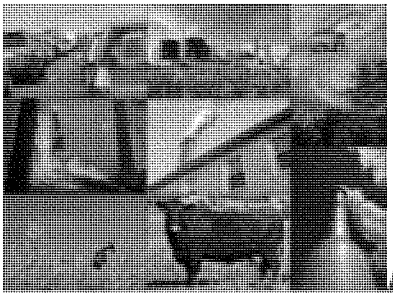
To: Allnutt, David[Allnutt.David@epa.gov]; Anderson, Lea[anderson.lea@epa.gov]; Anderson, Steve[Anderson.Steve@epa.gov]; Aranda, Amber[aranda.amber@epa.gov]; Averback, Jonathan[Averback.Jonathan@epa.gov]; Belser, Evan[Belser.Evan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Bogoshian, Matthew[Bogoshian.Matt@epa.gov]; Branning, Amy[Branning.Amy@epa.gov]; Bunker, Byron[bunker.byron@epa.gov]; Chapman, Apple[Chapman.Apple@epa.gov]; Choi, Jake[Choi.Jake@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Crum, Lynda[Crum.Lynda@epa.gov]; Crystal, Roy[crystal.roy@epa.gov]; Davis, Julian[davis.julian@epa.gov]; Dickinson, David[Dickinson.David@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]; Dubey, Susmita[dubey.susmita@epa.gov]; Dubois, Roland[Dubois.Roland@epa.gov]; Embrey, Patricia[Embrey.Patricia@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Froikin, Sara[Froikin.Sara@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Graham, Cheryl[Graham.Cheryl@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Hogan, Stephanie[Hogan.Stephanie@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Horowitz, Michael[horowitz.michael@epa.gov]; Igoe, Sheila[Igoe.Sheila@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Kataoka, Mark[Kataoka.Mark@epa.gov]; Klepp, Robert[Klepp.Robert@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Lee, Michael[lee.michaelg@epa.gov]; Lovett, Lauren[Lovett.Lauren@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Manners, Mary[manners.mary@epa.gov]; Marks, Matthew[Marks.Matthew@epa.gov]; Matthews, Julie[Matthews.Juliane@epa.gov]; McConkey, Diane[Mcconkey.Diane@epa.gov]; Mclean, Kevin[Mclean.Kevin@epa.gov]; Moore, Bruce[Moore.Bruce@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Adair, Jocelyn[Adair.Jocelyn@epa.gov]; Okoye, Winifred[Okoye.Winifred@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Pastorkovich, Anne-Marie[Pastorkovich.Anne-Marie@epa.gov]; Roberts, Martha[Roberts.Martha@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Rowland, John[Rowland.John@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Senn, John[Senn.John@epa.gov]; Shenkman, Ethan[Shenkman.Ethan@epa.gov]; Silverman, Steven[silverman.steven@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Snyder, Doug[Snyder.Doug@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Stahle, Susan[Stahle.Susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Tate, Ragan[Tate.Ragan@epa.gov]; Thrift, Mike[thrift.mike@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Ting, Kaytrue[Ting.Kaytrue@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Versace, Paul[Versace.Paul@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Wilcox, Geoffrey[wilcox.geoffrey@epa.gov]; Williams, Brent[Williams.Brent@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]; Williamson, Timothy[Williamson.Tim@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Wills, Jennifer[Wills.Jennifer@epa.gov]; Conger, Nick[Conger.Nick@epa.gov]; Blake, Wendy[Blake.Wendy@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]; Vergeront, Julie[Vergeront.Julie@epa.gov]; Tozzi, Lauren[Tozzi.Lauren@epa.gov]; Coursen, David[Coursen.David@epa.gov]; Pilchen, Zach[Pilchen.Zach@epa.gov]; Skinner-Thompson, Jonathan[Skinner-Thompson.Jonathan@epa.gov]; Vijayan, Abi[Vijayan.Abi@epa.gov]; Roder, Aileen[Roder.Aileen@epa.gov]; Walker, Denise[Walker.Denise@epa.gov]; Caballero, Kathryn[Caballero.Kathryn@epa.gov]; Thompson, Christopher[Thompson.Christopher@epa.gov]
From: Turley, Jennifer
Sent: Mon 2/2/2015 4:21:04 PM
Subject: Air & Radiation Law News for February 2, 2015



Air & Radiation Law News

for February 2, 2015

Bloomberg BNA Daily Environment Report™

Congress

Murkowski to Take Reins of EPA Spending Panel

Sen. Lisa Murkowski (R-Alaska) was named chairwoman of the Appropriations subcommittee responsible for allocating funding to the Interior Department and the Environmental Protection Agency in the 114th Congress. However, her Democratic...

Energy

EPA Critique Buoys Keystone Critics After Congress Backs Pipeline Project

The Environmental Protection Agency will file a response to a federal study of the Keystone XL pipeline released a year ago, raising the hopes of critics who argue the findings understated the project's climate risks....

Energy

IEA Says Lower Oil Prices Prompt Countries To Curb Subsidies, Increase Renewables Use

Countries from Mexico to Germany and Malaysia are increasingly taking advantage of cheap oil by trimming fossil fuel subsidies, easing the way for renewable power that can help the environment, according to the chief economist of the International...

Energy

Keystone Lobbying Said to Demonstrate Project's Symbolic Role in Energy Debate

Strong lobbying from most of the nation's top energy companies, industry groups, unions and environmental advocates last quarter on the proposed Keystone XL pipeline further indicates the pipeline has become the most visible symbol...

Energy

Ontario Utilities Agree to Conservation Program

About 70 electricity distribution utilities have agreed to deliver energy conservation programs aimed at reducing annual electricity use in Ontario by seven terawatt-hours from current levels by 2020, as stipulated in the province's...

Hazmat Transport

Canadian Safety Board Questions Oversight In Wake of Lac-Mégantic Railroad Disaster

Canada's transportation safety watchdog has warned that Canadian railways are not yet subject to sufficient oversight on the safety of their transportation of oil and other hazardous materials. ...

Radioactive Waste

Final NRC Report Says Yucca Site Safe But Licensing Will Require More Funding

The proposed Yucca Mountain nuclear waste repository meets safety requirements but should not yet be authorized for construction, the Nuclear Regulatory Commission said Jan. 30....

Sustainability

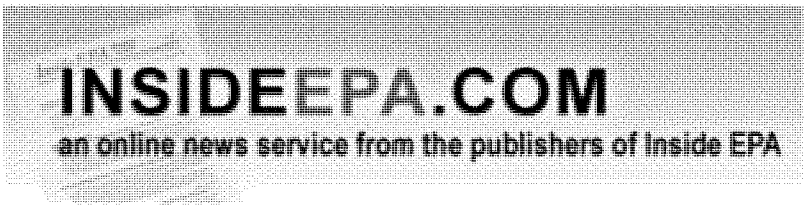
New Emissions Reporting Standards Could Influence Electricity Suppliers, Speakers Say

Updated corporate emissions reporting guidelines from the Greenhouse Gas Protocol could help put pressure on electricity suppliers to provide better data and more clean energy options, representatives from companies and nongovernmental...

Vehicle Fuels

U.S. Biodiesel Makers Cry Foul as EPA Moves to Allow Imports of Argentine Fuel

Biodiesel makers are complaining the Environmental Protection Agency is allowing imports from Argentina while failing to comply with a law encouraging domestic production....



Latest News

Low Gas Prices Unlikely To Affect EPA's Planning For Vehicle GHG Rules

Low gasoline prices are unlikely to have any major impact on EPA's long-term planning for its vehicle greenhouse gas (GHG) rules for light-duty cars and heavy-duty trucks, agency officials say, as short-term fluctuations in gas prices are unlikely to justify either additional compliance flexibility for existing rules or affect future rules.

EPA Bid To Revise Haze Air Planning Deadline Receives Mixed Response

EPA plans to revise its deadline for states to submit air quality compliance plans for its regional haze emissions reduction program and craft additional guidance to ease implementation of the program, prompting support from states that have struggled to meet existing deadlines but concern from advocates about possible delays to pollution cuts.

Senators Eye Options To Close Oil Spill Tax Loophole After Keystone Vote

Republican and Democratic senators are exploring options for closing a loophole they say allows tar sands oil producers to avoid paying into the Oil Spill Liability Trust Fund following broad support for a non-binding sense of the Senate amendment that was included in the Keystone XL pipeline bill approved Jan. 29.

News Briefs

House Bill Seeks Release Of Studies Used For EPA Rules

Rep. Larry Buchson (R-IN) has introduced a bill that would force EPA and other agencies to publicly release any scientific studies that they rely on for regulatory purposes such as proposed rulemakings, building on Republicans' efforts from the previous Congress to try and force EPA to reveal the data underpinning its rules.

Biodiesel Sector Urges EPA To Finalize Higher RFS Target

Biodiesel producers are urging EPA to immediately issue its final renewable fuel standard (RFS) target for biomass-based diesel at a level millions of gallons higher than the agency has proposed, saying EPA's delay in issuing the target is creating major uncertainty for biodiesel producers that is creating legal liability risks and economic harm.

Greenwire

EPA:

FBI probed 'Bullets for Bureaucrats' death threat against late agency chief

Kevin Bogardus, E&E reporter

Published: Friday, January 30, 2015

U.S. EPA faced anti-government fury even in its earliest years, when the FBI investigated threats against one of the agency's first leaders.

More than 200 pages of FBI records obtained by *Greenwire* through a Freedom of Information Act request detail an investigation into a death threat directed at Russell Train, EPA's second administrator, who led the agency from 1973 to 1977.

Train -- who died in 2012 at age 92 -- was part of a select band of government officials who helped institutionalize federal environmental policy beginning in the late 1960s. Train served as the first chairman of the White House Council on Environmental Quality under President Nixon before heading to EPA.

In June 1974, less than four years after EPA formed, a threatening message was sent to Train at the agency. A ranting letter and bizarre printed certificate told Train his life was in danger because of the policies he was supporting as EPA chief.

"Mr. Train: By your buttinsky policies, by your supercilious s , un-realistic efforts to control the country and bankrupt the people le under the guise of cleaning up the air, your days may well be numbered," said the letter, complete with unusual spacing and typos.

"Viva la revolution, Junior You're creating it big by curtailing our freedoms," the letter later continued. "... You, the OSHAcrats, the CPAcrats and Common Cause and socialist- communist swine will never be able to rest in peace if you continue your destructive measures. Break the people and blood shall flow...Beware, bastard!!"

The certificate was titled "Bullets for Bureaucrats" and signed by "Thomas Paine III," seemingly after the American Revolutionary War figure. Below the signature was the name "The Committee for Constitutional Justice."

"You are fashioning the bullets that will eventually shoot you down along with the innocents duped and defrauded by your assinine policies," the document warned Train.

Earlier in 1974, a similar document was sent to Hubert Humphrey, the former vice president and then-Democratic senator from Minnesota, according to FBI records.

Also among the FBI records was a certificate for the late Sen. Abraham Ribicoff (D-Conn.).

That pattern of harassment attracted the FBI's attention.

The bureau's Identification Division was asked to do fingerprint analysis on the materials. The FBI also contacted printing shops in the San Diego area -- supposedly where the letter was from -- to see whether they recognized the certificates.

Further, the law enforcement agency checked with six sources who were familiar with right-wing extremist groups in the region, but they had never heard of the Committee for Constitutional Justice. The FBI also analyzed the typewriting on the documents and concluded they may have come from a Smith Corona typewriter.

Roger Strelow, a former senior aide to Train at CEQ and EPA, remembered a death threat being issued against the administrator.

Russell Train, U.S. EPA's second administrator. Photo courtesy of U.S. EPA.

"It was kind of, 'Oh, my goodness, that's bizarre,'" said Strelow, now a principal at 3S Environmental and Energy Strategies.

EPA's inner circle was informed that there would be increased security around Train's office for an indefinite period because of the death threat, but that ended a few months later, according to Strelow's recollection.

"In typical fashion, he just shrugged it off," Strelow said. "Presumably, he had no clue on why he was singled out."

Security was light during EPA's early years, according to several agency insiders at the time. Death threats against senior officials were not common then.

"There were more concerns that unstable people would come in and cause a problem," said Jim Barnes, a former top official at EPA during its startup phase and now an Indiana University law and environmental affairs professor. "I think the administrators now move around with more security than we did."

Protection has become more prevalent for EPA administrators. The current agency chief, Gina McCarthy, tends to have bodyguards close by (*Greenwire*, Oct. 2, 2014).

"Anyone in the government in those days wouldn't have much security around them unless there was a specific threat against them. Russ certainly didn't," Strelow said. "It just was a totally different atmosphere. It's a real sadness at how vitriolic politics has grown now in Washington."

Train himself noted the furor he engendered in running the Cabinet-level agency.

"I certainly learned that at EPA you are in the middle of controversy all the time. I probably was not accustomed to the amount of media attention I received on just about everything. That was something new to me," Train said in an oral history interview conducted in 1992.

It's not clear whether the perpetrator behind Train's death threat was ever caught, though the FBI does not release documents through FOIA for ongoing investigations.

Christopher Allen, an FBI spokesman, declined to provide any additional information about the FBI records on Train.

'Typical college prank'

The records also show the numerous vettings Train underwent for the many government jobs he held, including in 1957 when he joined the U.S. Tax Court as a judge.

Born in Jamestown, R.I., Train also served as undersecretary at the Interior Department before running CEQ and later EPA. After leaving the agency, Train became president of the World Wildlife Fund from 1978 to 1985, then its chairman from 1985 to 1994.

The bureau's documents also go into great detail about Train's academic career.

Train ranked 370th out of 488 students in his Princeton University class, according to FBI records. He was also prone to "class cuts" and suspended for a short period of time for a "typical college prank": getting arrested for taking a nearby mill's bag of wheat when returning to school from a local bar.

The lengths the bureau goes to in vetting administration officials is extraordinary, said Gary Baise, a former close aide to first EPA Administrator Bill Ruckelshaus who also worked at the FBI.

"I'm amazed at the level of detail that the FBI has on people in these files," said Baise, who's now at

Olsson Frank Weeda Terman Matz. "People would send in all types of things, and then it would be included in their file."

FBI agents interviewed about 30 people regarding Train when he was in the running for the EPA administrator job.

For other investigations, agencies and congressional committees were contacted to see whether they had any information on Train, including the House Committee on Un-American Activities.

In addition, the FBI questioned people about Train's relatives and verified information about them, too.

Train passed the vettings with flying colors, with several attesting to his character and integrity.

Ruckelshaus gave a great reference for Train, saying he was "a superior person in every respect," according to FBI records.

Strelow told *Greenwire* that Train "was a genuine, sincere environmentalist" who also happened to be "politically astute."

"That was a benefit to the agency," Strelow said.

Click here and here to read the FBI's records on Train.

BIOFUELS:

EPA defends program for Argentinian biodiesel amid industry backlash

Amanda Peterka, E&E reporter

Published: Friday, January 30, 2015

This story was updated at 2 p.m. EST.

U.S. EPA is defending its approval earlier this week of a program for Argentinian imports of biodiesel against withering criticism by the U.S. biodiesel industry.

In a sit-down interview with *Greenwire*, EPA senior adviser Paul Argyropoulos called the program "more rigorous" than systems in place in other countries for biodiesel producers.

Under the program, a third party would certify that biodiesel produced in Argentina for export to the United States meets renewable fuel standard requirements. Other countries' qualification systems are based on a review of records meant to ensure that agricultural land does not expand as a result of the RFS (*Greenwire*, Jan. 28).

"This particular alternative biomass tracking program is even more stringent than that. It's more robust because it has a commitment from a third party to actually audit the entire biofuels supply chain," Argyropoulos said yesterday at EPA headquarters in Washington, D.C. "Absolutely it's more rigorous because it's not just providing a document. It's having everybody verify the documents, verify by physical visits and audits of the biofuel supply chain, and they are overseeing it."

When EPA announced the decision Tuesday, the National Biodiesel Board characterized it as "easing" requirements on Argentinian biodiesel producers to qualify for the federal renewable fuel standard. The group says that the program would result in a glut of Argentinian biodiesel coming into the United States.

In the wake of EPA's defense of the program, NBB has doubled down on its criticism. It sent a letter to EPA Administrator Gina McCarthy today asking the agency to reconsider its decision. NBB also today hosted a call with reporters in which it slammed EPA's handling of the RFS as a "failed" policy and blamed EPA for biodiesel plant shutdowns and diminishing profits over the past year.

"The point of the RFS is to help with the domestic industry and to help with energy independence, if you look back when it was signed into law -- not to be the Argentine jobs act," Anne Steckel, NBB's vice president of federal affairs, said in an interview yesterday.

The 2007 renewable fuel standard mandates that refiners blend certain amounts of conventional ethanol and advanced biofuels, including biodiesel, into petroleum gasoline and diesel each year. At issue are the RFS's requirements that foreign imports of fuels for use in the program are made from only renewable biomass.

Other countries typically use a "map-and-track" system that's largely a record-keeping exercise in which foreign biofuel producers must produce documents such as land-use records showing that plant inputs came from land that was already being used to grow crops when the RFS was enacted in 2007.

EPA's implementing regulations for the renewable fuel standard, however, laid out an alternative option for foreign producers to certify their fuel. Argentina is the only country so far to have applied to use the alternative option, according to Argyropoulos. EPA determined that it met all the requirements of the RFS regulations.

Under the approved program, the Argentine Chamber of Biofuels, or CARBIO, will classify "go areas" in Argentina where land was cleared or cultivated prior to 2007. A third party, the Peterson Control Group, would certify that feedstocks used in biodiesel exports to the United States for use in the RFS program come from those areas.

"We believe that having that third party oversee all of that process is certainly more robust than just having records made available to do so," Argyropoulos said.

Biofuel producers arrayed under CARBIO would fund the third-party reviews under contract. EPA did not participate in setting up the contract but reviewed it as part of its approval process for the program, Argyropoulos said.

Argentinian biofuel producers wanting to qualify under the RFS would only be allowed to use soybeans and other feedstocks that have been grown in Argentina, he added. Feedstocks imported from other countries, even where they've been certified under the map-and-track system, would not be allowed for inclusion.

The National Biodiesel Board, though, has countered that the new survey system would be "far less strenuous and stringent" than the map-and-track approach because it leaves reviews of feedstocks to a party that's being paid by the producers it audits. Whether feedstocks qualify under the renewable fuel standard program would be difficult to verify, according to NBB.

"It makes absolutely no sense that a group of biofuel producers would get together and ask for more stringent regulations on them," National Biodiesel Board CEO Joe Jobe said on today's press call.

The board estimates that the new survey system would lead to exports of up to 600 million gallons of

Argentinian biodiesel to the United States. NBB spokesman Ben Evans said that the number was based on Argentina's historical exports to Europe before the European Union slapped an anti-dumping duty on Argentinian imports. Argentina also operates under a tax export program that incentivizes exports of biodiesel.

"This is going to displace U.S. production because the product coming in from Argentina has a strong tax advantage," Steckel said today.

At the heart of complaints by the National Biodiesel Board is frustration over EPA's failure last year to complete a rulemaking establishing refiners' mandates for renewable fuels. In late 2013, the agency proposed to roll back the mandates for the first time in the RFS's history but did not finalize the proposal after receiving criticism from both the biofuels and oil industries.

The RFS has been essential for creating a market for biodiesel producers. Without the annual requirement, the trade group says that biodiesel production has slipped and producers have been forced to close their doors. Congress also allowed the industry's $1-a-gallon tax credit to expire through most of last year.

The group today highlighted Green Earth Fuels, a large biodiesel plant outside Houston that filed for bankruptcy earlier this month. NBB says that EPA should be focusing first on completing the annual volume requirements over the approval of the Argentina program.

"This is absolutely outrageous, and it is not without consequence. This failure on the part of EPA is costing people their livelihoods," Jobe said. "It is just without understanding why they would decide this week that they should prioritize a decision to lower sustainability requirements for foreign Argentinian subsidized product."

Argyropoulos said that the agency has heard NBB's concerns. But he labeled "speculative" any attempts to project how many gallons of Argentinian biodiesel would enter the United States under the new program.

"We don't know," he said. "There's a lot of things that happen in the market which provide the people in those businesses to make a determination if they're going to produce a product, No. 1, either for food or for fuel production, and No. 2, whether they're going to keep the product domestic or export it to some other country for other reasons."

EPA, Argyropoulos said, is still planning to go through with a rulemaking this year that combines the refiners' volume requirements for 2014, 2015 and 2016 in a bid to get the program back on track.

He said that the Argentina decision had no relation to the agency's work in establishing the yearly volume obligations.

"They are two separate things," he said. The Argentina decision was "an administrative action that is allowed for under the regulation, and the annual volumes rules are something we have to do every year, and certainly we know we are late and we have messages out there that we intend to get on track this year, but they really are two separate actions."

In an interview earlier this year with *Greenwire*, EPA acting air chief Janet McCabe said that the agency was "committed" to "getting the program back on track" and in supporting the development and use of advanced biofuels. The major issue has been EPA's legal authority to consider the practical limits to the amount of biofuel that can be used in the market, she said.

"That's what we have been focused on, how to best accomplish Congress' goal in determining what those

volumes should be, how the categories should be divided up and what's the right legal authority to use," McCabe said.

Though tensions boiled over this week, the National Biodiesel Board and EPA have been going back and forth on Argentina's application for the survey system since at least 2013. In November of that year, NBB wrote a letter expressing concerns and asking EPA to initiate a formal public comment period on CARBIO's request. NBB followed up with a letter reiterating its concerns Feb. 6.

Jobe said that NBB was not ruling out the possibility of taking legal action to challenge the Argentina decision.

CLIMATE:

Utility industry urges EPA to swap power plant rule's 'cliff' for 'straight line'

Jean Chemnick, E&E reporter

Published: Friday, January 30, 2015

Utilities can improve the way states show early progress under U.S. EPA's Clean Power Plan, industry officials said yesterday, while urging other agencies to back their strategy.

Quinlan Shea, the Edison Electric Institute's vice president for the environment, said yesterday at a Bipartisan Policy Center forum that EPA should swap out its current proposal to phase in hefty interim state targets to slash existing power plant carbon dioxide emissions in favor of a requirement to make incremental reductions.

Under last year's proposal, states will be required to submit implementation plans for the rule beginning next year. An interim compliance period would begin in 2020, with requirements averaged over the next nine years, and the rule would take full effect in 2030.

But Shea said this interim goal -- or "cliff," as many stakeholders have called it -- would be unachievable for many states and would force others to rely on strategies that they can implement quickly instead of ones that will benefit their ratepayers and the environment long term.

"If you're almost setting up your process to fail, why do that?" Shea said.

Instead, EPA should require states to show steady improvement each year after they submit their plans to EPA, gradually ramping down emissions until they reach their 2030 target, he said.

This "straight line" approach would ensure the states stay on track to meet the rule's ultimate reduction targets but would give them time to plan, build needed infrastructure and avoid the need to retire useful power plants.

He suggested that states' public utilities commission's propose the option in their ongoing talks with EPA staff, because "they have a lot of sway with this administration." He added that he would like to see the Federal Energy Regulatory Commission and the Energy Department intervene during interagency review.

"The E in EPA does not stand for energy, it stands for environment," he said. "And there are other sister agencies within the administration that do have a lot of expertise in terms of energy policy and reliability issues."

Republicans on Capitol Hill also have expressed hope that FERC would insert itself into the rulemaking process, preferably to demand the rule be rescinded.

But Shea said EEI's goal was to improve the rule, not kill it. And he said he expected EPA Administrator Gina McCarthy to pursue an "80 percent" solution -- opting for a much less burdensome rule that achieves most, but not all, of the proposal's environmental goals.

"She's very pragmatic," he said. "She understands our industry far better today than she did when she started out."

McCarthy previously has presided over EPA rulemakings for cooling water intake and mercury that took industry concerns into consideration, he noted.

McCarthy herself has said the final rule will be different from the proposal and has hinted EPA is mulling changes to the interim target.

"We clearly would like to have early reductions because it makes the target in the end much easier, but we'll work with the states to see where all of these comments end up," she said at a recent roundtable with reporters.

The BPC forum included a cross-section of state regulators, industry representatives, trade associations and environmental groups -- the vast majority of whom suggested changes that would lower the rule's 30 percent reduction target.

Many cited the 2020 "cliff" issue, which would obligate some states to achieve as much as 80 percent of their total required reductions beginning a few years after they submit plans to EPA.

Another recurring theme was the perceived lack of credit the proposal affords to states that were early movers in making reductions -- as almost every state argues it was.

Rather than having an easier time complying with the rule because of past coal plant closures and investment in natural gas, renewable energy, efficiency and other technologies, states are often assigned tougher reduction obligations because they have shown they can slash CO2, many panelists complained. Their concerns are echoed in the comments EPA received from state agencies and utility commissions ahead of its Dec. 1, 2014, commenting deadline for the proposal.

"The investment that our utilities made and that ratepayers paid for to move us forward and have cleaner emissions over the years should not be such that we are penalized," said Lisa Edgar, a Florida commissioner and president of the National Association of Regulatory Utility Commissioners.

Tennessee commissioner Bob Martineau said his state could be punished for its new nuclear units if they fall behind schedule, because EPA based Tennessee's targets on their being completed by the time the interim compliance period begins. Robert Kenney of Missouri's Public Service Commission urged EPA to be more sensitive to states that historically relied on coal.

Each of the concerns chips away at the rule's stringency.

But Derek Murrow, director of federal energy policy for the Natural Resources Defense Council, said EPA could address concerns while tightening the rule if it makes a few tweaks -- for example, a new assumption that all states can switch from coal to natural gas use even if they currently have no combined-cycle natural gas power plants.

"I think there are ways to have more consistent targets and go deeper over time," he said.

But EEI's "straight line" proposal would lead to more CO2 emissions than the EPA proposal in the early years of the rule, he said, adding tonnage that would remain in the atmosphere for centuries.

FEDERAL AGENCIES:

GOP targets pricey portraits, tax-delinquent employees

Robin Bravender, E&E reporter

Published: Friday, January 30, 2015

There's a renewed push in Congress to permanently ban government officials from using taxpayer cash for oil portraits.

Freshman Sen. Bill Cassidy (R-La.), who sought a portrait ban during his time in the House, is hoping to jump-start his effort in the upper chamber. As one of his first orders of business this year, Cassidy introduced a bill yesterday that would block the use of federal funds for oil paintings of the president, vice president, Cabinet members and members of Congress.

There's already a temporary ban on portrait spending in place after language was included in the fiscal 2014 and 2015 funding bills that halted spending on paintings of all government workers for those years. But Cassidy and other lawmakers want to make it permanent.

"When America is trillions of dollars in debt, we should take every reasonable measure to reduce the burden passed on to our children and grandchildren," Cassidy said in a statement. "Tax dollars should go to building roads and improving schools -- not oil paintings that very few people ever see or care about."

Sen. Deb Fischer (R-Neb.) has already signed on as a co-sponsor to Cassidy's bill, S. 310, the "Eliminating Government-Funded Oil-Painting" or "EGO" Act.

And yesterday, Sen. Jeanne Shaheen (D-N.H.) reintroduced her own effort to limit government spending on portraits. Shaheen's bill, S. 323 -- a reintroduction of a bipartisan measure that cleared a Senate committee last year -- would set a cap of $20,000 in taxpayer funds for portraits of officials in line to succeed the president (*E&E Daily*, Jan. 30).

The portrait backlash began after reports surfaced of the government spending tens of thousands of dollars on oil paintings of agency chiefs.

Former U.S. EPA Administrator Lisa Jackson's portrait cost $38,350 in 2012, according to agency records. Ex-EPA chief Stephen Johnson's portrait cost $29,500, and a portrait of Michael Leavitt, who was EPA chief for just over a year during President George W. Bush's administration, cost $26,000.

Former Energy Secretary Steven Chu's official portrait commissioned in 2012 cost $21,100; DOE spent $25,000 each for portraits of Clinton Energy Secretary Hazel O'Leary and George H.W. Bush Energy Secretary James Watkins, according to records released to *Greenwire* last year.

Defenders of the practice, including some former government officials and portrait artists, have argued that the paintings are an important way to record history and that congressional efforts to eliminate the practice are shortsighted (*Greenwire*, June 13, 2014).

Bid to block bonuses for delinquent taxpayers

There's a separate effort in the Senate to block tax-delinquent federal employees from receiving bonuses.

Sen. Pat Roberts (R-Kansas) yesterday introduced S. 303, a bill to prevent government workers from getting cash awards if they're deemed to have racked up "seriously delinquent" tax debt.

"Let me make it perfectly clear, employees who deliberately ignore the process and procedures for fulfilling their tax obligations must be held accountable," Roberts said in a statement. He called it "unconscionable" that IRS employees who are behind on their taxes are simultaneously working as tax collectors.

But his effort would apply to workers throughout federal agencies. "We should apply this standard across the federal government," Roberts said.

Last year, a Senate committee approved a bipartisan bill from then-Sen. Tom Coburn (R-Okla.) and Sen. Mark Pryor (D-Ark.) that would force federal agencies to fire employees -- and bar them from hiring new staff -- who have "seriously delinquent tax debt," but the measure never received a vote by the full chamber (*Greenwire*, May 21, 2014).

OIL AND GAS:

Shell bows to shareholders on climate disclosures

Published: Friday, January 30, 2015

Royal Dutch Shell PLC's board has agreed to support a shareholder resolution filed by the Church of England and more than 150 other investors urging the oil company to explain how it's managing greenhouse gas emissions and investing in low-carbon energy, though the move came on the same day Shell announced plans to continue its quest for oil in the Arctic.

The resolution requires the company to divulge how its business would be affected by global action to curb the impacts of climate change and to explain how its executives' financial incentives encourage them to search for new supplies of oil.

It's not clear whether Shell's support of the resolution means the company views the issue of climate change any differently, analysts say, and the Arctic action could mean the company plans to change little about how it operates. Still, activists say the move is almost unprecedented for an oil firm.

"Investors will be watching closely to see how the company explains that decision in light of the concerns raised in the shareholder proposal that Shell itself now says it supports," said Andrew Logan of Ceres, a nonprofit group that promotes sustainable investment.

Activist shareholders have targeted BP PLC with a similar resolution ahead of its annual meeting in April. A company spokesman said BP would "respond appropriately" to their demands (Pilita Clark, *Financial Times*, Jan. 29). -- **SP**

ELECTRICITY:

Despite 50M smart meters, Americans don't change energy use

Published: Friday, January 30, 2015

Energy consumption habits nationwide haven't changed much since the installation of 50 million smart meters five years ago.

The meters, which show homeowners their energy consumption by the hour, were once heralded as a way to make consumers more likely to conserve electricity by making them aware of how much energy they use.

Some speculate habits haven't changed because the meters report consumption in kilowatt-hours, a unit of measurement obscure to most Americans.

Ahmad Faruqui, a smart grid analyst with the Brattle Group in San Francisco, said the meters would have a greater impact if they also showed consumers how much their energy is costing them in real time, much like how you can watch the price go up as you pump gas into your car.

"There's no doubt in my mind that having knowledge and information about how much you're paying is a big factor in deciding how much to use," he said. "If you get a bill a month later, it doesn't help."

Some utilities have created online portals where customers can inspect their energy use data. But the websites aren't very popular and only show data of past energy use, not current use.

California's PG&E, for example, has deployed 9 million smart meters to 6.2 million customers. But only 43 percent have registered for the utility's online portal, and only 38 percent of those people have actually logged on to look at their usage.

One way to change electricity use habits could be to adopt a "prepay" system for electricity, much like a system for calling cards.

Under that model, users would pay in advance for a certain amount of power and then receive text messages and emails alerting them to their usage and how much money is left in their account (Chris Mooney, *Washington Post*, Jan. 29). **– AW**

WIND:

With no one to buy power, utility halts turbine farm expansion

Published: Friday, January 30, 2015

Plans to double the size of a wind farm on Anchorage, Alaska's Fire Island have stalled after a power purchase agreement fell through.

After two years of negotiations with Fire Island Wind, Alaska Railbelt utilities decided against purchasing the project's power. The decision resulted in the cancellation of construction and shipping contracts for 11 new wind turbines at the farm.

The 11 new turbines cost $50 million and would have added more than 20 megawatts of capacity to the 17.6-MW wind farm.

Fire Island Wind spokeswoman Suzanne Gibson said the company was willing to sell power from the 11 new turbines for 6.2 cents per kilowatt-hour. That rate is less than the 9.7-cent rate for power produced from the existing turbines but slightly higher than the cost of gas-fired power generation.

Utilities said the rate offered would have added costs as it moved through transmission lines, ultimately costing them double the original price.

"We really looked at it closely because if it would have lowered members' rates, we would have jumped on board," Mike Wright of the Golden Valley Electric Association said (Suzanna Caldwell, *Alaska Dispatch News*, Jan. 29). **-- AW**

DOE:

Agency to renew nuclear modeling hub if lawmakers provide funding

Katherine Ling, E&E reporter

Published: Friday, January 30, 2015

The Energy Department today said it would renew more than $121 million in funding for an energy innovation hub focused on simulating nuclear reactors to improve safety and longevity if Congress appropriates the funding.

The additional spending to support the Consortium for Advanced Simulation of Light Water Reactors for the next five years seems likely given the hub is headquartered in the home state of Sen. Lamar Alexander (R-Tenn.), the new chairman of the Energy and Water Development Appropriations Subcommittee.

"The work being done at the energy innovation hub at Oak Ridge National Laboratory is an important part of our country's ability to innovate and safely maintain our nuclear reactor fleet," Alexander said in a statement. "I'm glad to see the Consortium for the Advanced Simulation of Light Water Reactors remains a priority as we rely on nuclear power to provide the clean, cheap, reliable energy we need to power our 21st-century."

CASL is the first energy innovation hub to receive renewed funding from DOE. It was established in 2010 as part of a group of hubs that would allow the nation's top scientists from different universities to collaborate on significant barriers in energy technology.

Since its creation, CASL has "demonstrated significant progress," DOE said, using supercomputers to create unprecedented models and simulation tools for nuclear reactors, as well as interoperation software that simulates many physical behaviors found in reactors.

In 2013, CASL announced the first accurate, virtual operating nuclear reactor, which is the initial step in extending the life and reducing the waste of the nation's current fleet of reactors (*Greenwire*, July 11, 2013).

The "virtual" reactor is already in use for testing in the nuclear industry and is being validated with data from a variety of sources, including operating pressurized water reactors, according to DOE.

Over the next five years, CASL will focus on expanding its modeling capabilities for small nuclear reactors and other reactor designs, DOE said.

Until last year, there were five energy innovation hubs including CASL, but the Energy Efficient Buildings Hub based in Philadelphia is now the Consortium for Building Energy Innovation led by Pennsylvania State University after it ran into management issues and appropriators threatened to cut its budget.

The agency is still considering renewal for the Fuels from Sunlight hub led by the California Institute of Technology and Lawrence Berkeley National Laboratory, which was also created in 2010. The Joint Center for Energy Storage Research based at Argonne National Laboratory outside Chicago and the Critical Materials Institute based at the Ames Laboratory in Iowa were established in 2012, each with a five-year budget.

A report from the Secretary of Energy Advisory Board last year urged DOE to clearly define the challenge the hubs are trying to answer and emphasized the importance of on-site leadership as critical to success but also noted that a 10-year funding timeline might benefit the initiatives (*E&ENews PM*, March 28, 2014).

NSA:

States target spy agency's water, electricity to spur reforms

Published: Friday, January 30, 2015

With Congress deadlocked on whether to force the National Security Agency to change controversial surveillance practices, state legislators are trying to cut off the agency's access to utilities to force policy changes.

Bills are pending in eight states to either expel NSA facilities or prevent the agency from establishing operations. The bills would do this by banning state and local governments from helping the agency, including by letting NSA use local utilities to access electricity and water supplies.

Two bills would make it a criminal offense to cooperate with NSA, while others would bar contractors from working with the agency.

In Utah, state Rep. Marc Roberts (R) is continuing to push for a bill first introduced last year to cut utilities to a large NSA data center in the state. Maryland lawmakers also have filed bills targeting the agency's Fort Meade headquarters.

"I'll be shocked if we don't see at least one of these measures pass," said Mike Maharrey, executive director of the OffNow coalition, which prepared sample bills that led to many of the proposals (Steven Nelson, *U.S. News & World Report*, Jan. 28). **-- SP**

RAIL:

Groups pressure Congress to invest in passenger rail, transit infrastructure

Matthew Herbert, E&E reporter

Published: Friday, January 30, 2015

Unions and environmental groups called on Congress to provide more funds for passenger rail and transit systems in a report released today.

The Environmental Law and Policy Center and BlueGreen Alliance released the report, "Passenger Rail &

Transit Rail Manufacturing in the U.S.," which examined the impact and opportunities the passenger rail and transit industry presents to the national economy.

Howard Learner, executive director of the Environmental Law and Policy Center, said at the Washington, D.C., release that there are a variety of opportunities for Congress to invest in long-term passenger rail and transit infrastructure.

"We believe both passenger rail and transit should be included in a robust way in the transportation reauthorization bill and how funding is allocated," he said. "We're not against highways and bridges, but we want to make sure passenger rail and transit is a full, robust part of how the transportation reauthorization bill comes out."

Some members of Congress have fretted over funding for a long-term bill, but Learner suggested there are ways to pay for infrastructure needs, including raising the gas tax.

"The gas tax has attracted some support and some favorable nods on both sides of the aisle, but also some opposition, particularly coming from the Republican House members," said Learner.

Jennifer Narrod, the shop chairwoman for the IUE-CWA Local 81323 and a worker at Alstom Signaling Inc. in Rochester, N.Y., said a downsizing of manufacturing at her plant in recent years not only has hurt workers, but also has affected small businesses throughout the community. Narrod said long-term investments in the rail industry would be beneficial to Rochester and small towns across the country.

Narrod said her company, which produces signaling and operating systems for rail cars, manufactures products for larger cities and noted that Rochester doesn't have a passenger rail system. Along with the report, Narrod said small-town companies have a significant impact on the rail industry and are important to the economy.

The report found more than 750 companies in 39 states that manufacture components for passenger rail and transit rail. It homed in on a set of Midwestern and Mid-Atlantic states and found 540 companies making subcomponents of materials, track and infrastructure products, as well as providing repairs for the industry.

Investing in passenger rail and transit infrastructure could further boost manufacturing in those states and expand production to others, the report found.

"We need leadership from Congress to ensure long-term, sustainable funding for transportation, and from leaders at every level to ensure that as we build and operate the clean energy and transportation infrastructure and technology of the future, we also rebuild good family-supporting jobs and prosperous communities," said Kimberly Glas, executive director of the BlueGreen Alliance, a coalition of unions and environmental groups.

Congress has until May to find a funding solution for transportation infrastructure.

The report's authors said short-term funding bills hamper hiring and fail to give investors and companies confidence to expand plants. Both Glas and Learner said a long-term infrastructure investment would provide these companies with certainty for the future.

Although there are a few months until the deadline, Glas said she and others would have "boots on the ground" at the Capitol and in congressional districts that are affected by infrastructure funding.

"Congress can and should come together and get something done here, and get it done in way that's robust for creating jobs, growing our economy, investing in passenger rail and transit rail that helps our

environment, helps mobility, reduces congestion and is good for jobs," said Learner. "It's up to Congress now to get that done."

CHINA:

Officials tap university chief to lead environment agency

Published: Friday, January 30, 2015

The president of China's Tsinghua University could soon lead the country's environmental protection ministry.

University President Chen Jining has a background in environmental research, something that has sparked excitement among those who want the country to do more to prevent pollution.

"A Chinese public eager to breathe freely is calling for someone who 'gets' the environment and can deliver results," said Ma Tianjie, program director for mainland China at Greenpeace East Asia.

Chen has been chosen as party chief of the environmental protection ministry. In March, the National People's Congress will meet to potentially appoint him.

Despite Chen's background, some are wary about whether his appointment could change anything. For the past 10 years, the environmental protection ministry led by Zhou Shengxian nearly ignored environmental regulations, enforcing them only with tiny fines.

Even with new leadership, some observers note that China's environmental regulations do not give the ministry clear jurisdiction over water pollution, nor do they provide legislative authority to force local environmental bureaus to enforce the laws.

Cao Cong, a science and technology policy expert at the University of Nottingham, worries that Chen does not have the government experience to navigate those pitfalls.

"University president and minister require two completely different skills," Cao said (David Cyranoski, *Nature*, Jan. 28). **-- AW**

AIR POLLUTION:

Greenwire's Peterka discusses future of ozone rule after EPA hearings

Published: Friday, January 30, 2015

Following its November proposal to tighten federal ozone standards, U.S. EPA began a series of three public hearings on the plan yesterday. How contentious were the discussions, and what impact could the comments have on EPA's final proposal, which is expected later this year? On today's The Cutting Edge, *Greenwire* reporter Amanda Peterka discusses expectations for the final rule.

Click here to view today's The Cutting Edge.

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CLIMATEWIRE — Mon., February 2, 2015

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1.RISK:

Obama to raise federal projects 2 feet under new flood standard

Federal projects like roads and wastewater plants will be built at least 2 feet higher in the future to protect them against worsening floods that stem in part from climate change, under an order signed by President Obama on Friday.

2.NATIONS:

Canada's premiers agree to coordinate climate plan as oil price drop roils politics

Climate and energy infrastructure got top billing during the annual winter meeting of Canadian premiers in Ottawa, Ontario, last week, as the provincial leadership prepared to roll out a national energy strategy that they said would both feed the economy and address the country's carbon emissions.

TODAY'S STORIES

3.RENEWABLE ENERGY:
Led by Chile, and largely unsubsidized, Latin America's solar market sizzles
4.NEGOTIATIONS:
India probably won't announce a peak emissions year -- is that a bad thing?
5.RESOURCES:
Future land-use change is most significant threat to Southeast's forests
6.SCIENCE:
NASA launches soil moisture measuring satellite topped by giant antenna
7.PEOPLE:
Forest Service climate change adviser steps down
8.WEATHER:
Climate change may bring stronger storms, less frequently -- study
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World cities feel the heat
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Sea slugs move up Calif.'s coast
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For climate resilience, Mali turns to mud-brick homes

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ENERGYWIRE — Mon., February 2, 2015

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1.OFFSHORE DRILLING:

Stung by price crash, service provider finds ways to stay in the game

INGLESIDE, Texas -- For years, the giant fabrication yard in this coastal community across the bay from Corpus Christi has attracted attention from miles around as towering offshore platforms went up and out to exploit the riches locked under the Gulf of Mexico. Kiewit Offshore Services Ltd. has expanded by leaps and bounds, and its Ingleside facility has been front and center in delivering some of the largest and most complex offshore projects, both in the United States and globally. But with oil prices now about 60 percent below summer 2014 highs, company officials said they have moved swiftly to hunker down and prepare for the worst, finish existing contracts and diversifying to new markets should offshore activities slow substantially.

TOP STORIES

2.TECHNOLOGY:
Searching for the telltale fingerprints of a grid cyberattack

3.ELECTRICITY:
BNSF lays out 'extraordinary' worst-case plans for coal deliveries

4.LAW:
Texas high court to hear Chesapeake royalties case

ELECTRICITY

5.CLIMATE:
Southern states most challenged by EPA Clean Power Plan -- Fitch

OIL AND GAS

6.PIPELINES:
3-state enviro coalition forms to hinder New England gas project

7.EARNINGS:
Another supermajor is stung by oil slide as rig count plummets

8.REGULATION:
Texas energy chief stresses education as a tool to cope with fracking protests

9.WORKFORCE:
Drilling contractor to cut 2K jobs

10.LNG:
Low natural gas prices stall Asian demand for North American exports

11.OIL:
Crude slump set to steal profits

12.OIL:
Layoffs, salary freezes plague energy companies in Texas

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Oil woes bring empty shelves, with worse yet to come

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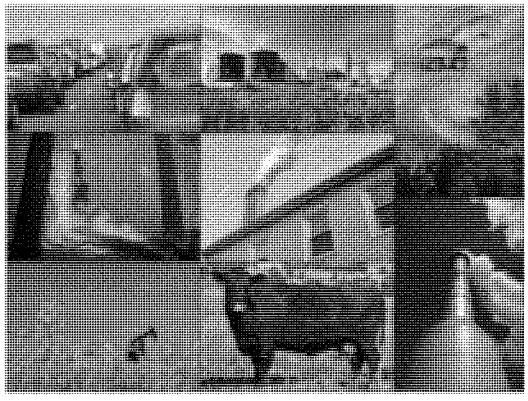

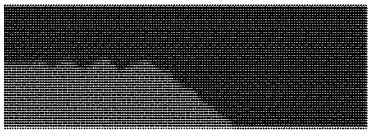

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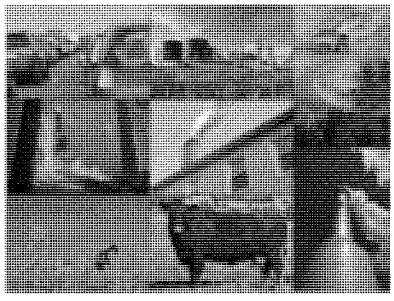

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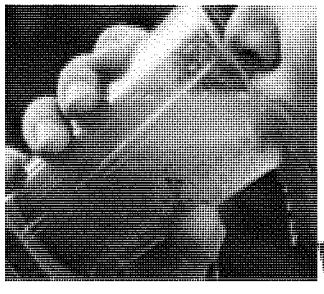

Water Law News

for February 2, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Maryland County to Repeal Stormwater Fee

The County Council of Harford County, Md., has voted unanimously to repeal its stormwater fee effective July 1, and it's the first jurisdiction to do so, Maryland Department of the Environment spokesman Jay Apperson said Jan. 30. County...

Chesapeake Bay

Maryland Lawmaker Plans Bill to Replace Phosphorus Rules Pulled by Governor

Just one week after newly inaugurated Gov. Larry Hogan (R) withdrew regulations intended to reduced phosphorus runoff from farms, the chairman of a Maryland House committee said in a letter to the governor he intends to pursue "a legislative...

Environmental Reviews

Seabridge Gold Establishes Board to Review Canadian Mine Tailings, Water Storage Plans

Exploration company Seabridge Gold said Jan. 26 it has established an independent geotechnical review board to examine tailings management and water storage dam facilities for its Kerr-Sulphurets-Mitchell mine near the Alaska–British...

Mining

British Columbia to Increase 2015 Budget For Mine Ministry Permitting, Tax Credits

British Columbia's budget in 2015 will see a $6 million increase in the provincial mining ministry's budget to provide for more regulatory inspections, the creation of a major projects office and the extension of industry tax credits,...

Mining

Canadian Mining, Government Must Team With Aboriginals for Best Results, Group Says

In the wake of Canadian court rulings on aboriginal land title, companies and the government must engage in meaningful consultation with aboriginal communities to create benefits for all parties, mining

industry and aboriginal leaders...

Mining

Federal Court Allows Lawsuit Challenging Permits for Tennessee Coal Mines to Proceed

A federal court in Tennessee ruled that a lawsuit challenging federal permits for a pair of surface coal mines in eastern Tennessee under the Endangered Species Act may proceed (Defenders of Wildlife v. Jewell, E.D. Tenn., No. 3:13-cv-698-PLR-CCS,...

Water Pollution

Ban on Personal Care Products Containing Plastic Microbeads Passes Vermont House

Legislation that would prohibit the manufacture and sale of personal care products and over-the-counter drugs that contain synthetic plastic microbeads was passed by the Vermont House. ...

Water Pollution

EPA Giving Power Plants Extra Time To Coordinate Coal Ash, Effluent Limits

The Environmental Protection Agency has given power plant owners and operators 18 more months to prepare plans for closing their coal ash ponds and landfills in order to allow them to coordinate with actions that will be required in upcoming...

Water Resources

Water Managers at Forefront of Efforts To Adapt to Climate Change, Lopez Says

Water managers are going to be at the forefront of dealing with climate change, Estevan Lopez, commissioner of the Bureau of Reclamation, said at a Colorado water conference. ...

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Latest News

Environmentalists Urge EPA To Revive Plans For Coalbed Methane ELG

Environmentalists are urging EPA to reverse its recent decision to scrap a planned Clean Water Act (CWA) effluent limitation guideline (ELG) and revive the rulemaking effort, arguing in a recent meeting with agency and White House officials that coalbed methane (CBM) effluent discharges are creating major harm to waterbodies that justifies an ELG.

Senators Eye Options To Close Oil Spill Tax Loophole After Keystone Vote

Republican and Democratic senators are exploring options for closing a loophole they say allows tar sands oil producers to avoid paying into the Oil Spill Liability Trust Fund following broad support for a non-binding sense of the Senate amendment that was included in the Keystone XL pipeline bill approved Jan. 29.

News Briefs

House Bill Seeks Release Of Studies Used For EPA Rules

Rep. Larry Buchson (R-IN) has introduced a bill that would force EPA and other agencies to publicly release any scientific studies that they rely on for regulatory purposes such as proposed rulemakings, building on Republicans' efforts from the previous Congress to try and force EPA to reveal the data underpinning its rules.

House Panel Schedules Cyanotoxins Bill Hearing

A House panel is slated to hold a hearing Feb. 5 on a bill that would require EPA to form a plan for evaluating and managing the risks of cyanotoxins in drinking water, one in a series of actions lawmakers have taken following last year's drinking water crisis in Toledo, OH.

Greenwire

OFFSHORE WIND:

After building it, one city wonders if they will come

Ariel Wittenberg, E&E reporter

Published: Friday, January 30, 2015

NEW BEDFORD, Mass. -- The ocean has been good to New Bedford.

This coastal Massachusetts city was once one of the richest in the world thanks to a booming whaling industry, serving as a home base for mariners searching for fortunes in whale oil.

That was in the 1850s, when in his novel "Moby-Dick," Herman Melville described the city with its "opulent" homes and gardens as "the dearest place to live in all New England."

It's not like that anymore.

The city of 100,000 has been in decline ever since whaling's demise. Manufacturing initially replaced whaling as the top industry, but those jobs have since been outsourced, leaving behind a dozen abandoned mills sitting on useless, contaminated land. Now New Bedford's economy is led by its commercial fishing fleet, which is more often than not in port thanks to federal quotas. Today, the former homes of whaling captains sit dilapidated, divvied up as multifamily rentals.

New Bedford is in need of a renaissance. To bring it, officials are looking to the sea once again in an attempt to reinvent the city as a hub of the offshore wind industry.

It's a risky strategy.

With no active offshore wind farms in the United States, the industry is in its infancy. And Cape Wind, which is set to be the city's first offshore wind customer, has been dealt blow after blow this month with the loss of two power purchase agreements and a suspension from participating in New England's wholesale energy markets. The prospect of other projects getting steel in water anytime soon also seems more unlikely this year with the expiration of federal renewable energy tax credits.

But Massachusetts has spent $113 million on a new port facility in New Bedford built specifically to cater to offshore wind farms, bolstering widespread community support for the strategy. The city's location near two federal areas off the coasts of Massachusetts and Rhode Island slated for wind development also buoys residents' hopes.

Says Mayor Jon Mitchell: "The arrival of the offshore wind industry in America, and especially the Northeast, is inevitable. And when it comes, New Bedford will be ready."

The city's greatest asset has always been its deepwater harbor. It's what persuaded Nantucket's Quakers to move their whaling businesses onshore in the early 1800s. It's what has kept the city's groundfishing and scalloping industries afloat.

And it's what persuaded state officials to locate their Marine Commerce Terminal in New Bedford instead of Boston.

In 2010, the Massachusetts Clean Energy Center, or MassCEC, decided to build a specialty port facility in New Bedford, when offshore wind developers like Cape Wind started to think about the logistical challenges of shipping turbine components to the states. The multiton turbine parts would need to be assembled on land before being installed at sea, and the commonwealth wanted to be prepared.

MassCEC, created by former Gov. Deval Patrick (D) to lead the state's renewable energy initiatives, commissioned a study of seven ports to find one best suited for an offshore wind reboot. Ultimately, the facility would accommodate turbine parts more than 400 feet long and handle loads of 4,000 tons per square foot.

"Given the enormous new potential for clean energy that offshore wind could provide and the economic development benefits of building a new industry, this seemed like a high-value, long-term opportunity for the commonwealth," MassCEC Executive Director and Chief Executive Alicia Barton said.

After narrowing the choices down to Boston and New Bedford, the study's authors recommended New Bedford, primarily due to geography.

Located south of Cape Cod in Buzzards Bay, New Bedford has easier access to Nantucket Sound, where Cape Wind's 130-turbine project is planned. It's also closest to two other federal renewable energy development areas located between Martha's Vineyard and Rhode Island. A hurricane barrier guards the harbor, protecting it from storm surge and flooding.

The study also noted that building the facility in New Bedford would spur more economic development than building the same facility in Boston.

During the two years it would take to construct the facility, Boston's business output would expand by nearly $19 million, while New Bedford's would expand by more than $44 million, according to the report.

In New Bedford, where the 10 percent unemployment rate nearly doubles Massachusetts' as a whole, the project was more than welcomed; it was embraced as a path to a better future.

Community activist John "Buddy" Andrade sees offshore wind as a way to change the lives of many in the inner city, most of whom have no college education and often struggle to find well-paying jobs.

"What we are talking about is lifting our community out of poverty and rebuilding our middle class. This would stop people from moving away, it would convince people to build homes here, to build families here," he said.

The first customer

The Marine Commerce Terminal was built to fit the schedule of the Cape Wind project. When ground was broken on the terminal in April 2012, Cape Wind agreed to use the facility to stage its 130-turbine farm in Nantucket Sound if it was completed by January 2015. Construction wrapped up on the project this month.

In September 2014, Cape Wind President Jim Gordon and Patrick held a Boston news conference to celebrate Cape Wind's lease for the terminal, an event celebrated in New Bedford as the first step toward economic revival.

But earlier this month, Cape Wind was dealt a potential death blow when two utilities terminated their contracts to purchase more than 75 percent of the project's power (*Greenwire*, Jan. 7). The decision followed Cape Wind's failure to reach a milestone of closing financing by the end of 2014 (*Greenwire*, Dec. 18, 2014). New England's grid operator has now suspended Cape Wind from participating in the region's wholesale energy markets (*Greenwire*, Jan. 26).

Cape Wind has argued that the power purchase agreement termination is illegal, saying specific portions of the contract allow for delays in project milestones. Company spokesman Mark Rodgers also called the energy market suspension irrelevant, saying, "Cape Wind will be qualified well in advance of coming online and actually producing energy for sale."

He did not respond to questions about the project's future but did say he appreciated New Bedford officials' "extremely proactive and visionary" promotion of Cape Wind and the industry as a whole.

'Our golden opportunity'

To city residents, the significance of the terminal is twofold.

No matter what type of cargo the terminal receives, it automatically expands the harbor's capacity because of its ability to bear weight. Container shipments and other heavy cargo previously off limits to New Bedford's piers can be landed at the terminal, which is expected to employ 100 people.

But because the facility has been branded as a place built for wind turbine components, city officials are hoping to leverage it to make New Bedford the "epicenter" of the offshore wind industry and to attract an entire supply chain. City leaders don't just want developers to use the terminal to ship and stage their parts; they want turbine manufacturers to build factories in town. They want New Bedford workers to be tasked with maintaining the turbines at sea.

"We are like many older industrial Northeastern cities where we have suffered plant closings and chronic unemployment that have eroded our tax base," Mitchell said. "We see offshore wind as our golden opportunity."

In order to attract other aspects of the offshore wind industry, the city needs more than just one developer to use the terminal. Because of this, city leaders have been able to rationalize that while having Cape Wind as the first customer would be helpful in achieving this goal, New Bedford isn't dependent on that one developer as long as others do business there instead.

Mitchell has also long cautioned residents that the change isn't expected to take place all at once. He expects it could take five to 10 years for European manufacturers to decide there's enough business at the terminal to justify building a factory nearby.

The approach may sound like a pipe dream, but New Bedford modeled its strategy after the German port city of Bremerhaven, a similarly sized city that had fallen on hard times until offshore wind came to town.

In April 2013, Mitchell led 25 community and business leaders on a trade mission to Germany to see the transformation the industry had there. Between 2005 and 2012, that 114,000-person city saw unemployment drop from 25 to 14 percent, Bremerhaven officials told the New Bedford *Standard-Times*, which sent a reporter on the trip. By 2013, the offshore wind industry employed 3,000 city residents at four factories and a research center.

JA Apparel Corp. CEO Tony Sapienza, who leads the city's Economic Development Council board and received a report from his staff detailing observations from their trip to Germany, said he sees the wind industry as a way to increase the city's cultural appeal.

"Offshore wind coming to New Bedford would mean a better, bigger downtown, more recreational attraction and more cultural attractions, everything that would be a byproduct of economic development," he said.

To help prepare residents for the city's "inevitable" transformation, the Economic Development Council last year formed its own Wind Energy Center to focus on ways to prepare the city workforce for jobs in the offshore wind industry. The local state and community colleges have also pitched in to create new class offerings to ensure that when the jobs come, New Bedford residents are qualified for them.

For example, the local Bristol Community College has revamped its two-year engineering technology program to allow students to concentrate on wind technology. Students will still learn the basics of engineering technology but will take one class that focuses exclusively on wind power. In the basic mechanics and physics classes, instructors also use wind power as examples, said Meghan Abella-

Bowen, associate dean for science, technology engineering and math initiatives.

Abella-Bowen said she sees the new program as a way to rebrand the school to fit in with "the buzz in our region about the wind industry."

More uncertainty in the wind

Unfortunately for New Bedford, Cape Wind's troubles aren't the only snags the industry has faced.

News of the company's power purchase troubles followed the expiration of federal renewable energy tax credits at the end of last year, which planted doubt about whether other developers would be able to secure investors.

And yesterday, the Interior Department held a highly anticipated lease auction for development of a 742,000-acre area off Massachusetts with uninspiring results.

While the area is the largest designated by the federal government for offshore wind development and has the potential to produce up to 4 gigawatts of commercial wind generation, developers bid on just two of the four lease parcels available (*Greenwire*, Jan. 29).

The two leases ultimately were awarded for less than $200,000 each, a small fraction of what developers had paid in other wind energy auctions where winning bids went as high as $8.7 million.

OffshoreMW LLC, one of the companies with a winning bid, is interested in potentially using the New Bedford terminal but already has a community benefit agreement with the Vineyard Power Cooperative that could eventually involve using Martha's Vineyard as a base for wind farm maintenance, said Vice President Erich Stephens.

"Anyone thinking about building a project today would be looking at New Bedford as a place for staging construction," Stephens said. "But the ongoing operations and maintenance, right now we see that as being on Martha's Vineyard."

To some in New Bedford, these snags are a sign that the city should not be so feverishly focused on offshore wind.

Former Mayor Scott Lang, who ran the city when the state picked New Bedford for the terminal project, said he never thought the facility should have just one use.

"I would be very excited to have Cape Wind be the first tenant, but the idea that we would focus only on renewable energy, I don't know how it serves the city," he said. "To lock into any one niche is a huge mistake. When that niche market has bumps in the road or doesn't get off the ground, people are going to be questioning it."

Lang, a longtime political rival of Mitchell, said the expiration of federal renewable energy tax credits further shatters Mitchell's vision of a pipeline of projects spurring broader industry interest in the city.

Lang faults Mitchell and his supporters for presenting wind as the city's panacea. Over the years, many have proposed ways to save the city like bringing a casino or aquarium to town, or getting rail service from New Bedford to Boston.

None of those plans has come to fruition. And though the Marine Commerce Terminal has actually been built, Lang charged Mitchell with giving residents false hope about its potential.

"I'm very hopeful for this facility, and I think it will be able to increase our operations in the city whether wind comes or not," he said. "But you can't put all your eggs in one basket and hope it will have a transformative effect."

Abella-Bellow also said the community college had been careful in crafting its wind engineering program, ensuring that students could get jobs in other sectors if the offshore wind industry doesn't come to town or takes a while to get there. The program is designed so a graduate with a wind engineering degree could first get a job at a natural gas or coal plant while waiting for an offshore wind project to come online, she said.

"We wanted to be broad because we do feel that southeastern Massachusetts is the offshore wind location, but it's in our best interest to make sure our students are well-rounded," she said.

Perhaps even more concerning to naysayers is that while the New Bedford terminal was built specifically to handle wind turbine parts, it's not the only facility in the region that can.

Quonset Point in Rhode Island has attracted the eye of offshore wind developers, including Cape Wind, which was set to use the facility before the New Bedford terminal was completed.

While the New Bedford terminal has almost double the capacity of Quonset, another developer, Deepwater Wind, has already signed a lease with Quonset for its five-turbine project off Block Island in Rhode Island. Deepwater Wind has also signaled it would use Quonset for a larger project located in a federal wind energy area between Martha's Vineyard and Rhode Island.

In the past, Deepwater Wind has expressed interest in using New Bedford as a secondary facility, but spokeswoman Meaghan Whims would not elaborate this month, saying only, "We believe the Northeast is home to some of the country's best offshore wind port facilities."

And while Massachusetts officials often boast the Marine Commerce Terminal is the "first port facility in the country purpose-built to serve the offshore wind industry," this month MassCEC's Barton was quick to emphasize that the terminal will handle multiple types of cargo -- not just wind turbine parts.

"We are not waiting around for Cape Wind, that's the take-home message for us," she said.

Barton noted that the center has sent out a request for proposals for a terminal operator, who would be tasked with organizing the various shipments to the terminal. The operator would have to give wind projects priority while still soliciting other cargo business.

"From the beginning, we knew there were uncertainties around Cape Wind, and we are planning for the long term by bringing on a terminal operator to balance offshore wind uses with other types of marine cargo," she said.

Not giving up

Despite the setbacks, many city residents are unwavering in their faith that the offshore wind industry will come to -- and transform -- New Bedford.

They point out that while Cape Wind has terminated land-use contracts with other facilities, including Quonset, its lease agreement for the New Bedford Marine Commerce Terminal remains in place.

And while residents acknowledge that the city can't wait forever for Cape Wind to recover and that the

terminal should take in other types of cargo in the meantime, they still see shipments of wind components as the only true way to spark a citywide economic revival.

"This offshore wind stuff, it has to take hold here," said activist Andrade.

Mitchell, who has previously traveled to Washington, D.C., to lobby for renewable energy tax credits, has promised to continue doing so. The city's Wind Energy Center also has pressured the state Legislature to adapt specific renewable portfolio standards for offshore wind as a way to finesse power purchase agreements for developers.

And New Bedford officials have played host to potential offshore wind investors from Germany, Japan and Denmark, giving tours of the city and the terminal as a way to help developers and woo business.

"We see offshore wind as an opportunity that we are pursuing even though success is not guaranteed," Mitchell said. "Not pursing an industry that holds such promise would be incredibly foolish."

Even if it takes five or 10 years, Mitchell said the city is willing to keep betting on offshore wind.

"The wind isn't going anywhere," he said. "And neither is New Bedford."

EPA:

FBI probed 'Bullets for Bureaucrats' death threat against late agency chief

Kevin Bogardus, E&E reporter

Published: Friday, January 30, 2015

U.S. EPA faced anti-government fury even in its earliest years, when the FBI investigated threats against one of the agency's first leaders.

More than 200 pages of FBI records obtained by *Greenwire* through a Freedom of Information Act request detail an investigation into a death threat directed at Russell Train, EPA's second administrator, who led the agency from 1973 to 1977.

Train -- who died in 2012 at age 92 -- was part of a select band of government officials who helped institutionalize federal environmental policy beginning in the late 1960s. Train served as the first chairman of the White House Council on Environmental Quality under President Nixon before heading to EPA.

In June 1974, less than four years after EPA formed, a threatening message was sent to Train at the agency. A ranting letter and bizarre printed certificate told Train his life was in danger because of the policies he was supporting as EPA chief.

"Mr. Train: By your buttinsky policies, by your supercilious s , un-realistic efforts to control the country and bankrupt the people under the guise of cleaning up the air, your days may well be numbered," said the letter, complete with unusual spacing and typos.

"Viva la revolution, Junior You're creating it big by curtailing our freedoms," the letter later continued. "... You, the OSHAcrats, the Carats and Common Cause and socialist- communist swine will never be able to rest in peace if you continue your destructive measures. Break the people and blood shall flow...Beware, bastard!!"

The certificate was titled "Bullets for Bureaucrats" and signed by "Thomas Paine III," seemingly after the American Revolutionary War figure. Below the signature was the name "The Committee for Constitutional Justice."

"You are fashioning the bullets that will eventually shoot you down along with the innocents duped and defrauded by your assinine policies," the document warned Train.

Earlier in 1974, a similar document was sent to Hubert Humphrey, the former vice president and then-Democratic senator from Minnesota, according to FBI records.

Also among the FBI records was a certificate for the late Sen. Abraham Ribicoff (D-Conn.).

That pattern of harassment attracted the FBI's attention.

The bureau's Identification Division was asked to do fingerprint analysis on the materials. The FBI also contacted printing shops in the San Diego area -- supposedly where the letter was from -- to see whether they recognized the certificates.

Further, the law enforcement agency checked with six sources who were familiar with right-wing extremist groups in the region, but they had never heard of the Committee for Constitutional Justice. The FBI also analyzed the typewriting on the documents and concluded they may have come from a Smith Corona typewriter.

Roger Strelow, a former senior aide to Train at CEQ and EPA, remembered a death threat being issued against the administrator.

Russell Train, U.S. EPA's second administrator. Photo courtesy of U.S. EPA.

"It was kind of, 'Oh, my goodness, that's bizarre,'" said Strelow, now a principal at 3S Environmental and Energy Strategies.

EPA's inner circle was informed that there would be increased security around Train's office for an indefinite period because of the death threat, but that ended a few months later, according to Strelow's recollection.

"In typical fashion, he just shrugged it off," Strelow said. "Presumably, he had no clue on why he was

singled out."

Security was light during EPA's early years, according to several agency insiders at the time. Death threats against senior officials were not common then.

"There were more concerns that unstable people would come in and cause a problem," said Jim Barnes, a former top official at EPA during its startup phase and now an Indiana University law and environmental affairs professor. "I think the administrators now move around with more security than we did."

Protection has become more prevalent for EPA administrators. The current agency chief, Gina McCarthy, tends to have bodyguards close by (*Greenwire*, Oct. 2, 2014).

"Anyone in the government in those days wouldn't have much security around them unless there was a specific threat against them. Russ certainly didn't," Strelow said. "It just was a totally different atmosphere. It's a real sadness at how vitriolic politics has grown now in Washington."

Train himself noted the furor he engendered in running the Cabinet-level agency.

"I certainly learned that at EPA you are in the middle of controversy all the time. I probably was not accustomed to the amount of media attention I received on just about everything. That was something new to me," Train said in an oral history interview conducted in 1992.

It's not clear whether the perpetrator behind Train's death threat was ever caught, though the FBI does not release documents through FOIA for ongoing investigations.

Christopher Allen, an FBI spokesman, declined to provide any additional information about the FBI records on Train.

'Typical college prank'

The records also show the numerous vettings Train underwent for the many government jobs he held, including in 1957 when he joined the U.S. Tax Court as a judge.

Born in Jamestown, R.I., Train also served as undersecretary at the Interior Department before running CEQ and later EPA. After leaving the agency, Train became president of the World Wildlife Fund from 1978 to 1985, then its chairman from 1985 to 1994.

The bureau's documents also go into great detail about Train's academic career.

Train ranked 370th out of 488 students in his Princeton University class, according to FBI records. He was also prone to "class cuts" and suspended for a short period of time for a "typical college prank": getting arrested for taking a nearby mill's bag of wheat when returning to school from a local bar.

The lengths the bureau goes to in vetting administration officials is extraordinary, said Gary Baise, a former close aide to first EPA Administrator Bill Ruckelshaus who also worked at the FBI.

"I'm amazed at the level of detail that the FBI has on people in these files," said Baise, who's now at Olsson Frank Weeda Terman Matz. "People would send in all types of things, and then it would be included in their file."

FBI agents interviewed about 30 people regarding Train when he was in the running for the EPA administrator job.

For other investigations, agencies and congressional committees were contacted to see whether they had any information on Train, including the House Committee on Un-American Activities.

In addition, the FBI questioned people about Train's relatives and verified information about them, too.

Train passed the vettings with flying colors, with several attesting to his character and integrity.

Ruckelshaus gave a great reference for Train, saying he was "a superior person in every respect," according to FBI records.

Strelow told *Greenwire* that Train "was a genuine, sincere environmentalist" who also happened to be "politically astute."

"That was a benefit to the agency," Strelow said.

Click here and here to read the FBI's records on Train.

ARCTIC:

ConocoPhillips delays NPR-A decision on slow permitting, low oil prices

Phil Taylor, E&E reporter

Published: Friday, January 30, 2015

A global oil company is postponing its push to become the first oil producer in Alaska's National Petroleum Reserve (NPR-A), citing slow federal permitting and slumping oil prices.

ConocoPhillips Co. yesterday announced it is postponing its final investment decision for its $890 million Greater Mooses Tooth (GMT1) project in the northeast corner of NPR-A, a proposal that is being closely watched by industry, national environmental groups and Alaska Natives.

The decision comes as the Bureau of Land Management nears final approval of the project and seeks to reconcile its preferred alternative with that of the Army Corps of Engineers, which issued a Clean Water Act permit for the project earlier this month. BLM is also negotiating with ConocoPhillips over how the company will mitigate the project's impacts, a plan that will be spelled out in BLM's record of decision.

"The project is challenged by permitting delays and requirements, as well as the current oil price environment," said ConocoPhillips Alaska President Trond-Erik Johansen in a statement.

ConocoPhillips this year will continue to shoot seismic surveys over the GMT1 area and pursue engineering, he said.

BLM last October issued a final environmental impact statement supporting the company's plans to drill up to 33 production wells and several injection wells. But BLM said it preferred that ConocoPhillips build a slightly longer and more expensive road to the drill site to avoid harm to Fish Creek, which is an important watershed for Native Alaskan hunters and is protected in BLM's comprehensive management plan for the 22.5-million-acre reserve.

But the Army Corps in its permitting decision this month said it believed a shorter road with some incursions into the Fish Creek area would be less environmentally damaging, since it would result in less gravel fill and use drier soils more amendable to roads.

Environmental groups have sided with BLM, while ConocoPhillips, Alaska's governor and congressional delegation, the county-level government, and a Native Alaskan corporation have sided with the corps.

BLM's record of decision for the project must jibe with the corps' decision, ConocoPhillips has said.

"ConocoPhillips is committed to protecting the environment and minimizing the impact of our operations on local residents," Johansen said. "With this as a guide, we designed a very robust project that minimizes impacts, complies with all applicable regulatory requirements and includes voluntary mitigation measures."

BLM's final approval of the project could set a template for future drilling in the Indiana-sized reserve.

GMT1 is a major priority for Alaskans, as it promises to send up to 30,000 barrels of oil per day to the Trans-Alaska Pipeline System, an economic lifeline that is threatened by lagging supplies.

ConocoPhillips this week announced it had lost $39 million in the fourth quarter of 2014, its first quarterly loss since 2008. It also announced that in anticipation of weak oil prices, it is further cutting global capital expenditures from $13.5 billion to $11.5 billion, with major cuts to onshore drilling and exploration programs in the Lower 48 states.

In a statement today, BLM said it "recognizes the challenging market conditions facing the entire oil industry." The agency plans to issue its record of decision for GMT1 in the "very near future."

"BLM remains committed to working with ConocoPhillips to move forward with oil and gas production in the National Petroleum Reserve-Alaska and to provide a new source of oil for the Trans-Alaska Pipeline System," the agency said. "The BLM has been working closely with the Army Corps of Engineers to determine a federally unified, environmentally sound and economically feasible path forward for the project. The BLM has also been working with ConocoPhillips to establish best management practices and mitigation measures to address the foreseeable impacts of this project and benefit affected parties, including Alaska Natives."

FEDERAL AGENCIES:

GOP targets pricey portraits, tax-delinquent employees

Robin Bravender, E&E reporter

Published: Friday, January 30, 2015

There's a renewed push in Congress to permanently ban government officials from using taxpayer cash for oil portraits.

Freshman Sen. Bill Cassidy (R-La.), who sought a portrait ban during his time in the House, is hoping to jump-start his effort in the upper chamber. As one of his first orders of business this year, Cassidy introduced a bill yesterday that would block the use of federal funds for oil paintings of the president, vice president, Cabinet members and members of Congress.

There's already a temporary ban on portrait spending in place after language was included in the fiscal

2014 and 2015 funding bills that halted spending on paintings of all government workers for those years. But Cassidy and other lawmakers want to make it permanent.

"When America is trillions of dollars in debt, we should take every reasonable measure to reduce the burden passed on to our children and grandchildren," Cassidy said in a statement. "Tax dollars should go to building roads and improving schools -- not oil paintings that very few people ever see or care about."

Sen. Deb Fischer (R-Neb.) has already signed on as a co-sponsor to Cassidy's bill, S. 310, the "Eliminating Government-Funded Oil-Painting" or "EGO" Act.

And yesterday, Sen. Jeanne Shaheen (D-N.H.) reintroduced her own effort to limit government spending on portraits. Shaheen's bill, S. 323 -- a reintroduction of a bipartisan measure that cleared a Senate committee last year -- would set a cap of $20,000 in taxpayer funds for portraits of officials in line to succeed the president (*E&E Daily*, Jan. 30).

The portrait backlash began after reports surfaced of the government spending tens of thousands of dollars on oil paintings of agency chiefs.

Former U.S. EPA Administrator Lisa Jackson's portrait cost $38,350 in 2012, according to agency records. Ex-EPA chief Stephen Johnson's portrait cost $29,500, and a portrait of Michael Leavitt, who was EPA chief for just over a year during President George W. Bush's administration, cost $26,000.

Former Energy Secretary Steven Chu's official portrait commissioned in 2012 cost $21,100; DOE spent $25,000 each for portraits of Clinton Energy Secretary Hazel O'Leary and George H.W. Bush Energy Secretary James Watkins, according to records released to *Greenwire* last year.

Defenders of the practice, including some former government officials and portrait artists, have argued that the paintings are an important way to record history and that congressional efforts to eliminate the practice are shortsighted (*Greenwire*, June 13, 2014).

Bid to block bonuses for delinquent taxpayers

There's a separate effort in the Senate to block tax-delinquent federal employees from receiving bonuses.

Sen. Pat Roberts (R-Kansas) yesterday introduced S. 303, a bill to prevent government workers from getting cash awards if they're deemed to have racked up "seriously delinquent" tax debt.

"Let me make it perfectly clear, employees who deliberately ignore the process and procedures for fulfilling their tax obligations must be held accountable," Roberts said in a statement. He called it "unconscionable" that IRS employees who are behind on their taxes are simultaneously working as tax collectors.

But his effort would apply to workers throughout federal agencies. "We should apply this standard across the federal government," Roberts said.

Last year, a Senate committee approved a bipartisan bill from then-Sen. Tom Coburn (R-Okla.) and Sen. Mark Pryor (D-Ark.) that would force federal agencies to fire employees -- and bar them from hiring new staff -- who have "seriously delinquent tax debt," but the measure never received a vote by the full chamber (*Greenwire*, May 21, 2014).

NOAA:

Weather satellites go beyond forecasts by aiding rescue operations

Emily Yehle, E&E reporter

Published: Friday, January 30, 2015

A boat with four children on board sank last August in Hawaii's Kaiwi Channel, forcing them and the four adults with them to abandon ship in rough waters 12 miles from the shore.

But what could have turned into a tragedy ended quickly with a Coast Guard helicopter rescue. Their rescue was due to an emergency beacon that uses satellites to relay a distress signal to rescuers.

The National Oceanic and Atmospheric Administration says it was one of 240 rescues made possible last year through the agency's fleet of weather satellites. NOAA is in the midst of replacing that aging fleet in an effort that costs billions of dollars and is closely watched by lawmakers (*E&ENews PM*, Jan. 15).

The satellites -- both polar-orbiting and geostationary -- are integral to weather forecasting and collecting data and images around the globe. But yesterday, NOAA highlighted their less-known role in rescue operations.

Alaska benefits the most from that use. According to NOAA, the Search and Rescue Satellite Aided Tracking System (SARSAT) helped in 78 rescues, mostly involving disabled snowmobiles in the North Slope region -- a particularly wild and remote part of the state.

SARSAT works by using a network of satellites to detect distress signals on airplanes, boats and personal locator beacons. When a NOAA satellite detects one, it relays it through a NOAA facility to the Air Force or Coast Guard.

In one case, pilots from the Fish and Wildlife Service rescued four passengers of a small plane that crashed into waters hundreds of miles away from Fairbanks, Alaska. The plane was headed to Fairbanks for hazardous-materials training when the engine failed -- and authorities were able to find it thanks to SARSAT.

All the plane's passengers escaped from the plane and built a fire while waiting for rescue, according to local media reports.

Florida also has seen a significant number of rescues, at 26. Two of those involved airplane pilots crashing into the ocean while flying between Florida and the Bahamas.

Other rescues -- all of which are detailed in an interactive online map -- involved all-terrain vehicle riders running out of fuel, hikers who were injured and at least one hunter who became separated from her hunting party.

NSA:

States target spy agency's water, electricity to spur reforms

Published: Friday, January 30, 2015

With Congress deadlocked on whether to force the National Security Agency to change controversial surveillance practices, state legislators are trying to cut off the agency's access to utilities to force policy changes.

Bills are pending in eight states to either expel NSA facilities or prevent the agency from establishing operations. The bills would do this by banning state and local governments from helping the agency, including by letting NSA use local utilities to access electricity and water supplies.

Two bills would make it a criminal offense to cooperate with NSA, while others would bar contractors from working with the agency.

In Utah, state Rep. Marc Roberts (R) is continuing to push for a bill first introduced last year to cut utilities to a large NSA data center in the state. Maryland lawmakers also have filed bills targeting the agency's Fort Meade headquarters.

"I'll be shocked if we don't see at least one of these measures pass," said Mike Maharrey, executive director of the OffNow coalition, which prepared sample bills that led to many of the proposals (Steven Nelson, *U.S. News & World Report*, Jan. 28). **-- SP**

FEDERAL AGENCIES:

Abandoned Mexican hydro project damaged homes with backing of U.S.

Published: Friday, January 30, 2015

A U.S.-backed hydroelectric construction project in Mexico cracked nearby homes and leaked murky gray water from taps, making residents fear their water was contaminated and triggering protests.

The three-year, $30 million project to build a 15-megawatt hydroelectric plant adjacent to the Cerro de Oro dam near Santa Ursula, Mexico, stripped more than a mile of densely forested riverbank to clear a path for dredging equipment when work started in 2010. Crews exploded dynamite to blast through rock to build a tunnel to take water to turbines that would generate electricity, but a year later, the project was abandoned in the face of local opposition.

The Overseas Private Investment Corp., a federal agency that funds projects around the world, provided an $8.5 million loan guarantee for the hydroelectric project. It was one part of the agency's $60 million contribution to an investment fund intended to help Latin American power projects.

Still, the OPIC project seemed to violate the agency's assurances that "no indigenous people and cultural heritage sites near the project" would be impacted. Many residents say they now purchase bottled water, even though it's expensive, and that their homes have not been repaired.

"The water was nice and clean, sweet, crystal-clear before they did this," said Luz Maria Montor Hernandez, who lives in the area. "It comes out dark, and it smells bad. The water is not right, you know?"

Agency spokesman Charles Stadtlander said OPIC's project evaluations now include more thoughtful consideration of how local populations will be affected (Orsi/Greene, AP/*Houston Chronicle*, Jan. 30). **-- SP**

CHINA:

Officials tap university chief to lead environment agency

Published: Friday, January 30, 2015

The president of China's Tsinghua University could soon lead the country's environmental protection ministry.

University President Chen Jining has a background in environmental research, something that has sparked excitement among those who want the country to do more to prevent pollution.

"A Chinese public eager to breathe freely is calling for someone who 'gets' the environment and can deliver results," said Ma Tianjie, program director for mainland China at Greenpeace East Asia.

Chen has been chosen as party chief of the environmental protection ministry. In March, the National People's Congress will meet to potentially appoint him.

Despite Chen's background, some are wary about whether his appointment could change anything. For the past 10 years, the environmental protection ministry led by Zhou Shengxian nearly ignored environmental regulations, enforcing them only with tiny fines.

Even with new leadership, some observers note that China's environmental regulations do not give the ministry clear jurisdiction over water pollution, nor do they provide legislative authority to force local environmental bureaus to enforce the laws.

Cao Cong, a science and technology policy expert at the University of Nottingham, worries that Chen does not have the government experience to navigate those pitfalls.

"University president and minister require two completely different skills," Cao said (David Cyranoski, *Nature*, Jan. 28). **-- AW**

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CLIMATEWIRE — Mon., February 2, 2015

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Obama to raise federal projects 2 feet under new flood standard

Federal projects like roads and wastewater plants will be built at least 2 feet higher in the future to protect them against worsening floods that stem in part from climate change, under an order signed by President Obama on Friday.

2.NATIONS:

Canada's premiers agree to coordinate climate plan as oil price drop roils politics

Climate and energy infrastructure got top billing during the annual winter meeting of Canadian premiers in Ottawa, Ontario, last week, as the provincial leadership prepared to roll out a national energy strategy that they said would both feed the economy and address the country's carbon emissions.

TODAY'S STORIES

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Led by Chile, and largely unsubsidized, Latin America's solar market sizzles

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India probably won't announce a peak emissions year -- is that a bad thing?

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Future land-use change is most significant threat to Southeast's forests

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NASA launches soil moisture measuring satellite topped by giant antenna

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Forest Service climate change adviser steps down

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Climate change may bring stronger storms, less frequently -- study

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World cities feel the heat

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Sea slugs move up Calif.'s coast

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For climate resilience, Mali turns to mud-brick homes

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ENERGYWIRE — Mon., February 2, 2015

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1.OFFSHORE DRILLING:

Stung by price crash, service provider finds ways to stay in the game

INGLESIDE, Texas -- For years, the giant fabrication yard in this coastal community across the bay from Corpus Christi has attracted attention from miles around as towering offshore platforms went up and out to exploit the riches locked under the Gulf of Mexico. Kiewit Offshore Services Ltd. has expanded by leaps and bounds, and its Ingleside facility has been front and center in delivering some of the largest and most complex offshore projects, both in the United States and globally. But with oil prices now about 60 percent below summer 2014 highs, company officials said they have moved swiftly to hunker down and prepare for the worst, finish existing contracts and diversifying to new markets should offshore activities slow substantially.

TOP STORIES

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Searching for the telltale fingerprints of a grid cyberattack

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BNSF lays out 'extraordinary' worst-case plans for coal deliveries

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Texas high court to hear Chesapeake royalties case

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Southern states most challenged by EPA Clean Power Plan -- Fitch

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3-state enviro coalition forms to hinder New England gas project

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Another supermajor is stung by oil slide as rig count plummets

8.REGULATION:

Texas energy chief stresses education as a tool to cope with fracking protests

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Drilling contractor to cut 2K jobs

10. LNG:
Low natural gas prices stall Asian demand for North American exports

11. OIL:
Crude slump set to steal profits

12. OIL:
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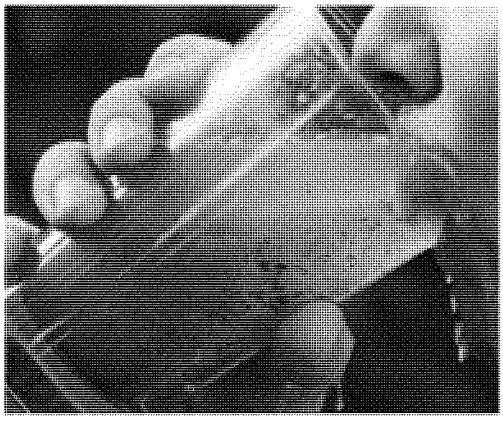

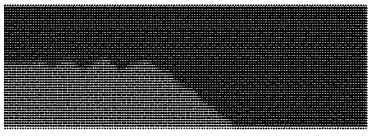

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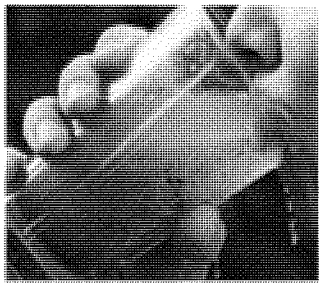

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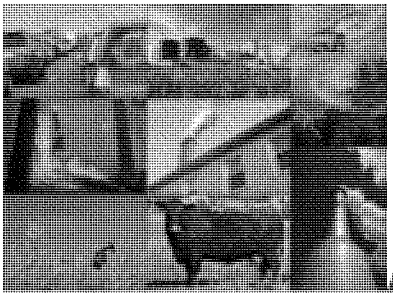

Air & Radiation Law News

for January 30, 2015

Bloomberg BNA **Daily Environment Report™**

Air Pollution

EPA, Mining Companies Reach Settlement Over Haze Plans for Michigan, Minnesota

The Environmental Protection Agency has agreed to make changes to its regional haze rule to allow a pair of mining companies to phase in pollution-control equipment at their taconite facilities in northern Michigan and Minnesota (Cliffs...

Air Pollution

EPA Urged by Industry, Health Groups To Revise Proposed Standards for Ozone

Several industry and public health groups used a public hearing in Washington, D.C., to push for changes in the Environmental Protection Agency's proposal to revise the national ambient air quality standards for ozone....

Climate Change

In Rare Move, Shell Tells Shareholders To Back Proposal on Climate Risk Reporting

In what is being called a rare move, Royal Dutch Shell Plc is recommending its investors vote in favor of a shareholder resolution that asks the oil major to report annually on how it's preparing its business model for potential risks posed...

Climate Regulation

EPA's Interim Carbon Dioxide Targets For Power Plants Unrealistic, States Say

States and utilities said they lack the time and resources needed to meet the interim carbon dioxide emissions targets for the power sector proposed by the Environmental Protection Agency in its Clean Power Plan....

Climate Regulation

EPA Extends Comments on Oil, Gas Reporting Rule

The Environmental Protection Agency will extend until Feb. 24 the comment deadline for a proposed rule that would set additional greenhouse gas emissions reporting requirements for the oil and natural gas industry, according to a notice...

Congress

Republicans Keep Focus on Keystone XL, Steer Clear for Now of Fighting Obama Rules

While Senate Democrats have forced Republicans to vote on whether climate change is real and not a hoax in debate over the Keystone XL pipeline bill, Republicans have held their fire on targeting U.S. climate funding and carbon dioxide limits...

Energy Efficiency

DOE Proposes Rule for Gas-Fired Hearths To Eliminate Constant-Burning Pilot Lights

The Energy Department is proposing an energy efficiency standard for hearth equipment fired by natural

gas that will eliminate constant-burning pilot lights, according to a notice of proposed rulemaking released Jan. 28....

Energy

FERC Petitions for Supreme Court Review of Ruling on Wholesale Electricity

The government is seeking Supreme Court review of an appellate court decision striking down a Federal Energy Regulatory Commission program that regulated the rates that regional grid operators pay to third-party aggregators for demand-response...

Energy

Senate Passes Keystone Pipeline Bill; Backers Weigh Options in Event of Veto

The Senate passed legislation (S. 1) to require approval of the Keystone pipeline Jan. 29 on a 62-36 vote, five short of the votes needed to override a presidential veto....

Enforcement

FAA Proposes $1.3 Million in Penalties Against United Airlines on Hazmat Allegations

The Federal Aviation Administration has proposed civil penalties of $1.3 million against United Airlines Inc., accusing the Chicago-based carrier of 120 distinct violations of federal hazardous materials regulations. ...

Enforcement

Rotting Oil Drums on Residential Property Justified State Agency's Investigative Entry

A petroleum exclusion in Pennsylvania's Superfund law doesn't bar the state's entry onto a residential property to investigate deteriorating containers holding thousands of gallons of petroleum products, the Commonwealth...

Hazmat Transport

Groups Challenge Air District Permit

In Bid to Block Crude-by-Rail Operations

Environmental and citizen groups have filed a lawsuit challenging the San Joaquin Valley Air Pollution Control District's permitting process for construction of oil-water tanks at a Taft, Calif., crude oil terminal recently expanded...

Hazmat Transport

PHMSA Proposes Adding Exceptions From Special Permits Into HazMat Rules

Federal regulators proposed amending the rules for transporting hazardous materials to adopt exceptions from nearly 100 special permits that have established safety records, according to a Federal Register notice scheduled for publication...

International Climate

France to Aid Vulnerable Developing Nations In Run-Up to Year-End Paris Climate Summit

France will make a concerted effort to provide technical assistance ahead of the Paris climate summit to help poor developing nations craft the contributions they can make to a global climate accord, its ambassador to the U.S. said Jan. 29....

Natural Gas

Energy Department 'Able to Comply' With Gas Legislation, Administration Official Says

An Obama administration official Jan. 29 said the Energy Department "will be able to comply" with Senate legislation (S. 33) designed to expedite the agency's consideration of applications to export liquefied natural gas,...

Natural Resources

Permanent Reauthorization of Land, Water Conservation Fund Falls Just Short in Senate

A Republican-led bid to permanently reauthorize a fund that uses revenues from offshore oil and gas development to create national parks and other public spaces fell short by one vote of passing the Senate after three Republicans changed their...

Radioactive Waste

Savannah River Site Cleanup Will Cost $25 Billion Above Old Estimate, Official Says

The Department of Energy now predicts that cleanup of waste at the Savannah River Site will require $25 billion more than previous estimates and will take 23 years longer to complete....

Renewable Energy

Environmentalists Urge Mexican Senate to Pass Law to Spur Renewable Development

Environmental groups are calling on Mexico's Senate to pass a law that would encourage development of renewable energy, saying the legislation is needed to ensure sustainable development of the sector....

Renewable Energy

Interior Awards Two Leases for Wind Energy Off Coast of Massachusetts

The federal Bureau of Ocean Energy Management (BOEM) awarded two provisional commercial wind energy leases for development off the coast of Massachusetts during an auction Jan. 29, a move that nearly doubled the amount of acreage leased for...

Renewable Energy

New Mexico Agency Suspends Power Plan to Assess Impact on Trust Lands

New Mexico's land commissioner announced a 60-day suspension of a $2 billion power transmission project approved by federal officials earlier this week to allow more time to review its potential impact on state trust lands....

Vehicle Fuels

Goodlatte to Reintroduce RFS Bill, As Opponents Mount New Reform Effort

House legislation that would remove the renewable fuel standard's corn ethanol mandate is expected to be reintroduced in the House next week, as opponents of the requirement launch a new push to alter energy provisions....

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Latest News

Novel Suit Claims EPA's 2014 RFS Delay Implements Proposed Fuel Targets

A biofuels manufacturer is pursuing a novel lawsuit claiming that EPA's announcement that it is delaying final 2014 renewable fuel standard (RFS) fuel production targets until 2015 effectively implements the contested proposed version of the 2014 RFS goals, which the company criticized for floating lower renewable fuel production targets.

Small Refiner Claims EPA's RFS Discriminates Against Non-Ethanol Plants

Small oil refining industry officials have met with EPA and White House Office of Management & Budget (OMB) officials to raise their concerns that the agency's renewable fuel standard (RFS) discriminates against refiners that do not blend ethanol, seeking changes to the program to ease their compliance burdens under the program.

House, Senate Lawmakers Renew Efforts To Overhaul EPA's RFS Program

House and Senate lawmakers are renewing efforts to overhaul EPA's renewable fuel standard (RFS) with measures to scrap what critics call its corn ethanol production mandate and other changes to the program, following calls from some energy sector groups for the GOP to use its control of Congress to force through major RFS fixes.

Judge Upholds EPA Release Of Farm Operational Data To Environmentalists

A federal judge has upheld EPA's decision to release operational information about concentrated animal feeding operations (CAFOs) in response to environmentalists' Freedom of Information Act (FOIA) requests, finding that agriculture groups lack standing to challenge the data release because they could not prove they were harmed by EPA's action.

EPA's Criticisms Of FERC's Pipeline NEPA GHG Review Could Bolster Suit

EPA is criticizing as too narrow a Federal Energy Regulatory Commission (FERC) National Environmental Policy Act (NEPA) review of the potential greenhouse gas (GHG) impacts of a proposed natural gas pipeline, and the agency's criticisms could boost environmentalists' expected suit over FERC's approval of the pipeline project.

EPA Aims To Use 'Next Generation' Enforcement Measures In Settlements

EPA is floating options for how its enforcement officials could begin using novel next generation provisions in civil settlement agreements in order to bolster compliance with environmental laws, including potentially requiring the use of advanced monitoring techniques and third party verification to affirm adherence to settlements.

News Briefs

Obama's Bid To End Sequester Could Boost EPA's FY16 Budget

President Obama is set to ask Congress to end sequestration caps on discretionary spending and approve an overall federal budget increase in his fiscal year 2016 budget, which could if adopted pave the way for at least a modest funding increase for EPA's funding over FY15 levels, though the GOP Congress is unlikely to back to proposal.

Greenwire

EPA:

Enforcement officials up in arms over anti-gun push

Robin Bravender, E&E reporter

Published: Thursday, January 29, 2015

A few years back, U.S. EPA enforcement agents tracked a Utah environmental fugitive to a trailer parked at a marina in the Florida Keys.

Larkin Baggett, one of EPA's "most wanted" criminals at the time, appeared in the trailer doorway sweeping an assault rifle toward the approaching EPA agents and local cops, saying things like, "I won't go," according to court documents. The officers opened fire, wounding Baggett and taking him into custody.

Cases such as the 2009 Baggett skirmish demonstrate why it's important for EPA agents to be armed, argue supporters of the agency's criminal program. They can face off against armed criminals, people using dangerous chemicals and fugitives anxious to avoid jail time.

But a freshman senator wants to take their guns away -- an effort that has EPA employees and law enforcement officials up in arms.

Sen. Dan Sullivan (R-Alaska) is pushing a measure that would strip EPA's special agents of their ability to carry firearms. His effort stems from a 2013 incident near Chicken, Alaska, when miners complained that they'd been intimidated with weapons and body armor by enforcement officials from EPA and other agencies who were investigating potential violations of clean water laws (*E&ENews PM*, Sept. 5, 2013).

Sullivan offered his amendment to a bill to approve the Keystone XL oil pipeline that's pending in the Senate, although it almost certainly won't see a vote this time around. But the Alaska Republican plans to keep pressing the issue.

"Disarming the EPA was a campaign promise made by Sen. Sullivan, and continues to be a top priority of his," said a Sullivan spokesman. "If it is not a component of the Keystone XL legislation, Sen. Sullivan intends to work with his colleagues in the near future to get this amendment across the finish line."

That's troubling to critics, who say the measure would put officers at risk and torpedo the agency's ability to pursue environmental criminals. They're concerned that the issue will come up again this Congress and that it could set a precedent of lawmakers looking to target other government law enforcement programs.

"I'm very concerned" about Senate efforts to block EPA agents from carrying guns "because I don't think EPA special agents will be able to do their jobs, which means that there won't be an EPA criminal enforcement program," said Fred Burnside, former director of EPA's criminal enforcement program.

"These agents conduct interviews, they're out at night, they investigate in isolated locations with no back-up, they knock on doors, and they execute arrest and search warrants," Burnside added. "They could run into the same types of problems that would pose a significant threat to agents and to others, so it's important that they be armed."

Like other crime fighters, the nearly 180 special agents in EPA's criminal enforcement branch are authorized to carry weapons as they investigate environmental crimes and pursue suspects like Baggett. Their work can involve interviewing people who witnessed crimes, carrying out searches and arresting those suspected of breaking clean air or water laws.

An EPA official said in a statement yesterday that "to remove this basic law enforcement tool from the hands of EPA agents could put the safety of the officers -- and the public -- at risk."

Fear about 'domino impact'

Meanwhile, a coalition of federal law enforcement officials is warning Senate leadership that Sullivan's efforts are "misguided" and would prevent highly trained EPA officers from doing their jobs.

Jon Adler, president of the Federal Law Enforcement Officers Association, sent a letter to Senate Majority Leader Mitch McConnell (R-Ky.) and Minority Leader Harry Reid (D-Nev.) earlier this week, voicing the group's strong opposition to disarming EPA.

That letter quotes an EPA criminal investigator saying, "There is no way we can accomplish our mission safely without a means to protect ourselves."

Adler's group -- which represents more than 25,000 federal law enforcement officers from over 65 different agencies -- is also worried that Sullivan's effort could have broader impacts beyond EPA.

"We are deeply concerned with the profound ignorance expressed in the amendment and the possible collateral damage or sort of psychological domino impact it may have on others," Adler said in an interview. "If one senator seeks to solve what he or she sees as an issue with the law, an issue with regulations, and reaches a conclusion that law enforcement officers should be disarmed, then it sort of concerns us in terms of who's next. If you disarm the EPA, when are we going to make our way to the FBI?"

Sullivan said yesterday that he wasn't surprised by the pushback from law enforcement officers but hasn't been dissuaded. He said EPA enforcement officials can still do their jobs without being armed. "They'll stay safe, just work closely with local law enforcement or federal marshals or others who are armed," he said.

And he isn't the only lawmaker questioning whether EPA agents should carry guns.

Sen. Lisa Murkowski (R-Alaska) said earlier this week, "Do we really need to have an armed bureaucracy?" The Energy and Natural Resources Committee chairwoman didn't say whether she backed Sullivan's amendment but called the issue a "good and legitimate question."

"I think we need to look critically and realistically at all the federal agencies that are out there that have their own enforcement arms," she said, noting that there are many armed federal agencies that need to cooperate with more conventional law enforcement. "Do we really need all of this?" (*E&ENews PM*, Jan. 27).

But so far, Adler said, the reaction his group has gotten from lawmakers has been "very favorable," noting that several Democratic senators have spoken out against Sullivan's effort. "Our only concern is that ultimately if the two parties go party line, that's the concern and the risk that we face. But I think if we were able to carve out this issue as a standalone issue, we would easily prevail in terms of support in the broader Senate."

'It's going to demoralize the working troops'

Former EPA officials say Sullivan's efforts will deal another blow to an office that's already taken some hits in terms of staffing and morale.

"It's a tough time in government, and frankly budgets are tough, and then you come up with sound bites like this," said Michael Hubbard, the former special agent in charge of criminal enforcement in EPA's Region 1 office in Boston, who's now retired.

"Certainly it's going to demoralize the working troops that in spite of all of this ... are still trying to do a good job, trying to maintain safeguards for human health and the environment and going out and doing it with less resources than they've had in the past," Hubbard added.

EPA's criminal enforcement division has 178 special agents on staff, despite a law requiring them to have 200. Current and former EPA officials say the office has been forced to scale back its work in certain regions and issue areas in recent years amid budget cuts and staff losses -- shifting their focus to only the worst polluters. And people close to EPA's criminal investigation program have said some crimes are falling through the cracks as a result (*Greenwire*, April 10, 2014).

"I think there's always been detractors for the EPA criminal program," Burnside said. "Especially people on the receiving end have trouble wrapping their mind around EPA special agents having that level of authority." But, he added, "EPA special agents need to be very careful about how they use their authority, how they are perceived by the public, and not be too heavy handed."

Eric Schaeffer, director of the Environmental Integrity Project and former director of EPA's civil enforcement office, criticized the effort as part of a broader push to score political efforts by targeting the agency.

"Anybody can say anything about EPA right now," Schaeffer said.

He added that he finds the effort particularly worrisome as other lawmakers push to expand the public's

ability to carry guns. Just yesterday, congressional Republicans revived a push to allow visitors to campgrounds and trails managed by the Army Corps of Engineers to carry firearms; loaded guns have been allowed in national parks and wildlife refuges since Congress passed a law dictating it in 2009 (*E&E Daily*, Jan. 29).

"The only people who won't have them are law enforcement agents," Schaeffer said.

Reporters Nick Juliano and Manuel Quiñones contributed.

AIR POLLUTION:

Science, cost concerns are main focus at EPA hearings on ozone rule

Amanda Peterka and Mike Lee, E&E reporters

Published: Thursday, January 29, 2015

Hundreds of people representing industry, environmental groups and public health organizations today descended on public hearings in the nation's capital and Texas to give U.S. EPA an earful on its proposal to tighten the national ozone standard.

Much of the testimony at today's two hearings -- which were held at EPA's Washington, D.C., headquarters and in Arlington, Texas, a suburb of Dallas -- centered on whether the science on the public health effects of ozone pollution justifies tightening the standard and the potential compliance costs of a tighter standard.

More than 200 people had signed up to testify throughout the day in D.C. in front of two panels of EPA officials, while another 110 people were scheduled to speak in Texas. No groups held major demonstrations outside of EPA's headquarters, where temperatures hovered around 30 degrees Fahrenheit this morning. Some Sierra Club members sported light blue shirts saying "I ♥ Clean Air" at the D.C. hearing and brought along a large cardboard inhaler.

EPA will hold a third public hearing Monday in Sacramento, Calif., where environmentalists are planning to hold demonstrations and bring in hundreds more to testify.

In November, EPA proposed to tighten the National Ambient Air Quality Standard for ozone from 75 parts per billion -- the limit set in 2008 under the George W. Bush administration -- to between 65 and 70 ppb based on public health data. The agency will accept public comments on the rule until March 17 and is working toward an Oct. 1 court-ordered deadline to finalize the rule.

Ground-level ozone is a key component of photochemical smog that is formed when nitrogen oxides react with volatile organic compounds in sunlight. According to the Clean Air Act, EPA is required to set new National Ambient Air Quality Standards at a level that would provide an adequate margin of safety to the public. Studies have linked ozone pollution to reduced lung function, premature death and other negative health effects.

EPA says that the science is clear that a lower standard is needed to comply with the law.

"EPA's proposal is based on extensive scientific evidence on ozone's effects on public health and welfare," Tom Powers, senior EPA policy adviser on air quality, said in opening up the D.C. hearing.

Environmental and health groups this morning in D.C., though, argued that the latest science calls for an

even tighter standard no higher than 60 ppb. EPA, argued Earthjustice attorney David Baron, is violating the Clean Air Act by setting the standard higher than 60 ppb.

Many people representing the groups told personal stories of coping with asthma and other health effects that scientific literature has tied to ozone pollution. Paul Billings, senior vice president for advocacy and education at the American Lung Association, characterized EPA's review of the standard as a chance to correct "major mistakes" made when the agency set the standard at 75 ppb in 2008 and then scuttled a review of the standard in 2011.

"In 2008, EPA chose to ignore the science and the law," Billings said. "EPA set an ozone standard that failed to protect public health and certainly did not include an adequate margin of safety."

Industry organizations repeated claims that the science does not show that a tighter standard is needed. They argued that the evidence linking increased respiratory mortality to ozone is limited.

"There is insufficient scientific justification for lowering the standard," said David Friedman, vice president for regulatory affairs at the American Fuel & Petrochemical Manufacturers. "Neither the 2008 review nor the more recent ozone studies justify lowering the standard based on the health effects of exposure."

A tighter standard would come with high compliance costs and add to the regulatory burden for manufacturers, coal-fired power plants and other businesses, industry groups told EPA. The same economic concerns that prompted the Obama administration to hold off on a new standard in 2011 "should still stand," said Kevin Sunday of the Pennsylvania Chamber of Business and Industry.

The National Association of Clean Air Agencies and the Northeast States for Coordinated Air Use Management, which both represent state and local air regulators, told EPA, on the other hand, that they agree that the scientific evidence shows that the current standard is not stringent enough and that they support a tighter standard. NACAA supported EPA's proposed range, while the Northeast consortium said that a range of 60 to 70 ppb, which EPA's scientific advisers recommended last year, is more appropriate.

NESCAUM chief scientist Paul Miller cautioned, though, that individual states can't on their own meet a tighter standard unless EPA addresses long-range interstate transport of ozone.

NACAA's Nancy Kruger also noted that meeting a tighter standard would have a "profound impact" on the work of state and local air pollution control agencies. She urged EPA to commit to issue a proposed implementation rule that lays out how states will meet a new limit at the time that it finalizes the standard.

Each state would determine how to best meet the potential new standard in a way that "make sense" to its region, Powers of EPA said. The agency is also counting on other federal regulations, such as the recent standards to stem mercury and air toxics emissions from utilities, to help states attain a revised standard by 2025.

Texas hearing

Many of the same themes were echoed at the Arlington, Texas, meeting.

EPA chose the Dallas-Fort Worth region for one of its three public hearings because of the area's history of high ozone levels, a spokeswoman said. The Dallas-Fort Worth metro area exceeded the ozone standard 17 to 18 days a year between 2010 and 2012, more than any city in the country except Baltimore, *The Dallas Morning News* reported. And a 2009 study by a Fort Worth hospital estimates that 12 to 19 percent of children have asthma in the six-county region around the city -- well above the state and national averages.

Environmental groups, including the Sierra Club, Environment Texas and the Moms Clean Air Force, urged EPA to adopt a stricter standard.

Trisha Sheehan, field manager for the Moms Clean Air Force in Wenonah, N.J., said she watched her son lose consciousness during an asthma attack and described sitting with him in a hospital room, waiting for his lung function to return to normal.

"I know the fear that comes over millions of mothers who are unfortunate enough to witness their child struggle to take a breath," she said.

Asthma has a disproportionate effect on African-American children, Democratic Rep. Eddie Bernice Johnson, who represents the Dallas area, wrote in a letter read by a staffer. Nationally, African-American children suffer from asthma at twice the rate of Anglo children and are four times more likely to die from it, she said.

At the same time, Texas' economy depends on the oil and gas and petrochemical industries. The state's unemployment rate has stayed below the national average since the end of the Great Recession, due in part to the boom in drilling and fracking around the state.

A lower standard would likely mean that San Antonio and Austin, which have about 15 percent of Texas' population, would be out of compliance with the ozone standard, according to EPA data. San Antonio has already violated the current standard for at least two years, in part because of the oil boom in the Eagle Ford Shale field, which lies upwind of the city (*EnergyWire*, Jan. 15, 2014).

Ted Steichen, a senior policy analyst for the American Petroleum Institute, testified that the air is already getting cleaner under the current standards and a new standard would harm the economy.

"Tighter standards could cause our economy to nosedive and people to lose their jobs," he said.

Lowering the standard could cost the state $48 billion in gross state product and 182,000 jobs and force the closure of 28 percent of the state's coal-fired power generation, according to prepared testimony from the Texas Association of Manufacturers.

"The Texas 'job engine' is too critical to the state and national economy to be decimated by EPA's attempts to advance a prohibitively expensive feel-good agenda with no demonstrated health benefits," said Christina Wisdom, a spokeswoman for the association.

The state's politicians, along with powerful oil and gas and petrochemical industries, say the air is getting cleaner without new regulations and have historically opposed any new EPA rules. Newly installed Gov. Greg Abbott, a Republican, sued EPA twice over ozone-related issues when he was attorney general.

The chief toxicologist for the Texas Commission on Environmental Quality, which regulates air pollution, questioned the link between ozone and asthma in an October 2014 article and said the ozone proposal may not protect people's health, since most people spend 90 percent of their time indoors.

KEYSTONE XL:

Senate votes to cut off debate, setting stage for final passage

Manuel Quiñones, E&E reporter

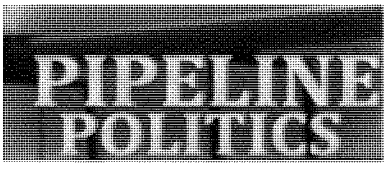
Published: Thursday, January 29, 2015

The Senate voted this afternoon 62-35 to invoke cloture on legislation to approve the Keystone XL oil pipeline from Canada, setting the stage for final passage within the next several hours.

Sens. Joe Manchin of West Virginia, Heidi Heitkamp of North Dakota, Claire McCaskill of Missouri, Jon Tester of Montana, Michael Bennet of Colorado, Bob Casey of Pennsylvania and Joe Donnelly of Indiana were, as expected, among the Democrats voting in favor. All Republicans voted to end debate.

Earlier in the session, senators voted down an amendment by Sen. Richard Burr (R-N.C.), plus Sens. Kelly Ayotte (R-N.H.) and Michael Bennet (D-Colo.), to reauthorize the Land and Water Conservation Fund.

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. **Click here** to view the special report.

The measure was headed for passage, but Republican leaders encouraged some lawmakers to change their votes to avoid jeopardizing the broader effort to approve the KXL bill. The final vote on that amendment was 59-39, one short of the 60 needed for passage.

Lawmakers similarly voted down 47-51 an amendment by Sen. Steve Daines (R-Mont.) to get senators on the record supporting the reauthorization of the LWCF, but his measure included proposed reforms.

An amendment by Sen. Tom Udall (D-N.M.) to set a 25 percent renewable energy standard by 2025 failed by a vote of 45-53.

An amendment by Sen. John Barrasso (R-Wyo.) to make clear that the KXL bill doesn't trump any treaties or other agreements with Native Americans passed by voice vote.

Sen. Ben Cardin (D-Md.) had a similar stand-alone amendment but instead worked with Barrasso on a compromise. Cardin then withdrew his own language.

Louisiana Republican Sens. David Vitter and Bill Cassidy had introduced an amendment to promote offshore drilling and revenue sharing with states, but withdrew it for later consideration.

Nongermane amendments like a proposal by Sen. Thom Tillis (R-N.C.) and Burr to encourage drilling off the East Coast, plus a measure by Sen. Dan Sullivan (R-Alaska) to disarm U.S. EPA agents, won't get votes now that cloture has been invoked.

BUDGET:

Obama again seeks to restore sequestration cuts -- official

Published: Thursday, January 29, 2015

In his fiscal 2016 budget proposal set to be unveiled next week, President Obama is looking to restore billions of dollars in federal government spending that was automatically halted by the 2013 sequester.

White House officials have begun to hint at parts of Obama's fiscal 2016 budget request, saying it will undo cuts that hit military and domestic programs.

"The president's budget will fully reverse those cuts for domestic priorities, and match those investments dollar for dollar with the resources our troops need to keep America safe," a White House official said.

The official did not say how much additional spending Obama would propose but did say the increases would be funded by closing tax loopholes and cutting wasteful spending.

Obama already has released his "middle-class economics" tax plan in advance of the State of the Union address last week. The plan would raise $320 billion in new revenue to pay for new tax credits and programs meant to help the middle class pay for college, child care and job training.

Republicans, who came out against the proposals then, are likely also to oppose much of the president's budget request (Kathleen Hennessey, *Los Angeles Times*, Jan. 29). **-- AW**

BIOFUELS:

World can't grow enough crops for food, energy -- report

Amanda Peterka, E&E reporter

Published: Thursday, January 29, 2015

The world cannot meet its future food needs and produce bioenergy at the same time, a new report from the World Resources Institute found.

Using land to grow plants for fuels and energy takes away from land that's needed to feed a burgeoning world population, the report found. The study also casts doubt on analyses that find greenhouse gas benefits from bioenergy, charging that their conclusions are the result of accounting errors.

Lead study author Tim Searchinger, whose 2008 paper started the debate on the contribution of indirect land-use change emissions to biofuels' carbon footprint, said the study made the case for halting bioenergy production and world policies that spur its growth.

"The essence of the report is that it recommends against making dedicated use of land to produce bioenergy," said Searchinger, a senior fellow at the World Resources Institute. "Don't use land to grow crops for bioenergy, don't use land to harvest trees, don't do things that actually undermine the other outputs of land."

According to the WRI report, the globe will have to close a 70 percent gap between the food calories that were available in 2006 and those that need to be available in 2050 to support an expected population of 9 billion.

Any dedicated use of land for fuel or energy, the study says, takes away from using that land to either close the gap or store carbon. If biofuels were to continue to grow to at least 10 percent of transportation fuel by 2050, the gap would increase to 90 percent. If biofuels were eliminated, on the other hand, the

gap would shrink to 60 percent.

"This 30 percentage point spread indicates how even relatively modest biofuel production makes achieving a sustainable food future significantly more difficult," the WRI paper says.

The challenges come because most crops grown for fuels or energy are grown on lands that could sustain food crops, said Searchinger, who spoke with reporters in advance of the paper's publication.

"Basically, the world is already full, and bioenergy promises to dramatically increase that competition," he said. "We need 70 percent more from crops. ... That's already a huge increase without an increase in bioenergy."

The report also cast doubt on analyses that attribute greenhouse gas reductions to bioenergy. According to the paper, those analyses tend to assume that the production of bioenergy will lead to increases in overall biomass that stores carbon, thereby offsetting emissions that come from burning the crops and leading to reductions in overall greenhouse gas emissions.

But what mostly happens, the report said, is that bioenergy crops are grown on lands that previously sustained either food crops or some other kind of plants that were already taking in carbon.

"The typical case for biofuels is simply taking crops that would grow otherwise -- corn -- and just use that for biofuels, and that doesn't absorb more carbon," Searchinger said. "If you want to be richer in carbon, you need to be richer in plant growth, and that's hard to do."

Bioenergy production generally is an "extremely inefficient" method of meeting renewable energy goals because photosynthesis is "extremely inefficient," the report said. It calls for the elimination of all federal policies that support bioenergy.

A much better renewable energy choice would be solar power, the study concludes, because photovoltaic panels can be used on land that's not suitable for crops.

The Norwegian Ministry of Foreign Affairs, U.N. Development Programme, U.N. Environment Programme and World Bank provided financial support for the project.

Bob Dinneen, president and chief executive of the Renewable Fuels Association, which represents U.S. ethanol producers, slammed the study as a rehashing of the "food vs. fuel" arguments that "are as wrong today as they were seven years ago when Searchinger first gained notoriety with his doomsday predictions."

The world has experienced less deforestation and global hunger, as well as a global slowdown in the rate of cropland expansion, since biofuels became a part of the fuel mix, Dinneen said.

"Providing a cursory update of a failed theory is not science and does nothing to enlighten the debate about biofuels," he said.

ENERGY EFFICIENCY:

DOE proposes first-time rules for gas fireplaces

Katherine Ling, E&E reporter

Published: Thursday, January 29, 2015

The Energy Department yesterday unveiled the first-ever proposed energy efficiency standards for gas fireplaces and other hearth products.

The proposed standards would prohibit use of continuously burning "stand-by" pilot lights in a gas fireplace. The rule also applies to space heating hearth products, decorative products, gas logs, gas stoves and outdoor hearth products.

DOE estimates consumers will each save $165 in energy expenses over the lifetime of the hearth products, with a payback period of just under three years. A typical life span of the products is 15 years, according to DOE. There are currently models that use instant electronic ignition similar to what is used for gas stoves, according to the Appliance Standards Awareness Project.

The proposed rule would create energy savings that result in up to $3 billion in savings and cut 37 million metric tons of carbon emissions over three decades, DOE said. The higher use of electricity from the electronic ignition would increase sulfur dioxide emissions by more than 4,000 tons and create an additional .01 ton of mercury, DOE said.

Companies could see anywhere from a 2.6 percent loss to a 0.4 percent gain in the industry's net present value of $125 million, according to DOE.

DOE will host a public meeting on the proposal March 4 and aims to finalize the rule by the end of the year. The standards would be applied five years later.

Earlier this month, the agency also proposed updated standards for commercial heating, air conditioning and water heating equipment. Energy Secretary Ernest Moniz has set a target of completing at least 12 new energy efficiency standards this year, following the 10 rules completed last year (*E&E Daily*, Jan. 5).

OIL AND GAS:

CSB OKs Chevron refinery fire report

Published: Thursday, January 29, 2015

The U.S. Chemical Safety Board voted last night to approve a final report of a refinery fire at Chevron Corp.'s Richmond, Calif., facility in 2012, calling for the company to make safety changes.

CSB Chairman Rafael Moure-Eraso said the goal of the report was to prompt safety changes beyond Chevron "simply completing paperwork."

The report, which was released in draft form last week, found that Chevron's response to the fire was chaotic and that management and employees had a lax attitude about safety at the refinery (*Greenwire*, Jan. 23). The report found that some Chevron employees had recommended replacing the section of pipe that eventually ruptured but were overruled because the company wanted to keep costs low.

Chevron has agreed with some of the board's recommendations but disputes the idea that it has a safety culture that encourages poor maintenance or dangerous practices.

A recent company survey found 93 percent of refinery workers "responded favorably" when asked whether they were comfortable using their right to stop work over unsafe conditions under state law. Chevron also said it has inspected 12,000 sections of pipes and conducted other safety measures since the Richmond fire.

State officials now inspect refineries twice per year and are notified when they are taken down for maintenance (Jaxon Van Derbeken, *San Francisco Chronicle*, Jan. 28). **-- SP**

UTILITIES:

Calif. investigators search homes of ex-CPUC president, PG&E exec

Published: Thursday, January 29, 2015

State investigators searched the homes of former California Public Utilities Commission President Michael Peevey and a former Pacific Gas and Electric Co. executive, seizing computers and other items as part of an ongoing investigation into the utility's effort to have a case heard by a favorable judge.

Investigators with the state Office of the Attorney General executed a search warrant Tuesday at the La Cañada Flintridge, Calif., home Peevey shares with his wife, state Sen. Carol Liu (D), according to court documents.

Records show the agents seized computers, smartphones and a thumb drive.

Investigators also searched the Orinda, Calif., home of former PG&E Vice President Brian Cherry. Cherry and two other executives were fired by the utility last year when it released emails showing Cherry had secretly communicated with Peevey and other CPUC officials to allow PG&E's preferred state judge to oversee a rate-setting case.

The search warrant for the homes said the attorney general's office was seeking evidence of "*ex parte* communications, judge-shopping, bribery, obstruction of justice or due administration of laws, favors or preferential treatment" concerning CPUC issues since 2009 (Jaxon Van Derbeken, *San Francisco Chronicle*, Jan. 28). **-- SP**

ENERGY EFFICIENCY:

Electricity use dips on Super Bowl Sunday -- study

Published: Thursday, January 29, 2015

Regardless of which team comes out on top this Sunday, energy efficiency is set to be a winner in the Super Bowl.

A study of the 2012 Super Bowl using data from 145,000 households shows that "when the game kicks off, electricity use plummets."

The study, published by Opower, a company that works with utilities to help them connect with customers and reduce energy use, found that during the big game, power usage was down 5 percent from an average Sunday afternoon and evening in the winter.

The savings are thanks to what Opower calls "TV-pooling" -- the fact that most people watch the Super Bowl with other people. So while your flat-screen TV might be on when you host a viewing party, your guests' home energy usage is virtually nothing.

"Twenty people watching one large TV at a friend's house requires much less energy than 20 people

watching 20 TVs in their individual homes," Opower wrote.

Plus, most people exclusively watch the game during the Super Bowl and don't spend much time on their other devices (Chris Mooney, *Washington Post*, Jan. 28). **– AW**

OFFSHORE WIND:

Companies show limited appetite for Mass. lease sale

Ariel Wittenberg, E&E reporter

Published: Thursday, January 29, 2015

Bidders were interested in only half the offshore wind development leases being auctioned by the Interior Department today.

The Bureau of Ocean Energy Management put up for auction four lease areas near Massachusetts totaling 742,000 acres and with the potential to support 4 gigawatts of commercial wind generation.

But just two companies bid on two of the areas, with RES America Developments Inc. provisionally winning the lease on a 187,523-acre area for $281,285 and OffshoreMW LLC winning the lease on a 166,886-acre area for $166,886.

Speaking on a conference call announcing the auction results, BOEM Director Abby Ross Hopper said the two areas developers bid on were located closer to shore than the other areas up for auction.

Hopper rejected the idea that the low bids in today's auction were in reaction to recent troubles the Nantucket Sound Cape Wind project has had related to its power purchase agreements, instead attributing the auction results to the acreage's depth.

The agency does not yet know what it will do with the lease areas that did not receive bids but will consult with Massachusetts.

"I am very encouraged by the fact that two experienced wind developers decided to bid and won leases," Hopper said.

Twelve companies were eligible to compete in the auction, including Deepwater Wind LLC, which has already leased another area off Massachusetts and Rhode Island, and U.S. Wind Inc., which won the auction of two lease areas near Ocean City, Md., in August 2014 (*E&ENews PM*, Aug. 19, 2014).

Hopper said BOEM set the initial asking price for the Massachusetts area lower than other auctions.

"We know developing an offshore wind facility here would be more expensive," she said.

She also said previous wind development auctions had been held near states that had created power purchase and renewable energy credit programs in advance of the auctions.

"That impacts that value a company places on it," she said.

Indeed, the three previous offshore wind auctions saw winning bids in the millions of dollars. The August auction of two leases near Maryland, which has a renewable energy credit program, raked in $8.7 million.

WISCONSIN:

Hearing on EPA power plant rule divides lawmakers

Published: Thursday, January 29, 2015

Wisconsin lawmakers could not agree on what impact the Obama administration's Clean Power Plan was likely to have on their state at a joint hearing held yesterday, and one regulator said the state could spend $3 billion to $13 billion trying to comply.

Some utilities and regulators in the state have criticized the U.S. EPA regulation for failing to give the state credit for its previous actions to cut carbon emissions and contend the 2020 deadline to start cutting emissions is unrealistic.

"What we have here is an unfunded mandate from the federal government, the Obama administration," state Sen. Rick Gudex (R) said. "It's kind of ironic at a time when we in the U.S. are being asked to clean up our acts, so to speak, on this issue, China and others are building power plants by the dozens."

Ellen Nowak, a commissioner at the state's Public Service Commission, said the state would face billions of dollars in costs because it derives 60 percent of its electricity from coal and because of its heavy manufacturing presence.

Others testified that Wisconsin would probably be able to adapt to the changes just as other cities and industries have adjusted to new regulations over time.

Keith Reopelle, senior policy director at the conservation group Clean Wisconsin, noted that doing nothing would pose significant costs for the state, as well (Thomas Content, *Milwaukee Journal Sentinel*, Jan. 28). -- **SP**

NORTH DAKOTA:

Oil firms want radioactive waste to stay in state

Published: Thursday, January 29, 2015

Oil companies in North Dakota are working to change the state's waste disposal laws to cut down on their radioactive waste disposal costs.

Under existing law, companies are required to truck slightly radioactive waste produced during the hydraulic fracturing process out of state because North Dakota landfills are not permitted to accept the items.

The most common radioactive waste is a filter sock along with tank and pipeline sludge. State officials began tracking the waste last year, so few data are available.

Industry groups say letting them deposit the waste at North Dakota landfills could save $10,000 in transportation costs for each truckload. That could lead to about $120 million in savings for oil producers, based on typical waste levels generated by an estimated 11,942 active wells in the state.

Still, the proposal has faced opposition from residents who don't want radioactive waste in their area.

"The only reason we're doing this today is to cut the oil industry's costs," said Darrell Dorgan, a spokesman for the North Dakota Energy Industry Waste Coalition (Ernest Scheyder, Reuters, Jan. 28). -- **SP**

WISCONSIN:

Regulators probe impacts of sand mining

Published: Thursday, January 29, 2015

State regulators will take a second look at sand mining regulations after the state's Natural Resources Board voted yesterday to conduct a "strategic analysis" of the industry.

The vote of 7-0 comes after the Midwest Environmental Advocates filed a petition with the Department of Natural Resources asking for a study of the health and environmental impacts of the industry.

Wisconsin has at least 63 active sand mines, 45 processing facilities and 27 railroad loading facilities, a major increase over five years ago when the state was home to just five mines and five processing plants.

"I think the time is right to update what we know," said Dave Siebert, director of DNR's Bureau of Environmental Analysis and Sustainability.

Residents living near the mines have previously raised concerns about air pollution and the impact on local waterways at the same time that Republican lawmakers have tried to limit DNR's regulating authority.

"Wisconsin is falling behind its neighbors in studying and adequately regulating the public health and environmental impacts of frac sand mining," the Midwest Environmental Advocates said in a statement (Lee Bergquist, *Milwaukee Journal Sentinel*, Jan. 28). -- **AW**

CHINA:

Nation bans new coal mines in eastern region

Published: Thursday, January 29, 2015

Combatting a coal surplus and bad air pollution, China has placed a moratorium on new mines in its eastern region.

The country's coal industry has been overproducing despite falling prices, which have contributed to China's slowing economy. The industry's production has nearly doubled since 2000.

Speaking at a conference in Beijing today, Wang Xianzheng, chairman of the China Coal Industry Association, said coal production in most of the country will continue, with an additional 1 billion metric tons of production capacity currently being built in the country.

The moratorium in the eastern region is expected to help Beijing's efforts to reduce pollution there by decreasing its reliance on burning coal for power (Anderlini/Hornby, *Financial Times*, Jan. 29). -- **AW**

CHINA:

Smog makes Beijing unlivable -- mayor

Published: Thursday, January 29, 2015

Beijing Mayor Wang Anshun has joined the chorus of people complaining about pollution there, calling his city unlivable, according to state media.

"To establish a first-tier, international, livable and harmonious city, it is very important to establish a system of standards, and Beijing is currently doing this," he said Friday. "At the present time, however, Beijing is not a livable city."

In his speech, Wang attributed the pollution to the large number of motor vehicles in the city and the distribution of factories in the country. But instead of asking that factories move to the suburbs, he demanded that they shut down.

Wang's comments were supported days later by a Euromonitor International study of the global tourism market in 2013. That study found Beijing tourism had declined 10 percent from the year before, largely due to pollution and China's economic slowdown.

In a ranking of the top 100 city destinations by the company, Hong Kong, Singapore and Bangkok won the top three spots, while Beijing lagged behind Paris and London in 34th place (Jonathan Kaiman, London *Guardian*, Jan. 28). **-- AW**

CLIMATE:

Former EPA policy counsel Sussman says agency 'back to the drawing board' on power plan targets, building blocks

Published: Thursday, January 29, 2015

As U.S. EPA crafts a model federal implementation plan for states to comply with the Clean Power Plan, should states work to tailor their own mechanisms, or are there benefits to plugging in to the agency's FIP? During today's OnPoint, Robert Sussman, a principal at Sussman & Associates and a former senior policy counsel at EPA, discusses compliance options for states. He also explains why he believes there could be significant changes to EPA's proposal in its final rule.

Click here to watch today's OnPoint.

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Can a country slash its CO2 emissions and avoid electricity price spikes at the same time?

BERLIN -- The goal is ambitious: Can Germany successfully adapt its electricity market to a future where the predominant power is renewable energy? The country is trying to pull together its current plan to get there at a difficult moment, when all across Europe, countries are suffering from market conditions that favor a fuel switch from natural gas to low-cost coal. This has yielded record export levels and rising emissions that threaten to undo Germany's reputation as a champion of climate change action.

2.ENTERPRISE:

Can companies push the government out of the trash business?

Major American companies in the food, beverage and consumer goods sectors are wasting resources, energy and money with inefficient packaging and recycling practices, missing a secondary market worth an estimated $11.4 billion every year, according to a survey published yesterday.

TODAY'S STORIES

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WRI report on biofuels rekindles an old firefight

4.FINANCE:

U.S. team at World Bank pushes for Kosovo coal plant

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Big gap remains between what scientists say and Americans think about climate change

6.NEGOTIATIONS:

The road to Paris is paved with carbon pricing, economists say

7.POLICY:

Energy storage industry calls for inclusion in Clean Power Plan compliance

8.POLITICS:

Senate easily approves Keystone XL but reveals 'glimmers' of climate hope

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State regulators worry about EPA rule's timeline

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EPA's McCarthy visits the Vatican today

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Researchers find little evidence for a climate change 'pause'

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To cut emissions, GE and Statoil partner on technology

13.PUBLIC OPINION:

Flooding boosted Britain's belief in climate change

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Floods displace 170,000 in Malawi

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Climate changes push Australian fish toward colder waters

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***Greenwire*'s Peterka discusses future of ozone rule after EPA hearings**

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Timeline for U.S.'s newest reactor stretches into 2019

The schedule for Georgia Power's nuclear expansion project has slipped another 18 months and faces escalating costs in the hundreds of millions of dollars, the company said yesterday in a filing with the U.S. Securities and Exchange Commission.

TOP STORIES

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Shell will push ahead with Alaska drilling, if conditions line up

3.OIL AND GAS:

Pa. moratorium on state land leasing doesn't stop enviro litigation

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Xcel CEO touts opportunity for regulatory reform in Minn.

ELECTRICITY

5.CLIMATE:

Sustainability experts are helping guide Ga.'s plan for EPA rule

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New device promises real-time home energy data, from fridge to bulb

7.PEOPLE:

CenterPoint nabs CFO from water utility

8.ELECTRICITY:

Texas power prices plummet in natural gas glut

OIL AND GAS

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Report sees fresh warning signs on energy demand

10.CALIFORNIA:

Lawsuit filed to block expansion of crude-by-rail terminal

11.HYDRAULIC FRACTURING:

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12.OIL:

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***Greenwire*'s Peterka discusses future of ozone rule after EPA hearings**

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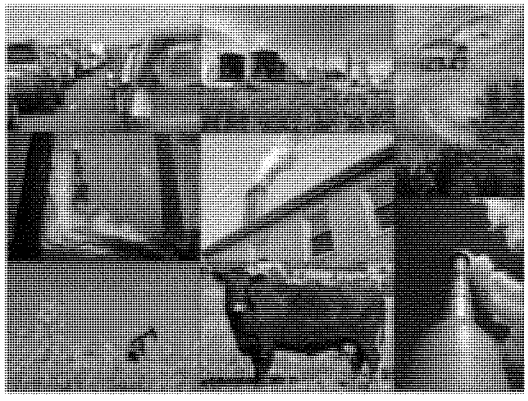

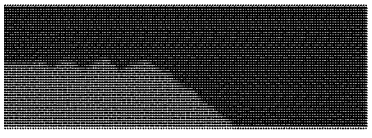

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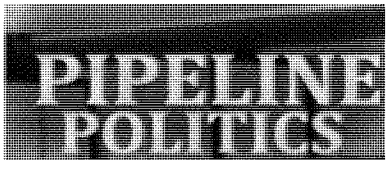
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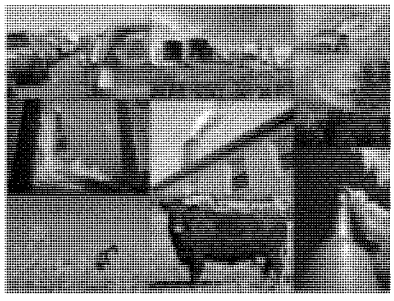
POLITICS



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From: Turley, Jennifer
Sent: Fri 1/30/2015 3:19:33 PM
Subject: Solid Waste & Emergency Response Law News for January 30, 2015

Solid Waste & Emergency Response Law News

for January 30, 2015

Bloomberg BNA Daily Environment Report™

Enforcement

FAA Proposes $1.3 Million in Penalties Against United Airlines on Hazmat Allegations

The Federal Aviation Administration has proposed civil penalties of $1.3 million against United Airlines Inc., accusing the Chicago-based carrier of 120 distinct violations of federal hazardous materials regulations. ...

Recycling

Oregon Wastewater Utility Proposes to Use Recycled Water in Beer-Brewing Project

An Oregon wastewater utility is proposing a novel way of overcoming consumer distaste for recycled toilet water: brewing it into beer....

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Inside EPA's **Weekly Report**, 01/30/2015

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Latest News

EPA Aims To Use 'Next Generation' Enforcement Measures In Settlements

EPA is floating options for how its enforcement officials could begin using novel next generation provisions in civil settlement agreements in order to bolster compliance with environmental laws, including potentially requiring the use of advanced monitoring techniques and third party verification to affirm adherence to settlements.

News Briefs

Obama's Bid To End Sequester Could Boost EPA's FY16 Budget

President Obama is set to ask Congress to end sequestration caps on discretionary spending and approve an overall federal budget increase in his fiscal year 2016 budget, which could if adopted pave the way for at least a modest funding increase for EPA's funding over FY15 levels, though the GOP Congress is unlikely to back to proposal.

Greenwire

EPA:

Enforcement officials up in arms over anti-gun push

Robin Bravender, E&E reporter

Published: Thursday, January 29, 2015

A few years back, U.S. EPA enforcement agents tracked a Utah environmental fugitive to a trailer parked at a marina in the Florida Keys.

Larkin Baggett, one of EPA's "most wanted" criminals at the time, appeared in the trailer doorway sweeping an assault rifle toward the approaching EPA agents and local cops, saying things like, "I won't go," according to court documents. The officers opened fire, wounding Baggett and taking him into custody.

Cases such as the 2009 Baggett skirmish demonstrate why it's important for EPA agents to be armed, argue supporters of the agency's criminal program. They can face off against armed criminals, people using dangerous chemicals and fugitives anxious to avoid jail time.

But a freshman senator wants to take their guns away -- an effort that has EPA employees and law enforcement officials up in arms.

Sen. Dan Sullivan (R-Alaska) is pushing a measure that would strip EPA's special agents of their ability to carry firearms. His effort stems from a 2013 incident near Chicken, Alaska, when miners complained that they'd been intimidated with weapons and body armor by enforcement officials from EPA and other agencies who were investigating potential violations of clean water laws (*E&ENews PM*, Sept. 5, 2013).

Sullivan offered his amendment to a bill to approve the Keystone XL oil pipeline that's pending in the Senate, although it almost certainly won't see a vote this time around. But the Alaska Republican plans to keep pressing the issue.

"Disarming the EPA was a campaign promise made by Sen. Sullivan, and continues to be a top priority of his," said a Sullivan spokesman. "If it is not a component of the Keystone XL legislation, Sen. Sullivan intends to work with his colleagues in the near future to get this amendment across the finish line."

That's troubling to critics, who say the measure would put officers at risk and torpedo the agency's ability to pursue environmental criminals. They're concerned that the issue will come up again this Congress and that it could set a precedent of lawmakers looking to target other government law enforcement programs.

"I'm very concerned" about Senate efforts to block EPA agents from carrying guns "because I don't think EPA special agents will be able to do their jobs, which means that there won't be an EPA criminal enforcement program," said Fred Burnside, former director of EPA's criminal enforcement program.

"These agents conduct interviews, they're out at night, they investigate in isolated locations with no back-up, they knock on doors, and they execute arrest and search warrants," Burnside added. "They could run into the same types of problems that would pose a significant threat to agents and to others, so it's important that they be armed."

Like other crime fighters, the nearly 180 special agents in EPA's criminal enforcement branch are authorized to carry weapons as they investigate environmental crimes and pursue suspects like Baggett. Their work can involve interviewing people who witnessed crimes, carrying out searches and arresting those suspected of breaking clean air or water laws.

An EPA official said in a statement yesterday that "to remove this basic law enforcement tool from the hands of EPA agents could put the safety of the officers -- and the public -- at risk."

Fear about 'domino impact'

Meanwhile, a coalition of federal law enforcement officials is warning Senate leadership that Sullivan's efforts are "misguided" and would prevent highly trained EPA officers from doing their jobs.

Jon Adler, president of the Federal Law Enforcement Officers Association, sent a letter to Senate Majority

Leader Mitch McConnell (R-Ky.) and Minority Leader Harry Reid (D-Nev.) earlier this week, voicing the group's strong opposition to disarming EPA.

That letter quotes an EPA criminal investigator saying, "There is no way we can accomplish our mission safely without a means to protect ourselves."

Adler's group -- which represents more than 25,000 federal law enforcement officers from over 65 different agencies -- is also worried that Sullivan's effort could have broader impacts beyond EPA.

"We are deeply concerned with the profound ignorance expressed in the amendment and the possible collateral damage or sort of psychological domino impact it may have on others," Adler said in an interview. "If one senator seeks to solve what he or she sees as an issue with the law, an issue with regulations, and reaches a conclusion that law enforcement officers should be disarmed, then it sort of concerns us in terms of who's next. If you disarm the EPA, when are we going to make our way to the FBI?"

Sullivan said yesterday that he wasn't surprised by the pushback from law enforcement officers but hasn't been dissuaded. He said EPA enforcement officials can still do their jobs without being armed. "They'll stay safe, just work closely with local law enforcement or federal marshals or others who are armed," he said.

And he isn't the only lawmaker questioning whether EPA agents should carry guns.

Sen. Lisa Murkowski (R-Alaska) said earlier this week, "Do we really need to have an armed bureaucracy?" The Energy and Natural Resources Committee chairwoman didn't say whether she backed Sullivan's amendment but called the issue a "good and legitimate question."

"I think we need to look critically and realistically at all the federal agencies that are out there that have their own enforcement arms," she said, noting that there are many armed federal agencies that need to cooperate with more conventional law enforcement. "Do we really need all of this?" (*E&ENews PM*, Jan. 27).

But so far, Adler said, the reaction his group has gotten from lawmakers has been "very favorable," noting that several Democratic senators have spoken out against Sullivan's effort. "Our only concern is that ultimately if the two parties go party line, that's the concern and the risk that we face. But I think if we were able to carve out this issue as a standalone issue, we would easily prevail in terms of support in the broader Senate."

'It's going to demoralize the working troops'

Former EPA officials say Sullivan's efforts will deal another blow to an office that's already taken some hits in terms of staffing and morale.

"It's a tough time in government, and frankly budgets are tough, and then you come up with sound bites like this," said Michael Hubbard, the former special agent in charge of criminal enforcement in EPA's Region 1 office in Boston, who's now retired.

"Certainly it's going to demoralize the working troops that in spite of all of this ... are still trying to do a good job, trying to maintain safeguards for human health and the environment and going out and doing it with less resources than they've had in the past," Hubbard added.

EPA's criminal enforcement division has 178 special agents on staff, despite a law requiring them to have 200. Current and former EPA officials say the office has been forced to scale back its work in certain

regions and issue areas in recent years amid budget cuts and staff losses -- shifting their focus to only the worst polluters. And people close to EPA's criminal investigation program have said some crimes are falling through the cracks as a result (*Greenwire*, April 10, 2014).

"I think there's always been detractors for the EPA criminal program," Burnside said. "Especially people on the receiving end have trouble wrapping their mind around EPA special agents having that level of authority." But, he added, "EPA special agents need to be very careful about how they use their authority, how they are perceived by the public, and not be too heavy handed."

Eric Schaeffer, director of the Environmental Integrity Project and former director of EPA's civil enforcement office, criticized the effort as part of a broader push to score political efforts by targeting the agency.

"Anybody can say anything about EPA right now," Schaeffer said.

He added that he finds the effort particularly worrisome as other lawmakers push to expand the public's ability to carry guns. Just yesterday, congressional Republicans revived a push to allow visitors to campgrounds and trails managed by the Army Corps of Engineers to carry firearms; loaded guns have been allowed in national parks and wildlife refuges since Congress passed a law dictating it in 2009 (*E&E Daily*, Jan. 29).

"The only people who won't have them are law enforcement agents," Schaeffer said.

Reporters Nick Juliano and Manuel Quiñones contributed.

BUDGET:

Obama again seeks to restore sequestration cuts -- official

Published: Thursday, January 29, 2015

In his fiscal 2016 budget proposal set to be unveiled next week, President Obama is looking to restore billions of dollars in federal government spending that was automatically halted by the 2013 sequester.

White House officials have begun to hint at parts of Obama's fiscal 2016 budget request, saying it will undo cuts that hit military and domestic programs.

"The president's budget will fully reverse those cuts for domestic priorities, and match those investments dollar for dollar with the resources our troops need to keep America safe," a White House official said.

The official did not say how much additional spending Obama would propose but did say the increases would be funded by closing tax loopholes and cutting wasteful spending.

Obama already has released his "middle-class economics" tax plan in advance of the State of the Union address last week. The plan would raise $320 billion in new revenue to pay for new tax credits and programs meant to help the middle class pay for college, child care and job training.

Republicans, who came out against the proposals then, are likely also to oppose much of the president's budget request (Kathleen Hennessey, *Los Angeles Times*, Jan. 29). **-- AW**

DOE:

Department to pay $44K fine to EPA for Hanford waste

Kevin Bogardus, E&E reporter

Published: Thursday, January 29, 2015

The Department of Energy has agreed to pay a hefty fine to U.S. EPA for running afoul of hazardous waste law.

DOE will pay a $44,722 penalty under a consent agreement signed yesterday with EPA for two violations of the Resource Conservation and Recovery Act at the department's Hanford, Wash., nuclear waste site. Both violations occurred in 2013.

"By ensuring that hazardous waste management is conducted in accordance with all applicable requirements, EPA helps protect cleanup workers, first responders and the public from unnecessary exposure to hazardous chemicals. This action also protects the environment by ensuring proper cleanup and closure of hazardous waste storage sites," the agency said in a statement.

In the first instance, EPA charged that DOE moved 136 55-gallon drums of waste to an unpermitted area without seeking prior authorization.

For the other violation, the department submitted a closure plan for eight storage units that left out how the remaining waste was to be disposed of.

DOE is now working with the Washington Department of Ecology to include that information in the closure plan.

Hanford, once the site of plutonium processing for nuclear weapons during the Cold War, has been problematic for the department. Cleanup efforts at the site have run over budget and years late, and dangers to workers there have inspired a lawsuit by the Washington attorney general (*E&ENews PM*, Nov. 19, 2014).

In addition, DOE and EPA have butted heads over Hanford in the past. EPA slapped DOE with $10,000 weekly fines for blowing a deadline in the site's cleanup last year (*Greenwire*, Oct. 16, 2014).

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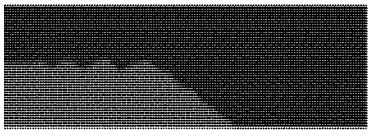

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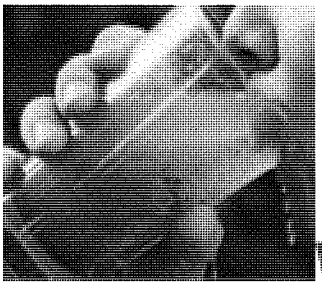


Water Law News

for January 30, 2015

Bloomberg BNA Daily Environment Report™

Hydraulic Fracturing

New Pennsylvania Governor Reinstates Ban on Fracking Leases on State Lands

New leases for oil and gas development in state parks and forests will again be banned in Pennsylvania, under an executive order signed Jan. 29 by newly elected Gov. Tom Wolf (D)....

Hydraulic Fracturing

Wisconsin DNR Pursues Environmental Analysis of Booming 'Frac Sand' Industry

The Wisconsin Natural Resources Board has directed a state agency to conduct a scientific review of the mining and processing of sand used for hydraulic fracturing in order to gain a broader understanding of the public health and environmental...

Natural Resources

Permanent Reauthorization of Land, Water Conservation Fund Falls Just Short in Senate

A Republican-led bid to permanently reauthorize a fund that uses revenues from offshore oil and gas development to create national parks and other public spaces fell short by one vote of passing the Senate after three Republicans changed their...

Oil & Gas

Shell Commits to Alaska Drilling This Year Despite Opposition

Royal Dutch Shell Plc is committed to drilling for oil in Alaska in what it says is the world's largest unexplored liquid resource base, despite opposition from environmentalists and a pledge to reduce spending....

Recycling

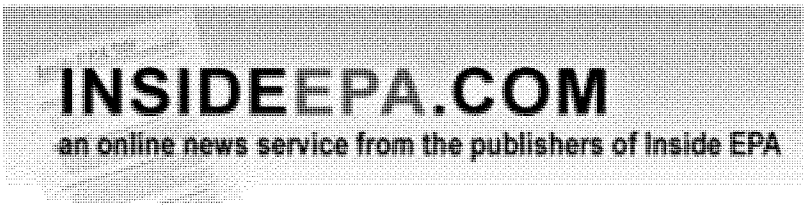
Oregon Wastewater Utility Proposes to Use Recycled Water in Beer-Brewing Project

An Oregon wastewater utility is proposing a novel way of overcoming consumer distaste for recycled toilet water: brewing it into beer....

Water Pollution

Barrasso to Introduce Senate Bill That Would Block Waters Of the U.S. Rulemaking

Sen. John Barrasso (R-Wyo.) said he plans to introduce a bill in the coming weeks that would put a stop to the waters of the U.S. rulemaking that seeks to clarify the scope of Clean Water Act jurisdiction, an aide confirmed Jan. 29....



Inside EPA's **Weekly Report**, 01/30/2015

http://insideepa.com/newsletters/inside-epa

News Briefs

House Lawmakers Reintroduce Bill To Block EPA's CWA Rule

House lawmakers have reintroduced a bipartisan bill to block EPA and the Army Corps of Engineers from finalizing their controversial proposed rule to clarify the scope of the Clean Water Act (CWA), ahead of a joint House-Senate hearing slated for next week to examine the rule's potential impacts on states and local governments.

Obama's Bid To End Sequester Could Boost EPA's FY16 Budget

President Obama is set to ask Congress to end sequestration caps on discretionary spending and approve an overall federal budget increase in his fiscal year 2016 budget, which could if adopted pave the way for at least a modest funding increase for EPA's funding over FY15 levels, though the GOP Congress is unlikely to back to proposal.

Greenwire

WATER POLLUTION:

Iowa utility's lawsuit takes new stab at old nutrient problems

Annie Snider, E&E reporter

Published: Thursday, January 29, 2015

A potentially precedent-setting lawsuit initiated earlier this month is once again ripping open the debate over how best to stem the flow of nutrients from America's farms and animal operations into the country's rivers and streams.

This time, the plaintiff is not an environmental group, though; it is a municipal utility struggling to bring clean drinking water to its customers.

Des Moines Water Works has long faced unsafe nitrate levels in its water supply, the Raccoon and Des Moines rivers. The Safe Drinking Water Act sets a limit of 10 milligrams per liter for nitrate, a fertilizer byproduct, in tap water. Higher levels are linked to blue baby syndrome and breathing problems.

The Raccoon and Des Moines rivers regularly exceed the nitrate limit, and levels have been particularly high over the past two years, the utility says. Last year, the Raccoon saw a record 24 milligrams per liter, the agency says.

Normal water treatment can't remove nitrates, so the high concentrations in the rivers have forced the utility to run its expensive and aging denitrification plant. In 2013, Des Moines Water Works said it had to run the facility for 74 days for at a total cost of $900,000. Last year, after an especially rainy fall, the utility had to begin operating the plant in the winter -- a highly unusual occurrence.

"This issue, for us, is public health; we're talking about the safe drinking water for half a million people," said Bill Stowe, CEO and general manager of Des Moines Water Works.

It's also a money matter: The utility is about to raise its rates 7 percent, nearly a third of which Stowe said is linked to running the denitrification plant.

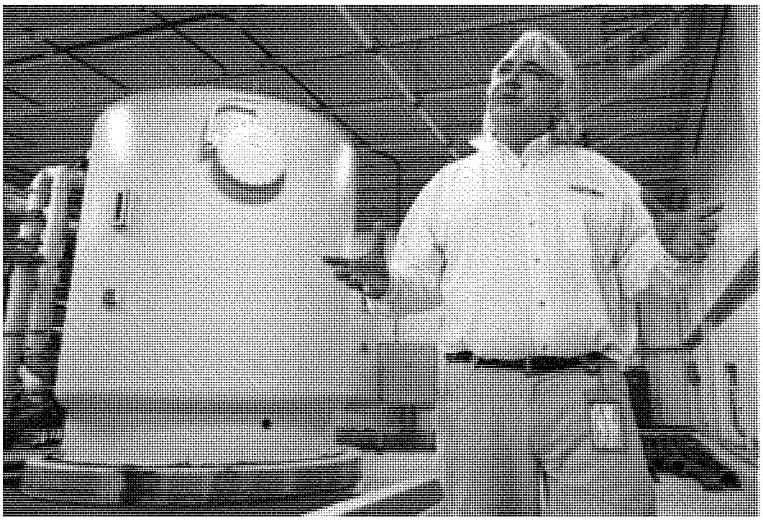
And the outdated plant poses some risks. For instance, the system uses salt to remove nitrates from the water, and the utility nearly ran out of it this month because of weather-related transportation problems, Stowe said. Without salt, the city may not have been able to deliver clean drinking water to its customers.

Such concerns have Des Moines Water Works considering the prospect of a $100 million upgrade.

But instead of undertaking this pricey capital improvement, Stowe wants farmers upstream to face restrictions on the amount of nitrates that can flow from their operations into the rivers. He and his board of trustees sent a notice of intent to sue to the county supervisors of three heavily agricultural upstream counties earlier this month.

The move drew swift opposition from Iowa's agricultural community and state officials, including the governor, the state agriculture commissioner and new Iowa Republican Sen. Joni Ernst. They argue that such regulation not only isn't allowed under the Clean Water Act, but simply won't work when nutrient problems and solutions can vary widely depending on location, hydrology and other factors.

"Des Moines has declared war on rural Iowa," Gov. Terry Branstad (R) told *The Des Moines Register*. "I think instead of filing a lawsuit, Des Moines should sit down with the farmers and people who want to do something about it."



Bill Stowe, CEO and general manager of Des Moines Water Works, at the utility's nitrate removal facility. Rather than undertake a $100 million upgrade to the facility, Stowe wants upstream farmers to face requirements for stanching nutrient flow from their operations. Photo by Charlie Neibergall, courtesy of AP Images.

City leaders responded that they have tried this approach for years, to little avail.

"They want to go down this path of voluntarily trying to find ways to reduce those pollutants and test them out and see how it works," Des Moines Mayor Franklin Cownie said. "Well, we're seeing that it's not working."

Field drainage

The lawsuit's specific target is a form of subsurface drainage common in Midwest agricultural areas.

Large swaths of farmland stretching through parts of the Dakotas, Minnesota, Iowa, Illinois, Indiana and Ohio were left as soggy wetlands when glaciers from the last ice age retreated over 12,000 years ago. That process left particularly rich soils but also made farming nearly impossible. So early settlers, often with government encouragement, installed artificial drainage systems.

They were once made of porcelain or clay, but farmers today use strong plastic piping that ranges from a few inches in diameter to 3 or 4 feet across. The piping, typically placed about 4 feet below the surface, is designed to quickly shuttle water away from row crops' roots.

No one tracks the extent of these tile drain systems, essentially farm field sewers, across the heartland, but Keith Schilling, a hydrologist at the University of Iowa, said the networks are vast.

"I don't think there's any way to underestimate how many tile drains there are, and we don't know where they are," he said.

Nor are the systems' impacts on water quality well understood.

Lori Sprague, a hydrologist with the U.S. Geological Survey who studies water quality trends, said tile drainage systems essentially short-circuit the natural filtration system that would normally allow some nitrogen to be taken up by plants or turned into harmless gas.

It's hard to know how much of that nitrogen could still make its way into a stream through the normal path

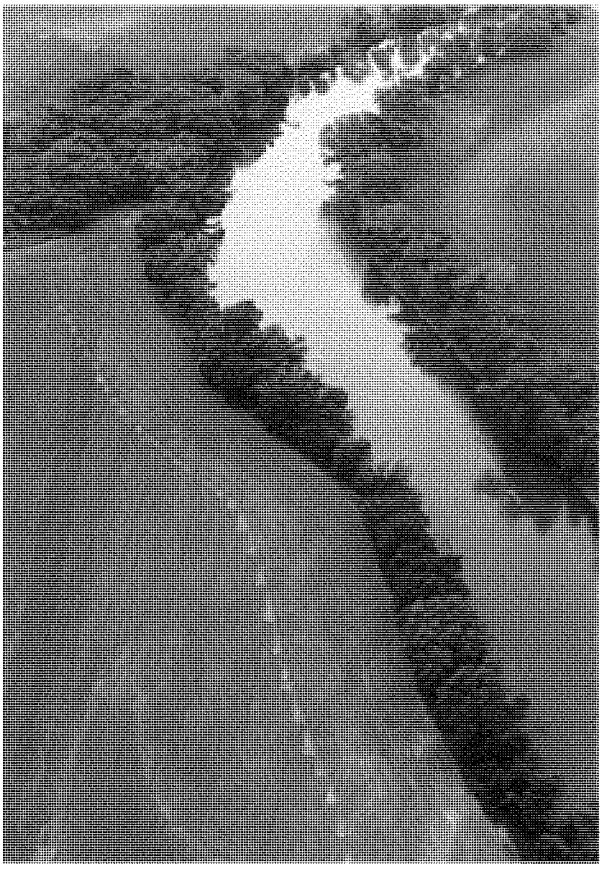
of groundwater, though. Further complicating the calculation is the fact that the Midwest regions thought to have the densest tile drainage are also those with heavy concentrations of row crop farming, making it difficult to know what role the tile drains play.

"But we have observed when there are more tile drains, if you hold everything else constant, there tends to be higher nitrate levels in streams," Sprague said.

Last year, Des Moines Water Works conducted water sampling at the points where three upstream drainage districts -- quasi-governmental entities that manage the larger drainage networks in Iowa -- discharged into rivers. Those samples showed nitrate levels that frequently exceeded the 10-milligram-per-liter limit.

That's roughly on par with an independent study done by Schilling in a major upstream tributary of the Des Moines River that found nitrate levels averaging 13 milligrams per liter over a two-year period.

And the nitrate impacts don't stop at the Des Moines Water Works intake.



Farm fields across the Midwest are underlain by vast networks of drainage tile. Those systems protect row crops, but they also short-circuit the natural infiltration system that helps cleanse water before it reaches rivers and streams. Photo by John Cross, courtesy of AP Images.

Nitrogen, phosphorus and sediment washing from Midwest farm fields into the Mississippi River and its tributaries feed a massive dead zone each year in the Gulf of Mexico. USGS attributes 41 percent of the problem to farm fertilizer. Tile drains' role in that is simply unknown, scientists say.

But stanching nitrate levels is no small feat. In a 2010 study looking at options along the Raccoon River,

Schilling found it would take a major conversion of cropland to unfarmed grassland, or a steep reduction in fertilizer use, in order to achieve the reductions necessary to bring nitrate concentrations below the federal limit at the water utility's intake.

To deal specifically with the nutrients in tile drained water, there are three main options: building artificial wetlands that the drains' water can flow into and be cleansed by, installing bioreactors to treat the water, and designing saturated buffers that allow the drained water to spread out and filter through buffers with grasses and trees that can take up excess nitrogen.

All three have been tried in Iowa, but they are not prevalent. One major hurdle: The cost-share funding available for such projects is limited, and the price can be high for items like artificial wetlands that would require prime farmland to be taken out of production.

"Three and four million [dollars] here and there sounds like a lot of money, but that's not enough money to even come close to addressing the problem," said Schilling. "It's going to take $1 billion to make a dent in the problem."

Legal crux

Under the federal Clean Water Act, factories, wastewater treatment plants and other industrial facilities deemed to be "point sources" must get permits to discharge pollutants like nitrogen into rivers and streams, but most forms of agricultural flows are exempted under the 1972 law.

The law explicitly provides two exemptions for agricultural water: for rainwater washing over farm fields, called agricultural stormwater, and for excess irrigation water that flows off fields, called irrigation return flows.

For years, environmental lawyers have been batting around the idea among themselves that tile drainage systems could be argued to be point sources, not qualifying for either of the two exemptions.

Until now, though, the concept has been tried in court only once, in a case brought by a California fishermen's association and a slate of environmental groups. The case was dismissed by a federal judge.

Vermont Law School professor Patrick Parenteau said, however, that the Des Moines Water Works case laid out in the letter sent to county supervisors appears to be much stronger.

"Their theory of why this meets the definition of a point source discharge and is not subject to the agricultural runoff exemption -- which was the reason that the California case got dismissed -- was intriguing," he said.

The water works' argument hinges on the idea that rainwater that has infiltrated into the ground to become groundwater and is then artificially drained is something fundamentally different, from the Clean Water Act's perspective, from rainwater that washes over the surface of a farm field.

The utility argues that stormwater flowing across fields and into ditches or streams could not pick up nearly as much nitrate pollution as water infiltrated through Iowa's nutrient-rich soils.

Parenteau said there is precedent for a judge requiring natural groundwater discharges to be permitted -- a 9th Circuit decision on groundwater pumping from coalbed methane formations.

But Gary Baise, who served as chief of staff to the first U.S. EPA administrator and now represents agricultural interests at the law firm Olsson Frank Weeda Terman Matz PC, said courts have been reluctant to poke holes in the law's farm exemptions.

"Agricultural stormwater runoff has been pretty sacrosanct because Congress said so," he said. "We know nonpoint runoff has nutrients in it, we know it's there, and Congress has spoken and until Congress speaks again, this strikes me as an oddball lawsuit."

Putting aside the question of exemptions, Baise said that permitting tile drain systems would pose an enormous administrative burden. On his farm in Illinois, there are 25 to 30 tiling systems just on his property, he said.

"Do you realize how many farms there are in this country?" Baise asked. "Do you realize how many discharge points there are on a farm? There's no way in hell you can permit that as a point source."

'You never litigate your way to water quality'

The Des Moines Water Works lawsuit comes after several years of concerted effort on the part of the state, agricultural leaders, environmental groups, academics and others to develop a plan for reducing Iowa's contribution to the annual Gulf of Mexico dead zone.

That document, called the Iowa Nutrient Reduction Strategy, was finalized in 2013 and was the first plan from a Mississippi River Basin state under an EPA-led effort. It lays out a path to cut the amount of nitrogen and phosphorus flowing into the state's portion of the Mississippi River watershed by 45 percent. It also calls for a 41 percent reduction in nitrogen flowing into waterways from agricultural activities.

Critics have called it weak, since it has no timeline for implementation and all the conservation practices it lays out are voluntary for farmers. But Sean McMahon, executive director of the nonprofit Iowa Agriculture Water Alliance, said the process has built momentum among all the key players.

"The agricultural sector would definitely be the first to say that we have water quality problems in Iowa and we're actually working very hard to address them," said McMahon, a former Nature Conservancy staffer whose new group is funded by farm industry groups with the goal of increasing adoption of agricultural conservation practices. "I would say that there's very strong buy-in to the strategy."

The question now is what the Des Moines lawsuit does to that momentum.

Even supporters of the lawsuit acknowledge that the only real pollution solutions can come from willing agricultural partners.

Parenteau, the Vermont Law School professor, said that even if the suit moves forward and Des Moines Water Works wins, state and federal regulators could create a general permitting system that essentially perpetuates the status quo for farmers.

"I'd be the first to say that the Clean Water Act is probably not the best way to address this," he said. "You never litigate your way to water quality; you use litigation as leverage. You need a political solution to these problems."

McMahon said Des Moines' lawsuit threatens to break down some of the collaboration that the nutrient strategy had built.

"Their actions have the potential to create an environment where farmers don't want to implement conservation practices because they fear that regulation is coming," said McMahon.

But Suzy Friedman, director of agricultural sustainability at the Environmental Defense Fund, said she has seen some indications that the lawsuit could advance the conversation.

Friedman says there is a role for regulation in some cases but ultimately argues that market forces are the most effective driver for conservation efforts. She has worked with Wal-Mart to set environmental requirements, including fertilizer efficiency, for its suppliers like Smithfield, the world's largest pork producer, and General Mills. And EDF is working with agribusinesses to help farmers respond to the demand signal with things like precision fertilizer techniques.

On a recent trip to Iowa to talk with farmers and agribusiness leaders about these efforts, Friedman said the Des Moines legal action was a hot topic.

"There was some pretty passionate talk about the lawsuit, but not in terms of, 'All right, we need to fight this thing,' or 'We need to slam the door shut and we don't talk to anybody,'" she said.

"It was, 'We need to get going, we need to go faster, we need to roll this program out sooner because this is our opportunity to get ahead of this and show that we can make a difference and show that lawsuits and what comes from them isn't the way it needs to happen.'"

EPA:

Enforcement officials up in arms over anti-gun push

Robin Bravender, E&E reporter

Published: Thursday, January 29, 2015

A few years back, U.S. EPA enforcement agents tracked a Utah environmental fugitive to a trailer parked at a marina in the Florida Keys.

Larkin Baggett, one of EPA's "most wanted" criminals at the time, appeared in the trailer doorway sweeping an assault rifle toward the approaching EPA agents and local cops, saying things like, "I won't go," according to court documents. The officers opened fire, wounding Baggett and taking him into custody.

Cases such as the 2009 Baggett skirmish demonstrate why it's important for EPA agents to be armed, argue supporters of the agency's criminal program. They can face off against armed criminals, people using dangerous chemicals and fugitives anxious to avoid jail time.

But a freshman senator wants to take their guns away -- an effort that has EPA employees and law enforcement officials up in arms.

Sen. Dan Sullivan (R-Alaska) is pushing a measure that would strip EPA's special agents of their ability to carry firearms. His effort stems from a 2013 incident near Chicken, Alaska, when miners complained that they'd been intimidated with weapons and body armor by enforcement officials from EPA and other agencies who were investigating potential violations of clean water laws (*E&ENews PM*, Sept. 5, 2013).

Sullivan offered his amendment to a bill to approve the Keystone XL oil pipeline that's pending in the Senate, although it almost certainly won't see a vote this time around. But the Alaska Republican plans to keep pressing the issue.

"Disarming the EPA was a campaign promise made by Sen. Sullivan, and continues to be a top priority of his," said a Sullivan spokesman. "If it is not a component of the Keystone XL legislation, Sen. Sullivan intends to work with his colleagues in the near future to get this amendment across the finish line."

That's troubling to critics, who say the measure would put officers at risk and torpedo the agency's ability to pursue environmental criminals. They're concerned that the issue will come up again this Congress and that it could set a precedent of lawmakers looking to target other government law enforcement programs.

"I'm very concerned" about Senate efforts to block EPA agents from carrying guns "because I don't think EPA special agents will be able to do their jobs, which means that there won't be an EPA criminal enforcement program," said Fred Burnside, former director of EPA's criminal enforcement program.

"These agents conduct interviews, they're out at night, they investigate in isolated locations with no back-up, they knock on doors, and they execute arrest and search warrants," Burnside added. "They could run into the same types of problems that would pose a significant threat to agents and to others, so it's important that they be armed."

Like other crime fighters, the nearly 180 special agents in EPA's criminal enforcement branch are authorized to carry weapons as they investigate environmental crimes and pursue suspects like Baggett. Their work can involve interviewing people who witnessed crimes, carrying out searches and arresting those suspected of breaking clean air or water laws.

An EPA official said in a statement yesterday that "to remove this basic law enforcement tool from the hands of EPA agents could put the safety of the officers -- and the public -- at risk."

Fear about 'domino impact'

Meanwhile, a coalition of federal law enforcement officials is warning Senate leadership that Sullivan's efforts are "misguided" and would prevent highly trained EPA officers from doing their jobs.

Jon Adler, president of the Federal Law Enforcement Officers Association, sent a letter to Senate Majority Leader Mitch McConnell (R-Ky.) and Minority Leader Harry Reid (D-Nev.) earlier this week, voicing the group's strong opposition to disarming EPA.

That letter quotes an EPA criminal investigator saying, "There is no way we can accomplish our mission safely without a means to protect ourselves."

Adler's group -- which represents more than 25,000 federal law enforcement officers from over 65 different agencies -- is also worried that Sullivan's effort could have broader impacts beyond EPA.

"We are deeply concerned with the profound ignorance expressed in the amendment and the possible collateral damage or sort of psychological domino impact it may have on others," Adler said in an interview. "If one senator seeks to solve what he or she sees as an issue with the law, an issue with regulations, and reaches a conclusion that law enforcement officers should be disarmed, then it sort of concerns us in terms of who's next. If you disarm the EPA, when are we going to make our way to the FBI?"

Sullivan said yesterday that he wasn't surprised by the pushback from law enforcement officers but hasn't been dissuaded. He said EPA enforcement officials can still do their jobs without being armed. "They'll stay safe, just work closely with local law enforcement or federal marshals or others who are armed," he said.

And he isn't the only lawmaker questioning whether EPA agents should carry guns.

Sen. Lisa Murkowski (R-Alaska) said earlier this week, "Do we really need to have an armed

bureaucracy?" The Energy and Natural Resources Committee chairwoman didn't say whether she backed Sullivan's amendment but called the issue a "good and legitimate question."

"I think we need to look critically and realistically at all the federal agencies that are out there that have their own enforcement arms," she said, noting that there are many armed federal agencies that need to cooperate with more conventional law enforcement. "Do we really need all of this?" (*E&ENews PM*, Jan. 27).

But so far, Adler said, the reaction his group has gotten from lawmakers has been "very favorable," noting that several Democratic senators have spoken out against Sullivan's effort. "Our only concern is that ultimately if the two parties go party line, that's the concern and the risk that we face. But I think if we were able to carve out this issue as a standalone issue, we would easily prevail in terms of support in the broader Senate."

'It's going to demoralize the working troops'

Former EPA officials say Sullivan's efforts will deal another blow to an office that's already taken some hits in terms of staffing and morale.

"It's a tough time in government, and frankly budgets are tough, and then you come up with sound bites like this," said Michael Hubbard, the former special agent in charge of criminal enforcement in EPA's Region 1 office in Boston, who's now retired.

"Certainly it's going to demoralize the working troops that in spite of all of this ... are still trying to do a good job, trying to maintain safeguards for human health and the environment and going out and doing it with less resources than they've had in the past," Hubbard added.

EPA's criminal enforcement division has 178 special agents on staff, despite a law requiring them to have 200. Current and former EPA officials say the office has been forced to scale back its work in certain regions and issue areas in recent years amid budget cuts and staff losses -- shifting their focus to only the worst polluters. And people close to EPA's criminal investigation program have said some crimes are falling through the cracks as a result (*Greenwire*, April 10, 2014).

"I think there's always been detractors for the EPA criminal program," Burnside said. "Especially people on the receiving end have trouble wrapping their mind around EPA special agents having that level of authority." But, he added, "EPA special agents need to be very careful about how they use their authority, how they are perceived by the public, and not be too heavy handed."

Eric Schaeffer, director of the Environmental Integrity Project and former director of EPA's civil enforcement office, criticized the effort as part of a broader push to score political efforts by targeting the agency.

"Anybody can say anything about EPA right now," Schaeffer said.

He added that he finds the effort particularly worrisome as other lawmakers push to expand the public's ability to carry guns. Just yesterday, congressional Republicans revived a push to allow visitors to campgrounds and trails managed by the Army Corps of Engineers to carry firearms; loaded guns have been allowed in national parks and wildlife refuges since Congress passed a law dictating it in 2009 (*E&E Daily*, Jan. 29).

"The only people who won't have them are law enforcement agents," Schaeffer said.

Reporters Nick Juliano and Manuel Quiñones contributed.

KEYSTONE XL:

Senate votes to cut off debate, setting stage for final passage

Manuel Quiñones, E&E reporter

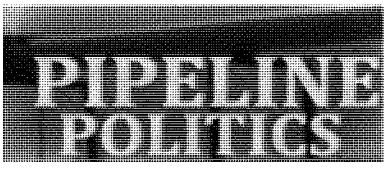
Published: Thursday, January 29, 2015

The Senate voted this afternoon 62-35 to invoke cloture on legislation to approve the Keystone XL oil pipeline from Canada, setting the stage for final passage within the next several hours.

Sens. Joe Manchin of West Virginia, Heidi Heitkamp of North Dakota, Claire McCaskill of Missouri, Jon Tester of Montana, Michael Bennet of Colorado, Bob Casey of Pennsylvania and Joe Donnelly of Indiana were, as expected, among the Democrats voting in favor. All Republicans voted to end debate.

Earlier in the session, senators voted down an amendment by Sen. Richard Burr (R-N.C.), plus Sens. Kelly Ayotte (R-N.H.) and Michael Bennet (D-Colo.), to reauthorize the Land and Water Conservation Fund.

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. **Click here** to view the special report.

The measure was headed for passage, but Republican leaders encouraged some lawmakers to change their votes to avoid jeopardizing the broader effort to approve the KXL bill. The final vote on that amendment was 59-39, one short of the 60 needed for passage.

Lawmakers similarly voted down 47-51 an amendment by Sen. Steve Daines (R-Mont.) to get senators on the record supporting the reauthorization of the LWCF, but his measure included proposed reforms.

An amendment by Sen. Tom Udall (D-N.M.) to set a 25 percent renewable energy standard by 2025 failed by a vote of 45-53.

An amendment by Sen. John Barrasso (R-Wyo.) to make clear that the KXL bill doesn't trump any treaties or other agreements with Native Americans passed by voice vote.

Sen. Ben Cardin (D-Md.) had a similar stand-alone amendment but instead worked with Barrasso on a compromise. Cardin then withdrew his own language.

Louisiana Republican Sens. David Vitter and Bill Cassidy had introduced an amendment to promote offshore drilling and revenue sharing with states, but withdrew it for later consideration.

Nongermane amendments like a proposal by Sen. Thom Tillis (R-N.C.) and Burr to encourage drilling off the East Coast, plus a measure by Sen. Dan Sullivan (R-Alaska) to disarm U.S. EPA agents, won't get votes now that cloture has been invoked.

ADVOCACY:

API opens new office in Colo., hires Hickenlooper aide

Phil Taylor, E&E reporter

Published: Thursday, January 29, 2015

DENVER -- The American Petroleum Institute today announced it is opening a new office in Colorado, a state that has become a battleground in a national debate over the safety of oil and gas drilling and hydraulic fracturing.

The Colorado Petroleum Council will be headed by Tracee Bentley, who was legislative director for Colorado Gov. John Hickenlooper (D) and was formerly deputy director of the Colorado Energy Office, where she lobbied the Legislature.

API's new office, based in Denver, will focus on hydraulic fracturing and energy infrastructure and seek to bolster production and revenues to the government.

PEOPLE

"Colorado is at the forefront of American's energy renaissance," said API President Jack Gerard. "The right energy policies are essential to maintain strong economic growth, which energy development is generating across the state."

The announcement comes as a 21-member Colorado oil and gas task force composed of industry, conservation, government and civic leaders seeks consensus on recommendations for new legislative protections for Coloradans who live near existing or proposed oil and gas drilling sites, as well as balancing state and local energy regulation.

Hickenlooper announced the task force last summer as a political compromise to kill a series of ballot initiatives that called for greater restrictions on hydraulic fracturing, measures that could have severely crippled oil and gas development in the state.

Passage of one measure to require that oil and gas wells be located at least 2,000 feet from homes would have curtailed new drilling projects by up to half and affected up to 36,000 jobs over the first five years, according to a study by the University of Colorado's business school.

Hickenlooper's task force remained sharply divided Jan. 16 over how much say local governments should have in future oil and gas development in the state -- suggesting that the panel could face a difficult fight when it meets next month to publicly discuss its legislative and regulatory recommendations (*Greenwire*, Jan. 19).

Barring a task force agreement and legislative action, it's possible Colorado could see a slew of anti-drilling measures again on the 2016 ballot.

Gerard said Colorado needs bipartisan cooperation among state government officials and business and consumer groups in order to remain a leader in energy development.

"Tracee Bentley is ideally positioned to lead our industry's efforts, now and into the future," Gerard said.

Prior to joining Hickenlooper's administration in 2011, Bentley ran a Colorado-based bipartisan lobbying firm, according to the governor. She previously was director of national affairs with the Colorado Farm Bureau, where she worked on energy, immigration, farm policy and international trade.

She earned bachelor's and master's degrees from Colorado State University and prior to that worked in the office of former Sen. Ben Nighthorse Campbell (R-Colo.).

"I'm thrilled to work with the dynamic API team on the exciting energy opportunities in Colorado that are transforming our state into a leader in domestic energy production," Bentley said.

API has 22 state petroleum council offices and contractors in 12 other states, said API spokesman Reid Porter.

FLOOD RISK:

Army Corps report lays out coastal vulnerabilities in Northeast

Annie Snider, E&E reporter

Published: Thursday, January 29, 2015

Back bays in New Jersey and New York's Long Island that suffered severe flooding during Superstorm Sandy deserve more attention as the United States contemplates how best to protect its coastlines in the face of sea-level rise and more extreme storms, the Army Corps of Engineers said yesterday.

The suggestion is part of a massive, $20 million study of vulnerabilities along the Northeastern coastline and approaches to protecting it that Congress called for in the wake of the 2013 storm.

The main takeaway: The people and infrastructure along the country's coastline face major risks, and it's not getting better as sea levels rise, storms are strengthening and development continues.

"Coastal communities face tough choices as they adapt local land use patterns while striving to preserve community values and economic vitality," the report's preface states. "Absent improvements to our current planning and development patterns that account for future conditions, the next devastating storm event will result in similar or worse impacts."

While the report highlights nine areas along the Northeast coast that the corps says deserve additional attention, it makes no specific project recommendations. Instead, corps leaders said it is intended to be a tool to help state and local leaders assess their own risk and weigh different ways of dealing with it.

"The comprehensive study is designed to help local communities better understand changing flood risk associated with climate change and also to provide the tools needed to help those communities better prepare for future flood risks," said Roselle Henn, one of the corps planners who oversaw the study.

For states and communities, the report lays out a nine-step framework for evaluating risk and developing a plan for dealing with it. It was designed with the Northeast in mind but is transferrable to other regions, Henn said.

Corps leaders also said the study advances the state of the science, providing coastal storm modeling covering the entire Northeast region, a regional sediment budget and an accompanying 480-page report on how natural features like wetlands and reefs can be incorporated into flood protection systems.

But whether the report will become anything more than just another binder on a shelf remains to be seen.

Ultimately, the path forward is not up to the Corps of Engineers, which serves as the nation's prime planner and builder for storm protection infrastructure but works only at the behest of Congress and local communities.

Indeed, the report itself calls out major institutional barriers to the kind of planning it lays out, ranging from silos and inconsistencies between various federal programs to public pressure to rebuild swiftly following a storm.

"The report doesn't achieve anything unless Congress and the corps and the states involved make it mean something," said Howard Marlowe, a longtime Washington, D.C., lobbyist for communities facing storm risks. "There's a fantastic amount of information in here, and ... this forms a basis that could be used for proactivity, but only if there's the leadership."

The Obama administration is currently working on a new flood risk standard to guide federal investment in risky floodplain areas, an effort that has drawn concerns from some local officials and industries, as well as key lawmakers (*E&E Daily*, Jan. 27).

But Marlowe said that sort of regulatory effort is only one piece of what needs to be done, and that the questions around transparency currently being floated make for a bad start if the federal government is going to be able to lead a planning process that requires some of those same stakeholders to make tough choices.

Mark Mauriello, former head of the New Jersey Department of Environmental Protection, who was involved in the post-Sandy recovery effort, said that all of the players need to start thinking about long-term solutions to problems that are only going to get worse.

"We can push a lot of sand out into the water, and we can try to push the shoreline out into the sea, but it's not going to last long," he said. "Unfortunately, it comes back to some uncomfortable discussions about our footprint on the landscape.

"There's going to be a point in time when we just can't afford to do all this, and it's better that we start to think about it now and plan now," Mauriello said.

Click here for the corps study.

BUDGET:

Obama again seeks to restore sequestration cuts -- official

Published: Thursday, January 29, 2015

In his fiscal 2016 budget proposal set to be unveiled next week, President Obama is looking to restore billions of dollars in federal government spending that was automatically halted by the 2013 sequester.

White House officials have begun to hint at parts of Obama's fiscal 2016 budget request, saying it will

undo cuts that hit military and domestic programs.

"The president's budget will fully reverse those cuts for domestic priorities, and match those investments dollar for dollar with the resources our troops need to keep America safe," a White House official said.

The official did not say how much additional spending Obama would propose but did say the increases would be funded by closing tax loopholes and cutting wasteful spending.

Obama already has released his "middle-class economics" tax plan in advance of the State of the Union address last week. The plan would raise $320 billion in new revenue to pay for new tax credits and programs meant to help the middle class pay for college, child care and job training.

Republicans, who came out against the proposals then, are likely also to oppose much of the president's budget request (Kathleen Hennessey, *Los Angeles Times*, Jan. 29). **-- AW**

ARCTIC:

Shell plans to drill off Alaska this summer

Phil Taylor, E&E reporter

Published: Thursday, January 29, 2015

Royal Dutch Shell PLC will explore for oil this summer in Alaska's Chukchi Sea if it receives approval from the federal government, CEO Ben van Beurden announced today, according to multiple news outlets.

Van Beurden's remarks at the company's fourth-quarter results conference in London come as world oil prices collapse and energy companies scrap dozens of drilling programs.

Van Beurden acknowledged that Arctic drilling "divides society" but said the world will need new sources of oil, according to the BBC.

"We will only do this if we feel that we can do it responsibly," van Beurden said, according to the BBC. "I think that we are as well prepared as any company can be to mitigate the risks."

Greenpeace Executive Director Annie Leonard said Shell's decision to return to the Arctic, where its 2012 drilling campaign was derailed by operational mishaps, regulatory violations and the wreck of one of its drill rigs amid a torrential storm, is "reckless" and "stunning."

"If President Obama wants to be a leader on climate change, there is only one choice to make -- do not approve Shell's Chukchi Sea drilling lease," she said.

Shell's decision will ignite a pitched battle in Washington, D.C., over the risks and rewards of exploring a relatively pristine ocean, one that offers fertile hunting grounds for Native Alaskans but also contains an estimated 23 billion barrels of oil.

In August, Shell submitted a blueprint for exploring this summer in the Chukchi Sea, and since then, Shell experts have been meeting with Bureau of Ocean Energy Management officials to discuss the company's exploration plan.

Since becoming Shell's top boss a year ago, van Beurden has hedged his bets on the company's Arctic exploration venture, which so far has cost more than $6 billion.

It is likely to cost Shell $1 billion more if the company is authorized to drill in Alaska and close to $1 billion even if it does not, according to the *New York Times*. The Chukchi exploration bid is "a little like operating the North Sea from New York," van Beurden said, according to the *Times*.

Last week, Shell secured approval to house its Arctic drilling fleet at the Port of Seattle.

BOEM is still completing a supplemental environmental review of its 2008 decision to sell $2.7 billion in Chukchi drilling leases. A federal circuit court ruled a year ago that BOEM had significantly underestimated the amount of oil that could be developed.

The agency's new review assumes a new exploration and development scenario of 4.3 billion barrels of oil, significantly higher than BOEM's earlier projection that 1 billion barrels of crude could be economically produced.

Environmental groups point out that it also estimated a 75 percent chance that one or more large oil spills over 1,000 barrels of oil would occur if the Chukchi leases are developed.

"The threat of oil spills from risky exploratory drilling threatens Alaska's Arctic seas and the people who depend on them," said Margaret Williams, managing director of U.S. Arctic programs for the World Wildlife Fund. "After the series of accidents and errors during its first foray of Arctic exploration, today's news from Shell raises serious concerns."

Shell's drilling plan will be a major political test for the Obama administration, which has hedged its bets on which lands and waters to make available for drilling.

It decided this week to recommend closure of the entire Arctic National Wildlife Refuge to drilling, and it withdrew nearly 10 million acres of the Chukchi and Beaufort seas to new leasing. But it also scheduled two more lease sales in those seas in its 2017-22 leasing plan, while scheduling a potential 2021 lease sale in the Atlantic Ocean, which has not been drilled since the 1980s.

Robert Dillon, spokesman for Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska), a major booster of Arctic drilling, said oil resources off Alaska's North Slope are "critically important to the nation, state and continued operations of [the Trans-Alaskan oil pipeline] in terms of domestic oil supply and jobs."

FISHERIES:

Feds consider allowing industry to help pay for onboard observers

Emily Yehle, E&E reporter

Published: Thursday, January 29, 2015

The National Marine Fisheries Service is considering a framework that would allow the fishing industry to partially pay for onboard observers on the East Coast, filling in the gaps of the federal budget.

The "omnibus amendment" is still winding its way through the New England and Mid-Atlantic fishery management councils and will likely undergo changes before it makes it to the agency's desk. But the underlying idea has broad support: Allow industry to pay for the days at sea of needed observers, who collect data and monitor bycatch.

Gib Brogan, the fisheries program manager at Oceana, said fishery managers have realized that in some fisheries, more observer coverage is needed than NMFS says it can afford.

"If we don't know what is being caught, kept or discarded at sea, we can't manage the fisheries," Brogan said in an email. But observers can cost upward of $500 each day they spend on a vessel. "To create this extra funding, the councils are developing a way for the industry to pay for some of the costs of observers, a task that is difficult because of federal laws prohibiting government collecting funds for specific purposes."

The New England council will discuss the amendment today, while the Mid-Atlantic council will take it up next month. Broadly, it sets parameters for what industry can legally pay for, such as hours worked. Other tasks -- such as analyzing the collected data -- would fall to the National Oceanic and Atmospheric Administration to fund.

Such a framework is necessary because East Coast fisheries do not enjoy the same legal exception of Alaska fisheries, where industry already pays for onboard observers.

Mike Pentony, assistant regional administrator for sustainable fisheries at NMFS, said the amendment would not increase the amount of observer coverage the agency requires of fisheries. Instead, it would allow councils to request supplemental coverage -- and only if NMFS has available funds to match the industry's contribution.

"It's setting up a process so that in the future, should funding be available to support expanded observer coverage, there is a mechanism to do that," he said.

That flexibility does not sit well with all conservationists. Joseph Gordon, the director of Northeast oceans at the Pew Charitable Trusts, called the draft "a slow bridge to nowhere."

"It relies on funding that doesn't currently exist," he said. "It's not a commitment to conservation. It commits nothing."

Sucking up fish

Pew's main objection is how NMFS is handling an issue that first sparked the amendment: observer coverage for the midwater trawlers that suck up massive amounts of herring and mackerel along the East Coast.

Conservationists have long worried about the fish the trawlers inadvertently catch, called bycatch. Fishery managers still do not have a firm grasp on how the herring and mackerel fisheries affect populations of river herring and threatened groundfish species.

In 2012, both the New England and Mid-Atlantic fishery councils voted for 100 percent observer coverage on vessels with the highest catch of river herring and shad. The fishing industry indicated it would bear the costs, at least temporarily, in order to prove that the fisheries did not threaten nontargeted fish.

But -- in a rare move -- NMFS rejected the recommendation, citing the lack of any legal mechanism to allow industry to pay for it.

The omnibus amendment addresses that mechanism. But it would not require any more observer coverage for the fisheries that started it all: herring and mackerel.

"I think the biggest failure is here's the industry willing to help fund [observers] -- with some of the most important fish at stake -- and we still don't have a way to take those funds and improve accountability,"

Gordon said.

Pew wants an independent observer on every industrial midwater trawl trip. NMFS has said it can't guarantee the funding for its part in that, even under a framework that allows industry to bear part of the costs.

While the omnibus amendment addresses both the industry-funded framework and observer coverage of the herring and mackerel fisheries, the councils may opt to divide the two issues and address them in separate measures.

But so far, fishery managers appear to be moving past the idea of observers to monitor the fisheries' bycatch. Pentony asserted that there are other ways to address the gap in data, such as a combination of electronic monitoring and dockside monitors.

"The scientific question is how much river herring and shad does the sea herring and the mackerel fisheries catch," Pentony said. "An at-sea observer isn't necessary the best tool to address that."

OCEANS:

Coral recovers from bleaching, remains weakened

Published: Thursday, January 29, 2015

Hawaiian corals that suffered stress from warm ocean temperatures last year have recovered, but officials are worried their future resilience may be compromised.

Last year, the Hawaii Department of Land and Natural Resources was alarmed when warmer-than-average ocean temperatures caused many corals to expel algae, which they rely on for food.

The phenomenon, called bleaching, caused many coral to lose their color, and though most of the coral has since recovered, officials say the experience may compromise their ability to survive future temperature increases.

Coral reefs are a critical part of the ocean ecosystem. In Hawaii, they are already being affected by development runoff and recreational ocean uses.

"I just worry how much the corals can take," said Anne Rosinski, a marine resource specialist with the state Division of Aquatic Resources (Audrey McAvoy, AP/Albany *Times Union*, Jan. 29). **-- AW**

OFFSHORE DRILLING:

Scientists home in on natural seismic waves to quietly survey geology

Katherine Ling, E&E reporter

Published: Thursday, January 29, 2015

Stanford University scientists have developed a new technique to survey for offshore oil and gas deposits that is less harmful to marine life and cheaper than current methods of detecting hydrocarbons, an important discovery in light of the White House announcement this week to expand offshore drilling.

The White House proposed opening new federal waters from Virginia to Georgia for oil and gas leasing and last June finalized a plan to move forward on seismic oil and gas surveys along the Atlantic coast (*Greenwire*, Jan. 27).

The Stanford team's technique uses natural, weak seismic activity generated by the collisions of ocean waves to generate almost daily images that can provide insight into subsurface geologic formations and potential oil and gas deposits, the university announced yesterday.

Current technology uses air guns to produce loud sounds that pulse off the ocean floor to produce similar subsurface images. Those surveys cost millions of dollars to run and are used only two or three times a year. Environmentalists criticize the air guns, which can produce noise 100,000 times louder than a jet engine, for harming whales, dolphins and other sea creatures (*Greenwire*, May 30, 2014).

The Stanford researchers were able to use sensors embedded in the ocean floor to isolate and record only some of the ambient seismic waves moving through the planet's crust to create a "virtual" seismic wave pattern similar to that produced by the air guns.

The team named the technique "ambient seismic field noise-correlation tomography," or ASNT.

The researchers have proved their technique to a depth of nearly 1,000 feet, Stanford said, comparing their images with existing arrays from BP PLC and ConocoPhillips Co. oil fields in the North Sea. The team's findings have been accepted for publication in the journal *Geophysical Research Letters*.

"We knew the ambient seismic energy was there, but we didn't know what we could do with it," Sjoerd de Ridder, a co-author and former Stanford graduate student who is now a postdoctoral scientist at the University of Edinburgh, said in a statement. "That understanding has only been developed in recent years. Our technique provides the first large-scale application to harness it for oil and gas production."

He added, "Our hope is that they can also reveal changes in the rocks that could signal an impending problem."

OFFSHORE WIND:

Companies show limited appetite for Mass. lease sale

Ariel Wittenberg, E&E reporter

Published: Thursday, January 29, 2015

Bidders were interested in only half the offshore wind development leases being auctioned by the Interior Department today.

The Bureau of Ocean Energy Management put up for auction four lease areas near Massachusetts totaling 742,000 acres and with the potential to support 4 gigawatts of commercial wind generation.

But just two companies bid on two of the areas, with RES America Developments Inc. provisionally winning the lease on a 187,523-acre area for $281,285 and OffshoreMW LLC winning the lease on a 166,886-acre area for $166,886.

Speaking on a conference call announcing the auction results, BOEM Director Abby Ross Hopper said the two areas developers bid on were located closer to shore than the other areas up for auction.

Hopper rejected the idea that the low bids in today's auction were in reaction to recent troubles the Nantucket Sound Cape Wind project has had related to its power purchase agreements, instead attributing the auction results to the acreage's depth.

The agency does not yet know what it will do with the lease areas that did not receive bids but will consult with Massachusetts.

"I am very encouraged by the fact that two experienced wind developers decided to bid and won leases," Hopper said.

Twelve companies were eligible to compete in the auction, including Deepwater Wind LLC, which has already leased another area off Massachusetts and Rhode Island, and U.S. Wind Inc., which won the auction of two lease areas near Ocean City, Md., in August 2014 (*E&ENews PM*, Aug. 19, 2014).

Hopper said BOEM set the initial asking price for the Massachusetts area lower than other auctions.

"We know developing an offshore wind facility here would be more expensive," she said.

She also said previous wind development auctions had been held near states that had created power purchase and renewable energy credit programs in advance of the auctions.

"That impacts that value a company places on it," she said.

Indeed, the three previous offshore wind auctions saw winning bids in the millions of dollars. The August auction of two leases near Maryland, which has a renewable energy credit program, raked in $8.7 million.

MARYLAND:

Lawmaker urges governor to find new solution to farm pollution

Published: Thursday, January 29, 2015

One Maryland lawmaker says the state has been put in a regulatory limbo by the new governor's decision to withdraw rules on farm pollution in the Chesapeake Bay.

The state is already under a U.S. EPA mandate to clean up the bay, and Del. Kumar Barve (D), chairman of the House Environment and Transportation Committee, has written to Gov. Larry Hogan (R) telling him he put the state in an "untenable position" by pulling the regulations (*Greenwire*, Jan. 22).

Barve said he wants to know what Hogan has planned for the problem or else he will put together a panel of farmers and environmentalists to find a "legislative solution."

"I'm hoping his objective is to propose something in the alternative," Barve said. "As legislators, we always reserve the right to take action, but we prefer to work with the governor."

The phosphorus rule, proposed by former Gov. Martin O'Malley (D), would have prevented Eastern Shore farmers from spreading poultry manure on fields that are already rich with phosphorous. The move was meant to curb a growing "dead zone" effect in the bay created when phosphorus from runoff feed algae blooms that suffocate fish and shellfish,

In withdrawing the regulation, Hogan said the regulations would put an unnecessary burden on farmers.

A Hogan spokeswoman said, "No one cares more about our environment and our state's most treasured natural resource -- the Chesapeake Bay -- than the governor" (Tim Wheeler, *Baltimore Sun*, Jan. 28). -- **AW**

MEXICO:

Agency halts controversial mall near sensitive Cancun beach

Published: Thursday, January 29, 2015

A massive shopping mall being built just south of the Cancun resort area in Mexico has been canceled after concerns over environmental damage.

Mexico's environmental agency ruled this week that the project had done serious harm to sensitive beaches and protected plants and animals in the area. The agency ordered all work to cease and issued about $1.5 million in fines to the mall's developers.

The Dragon Mart mega-mall would have covered nearly 1,400 acres 2 miles from the Caribbean Sea. The mall, which was to sell Chinese products, would have been the largest venue for selling Chinese goods in the Western Hemisphere, but it faced opposition from Mexican companies concerned about competition from Chinese firms and environmentalists worried about damage to pristine areas.

Guillermo Haro, federal prosecutor for environmental protection, said his office found "the activities the developers were conducting have deteriorated, impacted and damaged conditions of ecological balance, forest ecosystem and biodiversity of the zone," including damaging or razing about 370 acres of mangrove and seascape south of Cancun.

Juan Carlos Lopez, Dragon Mart's executive director, said the company considered the shutdown temporary and planned to challenge the decision in court (Cecilia Sanchez, *Los Angeles Times*, Jan. 28). -- **SP**

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CLIMATEWIRE — Fri., January 30, 2015

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1. GERMANY:

Can a country slash its CO2 emissions and avoid electricity price spikes at the same time?

BERLIN -- The goal is ambitious: Can Germany successfully adapt its electricity market to a future where the predominant power is renewable energy? The country is trying to pull together its current plan to get there at a difficult moment, when all across Europe, countries are suffering from market conditions that favor a fuel switch from natural gas to low-cost coal. This has yielded record export levels and rising emissions that threaten to undo Germany's reputation as a champion of climate change action.

2. ENTERPRISE:

Can companies push the government out of the trash business?

Major American companies in the food, beverage and consumer goods sectors are wasting resources, energy and money with inefficient packaging and recycling practices, missing a secondary market worth an estimated $11.4 billion every year, according to a survey published yesterday.

TODAY'S STORIES

3.EMISSIONS:
WRI report on biofuels rekindles an old firefight
4.FINANCE:
U.S. team at World Bank pushes for Kosovo coal plant
5.COMMUNICATION:
Big gap remains between what scientists say and Americans think about climate change
6.NEGOTIATIONS:
The road to Paris is paved with carbon pricing, economists say
7.POLICY:
Energy storage industry calls for inclusion in Clean Power Plan compliance
8.POLITICS:
Senate easily approves Keystone XL but reveals 'glimmers' of climate hope
9.REGULATION:
State regulators worry about EPA rule's timeline
10.RELIGION:
EPA's McCarthy visits the Vatican today
11.SCIENCE:
Researchers find little evidence for a climate change 'pause'
12.BUSINESS:
To cut emissions, GE and Statoil partner on technology
13.PUBLIC OPINION:
Flooding boosted Britain's belief in climate change
14.FLOODS:
Floods displace 170,000 in Malawi
15.SPECIES:
Climate changes push Australian fish toward colder waters

E&ETV'S THE CUTTING EDGE

16.AIR POLLUTION:
Greenwire's Peterka discusses future of ozone rule after EPA hearings

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ENERGYWIRE — Fri., January 30, 2015

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1.NUCLEAR:

Timeline for U.S.'s newest reactor stretches into 2019

The schedule for Georgia Power's nuclear expansion project has slipped another 18 months and faces escalating costs in the hundreds of millions of dollars, the company said yesterday in a filing with the U.S. Securities and Exchange Commission.

TOP STORIES

2.ARCTIC:

Shell will push ahead with Alaska drilling, if conditions line up

3.OIL AND GAS:

Pa. moratorium on state land leasing doesn't stop enviro litigation

4.UTILITIES:

Xcel CEO touts opportunity for regulatory reform in Minn.

ELECTRICITY

5.CLIMATE:

Sustainability experts are helping guide Ga.'s plan for EPA rule

6.TECHNOLOGY:

New device promises real-time home energy data, from fridge to bulb

7.PEOPLE:

CenterPoint nabs CFO from water utility

8.ELECTRICITY:

Texas power prices plummet in natural gas glut

OIL AND GAS

9.CHINA:

Report sees fresh warning signs on energy demand

10.CALIFORNIA:

Lawsuit filed to block expansion of crude-by-rail terminal

11.HYDRAULIC FRACTURING:

Scotland temporarily blocks fracking

12.OIL:

N.D. regulator defends dual role as oil promoter

E&ETV'S THE CUTTING EDGE

13.AIR POLLUTION:

***Greenwire*'s Peterka discusses future of ozone rule after EPA hearings**

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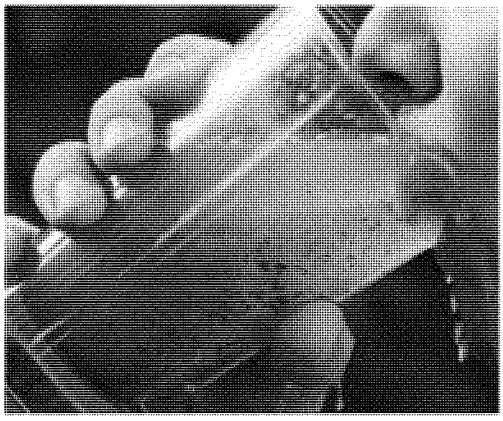

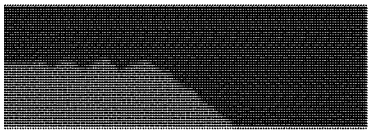

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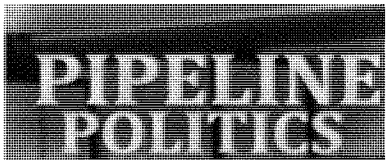
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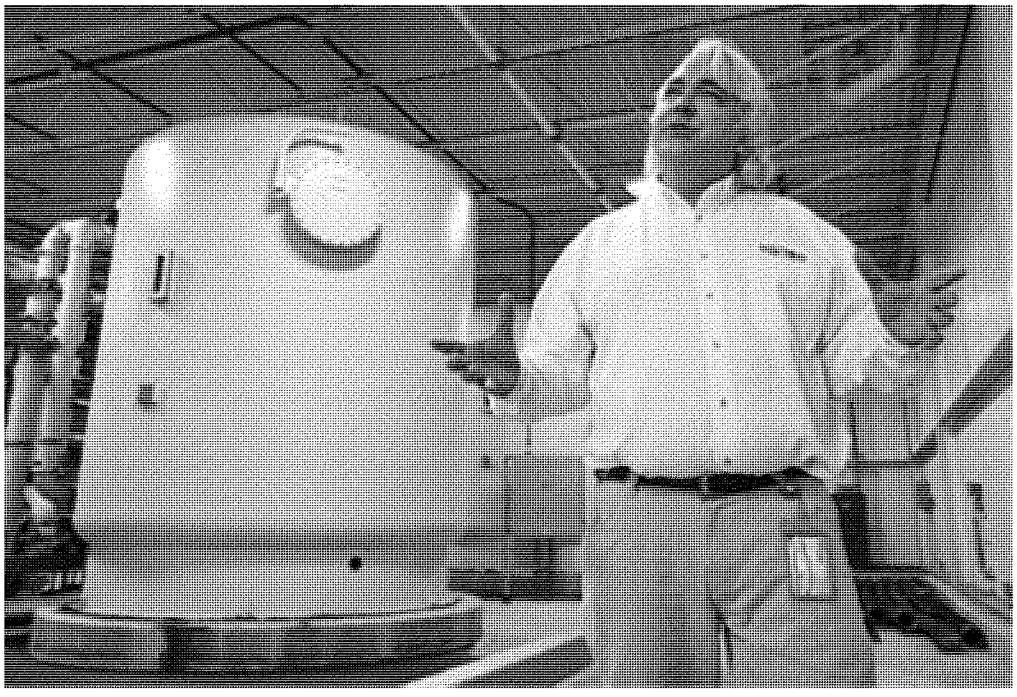
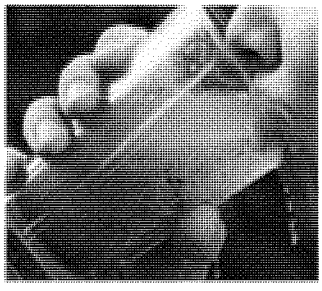


PEOPLE



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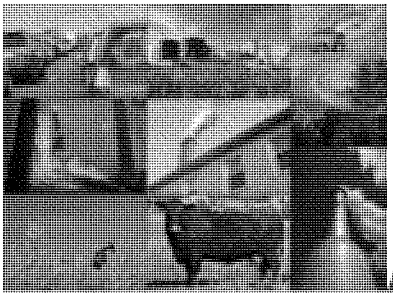

Air & Radiation Law News

for January 29, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

Lawsuits Seek Court Order Requiring EPA Response on Livestock Emissions

Environmental and public health groups have asked a federal district court to require the Environmental Protection Agency to respond to a pair of petitions seeking the regulation of air pollution emitted from industrial farms (Envtl. Integrity...

Climate Change

Oil-Price Drop Threatens to Undercut President Obama's Clean-Energy Legacy

The benefits of cheap oil may come at a steep price for President Barack Obama's climate-change initiatives....

Climate Change

U.S. Supply Chains Among Least Prepared
For Climate-Related Risks, Research Shows

Corporate supply chains located in the U.S. are among the least prepared for climate risks compared with those in other parts of the world, according to new research from CDP (formerly called the Carbon Disclosure Project) and Accenture....

Climate Policy

Climate Change Gets Its Place in Plans
For Work of House Resource Committee

The House Natural Resources Committee will include climate change in its list of subjects meriting oversight activity, the committee decided Jan. 28....

Climate Regulation

Court Schedules Argument in Lawsuits
Challenging EPA's Power Plant Authority

Federal appellate judges will hear oral arguments April 16 in a trio of lawsuits challenging the Environmental Protection Agency's authority to regulate carbon dioxide emissions from power plants (In re Murray Energy Corp., D.C. Cir.,...

Climate Regulation

EPA Seeks Small Business Input
On Methane Rules for Oil, Gas Sector

The Environmental Protection Agency is convening a panel to consider the impact upcoming rules to limit methane and other emissions from oil and natural gas systems will have on small businesses....

Endangered Species

Greater Sage Grouse Decision on Schedule,
Interior Department Tells Western Governors

The Interior Department is on track to make an Endangered Species Act listing determination for the greater sage grouse by September as scheduled, Secretary Sally Jewell assured Western governors. ...

Energy

Backers See House-Passed Natural Gas Export Bill Avoiding Obama Veto

Backers of legislation that would require the Energy Department to expedite consideration of applications to export liquefied natural gas that was passed by the House Jan. 28 are optimistic the president will sign the bill into law after it...

Energy

Coal Production Declines in China for First Time Since 2000 Amid Efforts to Curb Use

China's production of coal dropped for the first time since 2000, with a decline of 2.1 percent in the first 11 months of 2014 compared with the same period a year before, according to initial estimate provided by the China Coal Industry Association....

Hazmat Transport

Crude-by-Rail, Positive Train Control Key Issues in Rail Safety for Senate

Senators are tracking issues related to the safe transport of crude oil by rail and a deadline for positive train control systems implementation, they said at a Senate Commerce, Science and Transportation hearing Jan. 28....

International Climate

EU to Publish 2030 Decarbonization Action Plan Late Next Month, Energy Official Says

The European Commission next month will publish a plan outlining the legislative measures needed to deliver on the European Union's decarbonization program through 2030, according to the bloc's top energy official....

International Climate

France to 'Absolutely Guarantee' Security At End-of-Year Global Climate Talks in Paris

France announced details of its plans to host international talks scheduled for Paris at year-end, saying it would "absolutely guarantee security" when delegates from some 200 countries meet with hopes of finalizing a pact to control...

International Issues

More Air, Water Pollutants to Be Targeted In China's Upcoming 13th Five-Year Plan

China will target several more "key" pollutants that have contributed to the country's widespread air and water pollution beginning in 2016 under its next five-year plan, the country's top planning document, two officials...

Maritime Affairs

Freight Transport Carbon Dioxide Emissions Could Triple by Midcentury, Forum Says

Global carbon dioxide emissions from international freight transport will nearly triple by midcentury unless "radical" policy changes are adopted, as freight volume is set to climb rapidly, the head of the International Transport...

Natural Gas

New York Lifts Moratorium, Will Require Permits to Store Liquefied Natural Gas

New York has adopted regulations to lift a moratorium on the storage of liquefied natural gas (LNG) in the state, the Department of Environmental Conservation (DEC) announced Jan. 28....

Regulatory Policy

Senators Hoping to Get White House Support For Bill to Streamline U.S. Project Permitting

The authors of a Senate bill introduced Jan. 28 to streamline U.S. permitting requirements for energy, transportation and other big capital projects said they are optimistic they can get White House support for the measure given it has supported...

Renewable Energy

NRG Energy to Build Community Solar Panels,
Sell Power Directly to Consumers in Colorado

NRG Energy Inc. will sell solar power directly to consumers in Colorado as part of a push into renewable energy....

Renewable Energy

U.S. Wind Power Capacity Surged
In 2014, With Texas Leading Installations

Installations of wind turbines in the U.S. more than quadrupled in 2014 led by growth in Texas, as developers took advantage of an expiring federal tax credit, according to the American Wind Energy Association....

Vehicle Fuels

Kansas City-Area Utility to Create Network
Of 1,000 Electric Vehicle Charging Stations

Kansas City Power & Light Co. announced plans Jan. 27 to develop a network of more than 1,000 electric vehicle charging stations in the Kansas City, Mo., area....

Vehicle Fuels

Tokyo Continues Push to Become
World's Top Hydrogen Fuel Cell City

Tokyo wants to have as many as 100,000 hydrogen fuel cell vehicles on its roads and 80 hydrogen filling stations in its city by 2025 as it strives to become the world's top hydrogen-powered municipality, Japanese officials told Bloomberg...

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Latest News

EPA Faces Dual Legal Bids Seeking To Force Issuance Of CAFO Air Rules

EPA faces dual legal bids seeking to force it to issue first-time Clean Air Act rules for concentrated animal feeding operations (CAFOs), with one suit claiming the air law includes a duty for the agency to craft the regulations and another trying to force a deadline for EPA to respond to years-old petitions asking it to decide on issuing such rules.

Ahead Of EPA Hearings, Groups Debate Science For Stricter Ozone NAAQS

Ahead of EPA's public hearings on its proposal to tighten its ozone air standard, environmentalists and industry officials are debating the science underpinning the agency's plan, with advocates touting data to bolster EPA's proposal while industry is emphasizing research that it says justifies retaining the existing ozone standard.

News Briefs

Judge Faults EPA In FOIA Suit Over Regulatory Delays

A federal district judge is criticizing EPA for its response to a 2013 Freedom of Information Act (FOIA) request seeking documents that the agency's critics claim might prove that EPA delayed major rules until after the 2012 elections, saying that an agency staffer gave false testimony on a search for the documents.

EPA Seeks Small Businesses' Input On Methane NSPS

EPA is seeking input from small businesses on the potential adverse impacts that its planned methane new source performance standards (NSPS) for the oil and gas sector could have on the companies, with the agency noting that the rule could affect entities in various parts of the industry including energy production and processing.

D.C. Circuit Sets Arguments In Suits Over Climate ESPS

The U.S. Court of Appeals for the District of Columbia Circuit has set arguments for April 16 in two lawsuits challenging EPA's proposed existing source performance standards (ESPS) greenhouse gas rule for power plants, suits that the agency is urging the court to reject because they contest a proposed and not final regulation.

Greenwire

LNG:

House approves bipartisan export bill as eyes turn to Senate

Hannah Northey and Daniel Bush, E&E reporters

Published: Wednesday, January 28, 2015

The House voted 277-133 today to approve bipartisan legislation that would impose a deadline on federal approvals of liquefied natural gas exports, including support from 41 Democrats.

The lower chamber gave its stamp of approval to Rep. Bill Johnson's (R-Ohio) H.R. 351, the "LNG Permitting Certainty and Transparency Act," which would allot the Energy Department up to 60 days to decide the fate of LNG export applications after the Federal Energy Regulatory Commission publishes its environmental review.

Democrats voting for the bill spanned a wide geographic footprint -- from members such as Rep. Gene Green of Texas hailing from fossil fuel-heavy states that could benefit from exports all the way to California Reps. Pete Aguilar, Ami Bera and Jim Costa.

The industry has for months asserted that the federal approval process for LNG exports is riddled with uncertainty despite the Energy Department changing its methodology for making decisions after FERC reviews projects as well as approving a bulk of the projects that would ship gas to countries that don't have free-trade agreement with the United States.

Today's vote drew opposition from some Democrats, including Rep. Bobby Rush of Illinois and environmental groups, but praise from industry and senators pushing their own bills to accelerate DOE approvals. Rush said on the House floor that DOE's permitting process is working and there is no backlog to speak of.

Johnson said after the vote that he had "no idea" where the bill will end up.

Johnson told reporters yesterday that his legislation could be meshed with a bipartisan bill in the upper chamber that Sens. John Barrasso (R-Wyo.) and Martin Heinrich (D-N.M.) introduced earlier this month. That language is the focus of a Senate Energy and Natural Resources Committee hearing tomorrow and would require the secretary of Energy to make a decision on any LNG export application within 45 days of FERC publishing its environmental review.

"I am absolutely open to working with the Senate to make sure we get this done," Johnson said. "We've had broad bipartisan support on this. We've got Democratic co-sponsors on this bill."

Supporters have been quick to point out that neither of their bills has earned a veto threat from the White House.

Barrasso applauded today's vote without mentioning the possibility of combining the legislation.

"The House vote today brings us one step closer to making timely LNG exports a reality," he said in a statement. "Study after study has shown that LNG exports will create good-paying jobs across America, help reduce our nation's trade deficit, and increase the energy security of key U.S. allies and partners."

But Johnson acknowledged opposition exists.

"I'm encouraged, but you're always going to have those that are going to say no just for the sake of saying no," he said. "Who knows what the Senate will do, but I'm very optimistic about what I see happening."

Pushback could be highlighted at tomorrow's Senate hearing, where witnesses will include Chris Smith,

the Energy Department's assistant secretary for fossil energy, and Paul Cicio, president of the Industrial Energy Consumers of America, who in prepared remarks explains that he is not opposed to exports but concerned about the effect on consumers.

"All risks associated with the export of LNG fall on the consumer," Cicio writes. "The larger the LNG export volume, the larger the cumulative risk."

Reporter Nick Juliano contributed.

CAMPAIGN 2016:

GOP pivots on climate, environment ahead of election

Published: Wednesday, January 28, 2015

Although the 2016 elections are months away, Republican lawmakers are shifting their tone on climate change and environmental issues.

Former Texas Gov. Rick Perry (R), who is considering a presidential bid, touted his environmental record in his final speech as governor and said the state reduced carbon emissions and became a global leader in wind energy production during his tenure.

That's in stark contrast to his 2012 presidential campaign, when he declared climate change a "contrived phony mess."

Republican operatives and conservative environmental groups are applauding the pivot on climate change and environmental issues.

"'I'm not a scientist' won't be a winner in the presidential field," said Ford O'Connell, a Republican strategist, of the common line used by congressional Republicans.

A recent poll by Yale University found that 56 percent of Republicans support regulating greenhouse gas emissions.

Some Republican senators from blue-leaning states who are up for re-election in 2016 are taking note. New Hampshire Sen. Kelly Ayotte trumpeted her support for the state's use of technology to reduce coal plant emissions.

Other Republican lawmakers who are actively considering presidential runs, including Sen. Rand Paul of Kentucky and Sen. Lindsey Graham of South Carolina, were among 15 Republicans who acknowledged a human role in climate change in a vote last week (Volcovici/Becker, Reuters, Jan. 27). **-- MH**

KEYSTONE XL:

Personality traits could shape voters' views on pipeline -- study

Published: Wednesday, January 28, 2015

Voters who are interested in solving tough environmental problems like climate change or are very interested in the fate of the Keystone XL oil pipeline may be influenced by certain personality traits, according to a new study.

The research, published in the journal *Environment & Behavior*, could help explain how personality contributes to political decisions, such as whether to support the KXL pipeline or support the Obama administration's Clean Power Plan.

Because personality stays fairly stable over one's lifetime and is thought to be rooted -- at least in part -- by genetic influences, that could mean political choices are, to some extent, outside one's control.

Cameron Brick, the lead author of the study and a Ph.D. student at the University of California, Santa Barbara, said his research found participants with a personality trait known as "Openness to Experience" were more likely to favor environmental action. These people seek out new information but are also willing to change their mind and be intellectually flexible.

Brick said openness may be crucial for adapting to environmental challenges because "flexible abstract thinking is what we need to imagine long-term and long-distance environmental consequences, like those of climate change" (Chris Mooney, *Washington Post*, Jan. 27). **-- SP**

CLIMATE:

Appeals court sets date for arguments on Clean Power Plan

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 28, 2015

A federal appeals court will hear oral arguments in April on lawsuits from several states, utilities and power companies challenging U.S. EPA's proposal to set greenhouse gas standards for power plants.

The U.S. Court of Appeals for the District of Columbia Circuit said yesterday it will convene April 16 to hear the consolidated lawsuits brought by West Virginia, Murray Energy Corp. and others.

Murray and nine states are asking the D.C. Circuit to issue an "extraordinary writ" that would prevent EPA from finalizing the standards for existing power plants.

EPA is set this summer to finalize carbon limits for both new and existing plants, a critical component of President Obama's Clean Power Plan. The early challenges are being closely watched.

The D.C. Circuit has combined the cases -- *West Virginia v. EPA* and *In re: Murray Energy Corp.* -- for oral arguments.

EPA has called the lawsuit "one volley in a barrage of premature litigation" in court documents. It contends that Murray and others may not bring their challenges before the rule has been finalized, largely because it could still be changed (*Greenwire*, Nov. 4, 2014).

COAL:

Court rules Va. storage facility must comply with mining law

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 28, 2015

A federal appeals court ruled yesterday that a Virginia coal blending and storage facility is subject to mining-safety requirements.

The 4th U.S. Circuit Court of Appeals said unanimously that the Power Fuels LLC facility in Wise County falls within the scope of the 1977 Federal Mine Safety and Health Act.

Power Fuels' plant blends and stores coal that is trucked across the street to a Dominion Virginia Power plant that burns coal and biomass.

Citing its jurisdiction under the law, the Mine Safety and Health Administration has issued several citations to Power Fuels for violations.

Power Fuels argued that its activities do not constitute mining and, therefore, should fall under the jurisdiction of the Occupational Safety and Health Administration.

A three-judge panel of the Richmond-based 4th Circuit disagreed, citing the scope of the 1977 law.

"We hold that [the Labor Department} permissibly concluded that a facility that blends coal for a nearby power plant was subject to the Mine Act," wrote Judge J. Harvie Wilkinson III, a Republican appointee.

The law, Wilkinson wrote, covers facilities that engage in the "work of preparing coal."

Power Fuels qualifies, he said, noting that it mixes about 8,000 tons of coal per day at the terminal and supplies approximately 80 percent of the coal burned at the Dominion plant.

The law, the judge wrote, is "comprehensive in its coverage."

"The coverage of the Mine Act is not limited to extractive activities only," he wrote. It, "crucially, extends to a variety of activities involved in preparing coal."

Click here for the opinion.

EPA:

McCarthy to pitch climate cooperation at Vatican

Robin Bravender, E&E reporter

Published: Wednesday, January 28, 2015

U.S. EPA boss Gina McCarthy will meet with Vatican officials this week to push for increased international cooperation on climate change.

McCarthy's Vatican City stop is part of a five-day swing through Europe that kicks off tomorrow in Switzerland and will also take her to the Italian cities Rome and Florence.

The EPA chief, who is Irish Catholic, told the *National Catholic Reporter* that the Vatican visit marks "the most important" stop on the trip. "Clearly, climate change is an issue that is impactful in terms of how we're not just going to protect the most vulnerable but also take responsibility for protecting God's natural resources," she told the newspaper.

She said she'll attempt "to encourage that this dialogue continue" and hopes the talks will "really highlight this issue and begin to turn that into concrete actions that protect those that are most vulnerable and our key natural resources."

McCarthy is scheduled to meet with Vatican officials including Cardinal Peter Turkson, president of the Pontifical Council for Justice and Peace, the newspaper reported.

The meeting comes as Pope Francis has announced plans to make climate change one of his top priorities in 2015 (*ClimateWire*, Jan. 7).

Also on McCarthy's itinerary is a stop tomorrow in Geneva, Switzerland, where she'll speak with the World Health Organization's executive board. She'll then head to the Vatican and Rome, where she'll hold separate roundtables with business leaders and Catholic journalists on climate action, according to EPA. On Monday, McCarthy will deliver the keynote address at the General Electric Oil & Gas Annual Meeting in Florence.

WASHINGTON:

Inslee's carbon price plan draws a divided crowd at hearing

Nathanael Massey, E&E reporter

Published: Wednesday, January 28, 2015

Washington Gov. Jay Inslee's (D) broad climate bill to make polluters pay for carbon emissions sparked heated debate yesterday during state lawmakers' first public hearing on it, which quickly filled the legislative chamber and spilled out into several overflow rooms.

More than three dozen speakers testified before the House Environment Committee, while outside the chamber, groups demonstrated both in support of and opposition to H.B. 1314.

Environmentalists, low-income advocacy groups and a number of unions have banded together behind the bill, which would place a declining cap on emissions and require the state's largest polluters to purchase permits at auction.

Some of the state's most influential business groups remain opposed and are running a countercampaign against the bill through a coalition called the Washington Climate Collaborative.

The divide is partisan, as well, with Democrats accounting for all 37 of the bill's sponsors in the House.

Rep. Joe Fitzgibbon (D), the bill's primary sponsor and chairman of the House Environment Committee, said his state's relatively modest contribution to the U.S. carbon footprint "does not absolve us of the responsibility for our contribution to this problem. We are accountable for our pollution."

The proposal would cover roughly 130 of the state's biggest-emitting facilities, owned by around 70 entities, including fuel distributors, manufacturers and some large institutions, including the University of Washington.

Rep. Liz Pike (R) noted that three of those facilities are top employers in her district, and that they might reconsider their investments if the costs of doing business rise.

"When companies start leaving the state, what is the threshold of jobs lost for this to no longer be a successful program?" she asked.

A steady chorus of business leaders took the podium to echo Pike's concerns, citing competitive pressure from foreign businesses that already enjoy lower operating and labor costs.

"Energy has played a key role in growing our economy and serving our manufacturers across the state," said Kris Johnson, president of the Association of Washington Business. "At the end of the day, this becomes a competitiveness issue."

But so far, at least, Inslee's proposal enjoys majority support in the state and has a sizable coalition of green, labor and social justice groups to back it.

"As the economy comes back to life, it faces two great threats to broadly shared prosperity: extreme inequity and disruptive climate change," testified Jeff Johnson, president of the Washington State Labor Council, which represents more than 400,000 employees. "We can tackle both by tackling them together. The transition to a clean-energy-based economy can create more family-wage union jobs and shared prosperity."

The bill faces a divided Legislature after Republicans retained control of the Senate in the midterm elections. Inslee has said in the past that he believes he can win bipartisan support through the promise of revenue raised by the program. Washington currently faces severe budget shortfalls in education and transportation spending.

BIOFUELS:

New EPA regs seen spurring Argentinean biodiesel imports

Amanda Peterka, E&E reporter

Published: Wednesday, January 28, 2015

U.S. EPA yesterday issued new requirements for Argentinean biodiesel to qualify under the renewable fuel standard program, a move that the U.S. industry estimates will lead to more Argentinean biodiesel entering the United States.

Argentinean producers will be able to use an alternative tracking program for certifying the soybean oil that's used as an input in biodiesel production, EPA said. The alternative program involves annual surveys by third parties rather than tracking individual batches of feedstocks.

"This approved plan enhances existing regulatory oversight requirements currently applied to qualifying renewable fuels being imported from Argentina," EPA said in a notice yesterday.

EPA's renewable fuel standard regulations require foreign producers to certify that biofuels coming into the United States for use in the RFS program are made from only renewable biomass. Argentina is the first country for which EPA has approved a survey approach, according to the U.S. National Biodiesel Board.

Foreign producers are typically required to map and track each batch of feedstock used to produce biodiesel. Under Argentina's new program, an independent surveyor, Peterson Control Group, would certify that feedstock supplies are renewable and do not lead to deforestation.

The Argentine Chamber of Biofuels, or CARBIO, will classify "go areas" in Argentina where land was cleared or cultivated prior to 2007. Biodiesel made from feedstocks in those areas would qualify for use in the renewable fuel standard.

The RFS allows EPA to approve alternative renewable tracking programs for countries that import fuel to the United States. The Argentine Chamber of Biofuels asked EPA to approve the new system in 2012.

"The plan satisfies one aspect of the RFS, which is that importers are required to keep records which demonstrate that the feedstocks used to produce the fuel come from qualified land," EPA said. "CARBIO's plan includes a robust tracking program that requires an independent third party to conduct an annual survey of the entire biofuel supply chain, from soybean production through intermediate processing, to biodiesel production."

But the National Biodiesel Board slammed EPA's decision yesterday, characterizing it as easing the requirements for Argentinean biodiesel to enter the U.S. market and qualify under the renewable fuel standard.

The U.S. industry group argued that the survey system would not be as rigorous as the "map-and-track" system used in other countries and that EPA should have focused on establishing long-delayed annual volume targets under the RFS before dealing with requests by foreign producers to change certification systems.

"The Obama administration has effectively run the U.S. biodiesel industry into a ditch over the past year by failing to establish a functioning renewable fuels policy, and instead of pulling the domestic industry out, it is fast-tracking foreign competition," said Anne Steckel, vice president of federal affairs at the National Biodiesel Board.

The board estimated that the change would lead to exports of up to 600 million gallons of Argentinean biodiesel to the United States.

In 2013, the last full year for which full information is available at the U.S. Energy Information Administration, about 130 million gallons of Argentinean biomass-based diesel entered the United States. Argentina's exports to the United States spiked in late 2013 and early 2014 following the European Union's imposition of an anti-dumping duty on Argentinean biodiesel.

OIL AND GAS:

Regs haven't stemmed pipeline explosions -- NTSB

Published: Wednesday, January 28, 2015

Regulations set in 2003 to help decrease the number of oil and gas pipeline explosions in populated areas have only resulted in a slight leveling off, according to the National Transportation Safety Board.

The Pipeline and Hazardous Materials Safety Administration adopted safety standards for inspecting and maintaining pipelines in 2003 following a decade of pipeline explosions in "high consequence" areas where people were hurt and buildings were destroyed.

Since then, there has been no marked decrease in the number or frequency of explosions, though state pipelines had a 27 percent higher incident rate than federally regulated ones.

In fact, from 2010 to 2013, there were more accidents involving high-consequence-area pipelines than

those in less-developed areas.

On Sept. 9, 2010, for example, a section of pipeline in a San Francisco suburb was blown out of the ground, resulting in a giant fire that killed nine people and destroyed 70 homes.

A pipeline exploded yesterday in West Virginia (*see related story*).

There are nearly 300,000 miles of gas transmission pipelines in the United States, and the NTSB report raises concerns that aging pipelines could explode in heavily populated areas.

The board is now asking that federal regulators help train state inspectors and that a national pipeline mapping system be improved so states can better determine which areas have high consequences (AP/*Wall Street Journal*, Jan. 27). **-- AW**

NATURAL GAS:

Pipeline explodes in W.Va.

Published: Wednesday, January 28, 2015

An explosion Monday at a Brooke County, W.Va., natural gas pipeline sent flames shooting several hundred feet in the air.

The pipeline's operator, Enterprise Products Partners LP, said it's working to determine what caused the explosion. No injuries were reported.

The 20-inch-diameter pipeline transports ethane from four natural gas processing plants in the area, Enterprise spokesman Rick Rainey said.

Rainey said the company is working with the Pipeline and Hazardous Materials Safety Administration to figure out what went wrong.

Damon Hill, a spokesman for the Department of Transportation, said the agency has an inspector at the site of the blast (AP/*Fuel Fix*, Jan. 28). **-- SP**

SOLAR:

While useful, energy-generating carports carry high price tag

Published: Wednesday, January 28, 2015

The innovative idea of installing solar panels to shade a parking lot is also an expensive one.

Solar carports have begun cropping up in large parking lots, including at Rutgers University and the Washington Redskins' FedEx Field.

The solar canopies have multiple benefits. Not only do they allow for energy production in a space already used for something else, but they also help the environment by cooling the vehicles parked under them.

According to U.S. EPA and the Department of Energy, parking in the shade in the summer can increase fuel efficiency by limiting the amount of fuel a car needs to cool off once it is turned back on.

But carports are not very popular among solar developers, making up only 600 megawatts nationwide by the end of 2014, according to an estimate by GTM Research.

Chase Weir, of TruSolar, which rates solar projects based on financial riskiness, said the carports are not popular because they are "the most expensive type of system to build."

"A lot more engineering, a whole lot more steel, more labor, and therefore, it's a relatively small percentage" of solar power, he said (Chris Mooney, *Washington Post*, Jan. 28). **-- AW**

NATURAL GAS:

N.Y. approves LNG rules aimed at long-haul truckers

Colin Sullivan, E&E reporter

Published: Wednesday, January 28, 2015

NEW YORK -- State regulators today adopted what they're billing as the toughest liquefied natural gas storage rules aimed at helping lower fuel costs for long-haul truckers.

The Department of Environmental Conservation approved permit rules for LNG facilities that are meant to help transition long-haul trucks from diesel to natural gas to lower fuel costs for truckers as well as scrub the air of diesel emissions.

The rules, first proposed in September 2013, came about to address air quality and the cheap cost of gas for long-haul tractor-trailers and large-capacity fleet trucks operating in New York.

LNG-supply facilities will still be barred from operation in New York City, but they'll be able to file for permits elsewhere to bring LNG into the mainstream as a transportation fuel choice here.

The decision reverses a ban in place since 1973 following an explosion at a Staten Island LNG facility that killed 40 employees. That accident has been called the worst industrial tragedy in Staten Island history.

A statement on the rules from the DEC said nearly all the expected permit applications in the first five years of the program will be for facilities aimed at long-haul trailers and other big trucks.

Crucially, the rules will require an environmental and safety review for each new facility. The DEC said this means evaluation of each permit application will be taken on "its own merits taking into consideration the proposed location of the facility and tanks and additional siting criteria in the regulation."

Other requirements include compliance with National Fire Protection Association standards, which address setbacks, evacuation issues and tank capacities, and local reviews of fire departments to make sure they're ready to handle an accident should one occur.

As with several ongoing debates over proposed gas pipelines across New York, opposition to the rules focused on whether this would mean an easier path into the Empire State for Pennsylvania gas drilled via high-volume hydraulic fracturing, or fracking.

Some upstate opponents railed against the rules, saying they're a backdoor means to get fracked product into the state. New York currently does not allow fracking for gas despite the presence of large deposits in its sections of the Utica and Marcellus shales.

DEC responded in its rulemaking process that "production of natural gas is outside the scope" of these rules. The DEC says the rules will result in less than a 1 percent increase in gas in the state in any event as most trucks will still be fueled by diesel in the near term.

Others protested the safety implications, questioning whether LNG facilities are more dangerous than other storage infrastructure. DEC replied that gas is the single largest source of energy in New York, "demonstrating that natural gas ... is already managed safely."

The DEC also referenced studies by California and the Argonne National Laboratory that found the life-cycle carbon footprint of producing and using LNG is less than that of petroleum or coal.

Glen Kedzie, vice president and energy and environmental counsel at the American Trucking Associations, said he views the rules as "a positive step" toward attaining uniformity across the country for LNG as an alternative fuel to diesel.

"We don't tell the fleets how to run their businesses, but we do want to make sure that every option is available to them," he said.

Kedzie added that diesel is still used by "99-point-something percent" of long haulers, and ATA does not have solid statistics on how many trucks have transitioned to LNG. The low cost of oil is also a consideration in the short term, but Kedzie said developing alternative fuels is still important because the cost of crude will likely rebound over the next five years.

"We would be very short-sighted to say, 'Don't buy efficient fuel equipment,'" he said, adding that in the current environment "you're looking at replacing a much, much cheaper fuel and a much more expensive truck to put that fuel in."

ELECTRIC VEHICLES:

Airbnb host offers to let patrons sleep in his Tesla

Published: Wednesday, January 28, 2015

A night in the "The World's Fastest Hotel!" will set Airbnb patrons headed to Phoenix back $85 per night.

Host "Steve" is offering up an air bed in the back of his Tesla Model S. Rides in the sedan cost extra.

"How often do you get to sleep in a $118,000 Electric Car?" asks Steve, who also authored an e-book titled "How Anyone Can Afford a Tesla."

Kitchen and restroom accommodations are in the host's condo.

Checkout is at 10 a.m., but Steve uses the car to commute to work, so overnight guests will need to be out of bed by 8 a.m.

No pets, the ad says (David Baker, *San Francisco Chronicle*, Jan. 27). **-- DTB**

AIR POLLUTION:

Industry, enviros gear up for EPA ozone hearings

Amanda Peterka, E&E reporter

Published: Wednesday, January 28, 2015

Both opponents and proponents of U.S. EPA's proposal to tighten the federal ozone today attempted to rally support ahead of public hearings that begin tomorrow.

Oil representatives called on EPA to keep the standard at its current level and questioned EPA's analysis of the health benefits tied to a more stringent standard.

A coalition of public health groups, on the other hand, raised concerns about the negative public health effects tied to ozone pollution and urged EPA to rebuff industry concerns about the potential high costs of a new standard.

EPA is scheduled to hold two hearings tomorrow on the proposal: one at its Washington, D.C., headquarters and the other in Arlington, Texas. The agency will hold a third public hearing Monday in Sacramento, Calif. All hearings will begin at 9 a.m. local time.

"We urge you to listen to the medical experts and not the industry-based PR machine," American Lung Association Senior Vice President of Advocacy and Education Paul Billings said today.

Ground-level ozone is a component of smog that is formed when nitrogen oxides react with volatile organic compounds in sunlight. EPA last November proposed tightening the ozone standard of 75 parts per billion -- set in 2008 during the George W. Bush administration -- to between 65 and 70 ppb based on adverse public health effects linked to smoggy air.

EPA's final new ozone standard -- due in October under a court-ordered deadline -- promises to be one of the agency's most controversial decisions of the year. Along with the public hearings, the agency will accept written feedback on the proposal until March 17.

Tomorrow's hearings are likely to draw a diverse group of stakeholders, with today's jockeying a preview of the arguments to come.

"We will urge the administration to keep the current standards, which are not only the strictest standards ever imposed, they are standards that have to be fully implemented," said Howard Feldman, director of regulatory affairs at the American Petroleum Institute, during a call today with reporters.

API plans to participate in all three public hearings, Feldman said. The group will also argue that EPA is lacking the science needed to show that a tighter standard is necessary to protect public health. At tomorrow's Texas hearing, the Texas Commission on Environmental Quality is expected to make a similar argument.

Today, Energy in Depth, a project of the Independent Petroleum Association of America, also released a report accusing EPA of relying on "suspicious health data" in the rule's regulatory impact analysis.

In November, EPA estimated that a new standard set at 70 ppb would cost the nation $3.9 billion a year by 2025, though that figure excludes California. A 65 ppb standard, on the other hand, would cost $15 billion a year. The agency said that the proposal would have benefits that yield significant savings in

health care costs and outweigh costs by as much as 3-to-1.

In the report, Energy in Depth said that EPA had not adequately explained why the estimates of health benefits released in November are significantly higher than the agency estimated they would be in 2011, when the White House scuttled a review of the ozone standard.

"A review of the data suggests that EPA may have inflated the benefits of its proposed rule and downplayed the costs," Energy in Depth wrote, "which could ultimately translate to less American energy production and increased costs for U.S. manufacturers."

Environmental and public health groups plan to push back against industry arguments that a tighter standard would cripple the economy.

"We know the naysayers -- and their political cronies and their pseudo 'think tank' allies -- will come out in force to proclaim clean air costs too much," Clean Air Watch President Frank O'Donnell will tell EPA representatives at tomorrow's hearing in Texas. "For them, the sky is always falling. History has proven the naysayers wrong time and again. The sky won't fall if you set tougher standards."

Air advocates tomorrow will also call on EPA to set the final standard at 60 ppb, the lower end of the range recommended by EPA's science advisers and technical staff. While not including it in the proposed range, EPA said in November that it would take comments on setting the standard at 60 ppb.

"Why do we care about ozone? It is one of the most dangerous pollutants in the United States," Georges Benjamin, executive director of the American Public Health Association, told reporters today. Asthma, reduced lung function and premature death have all been linked to ozone exposure.

A coalition of public health groups that includes the American Lung Association, Sierra Club's Beyond Coal Campaign and Environmental Defense Fund plans to testify tomorrow in D.C. Public health advocates plan to also showcase families and children that have health problems stemming from air pollution.

An alliance of environmental groups including the Moms Clean Air Force, the Sierra Club, Climate Parents and the Alliance for Climate Education plans to hold a demonstration at noon Monday in Sacramento.

WEST VIRGINIA:

State Senate sends energy law repeal to governor's desk

Published: Wednesday, January 28, 2015

A bill that would repeal West Virginia's renewable portfolio law is now in the hands of Gov. Earl Ray Tomblin (D).

The bill would repeal a 2009 law requiring utilities to use alternative fuels, though it did not restrict greenhouse gas emissions (*Greenwire*, Jan. 22). It passed by a final 33-0 vote in the Senate yesterday.

Tomblin spokesman Chris Stadelman said that the governor would probably sign the bill into law but that his staff had to review it first.

"If the bill continues to include provisions for net metering and extension of tax credits related to alternative energy, it is likely the governor will sign the bill," Stadelman said.

The bill's passage fulfilled a campaign promise of many Republicans, who attacked the 2009 legislation as "West Virginia's cap and trade" during the 2014 elections.

U.S. Sen. Joe Manchin (D), who was governor when the 2009 law was enacted, would not comment on the bill's passage, his spokesman Jonathan Kott said.

Manchin has previously denounced the repeal bill, saying, "I had always hoped and believed that the corrosive political atmosphere that has been so destructive in Washington would not make its way to our great state" (Phil Kabler, *Charleston* [W.Va.] *Gazette*, Jan. 27). **-- AW**

OREGON:

GOP threatens to halt gas-tax hike to block low-carbon standard

Published: Wednesday, January 28, 2015

Republican lawmakers in Oregon are aiming to stop the continuation of a low-carbon fuel standard in Oregon by threatening to derail a bill to increase the state's gas tax.

Oregon's low-carbon fuel standard requires energy providers to reduce their products' carbon contents or buy credits from clean-burning fuel producers. The law is scheduled to expire at the end of the year, before it is fully implemented, and Gov. John Kitzhaber (D) is pushing for its extension.

But state House Republicans say they worry renewing the law will raise gas prices, which they said should not coincide with a hike in the state's gas tax.

The GOP's stance has dismayed state Democrats, who say the greenhouse gas legislation is designed to avoid major price spikes.

"I'm pretty depressed about it right now, to be frank with you," Senate President Peter Courtney (D) said yesterday. "I don't know where we go from here."

Sen. Ted Ferrioli (R) said Oregon's greenhouse gas emissions are so minimal that the law would force Oregonians "to pay real money on what is essentially a symbolic contribution on the issue of global warming."

Democrats have the majority in both the House and Senate, but increasing taxes requires a three-fifths majority. That means every Democrat in the Senate would have to report the measure, as would one Republican in the House (Jonathan Cooper, AP/WRAL, Jan. 27). **-- AW**

NATURAL GAS:

Ex-FERC Commissioner Spitzer discusses impact of White House NEPA guidance on pipeline, export facility approvals

Published: Wednesday, January 28, 2015

How could the Obama administration's recent proposed guidance for considering climate change as part of the government's environmental reviews affect the Federal Energy Regulatory Commission's process

for reviewing natural gas pipelines and LNG export terminals? During today's OnPoint, Marc Spitzer, a partner at Steptoe & Johnson and a former commissioner at FERC, discusses how a change to FERC's process could affect natural gas infrastructure investments.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

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READ FULL EDITION

1.TRANSPORTATION:

3-D printing poised to advance cleaner cars

It's rare that a gleaming, azure legend on wheels fails to turn heads, but at the Detroit auto show earlier this month, Oak Ridge National Laboratory's Shelby Cobra faced stiff competition for attention as manufacturers showed off their new concepts. But in this showcase all about the future of the auto industry, the Oak Ridge Cobra, a throwback to 1967, was a harbinger of things to come. The polished paint and chrome belied bodywork that came out of a 3-D printer, making the roadster a victim of its own success.

2.ADAPTATION:

Tale of 2 penguins: Warming climate won't help picky eaters

Two penguin species are responding differently to rising temperatures in the Antarctic, according to a new study. Gentoo penguin populations have almost tripled in recent years while their habitat partners, chinstrap penguins, struggle to keep up. Adaptive feeding strategies that in the past decreased competition for food between gentoo and chinstrap penguins are now proving problematic for the chinstraps.

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Wind power industry escaped doldrums of 2013, growing 7.4% last year

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Affluent investors betting on natural gas, solar

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Analysts say EPA power plant rule will give big boost to natural gas

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Lawmaker introduces bill to raise state's renewable energy use to 50%

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Brazilian bank raises $400M for renewable energy

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Climate change drives poor in Kashmir to join militants, experts say

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Former EPA policy counsel Sussman says agency 'back to the drawing board' on power plan targets, building blocks

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., January 29, 2015

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Senate votes to keep 'Halliburton loophole'; regulation stays with states

The Senate sided with the oil and gas industry yesterday and flatly rejected an effort to repeal a provision environmentalists call the "Halliburton loophole."

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Exports are poised to move on the Hill -- but does it matter?

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Investors gear up for fire sale in the shale patch

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Lobbyist-turned-CEO says government policy 'irrelevant,' millennials key

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Lawmaker laments federal 'bull's-eye' as panel mulls energy policies

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Prices should start to recover by this summer, Hamm tells peers

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First route or no route, say Sandpiper's backers

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17.CLIMATE:

Former EPA policy counsel Sussman says agency 'back to the drawing board' on power plan targets, building blocks

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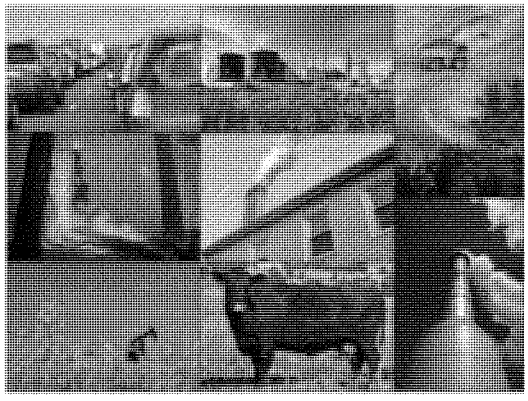

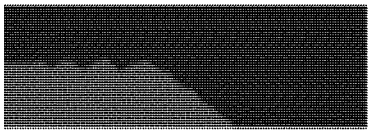

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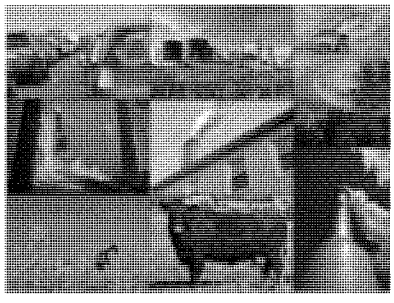

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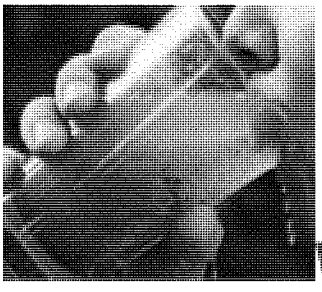
From: Turley, Jennifer
Sent: Thur 1/29/2015 3:27:47 PM
Subject: Water Law News for January 29, 2015



Water Law News

for January 29, 2015

Bloomberg BNA Daily Environment Report™

Drinking Water

City Council in Minnesota Endorses $60 Million Settlement for Water Cleanup

The New Brighton (Minn.) City Council has approved a settlement that will require the U.S. Army to pay for the treatment of the city's drinking water for the next 30 years (New Brighton v. U.S., D. Minn., No. 84-CV-1110, 10/31/14)....

International Issues

More Air, Water Pollutants to Be Targeted In China's Upcoming 13th Five-Year Plan

China will target several more "key" pollutants that have contributed to the country's widespread air and water pollution beginning in 2016 under its next five-year plan, the country's top planning document, two officials...

Mining

EPA to Halt Work on Pebble Mine Determination

The Environmental Protection Agency is halting work to determine whether to impose restrictions on dredge-and-fill activities at the potential Pebble Mine, the agency said in a notice scheduled for publication Jan. 29. The EPA is considering...

Oil & Gas

Colorado Town Backs Away From Drilling Ban, Will Revise Agreements With Two Operators

The Erie, Colo., board of trustees defeated a temporary moratorium on drilling for oil and gas within town limits, opting instead to continue negotiating new operating agreements with two energy companies. ...

Oil & Gas

Failed Amendment Indicates Republicans Still Lack Support for ANWR Exploration

The Senate voted Jan. 28 to block an amendment that would have limited an Obama administration plan to place more than 12 million acres of land in the Arctic National Wildlife Refuge off-limits to oil and gas development—the first significant...

Water Pollution

District Court Dismisses Lawsuit Over Release of Farmers' Identifying Information

A lawsuit aimed at preventing the Environmental Protection Agency from releasing personal identifying information of animal feedlot operators in response to Freedom of Information Act requests by environmental groups was dismissed by...

Water Pollution

EPA Says It Exercised Discretionary Authority In Not Requiring Permits for Water Transfers

The Environmental Protection Agency maintains that it exercised discretionary authority to interpret the Clean Water Act to exempt water transfers from discharge permit requirements because the language in the statute is ambiguous (Catskill...

Water Pollution

Judge Finds Coal Mine Discharges Harmed W.Va. Waters as Measured by Conductivity

A West Virginia coal mining operation has violated the Clean Water Act by damaging adjacent waterways with pollution as measured by electric conductivity, according to a federal judge (Ohio Valley Envtl. Coal. v. Fola Coal Co. LLC, S.D. W.Va.,...

Water Pollution

Kentucky General Permit Shields Mine From Selenium Charges, Sixth Circuit Finds

Kentucky's decision not to restrict, through a general permit, a surface mine's selenium runoff has been upheld by the U.S. Court of Appeals for the Sixth Circuit (Sierra Club v. ICG Hazard LLC, 6th Cir., No. 13-05086, 1/27/15)....

Water Pollution

Senate Agriculture Chairman Plans Hearing On EPA's Proposed Waters of U.S. Rule

Senate Agriculture Committee Chairman Pat Roberts (R-Kan.) is planning a hearing on the Environmental Protection Agency's proposed rule on waters of the U.S....

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http://insideepa.com/newsletters/inside-epa

Latest News

6th Circuit's Split Ruling Sets Test For Scope Of CWA General Permit 'Shield'

The U.S. Court of Appeals for the 6th Circuit has issued a precedent-setting split ruling that sets a test for when a Clean Water Act (CWA) general permit can shield companies from citizen suit enforcement, expanding the scope of a 4th Circuit test on using the shield for individual CWA permits to broader general permits.

Iowa Utility Eyes Suit Challenging Efficacy Of Voluntary Nutrient Reductions

An Iowa drinking water utility is seeking to subject several agricultural drainage districts to Clean Water Act (CWA) permitting requirements, challenging the efficacy of farms' voluntary nutrient reduction efforts and raising novel arguments that, if successful, could narrow the CWA's agricultural stormwater exemption.

Greenwire

WATER POLLUTION:

Court backs EPA, greens in CAFO privacy lawsuit

Tiffany Stecker, E&E reporter

Published: Wednesday, January 28, 2015

Updated at 1:55 p.m. EST.

A federal judge ruled for U.S. EPA yesterday in a lawsuit filed by agribusinesses angry about the agency providing information on large livestock farms to environmentalists.

U.S. District Judge Ann Montgomery for the District of Minnesota denied the American Farm Bureau Federation and the National Pork Producers Council's motion for summary judgment, saying they lacked standing because the information's release didn't cause "actual or imminent injury" to the livestock farm operators who had provided data to EPA under Clean Water Act permitting.

"It's not only a win for environmental groups and EPA, but for open government," said Scott Edwards, co-director of the nonprofit Food and Water Justice.

At issue was EPA's release in early 2013 of hundreds of pages of documents on concentrated animal feeding operations (CAFOs) to Earthjustice, the Natural Resources Defense Council and Pew Charitable Trusts, which had requested the data under the Freedom of Information Act. These documents disclosed farmers' names, addresses and geographical coordinates, as well as information on pollution discharges (*Greenwire*, Feb. 21, 2013).

After the farm groups complained, EPA asked the environmental nonprofits to return the materials so the agency could resend versions that had personal data redacted. Then EPA accidentally provided too much information a second time in May 2013 (*Greenwire*, May 3, 2013).

FOIA safeguards personal or medical information that would "constitute a clearly unwarranted invasion of personal privacy."

Environmental groups filed the request to know more about nutrient runoff from the farms. Manure from CAFOs can release excessive nitrogen and phosphorus, which feed algae blooms in waterways that smother aquatic life and contaminate municipal water supplies.

"The real importance [of this case] is that the states and the federal government have not done a good job of regulating agriculture and CAFOs," Edwards said. Edwards' group, a part of Food and Water Watch, had intervened in the case on EPA's side with the Environmental Integrity Project and Iowa Citizens for Community Improvement.

In her opinion, Montgomery added that the agriculture groups' argument failed to prove farmers were likely to be further victimized as a result of the information's release. Swine producer Rick Grommersch told the court that activists with the group Compassionate Action for Animals entered his property to take photographs of his farm, in a declaration submitted by the trade associations.

But the incident on Grommersch's farm took place in 2006 -- years before EPA received the FOIA requests, Montgomery said. This underscores "the ease with which activist groups can identify the location of large farms," she wrote.

The Farm Bureau and Pork Producers Council also presented an affidavit to the judge from Minnesota dairy farmer Patrick Lunemann, who alleged that his privacy had been violated. Environmental groups soundly disputed this claim when they discovered that Lunemann's name, his wife's name and their farm's address were available on his dairy's website and Facebook page.

The agriculture and livestock groups submitted five other declarations in which CAFO operators claimed the information would make them "more likely to receive disturbing threats and potentially targeted criminal activity," as well as acts of terrorism like the introduction of diseases in the food supply.

The CAFO document release sparked bipartisan outcry from Capitol Hill in 2013 as lawmakers called for investigations into the incident and introduced bills to block the agency from releasing such data (*E&ENews PM*, June 6, 2013).

The story drove an even deeper wedge between EPA and the agriculture community, which has traditionally distrusted the agency.

Michael Formica, chief environmental counsel for the National Pork Producers Council, said he is almost certain his group will appeal the "ludicrous" decision.

Montgomery is "arguing that if someone's name appears in the phone book, it means you can get all sorts of other information on them and release it," Formica said.

Furthermore, he said, the judge didn't mention whether EPA was required to protect the farmers from threats by handing the data to groups that could use it to invade private property. The fact that addresses were publicly available online does not nullify the responsibility to protect parties, he added.

As far as the groups' standing to look out for their members, Formica points to the Supreme Court case *Friends of the Earth Inc. v. Laidlaw Environmental Services Inc.*, in which a complaint from a single member of the environmental group was enough to justify Friends of the Earth's representation.

"We're disappointed. It's very disappointing," Formica said.

If an appeal is granted, the case will be considered in the 8th U.S. Circuit Court of Appeals.

Bob Stallman, president of the American Farm Bureau Federation, released a statement saying the decision should be concerning to farmers, ranchers and citizens in general.

"This court seems to believe that the Internet age has eliminated the individual's interest in controlling the distribution of his or her personal information. We strongly disagree," Stallman said.

The plaintiffs have 60 days to appeal the decision.

COAL:

Groups draw battle lines after court allows selenium discharges

Manuel Quiñones, E&E reporter

Published: Wednesday, January 28, 2015

Environmental advocates are blasting an appeals court ruling yesterday, which upheld a coal company's right to dump the chemical element selenium from a strip mine in Kentucky.

The 6th U.S. Circuit Court of Appeals yesterday said the Clean Water Act's permit shield protected ICG Hazard LLC's Thunder Ridge strip mine in Leslie County, Ky., from liability, even though the releases exceeded state water quality standards.

"The sad part about all of this is the [Kentucky Department of Water] knew all along that ICG Thunder Ridge was allowing toxic levels of selenium to flow into Lower Bad Creek that feeds directly into the Middle Fork of the Kentucky River," Sierra Club volunteer Teri Blanton said in a statement.

The permit shield generally protects companies from liability for dumping certain pollutants not expressly prohibited in their permits. Regulators must have reasonably contemplated the possibility of such releases but decided to leave them out.

In this case, the Sierra Club argued the permit shield shouldn't apply to the broader and streamlined general permit. Thunder Ridge had a general dumping permit rather than an individual permit.

But a divided appeals court said general permits should be treated like individual permits in terms of liability protections under the permit shield.

"There, absent the permit shield, the permitting authority would not only need to identify the many pollutants that a single polluter could discharge," said the opinion, "but all of the pollutants and combinations of pollutants that could be discharged by all polluters that may later fall under the general permit."

Judges also disagreed with environmentalists in saying state regulators did contemplate the prospect of selenium releases before issuing the general permit without limits.

"ICG's discharge of selenium was within [Kentucky Division of Water's] reasonable contemplation because KDOW knew at the time it issued the general permit that the mines in the area could produce selenium," said the opinion.

Environmental advocates have been suing companies for years to force them to reduce their releases of selenium, which can harm aquatic life. They say the ruling could make it harder to enforce standards.

"In practice," Blanton said, "coal companies are poisoning Kentucky's waterways with toxic selenium while the state's elected officials look the other way."

"There is something seriously wrong with a permit scheme that authorizes, by default, discharges of toxic chemicals like selenium that are dangerous to aquatic life and humans, as well," said Vermont Law School professor Pat Parenteau. "That can't be what Congress had in mind when it tightened the limits on toxic discharges in 1987."

Industry groups have also been following this case closely. Several of them -- led by the National Mining Association, American Petroleum Institute and U.S. Chamber of Commerce -- filed a brief with the appeals court warning legal and permit burdens if they overturned a lower court ruling.

"We're very pleased with this decision," said NMA spokesman Luke Popovich. "It provides the proper scope of protection for selenium and restores common sense to the discussion."

The mining industry is also pleased by another section of the ruling, dealing with the Surface Mining Control and Reclamation Act. Judges essentially said that the permit shield also precluded liability under SMCRA.

Popovich said the decision "properly applies the Clean Water Act's permit shield protections to permittees operating under both individual and general [National Pollution Discharge Elimination System] permits and does not allow SMCRA to be used to inappropriately bypass the Clean Water Act."

Judges Julia Gibbons and David McKeague, both appointed by Republican President George W. Bush, voted in favor of the ruling. Judge Gilbert Merritt, appointed by Democratic President Jimmy Carter, dissented.

The Sierra Club, represented by attorneys from the Appalachian Citizen's Law Center and Appalachian Mountain Advocates, has yet to decide whether to ask for a full court rehearing, but the dissent may help convince other judges to revisit the case.

"But maybe the best solution would be for [U.S.] EPA to address this in the next round of general permits and clarify how the permit shield works in cases like this," Parenteau said. "It could do this by requiring disclosure of more information by those seeking coverage under a general permit."

Parenteau said EPA could work with Kentucky to design a general permit to deal with selenium discharges or scrap general permits of companies that discharge selenium.

Environmental advocates are currently in litigation against the federal agency for approving Kentucky's new selenium standards, which focus on fish tissue samples.

Last year, the 4th U.S. Circuit Court of Appeals upheld Virginia ruling against A&G Coal Corp.'s discharges of selenium, saying the permit shield did not protect the company (*E&ENews PM*, July 11, 2014).

However, attorneys say the 6th and 4th circuit decisions, while having different outcomes, don't necessarily conflict because of distinct case facts. The Virginia case involved an individual permit.

LNG:

House approves bipartisan export bill as eyes turn to Senate

Hannah Northey and Daniel Bush, E&E reporters

Published: Wednesday, January 28, 2015

The House voted 277-133 today to approve bipartisan legislation that would impose a deadline on federal approvals of liquefied natural gas exports, including support from 41 Democrats.

The lower chamber gave its stamp of approval to Rep. Bill Johnson's (R-Ohio) H.R. 351, the "LNG Permitting Certainty and Transparency Act," which would allot the Energy Department up to 60 days to decide the fate of LNG export applications after the Federal Energy Regulatory Commission publishes its environmental review.

Democrats voting for the bill spanned a wide geographic footprint -- from members such as Rep. Gene Green of Texas hailing from fossil fuel-heavy states that could benefit from exports all the way to California Reps. Pete Aguilar, Ami Bera and Jim Costa.

The industry has for months asserted that the federal approval process for LNG exports is riddled with uncertainty despite the Energy Department changing its methodology for making decisions after FERC reviews projects as well as approving a bulk of the projects that would ship gas to countries that don't have free-trade agreement with the United States.

Today's vote drew opposition from some Democrats, including Rep. Bobby Rush of Illinois and environmental groups, but praise from industry and senators pushing their own bills to accelerate DOE approvals. Rush said on the House floor that DOE's permitting process is working and there is no backlog to speak of.

Johnson said after the vote that he had "no idea" where the bill will end up.

Johnson told reporters yesterday that his legislation could be meshed with a bipartisan bill in the upper chamber that Sens. John Barrasso (R-Wyo.) and Martin Heinrich (D-N.M.) introduced earlier this month. That language is the focus of a Senate Energy and Natural Resources Committee hearing tomorrow and would require the secretary of Energy to make a decision on any LNG export application within 45 days of FERC publishing its environmental review.

"I am absolutely open to working with the Senate to make sure we get this done," Johnson said. "We've had broad bipartisan support on this. We've got Democratic co-sponsors on this bill."

Supporters have been quick to point out that neither of their bills has earned a veto threat from the White House.

Barrasso applauded today's vote without mentioning the possibility of combining the legislation.

"The House vote today brings us one step closer to making timely LNG exports a reality," he said in a statement. "Study after study has shown that LNG exports will create good-paying jobs across America, help reduce our nation's trade deficit, and increase the energy security of key U.S. allies and partners."

But Johnson acknowledged opposition exists.

"I'm encouraged, but you're always going to have those that are going to say no just for the sake of saying no," he said. "Who knows what the Senate will do, but I'm very optimistic about what I see happening."

Pushback could be highlighted at tomorrow's Senate hearing, where witnesses will include Chris Smith, the Energy Department's assistant secretary for fossil energy, and Paul Cicio, president of the Industrial Energy Consumers of America, who in prepared remarks explains that he is not opposed to exports but concerned about the effect on consumers.

"All risks associated with the export of LNG fall on the consumer," Cicio writes. "The larger the LNG export volume, the larger the cumulative risk."

Reporter Nick Juliano contributed.

DROUGHT:

Los Angeles tries to kick its addiction to imported water

Anne C. Mulkern, E&E reporter

Published: Wednesday, January 28, 2015

LOS ANGELES -- This city of nearly 4 million people imports most of its water, bringing in 80 percent of what it consumed last year.

Mayor Eric Garcetti has said that must change.

The Democrat has directed Los Angeles to shrink its water use 20 percent in two years and cut imports in half within a decade. Water leaders now are looking at a range of options to meet those mandates, including enhanced ways to capture stormwater, repairing a contaminated reservoir and even turning wastewater into drinkable water.

"Water provides economic growth, quality of life, sustainability," Adel Hagekhalil, assistant director of the Los Angeles Bureau of Sanitation, said this week at the VerdeXchange conference here. "We don't have an infinite amount of water, so we have to find ways to capture and reuse water.

"We have to start thinking about it," he added. "It's not something that's going to be there forever."

Los Angles boomed in the early 20th century in large part after early water leaders used money and some subterfuge to gain the city the right to water from the Owens Valley, east of the Sierra Nevada. An aqueduct was built to funnel those supplies. The city's goal a century later is to become more water independent. The Bureau of Sanitation is crafting a "One Water Los Angeles 2040 Plan."

Los Angeles' commitment to develop more local water is important as the state enters its fourth year of drought, said Felicia Marcus, chairwoman of the state Water Resources Control Board.

"We're spending time delivering water to small communities who are running out of water," Marcus said. "If we had a large community running out of water, there's just no way."

Los Angeles, she added, "can be a model for the nation. It's the second largest city in the country, so it's undeniably important."

The Los Angeles Department of Water and Power (LADWP) is finishing a stormwater master plan that will guide how it handles rain going forward. The blueprint is aimed at evaluating existing stormwater capture facilities and projects and developing alternatives, the agency said. It's expected to be finished in mid-2015. A future goal is to capture 85 percent of the rain that falls, Hagekhalil said.

LADWP, along with the city's Department of Public Works, Bureau of Sanitation and Bureau of Engineering in 2012, published a recycled water plan. It urged a focus on local sources.

Los Angeles gets much of its imported water from Northern California and the Colorado River, as well as the city-owned aqueduct. But there are battles over those supplies. In Northern California, local fisheries and some residents are competing with farmers who need more water for thirsty crops. And California is one of seven states relying on the Colorado River, where demand outpaces supplies. Depending on water from those places is a risk, the recycled-water plan says.

"Future water supplies from distant sources are becoming more restricted and less reliable," it says. "Environmental commitments, periods of dry years, low snowpack, and judicial decisions have all contributed towards significant cuts in imported supplies."

While some long-term planning was already underway, Garcetti's directive in October gave a new impetus, said Nancy Sutley, LADWP's chief sustainability and economic development officer and the former director of the White House Council on Environmental Quality.

"He's accelerated the time frame of the existing plans," Sutley said. "He's also put a premium on city agencies working together. It's very helpful to have the mayor pushing."

Climate change

LADWP has made conservation a priority. Through outreach to residents, the agency said, it's been able to keep demand relatively flat from the 1970s, even as the city's population has grown.

The agency offers incentives to cut water use, including a program that pays residents $3.50 per square foot to rip out their water-dependent lawns and put in sustainable replacements. It's a program popular in many cities, but Los Angeles' payment is among the highest (*Greenwire*, July 2, 2014).

With the drought, however, and the need to secure more local supplies, water planning has become more urgent.

"Believe me, you're not going to get there one lawn at a time," said Mark Gold, acting director of the UCLA Institute for the Environment and Sustainability. "It's going to have to be much bolder."

Climate change also presents challenges, said Marty Adams, LADWP's water systems manager. It's expected that precipitation in the future will fall more as water than snow. The snowpack in the state's northern Sierra Nevada typically has provided water in the spring and summer as it melted, but that snowpack over the last three years of drought has been well below average levels.

"Things will not be as they have been historically," Adams said. When it rains, he said, "we're going to have to do a much better job of capturing water right away and putting it somewhere we can use it in the future."

At the same time, he said, there are questions about how much to invest in the Sacramento-San Joaquin River Delta. That's one source of water that's sent south to places like Los Angeles.

"The one thing that is known is we cannot build solutions overnight," Adams said. "We are needing those things now. One of the challenges is how to invest in things we already have in place" and also in future projects.

Protection from earthquakes also is an issue, he said. LADWP's aqueduct crosses the San Andreas Fault, known for triggering massive quakes.

"This is one of the critical resources for the future," Adams said of the aqueduct. "We cannot stop using it now as we plan for the future."

Recycled water's PR problem

Some of the local water plans are immediately on the horizon, including stormwater capture projects, Sutley said. Others are longer-term efforts like treating a contaminated groundwater basin in the San Fernando Valley, which currently is a Superfund site. The goal is to get it online so it can store recycled water by 2021.

"We have groundwater pumping rights. We can store stormwater that we capture," Sutley said. "We can store highly treated recycled water."

The city already has a series of "purple pipes" that deliver recycled water for irrigation purposes. There's talk of expanding the Bureau of Sanitation site in El Segundo -- near Los Angeles International Airport -- so that it can handle more volume.

Still under consideration is turning wastewater into drinking water.

"I think that everybody believes that the real opportunity lies in being able to really reuse that water as part of the potable water system," Sutley said.

There are two options for treating wastewater: indirect potable use and direct potable use. With indirect, wastewater goes through a treatment plant for purification. After that, it's pumped into the ground as an "environmental buffer," before it's pulled out again, sent back to a treatment plant, and then can be used as drinking water, said Guillaume Clairet, executive vice president at H20 Innovations, which sells wastewater treatment systems.

But Clairet said Los Angeles could save money by choosing direct potable use. In that process, the "return to nature" step is skipped and the wastewater is purified and made available for consumption.

Regulatory approval typically is needed, he said, and there's the obstacle of public acceptance. But the

water in the direct potable process is consistently monitored to make sure it meets water quality standards, he said.

"So why do we have to spend the money to pump it down into the ground, pump it back up, go to an expensive water treatment facility" because society is not yet ready to drink it, he said.

CONSERVATION:

Senators to take sides on future of LWCF

Phil Taylor, E&E reporter

Published: Wednesday, January 28, 2015

Conservation lobbyists are making a furious pitch this morning to build support for an amendment to permanently reauthorize the Land and Water Conservation Fund, a 50-year-old program seen as one of the nation's premier conservation laws.

The Senate this afternoon is scheduled to vote on an amendment by Sen. Richard Burr (R-N.C.) to permanently reauthorize LWCF, which expires in September, and also dedicate a small percentage of LWCF money to enhancing recreational access to public lands.

But just prior to that, senators will vote on an amendment by Sen. Steve Daines (R-Mont.) that would express the Senate's support for LWCF, while also calling for "improvements to the structure of the program to more effectively manage existing federal land."

Both measures will seek to amend a bill to approve the Keystone XL pipeline, a bill that the president is expected to veto.

But the votes will be a major referendum on LWCF, which is used to acquire new federal lands, secure private conservation easements and help local communities build parks. It is authorized at up to $900 million -- paid for by offshore oil and gas royalties -- but appropriators have rarely funded it at even half that level.

While it is backed strongly by conservationists, sportsmen, Democrats and many Republicans, fiscal hawks have opposed the acquisition of new federal lands at a time when the Interior Department faces a huge maintenance backlog. Critics are calling for LWCF to be overhauled so some funds can be used to address other land management needs -- a proposal conservationists have so far rejected.

Backers of the Burr amendment say the measure has at least seven or eight Republican supporters, including Sens. Kelly Ayotte of New Hampshire, Susan Collins of Maine, Lindsey Graham of South Carolina, Thom Tillis of North Carolina and Lamar Alexander of Tennessee.

They'll need to court at least a handful more to reach the required 60 votes for passage. They may be eyeing moderate Republicans, including Sens. Mark Kirk of Illinois or Mike Crapo of Idaho, among others.

Burr supporters say they're fearful that the Daines amendment was added to pull Republicans away from the Burr proposal, while allowing them to still claim support for LWCF.

While the Daines amendment is merely a "sense of Congress," LWCF backers see it as a camel's nose under the tent to reform LWCF and siphon money away from land protections. Conservationists see this afternoon's action as a loyalty vote on LWCF.

Burr took to the Senate floor this week to urge support for his measure.

"I don't think we should wait to reauthorize what I believe is, dollar for dollar, the most effective government program we have," he said. "This is not about a land grab. ... This is not about initiatives to create new national parks. It is to protect the infrastructure that is out there in their control, and we have battled for years."

Daines also defended his amendment on the floor, saying that while LWCF has greatly benefited Montanans, there is "great potential for the program to be used to improve the management of our existing federal lands."

"We must work to improve programs such as the Land and Water Conservation Fund so it will work better for Montanans and all Americans," he said. "Supporting and improving the Land and Water Conservation Fund will help us ensure this legacy is continued for future generations."

WATER POLICY:

Northern Calif. Dems huddle with Feinstein on drought relief

Annie Snider, E&E reporter

Published: Wednesday, January 28, 2015

Efforts to pass a drought relief measure for water-starved California farms and cities took a step forward yesterday, with Northern California House Democrats sitting down with their party's lead negotiator.

It was their first meeting with Sen. Dianne Feinstein (D-Calif.) this session, and comes after Northern California members complained of being shut out of the closed-door negotiations held last year between Feinstein and House Republicans.

Measures pushed in the House and the Senate last session centered on increasing water deliveries to farms and cities in the southern half of the state. To do that, lawmakers have targeted Endangered Species Act protections for fish species that inhabit the Sacramento-San Joaquin River Delta, the state's main water hub -- inflaming long-standing geographic tensions in the state over how much water is reserved for farms versus endangered fish and other species.

After a last-ditch effort to pass a controversial measure at the tail end of last session, Feinstein committed to a more open process this time around, and participants in yesterday's meeting say it appears she is following through.

"I joined a number of other Northern California members in meeting with the senator yesterday and was encouraged by the constructive tone of that," said Rep. Jared Huffman, a Democrat representing a swath of Northern California coast.

How constructive the meeting may have been is unclear, though, as participants have taken an oath of silence.

"We're not elaborating on what's happening in the meeting or what the senator's working on because we want to build trust and we want to make progress in those meetings and not talk to each other through the media," Huffman said.

Negotiations between Feinstein and House Republicans swiftly restarted at the beginning of the 114th Congress, although Feinstein said recently that new legislation was not "imminent" (*E&E Daily*, Jan. 8).

BRISTOL BAY:

EPA officially puts mine curbs on hold

Manuel Quiñones, E&E reporter

Published: Wednesday, January 28, 2015

U.S. EPA is formally putting on hold a decision on whether to move forward with proposed Clean Water Act permit limits on the Pebble LP gold and copper project in the Bristol Bay area of southwestern Alaska.

An Alaska federal court judge last year issued an injunction against all of EPA's ongoing work amid litigation from the mining company (*Greenwire*, Jan. 16).

"EPA is complying with the court's order and as such is not taking any steps to withdraw the Proposed Determination or to prepare a Recommended Determination while the preliminary injunction is in place," said Region 10 Administrator Dennis McLerran in a notice to appear in tomorrow's *Federal Register*.

EPA had originally promised to announce whether it was moving forward or scrapping limits on Pebble by early February.

FLORIDA:

Scott unveils $150M Everglades conservation plan

Published: Wednesday, January 28, 2015

In his latest budget proposal for Florida, Gov. Rick Scott (R) has proposed spending $150 million on restoration work in the Everglades.

During an announcement on the edge of Everglades National Park yesterday, Scott said he also will ask the Legislature to use a quarter of the funds raised by Amendment 1 for Everglades restoration and preservation.

Amendment 1 is a ballot measure for land and water conservation passed by voters in November. If the Legislature follows Scott's plan, it could raise $5 billion for the Everglades over the span of the 20-year amendment.

Scott has often raised the ire of Florida environmentalists, who have said his pro-growth policies have diverted money from the state's environmental protection agency to other projects. Conservationists have criticized Scott for what they said was a 95 percent decrease in environmental spending during his first term.

But yesterday, Scott's new plan earned high praise for both his emphasis on environmental projects and his strategy for securing a long-term funding source.

"Future governors and future legislators are going to have to take the Rick Scott plan over the 20-year life of this amendment and implement it," Everglades Foundation CEO Eric Eikenberg said. "Once it starts,

it's going to be hard to backtrack" (Jenny Staletovich, *Miami Herald*, Jan. 28). **-- AW**

MINNESOTA:

Lawmakers tackle environmental regs

Published: Wednesday, January 28, 2015

The new Republican majority in the Minnesota House of Representatives and conservative Democratic Farmer-Labor lawmakers in the state Senate are taking aim at the state's environmental regulations.

Many of the lawmakers favor eliminating some of the regulations for agribusiness, mining and other industries but will likely come head to head with Gov. Mark Dayton (D), who is proposing stricter clean water rules.

Many of the conservative DFL lawmakers hail from the iron-range area of northern Minnesota, where mining jobs have disappeared over the years. Many residents blame environmental regulations on the loss of industry and jobs in the region.

Another issue lawmakers are hoping to tackle is decreasing the time it takes for the Minnesota Pollution Control Agency to issue permits for projects.

Although there is disagreement over many regulations, lawmakers from both sides see issues they can work on together, including water quantity and quality, wetlands, clean air and transit, and the role of Minnesotans in the environmental regulatory process (J. Patrick Coolican, Minneapolis *Star Tribune*, Jan. 26). **-- MH**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Thu., January 29, 2015

READ FULL EDITION

1.TRANSPORTATION:

3-D printing poised to advance cleaner cars

It's rare that a gleaming, azure legend on wheels fails to turn heads, but at the Detroit auto show earlier this month, Oak Ridge National Laboratory's Shelby Cobra faced stiff competition for attention as manufacturers showed off their new concepts. But in this showcase all about the future of the auto industry, the Oak Ridge Cobra, a throwback to 1967, was a harbinger of things to come. The polished paint and chrome belied bodywork that came out of a 3-D printer, making the roadster a victim of its own success.

2.ADAPTATION:

Tale of 2 penguins: Warming climate won't help picky eaters

Two penguin species are responding differently to rising temperatures in the Antarctic, according to a new study. Gentoo penguin populations have almost tripled in recent years while their habitat partners, chinstrap penguins, struggle to keep up. Adaptive feeding strategies that in the past decreased competition for food between gentoo and chinstrap penguins are now proving problematic for the chinstraps.

TODAY'S STORIES

3.BUSINESS:

Wind power industry escaped doldrums of 2013, growing 7.4% last year

4.FINANCE:

Affluent investors betting on natural gas, solar

5.FOOD SECURITY:
Researchers aim to make global climate data useful to local farmers
6.POLICY:
Analysts say EPA power plant rule will give big boost to natural gas
7.CALIFORNIA:
Lawmaker introduces bill to raise state's renewable energy use to 50%
8.COAL:
India to sell shares in state-controlled Coal India
9.FINANCE:
Brazilian bank raises $400M for renewable energy
10.NATIONS:
Climate change drives poor in Kashmir to join militants, experts say
11.RISK:
Poor farmers could get support from climate-related insurance

E&ETV'S ONPOINT

12.CLIMATE:
Former EPA policy counsel Sussman says agency 'back to the drawing board' on power plan targets, building blocks

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., January 29, 2015

READ FULL EDITION

1.HYDRAULIC FRACTURING:
Senate votes to keep 'Halliburton loophole'; regulation stays with states

The Senate sided with the oil and gas industry yesterday and flatly rejected an effort to repeal a provision environmentalists call the "Halliburton loophole."

TOP STORIES

2.LNG:
Exports are poised to move on the Hill -- but does it matter?
3.FINANCE:
Investors gear up for fire sale in the shale patch
4.UTILITIES:
Lobbyist-turned-CEO says government policy 'irrelevant,' millennials key

ELECTRICITY

5.TEXAS:
Lawmaker laments federal 'bull's-eye' as panel mulls energy policies
6.TECHNOLOGY:
5 states lead the way on 'grid-edge' transition -- report
7.SECURITY:
Cyber experts press Senate on sharing critical data

OIL AND GAS

8.OIL:

Prices should start to recover by this summer, Hamm tells peers

9.FINANCE:

Companies with greater domestic shale investments may see more risk -- Fitch

10.PEOPLE:

Weatherford eliminates COO role

11.PEOPLE:

Chevron appoints manufacturing CEO to board

12.NATURAL GAS:

South African firm reconsiders $14B La. investment

13.OIL:

Kurdish tanker off Texas coast sets sail for more welcome waters

14.OIL:

Calif. county faces $61M budget hole amid crude price drop

15.PIPELINES:

First route or no route, say Sandpiper's backers

16.TRANSPORT:

Safety watchdog 'concerned' with response to deadly oil train crash

E&ETV'S ONPOINT

17.CLIMATE:

Former EPA policy counsel Sussman says agency 'back to the drawing board' on power plan targets, building blocks

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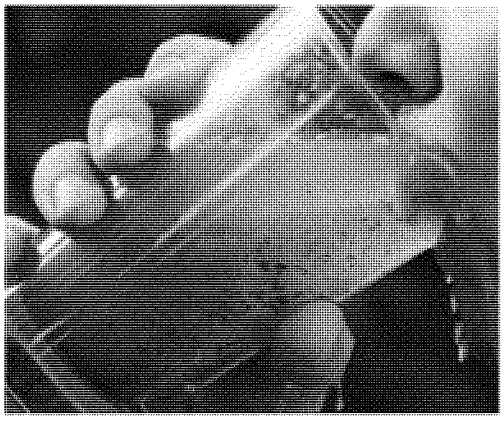

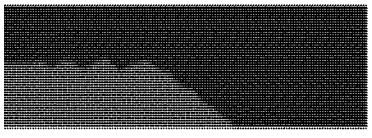

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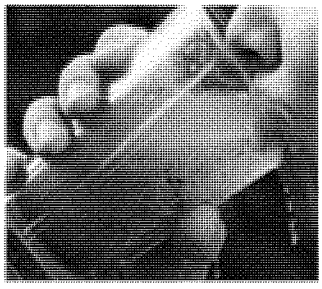

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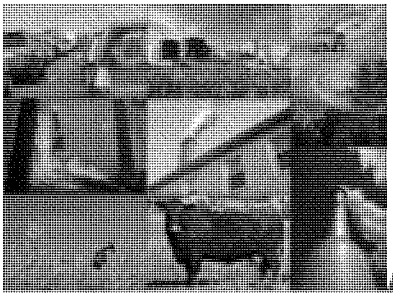

Air & Radiation Law News

for January 28, 2015

Bloomberg BNA **Daily Environment Report™**

Air Pollution

Court Consolidates Challenges to MATS Rule

A federal appeals court consolidated industry and environmental group challenges to an Environmental Protection Agency regulation that established an alternative method for compliance with the agency's 2012 mercury and air toxics...

Air Pollution

EPA Says Endangerment Finding Proposal For Aircraft Lead Emissions Coming in 2017

The Environmental Protection Agency anticipates completing its review of the dangers of lead emissions from piston aircraft by 2017, two years later than previously planned, the agency told environmental groups. ...

Air Pollution

Long-Term Exposure to Clean Diesel Exhaust Doesn't Boost Lung Cancer Risks, Study Says

A study of long-term exposure to emissions from cleaner diesel engines found no evidence of increased risk of lung cancer associated with exposure....

Climate Regulation

EPA Seeks Small Businesses to Participate In Review Panel for Power Plant Rule

The Environmental Protection Agency is seeking participants for a Small Business Advocacy Review Panel to evaluate the potential impact of a proposal to reduce carbon dioxide emissions from existing power plants....

Climate Regulation

Progressive Groups Seek Stronger Power Plant Rule

Environmental and progressive groups urged the Environmental Protection Agency to set even more stringent carbon dioxide emissions limits for existing power plants in a Jan. 27 letter. The EPA in June 2014 proposed the first standards (RIN...

Congress

New House Science Panel Rules Grant Chairman Smith Broad Subpoena Powers

Republicans on the House Science, Space and Technology Committee approved rules allowing Chairman Lamar Smith (R-Texas) unilateral subpoena powers despite the strong objections of Democrats who called the move unprecedented. ...

Energy

Keystone Crude Export Ban Amendment Dropped in Exchange for Senate Hearing

Sen. Ted Cruz (R-Texas) isn't seeking a vote on his amendment to Keystone pipeline legislation (S. 1) that would impose a ban on domestic crude oil export production after reaching an agreement to have a hearing on the issue in the Senate...

Energy

Majority of Cyberattacks Target Nation's Electricity Grid, FERC Chairman Says

A majority of cyberattacks in the U.S. target the nation's electricity grid, the head of the Federal Energy Regulatory Commission said....

International Climate

EPA's McCarthy Optimistic About Chances For Reaching Climate Agreement in Paris

Environmental Protection Agency Administrator Gina McCarthy expressed optimism Jan. 27 on the possibility of an international agreement to address climate change in 2015....

International Climate

India's Shift on Climate Fundamental, Former White House Official Says

India is moving toward "a fundamentally different position" than it was in six years ago just before the near collapse of climate talks in Copenhagen, a former White House climate official said Jan. 27....

Pipeline Safety

NTSB Approves Findings, Recommendations For Improving Pipeline Integrity Management

The National Transportation Safety Board Jan. 27 approved 33 findings on gas transmission pipeline integrity management in high-consequence areas and 28 recommendations on how to make the management more effective....

Pipeline Safety

PHMSA Guidance to Help Governments Plan, Mitigate Transmission Pipeline Risks

State, local and tribal governments can use land use and development authorities and other methods to

limit risks related to transmission pipeline accidents, according to guidance prepared by the Pipeline and Hazardous Materials Administration...

Regulatory Policy

Committee Approves Bill to Buffer Industry Against Unfunded Mandates

The newly organized House Committee on Oversight and Government Reform approved by a vote of 20-13 a bill (H.R. 50) introduced again this year by Rep. Virginia Foxx (R-N.C.) intended to protect the private sector from unfunded federal mandates....

Regulatory Policy

House Panel Passes Bill Requiring Agencies To Consider Indirect Costs of Regulations

A bill that would require the Environmental Protection Agency and other federal agencies to consider the indirect economic impacts their rules would impose on small businesses passed the House Judiciary Committee Jan. 27 by a vote of 19-8....

Regulatory Policy

Portman Moves Streamlined Permit Bill; Startup Bill Gets Democrats' Support

Sens. Rob Portman (R-Ohio) and Claire McCaskill (D-Mo.) will introduce a bill Jan. 28 to streamline federal permitting requirements for large infrastructure projects, Portman aides told Bloomberg BNA Jan. 27....

Renewable Energy

Second Florida Utility Unveils Solar Project Plans

Florida's largest electric utility, Florida Power & Light, plans to triple its solar power capacity in the state by the end of 2016 by adding 225 megawatts of new capacity, the company announced. The utility, which is a subsidiary of...

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Latest News

HEI Data May Aid Bid To Replace Older Diesel Engines To Cut Cancer Risk

New research by the Health Effects Institute (HEI) says there is no evidence of carcinogenic lung tumors in rats that were exposed to diesel exhaust from engines with emissions control technology, which could boost EPA's efforts to replace older diesel engines with newer models in order to significantly cut potential human cancer risks.

Science Advisors Back EPA Research Approach, Urge More Agency Outreach

EPA's science advisors are backing the Office of Research and Development's (ORD) integrated approach to its next research plans, but are also calling for additional work in some areas, and warning that ORD's shift from strictly informing regulation to more broadly supporting human and environmental health may not yet be well understood within EPA.

News Briefs

EPA Launches Small Business Review For Climate ESPS

EPA is formally launching its Small Business Advocacy Review (SBAR) panel to seek input on how its proposed climate existing source performance standards (ESPS) for power plants might affect small businesses, a review that observers have warned could create a fight between larger utilities and smaller companies over easing the rule.

Greenwire

KEYSTONE XL:

Senate nears deal for new round of amendments

Nick Juliano, E&E reporter

Published: Tuesday, January 27, 2015

A deal is near to line up consideration of more amendments and clear the way for passage of legislation to approve the Keystone XL pipeline, senators said today.

Negotiations were ongoing after Democrats yesterday successfully stalled consideration of the bill to demand additional amendment votes. Sens. Lisa Murkowski (R-Alaska) and Maria Cantwell (D-Wash.), the Energy and Natural Resources Committee chairwoman and ranking member who are managing the debate, met this morning to negotiate a new package of amendments.

Cantwell said they had to confer with leadership this morning, but she was optimistic a deal could be announced by this afternoon.

"I think we figured out a way to try to move forward today on some amendments and some votes," Cantwell told reporters this morning on her way into the Capitol. "So hopefully, we'll find out a way to come to agreement on a larger package."

She divulged few details on the amendment deal before it is cleared by leadership and rank-and-file members on either side of the aisle. But she said it would include items that had previously been agreed to, such as an amendment from Sen. Ben Cardin (D-Md.) addressing drinking water sources along the pipeline's route.

Eight amendments are currently pending on the bill, but it remains to be seen whether all receive a vote.

In floor remarks just before the Senate adjourned for lunch today, Murkowski said she was optimistic that a deal would be announced soon.

"I think we've had a really constructive conversation this morning and I am encouraged," she said.

LNG:

Upton expects stand-alone bill to reach Obama's desk

Hannah Northey, E&E reporter

Published: Tuesday, January 27, 2015

Despite political rancor between a Republican Congress and President Obama, House Energy and Commerce Chairman Fred Upton (R-Mich.) today said a stand-alone, bipartisan bill to fast-track liquefied natural gas exports is expected to reach President Obama's desk and could get signed into law.

"I see this going as an individual piece when we get it done. Again, I don't think we're that far apart from the Senate," Upton said at an LNG Allies event in Washington, D.C. "We had a very instructive meeting last week with [Energy Secretary Ernest Moniz]."

Upton attended the event to show support for Ohio Republican Rep. Bill Johnson's H.R. 351, which would require an Energy Department decision on any LNG export application within 60 days of publication of an environmental review by the Federal Energy Regulatory Commission. The bill passed the lower chamber with bipartisan support last year before stalling.

LNG Allies is a research and advocacy group whose members include oil and gas trade groups as well as foreign embassies, including those from Lithuania, Croatia and the Czech Republic.

The House is slated to vote on a rule governing floor debate on Johnson's bill later today and will hold a final vote on the bill tomorrow.

Sources say Johnson's bill could be combined in conference with another bipartisan measure in the upper chamber. The Senate Energy and Natural Resources Committee is scheduled to hold a hearing Thursday to discuss a bill from Sens. John Barrasso (R-Wyo.) and Martin Heinrich (D-N.M.) that would require DOE to decide on LNG export applications within 45 days of FERC publishing its environmental review.

Johnson said it's unclear whether the Senate will ultimately decide to combine the LNG legislation with a larger package in conference or move a stand-alone bill.

"All bets are off on what the Senate may or may not do," he said. "We know our colleagues in the Senate, the Republican majority, are very much in favor of moving this. The question, technically, is how best to do that in the Senate and get it done."

A key question is what DOE deems palatable. Last year, Republican Sen. John Hoeven of North Dakota said Moniz was working with him on a bill to fast-track LNG exports, yet the agency was at the same time facing pushback among environmental groups voicing climate concerns (*Greenwire*, Dec. 22, 2014).

Moniz's views could be made clear when he appears before the House Energy and Commerce Committee in mid-February, Upton said. The secretary may discuss a range of issues, including the agency's Quadrennial Energy Review -- an issue that Republicans want to include in a broader energy platform, Upton said.

Upton said he's hopeful Rep. Steny Hoyer (D-Md.), the House minority whip, will again join House Republicans in supporting legislation to fast-track DOE approvals of LNG exports, adding that the congressman was supportive last year.

"It's that type of record that we really want to move forward," Upton said.

On Capitol Hill, House GOP leaders also chimed in to support Johnson's legislation, saying it would create thousands of jobs and increase the country's energy security. "There's an energy boom going on in America, and this bill will help create 45,000 jobs," House Speaker John Boehner (R-Ohio) told reporters at a press briefing this morning.

Boehner did not say when he expects the bill to clear the House.

Majority Whip Steve Scalise (R-La.) called on Congress to place a "shot clock" on DOE's permitting process.

"You've got this cue at the Department of Energy that literally blocks the ability to move more" LNG projects forward, Scalise said. "Right now, this process doesn't work."

Upton said Republicans at the helm of both chambers decided early on to focus on "low-hanging fruit" -- bills that passed last year but then faced roadblocks in the Senate -- to maneuver partisan divides and avoid veto threats from the White House. LNG exports, he noted, are an area of potential cooperation.

President Obama in recent weeks has promised to block a number of Republican measures, including a Senate bill to greenlight the Keystone XL pipeline and a House measure that would put a clock on federal interstate gas pipeline approvals.

"We can set a bipartisan policy that gets through some of these veto threats," Upton said.

Reporter Daniel Bush contributed.

COAL:

Murray blasts Ohio's GOP administration for permit delay

Manuel Quiñones, E&E reporter

Published: Tuesday, January 27, 2015

Murray Energy Corp. is blasting Ohio regulators for delaying a permit to mine under a section of Barkcamp State Park to extend the life of its Powhatan No. 6 mine.

Statements by the company, headed by CEO Robert Murray, put executives at odds with an administration headed by Republican Gov. John Kasich. Murray is a well-known Republican donor and has supported Kasich with thousands of dollars in contributions.

Murray's concerns also come amid increased scrutiny of Ohio permitting for coal mines, with environmentalists accusing the Kasich administration of being too lenient on industry.

Murray spokesman and attorney Gary Broadbent, in a series of statements, blamed the Ohio Department of Natural Resources for delaying a permit filed last August. In the meantime, he said, the coal reserves in question became uneconomical.

"The Ohio Valley Coal Company simply could not afford to have its employees and equipment idled while ODNR deliberately delayed the processing of this routine permit application," said Broadbent, pointing the finger directly at Fred Shimp, ODNR's assistant director.

The way Murray sees it, regulators should have processed the permit within the customary two months. Mining could have lasted beyond 2017, Broadbent said, helping secure hundreds of jobs.

Instead, the company said ODNR's delay forced the company to mine on another site roughly 10 miles way. Broadbent said the move came "at tremendous cost and expense."

"The record is clear that Mr. Fred Shimp failed to act on our permit application in a diligent and timely manner," he said. "Again, this caused the employees of The Ohio Valley Coal Company, and their families, to lose many years of high paid, well-benefited employment."

Asked whether Murray executives discussed the issue with other state officials, Broadbent said, "We discussed the matter with many officials of the state of Ohio, in an effort to save these jobs."

ODNR spokesman Eric Heis did not address the specific accusations by Murray but suggested in a statement that the department stood by its scrutiny.

"With each coal mining application, ODNR must practice its due diligence in assessing the impacts of the project," Heis said in an email to *Greenwire* this morning.

"The permitting process cannot be rushed, and permits cannot be issued until we are certain that all of the required criteria have been met," he said. "This includes, but is not limited to, safety measures, surface and ground water protections and any potential subsidence concerns."

Robert Murray has never shied from being critical of state or federal regulations aimed at scrutinizing coal mining or power production. He has accused the Obama administration of jeopardizing jobs and working to kill coal and is leading litigation against U.S. EPA rulemaking (*E&E Daily*, Dec. 11, 2014).

Environmental advocates have, in turn, targeted Murray, accusing him of overstating the Obama administration's impact on the ongoing coal downturn. Greens say cheap natural gas prices, global oversupply and increasingly uneconomical reserves in Appalachia are what's hurting companies like Murray.

In 2013, George Elmaraghy, former chief of Ohio EPA's Division of Surface Water, blamed the coal industry and its influence on Kasich for his ouster (*Greenwire*, March 18, 2014). And last year, environmental groups asked federal officials to scrutinize state permitting decisions.

UTILITIES:

S.F. mayor vows support for community electricity

Debra Kahn, E&E reporter

Published: Tuesday, January 27, 2015

San Francisco Mayor Ed Lee in a surprise move yesterday threw his support behind a long-standing city proposal to break away from the massive utility Pacific Gas and Electric Co. and purchase electricity independently.

The program, which has been debated on and off in San Francisco for a decade, is known as "community choice aggregation" (CCA), a state policy that allows local governments to use utilities' infrastructure to deliver power of their own sourcing.

Originally proposed in 2004, the city's plan has been stalled for years amid cost estimates that exceeded PG&E's rates. An earlier version of the proposal would have had the city buy renewable energy from Shell Energy North America, which alienated potential supporters who had advocated for more local solar power to be built.

Lee had held the program at arm's length since taking office in 2012 (*Greenwire*, Nov. 8, 2011). The San Francisco Public Utilities Commission has been studying it and proposed rates in 2013 but was unable to agree on a final cost structure.

But in a statement yesterday, Lee professed support for the program, slamming Shell in the process.

"If San Francisco is going to do a clean energy program, let's do a real one," he said. "San Francisco's clean energy program should not contract with an oil company with a dubious record of protecting the environment and human rights: We can do better."

Lee instructed the SFPUC to develop a program by the end of the year that would compete with PG&E on price and renewables content. PG&E is already under a state mandate to provide 33 percent renewable power by 2020.

"I call on the SFPUC to develop a program that is affordable for customers, greener for our planet, takes advantage of renewable technology being developed right here in our city and has a real plan for creating jobs for our residents," he said.

Lee's support is also a blow to PG&E, the state's largest utility, which in 2010 spent $46 million on a failed statewide ballot initiative that would have required communities to get a two-thirds vote before forming CCAs (*Greenwire*, June 9, 2010).

Utility officials said they would cooperate with San Francisco.

"For more than 100 years, it has been PG&E's privilege to provide our customers safe, clean, reliable and affordable energy, and we look forward to the opportunity to do so for many years to come," spokeswoman Nicole Liebelt said in a statement. "At the same time, we respect the energy choices that are available to our customers, and will continue to cooperate with local governments as they consider pursuing and/or developing a CCA program."

Lee cited a city-commissioned report that came out late last year finding that the program could create demand for nine solar installations, eight wind installations and three geothermal plants. It would cost $2.3 billion and would create 9,200 jobs, according to the median estimate.

"While short of a detailed plan to build local renewable energy projects and create jobs in San Francisco, the mayor was pleased to see some progress on a key aspect of the program that was missing in the previous iteration of CleanPowerSF," Lee said yesterday. "The mayor considered the report a good starting point."

An advocate for the CCA program said the report, commissioned by the city's Local Agency Formation Commission, was key in shifting Lee's stance.

"Once that jobs number was front-page news, and it became clear that Shell was no longer part of the program, this swept the mayor's previous objections to CleanPowerSF completely off the table," said Eric Brooks, a labor and renewable energy advocate who lobbied for the program. "So I'm not surprised that he has come around to joining us to support CleanPowerSF."

The program still may not face smooth sailing. The SFPUC, whose members are appointed by the mayor, has one vacancy on its five-member board that Lee may fill at any time.

"Everything that matters could depend on who he appoints," Brooks said.

But the proposal has strong support from the city's elected board of supervisors, which has sought in the past to force the SFPUC to move forward with the plan.

"After more than a decade of work and effort, it seems we have won the un-winnable fight!" Board of Supervisors President London Breed wrote on Facebook yesterday. "CleanPower is the single most important thing San Francisco can do to combat climate change, and it has been one of my highest priorities as supervisor."

BIOMASS:

U.S.-funded energy project fails in Liberia

Published: Tuesday, January 27, 2015

A Liberian biomass project funded by the U.S. government failed due to insider connections, questionable planning and sexual abuse allegations.

The Overseas Private Investment Corp. approved loans totaling $217 million for a project, led by

Buchanan Renewables, that would convert nonproducing rubber trees into biomass chips and create an energy source for the impoverished West African country.

In 2013, Buchanan halted its Liberian operations and released 600 workers. The company never built the planned power plant and shipped the biomass chips to Europe.

Buchanan repaid the U.S. government loans, but complaints surfaced over allegations of sexual abuse and workplace hazards.

The agency's support for the project was marked by questionable due diligence and deep political links, an Associated Press investigation found.

The Office of Accountability, the agency's internal watchdog group, said Buchanan's senior management lacked previous experience in the rubber industry and operating a commercial venture in Liberia. Proper background checks were not conducted on key OPIC and Buchanan figures prior to the loan approvals (Greene/Paye-Layleh, Associated Press, Jan. 27). -- **MH**

NUCLEAR POWER:

Plant shutdown sparks NRC inspection

Published: Tuesday, January 27, 2015

The Nuclear Regulatory Commission deployed a team of experts yesterday for a special inspection following an emergency shutdown of Entergy's River Bend nuclear power plant near Baton Rouge, La., on Christmas morning.

Mike Bowen, a spokesman for Entergy Nuclear, which oversees all of Entergy's nuclear plants, said the initial failure of a valve controlling an electrical turbine did not involve the nuclear reactor at the St. Francisville, La., plant.

But the incident report filed with the NRC indicated it did trigger elevated levels of water used to cool the reactor, causing the pumps feeding water into the reactor to shut down. One of the pumps failed to start when the water level dropped down, forcing workers to manually align another valve to restore water levels.

Inspectors will evaluate the "root cause analysis" conducted by Entergy employees, River Bend's systems maintenance and the company's corrective actions at the 974-megawatt facility.

"The purpose of this special inspection is to better understand the circumstances surrounding the event, determine if there are any generic implications and review the licensee's corrective actions to ensure that the cause of the event, including associated equipment problems, have been effectively addressed," Marc Dapas, NRC Region IV administrator, said in a news release (Mark Schleifstein, New Orleans *Times-Picayune*, Jan. 26). -- **DTB**

FEDERAL AGENCIES:

Satisfaction with services hits new low -- survey

Kevin Bogardus, E&E reporter

Published: Tuesday, January 27, 2015

A survey released today has found public satisfaction with the federal government has fallen for the second consecutive year.

The report by the American Customer Satisfaction Index (ACSI) shows that satisfaction with government services declined to a score of 64.4 in 2014. That's a 2.6 percent drop from 2013's 66.1 score and the federal government's lowest score in eight years, even worse than 2010's showing of 65.4.

The survey group blamed budget-cutting measures that have eaten into federal staff and resources for the poor customer satisfaction results.

"Much like the private sector, one of the first casualties of cost-cutting is customer service," Claes Fornell, ACSI chairman and founder, said in a statement. "Due to the very nature of their business, regulatory agencies like the IRS always face user satisfaction challenges and it becomes even more difficult to maintain quality service to a growing number of users with fewer, or even the same number of people, providing those services."

As budget austerity has taken hold in Washington, D.C., the federal government has begun to shrink in size. Federal agencies, excluding the U.S. Postal Service, lost about 19,000 jobs last year, according to the Bureau of Labor Statistics (*Greenwire*, Jan. 14).

ACSI also found the federal government continues to rank below the private sector when it comes to customer satisfaction.

"Among more than 40 industries covered by the ACSI, only Internet service providers have a lower score," according to the group's report.

Trust also fell in federal agencies, from a score of 67 in 2013 to 66 last year.

No federal department scored above 75.6, the national ACSI average score for customer satisfaction, though the Department of Defense came close with a score of 73, the highest total earned among the government departments last year.

ACSI's 2014 report on federal government services was based on interviews with 1,772 users. Those surveyed by the group were randomly selected and contacted by phone and email between Oct. 17 and Nov. 1, 2014.

ENERGY MARKETS:

CFTC picks 1 public interest rep for energy panel

Tiffany Stecker, E&E reporter

Published: Tuesday, January 27, 2015

Public Citizen's Tyson Slocum is the lone public interest voice on the Commodity Futures Trading Commission's recently announced list of nine members on its Energy and Environmental Markets Advisory Committee.

CFTC announced the member list yesterday afternoon, following a speech from the committee's sponsor, Commissioner Christopher Giancarlo, at an industry conference in Miami.

"I hope the EEMAC will be a catalyst to drive necessary improvements in CFTC rules and regulations," said Giancarlo in a statement.

Slocum, the director of Public Citizen's Energy Program, advocates for renewable energy, environmental regulation and commodity market oversight. He is joined by members of oil and gas companies, futures market brokers and industry trade associations.

"We're really glad that [Giancarlo] recognized the importance of a public interest choice on the committee," said Slocum.

The other eight members:

- James Allison, manager of corporate studies and initiatives, ConocoPhillips Co.
- Michael Cosgrove, partner, Vectra Capital.
- Bryan Durkin, chief commercial officer, CME Group.
- Benjamin Jackson, president and chief operating officer, ICE Futures U.S.
- William McCoy, executive committee member of the Law and Compliance Division, Futures Industry Association.
- Mac McFarland, CEO, Luminant.
- Lopa Parikh, director of federal regulatory affairs for energy supply, Edison Electric Institute.
- Dena Wiggins, president and CEO, Natural Gas Supply Association.

AIR POLLUTION:

Study finds no link between diesel technologies, cancer

Amanda Peterka, E&E reporter

Published: Tuesday, January 27, 2015

Lifetime exposure to exhaust from modern diesel technologies is not likely to cause cancer, according to a study released today by a nonprofit research organization.

The study exposed rats for up to 30 months to exhaust from a heavy-duty diesel engine that meets recent U.S. EPA standards for emissions and found no evidence of cancerous lung tumors. Emissions of particulate matter and toxic air pollutants from the newer engine were more than 90 percent lower than the levels emitted by older diesel technologies.

The study, published by the Health Effects Institute, is the first comprehensive look at lifetime effects from emissions of newer diesel technologies and is likely to be incorporated in future risk reviews of diesel technologies, according to the institute.

"We are already seeing a transition in America's roads with over 30 percent of the trucks and buses in use today meeting these new standards and the trend is growing in Europe as well," Dan Greenbaum, president of the Health Effects Institute, said in a statement. "These results confirm the great strides that government and industry have made to reduce diesel risk -- and argue for even greater efforts to accelerate the replacement of older diesel engines."

Jacob McDonald of the Lovelace Respiratory Research Institute in New Mexico, Jeffrey Bemis of Litron Laboratories in New York, Lance Hallberg of the University of Texas Medical Branch and Daniel Conklin of the University of Louisville in Kentucky conducted the research, while a panel convened by the Health Effects Institute peer-reviewed the results.

EPA and the motor vehicle industry provide funding for the Health Effects Institute. For the diesel study, the organization also received funding from the Department of Energy and the Federal Highway Administration. The Coordinating Research Council, a research entity funded by the oil and auto industries, also provided oversight for the study.

The study measured animal exposure to "new-technology diesel exhaust" (NTDE), or emissions from diesel engines that are built to comply with a string of recent EPA regulations. Beginning in 2007, EPA put in place new standards for diesel engines to cut down on emissions of particulate matter and nitrogen oxides, requiring diesel manufacturers to use new filters and other control technologies. The agency has also since lowered the amount of sulfur that can be contained in fuel.

The study exposed male and female rats to three different dilutions of inhaled new-technology diesel exhaust for 80 hours a week for up to 30 months, along with measuring shorter-term exposures. The engine was run in an operating cycle meant to represent the behavior of modern engines.

The rats were euthanized after the study period and examined for changes caused by the exposure. Lifetime exposure was not linked to the development of tumors or precancerous changes in the rats' lungs.

A few "mild changes" appeared in the rats' lungs that were consistent with long-term exposure to nitrogen dioxide, according to HEI.

"There was no induction of tumors or pre-cancerous changes in the lung and no increase in tumors that were considered to be related to NTDE in any other tissue," according to a summary by the Health Effects Institute. "The effects that were observed with NTDE were limited to the respiratory tract and were mild and generally seen only at the highest exposure level."

In contrast, studies of chronic exposure to older diesel technologies have linked exhaust emissions to lung tumors, inflammation and deposition of soot in the lungs.

"These results are impressive for what they can mean for reducing exposure in the U.S. and Europe, but also for the promise they hold in the developing countries of Asia and elsewhere in the world," Bob O'Keefe, vice president of the Health Effects Institute and chairman of Clean Air Asia, said in a statement. "Countries like China are already moving toward implementing the ultra-low sulfur diesel fuel that is required for these new cleaner technologies."

MINNESOTA:

Governor proposes gas tax hike to fund roads

Published: Tuesday, January 27, 2015

Minnesota drivers would pay 16 cents a gallon more in gas taxes under Gov. Mark Dayton's (D) $11 billion transportation proposal.

Dayton unveiled the plan yesterday and said improving Minnesota roads is essential for a growing population and economy.

"Inadequate transportation clogs our lives with worse traffic congestion, longer commutes, more dangerous travel conditions," said Dayton. "These deficiencies restrict our future economic growth and detract from our quality of life."

The proposal, which would spend the funds over the next decade, would also increase license fees and raise transit money in Minneapolis and St. Paul by adding a half-percent sales tax increase.

Half the state's highways are at least 50 years old, and 20 percent will last only three years or less, said Charlie Zelle, Minnesota's transportation commissioner.

Dayton's plan also increases funding for cities, counties and townships. Much of the plan depends on federal funds, which have yet to be appropriated (Don Davis, Fargo *Forum*, Jan. 26). **-- MH**

UTAH:

State lawmakers propose bills to improve air quality

Published: Tuesday, January 27, 2015

In an effort to clean up Utah's air, state lawmakers are pushing new bills that would cut emissions.

One of the proposed bills, from state Rep. Patrice Arent (D), would give more power to air quality watchdog groups over emissions cheaters. The legislation would allow the Division of Motor Vehicles to suspend a vehicle's registration if police or local health department officials believe it would fail an emissions test.

Arent and other lawmakers are not rushing the legislation through the process.

"I want real data, real information before we try to pass legislation," said Arent. "We need to know it will make a difference and it's not just feel-good legislation."

Another idea floating around the Utah Legislature would replace older, dirty diesel school buses with cleaner natural gas versions. A set of bills regarding the Division of Air Quality that each failed to gain ground last session are being proposed again.

In 2014, Utah lawmakers set aside $1 million to fund 14 air quality projects (Brian Maffly, *Salt Lake Tribune*, Jan. 26). **-- MH**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., January 28, 2015

1.WEATHER:

Climate models overestimate 'historic' storm in NYC; other areas slammed

As snow continued to fall in Boston and other parts of eastern Massachusetts yesterday afternoon, National Weather Service Director Louis Uccellini said the term "historic" could still apply to snowfall amounts recorded in those areas.

2.AGRICULTURE:

The difficult art of communicating climate change to farmers

As a sociologist, J. Gordon Arbuckle Jr. spends a lot of time studying what shapes farmers' views and responses to climate change. It's a subject that has not gotten much attention, even as more research focuses on how to reduce agricultural greenhouse gas emissions and how to make farming more resilient to the impacts of extreme weather.

TODAY'S STORIES

3.POLICY:

FERC leader sees multiple roles for her agency in EPA's power plant rule

4.SCIENCE:

Corals may be more resilient to climate change than previously thought -- study

5.REGULATION:

Some utilities could benefit from regional cooperation on EPA's Clean Power Plan

6.TRADE:

Driven by Asia, global shipping volumes and emissions will multiply

7.NATIONS:

Australian temperatures are rising faster than in the rest of the world

8.NATIONS:

Government pushes solar in Bangladesh

9.HYDRAULIC FRACTURING:

British Parliament members call for fracking ban, citing climate change, health concerns

10.CITIES:

Copenhagen builds world's first climate change-adapted neighborhood

E&ETV'S ONPOINT

11.NATURAL GAS:

Ex-FERC Commissioner Spitzer discusses impact of White House NEPA guidance on pipeline, export facility approvals

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., January 28, 2015

READ FULL EDITION

1.OFFSHORE DRILLING:
Obama exploration plan hits an industry slowed by pricing uncertainty
The East Coast could become home to a booming offshore energy industry -- but only if the price of crude oil recovers substantially.

TOP STORIES

2.GRID:
Midwestern utility bets big with EV charging network
3.REGULATION:
FERC chairwoman says electric grid challenges require 'more than tinkering'
4.ELECTRICITY:
La. regulator touts role of gas, questions solar incentive

ELECTRICITY

5.RENEWABLES:
NextEra expects business boost from EPA climate plan
6.UTILITIES:
Power companies puzzle over rooftop solar programs

OIL AND GAS

7.REGULATION:
Texas reverses itself on urban oil and gas inspections
8.REGULATION:
Pa. data show wide pattern of gas drilling problems -- report
9.HYDRAULIC FRACTURING:
Congressman seeks redress for property owners harmed by N.Y. fracking ban
10.PEOPLE:
Lawyer joins growing Houston energy practice
11.CALIFORNIA:
Los Angeles oil drilling plan scrapped
12.HYDRAULIC FRACTURING:
Enviros accuse Ohio regulator of violating federal chemical disclosure rules
13.REGULATION:
Okla. considers bills to rescind local drilling control

E&ETV'S ONPOINT

14.NATURAL GAS:
Ex-FERC Commissioner Spitzer discusses impact of White House NEPA guidance on pipeline, export facility approvals

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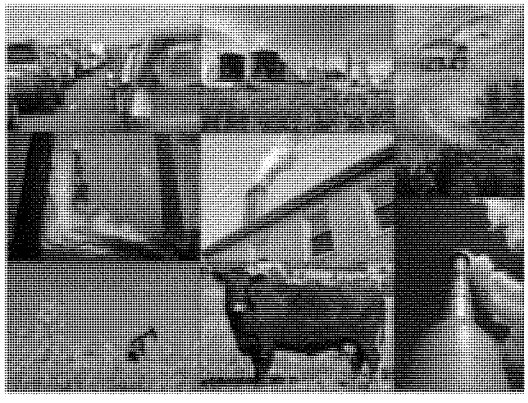

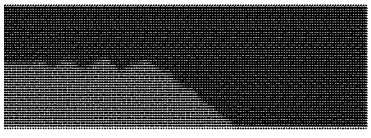

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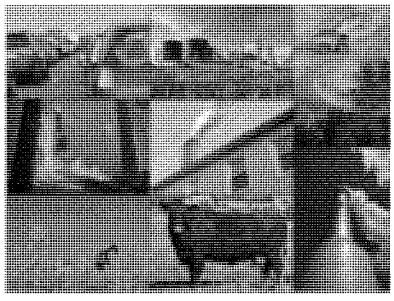

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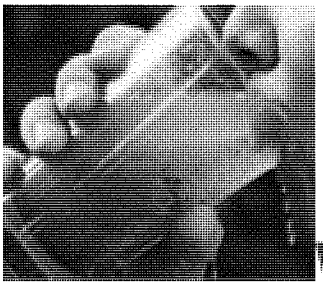
From: Turley, Jennifer
Sent: Wed 1/28/2015 3:41:55 PM
Subject: Water Law News for January 28, 2015



Water Law News

for January 28, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Maryland Farmers Cutting Pollution, on Track To Meet TMDL Mandate, State Agency Says

Maryland farmers implemented numerous pollution-reduction practices in 2014 and are on track to meet the nutrient and sediment load limits required to restore the Chesapeake Bay, the Maryland Department of Agriculture said Jan. 27....

Hydraulic Fracturing

Federal Bill Would Allow Landowners To Sue New York Over Fracking Ban

A New York congressman introduced legislation (H.R. 510) to allow landowners affected by New York's fracking ban to sue the state for compensation....

Hydraulic Fracturing

UK Parliament Rejects Temporary Fracking Ban; Allows Conditional Shale Exploration

Hydraulic fracturing will be allowed in the U.K. if certain environmental conditions are met, following a late Jan. 26 vote in Parliament on proposed rules governing the future of shale gas, which is still in the early stages of development....

Oil & Gas

Interior Plan Would Open Atlantic Coast To Offshore Drilling, Signals Policy Shift

The Interior Department Jan. 27 released a draft five-year plan that targets the Gulf of Mexico for most new offshore drilling leases, but which, in a major policy shift, also would open an area from Virginia to Georgia to oil and gas exploration....

Oil & Gas

White House Plan to Open Atlantic to Drilling Draws Fire From Republicans, Democrats

A proposal by the Obama administration to allow oil and gas exploration in the Atlantic Ocean for the first time while placing new limits on drilling in the Arctic drew bipartisan criticism Jan. 27, with Republicans

arguing that the draft five-year...

Water Pollution

Injection Wells Are Point Sources
With Groundwater as Conduit, Court Says

A county in Hawaii has once again been held liable under the Clean Water Act for illegally discharging treated wastewater into the ocean through groundwater injection wells under a ruling handed down by the U.S. District Court for the District...

Water Resources

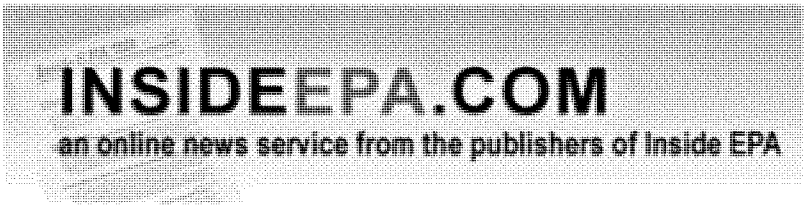
New Water Resources Attorney Appointed at Interior

The Obama administration has appointed Ramsey Kropf to be the Interior Department's deputy solicitor for water resources. She will begin work as the administration's top water resources attorney Feb. 9. Prior to her appointment,...

Wetlands

Grants Announced for Wetlands Protection Programs

The Environmental Protection Agency said Jan. 27 it has awarded $1 million in grants to help fund six wetlands protection and restoration programs. EPA's Wetland Program Development Grants are to help states, tribes and localities with...



Inside EPA's **Risk Policy Report**, 01/27/2015

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Says High Court Rulings Allow Permit Exemptions For Water Transfers

EPA and some states are touting Supreme Court rulings as giving the agency authority for its contested 2008 rule exempting some water transfers from Clean Water Act (CWA) permit mandates, saying the rulings allowing exemptions for transfers in one waterbody imply that EPA has discretion to allow exempt transfers between two separate waters.

New EPA Finance Plan Prompts Fear Of SRF Cuts In Agency's FY16 Budget

EPA's creation of a new Water Finance Center to promote public-private water infrastructure projects is prompting concern from some stakeholders that either President Obama's fiscal year 2016 budget proposal or GOP spending bills might float major cuts to EPA's water state revolving funds (SRFs) by citing the new financing push at the agency.

News Briefs

Water Groups Counter States' WIFIA Request

Wastewater and drinking water industry groups are pushing back against states' request for EPA to extend the time frame for states to consider whether to fund water infrastructure projects through traditional state revolving fund (SRF) programs or allow them to apply for financing through a newly authorized pilot program.

Greenwire

OFFSHORE DRILLING:

Obama proposes major leasing expansion in Atlantic, Arctic

Phil Taylor, E&E reporter

Published: Tuesday, January 27, 2015

The Obama administration today proposed opening new federal waters from Virginia to Georgia for oil and gas leasing, the first step in a potentially major expansion of drilling.

The Interior Department's draft proposed leasing program for 2017 to 2022 also includes up to three lease sales in Alaska's Cook Inlet and Beaufort and Chukchi seas, with expanded protections for an area known as Hanna Shoal that is important to walruses and seals.

The plan also calls for two lease sales per year that would include all waters in the western, central and eastern Gulf of Mexico that are not under congressional moratorium -- though it does not propose leasing in eastern Gulf waters that Congress has placed off limits through 2022.

No lease sales would occur in the Pacific, where drilling is opposed by key West Coast elected officials.

Interior Secretary Sally Jewell this afternoon said the plan makes 80 percent of the undiscovered technically recoverable oil and gas resources available for development, while protecting areas that are "too special to drill."

"We are committed to gathering the necessary science and information to develop resources the right

way and in the right places," Jewell said in a statement. "We look forward to continuing to hear from the public as we work to finalize the proposal."

The Bureau of Ocean Energy Management proposal reflects "a continuation of the regionally tailored leasing strategies" in the current 2012-17 plan, Interior said.

President Obama today also issued a memorandum withdrawing nearly 10 million acres of wildlife-rich areas of the Beaufort and Chukchi seas that are currently off-limits to leasing, as well as Hanna Shoal. The withdrawals will protect Native Alaskans who depend on the ocean's bounty for their livelihoods, he said.

The leasing proposal -- if finalized -- would be one of Obama's boldest moves to expand drilling opportunities on the federal estate at a time when Republicans are attacking him for shutting down oil and gas.

It comes days after Obama proposed designating more wilderness in the oil-rich Arctic National Wildlife Refuge and as the Bureau of Land Management leases far fewer lands for drilling than the George W. Bush administration. Republicans have hammered Obama for the slow growth of oil production on federal acres compared to private lands, and for the precipitous decline in natural gas production as industry sets production records elsewhere.

The move also comes as the administration seeks new restrictions on methane emissions from oil and gas developers and a final BLM rule on hydraulic fracturing -- both of which are vigorously opposed by industry.

Jewell today emphasized that the leasing plan is far from final. Waters could be removed from the BOEM plan as it crafts an environmental impact statement and takes what are likely to be many thousands of public comments.

Waters left out of the draft proposed program -- such as the eastern Gulf -- may not be added in later in the process.

Opening the Atlantic is likely to spark intense debate.

Then-Interior Secretary Ken Salazar in March 2010 announced plans to hold a lease sale off the Virginia coast but then scrapped the plan following the Deepwater Horizon spill in the Gulf of Mexico a month later.

BOEM's potential lease sale in the Atlantic would not occur until the back end of the five-year program and will depend on the availability of infrastructure to respond to a potential spill, Jewell said. BOEM has already established a 50-mile coastal buffer to minimize conflicts with the Department of Defense and NASA activities, offshore wind development, recreational fishing, and critical wildlife habitats, as well as visual impacts.

Interior held several lease sales in the Atlantic from 1976 through 1983, selling drilling rights on more than 2 million acres of waters. A total of 51 wells were drilled from New England to as far south as Georgia.

But the Atlantic and Pacific were placed off-limits to development by congressional and presidential moratoriums beginning in the 1980s. It wasn't until 2008 that Congress and President George W. Bush lifted the leasing bans.

Jewell said the agency needs more information on the oil and gas resource potential in the Atlantic -- data should become available as companies begin updating estimates that date back three decades. Interior

last June finalized a plan to allow seismic oil and gas surveys from Delaware south to the Florida border.

The American Petroleum Institute this morning said it was reserving comment until seeing details of BOEM's five-year plan.

But Erik Milito, API's director of upstream and industry operations, said it would be "premature and irresponsible" to leave out any areas that hold the potential for significant oil and gas discoveries. If conflicts exist, waters may be removed from the plan before it is finalized, but they cannot be added back in.

"How much energy we produce offshore 15 and 20 years from now depends on the decisions being made today," Milito said in a conference call with reporters.

API said recent polls showed a majority of voters in Florida, Georgia, South Carolina, North Carolina and Virginia support offshore drilling. Governors in the Carolinas and Virginia are on record supporting offshore drilling.

But opening the Atlantic is likely to trigger major opposition from environmentalists and some powerful Democrats.

Democratic Sens. Cory Booker and Robert Menendez of New Jersey, Ben Cardin of Maryland and Ed Markey of Massachusetts this afternoon will hold a news conference to oppose Obama's plan.

Those senators joined five other Democrats in signing an August 2014 letter to Jewell saying offshore drilling anywhere in the Atlantic would threaten fishing, tourism and recreation that provide billions of dollars in revenue to coastal states.

Eleanor Huffines, senior officer for the U.S. Arctic at the Pew Charitable Trusts, praised Interior's moves to protect certain waters off Alaska's North Slope.

"Safeguarding bowhead whale migration routes and walrus foraging areas is essential for the health of the Arctic marine ecosystem and for subsistence," she said. "These areas are long-recognized as sensitive habitats, and we appreciate the leadership shown by the administration in taking action to protect them."

The plan calls for three potential sales in Cook Inlet and the Beaufort and Chukchi seas, but they are proposed for later in the program so Interior can account for the region's harsh climate, sensitive sea life and the needs of Native Alaskans, Jewell said.

COAL:

Court cites 'permit shield,' allows selenium discharges

Manuel Quiñones, E&E reporter

Published: Tuesday, January 27, 2015

This story was updated at 5:36 p.m. EST.

A federal appeals court ruled this morning that the Clean Water Act shielded a coal mining company from liability for releases of the chemical element selenium.

A divided panel of the U.S. Court of Appeals for the 6th Circuit said former Arch Coal Inc. subsidiary ICG Hazard LLC's Thunder Ridge strip mine in Leslie County, Ky., could dump selenium because its state-issued National Pollutant Discharge Elimination System permit did not expressly prohibit the pollution.

The Sierra Club, which sued the company, said the Clean Water Act's so-called "permit shield" didn't apply because Kentucky regulators did not give selenium releases enough consideration. Therefore, the group said, judges shouldn't read too much into their not including limits in the company's permit.

Environmental groups have been targeting the releases of selenium from coal mines. The element harms aquatic and human life in sufficient quantities.

The opinion this morning said that "ICG's discharge of selenium was within KDOW's reasonable contemplation because KDOW knew at the time it issued the general permit that the mines in the area could produce selenium."

The court acknowledged that the mine's selenium releases "resulted in levels exceeding the threshold in the state's water quality standard."

But because of the permit shield, the appeals court decided to uphold 2012 and 2013 rulings in the company's favor by U.S. District Court Judge Greg Van Tatenhove in the Eastern District of Kentucky (*Greenwire*, May 22, 2013).

"Through our analysis of the permit shield's application in the context of a general permit, we also conclude that the permit shield covers ICG's discharges in this case," the judges wrote.

Judges Julia Gibbons and David McKeague, both appointed by Republican President George W. Bush, voted in favor of the ruling. Judge Gilbert Merritt, appointed by Democratic President Jimmy Carter, dissented.

"The Clean Water Act prohibits the discharge of selenium without a permit. The EPA and Kentucky codified clear legal limits for those permits," Merritt wrote in the dissent.

"Deference to a prior administrative choice to focus on the most dangerous chemicals and work with good faith applicants to advance the goals of the Clean Water Act does not require us to turn a blind eye to the knowing discharge of a notorious toxic pollutant," said Merritt.

Today's ruling contradicts a decision by the 4th U.S. Circuit Court of Appeals last year denying A&G Coal Corp., owned by West Virginia billionaire James Justice, liability protection for selenium releases under the permit shield (*Greenwire*, Aug. 12, 2014).

INFRASTRUCTURE:

Sanders rolls out $1T public works bill

Sean Reilly, E&E reporter

Published: Tuesday, January 27, 2015

Sen. Bernie Sanders (I-Vt.) today called for vast new public works spending with legislation that would pour $1 trillion into roadwork, water pollution control efforts and other infrastructure projects between now and 2022.

The bill, which does not propose a means of paying for the added expenditures, would not only make the nation "more efficient, more productive and safer" but also create millions of jobs, Sanders said at a news conference this morning as he outlined a litany of problems in areas from highways to the electrical grid.

"We cannot turn our back. It's getting worse every single year," said Sanders, the ranking member on the Senate Budget Committee.

The lion's share of the proposed spending would go into the Highway Trust Fund, which would get a total of $600 billion through 2022, or roughly 150 percent more than the fund is currently on track to receive at existing thresholds. Passenger rail projects would cumulatively receive $75 billion between now and 2019, while grid modernization would receive $50 billion and state revolving funds for drinking water and water pollution control projects would receive $30 billion each during the same period. Other beneficiaries would be the National Park Service and the Army Corps of Engineers.

The legislation leans heavily on recommendations from the American Society of Civil Engineers, which in a 2013 report card gave the nation's infrastructure an overall grade of D+. It does not contain a means of covering the cost, Sanders said, because he wants to focus on the need to build the infrastructure "and not start the debate right away how to fund it."

The engineers society was one of several groups on hand to applaud the legislation, which Sanders plans to introduce today with Sen. Barbara Mikulski of Maryland, the ranking Democrat on the Senate Appropriations Committee, as a co-sponsor.

"Without these investments, infrastructure -- the backbone of our nation's economy -- will continue to decline and Americans will pay the price," said Casey Dinges, a senior managing director with the society.

Also present at the news conference were representatives of the U.S. High-Speed Rail Association, the AFL-CIO and the Laborers' International Union of North America, which coupled praise for the bill with a renewed call to raise the 18.4-cents-per-gallon federal gas tax.

Congress "must have a real debate, followed by consensus, about how to pay for needed investments," Terry O'Sullivan, the union president, said in a letter to Sanders released beforehand. "Now it is time for the political will to move forward."

KEYSTONE XL:

Senate nears deal for new round of amendments

Nick Juliano, E&E reporter

Published: Tuesday, January 27, 2015

A deal is near to line up consideration of more amendments and clear the way for passage of legislation to approve the Keystone XL pipeline, senators said today.

Negotiations were ongoing after Democrats yesterday successfully stalled consideration of the bill to demand additional amendment votes. Sens. Lisa Murkowski (R-Alaska) and Maria Cantwell (D-Wash.), the Energy and Natural Resources Committee chairwoman and ranking member who are managing the debate, met this morning to negotiate a new package of amendments.

Cantwell said they had to confer with leadership this morning, but she was optimistic a deal could be announced by this afternoon.

"I think we figured out a way to try to move forward today on some amendments and some votes," Cantwell told reporters this morning on her way into the Capitol. "So hopefully, we'll find out a way to come to agreement on a larger package."

She divulged few details on the amendment deal before it is cleared by leadership and rank-and-file members on either side of the aisle. But she said it would include items that had previously been agreed to, such as an amendment from Sen. Ben Cardin (D-Md.) addressing drinking water sources along the pipeline's route.

Eight amendments are currently pending on the bill, but it remains to be seen whether all receive a vote.

In floor remarks just before the Senate adjourned for lunch today, Murkowski said she was optimistic that a deal would be announced soon.

"I think we've had a really constructive conversation this morning and I am encouraged," she said.

OCEANS:

Sea Shepherd to spend $12M on Antarctic 'dream' ship

Published: Tuesday, January 27, 2015

Sea Shepherd plans to build its "dream" ship to combat poaching in the Southern Ocean after receiving its largest-ever donation yesterday from Amsterdam's annual Good Money Gala.

The gala awards organization -- whose website attests it is "working for a fairer, greener world" -- donated 8.3 million ($9.4 million), exceeding previous donations to the ocean conservation group.

"Sea Shepherd will now be able to have a custom-designed ship built, capable of achieving speeds that far exceed any of the vessels in our current fleet," Sea Shepherd Global Chief Executive Alex Cornelissen said. "After researching possible shipbuilders for the last two years, negotiations with Dutch shipbuilder Damen has resulted in a blueprint of our ideal ship."

Sea Shepherd, largely known for its anti-whaling activities, returned to Antarctic waters in December 2014 to disrupt illegal fishing operations targeting Patagonian toothfish (Melissa Davey, London *Guardian*, Jan. 26). **-- DTB**

OFFSHORE DRILLING:

Man charged with faking blowout tests, lying to inspectors

Published: Tuesday, January 27, 2015

Federal prosecutors in New Orleans have charged a Houston man with lying about a blowout preventer test on an offshore oil and gas platform in 2012.

The U.S. Attorney's Office in New Orleans charged Race Addington, 49, under a bill of information with two counts of making false statements to federal agencies about tests performed Nov. 27, 2012, while he was the well site's supervisor. The charges carry a maximum penalty of 10 years in prison and $500,000 in fines.

A pressure chart recording the tests showed Addington did not test a required component, prosecutors said. The document also wasn't signed or dated.

Prosecutors contend Addington had employees fake the test and then presented the chart to federal inspectors. Addington also is accused of lying to federal inspectors again the following month.

The charging document doesn't identify Addington's employer, but the location of the rig is near a gas well that leaked in July 2013. That well was owned by a subsidiary of Talos Energy LLC (AP/*Fuel Fix*, Jan. 27). **-- SP**

OIL AND GAS:

Breached saltwater pipeline lacked state inspection

Published: Tuesday, January 27, 2015

Records show North Dakota performs little oversight of its more than 20,000 miles of saltwater pipelines, like the one that ruptured earlier this month resulting in the state's largest brine spill amid the current energy boom.

Oversight has been "very, very minimal," a spokeswoman for the North Dakota Industrial Commission said.

The agency approved new regulations for the pipelines last year but has been unable to hire enough pipeline inspectors despite advertising the jobs since July 2014.

Alison Ritter, a spokeswoman for the Department of Mineral Resources, said the state did not supervise Summit Midstream Partners LLC's installation its pipeline last year.

"Being there to see what's going on is a big piece of the puzzle that we don't have right now," Ritter said (Amy Dalrymple, Fargo *Forum*, Jan. 26).

Authorities have pumped more than 4 million gallons of a mixture of fresh water, brine and oil from the ruptured pipeline near Marmon, N.D.

U.S. EPA said in a report today it remains unclear what caused the nearly 3-million-gallon spill of salt water generated by oil drilling from the pipeline Jan. 6. The agency said it has installed underflow dams meant to allow clean water to escape while trapping other fluids to prevent the material from spreading. The spill is the largest on record in North Dakota.

The spill contaminated the Blacktail Creek and reached the Little Muddy River and Missouri River, EPA said.

Spills of similar size have taken years to clean up. A spill near Alexander, N.D., from 2006 is still being remediated nearly a decade later (Regina Garcia Cano, Associated Press, Jan. 26). **-- SP**

FEDERAL AGENCIES:

Satisfaction with services hits new low -- survey

Kevin Bogardus, E&E reporter

Published: Tuesday, January 27, 2015

A survey released today has found public satisfaction with the federal government has fallen for the second consecutive year.

The report by the American Customer Satisfaction Index (ACSI) shows that satisfaction with government services declined to a score of 64.4 in 2014. That's a 2.6 percent drop from 2013's 66.1 score and the federal government's lowest score in eight years, even worse than 2010's showing of 65.4.

The survey group blamed budget-cutting measures that have eaten into federal staff and resources for the poor customer satisfaction results.

"Much like the private sector, one of the first casualties of cost-cutting is customer service," Claes Fornell, ACSI chairman and founder, said in a statement. "Due to the very nature of their business, regulatory agencies like the IRS always face user satisfaction challenges and it becomes even more difficult to maintain quality service to a growing number of users with fewer, or even the same number of people, providing those services."

As budget austerity has taken hold in Washington, D.C., the federal government has begun to shrink in size. Federal agencies, excluding the U.S. Postal Service, lost about 19,000 jobs last year, according to the Bureau of Labor Statistics (*Greenwire*, Jan. 14).

ACSI also found the federal government continues to rank below the private sector when it comes to customer satisfaction.

"Among more than 40 industries covered by the ACSI, only Internet service providers have a lower score," according to the group's report.

Trust also fell in federal agencies, from a score of 67 in 2013 to 66 last year.

No federal department scored above 75.6, the national ACSI average score for customer satisfaction, though the Department of Defense came close with a score of 73, the highest total earned among the government departments last year.

ACSI's 2014 report on federal government services was based on interviews with 1,772 users. Those surveyed by the group were randomly selected and contacted by phone and email between Oct. 17 and Nov. 1, 2014.

WATER:

Nonprofit honors 3 programs for innovation

Annie Snider, E&E reporter

Published: Tuesday, January 27, 2015

The U.S. Water Alliance today recognized three innovative water programs with its annual U.S. Water Prize.

The awards, given every year since 2011, honor organizations working to promote the value of water and taking an integrated approach to sustainability.

This year's winners:

- San Diego's Public Utilities Department for its water purification demonstration project aimed at boosting reservoirs through water reuse, which is putting the city on a path to a 20-year water reuse program aimed at supplying 83 million gallons of drinking water per day by 2035.

- The Electric Power Research Institute for its water quality trading project. The effort has worked with power companies, farmers, state and federal agencies, and environmental groups, and last year it conducted the first interstate trade (*Greenwire*, March 10, 2014).

- The Coca-Cola Co. for its work toward becoming water-neutral by 2020. The company has so far replenished more than 60 percent of its total beverage volume in North America, according to the alliance.

"These are inspiring organizations," Dick Champion, chairman of the U.S. Water Alliance's board of directors, said in a statement. "They are at the forefront of improving and protecting the health of U.S. watersheds. Through technology, collaboration and education, these organizations are driving the United States to a more sustainable water future."

Winners will be honored at an award ceremony in Washington, D.C., in April.

DRINKING WATER:

Salt water creeps toward 'very, very pure' La. aquifer

Published: Tuesday, January 27, 2015

The Baton Rouge aquifer in Louisiana is known for its purity and taste, making it "totally unnecessary" to filter water for drinking in the area, according to Hays Owen, senior vice president and chief administration officer for the Baton Rouge Water Co.

"The water that we pump out of the ground today [is] rainwater from about the time of Christ in Vicksburg, Miss.," Owen said, adding that the groundwater is treated only with "a little chlorine" before it is piped into homes. "It's very soft and it's very, very pure, having gone through a natural filtration process over time."

The high water quality is thanks to loose rocklike sand that sits below East Baton Rouge Parish and acts as a natural filter. The sand is between 5.4 million and 2.6 million years old, meaning it has very low mineral content to contaminate the water.

Unlike drought-prone areas of the United States, the region isn't threatened with a dried-up water source, but it is under threat from saltwater intrusion.

A geological fault currently holds salt water back from infiltrating freshwater aquifers. But daily pumping of 200 wells causes pressure changes that allow salt water to seep into freshwater pockets.

The threat is serious, said Anthony Duplechin, executive director of the Capital Area Groundwater Conservation Commission. It's "a matter of managing the resource that we have," he said (Emily Lane, New Orleans *Times-Picayune*, Jan. 26).

On Thursday, the Water Institute of the Gulf issued a report called "Into the Blue" pushing for a study of the aquifer in hopes of preserving it.

By researching the aquifer and how often it is recharged with rainfall, the institute is hoping to help maintain it and avoid future conservation issues.

"We see this as the first step in an ongoing process," said Phillip LaFargue II, associate director of communications for the institute (Amy Wold, Baton Rouge *Advocate*, Jan. 26). **-- AW**

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CLIMATEWIRE — Wed., January 28, 2015

READ FULL EDITION

1.WEATHER:

Climate models overestimate 'historic' storm in NYC; other areas slammed

As snow continued to fall in Boston and other parts of eastern Massachusetts yesterday afternoon, National Weather Service Director Louis Uccellini said the term "historic" could still apply to snowfall amounts recorded in those areas.

2.AGRICULTURE:

The difficult art of communicating climate change to farmers

As a sociologist, J. Gordon Arbuckle Jr. spends a lot of time studying what shapes farmers' views and responses to climate change. It's a subject that has not gotten much attention, even as more research focuses on how to reduce agricultural greenhouse gas emissions and how to make farming more resilient to the impacts of extreme weather.

TODAY'S STORIES

3.POLICY:

FERC leader sees multiple roles for her agency in EPA's power plant rule

4.SCIENCE:

Corals may be more resilient to climate change than previously thought -- study

5.REGULATION:

Some utilities could benefit from regional cooperation on EPA's Clean Power Plan

6.TRADE:

Driven by Asia, global shipping volumes and emissions will multiply

7.NATIONS:

Australian temperatures are rising faster than in the rest of the world

8.NATIONS:

Government pushes solar in Bangladesh

9.HYDRAULIC FRACTURING:

British Parliament members call for fracking ban, citing climate change, health concerns

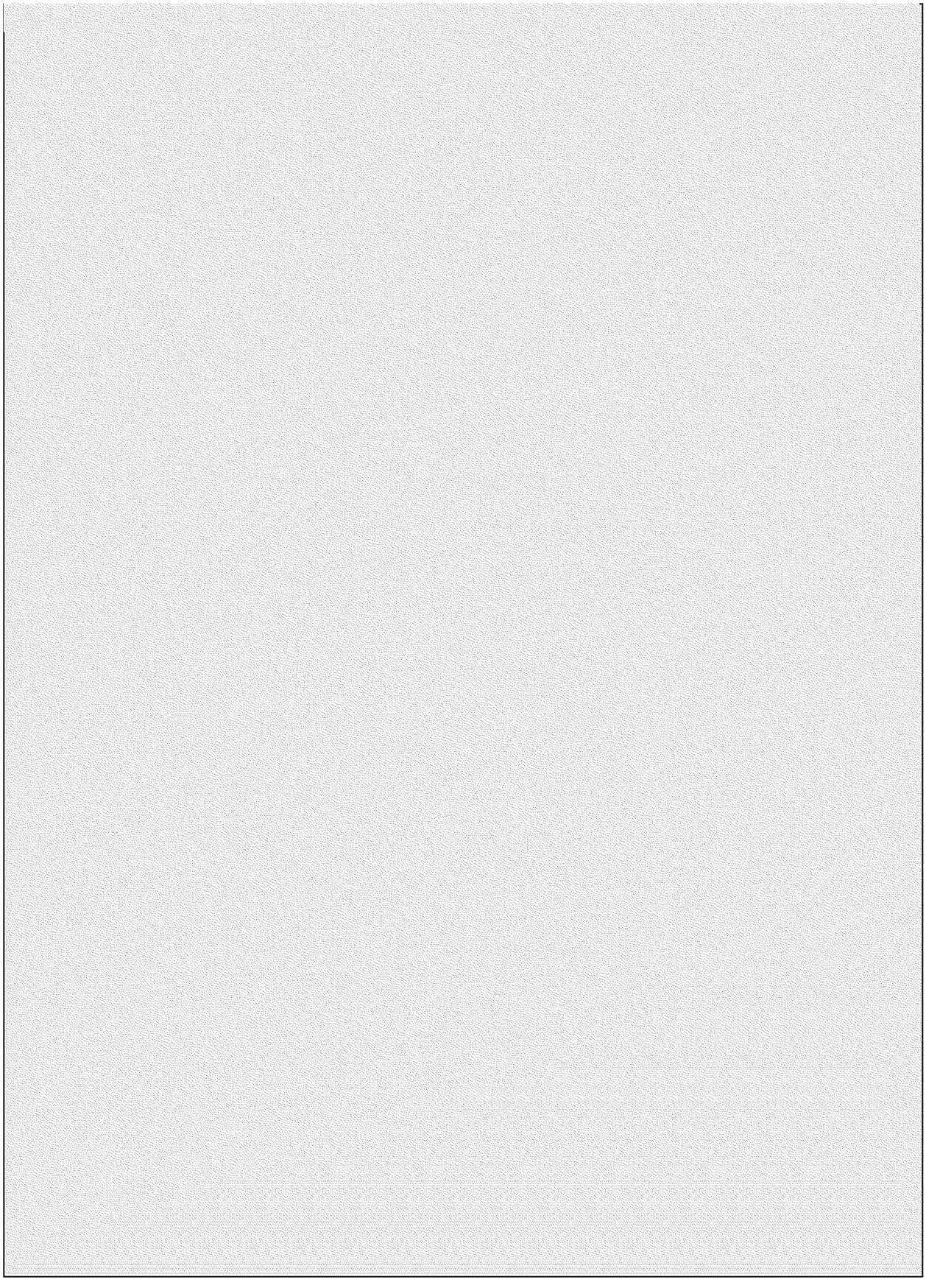
10.CITIES:

Copenhagen builds world's first climate change-adapted neighborhood

E&ETV'S ONPOINT

11.NATURAL GAS:

Ex-FERC Commissioner Spitzer discusses impact of White House NEPA guidance on pipeline, export facility approvals



AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., January 28, 2015

READ FULL EDITION

1.OFFSHORE DRILLING:

Obama exploration plan hits an industry slowed by pricing uncertainty

The East Coast could become home to a booming offshore energy industry -- but only if the price of crude oil recovers substantially.

TOP STORIES

2.GRID:

Midwestern utility bets big with EV charging network

3.REGULATION:

FERC chairwoman says electric grid challenges require 'more than tinkering'

4.ELECTRICITY:

La. regulator touts role of gas, questions solar incentive

ELECTRICITY

5.RENEWABLES:

NextEra expects business boost from EPA climate plan

6.UTILITIES:

Power companies puzzle over rooftop solar programs

OIL AND GAS

7.REGULATION:

Texas reverses itself on urban oil and gas inspections

8.REGULATION:

Pa. data show wide pattern of gas drilling problems -- report

9.HYDRAULIC FRACTURING:

Congressman seeks redress for property owners harmed by N.Y. fracking ban

10.PEOPLE:

Lawyer joins growing Houston energy practice

11.CALIFORNIA:

Los Angeles oil drilling plan scrapped

12.HYDRAULIC FRACTURING:

Enviros accuse Ohio regulator of violating federal chemical disclosure rules

13.REGULATION:

Okla. considers bills to rescind local drilling control

E&ETV'S ONPOINT

14.NATURAL GAS:

Ex-FERC Commissioner Spitzer discusses impact of White House NEPA guidance on pipeline, export facility approvals

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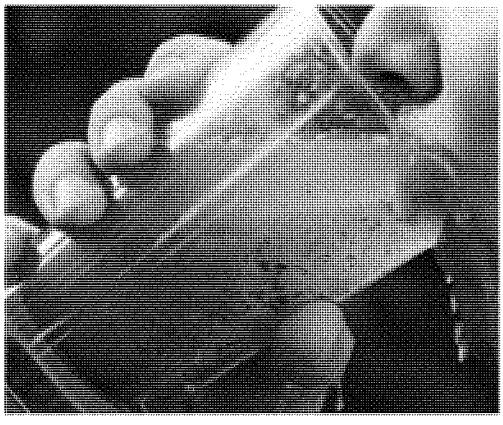

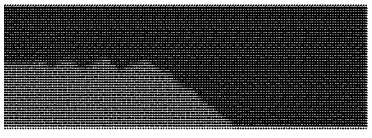

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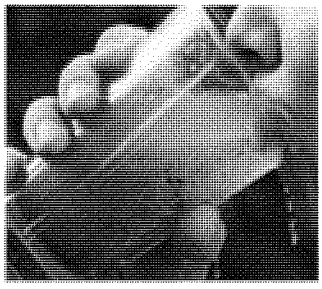

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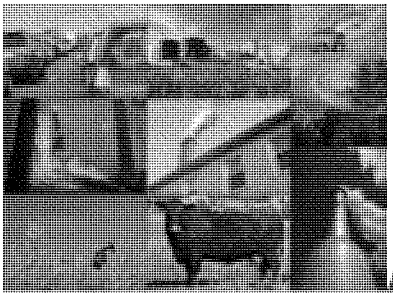

Air & Radiation Law News

for January 27, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

Energy, Climate Pacts Between Obama, Modi Expected to Help Air Quality in India's Cities

Air Force One descended through an acrid smog when it landed in New Delhi on Jan. 25. A day later, haze obscured the visibility of fighter jets flying over President Barack Obama and Prime Minister Narendra Modi as they watched the Republic Day...

Air Pollution

EPA Seeks Cost-Effective Reductions In Aerospace Sector Air Toxics Proposal

Facilities manufacturing aerospace vehicles and components would be required to meet new standards for emissions of hazardous air pollutants from the application of specialty coatings under a proposed rule issued by the Environmental...

Air Pollution

McCarthy Approves Withdrawal of Limits On PVC Facility Emissions, Cites Faulty Data

Environmental Protection Agency Administrator Gina McCarthy has approved the withdrawal of process wastewater emissions limits for polyvinyl chloride resin facilities that were based on erroneously submitted industry data....

Climate Change

Rhetoric on EPA, Climate Show Divisions Among Republican Presidential Hopefuls

One likely Republican presidential candidate called the Environmental Protection Agency "locusts" while another compared climate change to a "sunburn," exposing a contrast with several other likely contenders within...

Climate Regulation

Business Groups Support Clean Power Plan

The Environmental Protection Agency's proposed Clean Power Plan will provide market incentives for the power industry to shift away from coal to cleaner energy sources, business groups told members of Congress in a Jan. 26 letter. The...

Climate Regulation

EPA Tells D.C. Circuit States Lack Standing In Settlement on Power Plant Proposed Rule

West Virginia and 11 other states are not harmed by a 2010 settlement agreement in which the Environmental Protection Agency said it will propose carbon dioxide emissions limits for power plants, and they can't challenge the settlement...

Energy

China Biodiesel Industry Development Plan Encourages Foreign Corporate Investment

China's National Energy Administration has issued a biodiesel industry development plan and called on

provincial governments to help bolster the industry to produce cleaner fuels and use recycled oils as a way to reduce waste and curtail...

Energy

Clean-Energy Goals of India's Modi Face Financial, Political Obstacles

India's Prime Minister Narendra Modi says the world's third-biggest polluter is ready to take on global warming. Money and politics stand in his way, however....

Energy

India's $160 Billion Solar Industry Plan Draws Obama Pledge for Financial Support

India's audacious plan to create a solar industry on the scale of China's almost from scratch gained credibility with President Barack Obama's pledge to lend U.S. financial support for the program....

Energy

Vote to Limit Debate on Keystone Fails As Democrats Rebel Over McConnell Tactics

A procedural vote to advance legislation that would bypass the Obama administration and approve the Keystone pipeline failed Jan. 26 after Democrat supporters of the bill rebelled due to what they called heavy-handed tactics by Senate Majority...

Hazmat Transport

OMB Completes Railroad Risk-Reduction Review

The White House Office of Management and Budget completed Jan. 23 its review of a Federal Railroad Administration risk-reduction program proposal that would affect certain railroads carrying hazardous materials. The proposal, which the...

Hazmat Transport

Railroads Start Mobile Tool With Hazmat Data

The Association of American Railroads has developed a mobile application to boost available information for emergency responders responding to rail incidents, including incidents that include hazardous materials, an association spokesman...

Radioactive Waste

Canada Expected to Decide This Year Whether to Build Radioactive Waste Site

Canada is expected to decide this year whether to authorize construction of an underground disposal facility for low- and intermediate-level radioactive waste, the country's nuclear regulator said....

Regulatory Policy

EPA's Failure to Conduct Jobs Review Harms Businesses, Coal Company Says

The Environmental Protection Agency's failure to conduct a mandatory review of the impact its air and climate rules have on jobs has caused direct economic harm to businesses, a coal company told a federal district court (Murray Energy...

Renewable Energy

Interior Clears $2 Billion Renewables Plan For Southwest; Impact on River Decried

The Interior Department has announced approval of a $2 billion infrastructure project designed to promote wind and solar power development in the Southwest....

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Inside EPA's **Risk Policy Report**, 01/27/2015

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Latest News

EPA Outlines Slew Of Procedural Flaws With States' Suit Over GHG ESPS

EPA is outlining a slew of procedural flaws in a suit filed by 12 states over the agency's proposed greenhouse gas (GHG) standards for existing power plants, arguing the suit should be dismissed because the states lack legal standing and that the court lacks jurisdiction to hear the novel challenge because the proposed rule is not yet final.

In High-Profile NSR Suit, Ameren Fights DOJ Bid To Reveal Talks With UARG

Ameren is urging a federal district court judge to reject a Department of Justice (DOJ) motion seeking to compel the company to reveal talks it had with the Utility Air Regulatory Group (UARG) as part of a high-profile new source review (NSR) case, saying the information DOJ wants is privileged and the judge should reject the motion.

News Briefs

API Files Suit Over EPA's Oil Sector GHG Reporting Rule

The American Petroleum Institute (API) is suing EPA over its recently finalized revisions to its greenhouse gas (GHG) reporting rules for the oil and natural gas sector, after the group last year raised concerns that the proposed changes to the rules could be too expansive and not allow enough time for the sector to comply.

Greenwire

ENERGY EFFICIENCY:

Dilbert's an MVP in EPA's booming battle of the buildings

Katherine Ling, E&E reporter

Published: Monday, January 26, 2015

George McDowell delayed retirement to help his Delaware school district slash its energy consumption.

A former social studies teacher, building administrator and facilities manager, McDowell, 68, has added part-time energy manager to his résumé at the Red Clay Consolidated School District in and around Wilmington.

"My friends ask, 'Why are you still working? Why don't you want to retire?'" he said with gusto in a recent interview. "Because I am already doing want I want to do. I love it!"

No joke. McDowell is as gaga for energy efficiency as he is for his beloved Dallas Cowboys. It shows in how his voice rises and hands gesture when talk turns to the Cowboys -- or saving power.

And it's also no joke that U.S. EPA is gaga for people like McDowell. He and other energy efficiency

enthusiasts are star players in EPA's National Building Competition that for the last five years has pit one group of power misers against another to see who can be energy's "biggest loser."

The 2014 competition offered a new wrinkle as each participant had to enter a "team" of five or more buildings. The Cincinnati-based grocery chain Kroger Co. led the field with a team of 2,326 stores. EPA will continue the team concept in this year's contest.

Last month marked the final "weigh in" for 5,500 buildings in the 2014 competition. Final scores will take several months to calculate, EPA says.

But the sheer number of entries last year marks a huge win for EPA given that the initial competition in 2010 had only 14 entries, according to Lauren Hodges, communications director for EPA's Energy Star building program.

"Our partners were beating their heads against the wall to get people in their building to try and achieve these goals," Hodges said. "The competition was the first time it really clicked and really happened, and they are seeing savings like they have never seen before."

Energy efficiency boosters say conservation is the cheapest "fuel" capable of dramatically cutting electricity bills and emissions of heat-trapping greenhouse gases.

Because buildings use almost 75 percent of U.S. electricity, a National Academy of Sciences panel says improved efficiency in buildings "offers the greatest possibility for U.S. energy savings."

Maximizing energy efficiency measures could potentially cut building energy use to as low as 16 quadrillion British thermal units in 2050, or about 70 percent below business-as-usual estimates, according to the Rocky Mountain Institute, an efficiency booster and researcher.

George McDowell, energy manager for Delaware's Red Clay Consolidated School District and Dallas Cowboys fan. Photo by George McDowell.

But energy efficiency means more than flipping switches and installing fancy equipment. A critical key to success: behavior modification.

Can people be taught to turn off computers at night? Can they reset heating and cooling systems to sync with office hours?

Some progressive companies like office supply retailer Staples Inc. use automatic systems to circumvent the human factor to save energy, but most companies can't or won't pay for what seems like a simple act of turning off a light switch.

"The average building wastes 30 percent of its energy," Hodges said. "Through the competition, they see the 'lowly' cubicle dweller can make a difference."

'Small nudge ... can go a long way'

There are no cash prizes for National Building Competition champions. They get nice plaques and bragging rights.

But the competition does generate national recognition for winners and leverage for building managers pushing for expanded energy-conservation budgets or a way to persuade tenants to be smart about energy use.

"The underlying economics are so positive that a small nudge of a competition can go a long way toward driving performance," said Cliff Majersik, executive director of the Institute for Market Transformation. "Those conversations are directly valuable to empower the people that make buildings better."

The competition is also open to any building -- old or new -- that boosts facilities that can't meet the high standards of EPA's Energy Star certification. To earn an Energy Star label, a building must score 75 or higher, which would place it in the top 25 percent of similar facilities nationwide.

Majersik said the competition provides hard numbers for buildings trying to qualify for financing for efficiency improvements.

"When you have a competition like this, it shows buildings all over the country that have achieved savings at that level, that another prospective building can point to," he said. "People often think many things are not possible, and the best way to counter that is to show that not only is it possible, but here it is."

The competition is an incentive to improve energy consumption -- but it also presents bonus visible publicity for companies already making energy efficiency improvements anyway.

At the midpoint weigh-in last year, drug retailing giant Walgreen Co.'s five stores led the competition.

Doug Latulippe, director of demand-side programs at energy management firm Burton Energy Group, worked with Walgreens on some energy efficiency improvement projects that just happened to coincide with the timeline of the 2014 competition. He persuaded his client to enter Walgreens into the competition to showcase the savings.

Latulippe's firm is also an integral part of energy conservation at Staples, which has been a player in the EPA building contest for the past several years. Staples eliminated its "low-hanging" efficiency improvements long ago -- actually placing it at a disadvantage in the competition -- so continuing to find the extra percentages of improvements for the company is still exciting, Latulippe said.

"Staples is a much different animal," he said. "Staples would be doing this if there were no competition. We would be in this facility making these improvements just because that is what Staples does."

But the competition does give Latulippe and his team another excuse to check in with Staples' managers to ensure they are following their company's best practices -- something he says all businesses and buildings can do for instant and easy energy savings. The competition also drives Staples' managers "to put their best foot forward" and increases competition between facilities providing those extra savings, he

said.

Not just for the 'rah-rah' type

For McDowell and the Red Clay schools, the competition helped to highlight the culmination of energy efficiency improvements the New Castle County district is making as part of a major capital and renovation process.

Water conservation joins EPA's building competition

The EPA National Building Competition also tracks water use, although only 700 of 5,500 buildings in the 2014 contest chose to compete in that category.

Water conservation became part of the 5-year-old building competition in 2012.

Water and energy "do tie together," said Lauren Hodges, communications director for EPA's Energy Star building program.

"Certainly, there is a lot of energy intensity inherent in water use," she said. "Reducing the amount of water use is reducing energy use," and vice versa.

Doug Latulippe, director of demand-side programs at energy management firm Burton Energy Group, said water conservation is growing in importance, but water bills don't cost as much as electric bills unless a company is in the hotel or restaurant business.

"We care. We don't want to waste it. But at the end of the day, you start talking to public companies thinking about profits, and you are just not going to be able to get the kind of resources allocated to water because the cost just isn't there," he said.

Some buildings did enter the water contest from Cassidy Turley, a leading real estate property manager that merged with global commercial real estate services provider DTZ at the beginning of the year. For them, the competition adds "an extra incentive," said Katie Ross, the firm's sustainability manager.

-- Katherine Ling

Many Red Clay schools are already Energy Star-certified, and several of the schools have "green ribbon" committees to work on energy efficiency efforts, McDowell said. Energy is also embedded in the curriculum of the middle and high schools, including a science high school that has a solar panel lab.

Still, McDowell said he didn't want to let a good competition go to waste. He not only entered about two dozen school buildings in his district, he tried to whet the competitive appetites of the district's 16,000 or so students by entering the elementary, middle and high schools as separate teams.

At the competition's midpoint, Red Clay high schools commanded third place with an 8.6 percent reduction in energy usage, with the elementary team placing seventh with 6 percent reduction and middle schools a close eighth place with 5.7 percent reduction.

"I was very surprised that the high schools are doing so much better," McDowell said. "Because of the involvement of people, I thought elementary schools would do the best. ... Elementary school kids are

more of the 'rah-rah' type. You can get them more involved in that type of thing. They are less cynical."

For Cassidy Turley, a leading U.S. commercial real estate services provider that recently combined with global real estate firm DTZ, the competition helps the firm's building managers boost the enthusiasm of their tenants, who command about 70 percent of their buildings' power demand, to cut energy use. Cassidy Turley merged with DTZ, a global leader in commercial real estate services, earlier this month under new ownership and a new DTZ brand.

The Chicago-based firm doesn't own the buildings it manages, so capital improvements such as a new sensor-based lighting system aren't necessarily on the table. And not all its clients want their energy consumption information to be public.

But internal recognition and positive public relations for the buildings -- an attraction for new tenants -- are a powerful motivator, according to Katie Ross, the firm's sustainability project manager.

"Last year, we had a building that placed 12th in the whole competition with a 29.2 percent reduction, and that really sparked, I think, great interest in the competition, and the Cincinnati team was really, really proud and excited about that," she said.

The company's 12th-place finish means a lot given that the competition had 3,200 entries.

The firm's 2014 team included 125 buildings in 14 states. For each competition, Ross and her sustainability team provide communication materials, an educational video and tips for "150 ways to save energy," but each facility has its own plan, Ross said.

One building engineer decided to reward occupants with "green bucks" certificates to use at the cafeteria whenever a person was seen turning a light off or using the stairs, for example, she said.

'Coopetition'

EPA is not the only federal agency to use competitions to spur progress in energy efficiency or other areas where regulation isn't desirable or possible.

The Energy Department has also held several competitions to boost clean technology development (*E&ENews PM*, May 20, 2014) and create applications for DOE energy data (*Greenwire*, Feb. 17, 2014).

And the National Oceanic and Atmospheric Administration has joined EPA and other agencies in hosting a competition for the most inexpensive and best sensor for nutrients in water (*Greenwire*, Dec. 18, 2014).

Congress has also promoted the use of prizes and competitions by federal agencies to spur private-sector investment.

House Science, Space and Technology Chairman Lamar Smith (R-Texas) has said agencies aren't using competition enough and included language for further guidance on prize authority and flexibility to partner with the private sector last year in a bill, H.R. 4186, to reauthorize the National Science Foundation (*E&E Daily*, April 10, 2014).

With EPA and many other agencies facing budget cuts and likely further financial constrains in the future, this combination of cooperation while competing is very cost-effective, the Institute for Market Transformation's Majersik said.

"We call it 'coopetition,'" Majersik said. "This is a new trend this challenge program where they try to instill this coopetition -- cooperating with each other at the same time competing to do their best."

Another bonus: Unlike regulations, competition is unlikely to get mired in a long court fight.

Regulations are valuable, Majersik said, but because of the human element and ecosystem of different elements in a building, "you can't regulate [buildings] like a furnace."

Much of the energy savings depends on good facility managers, and the competition helps raise their profile, he said.

"This is a little-recognized profession that usually labors in obscurity without credit or recognition for the importance of what they do," Majersik said. "Recognizing the performance of a building is effectively recognizing the facility managers who are doing a good job."

CLIMATE:

Experts grapple with meaning of U.S.-India accord

Jean Chemnick and Hannah Northey, E&E reporters

Published: Monday, January 26, 2015

The climate deal that President Obama and Indian Prime Minister Narendra Modi announced yesterday in New Delhi did not rise to the level of last year's U.S.-China agreement, either in substance or in the media attention it attracted.

The world's third-highest emitting country did not pledge to cap its emissions at any point in the future, as Chinese President Xi Jinping surprised the world by doing in November. Instead, the agreement between Obama and Modi included general statements about "enhancing bilateral climate change cooperation" in advance of this year's push by the United Nations to reach agreement on emissions and finance at a December conference in Paris (*Climatewire*, Jan. 26).

It also again promised U.S.-India cooperation to curb heat-trapping hydrofluorocarbons (HFCs) under the Montreal Protocol, which governs ozone emissions. And it called for India to expand -- with U.S. assistance -- its efforts to develop and deploy renewable energy, building and appliance efficiency and non-HFC cooling agents. The White House statement on the deal made an opaque reference to India's intent to put forward an economywide renewable goal in the near future, but it does not say how ambitious that would be.

None of these actions equated to China's much-vaunted commitment last year to stop growing its emissions by no later than 2030 and to draw 20 percent of China's energy from renewables by the same year.

That promise -- released during a November summit in Beijing together with a U.S. pledge to cut greenhouse gas emissions between 26 and 28 percent below 2005 levels by 2025 -- injected some new life into the flagging U.N. process. And Obama touted it in last week's State of the Union address to argue that his administration isn't acting alone to combat warming (*E&E Daily*, Jan. 20).

But critics of the administration said they expected the White House to lose little time in trumpeting its newest bilateral climate agreement as further evidence that Obama is not putting the United States out on a limb by enacted policies to reduce its emissions.

"It's tailor-made for the White House, Democrats and Republicans to play it however they want to play it,"

predicted Frank Maisano of Bracewell & Giuliani, who has followed international climate politics for two decades.

While the India agreement is not substantial, Maisano said the administration would certainly feature it again and again in the run-up to Paris. And Republicans would target it as further proof that Obama is negotiating climate deals that saddle the United States with a disproportional share of the emissions-reduction responsibilities, he said -- a point that Sens. Roy Blunt (R-Mo.) and James Inhofe (R-Okla.) drove home in an amendment they offered last week to legislation on the Keystone XL oil pipeline.

Messages will vary, Maisano said, from "see, India's doing something" to "see, India's doing nothing" to "see, India is willing to talk."

"You're going to see people pulling what they want to out of it in the Capitol Hill debate and the White House debate," he said.

But climate advocacy groups who follow the international climate negotiations said yesterday's deal had the potential to turn the corner on the sometimes troubled relationship between the United States and India over climate change. India is perhaps the staunchest defender of the argument that developing nations should not be compelled to shoulder mandatory reductions in the context of an international climate agreement because their historic responsibility for the problem is small and their economies must have room to grow. And the United States has said that while wealthy nations should put forward more ambitious pledges, all major emitters must accept responsibilities under any agreement.

This clash over "equity" has often plagued the international negotiations.

But David Waskow, director of the World Resources Institute's International Climate Initiative, said yesterday's agreement showed that the United States and India could work together on achieving reductions.

"Having that kind of strong working relationship in place can be very important, including for the outcome in Paris," he said.

In a press briefing with Obama yesterday, Modi made it clear that he did not see China's actions last year as applying pressure for India to act, asserting that "India is an independent country."

But Waskow said that India's proportional responsibility for global emissions is actually quite small, and its commitment to renewable energy growth has been significant.

Where China's per capita emissions stand at 8 tons of carbon dioxide per person per year and the United States' at 20, India's is 2 tons.

And in its quest to provide its citizens with power, India has often reached for renewable energy rather than fossil fuels. The country has few fossil fuels resources, and Modi's government in particular has embraced renewable energy as a way to expand access to electricity in a way that will be cost-effective in the long term, Waskow said.

The country already has a commitment to use 100 gigawatts of solar energy by 2022 -- an amount 30 times greater than the country's current solar capacity. And it is mulling a 60-GW commitment for wind energy by the same year.

The economywide goal referenced in the White House statement could build on those policies, Waskow said, and could form the basis for India's national commitment to bend the curve on emissions as part of the Paris accord.

That package "could represent the kind of commitment that will help underpin the kind of global ambition we need," Waskow said.

Countries are encouraged to put forward their pledges toward the Paris deal by the end of March, and the United States, European Union and China are expected to meet that soft deadline. India is expected to take a few extra months to formulate its pledge.

On calls last week ahead of Obama's India visit, other experts in Indian energy policy pushed back against the popular perception -- not only from Republicans in the United States but from some climate activists -- that the country is not doing enough to address emissions.

The narrative goes that India is more concerned with economic development and pulling its population out of poverty than it is with climate change, they said. And while that is true, Modi's government in particular has said those two goals are not incompatible.

"One of the frustrations that many of us in India feel with the perceptions that India is perhaps a laggard on climate policy is that we feel sometimes that India is judged less by what it does and more by what it says," said Navroz Dubash, senior fellow at the New Delhi-based Centre for Policy Research.

India may still say that emissions reductions are the responsibility of the developed world, he said. But while his country is urbanizing and industrializing quickly, it is often doing so in a way that reduces its carbon intensity -- not only out of concern for the environment but as a way to expand access to power and attract international development of the kind Obama announced yesterday.

And the Indian public is starting to talk about the need for India to address warming -- a departure from past messaging on the issue, Dubash said.

In his statement yesterday at the briefing, Modi said that while the U.S.-China deal did not obligate India to act, it did feel that obligation.

"When we think about the future generations and what kind of world we are going to give them, then there is pressure," he said.

"Climate change itself is a huge pressure. Global warming is a huge pressure. And all those who think about a better life and a better world for the future generations, those who are concerned about this, then it is their duty and their conscience, they would want to give a better lifestyle to the future generations, a good life and a good environment," he said.

Nuclear 'breakthrough'

Besides calling for collaboration on the Paris agreement and the Montreal Protocol effort to curb HFCs, the U.S.-India deal includes several energy-related commitments.

These include expanding a program funded by both countries that conducts research on solar, building efficiency and advanced biofuels, and the creation of a new U.S. AID field officer position to help mobilize private capital for the clean energy sector.

The two presidents also announced this weekend that they had reached an agreement that could break a yearslong impasse over liability concerns and pave the way for U.S. companies to build and service nuclear reactors for tens of billions of dollars in India.

"Today, we achieved a breakthrough understanding on two issues that were holding up our ability to advance our civil nuclear cooperation, and we're committed to moving toward full implementation," Obama said at a briefing at the Hyderabad House in New Delhi yesterday. "This is an important step that shows how we can work together to elevate our relationship."

Obama and Modi's announcement stems from a Section 123 agreement between the United States and India, which allows for civil nuclear trade between the two countries.

General Electric Co. and Westinghouse Electric Co. have for years signaled concerns with laws in India that hold reactor developers -- not just operators -- liable when accidents occur (*Greenwire*, Jan. 22).

Deputy National Security Adviser Ben Rhodes said during a press briefing that India proposed a way to create an insurance pool to cover reactor accidents and the country had committed financial resources to mitigate risk for companies doing business in India.

"So in terms of the two governments, we believe that we have reached an understanding on these critical issues that have been an impediment to moving forward in the last several years," Rhodes said. "At the same time, it's ultimately up to U.S. companies to make their own determinations about whether and when to invest in India and to move forward."

Rhodes said the agreement represented a "win-win" for the United States and India.

Danny Roderick, president and CEO of Westinghouse, said during an interview with NDTV, an Indian television outlet, that he's optimistic about the announcement but waiting to review what insurance will ultimately be offered.

Westinghouse has been working to finalize a contract with Nuclear Power Corp. of India to build a nuclear plant in Gujarat, despite frustrations over liability (*Greenwire*, Sept. 26, 2013). Roderick said companies can't agree to "unbound" risks under "unclear law" in India.

"We're offering to bring in our experience into an existing program," he said, adding that Westinghouse could build the plant in Gujarat during the next decade. Roderick said he was planning to meet with Modi and would seek for India to issue a mandate related to the announcement this week.

"That mandate to execute what we heard this week is really going to be necessary to make this happen," he said.

Dan Lipman, the Nuclear Energy Institute's executive director for policy development and supplier programs, said in an email that the Indian nuclear market is ideal for U.S. reactor vendors hoping to export their technology.

"It is a significant market with exceptional talent that would make ideal partners for companies within the U.S. nuclear industry," Lipman said. "It represents the potential for major bilateral benefits beyond hardware exports for the Indian operating nuclear fleet or new project sales. However, this hope has been stymied by the lack of adequate liability protection of the type that exists in other major nuclear markets."

TRANSMISSION:

Jewell defends SunZia approval over congressman's criticism

Scott Streater, E&E reporter

Published: Monday, January 26, 2015

Interior Secretary Sally Jewell and the Army this weekend defended the decision to approve a contested New Mexico-to-Arizona transmission line project that they say should spark renewable energy development in both states without interfering with a missile testing range or harming cultural resources in the region.

The proposed route of the 515-mile-long SunZia Southwest Transmission Project has been sharply criticized by New Mexico Rep. Steve Pearce (R), who says the power line will harm the mission of the Army's White Sands Missile Range in his home state and damage American Indian cultural sites.

As expected, Jewell announced Saturday at a ceremony in Albuquerque, N.M., that she has approved a record of decision (ROD) authorizing the project, which is projected to carry at least 3,000 megawatts of what proponents say will be mostly wind- and solar-generated electricity from northeast New Mexico to an electric distribution point northwest of Tucson, Ariz.

"I would say that going 515 miles across a lot of different jurisdictions takes a village to get approved, and it takes a fair amount of time," Jewell said.

Phoenix-based SunZia Transmission LLC has committed to bury up to 5 miles of the power line in three segments running near the White Sands Missile Range as part of an agreement to alleviate Department of Defense concerns that the high-tower line's route could disrupt the testing and training mission of the missile range.

Jewell, New Mexico Sen. Martin Heinrich (D) and Katherine Hammack, the Army's assistant secretary for installations, energy and environment, all noted during the ceremony the collaboration and cooperation that was needed to approve the power-line project, which proponents say will allow the vast renewable energy resources in both states to be developed and delivered to major load centers across the West.

"This is really a big deal for the state of New Mexico," Heinrich said. "It's a great thing for our nation and for our energy security, but we are a state that, we all know, has an enormous capacity for renewables. But we've never seen those resources fully tapped, and that's what this transmission line is all about. It is about unlocking that potential in a way that puts New Mexicans to work."

The project must still obtain state permits and local siting approval in both New Mexico and Arizona, SunZia Transmission LLC said in a statement Saturday. The developers are also still working on completing financing for the $2 billion project, which they have said they want to construct and bring online by 2020.

But the ROD is a major milestone for the project that has been under federal review for six years.

The SunZia project was one of seven proposed transmission lines the Obama administration in 2011 placed on a list of pilot projects overseen by the Rapid Response Team for Transmission, an interagency effort to speed approval of transmission projects. SunZia is the first of those pilot projects to receive final federal approval along the line's entire route.

Jewell said the SunZia line is a major advancement of President Obama's 2013 Climate Action Plan, noting that if the line eventually carries 3,000 MW of renewable energy, that would provide enough electricity to power 1 million homes across the desert Southwest while displacing emissions of 4.5 million metric tons of carbon emissions per year -- the equivalent of removing nearly 900,000 cars from the road.

"The president just a few days ago in his State of the Union address talked about energy and climate change. The president has talked about an all-of-the-above energy strategy, and this [SunZia project]

represents an energy future, an energy future that is not subject to commodity prices ... we have no control over," Jewell said, referring to the boom-and-bust cycle of the oil and gas industry. "We do have control over renewable energy."

Lingering criticism

But Interior's approval of the SunZia project has come under fire from Pearce, whose district includes the White Sands Missile Range.

Pearce on Friday, the day before the ROD announcement ceremony, blasted the scheduled approval of the SunZia project's route near the missile range, which he said will ultimately compromise the range's mission, and thus national security (*E&ENews PM*, Jan. 23).

The section of line proposed to be buried wouldn't touch any of White Sands' 2.2 million acres of withdrawn federal lands, but it would cross a roughly 35-mile section of restricted airspace referred to as the missile range's Northern Extension Area. The area is used in weapons testing and training exercises.

While the Pentagon has long expressed concerns that a high-tower power line across the area would interfere with the range's mission, former Defense Secretary Chuck Hagel agreed last year to drop DOD's objections to the SunZia project if sections of the line near the range are buried.

Despite that agreement, Pearce in his statement Friday insisted that the SunZia project "will dramatically impair" the range's mission "to test defense systems critical to the protection of our nation and troops."

He also said that the chosen route of the line "will encroach upon, damage, and potentially destroy ancient Pueblo sites," though he was not specific on where these sites are located.

"Green-lighting the completion of SunZia along the chosen route is a reckless rush to judgment without thorough examination," he said.

Jewell, without mentioning Pearce by name, directly addressed those criticisms during Saturday's ceremony, particularly concerns about impacts to American Indian cultural sites.

"Many, many Pueblos in New Mexico and Indian tribes in the state of Arizona were part of our process to make sure that as we traverse these 515 miles, we pay attention to their interests, as well," Jewell said.

"So the line was moved out of concerns the San Carlos Apache tribe expressed about its original alignment; the line was moved because of suggestions from the Department of Defense," she added. "The Isleta Pueblos worked with us in walking what will be the buried sections of the line to make sure we're not impacting cultural sites. So those are just a few examples of the village it takes to do something like this."

Hammack, the Army assistant secretary, also defended the project Saturday, saying the buried sections near the White Sands Missile Range will not interfere with the missile range.

Burying sections of the line that cross the Northern Extension Area "will allow the important testing and training missions of White Sands Missile Range to continue," while also assisting the Obama administration's efforts "to integrate renewable energy and provide pathways for renewable energy resources so they're not stranded in areas."

"The SunZia power line makes America stronger and allows for a more rapid infusion of renewable energy into the power grid and stimulates jobs," she said. "And I think that's a win-win for everybody."

BIOFUELS:

In patent dispute, Supreme Court sides with startup

Amanda Peterka, E&E reporter

Published: Monday, January 26, 2015

The Supreme Court today sided with startup company Gevo Inc. in a lingering dispute over patents for technology related to the commercial development of an advanced biofuel, isobutanol.

The justices vacated a federal appeals court ruling that last year upheld two patents belonging to Butamax, a BP PLC-DuPont Co. joint venture, in a lawsuit alleging that Gevo infringed on the patents. The case now goes back to the appeals court for reconsideration.

The high court's decision comes on the heels of its ruling last week that an appeals court had used the wrong standard of review in a similar patent dispute between pharmaceutical companies.

Colorado-based Gevo and Butamax have been developing technology to produce isobutanol, a promising advanced biofuel that can be used in higher volumes in petroleum fuel than conventional ethanol. Both companies have developed fermentation technology to produce isobutanol from retrofitted corn ethanol plants.

Gevo owns and operates a completed retrofit ethanol plant in Luverne, Minn., that is producing both isobutanol and conventional ethanol. Butamax has yet to open its first isobutanol facility.

The two companies have been sparring in the courts for more than four years over patents to the technology. At issue in the Supreme Court case are patents that cover Butamax's broad technological pathway for making isobutanol; Butamax first sued Gevo in 2011 in the U.S. District Court of Delaware, accusing it of infringing the patents.

Butamax twice appealed rulings by the lower court, which found that Gevo's technology did not fit into the definition of enzymes in Butamax's patents. In Butamax's successful appeal last year, the U.S. Court of Appeals for the 3rd Circuit modified what the district judge had determined the patent claims meant, paving the way for Butamax's infringement suit to continue.

But in a 7-2 ruling last week, the Supreme Court justices ruled in the similar case *Teva Pharmaceuticals USA Inc. v. Sandoz Inc.* that a federal appeals court should have deferred to a district judge's findings.

The Gevo case was one of three cases that the court today remanded in light of its ruling in *Teva*. Justice Samuel Alito did not participate in the consideration of or ruling on *Gevo Inc. v. Butamax Advanced Fuels LLC*.

Last week, Gevo Chief Legal Officer Brett Lund characterized the *Teva* decision as a big victory (*E&ENews PM*, Jan. 20).

"Obviously, this is a huge win for us because there's no higher court than the U.S. Supreme Court. There's no mechanism to further challenge this at a higher court," Lund said. "What this does is make it clear that we're not utilizing any of this technology in their patents."

In a statement today, Butamax said it was still confident it would win its lawsuit.

"In the light of the *Teva* ruling, we were expecting the Supreme Court to refer the Butamax case back to the federal circuit for consideration," Butamax said. "However, we remain confident the federal circuit's earlier decision in our favor will be confirmed."

RENEWABLES:

AWEA's Kiernan talks future of PTC support following Obama remarks on wind power leadership

Published: Monday, January 26, 2015

Did President Obama's State of the Union remarks on wind power's leadership role indicate a shift in support for the production tax credit? During today's OnPoint, Tom Kiernan, CEO of the American Wind Energy Association, explains why his industry continues to need the PTC, despite its global leadership. He also talks about his organization's lobbying strategy for the Republican-controlled Congress.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Tue., January 27, 2015

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1.CALIFORNIA:

Natural gas's role in state's low-carbon future comes with caveats

LOS ANGELES -- The head of the California agency keeping the state on track to meet its ambitious climate goals didn't rule out the long-term use of natural gas yesterday but said she also sees caveats on the horizon.

2.ENERGY EFFICIENCY:

Chinese developers get active building passive energy homes

QINHUANGDAO, China -- In 2009, Wang Zhen, a property developer in this northeastern Chinese city, made a risky decision. If it were proved wrong, Wang would lose millions of dollars and his hard-earned reputation. Wang decided not to have district heating in a condominium that he was about to build. In a city where temperatures often drop below zero in winter, most buildings use the city-distributed system; otherwise, occupants there would freeze. But families living in Wang's units didn't. Instead, they became occupants of the first Chinese passive building.

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Cap and trade's political impact on gas prices will be felt when fuel prices turn around ARB leader

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Private agreement is better than law at protecting Amazon, scientists assert

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Wood burning is not a major threat to the climate -- study

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Biden asks Caribbean islands to use drop in oil price to invest in renewables

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Asia-Pacific region faces stiff problems in addressing climate change, experts say

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R.I. embraces adaptation solutions for its coastline

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Ongoing severe drought threatens millions
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No El Niño relief for Texas
12.ADAPTATION:
More suffering for the poor as climate change develops

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., January 27, 2015

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1.ELECTRICITY:
Northeast blizzard evokes polar vortex -- and region's gas pipeline shortages

Juno, the massive blizzard slamming the Northeast and New England today, is likely to rekindle memories of last year's polar vortex that severely stressed the region's power grid and sent electricity prices soaring. It may also lend some urgency to the region's dormant discussion on how to accomplish the construction of new natural gas pipeline capacity as well as transmission lines, which stakeholders agree is the only long-term solution to volatile pricing for natural gas and, in turn, electricity.

TOP STORIES

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Uncertainty reigns as Shell preps for Chukchi drilling
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Senate amendment is first wave in coming refiners-vs.-producers battle
4.COLORADO:
An 'ambitious' year of rulemaking ahead for energy regulators

ELECTRICITY

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Fla. utility sees nuclear delays as generation needs increase
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EEI spokesman returns to Hill

OIL AND GAS

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Enviros reach settlement with Wyo. regulators, Halliburton on fracking disclosure
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$18B deal would merge pipeline entities
9.TRANSPORT:
Lawmaker sees 'unacceptable hazards' in Calif. oil train plan
10.PEOPLE:
Law firms announce moves in Colo., Calif.
11.PRODUCTION:

Colo. driller idles completions in response to low energy prices

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Okla. court to consider oil companies' liability for temblors

13. HYDRAULIC FRACTURING:

Sand suppliers brace for oil slump's ripple effects

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Lawmakers float $2.5M plan to probe earthquakes

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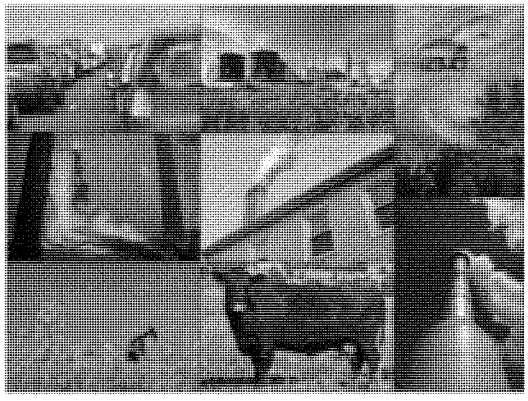

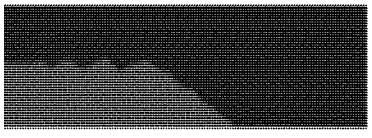

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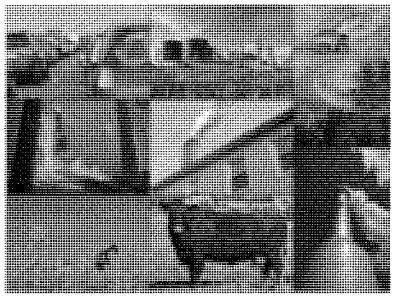

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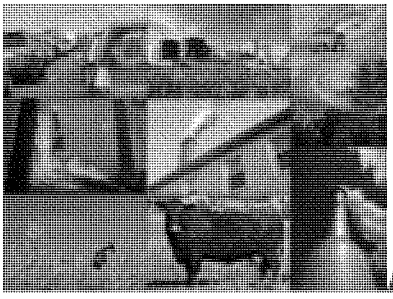


Air & Radiation Law News

for January 26, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

Case Studies Show Efforts to Reduce Fine Particulates Under Congestion Program

Four case studies developed by the Federal Highway Administration highlight examples of effective efforts to reduce diesel particulate emissions and improve regional air quality under the Congestion Mitigation and Air Quality Improvement...

Air Pollution

Downwind Areas Defend EPA's Authority, Approach to Regulating Interstate Pollution

The Environmental Protection Agency had the authority to issue federal implementation plans under its Cross-State Air Pollution Rule and properly implemented the Clean Air Act's "good-neighbor" provision, according to...

Canada

Newfoundland Publishes Environmental Action Plan

The Canadian province of Newfoundland and Labrador has published a five-year action plan intended to boost its environmental performance. The plan for 2015 through 2019 includes 46 commitments in five strategic areas, and includes electric...

Climate Change

Cargill Adapting Plans on Construction, Investment to Account for Extreme Weather

Cargill Inc., an agricultural trader and the largest closely held company in the U.S., is adapting its construction and investment plans to take into account extreme weather amid concern about climate change....

Climate Policy

House Bill Seeks Task Force to Study Short-Lived Climate 'Super Pollutants'

Rep. Scott Peters (D-Calif.) has introduced a bill to establish an intragovernmental task force to coordinate efforts to reduce emissions of short-lived but extremely potent greenhouse gases....

Climate Regulation

Oil, Gas Industry Challenging EPA Rule Phasing Out Alternate Emissions Reporting

The petroleum and natural gas industry has filed lawsuits challenging an Environmental Protection Agency rule that phases out use of alternative methods for calculating emissions under the greenhouse gas reporting program (Am. Petroleum...

Energy

Final Senate Vote on Keystone Expected Week of Jan. 26; McConnell Files for Cloture

Senate Majority Leader Mitch McConnell (R-Ky.) filed a motion for cloture on Keystone pipeline legislation (S. 1) late Jan. 22, setting up a vote on final passage on the bill that would bypass the Obama

administration's review of the Canada-to-Texas...

Energy

India Clean-Energy Investments Rose
13 Percent to $7.9 Billion in 2014

Clean-energy investments in India increased to $7.9 billion last year and are expected to surpass $10 billion in 2015....

Energy

Upcoming Obama Visit Sparks Debate
On Implications of India Nuclear Power

It's a $182 billion question for India with no easy answer....

Enforcement

Salvage Managers Sentenced, Ordered
To Pay $10.3 Million for Asbestos Violations

Five managers of a salvage company were sentenced to prison terms and ordered to pay $10.3 million in restitution Jan. 22 after having earlier pleaded guilty to allowing workers to be exposed to asbestos during a commercial demolition project...

EPA

EPA Solicits Input as It Continues to Develop
E-Enterprise Online Information Portal

The Environmental Protection Agency announced it will hold three webinars as it continues work toward the development of its E-Enterprise portal, an online website that will aim to promote cooperative environmental federalism with real-time...

Hazmat Transport

Bill Would Establish Committee, Standard
On Hazmat Electronic Shipping Documents

Rep. Daniel Lipinski (D-Ill.) introduced a bill Jan. 22 to create an advisory committee on electronic shipping documentation for hazardous materials and, eventually, a voluntary standard on the issue....

Hazmat Transport

PHMSA Proposes Rule to Respond To NTSB, Industry, Clarify Hazmat Rules

A variety of shippers and carriers would see clarified or relaxed requirements related to the transport of hazardous products such as acetylene cylinders under a Pipeline and Hazardous Materials Safety Administration proposed rule published...

Ozone Depletion

EPA Extends Exemption Allowing Production Of Ozone- Depleting Substances for Lab Use

The Environmental Protection Agency is authorizing the production and import into the U.S. of class I ozone-depleting substances for laboratory and analytical uses through the end of 2021....

Regulatory Policy

House Committee to Take Up Regulatory Reform Bill

The House Judiciary Committee will mark up another in a series of bills aimed at reducing regulatory burdens Jan. 27. The Small Business Regulatory Flexibility Improvements Act, which has yet to be formally introduced, would amend the Regulatory...

Renewable Energy

Gulf Power Co. to Construct Solar Facilities At Three Military Bases in Western Florida

A Florida utility company is seeking state approval to build solar farms on three military bases with a total capacity of 120 megawatts, which together would represent one of Florida's largest solar power projects in operation....

Trade

WTO Members to Engage in Trade, Environmental Goods Negotiations

World Trade Organization participants in the plurilateral Environmental Goods Agreement will convene for negotiations Jan. 26 through Jan. 30. ...

BNA INSIGHTS

Obama Administration Sharpens Focus on Reducing Methane Emissions

On Jan. 14, 2015, the Obama Administration announced a number of actions to reduce methane emissions in the United States. On the heels of that announcement, the Environmental Protection Agency released its own strategy to reduce methane...

Latest News

'Clean' Utilities Attack Bid To Cite High Court Ruling To Undermine CSAPR

Clean utilities that generate much of their power from lower-emitting natural gas or other alternatives to coal are attacking coal utilities' push to use the Supreme Court's ruling upholding EPA's Cross-State Air Pollution Rule (CSAPR) as a basis for reopening challenges to various provisions of the rule, saying the effort misreads the ruling.

EPA Places Onus On States To Curb Ozone Interstate Transport Problems

EPA in a new policy memo is placing the onus on states to meet their Clean Air Act good neighbor obligations to curb interstate transport of ozone-forming air pollution that the agency will then review, a break from EPA's earlier decision to impose federal transport plans on states through its Cross-State Air Pollution Rule (CSAPR).

Industry, Environmentalists Spar Over EPA's Combustion Air Rule Package

Industry and environmentalists are sparring with competing claims on the legality of EPA's package of combustion emission rules including its boiler air toxics standards, with industry renewing a push to soften the regulations while environmentalists say the policies are too weak and fall short of stricter limits the Clean Air Act requires.

Greenwire

WHITE HOUSE:

National Park Service official expected to take reins at CEQ

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The White House is planning to hire a National Park Service official and public lands expert to take the helm at the Council on Environmental Quality, according to two sources familiar with the administration's plans.

Christy Goldfuss, who's now deputy director of congressional and external relations at the Park Service, will soon join CEQ as a senior adviser, according to CEQ spokeswoman Taryn Tuss. She's expected to ultimately replace acting CEQ Chairman Mike Boots, who's slated to step down in March after leading the agency for the past year, the two sources outside the White House told *Greenwire*.

Goldfuss will be central to the administration's work on climate change -- a priority for the remainder of the term, Tuss said today in a statement. She declined to comment on personnel shuffles that may occur when Boots leaves his office. "She will help oversee implementation of the President's Climate Action Plan and work with other White House partners on new strategies to tackle this global challenge, and will continue to advance the President's agenda for protecting the lands and waters Americans value."

Goldfuss will be part of a new green leadership team in the White House.

Obama's top environmental aide, John Podesta, plans to leave the administration next month. His energy portfolio will be taken over by White House budget expert Brian Deese, the White House announced this week (*E&E Daily*, Jan. 22). Along with Deese and Obama's special assistant for energy and climate, Dan Utech, Goldfuss would be tasked with pushing through the White House environmental agenda during the administration's final years.

Goldfuss didn't respond to requests for comment on the appointment.

It's unclear whether the administration would officially nominate Goldfuss to the post, which requires Senate approval, or opt to avoid what would likely be a tough confirmation battle by keeping her there in an acting capacity. Several sources have speculated that the White House is unlikely to make a formal CEQ nomination, given the GOP ire toward the administration's environmental policies.

Prior to joining the Park Service in 2013, Goldfuss was director of the public lands project at the Center for American Progress, the liberal think tank founded by Podesta. Deese, too, is a CAP veteran -- he was a senior analyst for economic policy at the think tank before joining the Obama administration. Podesta has likely had a central role in lining up new leadership as he plans his exit from the White House.

Goldfuss paid several visits to the White House last fall, according to the most recently released visitor logs. She met twice for one-on-one meetings with Boots in September, the records show, and attended another September meeting with Podesta along with fellow Park Service employee Theodora Chang.

Before starting at CAP in 2011, Goldfuss worked for the Democratic staff of the House Natural Resources Subcommittee on National Parks, Forests and Public Lands. Before that, she was a federal preservation advocate for Environment America and was a television reporter in Nevada and California.

Some people familiar with Goldfuss' expected appointment have expressed concern over her perceived

lack of experience for the job, which requires coordinating the administration's environmental effort across federal agencies.

Goldfuss and Deese are not "known forces of nature within the community that would be people you'd love to see in that role," said one source familiar with the White House plans.

But Deese has won accolades from many in the green community and from former administration colleagues. And several people who have worked with Goldfuss described her as a seasoned operative who would be a good fit at CEQ.

"Christy Goldfuss combines deep substantive knowledge with political savvy, legislative acumen, communications clarity and a collaborative working style," said Daniel Weiss, senior vice president for campaigns at the League of Conservation Voters, who worked with her at CAP. "She is a great candidate for a senior administration leadership role."

Goldfuss "brings a lot to the equation," said a former Obama administration official who worked with her.

"I think there will be people questioning whether she's experienced enough for this job or senior enough," that person added. But at this point in the administration, "it's probably most important that the CEQ chair have good relationships with key players. Christy is a known quantity and she has very strong personal qualities and may well be a very good fit for what needs to happen here in the last two years -- which is largely implementing the president's agenda."

Reporter Phil Taylor contributed.

AIR POLLUTION:

Sloppy lab work forces EPA to trash data, put state in Clean Air Act limbo

Amanda Peterka, E&E reporter

Published: Friday, January 23, 2015

Problems at a suburban Chicago laboratory forced U.S. EPA to toss out three years of data on airborne soot and to sideline decisions on whether Illinois and parts of Indiana and Missouri comply with the Clean Air Act standard for fine particulate matter.

As a result of the 2013 lab audit, EPA labeled all of Illinois "unclassifiable," meaning people don't know if they're being exposed to unsafe levels of air pollution and efforts to ratchet down pollution levels are being delayed.

"It means that the communities don't know whether they need to be doing more to clean up," said Janice Nolen, assistant vice president of national policy at the American Lung Association. "In many of these areas, national steps are taking place, like cleaner diesel going into place and cleaning up power plants more. But we don't know if that's enough."

Illinois is not alone for having lab problems. EPA has also determined that air quality in Puerto Rico and the U.S. Virgin Islands was unclassifiable and deferred designation decisions on eight areas in Georgia that include parts of South Carolina, all of Tennessee except three counties and Florida.

The agency said it expected monitoring data collected this year to help it make decisions on Georgia, South Carolina, Alabama and Tennessee. EPA said that it discovered data quality problems in Florida that would require more to evaluate.

This is not the first time EPA has found glaring errors at labs that handle air quality data. A 2013 EPA audit found "severe deficiencies" at a lab that analyzes air quality data for Louisville, Ky. Several months of data had to be invalidated (*Greenwire*, Sept. 18, 2013).

Fine particulates -- about 1/30th the width of a human hair -- are spewed from the power plant smokestacks and automobile tailpipes. High particulate levels have been linked to lung problems, heart attacks, strokes, asthma and premature death.

In 2012, EPA tightened the fine particulate limit from 15 micrograms per cubic meter to 12 micrograms per cubic meter, based on information about health effects.

And last month, EPA released its final list of areas that don't meet that standard.

Areas that fail to meet federal air pollution standards are classified by EPA as being in "nonattainment." That designation compels states to submit to EPA and put in place pollution-control plans and let residents know there's a problem.

The Illinois "situation seems especially intolerable," said David Baron, managing attorney in Earthjustice's Washington, D.C., office. "Three years' worth of data thrown out the window, and the effect is to leave millions of people unprotected."

'Cluttered and disorganized'

The Illinois laboratory is operated in Chicago's western suburbs by the Cook County Department of Environmental Control (CCDEC). The lab has long been used by state and federal environmental regulators to analyze the state's air quality data. Along with fine particulate matter, it also handles ozone air quality analyses.

According to the Illinois EPA, the lab is funded through a combination of grants from the state and federal EPA and by Cook County. The lab operates 15 air monitors in the Chicago metropolitan and analyzes air samples collected statewide.

EPA regularly audits organizations that provide air analysis and data to the agency for regulatory purposes. The agency audited the Chicago-area lab and adjoining offices in November 2013 and completed a report in May 2014.

As detailed in the audit report, the discretions at the lab ranged from relatively minor -- "the CCDEC laboratory is very cluttered and disorganized" -- to major.

Significantly, workers failed to measure lab temperature and humidity in the lab when calculating weights of air samples, directly going against EPA quality control requirements.

"CCDEC has no practical or regulatory means of determining whether the any particular weighing meets the 24-hour average temperature and humidity conditioning criteria for being a valid weighing," Liz Naess of EPA's Air Quality Assessment Division wrote in a memorandum on audit results.

Workers also failed to properly document samples to establish their chains of custody. At times, trays of filters were placed on unstable, easily tipped garbage cans.

The lab wasn't operating under an approved quality management plan, and standard operating procedures were incomplete, EPA found.

The lab also lacked an equipment inventory, making it difficult for workers to know what tools were available. In some cases, staffers were using older equipment when new equipment was available. Staff also did not have adequate transportation to get to and from the air monitors located in Cook County.

The Cook County Department of Environmental Control partly blamed its problems with data quality on a high turnover rate among employees.

The department has "experienced a high turnover rate recently and has suffered a loss of institutional knowledge, skills and experience," the audit report says. The Cook County Department of Environmental Control indicated to the federal auditors that "data quality has suffered as a result."

Citing the audit, EPA not only labeled all of Illinois unclassifiable but also parts of Indiana that are near Chicago and parts of Missouri near St. Louis. The agency invalidated data from 2011 to 2013.

"At this time EPA does not consider the data from the Illinois network valid for regulatory purposes," Naess wrote.

State urged 'nonattainment' label

EPA's final decision labeling areas whose air was tested by the Cook County lab "unclassifiable" diverges from recommendations submitted by the state of Illinois to EPA at the beginning of the designation process.

In a December 2013 letter, Illinois EPA recommended that EPA designate parts or all of 12 counties in "nonattainment" with the fine particulate standard.

The areas are clustered in northeast Illinois -- surrounding and including Chicago and at the Missouri line near St. Louis. The areas had been previously found to be out of compliance with the old, less stringent particulate standards.

"As violations of the annual PM2.5 standards have been measured in these areas, designating them as nonattainment is appropriate," Illinois EPA wrote.

David Bloomberg, manager of the air quality planning section at Illinois EPA, said the state was unaware of the data problems at the lab when it made its recommendations to EPA. Since the scathing audit, the state has worked with both EPA and Cook County to make improvements.

Bloomberg said data generated at the lab have been clean since last July. Both EPA and an independent contractor hired by EPA have reaudited the lab and found no significant problems.

"We continue to work with Cook County to ensure that we are still looking at the data integrity and quality, and verifying it, as we continue moving forward," Bloomberg said.

EPA requires three years of data to make an air quality determination. Once it has three years of clean data from the Illinois lab, the agency could revisit its "unclassifiable" decision at any time.

Baron of Earthjustice said, though, that he believed that it was probably unlikely that the agency would change its decision regarding Illinois, given past precedent. It's more likely that the data would be used for designation decisions for a new particulate matter standard; under the Clean Air Act, EPA is supposed to review and decide whether to revise the 2012 standard in 2017.

Earthjustice and the American Lung Association have argued that EPA is compelled by the Clean Air Act to label areas in nonattainment where the most recent clean data show there's been a violation of the standard.

The groups say Chicago and St. Louis have exceeded the 2012 standard for every three-year period prior to 2011.

They also say data quality issues should never have happened in the first place.

"Honestly, the state messed up. It's what it came down to," said Brian Urbaszewski, director of environmental health at the Chicago-based Respiratory Health Association. "It's embarrassing. You can't go back and reconstruct that. It is spilled milk. Once the problem was discovered, that was an issue, they fixed it fairly quickly. Unfortunately, no one caught that problem for a long time."

'Steady march of transition'

Environmentalists are not the only ones to express concern at the issues unearthed at the lab or EPA's decision to label Illinois and parts of Indiana and Missouri unclassifiable.

A coalition of Indiana steel producers slammed EPA's decision to wrap two counties in Indiana in the Illinois unclassifiable label because EPA couldn't tell whether those counties were contributing to a violation in the Chicago area.

Indiana had recommended that Lake and Porter counties be designated as in attainment with the standard.

Nolen of the American Lung Association said that public health advocates were concerned that the data quality issues in this round of particulate designations also highlighted larger concerns about infrastructure problems in the nation's monitoring network (*Greenwire*, March 31, 2014).

To be sure, it's unclear whether the recommendations by Illinois and neighboring states would have been finalized absent the data issues.

While Illinois regulators recommended nonattainment for Chicago, it's "not clear that the Chicago area ever would have been in nonattainment," Bloomberg of Illinois EPA said.

Newer data that were not accounted for in the state's recommendation indicated that Chicago's air was cleaner, he said.

Urbaszewski, who has worked on air issues in Chicago for 17 years, said that his group was concerned about chronic air quality problems in southeast Chicago stemming from stored piles of petcoke from refineries.

But Urbaszewski also acknowledged that the air quality in Chicago has improved over time. Recent environmental initiatives by all levels of government, from federal diesel standards to new local regulations requiring the full enclosure of petcoke piles, are in effect or set to go in effect to reduce levels of fine particulate matter in the area. Many area power plants have reduced or ceased burning coal.

"Every day is a steady march of transition" from coal-fired power plants to renewable energy, he said. "We just want it to go as fast as possible."

NATURAL GAS:

Contentious Northeast pipeline expansion advances

Hannah Northey, E&E reporter

Published: Friday, January 23, 2015

Federal regulators today issued a positive environmental review of a controversial natural gas project in the energy-starved Northeast that's pitting supportive unions against environmental groups and some landowners.

Spectra Energy Corp.'s proposal to expand its pipeline system running through New York, Connecticut, Rhode Island and Massachusetts would have some adverse environmental effects that could be mitigated, staff at the Federal Energy Regulatory Commission said in a final environmental impact statement for the project.

FERC commissioners will now review the staff's findings. Spectra still needs approval from state regulators and the U.S. Army Corps of Engineers.

Spectra in its Algonquin Incremental Market (AIM) project is asking to upgrade more than 20 miles of pipeline, build at least 5 miles of additional pipeline and upgrade six compressor stations -- all changes that would boost gas shipments along the East Coast.

Spectra has touted the project as a critical means for boosting supplies of Appalachian gas to the Northeast, a region of the country notorious for energy shortages during severe winter weather. A coalition of bipartisan senators including Maine Independent Sen. Angus King joined, Republican Sens. Kelly Ayotte of New Hampshire and Susan Collins of Maine, and Democratic Sens. Richard Blumenthal of Connecticut and Jeanne Shaheen of New Hampshire, have recognized the need for new infrastructure in the area and called on FERC last year to conduct an expeditious and thorough review of Spectra's proposal.

But community and environmental groups throughout the Northeast opposed to fossil fuels -- including "Stop the Algonquin Pipeline Expansion," or SAPE, and "Fighting Against Natural Gas," or FANG -- have formed or joined forces to protest the AIM project and other proposed pipelines.

At a FERC scoping hearing last September in Westchester County, local unions and environmental groups clashed over the project. With unions chanting in the background, Suzannah Glidden, chairwoman of the environmental advocacy group Hands Across the Border, criticized the project, saying it would cross fault lines and run too close to the Indian Point nuclear plant in New York on the east bank of the Hudson River.

But FERC staff rejected that claim in the environmental review.

FERC staff noted the Nuclear Regulatory Commission found that a breach and explosion of the proposed 42-inch-diameter natural gas pipeline would not "adversely impact the safe operation" of the Indian Point plant.

FERC also addressed a variety of environmental and routing concerns, finding that Spectra could mitigate adverse effects.

The project, FERC staff said, would cross the Hudson River in New York, which contains threatened and

endangered species and anadromous fisheries. Spectra's steps, which the U.S. Fish and Wildlife Service found to be sufficient, would minimize effects on fish habitat and managed species, the agency's staff wrote.

FERC staff also found the project would affect more than 52 acres of wetlands in New York and Connecticut but wouldn't result in any permanent loss of those lands. Spectra, according to the EIS, would take steps to protect effects on migratory birds near the Hudson River.

Algonquin is also implementing a construction plan to minimize traffic, noise, emissions and other effects on at least 332 homes and apartment buildings within 50 feet of the work area, which FERC staff found acceptable.

Lastly, the staff said no proposed alternative routes were a better option, noting that the bulk of the pipeline would be within existing rights of way or replace existing pipelines.

"We determined that none of the route or site alternatives or variations would offer significant environmental advantages over the project," they wrote.

KEYSTONE XL:

Coal lobby blasts into pipeline debate, bashing climate votes

Manuel Quiñones, E&E reporter

Published: Friday, January 23, 2015

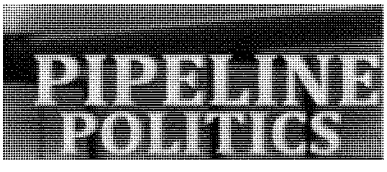
The American Coalition for Clean Coal Electricity, one of the fuel's top lobby groups in Washington, D.C., has been blustering in its criticism of recent votes meant to get lawmakers on the record about climate change.

This week, the Senate approved an amendment saying climate change is real and not a hoax. But lawmakers rejected other amendments -- one Democratic and another Republican -- saying human beings are having an impact. The GOP version failed by one vote.

Laura Sheehan, top spokeswoman for the group, took particular aim at the amendment by Hawaii Democratic Sen. Brian Schatz, which said humans are having a significant impact on the Earth's climate.

"At one time, the liberal wing of the Senate cared first and foremost about the American middle class," she said. "Unfortunately, it seems that some, like Sen. Brian Schatz, would rather exacerbate ideological divisions than come together and make meaningful progress on a measure that will help the very base his party claims to support."

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. **Click here** to view the special report.

Schatz and other Democrats who have pushed climate amendments to legislation approving the Keystone XL pipeline bill have defended their moves by touting the benefits of debating one of the important issues of the day.

"Interactions on the floor have been civilized and smart," Schatz said yesterday. "I think we're making incremental progress, I don't want to overstate it. It hasn't been a bad couple of days for our cause."

Several pro-coal lawmakers, including Democratic Sens. Heidi Heitkamp of North Dakota and Joe Manchin of West Virginia, voted for the Schatz language (*E&E Daily*, Jan. 22).

Manchin also pushed an amendment of his own declaring the importance of dealing with climate change but also recognizing the continued relevance of fossil fuels. He called for a focus on investment to make them cleaner, which dovetails with ACCCE's goals.

"I like Joe Manchin's amendment," Schatz said. "And I like that Joe Manchin has an amendment. More than the particulars of the language, I think it's important he's trying to contribute meaningfully to this debate."

Schatz added, "I was trying to amend his amendment during [Democratic] caucus luncheon; we were only one word off, so that's pretty good. It happened to be the word 'fossil.'"

But ACCCE feels the focus is misplaced. "Perhaps the American people should demand an amendment be added that examines what Sen. Schatz and his colleagues who support this measure have contributed to real priorities like improving the economy, protecting jobs and moving our country forward," Sheehan said in a statement.

ACCCE did support an amendment by Sen. Roy Blunt (R-Mo.), which failed to get the necessary votes for passage, against President Obama's recent climate deal with China (*ClimateWire*, Jan. 23).

The group cites a study by research firm Management Information Services Inc. for St. Louis-based Peabody Energy Corp., which said the deal would hurt the U.S. economy while allowing the Chinese economy to continue growing.

"President Obama's radical overseas environmental agenda will force America to partake in agreements that jeopardize our economic competitiveness and national security," Sheehan said in another statement. "Sen. Blunt's amendment is an important step in putting an end to the Obama administration's unchecked unilateralism."

Earlier in the week, ACCCE CEO Mike Duncan made similar comments against the president following his State of the Union address, which prominently featured climate.

"In his State of the Union address tonight, President Obama failed to offer answers about the calamitous consequences of his environmental regulations," Duncan said. "Rather than seek a common-sense energy plan for America, President Obama bypassed Congress and is forging ahead with his climate crusade at the expense of the nation's economic security."

ACCCE members hired Duncan, a former Republican National Committee chairman, in 2012 ahead of that year's elections. He then tapped Capitol Hill Democratic staffer Sheehan the following year to redo the group's messaging.

Sheehan this morning said ACCCE's goal is not to express denial of climate change, but rather to criticize certain lawmakers' priorities. She also expressed support for the KXL bill.

"We are merely pointing out the hypocrisy of the Democratic Party that repeatedly says it is for the working class, yet repeatedly plays games with legislation that will result in jobs and increased energy security," she said. "Senators on both sides need to focus on moving bipartisan legislation that benefits America."

Outgoing Peabody CEO Greg Boyce, who has also been outspoken on regulatory issues, this week coupled trends in the oil markets with industry claims that Obama administration rules will boost power prices.

"It's unacceptable that we as a nation would allow growing pain at the plug to replace the pain at the pump that has been recently eased by falling oil prices," he said.

A debate is ongoing within the fossil fuel industry over how united different interests should be in opposition to the administration's agenda. Natural gas, which generally burns cleaner than coal, has fared better under White House plans.

But Charles Drevna, president of the American Fuel & Petrochemical Manufacturers, said, "This shouldn't be an argument, whether it's oil or coal or natural gas or any other fossil fuel. We're all in this together." He added, "Winston Churchill once described an appeaser as one who feeds a crocodile, hoping it will eat him last."

Reporter Jean Chemnick and Nick Juliano contributed.

FUEL EFFICIENCY:

Inhofe calls for revamp of CAFE standards

Sean Reilly, E&E reporter

Published: Friday, January 23, 2015

The existing framework of vehicle fuel efficiency standards is "broken" and needs congressional review, Senate Environment and Public Works Chairman Jim Inhofe (R-Okla.) said yesterday after meeting with General Motors lobbyists.

In a news release, Inhofe touted a provision added to a recently enacted defense bill giving automakers the chance to earn credit toward meeting the corporate average fuel economy (CAFE) standards by making vehicles capable of running both on gasoline and natural gas. But Inhofe said the provision addressed only "a small portion of the inequality" in the program.

While Inhofe also intends to address broader concerns with the CAFE program, "he is not yet announcing his next steps," spokeswoman Donelle Harder said in an email.

Accompanying yesterday's release was a photo of Inhofe with two GM officials at the Washington Auto Show. While the photo does not say who the men are, GM spokeswoman Sharon Basel this morning identified them as Mark Kemmer and Joseph Guzzo, both of whom are part of the company's Washington lobbying team, according to Senate public disclosure records.

The provision in the fiscal 2015 National Defense Authorization Act (H.R. 3979) signed last month is

based on a bill (S. 2065) introduced last February by Inhofe and then-Sen. Carl Levin (D-Mich.) and referred to the Senate Commerce, Science and Transportation Committee.

The bill never got a hearing in that venue. But Levin, now retired, chaired the Senate Armed Services Committee last year while Inhofe was the ranking Republican, giving them considerable sway over the contents of the defense bill. In statements after the measure won final congressional approval, the two senators said it would foster the spread of vehicles able to run on relatively clean-burning natural gas.

Enactment "moves natural gas one step closer toward becoming a mainstream fuel for our everyday cars," Inhofe said.

But Dan Becker, director of the environmental advocacy group Safe Climate Campaign, yesterday called the new incentive an expansion of a "sham" program dating back to the late 1980s that gives car companies CAFE credit for making vehicles capable of running on both regular gas and E85 ethanol.

That original program was the brainchild of GM, Becker said in an interview. A 2002 Transportation Department report concluded that it had almost no impact on ethanol consumption, and "nothing has changed" since then, Becker said. He also noted that the Senate Commerce Committee, not the Environment and Public Works panel, has jurisdiction over the CAFE program.

The most recent CAFE standards require automakers to achieve an average fuel economy of 54.5 mpg by model year 2025. While it's hard to say how much of an impact the new incentive will have, GM's Basel said, she expressed appreciation for Inhofe's "leadership" and called the program important both "in terms of product development and satisfying the demand in the marketplace."

FEDERAL AGENCIES:

Union pans bill to cap workforce

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The largest government employee union is attacking House Republicans' latest effort to slash the size of the federal workforce.

Earlier this week, Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) reintroduced legislation that aims to limit new federal hires to one employee for every three that retire or leave service. According to the co-sponsors, H.R. 417 would save about $35 billion over five years without forcing current employees out of their jobs.

But J. David Cox, president of the American Federation of Government Employees, today called their effort "misguided legislation" that would "arbitrarily slash the size of the federal workforce without doing away with any of the work, forcing agencies to rely on more expensive contractors."

"Rep. Lummis trotted out this bill in the last Congress and it was rejected by Democrats and Republicans alike," he said in a statement.

Lummis, the new chairwoman of a subcommittee charged with overseeing environmental and energy agencies, said in an interview this month that she'd continue this year with her efforts to downsize the government workforce. "I continue to believe that that's a good idea and responsible policy," she said (*E&E Daily*, Jan. 14).

The Wyoming Republican said in a statement this week, "Attrition is a solution that requires the federal government to do what any business, state, or local government would do to cut costs -- limit new hires. Instead of blindly filling empty desks, this bill forces agencies to take a step back, consider which positions are crucial, and make decisions based on necessity rather than luxury."

Cox, however, said today that fewer employees means increasing workloads and less efficient government services.

"The number of workers employed by the federal government is currently at an all-time low -- less than 2 percent of the total U.S. workforce," he said. "If Reps. Lummis and Mulvaney believe the federal government can afford to lose another 200,000 employees in the span of a single year, then they should explain to the American public where they think these cuts should occur and what services they think we can do without."

SENATE:

With gavel in hand, Murkowski prepares for 'big issues'

Published: Friday, January 23, 2015

Sen. Lisa Murkowski (R-Alaska) is poised to tackle thorny energy issues with her trademark steady and methodical approach in her new post as chairwoman of the Senate Energy and Natural Resources Committee.

Hailing from the resource-rich state of Alaska, Murkowski told the *Houston Chronicle* she plans to take charge of debates over the Keystone XL pipeline, oil exports, offshore drilling, renewable power and access to federal lands.

Another issue Murkowski is pushing for is the approval of a road through a wildlife refuge that would connect an isolated Alaska community with medical and emergency care. The issue has faced controversy, and the Department of the Interior has blocked the road's construction.

One of Murkowski's biggest obstacles is finding common ground with Democrats on the committee who do not share the Alaska senator's views on many issues.

"She has strong views, and she is committed to those views," said former Sen. Jeff Bingaman (D-N.M.), a previous committee chairman. "But she was willing to let the process work itself out and have votes on issues, and that's the way the Senate is supposed to work."

Murkowski came to the Senate amid controversy in 2002 when she was appointed by her father to fill the seat he had just vacated for the governor's mansion. Voters re-elected her to a full six-year term in 2004. But she hit a stumbling block in 2010, when she lost her Republican primary campaign to tea party favorite Joe Miller. She returned to Washington, D.C., however, after launching only the second successful write-in campaign in Senate history.

A third-generation Alaskan, Murkowski takes a more nuanced view on energy and environmental issues than many of her Republican colleagues. On one hand, she is a strong supporter of oil and gas development. But she also is sensitive to the threats of a melting Arctic.

"I am allegiant, faithful to the people of Alaska -- period," she said. "Yes, I am a member of the Republican majority ... but I have always put the best interests of Alaska and Alaskans ahead of my

party."

On Wednesday, Murkowski made her most visible break with her GOP colleagues when she joined just 14 other Republicans on a vote affirming humans' contribution to climate change (*E&E Daily*, Jan. 22).

"You should never be afraid to take on the big issues," Murkowski said. "But timing with the big issues is important, and if the time isn't necessarily here, then [you consider] how to advance the conversation so it is right" (Jennifer A. Dlouhy, *Houston Chronicle*, Jan. 22). **-- MH**

EPA:

Republican views of agency worsen -- poll

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

Republicans dislike U.S. EPA even more than they did a year ago, according to a new poll.

The survey released yesterday by the Pew Research Center shows that 51 percent of Republicans have an unfavorable impression of EPA, and 36 percent view the agency in a positive light.

Last February, GOP views were nearly evenly split, with 46 percent viewing the agency favorably and 45 percent holding an unfavorable view of EPA.

Overall, most people -- 59 percent -- see EPA positively, compared to 32 percent with negative opinions, the survey showed.

Pew's national survey of 1,504 adults was conducted from Jan. 7 to 11 and has a 2.9-point margin of error.

Democrats, meanwhile, have grown slightly more positive in their opinions of EPA. The poll found that 80 percent of Democrats see the agency favorably, compared to 11 percent who view it unfavorably. Last February, 70 percent of Democrats saw the agency positively; 21 percent had a negative view.

Among the eight agencies included in the poll, the partisan divide was starkest for EPA. Democrats also held more favorable views than Republicans of the Internal Revenue Service, the Centers for Disease Control and Prevention, and others. The CIA was the only agency included in the poll that Republicans view more favorably than Democrats.

NEW HAMPSHIRE:

Bill to abandon regional cap-and-trade program fails to gain steam

Published: Friday, January 23, 2015

A bill in New Hampshire that would pull the state from a regional initiative to reduce greenhouse gases is receiving little support.

The Regional Greenhouse Gas Initiative is a collection of nine states that sell carbon emission allowances to producers.

Supporters of the bill said leaving the partnership would help reduce electricity costs because producers would no longer be forced to purchase carbon allowances. Opponents to the bill say the initiative has not impacted local economies and, in fact, would increase costs.

"There is no negative economic impact from RGGI in the region," said Mike Fitzgerald of the Department of Environmental Services.

The state receives about $18 million a year from carbon allowance sales, which provides $15 million in ratepayer rebates and $2.6 million toward energy efficiency initiatives.

In 2011, the last time Republicans controlled both chambers of the state Legislature, lawmakers voted to repeal New Hampshire's membership, but then-Gov. John Lynch (D) vetoed the legislation. Republicans once again control both chambers, but many conservative lawmakers are wary of the bill.

"Repeal of this bill means higher electric rates; I'm having a hard time with that," said Republican Senate Majority Leader Jeb Bradley (Kathleen Ronayne, AP/Greenfield [Ind.] *Daily Reporter*, Jan. 22). **-- MH**

ARCTIC:

State Department, Disney discuss 'Frozen' spinoff on climate change

Published: Friday, January 23, 2015

The State Department's special representative for the Arctic said he has been in discussions with Disney over turning the popularity of the 2013 film "Frozen" into a way to teach children about climate change's impact on the Arctic.

"I said, 'You've taught an entire generation about the Arctic. Unfortunately, the Arctic that you've taught them about is a fantasy kingdom in Norway, where everything is nice,'" retired Coast Guard Adm. Robert Papp Jr. said at the Arctic Frontiers conference in Tromsø, Norway. "And I said what we really need to do is educate the American youth about the plight of the polar bear, about the falling tundra, about Alaskan villages that run the risk of falling into the sea because of the lack of sea ice protecting their shores."

The plot of "Frozen," the highest-grossing animated film of all time, revolves around a princess freeing her kingdom from eternal winter.

Papp admitted that Disney executives were "perplexed" about how to commingle the company's usual penchant for happy endings with the bleak picture of climate change but promised that he isn't going to let the issue go as the United States starts its two-year tenure as leader of the Arctic Council by May.

"We're regrouping on our storyline, and we still have Disney engaged," he said. But an email from State said "no further collaboration is planned at this time" (Sophie Yeo, *Responding to Climate Change*, Jan. 22). **-- DTB**

EPA:

McCarthy warns of climate impacts during X Games appearance

Published: Friday, January 23, 2015

U.S. EPA Administrator Gina McCarthy took to the slopes of Aspen's X Games yesterday to spotlight the potential impacts of climate change.

The EPA chief warned of the devastating effects climate change could have on the games in the future and noted that shorter winters and less snow would hurt snow-related businesses that contribute $67 billion a year to the U.S. economy and support 900,000 jobs.

"That's why we're here. People here do know the climate has changed. It's been a notable change in how much snow is falling," McCarthy said. "If we don't take action now, that change will be a lot more extreme."

McCarthy said large oil supplies and falling prices will not hamper efforts to transition to renewable energy sources, such as wind and solar.

"The work we're doing with states, to think through our Clean Power Plan to regulate pollution from power plants, will really provide opportunities for significant investment in renewable energy," McCarthy said (Bruce Finley, *Denver Post*, Jan. 22). **-- MH**

ENERGY EFFICIENCY:

In effort to cut costs, Marines turn to psychology

Published: Friday, January 23, 2015

The U.S. Marine Corps is hoping to save money and fuel not by purchasing new equipment but by changing its members' behavior.

The Department of Defense is the largest energy user in the United States. In 2013, its energy bill totaled $18.9 billion. The Marine Corps has estimated it could save $26 million per year if it reduced energy use at installations and bases by 10 percent.

Marine regimental commander Jim Caley, head of the Marines' five-year-old Expeditionary Energy Office, is hoping to train marines to make behavioral changes to help the Marine Corps save energy.

In doing so, he's tapping into one of the hottest areas in energy academia: using psychology and behavioral sciences to help people change habits, routines and preconceptions to save energy.

"The opportunities that we see on the behavioral side of the house are phenomenal," Caley said. "And they're frankly less expensive than us trying to buy new equipment."

One way Caley is encouraging behavioral changes is encouraging marines not to idle vehicles.

While older military vehicles would require being idled before being driven, newer models no longer need it. But the habit has been tough for some to break.

Caley's office is hoping that by adding consumption gauges to vehicles, operators will be more conscious of their fuel efficiency.

"We actually think that half of idling is bad," he said.

The U.S. Navy is taking similar steps, looking into how much Navy planes need to idle before takeoff (Chris Mooney, *Washington Post*, Jan. 22). **-- AW**

FEDERAL WORKFORCE:

Union membership on the rise

Kevin Bogardus, E&E reporter

Published: Friday, January 23, 2015

Union membership among federal government employees ticked upward last year.

A report released today by the Bureau of Labor Statistics (BLS) showed that the union membership rate for those working for the federal government was 27.5 percent in 2014 -- more than the 26.5 percent of federal workers who were union members in 2013.

Union membership among public-sector workers nationwide remained vastly higher than those working in the private sector last year. At 35.7 percent in 2014, the public-sector workers' union membership rate was more than five times higher than the rate for private-sector workers, 6.6 percent of whom were union members.

Union membership among all public-sector workers, not just federal employees, went up as well. In 2013, 35.3 percent of the sector's workers were members of unions, but last year, the union membership rate for the public sector rose slightly by 0.4 percentage point.

Nevertheless, organized labor suffered declining membership across the entire workforce.

In 2014, the union membership rate was 11.1 percent, a drop from the 11.3 percent rate in 2013, according to BLS. The bureau also said that the number of workers belonging to unions at 14.6 million was "little different" from 2013.

Though union membership remains strong among federal workers, their overall numbers are shrinking. BLS found earlier this month that the federal government shed about 19,000 jobs in 2014 (*Greenwire*, Jan. 14).

Further, federal employees' numbers may further dwindle. Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) introduced legislation this week that would restrict federal agencies' hiring of new workers (*see related story*).

The U.S. jobs market is now booming compared with the dark days of the 2008 financial crisis, with President Obama touting the country's economic success in his State of the Union address earlier this week.

The White House noted earlier this month that the private sector has added 11.2 million jobs over 58 straight months of job growth. Union leaders, though, have questioned whether those are quality, high-paying jobs.

In reaction to the BLS report today, AFL-CIO President Richard Trumka said that, though more jobs are being created, "the most important question is not simply how many jobs we're creating, but are we creating jobs that raise wages for all?"

"A strong recovery must be built on family-sustaining, not poverty-level jobs," Trumka said in a statement. "Today's news confirms what most of us already knew: workers are finding good union jobs despite

political ideologues -- and jobs are coming back as the economy slowly rebounds, but neither are nearly enough."

OIL AND GAS:

CSB links Chevron safety lapses, poor maintenance to refinery fire

Sam Pearson, E&E reporter

Published: Friday, January 23, 2015

Chevron Corp.'s lax safety standards and poor emergency response practices, as well as shoddy industry guidelines on refinery maintenance, contributed to a 2012 fire that sent more than 15,000 East Bay residents to the hospital, the U.S. Chemical Safety Board said in a draft report today.

The draft, released ahead of a planned Jan. 28 public meeting in Richmond, Calif., is the agency's third and final set of recommendations from the Richmond blaze, which is thought to have started when a pipe ruptured in one of the refinery's crude units Aug. 6, 2012.

The ruptured pipeline released flammable, high temperature light gas oil that partially vaporized into a cloud that engulfed 19 refinery employees and ignited two minutes later.

Eighteen workers escaped before the oil ignited, and one worker escaped because he was wearing firefighting equipment and was inside a fire engine.

As the oil ignited, a black smoke plume spread into residential areas where people were warned to shelter in place within five minutes. It took almost five hours for firefighters to subdue the flames.

"The CSB's investigation report identifies gaps in current industry guidelines and shortcomings in Chevron's safety culture and emergency response," CSB Chairman Rafael Moure-Eraso said in a statement. "Our previous reports on this accident have found numerous safety deficiencies that occurred over the years prior to the vapor release and fire as well as root causes and safety recommendations which we are pleased to see California has begun acting upon."

According to the draft report, Chevron failed to identify a piping damage mechanism that ran the risk of rupturing. The company also had no leak response guidance or procedure for site personnel to respond to a process leak like the kind that started the blaze, CSB said, and the pipeline that ruptured was made with a weaker form of steel than alternatives available.

Because the oil company lacked on-site employees who understood the risk of the pipeline rupturing, workers responded to the blaze in a way more likely to endanger their safety, CSB said.

In the 10 years before the pipe failure, a small group of Chevron employees recommended checking on the components used there, but the company didn't act on their suggestions, the draft report said.

American Petroleum Institute guidelines for refinery operators on inspections, facility upgrades and minimum safety requirements are also "inconsistent and permissively written," the agency said.

The draft report recommends that Chevron conduct a review of its refinery operations to identify possible sources of plant damage and how to mitigate the risks by using safer processes. The company should notify state regulators of areas at its refineries identified as possible hazards, the report said.

Earlier CSB reports on the Chevron refinery fire have called on state regulators to tighten rules for refineries to more closely resemble stricter European regulatory regimes (*Greenwire*, Nov. 11, 2014). California's Division of Occupational Safety and Health released draft regulations based in part on CSB's suggestions last fall.

The safety agency still must vote to approve the report at its meeting in Richmond before the recommendations become official.

A Chevron spokesman said the company would review the new findings.

"Chevron U.S.A. Inc. acknowledges the extensive efforts of the CSB investigators," spokesman Kurt Glaubitz said in a statement. "We will carefully consider the recommendations directed to CUSA."

MEDIA:

Washington Post augments energy, enviro coverage

Published: Friday, January 23, 2015

The Washington Post launched a new energy and environment section yesterday, with correspondent Chris Mooney noting that the issues have "never mattered more."

Mooney, who joined the *Post* last year after covering energy at *Mother Jones* magazine, will produce a blog that will feature contributions from reporters throughout the newspaper, the *Post* said (Chris Mooney, *Washington Post*, Jan. 22).

The *Post*'s move to beef up its coverage and produce more current online materials mirrors staff changes at *The New York Times* last year (Benjamin Mullin, Poynter Institute, Jan. 22).

MOTOR VEHICLES:

DOE pledges $55M to spur development of 'cutting-edge' cars

Katherine Ling, E&E reporter

Published: Friday, January 23, 2015

Companies developing advanced clean vehicle technology will get $55 million from the Obama administration to get promising research into the commercial market, the Energy Department announced yesterday.

The funding will be available on a cost-share basis for "cutting-edge vehicle technologies" that improve the efficiency and lower the price of vehicles that run on electricity, petroleum or alternative fuel, DOE said.

DOE said it's considering projects focused on advanced batteries, electric drive, lightweight materials, advanced combustion engines and natural gas engine technologies, among others.

The department also announced an additional $35 million for advanced fuel-cell and hydrogen technologies, including vehicles, that will be available in early February.

"Energy Department investments in advanced vehicle technologies have had a major impact on the industry, driving down costs for consumers and reducing carbon emissions," Energy Secretary Ernest Moniz said in a statement. "These projects will continue America's leadership in building safe, reliable, and efficient vehicles to support a strong, 21st century transportation system."

Despite the administration's long-standing support for alternative vehicles, the nation is unlikely to reach the president's original 2011 target of seeing 1 million electric vehicles on the road by the end of this year with 280,000 currently sold.

"We're going to be a few years after the president's aspirational goal of the end of 2015, but I think that we are within a few years of reaching that goal," Moniz told *The Detroit News* after an appearance yesterday at the Washington Auto Show.

Electric drive vehicles -- hybrid, plug-in hybrid and electric battery -- made up almost 3.5 percent of sales last year, according to the Electric Drive Transportation Association. This was slightly lower than 2013, and analysts are concerned that the plunge in gasoline prices may set the market back again in 2015.

Still, there are now more than 24 plug-in and fuel-cell models available with 20 additional models expected through 2016, according to the association.

General Motors Co. unveiled the Chevrolet Bolt this week, a concept car that will able to go up to 200 miles on a single charge and park itself -- at a price of about $30,000 with tax rebates -- to add to its best-selling Volt plug-in hybrid model and Spark all-electric model. GM plans to bring the car to market in 2017.

ELECTRIC VEHICLES:

BMW, Volkswagen to develop U.S. charger networks

Published: Friday, January 23, 2015

Two of America's most heavily driven highways will soon be home to a string of electric car charging stations thanks to the investment of two German automakers.

BMW AG and Volkswagen AG announced they would spend about $2 million to install 100 chargers along Interstate 95 from Boston to Washington, D.C., and on routes between Portland, Ore.; San Francisco; Los Angeles; and San Diego.

The announcement, made at the Washington Auto Show yesterday, is an effort to create electric car infrastructure in the United States to help alleviate potential buyers' fears that they could be stranded on a long drive with no charging stations in sight.

Luxury electric automaker Tesla Motors Inc. has installed 356 of its Supercharger stations around the world.

The Tesla superchargers, which only work with Tesla vehicles, deliver 120 kilowatts of electricity and recharge 80 percent of an 85-kW battery in a Model S in 30 minutes. The planned BMW-Volkswagen stations will deliver 50 kW and will recharge 80 percent of a vehicle's battery in 20 minutes (Bennett/Ramsey, *Wall Street Journal*, Jan. 22). **-- AW**

TEXAS:

Law firm spurred whistleblower's firing from state agency -- documents

Published: Friday, January 23, 2015

A former state environmental investigator is suing a high-profile Texas law firm after the firm allegedly turned him in to his employer when he asked to be represented in a whistleblower case.

According to lawsuit documents, Kent Langerlan, a former investigator with the Texas Commission on Environmental Quality, asked an attorney at Houston-based Baker Botts to represent his girlfriend, Audra Benoit, a former enforcement coordinator at TCEQ, in a whistleblower claim against the agency.

The agency fired Benoit in 2013 due to "poor performance," but Langerlan wrote in his email to Baker Botts that Benoit had validation that she was dismissed for "adamantly following TCEQ procedures and state and federal regulations."

The attorney at Baker Botts declined the case, and TCEQ was contacted about it. The agency then fired Langerlan in May, saying his email with a "Houston law firm" violated professional conduct and ethical standards.

Langerlan's attorney Josh Davis said the firm had violated "ethics 101."

"When you contact an attorney with information, even if the attorney initially rejects the case, that initial contact is privileged," he said.

In an emailed statement, a spokeswoman for Baker Botts said the firm "took the appropriate ethical action under the circumstances."

Langerlan's email "proposed to provide confidential TCEQ information to us -- for use on behalf of clients having matters before the commission if we would represent his girlfriend in an employment case against the commission," the spokeswoman said.

A TCEQ spokesman declined to comment.

But the lawsuit filed in Harris County district court this month surprised many in the legal community.

"It's one thing not to represent someone. It's another thing to take the information and turn it over to that prospective client's adversary," said Kathleen Clark, an expert in whistleblower law at Washington University in St. Louis. "It's a little shocking" (Satija/Malewitz, *Texas Tribune*, Jan. 22). **-- AW**

CHINA:

Beijing to shutter 300 companies amid pollution fight

Published: Friday, January 23, 2015

Beijing plans to close 300 companies this year to help battle air pollution, according to the official Xinhua news agency.

City Mayor Wang Anshun told Xinhua that the city is "determined to migrate the capital's non-core functions" and is adopting a coordinated development strategy laid out for the Beijing-Tianjin-Hebei

region.

This is not the first time city government has taken such steps to try and alleviate smog. Last year, the city closed 392 manufacturing and polluting firms. In 2013, the city limited the number of new vehicles on the roads and ordered 1,200 companies to be upgraded or closed (Reuters, Jan. 23). **-- AW**

SAUDI ARABIA:

Despite king's death, oil policy expected to remain in place

Published: Friday, January 23, 2015

The death yesterday of King Abdullah of Saudi Arabia, 90, is not expected to change the country's oil policy, at least in the short term.

Abdullah, who was admitted to a hospital in Riyadh for pneumonia in late December 2014, is succeeded by his brother Salman, 79.

Energy policy experts said the change in leadership would not have a large impact on global oil prices because other members of the Saudi royal family probably had an input in the country's policies.

"I think the current policy is vetted across all of these people," said Amy Myers Jaffe, an expert on global energy at the University of California, Davis.

Saudi Arabia is the leading producer in the Organization of Petroleum Exporting Countries, giving it a large influence on global oil prices.

In November 2014, when U.S. oil production was surging, OPEC decided against cutting its 30-million-barrel-per-day quota, something that would have increased oil prices. The move was seen as an effort by Saudi Arabia to keep its market share.

"Stability is critical, and I don't expect any changes in oil policy before the objectives are met," Fadel Geheit, an analyst with Oppenheimer, said yesterday (Holeywell/Cain, *Fuel Fix*, Jan. 22).

Oil did erase some gains in the market today following Abdullah's death.

Eugen Weinberg, a Frankfurt, Germany-based head of commodities research at Commerzbank AG, said such a shift was not unexpected.

"Such news was always going to provoke a short-term recovery, and the whole focus of the market is shifting back to this region," Weinberg said.

Despite the change in monarchs, Oil Minister Ali Al-Naimi, 80, will remain in his post for the time being. Though he has said he'd like to spend more time in his other post as chairman of the Abdullah University of Science and Technology, the shift is not expected immediately.

"Any change in the minister now can create a lot of uncertainty in the market, which Saudi Arabia is going to try and avoid," Amrita Sen, chief analyst at Energy Aspects Ltd., said. "We do think there's going to be a change, but not straight away" (*Fuel Fix*, Jan. 23). **-- AW**

POWER MARKETS:

EnergyWire's Kuckro talks 'war on coal,' generation forecast

Published: Friday, January 23, 2015

With coal continuing to lead power generation in the United States, is coal under fire, as the industry warns? On today's The Cutting Edge, *EnergyWire* reporter Rod Kuckro, discusses the market dynamics affecting coal-fired power generation and talks about key drivers responsible for moving the electric power sector toward other sources of generation.

Click here to watch E&ETV's The Cutting Edge.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Mon., January 26, 2015

READ FULL EDITION

1.REGIONS:

Bloomberg, Paulson and Steyer release bipartisan report on climate change risks to Midwest

On Friday, the three U.S. financial heavyweights behind the Risky Business Project -- an effort to quantify the financial risks posed by global climate change -- published the organization's latest report to help people identify, understand and plan for the economic risks related to steadily increasing temperatures worldwide.

2.ELECTRICITY:

Hawaii utility seeks end to popular rooftop solar incentive; does it signal industry's future?

A popular program for rooftop solar that gives customers sizable bill credits for electricity sent to the grid would be phased out in Hawaii under a proposal from the island's largest utility.

TODAY'S STORIES

3.NATIONS:

U.S. and India sign nonbinding pledge to work together toward new climate pact

4.POLICY:

On heels of Arctic climate order, Obama moves to protect refuge

5.STATES:

W.Va. Republicans set to repeal state's alternative energy mandate

6.TECHNOLOGY:

As another funding round opens, ARPA-E touts some of its ambitious clean-tech bets

7.ENERGY EFFICIENCY:

White House announces challenge for improving outdoor lighting

8.WEATHER:

N.D. climate could be affected by dirty snow, research finds

9.BUSINESS:

U.K. Environment Agency pension fund pressures oil companies to invest in renewables

10.RENEWABLE ENERGY:

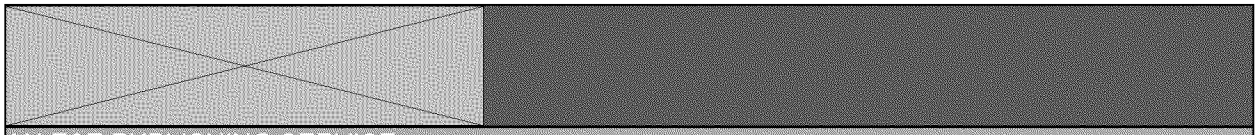
Renewables threatened and bolstered by low oil prices -- U.N. climate chief

11.NATIONS:

U.N. calls on governments to act after hottest year on record

E&ETV'S ONPOINT

12.RENEWABLES:
AWEA's Kiernan talks future of PTC support following Obama remarks on wind power leadership



AN E&E PUBLISHING SERVICE

ENERGYWIRE — Mon., January 26, 2015

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1.MARKETS:
5 reasons why oil prices won't be recovering anytime soon

At a high level, it's Economics 101. When the world has plenty of oil, but far less demand, the price should crash. And so it has.

TOP STORIES

2.OIL:
Markets continue to rumble amid transition in Saudi Arabia

3.OKLAHOMA:
Chesapeake, royalty owners agree on $119M settlement

4.WORKFORCE:
Not all oil industry segments suffer equally as prices slide

ELECTRICITY

5.MEDIA:
What would Edison do with today's electricity challenges?

6.RENEWABLES:
Investment firm acquires Okla. wind farm

OIL AND GAS

7.YELLOWSTONE SPILL:
Federal regulators order upgrades to leaking pipeline

8.REGULATION:
Texas Railroad Commission may amend no-interviews policy

9.PEOPLE:
BP financial executive takes Apache's open CFO post

10.ADVOCACY:
Pa. fracking group reaches settlement over spot on terror list

11.REGULATION:
Okla. town rejects drilling ban

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12.RENEWABLES:
AWEA's Kiernan talks future of PTC support following Obama remarks on wind power leadership

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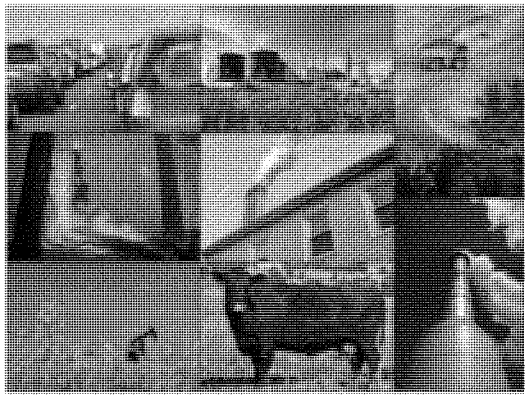

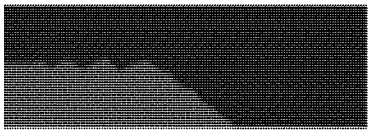

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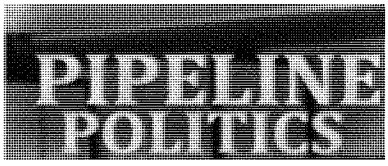
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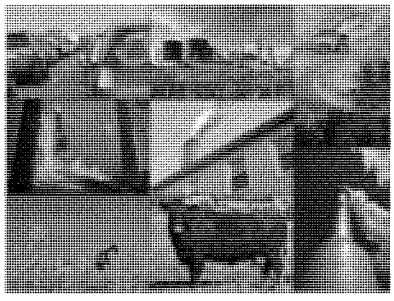

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Solid Waste & Emergency Response Law News

for January 26, 2015

Bloomberg BNA Daily Environment Report™

Emergency Response

CSB Urges Local Authorities to Monitor Safety After 2012 California Refinery Fire

In response to the catastrophic 2012 fire at a Chevron USA refinery in Northern California, the Chemical Safety and Hazard Investigation Board said city and county regulators should establish committees to oversee the way safety is managed...

Enforcement

$5.15 Billion Settlement With Anadarko Over Fraudulent Conveyances Takes Effect

A record-setting $5.15 billion settlement by Anadarko Petroleum Corp. and its subsidiary Kerr-McGee Corp. with the federal government over the use of fraudulent conveyances to avoid cleaning up toxic

waste sites around the nation has gone...

Hazardous Waste

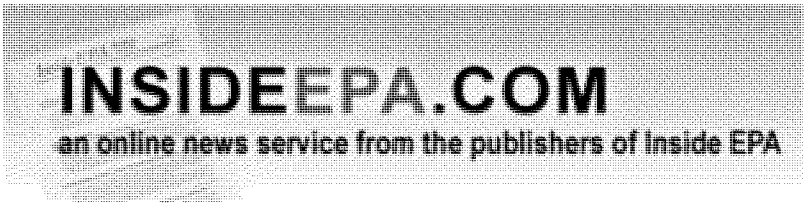
EPA Inspector General Launches Investigation Into Hazardous Waste Inspection Frequency

The Environmental Protection Agency's Office of Inspector General has begun an investigation to determine whether inspections of hazardous waste treatment, storage and disposal facilities are being conducted frequently enough....

Oil Spills

Canada Regulator Rules That Kinder Morgan Doesn't Have to Disclose Spill Response Plan

Full details of an emergency response management plan to deal with an oil spill from Kinder Morgan's proposed Trans Mountain pipeline to run from the Alberta oil sands to the Pacific Coast will remain secret, Canada's National Energy...



Latest News

CCS Sector, EPA Fight Over Whether CO2 Is 'Abandoned' Under Waste Law

Carbon control and sequestration (CCS) operators and EPA are waging competing legal claims over whether carbon dioxide (CO2) in CCS wells is deemed an abandoned waste subject to Resource Conservation & Recovery Act (RCRA) regulation, with industry saying the CO2 is instead a saved material that may be sold for later use.

Greenwire

WHITE HOUSE:

National Park Service official expected to take reins at CEQ

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The White House is planning to hire a National Park Service official and public lands expert to take the helm at the Council on Environmental Quality, according to two sources familiar with the administration's plans.

Christy Goldfuss, who's now deputy director of congressional and external relations at the Park Service, will soon join CEQ as a senior adviser, according to CEQ spokeswoman Taryn Tuss. She's expected to ultimately replace acting CEQ Chairman Mike Boots, who's slated to step down in March after leading the agency for the past year, the two sources outside the White House told *Greenwire*.

Goldfuss will be central to the administration's work on climate change -- a priority for the remainder of the term, Tuss said today in a statement. She declined to comment on personnel shuffles that may occur when Boots leaves his office. "She will help oversee implementation of the President's Climate Action Plan and work with other White House partners on new strategies to tackle this global challenge, and will continue to advance the President's agenda for protecting the lands and waters Americans value."

Goldfuss will be part of a new green leadership team in the White House.

Obama's top environmental aide, John Podesta, plans to leave the administration next month. His energy portfolio will be taken over by White House budget expert Brian Deese, the White House announced this week (*E&E Daily*, Jan. 22). Along with Deese and Obama's special assistant for energy and climate, Dan Utech, Goldfuss would be tasked with pushing through the White House environmental agenda during the administration's final years.

Goldfuss didn't respond to requests for comment on the appointment.

It's unclear whether the administration would officially nominate Goldfuss to the post, which requires Senate approval, or opt to avoid what would likely be a tough confirmation battle by keeping her there in an acting capacity. Several sources have speculated that the White House is unlikely to make a formal CEQ nomination, given the GOP ire toward the administration's environmental policies.

Prior to joining the Park Service in 2013, Goldfuss was director of the public lands project at the Center for American Progress, the liberal think tank founded by Podesta. Deese, too, is a CAP veteran -- he was a senior analyst for economic policy at the think tank before joining the Obama administration. Podesta has likely had a central role in lining up new leadership as he plans his exit from the White House.

Goldfuss paid several visits to the White House last fall, according to the most recently released visitor logs. She met twice for one-on-one meetings with Boots in September, the records show, and attended another September meeting with Podesta along with fellow Park Service employee Theodora Chang.

Before starting at CAP in 2011, Goldfuss worked for the Democratic staff of the House Natural Resources Subcommittee on National Parks, Forests and Public Lands. Before that, she was a federal preservation advocate for Environment America and was a television reporter in Nevada and California.

Some people familiar with Goldfuss' expected appointment have expressed concern over her perceived lack of experience for the job, which requires coordinating the administration's environmental effort across federal agencies.

Goldfuss and Deese are not "known forces of nature within the community that would be people you'd

love to see in that role," said one source familiar with the White House plans.

But Deese has won accolades from many in the green community and from former administration colleagues. And several people who have worked with Goldfuss described her as a seasoned operative who would be a good fit at CEQ.

"Christy Goldfuss combines deep substantive knowledge with political savvy, legislative acumen, communications clarity and a collaborative working style," said Daniel Weiss, senior vice president for campaigns at the League of Conservation Voters, who worked with her at CAP. "She is a great candidate for a senior administration leadership role."

Goldfuss "brings a lot to the equation," said a former Obama administration official who worked with her.

"I think there will be people questioning whether she's experienced enough for this job or senior enough," that person added. But at this point in the administration, "it's probably most important that the CEQ chair have good relationships with key players. Christy is a known quantity and she has very strong personal qualities and may well be a very good fit for what needs to happen here in the last two years -- which is largely implementing the president's agenda."

Reporter Phil Taylor contributed.

FEDERAL AGENCIES:

Union pans bill to cap workforce

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The largest government employee union is attacking House Republicans' latest effort to slash the size of the federal workforce.

Earlier this week, Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) reintroduced legislation that aims to limit new federal hires to one employee for every three that retire or leave service. According to the co-sponsors, H.R. 417 would save about $35 billion over five years without forcing current employees out of their jobs.

But J. David Cox, president of the American Federation of Government Employees, today called their effort "misguided legislation" that would "arbitrarily slash the size of the federal workforce without doing away with any of the work, forcing agencies to rely on more expensive contractors."

"Rep. Lummis trotted out this bill in the last Congress and it was rejected by Democrats and Republicans alike," he said in a statement.

Lummis, the new chairwoman of a subcommittee charged with overseeing environmental and energy agencies, said in an interview this month that she'd continue this year with her efforts to downsize the government workforce. "I continue to believe that that's a good idea and responsible policy," she said (*E&E Daily*, Jan. 14).

The Wyoming Republican said in a statement this week, "Attrition is a solution that requires the federal government to do what any business, state, or local government would do to cut costs -- limit new hires. Instead of blindly filling empty desks, this bill forces agencies to take a step back, consider which

positions are crucial, and make decisions based on necessity rather than luxury."

Cox, however, said today that fewer employees means increasing workloads and less efficient government services.

"The number of workers employed by the federal government is currently at an all-time low -- less than 2 percent of the total U.S. workforce," he said. "If Reps. Lummis and Mulvaney believe the federal government can afford to lose another 200,000 employees in the span of a single year, then they should explain to the American public where they think these cuts should occur and what services they think we can do without."

SENATE:

With gavel in hand, Murkowski prepares for 'big issues'

Published: Friday, January 23, 2015

Sen. Lisa Murkowski (R-Alaska) is poised to tackle thorny energy issues with her trademark steady and methodical approach in her new post as chairwoman of the Senate Energy and Natural Resources Committee.

Hailing from the resource-rich state of Alaska, Murkowski told the *Houston Chronicle* she plans to take charge of debates over the Keystone XL pipeline, oil exports, offshore drilling, renewable power and access to federal lands.

Another issue Murkowski is pushing for is the approval of a road through a wildlife refuge that would connect an isolated Alaska community with medical and emergency care. The issue has faced controversy, and the Department of the Interior has blocked the road's construction.

One of Murkowski's biggest obstacles is finding common ground with Democrats on the committee who do not share the Alaska senator's views on many issues.

"She has strong views, and she is committed to those views," said former Sen. Jeff Bingaman (D-N.M.), a previous committee chairman. "But she was willing to let the process work itself out and have votes on issues, and that's the way the Senate is supposed to work."

Murkowski came to the Senate amid controversy in 2002 when she was appointed by her father to fill the seat he had just vacated for the governor's mansion. Voters re-elected her to a full six-year term in 2004. But she hit a stumbling block in 2010, when she lost her Republican primary campaign to tea party favorite Joe Miller. She returned to Washington, D.C., however, after launching only the second successful write-in campaign in Senate history.

A third-generation Alaskan, Murkowski takes a more nuanced view on energy and environmental issues than many of her Republican colleagues. On one hand, she is a strong supporter of oil and gas development. But she also is sensitive to the threats of a melting Arctic.

"I am allegiant, faithful to the people of Alaska -- period," she said. "Yes, I am a member of the Republican majority ... but I have always put the best interests of Alaska and Alaskans ahead of my party."

On Wednesday, Murkowski made her most visible break with her GOP colleagues when she joined just 14 other Republicans on a vote affirming humans' contribution to climate change (*E&E Daily*, Jan. 22).

"You should never be afraid to take on the big issues," Murkowski said. "But timing with the big issues is important, and if the time isn't necessarily here, then [you consider] how to advance the conversation so it is right" (Jennifer A. Dlouhy, *Houston Chronicle*, Jan. 22). **-- MH**

EPA:

Republican views of agency worsen -- poll

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

Republicans dislike U.S. EPA even more than they did a year ago, according to a new poll.

The survey released yesterday by the Pew Research Center shows that 51 percent of Republicans have an unfavorable impression of EPA, and 36 percent view the agency in a positive light.

Last February, GOP views were nearly evenly split, with 46 percent viewing the agency favorably and 45 percent holding an unfavorable view of EPA.

Overall, most people -- 59 percent -- see EPA positively, compared to 32 percent with negative opinions, the survey showed.

Pew's national survey of 1,504 adults was conducted from Jan. 7 to 11 and has a 2.9-point margin of error.

Democrats, meanwhile, have grown slightly more positive in their opinions of EPA. The poll found that 80 percent of Democrats see the agency favorably, compared to 11 percent who view it unfavorably. Last February, 70 percent of Democrats saw the agency positively; 21 percent had a negative view.

Among the eight agencies included in the poll, the partisan divide was starkest for EPA. Democrats also held more favorable views than Republicans of the Internal Revenue Service, the Centers for Disease Control and Prevention, and others. The CIA was the only agency included in the poll that Republicans view more favorably than Democrats.

FEDERAL WORKFORCE:

Union membership on the rise

Kevin Bogardus, E&E reporter

Published: Friday, January 23, 2015

Union membership among federal government employees ticked upward last year.

A report released today by the Bureau of Labor Statistics (BLS) showed that the union membership rate for those working for the federal government was 27.5 percent in 2014 -- more than the 26.5 percent of federal workers who were union members in 2013.

Union membership among public-sector workers nationwide remained vastly higher than those working in the private sector last year. At 35.7 percent in 2014, the public-sector workers' union membership rate was more than five times higher than the rate for private-sector workers, 6.6 percent of whom were union members.

Union membership among all public-sector workers, not just federal employees, went up as well. In 2013, 35.3 percent of the sector's workers were members of unions, but last year, the union membership rate for the public sector rose slightly by 0.4 percentage point.

Nevertheless, organized labor suffered declining membership across the entire workforce.

In 2014, the union membership rate was 11.1 percent, a drop from the 11.3 percent rate in 2013, according to BLS. The bureau also said that the number of workers belonging to unions at 14.6 million was "little different" from 2013.

Though union membership remains strong among federal workers, their overall numbers are shrinking. BLS found earlier this month that the federal government shed about 19,000 jobs in 2014 (*Greenwire*, Jan. 14).

Further, federal employees' numbers may further dwindle. Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) introduced legislation this week that would restrict federal agencies' hiring of new workers (*see related story*).

The U.S. jobs market is now booming compared with the dark days of the 2008 financial crisis, with President Obama touting the country's economic success in his State of the Union address earlier this week.

The White House noted earlier this month that the private sector has added 11.2 million jobs over 58 straight months of job growth. Union leaders, though, have questioned whether those are quality, high-paying jobs.

In reaction to the BLS report today, AFL-CIO President Richard Trumka said that, though more jobs are being created, "the most important question is not simply how many jobs we're creating, but are we creating jobs that raise wages for all?"

"A strong recovery must be built on family-sustaining, not poverty-level jobs," Trumka said in a statement. "Today's news confirms what most of us already knew: workers are finding good union jobs despite political ideologues -- and jobs are coming back as the economy slowly rebounds, but neither are nearly enough."

OIL AND GAS:

CSB links Chevron safety lapses, poor maintenance to refinery fire

Sam Pearson, E&E reporter

Published: Friday, January 23, 2015

Chevron Corp.'s lax safety standards and poor emergency response practices, as well as shoddy industry guidelines on refinery maintenance, contributed to a 2012 fire that sent more than 15,000 East Bay residents to the hospital, the U.S. Chemical Safety Board said in a draft report today.

The draft, released ahead of a planned Jan. 28 public meeting in Richmond, Calif., is the agency's third and final set of recommendations from the Richmond blaze, which is thought to have started when a pipe ruptured in one of the refinery's crude units Aug. 6, 2012.

The ruptured pipeline released flammable, high temperature light gas oil that partially vaporized into a cloud that engulfed 19 refinery employees and ignited two minutes later.

Eighteen workers escaped before the oil ignited, and one worker escaped because he was wearing firefighting equipment and was inside a fire engine.

As the oil ignited, a black smoke plume spread into residential areas where people were warned to shelter in place within five minutes. It took almost five hours for firefighters to subdue the flames.

"The CSB's investigation report identifies gaps in current industry guidelines and shortcomings in Chevron's safety culture and emergency response," CSB Chairman Rafael Moure-Eraso said in a statement. "Our previous reports on this accident have found numerous safety deficiencies that occurred over the years prior to the vapor release and fire as well as root causes and safety recommendations which we are pleased to see California has begun acting upon."

According to the draft report, Chevron failed to identify a piping damage mechanism that ran the risk of rupturing. The company also had no leak response guidance or procedure for site personnel to respond to a process leak like the kind that started the blaze, CSB said, and the pipeline that ruptured was made with a weaker form of steel than alternatives available.

Because the oil company lacked on-site employees who understood the risk of the pipeline rupturing, workers responded to the blaze in a way more likely to endanger their safety, CSB said.

In the 10 years before the pipe failure, a small group of Chevron employees recommended checking on the components used there, but the company didn't act on their suggestions, the draft report said.

American Petroleum Institute guidelines for refinery operators on inspections, facility upgrades and minimum safety requirements are also "inconsistent and permissively written," the agency said.

The draft report recommends that Chevron conduct a review of its refinery operations to identify possible sources of plant damage and how to mitigate the risks by using safer processes. The company should notify state regulators of areas at its refineries identified as possible hazards, the report said.

Earlier CSB reports on the Chevron refinery fire have called on state regulators to tighten rules for refineries to more closely resemble stricter European regulatory regimes (*Greenwire*, Nov. 11, 2014). California's Division of Occupational Safety and Health released draft regulations based in part on CSB's suggestions last fall.

The safety agency still must vote to approve the report at its meeting in Richmond before the recommendations become official.

A Chevron spokesman said the company would review the new findings.

"Chevron U.S.A. Inc. acknowledges the extensive efforts of the CSB investigators," spokesman Kurt Glaubitz said in a statement. "We will carefully consider the recommendations directed to CUSA."

MEDIA:

Washington Post augments energy, enviro coverage

Published: Friday, January 23, 2015

The Washington Post launched a new energy and environment section yesterday, with correspondent Chris Mooney noting that the issues have "never mattered more."

Mooney, who joined the *Post* last year after covering energy at *Mother Jones* magazine, will produce a blog that will feature contributions from reporters throughout the newspaper, the *Post* said (Chris Mooney, *Washington Post*, Jan. 22).

The *Post*'s move to beef up its coverage and produce more current online materials mirrors staff changes at *The New York Times* last year (Benjamin Mullin, Poynter Institute, Jan. 22).

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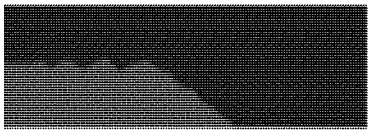

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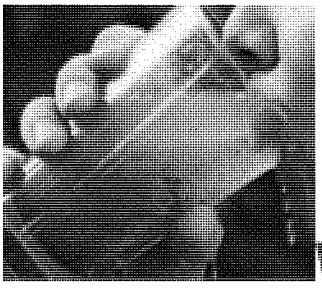
From: Turley, Jennifer
Sent: Mon 1/26/2015 4:23:53 PM
Subject: Water Law News for January 26, 2015



Water Law News

for January 26, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

States Urged to Specify How They Will Offset Pollution from Post-2025 Growth

The six states within the Chesapeake Bay's watershed need to specify how they'll meet nutrient and sediment limits in light of anticipated growth in population and development, an official with a partnership focused on restoring...

Enforcement

Mining Company Fails to Appear in Court To Face Criminal Water Pollution Charges

A mining company that was indicted, along with five officers and employees, on federal water pollution charges in Alaska failed to send any representatives to a scheduled arraignment and might be cited for contempt of court, the lead prosecutor...

Hydraulic Fracturing

Canadian Consortium Taps Seismologist To Study Earthquakes Caused by Fracking

A consortium of Canadian government and industry organizations has hired a seismologist to monitor induced earthquakes from natural gas development in northeast British Columbia, and to study the relationship between hydraulic fracturing...

Oil Spills

Canada Regulator Rules That Kinder Morgan Doesn't Have to Disclose Spill Response Plan

Full details of an emergency response management plan to deal with an oil spill from Kinder Morgan's proposed Trans Mountain pipeline to run from the Alberta oil sands to the Pacific Coast will remain secret, Canada's National Energy...

Inside EPA's **Water Policy Report**, 01/26/2015

http://insideepa.com/newsletters/water-policy-report

Latest News

EPA's Legal Pact With Drillers Suggests Stricter CWA Permit Enforcement

EPA has reached a proposed settlement with an energy drilling company over alleged Clean Water Act (CWA) section 404 permit violations that an environmentalist says imposes "aggressive" enforcement of the law, which sources agree suggests the agency is ramping up stricter enforcement of 404 water permit requirements.

News Briefs

Democrats Seek Funding For EPA Water Efficiency Efforts

House and Senate Democrats are pushing legislation to authorize new funding for EPA grants aimed at encouraging local water systems to conserve or reuse water, and to allocate dedicated appropriations for the agency's voluntary WaterSense program that certifies water-efficient appliances, buildings and other technologies.

Greenwire

WHITE HOUSE:

National Park Service official expected to take reins at CEQ

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The White House is planning to hire a National Park Service official and public lands expert to take the helm at the Council on Environmental Quality, according to two sources familiar with the administration's plans.

Christy Goldfuss, who's now deputy director of congressional and external relations at the Park Service, will soon join CEQ as a senior adviser, according to CEQ spokeswoman Taryn Tuss. She's expected to ultimately replace acting CEQ Chairman Mike Boots, who's slated to step down in March after leading the agency for the past year, the two sources outside the White House told *Greenwire*.

Goldfuss will be central to the administration's work on climate change -- a priority for the remainder of the term, Tuss said today in a statement. She declined to comment on personnel shuffles that may occur when Boots leaves his office. "She will help oversee implementation of the President's Climate Action Plan and work with other White House partners on new strategies to tackle this global challenge, and will continue to advance the President's agenda for protecting the lands and waters Americans value."

Goldfuss will be part of a new green leadership team in the White House.

Obama's top environmental aide, John Podesta, plans to leave the administration next month. His energy portfolio will be taken over by White House budget expert Brian Deese, the White House announced this week (*E&E Daily*, Jan. 22). Along with Deese and Obama's special assistant for energy and climate, Dan Utech, Goldfuss would be tasked with pushing through the White House environmental agenda during the administration's final years.

Goldfuss didn't respond to requests for comment on the appointment.

It's unclear whether the administration would officially nominate Goldfuss to the post, which requires Senate approval, or opt to avoid what would likely be a tough confirmation battle by keeping her there in an acting capacity. Several sources have speculated that the White House is unlikely to make a formal CEQ nomination, given the GOP ire toward the administration's environmental policies.

Prior to joining the Park Service in 2013, Goldfuss was director of the public lands project at the Center for American Progress, the liberal think tank founded by Podesta. Deese, too, is a CAP veteran -- he was a senior analyst for economic policy at the think tank before joining the Obama administration. Podesta has likely had a central role in lining up new leadership as he plans his exit from the White House.

Goldfuss paid several visits to the White House last fall, according to the most recently released visitor logs. She met twice for one-on-one meetings with Boots in September, the records show, and attended another September meeting with Podesta along with fellow Park Service employee Theodora Chang.

Before starting at CAP in 2011, Goldfuss worked for the Democratic staff of the House Natural Resources Subcommittee on National Parks, Forests and Public Lands. Before that, she was a federal preservation advocate for Environment America and was a television reporter in Nevada and California.

Some people familiar with Goldfuss' expected appointment have expressed concern over her perceived lack of experience for the job, which requires coordinating the administration's environmental effort across federal agencies.

Goldfuss and Deese are not "known forces of nature within the community that would be people you'd love to see in that role," said one source familiar with the White House plans.

But Deese has won accolades from many in the green community and from former administration colleagues. And several people who have worked with Goldfuss described her as a seasoned operative who would be a good fit at CEQ.

"Christy Goldfuss combines deep substantive knowledge with political savvy, legislative acumen, communications clarity and a collaborative working style," said Daniel Weiss, senior vice president for campaigns at the League of Conservation Voters, who worked with her at CAP. "She is a great candidate for a senior administration leadership role."

Goldfuss "brings a lot to the equation," said a former Obama administration official who worked with her.

"I think there will be people questioning whether she's experienced enough for this job or senior enough," that person added. But at this point in the administration, "it's probably most important that the CEQ chair have good relationships with key players. Christy is a known quantity and she has very strong personal qualities and may well be a very good fit for what needs to happen here in the last two years -- which is largely implementing the president's agenda."

Reporter Phil Taylor contributed.

KEYSTONE XL:

Coal lobby blasts into pipeline debate, bashing climate votes

Manuel Quiñones, E&E reporter

Published: Friday, January 23, 2015

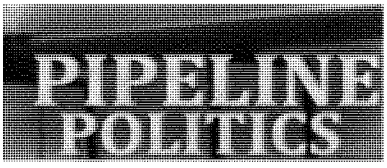
The American Coalition for Clean Coal Electricity, one of the fuel's top lobby groups in Washington, D.C., has been blustering in its criticism of recent votes meant to get lawmakers on the record about climate change.

This week, the Senate approved an amendment saying climate change is real and not a hoax. But lawmakers rejected other amendments -- one Democratic and another Republican -- saying human beings are having an impact. The GOP version failed by one vote.

Laura Sheehan, top spokeswoman for the group, took particular aim at the amendment by Hawaii Democratic Sen. Brian Schatz, which said humans are having a significant impact on the Earth's climate.

"At one time, the liberal wing of the Senate cared first and foremost about the American middle class," she said. "Unfortunately, it seems that some, like Sen. Brian Schatz, would rather exacerbate ideological divisions than come together and make meaningful progress on a measure that will help the very base his party claims to support."

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. **Click here** to view the special report.

Schatz and other Democrats who have pushed climate amendments to legislation approving the Keystone XL pipeline bill have defended their moves by touting the benefits of debating one of the important issues of the day.

"Interactions on the floor have been civilized and smart," Schatz said yesterday. "I think we're making incremental progress, I don't want to overstate it. It hasn't been a bad couple of days for our cause."

Several pro-coal lawmakers, including Democratic Sens. Heidi Heitkamp of North Dakota and Joe Manchin of West Virginia, voted for the Schatz language (*E&E Daily*, Jan. 22).

Manchin also pushed an amendment of his own declaring the importance of dealing with climate change but also recognizing the continued relevance of fossil fuels. He called for a focus on investment to make them cleaner, which dovetails with ACCCE's goals.

"I like Joe Manchin's amendment," Schatz said. "And I like that Joe Manchin has an amendment. More than the particulars of the language, I think it's important he's trying to contribute meaningfully to this debate."

Schatz added, "I was trying to amend his amendment during [Democratic] caucus luncheon; we were only one word off, so that's pretty good. It happened to be the word 'fossil.'"

But ACCCE feels the focus is misplaced. "Perhaps the American people should demand an amendment be added that examines what Sen. Schatz and his colleagues who support this measure have contributed to real priorities like improving the economy, protecting jobs and moving our country forward," Sheehan said in a statement.

ACCCE did support an amendment by Sen. Roy Blunt (R-Mo.), which failed to get the necessary votes for passage, against President Obama's recent climate deal with China (*ClimateWire*, Jan. 23).

The group cites a study by research firm Management Information Services Inc. for St. Louis-based Peabody Energy Corp., which said the deal would hurt the U.S. economy while allowing the Chinese economy to continue growing.

"President Obama's radical overseas environmental agenda will force America to partake in agreements that jeopardize our economic competitiveness and national security," Sheehan said in another statement. "Sen. Blunt's amendment is an important step in putting an end to the Obama administration's unchecked unilateralism."

Earlier in the week, ACCCE CEO Mike Duncan made similar comments against the president following his State of the Union address, which prominently featured climate.

"In his State of the Union address tonight, President Obama failed to offer answers about the calamitous consequences of his environmental regulations," Duncan said. "Rather than seek a common-sense energy plan for America, President Obama bypassed Congress and is forging ahead with his climate crusade at the expense of the nation's economic security."

ACCCE members hired Duncan, a former Republican National Committee chairman, in 2012 ahead of that year's elections. He then tapped Capitol Hill Democratic staffer Sheehan the following year to redo the group's messaging.

Sheehan this morning said ACCCE's goal is not to express denial of climate change, but rather to criticize certain lawmakers' priorities. She also expressed support for the KXL bill.

"We are merely pointing out the hypocrisy of the Democratic Party that repeatedly says it is for the working class, yet repeatedly plays games with legislation that will result in jobs and increased energy security," she said. "Senators on both sides need to focus on moving bipartisan legislation that benefits America."

Outgoing Peabody CEO Greg Boyce, who has also been outspoken on regulatory issues, this week coupled trends in the oil markets with industry claims that Obama administration rules will boost power prices.

"It's unacceptable that we as a nation would allow growing pain at the plug to replace the pain at the pump that has been recently eased by falling oil prices," he said.

A debate is ongoing within the fossil fuel industry over how united different interests should be in

opposition to the administration's agenda. Natural gas, which generally burns cleaner than coal, has fared better under White House plans.

But Charles Drevna, president of the American Fuel & Petrochemical Manufacturers, said, "This shouldn't be an argument, whether it's oil or coal or natural gas or any other fossil fuel. We're all in this together." He added, "Winston Churchill once described an appeaser as one who feeds a crocodile, hoping it will eat him last."

Reporter Jean Chemnick and Nick Juliano contributed.

FEDERAL AGENCIES:

Union pans bill to cap workforce

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

The largest government employee union is attacking House Republicans' latest effort to slash the size of the federal workforce.

Earlier this week, Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) reintroduced legislation that aims to limit new federal hires to one employee for every three that retire or leave service. According to the co-sponsors, H.R. 417 would save about $35 billion over five years without forcing current employees out of their jobs.

But J. David Cox, president of the American Federation of Government Employees, today called their effort "misguided legislation" that would "arbitrarily slash the size of the federal workforce without doing away with any of the work, forcing agencies to rely on more expensive contractors."

"Rep. Lummis trotted out this bill in the last Congress and it was rejected by Democrats and Republicans alike," he said in a statement.

Lummis, the new chairwoman of a subcommittee charged with overseeing environmental and energy agencies, said in an interview this month that she'd continue this year with her efforts to downsize the government workforce. "I continue to believe that that's a good idea and responsible policy," she said (*E&E Daily*, Jan. 14).

The Wyoming Republican said in a statement this week, "Attrition is a solution that requires the federal government to do what any business, state, or local government would do to cut costs -- limit new hires. Instead of blindly filling empty desks, this bill forces agencies to take a step back, consider which positions are crucial, and make decisions based on necessity rather than luxury."

Cox, however, said today that fewer employees means increasing workloads and less efficient government services.

"The number of workers employed by the federal government is currently at an all-time low -- less than 2 percent of the total U.S. workforce," he said. "If Reps. Lummis and Mulvaney believe the federal government can afford to lose another 200,000 employees in the span of a single year, then they should explain to the American public where they think these cuts should occur and what services they think we can do without."

SENATE:

With gavel in hand, Murkowski prepares for 'big issues'

Published: Friday, January 23, 2015

Sen. Lisa Murkowski (R-Alaska) is poised to tackle thorny energy issues with her trademark steady and methodical approach in her new post as chairwoman of the Senate Energy and Natural Resources Committee.

Hailing from the resource-rich state of Alaska, Murkowski told the *Houston Chronicle* she plans to take charge of debates over the Keystone XL pipeline, oil exports, offshore drilling, renewable power and access to federal lands.

Another issue Murkowski is pushing for is the approval of a road through a wildlife refuge that would connect an isolated Alaska community with medical and emergency care. The issue has faced controversy, and the Department of the Interior has blocked the road's construction.

One of Murkowski's biggest obstacles is finding common ground with Democrats on the committee who do not share the Alaska senator's views on many issues.

"She has strong views, and she is committed to those views," said former Sen. Jeff Bingaman (D-N.M.), a previous committee chairman. "But she was willing to let the process work itself out and have votes on issues, and that's the way the Senate is supposed to work."

Murkowski came to the Senate amid controversy in 2002 when she was appointed by her father to fill the seat he had just vacated for the governor's mansion. Voters re-elected her to a full six-year term in 2004. But she hit a stumbling block in 2010, when she lost her Republican primary campaign to tea party favorite Joe Miller. She returned to Washington, D.C., however, after launching only the second successful write-in campaign in Senate history.

A third-generation Alaskan, Murkowski takes a more nuanced view on energy and environmental issues than many of her Republican colleagues. On one hand, she is a strong supporter of oil and gas development. But she also is sensitive to the threats of a melting Arctic.

"I am allegiant, faithful to the people of Alaska -- period," she said. "Yes, I am a member of the Republican majority ... but I have always put the best interests of Alaska and Alaskans ahead of my party."

On Wednesday, Murkowski made her most visible break with her GOP colleagues when she joined just 14 other Republicans on a vote affirming humans' contribution to climate change (*E&E Daily*, Jan. 22).

"You should never be afraid to take on the big issues," Murkowski said. "But timing with the big issues is important, and if the time isn't necessarily here, then [you consider] how to advance the conversation so it is right" (Jennifer A. Dlouhy, *Houston Chronicle*, Jan. 22). **– MH**

OCEANS:

Infrastructure costs gobbling up U.S. funding for core research -- report

Emily Yehle, E&E reporter

Published: Friday, January 23, 2015

Ocean research should focus on sea-level risks, forecasting natural disasters and global warming's impacts on marine ecosystems, the National Research Council said in a report released today.

The report sets out eight priorities for the next decade that emphasize the need for funding and cross-agency collaboration. Specifically, it warns that infrastructure costs are beginning to overshadow research funding amid flat and declining federal budgets.

Shirley Pomponi, who co-chaired the NRC panel that wrote the report, said in a statement that the 148-page document incorporated "broad input" from marine scientists in an effort to provide strategic direction for research.

"The next decade and beyond should be a time of opportunity and progress in ocean science, with advances that benefit the societal and economic goals not only of our nation but also the world," said Pomponi, who is executive director of the Cooperative Institute for Ocean Exploration, Research and Technology. CIOERT is sponsored by the National Oceanic and Atmospheric Administration.

The eight priorities set out categories of study. They include the "rates, mechanisms, impacts and geographic variability" of sea-level change, the change in marine food webs over the next century, the formation of ocean basins and the role of biodiversity in the resilience of marine ecosystems, among other things.

Beyond research objectives, the report recommends specific steps to ensure that researchers have sufficient funding. It paints a somewhat bleak picture of the current situation, pointing to infrastructure costs that have eaten into research money.

The focus is on the Division of Ocean Sciences (OCE) at the National Science Foundation, which asked the National Research Council to write the report in order to outline priorities amid funding constraints.

Since 2000, rising operating and infrastructure costs have led to a "substantial decline in funding for core research programs," according to the report. It recommends that OCE should limit costs for infrastructure -- such as research vessels and scientific ocean drilling -- to 50 percent of its annual budget.

To get there, the report makes specific recommendations, such as limiting the planned construction of three new research vessels to just two. And while emphasizing the importance of ocean drilling to research, the report points out that the United States carries a "heavier financial burden" than many other countries; if that can't be renegotiated, then one solution would be reducing the number of drilling platforms.

"Reductions in infrastructure support are never easy and will cause disruptions for parts of the ocean science community," committee co-chairman David Titley, director of Pennsylvania State University's Center for Solutions to Weather and Climate Risk, said in a statement.

"But restoring a balance between the core science budget and infrastructure and then investing prudently in new technology will enable a diverse community of scientists to undertake research and pursue discoveries that will advance ocean science."

EPA:

Republican views of agency worsen -- poll

Robin Bravender, E&E reporter

Published: Friday, January 23, 2015

Republicans dislike U.S. EPA even more than they did a year ago, according to a new poll.

The survey released yesterday by the Pew Research Center shows that 51 percent of Republicans have an unfavorable impression of EPA, and 36 percent view the agency in a positive light.

Last February, GOP views were nearly evenly split, with 46 percent viewing the agency favorably and 45 percent holding an unfavorable view of EPA.

Overall, most people -- 59 percent -- see EPA positively, compared to 32 percent with negative opinions, the survey showed.

Pew's national survey of 1,504 adults was conducted from Jan. 7 to 11 and has a 2.9-point margin of error.

Democrats, meanwhile, have grown slightly more positive in their opinions of EPA. The poll found that 80 percent of Democrats see the agency favorably, compared to 11 percent who view it unfavorably. Last February, 70 percent of Democrats saw the agency positively; 21 percent had a negative view.

Among the eight agencies included in the poll, the partisan divide was starkest for EPA. Democrats also held more favorable views than Republicans of the Internal Revenue Service, the Centers for Disease Control and Prevention, and others. The CIA was the only agency included in the poll that Republicans view more favorably than Democrats.

GULF OF MEXICO:

NMFS proposal sets red snapper quota for charter captains

Emily Yehle, E&E reporter

Published: Friday, January 23, 2015

Gulf of Mexico charter captains would get their own quota for red snapper under a proposed rule from the National Marine Fisheries Service.

The proposal, which appears in today's *Federal Register*, follows up on the Gulf of Mexico Fishery Council's recommendation from last year (*E&ENews PM*, Oct. 23, 2014).

Known as Amendment 40, the contentious measure divides the fishing quota among commercial fishermen, recreational anglers and professional charter boats. There are currently two sectors, commercial and recreational; charter captains share the recreational catch.

Ocean advocates say the change will help fishery managers keep better track of recreational catch, distinguishing between individual anglers and charter boat captains who can be more closely regulated. The recreational sector has exceeded its red snapper quota for six of the past seven years, prompting debate on how NMFS can better manage the fishery.

Recreational fishermen -- and several Gulf Coast lawmakers -- say Amendment 40 will merely take more fish away from individual anglers, who have seen their season shrink each year. Last year, it was nine days long.

EVERGLADES:

Decline in wading birds hints restoration too slow

Published: Friday, January 23, 2015

Numbers of small wading birds residing in the Everglades declined in 2014, despite ongoing restoration efforts, according to an annual survey released yesterday.

The South Florida Water Management District found the overall number of nests in and around refuges, wildlife sanctuaries and water conservation areas was down by 60 percent after record growth five years ago and down by 28 percent since 2013.

Everglades nests for little blue herons, tricolored herons and snowy egrets that numbered more than 1,000 a decade ago were down to about 130 last year, raising concerns that wetlands restoration isn't moving fast enough.

"If anything, this decline in wading birds shows we need to step up the pace [of restoration work] to make sure we don't lose everything magical about this ecosystem," said Tabitha Cale of Audubon Florida.

Recovery is closely tied to Everglades hydrology. Biologists blame heavy rains in 2013 for producing more fish that compete with the birds for prey like crayfish, and rising sea levels could also be a factor in emptying coastal rookeries of roseate spoonbills.

While overall numbers were down, Cale said the silver lining was the surprise return of the threatened woodstork to Corkscrew Swamp east of Naples after seven years and increases in ibis, stork and great egret populations over the last 15 years (Jenny Staletovich, *Miami Herald*, Jan. 22). **-- DTB**

NOAA:

Draft plan lays out 5-year climate change strategy for fisheries

Emily Yehle, E&E reporter

Published: Friday, January 23, 2015

The National Marine Fisheries Service released a five-year blueprint today for addressing climate change, marking the first time the agency has tackled the issue on a national scale.

The "climate science strategy" -- still in draft form -- underscores the challenges fishery managers face amid warming oceans, rising sea levels and ocean acidification. As fish shift north, they move beyond the reach of the fishermen who have long caught them, and as oceans become more acidic, ecosystems change.

The draft strategy lays out seven steps for the next five years. They include selecting "robust strategies" for managing fisheries under a changing climate, building a "science infrastructure" and identifying "future

states" of marine ecosystems. They also partly focus on living marine resources tied to the economies of communities.

The aim is "to provide a nationally consistent framework to guide development and implementation of regional actions," the agency wrote in a notice in today's *Federal Register*. "The Strategy proposes specific near and medium-term recommendations, and identifies priority recommendations that are common across mandates, regions, objectives and living marine resources."

The strategy -- open for public comment until March 31 -- comes about a month after NMFS partnered with Rutgers University to create OceanAdapt, a website that allows fishermen and policymakers to track shifting fish populations (*Greenwire*, Dec. 12, 2014).

More broadly, the National Oceanic and Atmospheric Administration, which houses NMFS, has long pushed for climate change planning, recently helping develop a climate resilience toolkit called for in President Obama's Climate Action Plan.

ARCTIC:

State Department, Disney discuss 'Frozen' spinoff on climate change

Published: Friday, January 23, 2015

The State Department's special representative for the Arctic said he has been in discussions with Disney over turning the popularity of the 2013 film "Frozen" into a way to teach children about climate change's impact on the Arctic.

"I said, 'You've taught an entire generation about the Arctic. Unfortunately, the Arctic that you've taught them about is a fantasy kingdom in Norway, where everything is nice,'" retired Coast Guard Adm. Robert Papp Jr. said at the Arctic Frontiers conference in Tromsø, Norway. "And I said what we really need to do is educate the American youth about the plight of the polar bear, about the falling tundra, about Alaskan villages that run the risk of falling into the sea because of the lack of sea ice protecting their shores."

The plot of "Frozen," the highest-grossing animated film of all time, revolves around a princess freeing her kingdom from eternal winter.

Papp admitted that Disney executives were "perplexed" about how to commingle the company's usual penchant for happy endings with the bleak picture of climate change but promised that he isn't going to let the issue go as the United States starts its two-year tenure as leader of the Arctic Council by May.

"We're regrouping on our storyline, and we still have Disney engaged," he said. But an email from State said "no further collaboration is planned at this time" (Sophie Yeo, *Responding to Climate Change*, Jan. 22). **-- DTB**

EPA:

McCarthy warns of climate impacts during X Games appearance

Published: Friday, January 23, 2015

U.S. EPA Administrator Gina McCarthy took to the slopes of Aspen's X Games yesterday to spotlight the potential impacts of climate change.

The EPA chief warned of the devastating effects climate change could have on the games in the future and noted that shorter winters and less snow would hurt snow-related businesses that contribute $67 billion a year to the U.S. economy and support 900,000 jobs.

"That's why we're here. People here do know the climate has changed. It's been a notable change in how much snow is falling," McCarthy said. "If we don't take action now, that change will be a lot more extreme."

McCarthy said large oil supplies and falling prices will not hamper efforts to transition to renewable energy sources, such as wind and solar.

"The work we're doing with states, to think through our Clean Power Plan to regulate pollution from power plants, will really provide opportunities for significant investment in renewable energy," McCarthy said (Bruce Finley, *Denver Post*, Jan. 22). **-- MH**

FEDERAL WORKFORCE:

Union membership on the rise

Kevin Bogardus, E&E reporter

Published: Friday, January 23, 2015

Union membership among federal government employees ticked upward last year.

A report released today by the Bureau of Labor Statistics (BLS) showed that the union membership rate for those working for the federal government was 27.5 percent in 2014 -- more than the 26.5 percent of federal workers who were union members in 2013.

Union membership among public-sector workers nationwide remained vastly higher than those working in the private sector last year. At 35.7 percent in 2014, the public-sector workers' union membership rate was more than five times higher than the rate for private-sector workers, 6.6 percent of whom were union members.

Union membership among all public-sector workers, not just federal employees, went up as well. In 2013, 35.3 percent of the sector's workers were members of unions, but last year, the union membership rate for the public sector rose slightly by 0.4 percentage point.

Nevertheless, organized labor suffered declining membership across the entire workforce.

In 2014, the union membership rate was 11.1 percent, a drop from the 11.3 percent rate in 2013, according to BLS. The bureau also said that the number of workers belonging to unions at 14.6 million was "little different" from 2013.

Though union membership remains strong among federal workers, their overall numbers are shrinking. BLS found earlier this month that the federal government shed about 19,000 jobs in 2014 (*Greenwire*, Jan. 14).

Further, federal employees' numbers may further dwindle. Reps. Cynthia Lummis (R-Wyo.) and Mick Mulvaney (R-S.C.) introduced legislation this week that would restrict federal agencies' hiring of new workers (*see related story*).

The U.S. jobs market is now booming compared with the dark days of the 2008 financial crisis, with President Obama touting the country's economic success in his State of the Union address earlier this week.

The White House noted earlier this month that the private sector has added 11.2 million jobs over 58 straight months of job growth. Union leaders, though, have questioned whether those are quality, high-paying jobs.

In reaction to the BLS report today, AFL-CIO President Richard Trumka said that, though more jobs are being created, "the most important question is not simply how many jobs we're creating, but are we creating jobs that raise wages for all?"

"A strong recovery must be built on family-sustaining, not poverty-level jobs," Trumka said in a statement. "Today's news confirms what most of us already knew: workers are finding good union jobs despite political ideologues -- and jobs are coming back as the economy slowly rebounds, but neither are nearly enough."

MEDIA:

Washington Post augments energy, enviro coverage

Published: Friday, January 23, 2015

The Washington Post launched a new energy and environment section yesterday, with correspondent Chris Mooney noting that the issues have "never mattered more."

Mooney, who joined the *Post* last year after covering energy at *Mother Jones* magazine, will produce a blog that will feature contributions from reporters throughout the newspaper, the *Post* said (Chris Mooney, *Washington Post*, Jan. 22).

The *Post*'s move to beef up its coverage and produce more current online materials mirrors staff changes at *The New York Times* last year (Benjamin Mullin, Poynter Institute, Jan. 22).

AGRICULTURE:

Harvard snaps up water rights in drought-stricken wine country

Published: Friday, January 23, 2015

As California's drought has escalated over the past few years, Harvard University has purchased water rights in the state's wine region.

In the last two years, the university has purchased land in the Paso Robles area and quickly become one of the region's largest grape growers. Brodiaea Inc., owned by the $36 billion Harvard endowment fund, has purchased 10,000 acres for $60 million in Santa Barbara and San Luis Obispo counties since 2012.

During that time, Brodiaea has acquired the rights to drill 16 water wells two to three times deeper than average residential wells. According to records, the company obtained permits to drill seven 800-foot wells on Aug. 21, 2013, six days before lawmakers approved a ban on new pumping in the area.

Locals and environmentalists have questioned the land grabs and Harvard's intentions.

"It remains to be seen what commitment they have to the business of agriculture," said Susan Harvey of North County Watch, an environmental group. "Is Harvard going to keep pumping groundwater or cut back on returns to protect water quality and quantity?"

Harvard Management Co., which runs the fund, and Brodiaea officials declined to comment on the issue (Richard Valdmanis, Reuters, Jan. 22). **-- MH**

COAL:

Court gives company green light to mine in Ohio wetlands

Published: Friday, January 23, 2015

A coal mining company is authorized to operate in wetland areas, an Ohio appeals court ruled yesterday.

The court ruling said the Ohio EPA and Ohio Environmental Review Appeals Commission's decision to not allow Oxford Mining Co. to disturb wetlands was not based in law.

Ohio EPA granted the company a permit to mine for coal on 1,100 acres in eastern Ohio in 2011 but restricted some mining activities and forced the company to stop operations if they encountered an endangered eastern massasauga rattlesnake. The agency also prohibited the company from building roads in a wetland.

The company appealed the restrictions to the governor-appointed commission, which agreed with the company on some points, including not having to stop operations for an endangered species. The commission, however, upheld Ohio EPA's decision on other points, such as building a road through the wetland.

After the commission's decision, Ohio EPA appealed and said both endangered species and wetlands should be protected.

Ohio EPA is considering its options and has not decided if it will appeal the court's decision.

Last month, Oxford was ordered to pay $650,000 in fines and community service because its director of environmental compliance submitted false reports to Ohio EPA regarding discharges from mining operations (Laura Arenschield, *Columbus Dispatch*, Jan. 23). **-- MH**

DRINKING WATER:

Mont. town's supplies cleared after oil spill

Published: Friday, January 23, 2015

Residents in an eastern Montana town near an oil pipeline spill got the all-clear yesterday to start using their tap water again after earlier tests found it contaminated with benzene.

Tests found the cancer-causing chemical after a Bridger Pipeline Co. oil pipeline ruptured beneath the Yellowstone River, spilling 40,000 gallons of oil about 6 miles upstream of the city.

Residents should run water from their taps first to flush out any contamination that may remain, officials said, and filters added to the city's water treatment plant should keep out further contaminants.

"If it doesn't smell anymore, you have cleaned it out, you're good," said Paul Peronard, a U.S. EPA official. "Citizens can start drinking it."

Cleanup crews say it could take months to remove all of the crude oil from the river, as most of it is trapped beneath ice. Scientists say if the oil is not removed by spring, wildlife is more likely to come in contact with it (AP/Portland *Oregonian*, Jan. 22). **-- SP**

DRINKING WATER:

Concerns mount over contaminants in Mich. city's supply

Published: Friday, January 23, 2015

Mysterious rashes on children, unexplained illnesses and sick pets have Flint, Mich., residents wondering if their tap water is safe to drink.

Residents have reported brown rust circles around drains, and children have become ill after drinking it. At a General Motors Co. plant nearby, operators connected to a nearby water system to avoid the Flint water.

Tests show it doesn't contain coliform bacteria, but it has low levels of total trihalomethane, or TTHM, a byproduct of disinfectants used to kill microorganisms. U.S. EPA has said that years of exposure to TTHM can cause central nervous system problems and an elevated risk of cancer.

Flint Mayor Dayne Walling (D) said residents shouldn't be concerned about the water, but he has asked Gov. Rick Snyder (R) to help with infrastructure improvements and to provide funding to hire additional water treatment employees.

Flint is also due to tap into a new water authority drawing its supplies from Lake Huron in 2016 (Robin Erb, *Detroit Free Press*, Jan. 23). **-- SP**

HONG KONG:

Biologists marvel, fret over fluorescent blue seashore

Published: Friday, January 23, 2015

Hong Kong's seashore is glowing neon blue, but marine biologists say the fluorescent spectacle indicates an abundance of harmful single-celled organisms.

Noctiluca scintillans, or sea sparkle, looks and can act like algae but technically functions as both animal and plant. Like algae, however, sea sparkle blooms are triggered when nitrogen and phosphorous from farm run-off increase, which can be devastating to marine life and local fisheries.

"It's just extremely unfortunate that the mysterious and majestic blue hue is created by a *Noctiluca*," University of Georgia oceanographer Samantha Joye said (AP/New Orleans *Times-Picayune*, Jan. 22). **-- DTB**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Mon., January 26, 2015

READ FULL EDITION

1.REGIONS:

Bloomberg, Paulson and Steyer release bipartisan report on climate change risks to Midwest

On Friday, the three U.S. financial heavyweights behind the Risky Business Project -- an effort to quantify the financial risks posed by global climate change -- published the organization's latest report to help people identify, understand and plan for the economic risks related to steadily increasing temperatures worldwide.

2.ELECTRICITY:

Hawaii utility seeks end to popular rooftop solar incentive; does it signal industry's future?

A popular program for rooftop solar that gives customers sizable bill credits for electricity sent to the grid would be phased out in Hawaii under a proposal from the island's largest utility.

TODAY'S STORIES

3.NATIONS:
U.S. and India sign nonbinding pledge to work together toward new climate pact

4.POLICY:
On heels of Arctic climate order, Obama moves to protect refuge

5.STATES:
W.Va. Republicans set to repeal state's alternative energy mandate

6.TECHNOLOGY:
As another funding round opens, ARPA-E touts some of its ambitious clean-tech bets

7.ENERGY EFFICIENCY:
White House announces challenge for improving outdoor lighting

8.WEATHER:
N.D. climate could be affected by dirty snow, research finds

9.BUSINESS:
U.K. Environment Agency pension fund pressures oil companies to invest in renewables

10.RENEWABLE ENERGY:
Renewables threatened and bolstered by low oil prices -- U.N. climate chief

11.NATIONS:
U.N. calls on governments to act after hottest year on record

E&ETV'S ONPOINT

12.RENEWABLES:
AWEA's Kiernan talks future of PTC support following Obama remarks on wind power leadership

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Mon., January 26, 2015

READ FULL EDITION

1.MARKETS:

5 reasons why oil prices won't be recovering anytime soon

At a high level, it's Economics 101. When the world has plenty of oil, but far less demand, the price should crash. And so it has.

TOP STORIES

2.OIL:

Markets continue to rumble amid transition in Saudi Arabia

3.OKLAHOMA:

Chesapeake, royalty owners agree on $119M settlement

4.WORKFORCE:

Not all oil industry segments suffer equally as prices slide

ELECTRICITY

5.MEDIA:

What would Edison do with today's electricity challenges?

6.RENEWABLES:

Investment firm acquires Okla. wind farm

OIL AND GAS

7.YELLOWSTONE SPILL:

Federal regulators order upgrades to leaking pipeline

8.REGULATION:

Texas Railroad Commission may amend no-interviews policy

9.PEOPLE:

BP financial executive takes Apache's open CFO post

10.ADVOCACY:

Pa. fracking group reaches settlement over spot on terror list

11.REGULATION:

Okla. town rejects drilling ban

E&ETV'S ONPOINT

12.RENEWABLES:

AWEA's Kiernan talks future of PTC support following Obama remarks on wind power leadership

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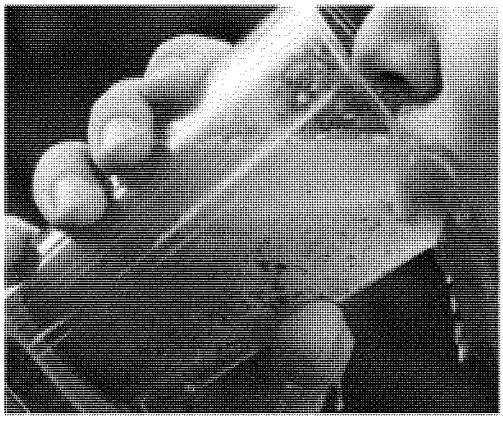

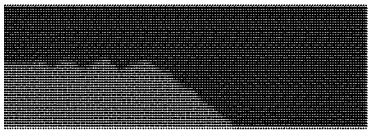

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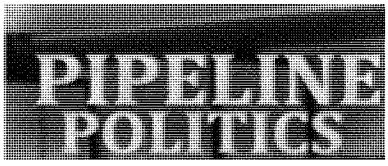
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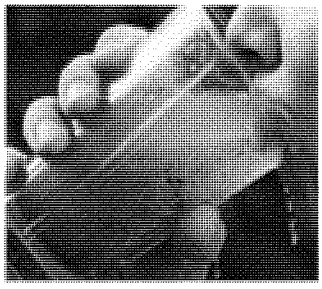
POLITICS



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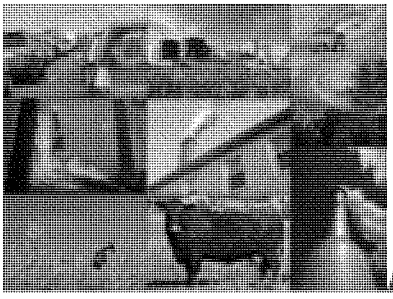
Subject: Air & Radiation Law News for January 23, 2015



Air & Radiation Law News

for January 23, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA 'Good Neighbor' Guidance Identifies Potential Ozone Nonattainment Areas

The Environmental Protection Agency predicted that 11 areas will fail to meet the air quality standards for ozone by 2018 in a Jan. 22 memorandum to state air pollution regulators....

Air Pollution

EPA Unreasonably Ignored Cost in Deciding To Promulgate MATS Rule, Petitioners Say

The Environmental Protection Agency unreasonably decided not to consider cost when determining it was "appropriate and necessary" to regulate emissions of mercury and other hazardous air pollutants from power plants, according...

Air Pollution

New Governor Puts Hold on Limits For Power Plant Nitrogen Oxide Emissions

Just hours after being inaugurated, Gov. Larry Hogan (R) put a hold on environmental regulations crafted by his predecessor that would have placed limits on coal-burning power plants' nitrogen oxide emissions....

Climate Change

'Virtual Framework' Will Help Agencies Assess Transportation Systems' Vulnerability

A suite of tools to help agencies assess vulnerability of transportation facilities and systems is now available via a "virtual framework" launched Jan. 22 by the Federal Highway Administration....

Climate Change

UN Unveils Portal for Climate Change Submissions

The United Nations Framework Convention on Climate Change Jan. 22 unveiled a Web-based portal that countries can use to submit their pledges for confronting climate change. The Intended Nationally Determined Contributions (INDCs) are...

Climate Change

WEF: Business Community Viewed as Critical In Reduction of Greenhouse Gas Emissions

A key component to reducing greenhouse gas emissions is getting businesses to recognize the costs of inaction, said a panel of climate negotiators speaking at the World Economic Forum in Davos, Switzerland. ...

Climate Policy

Taken Together, Senate Climate Votes Make Incremental Progress, Advocates Say

While Senate votes on the role humans have had in raising global temperatures were important for putting Republicans on record on the issue, congressional observers told Bloomberg BNA Jan. 22 the impact on actual policies to address climate...

Emissions Trading

EU Panel Rejects Carbon-Fix Plan To Withhold Surplus Allowances

The European Parliament's industry committee failed to agree on a recommendation for a draft measure to curb a glut of carbon permits....

Energy

$55 Million Available for Auto Technology R&D

The Energy Department is making more than $55 million available for research and development proposals on advanced automotive technologies, the department said Jan. 22. The projects are to focus on advanced batteries, electric-drive vehicles,...

Energy

Bill Reintroduced to Boost Tribal Energy Projects

A bill to ease the development of energy resources on Indian tribal lands was reintroduced Jan. 22 by Sens. John Barrasso (R-Wyo.) and Jon Tester (D-Mont.). The Indian Tribal Energy Development and Self-Determination Act Amendments of 2015...

Energy

Mayors Seek Return of Federal Program Offering Block Grants for Energy Efficiency

Mayors have called on Energy Secretary Ernest Moniz to bring back a federal energy efficiency block grant program that was funded only once since it was established several years ago....

Energy

Senate Rejects Keystone Amendments On Tar Sands Tax, Climate, Eminent Domain

The Senate voted down a series of amendments from Democrats that would have ended an excise fee exemption for tar sands oil, acknowledged the role of fossil fuels in climate change and prohibited the use of eminent domain to seize private property...

Environmental Reviews

Federal Court Upholds $90M Coal Export Loan Guarantee; Says Groups Lack Standing

A federal court has upheld a $90 million U.S. Export-Import Bank loan guarantee for Appalachian coal exports from the U.S. (Chesapeake Climate Action Network v. Exp.-Imp. Bank of the United States, D.D.C., No. 1:13-cv-01820, 1/21/15)....

EPA

Longtime EPA Official to Be Nominated As Permanent Deputy Administrator

The president intends to nominate Stanley Meiburg, a longtime official at the Environmental Protection Agency, for the agency's second-highest position, the White House said Jan. 22....

Hazmat Transport

Rep. DeFazio Plans to Request PHMSA Audit, Asks Foxx to Address Safety Issues Quickly

Rep. Peter DeFazio (D-Ore.) will soon request an audit of the Pipeline and Hazardous Materials Safety Administration's pipeline and hazmat transport programs, he told Transportation Secretary Anthony Foxx in a letter Jan. 22....

Natural Gas

House to Vote on Liquefied Gas Export Bill Next Week, Majority Leader McCarthy Says

The House will vote next week on legislation that would require the Energy Department to expedite consideration of applications to export liquefied natural gas, Majority Leader Kevin McCarthy (R-Calif.) said Jan. 22. ...

Regulatory Policy

Goodlatte to Move Streamlined Permitting Legislation, REINS Act During February

Rep. Bob Goodlatte (R-Va.) will move a bill in February to streamline federal permitting for energy projects before turning to a measure to subject all major federal rules to congressional consent, he told Bloomberg BNA in an interview....

Renewable Energy

U.S. Wind Power Capacity Grew Sixfold
In 2014, Bloomberg Energy Group Says

Installations of wind power in the U.S. surged sixfold in 2014 compared with the previous year, making the U.S. the largest market for the technology worldwide after China....

Trade

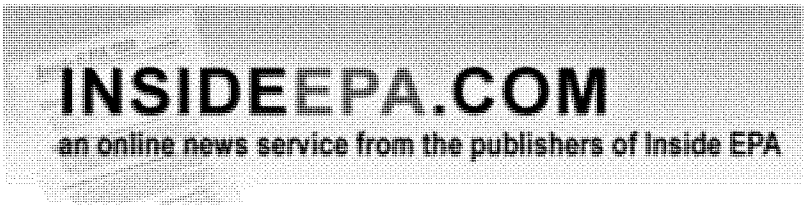
China Says U.S. Ruling on Solar Panels
Will Hurt Clean Energy Development

China said a U.S. ruling that will trigger tariffs on solar panels imported from China and Taiwan will hurt both local manufacturers and American companies that buy them....

BNA INSIGHTS

Mexico Energy Reform and U.S. Presidential Permits for Cross-Border Projects

Presidential permits have existed for more than 75 years and are required for importing crude oil, importing and exporting natural gas and other refined products, and developing electric transmission lines and other infrastructure projects...



Inside EPA's **Weekly Report**, 01/23/2015

http://insideepa.com/newsletters/inside-epa

Latest News

EPA Defends Deferral Of Methane Air Rules For Existing Oil & Gas Drilling

EPA Administrator Gina McCarthy is defending the agency's decision to defer regulation of the greenhouse gas (GHG) methane from existing oil and gas development and instead focus on imposing direct methane limits on new drilling, saying new sources have the greatest emissions and there is no legal deadline to regulate existing sources.

News Briefs

Obama Nominates Meiburg As Deputy EPA Administrator

President Obama has announced his intent to formally nominate Acting Deputy EPA Administrator Stan Meiburg to serve in the role permanently, setting up a potentially tough Senate Environment & Public Works Committee (EPW) hearing for the nominee where senators will be able to question him about a host of contested agency policies.

EPA Urged To Quickly Craft GHG Limits For Aircraft

Environmentalists are urging EPA to quickly develop first-time regulations to limit greenhouse gas (GHG) emissions from aircraft, saying the agency needs to move beyond relying on international negotiations over a global pact on curbing aircraft GHGs and propose domestic emissions limits by next year at the latest.

GOP, Democrats Name Leaders For EPA Spending Panels

Republicans and Democrats have named the lawmakers that will serve as chairmen and ranking members of the House and Senate appropriations panels that oversee EPA's spending bill, just weeks ahead of President Obama's fiscal year 2016 budget proposal that sources doubt will result in major funding cuts or boosts to EPA.

Greenwire

KEYSTONE XL:

'Bring on science!' Canadian ambassador tells Obama

Matt Herbert, E&E reporter

Published: Thursday, January 22, 2015

Canadian Ambassador Gary Doer this morning responded to President Obama's comments during his State of the Union address on the Keystone XL oil pipeline and accused the president of not reading into the scientific data regarding the controversial project.

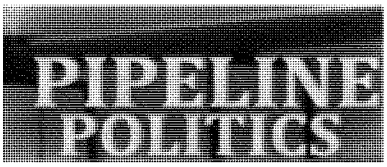
"I heard him at the State of the Union talk about science. Hallelujah," Doer said this morning during a news conference with Sens. John Hoeven (R-N.D.) and Joe Manchin (D-W.Va.), who are sponsoring

legislation to approve the pipeline that would carry Canadian crude from the oil sands to Gulf Coast refineries ahead of an Obama administration review of the project.

"Bring on science because the science is in the State Department report," Doer added.

State concluded that KXL is unlikely to have a significant impact on climate.

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. Click here to view the special report.

Doer said approving the pipeline would put veterans to work, a key point in Obama's speech.

"I heard the president say, 'If you want a job, hire a veteran,'" said Doer. "... We say to the president, the sooner you can approve this, the sooner we can hire those returning veterans. I agree with him. Let's hire veterans. Let's do it for one of these infrastructure projects."

Environmental advocates and other KXL opponents, plus many Democratic lawmakers, say the boosters are overplaying the pipeline's economic benefits. They also question the State Department's conclusions about KXL's climate impacts.

That's why Hoeven, Manchin and Doer aimed to highlight bilateral efforts at protecting the environment.

"Canada is committed to developing the oil sands with good environmental stewardship and already has a strong record of achievement," said Hoeven. "Companies like [Exxon Mobil Corp. and Royal Dutch Shell PLC] are working with their Canadian counterparts to develop new technologies to reduce greenhouse gas emissions as they increase production to help both Canada and the U.S. to become more economically strong and energy secure."

Doer said the United States and Canada have been partners in protecting the environment and continue to work together on environmental legislation. "We work together on clean air policies such as vehicle fuel efficiency standards and acid rain reduction," said Doer. "Canada and the U.S. develop renewable and traditional energy to make our North American neighborhood less dependent on countries that represent potential risk for the future."

Hoeven and Manchin highlighted Exxon Mobil's $10 billion investment in clean production technology and Shell's carbon capture and storage project that will store more than 1 million tons of carbon dioxide per year.

The senators also discussed the pending KXL legislation in the Senate and said they are still working to find a few more Democratic votes to override the president's veto.

Manchin praised Republican leaders for the open amendment process.

"We've had more amendments on this one piece of legislation than I've been able to vote on in a whole year or more," said Manchin. "Just on one piece of legislation. I'm hopeful."

Reporter Manuel Quiñones contributed.

FERC:

LaFleur weighs response as protesters disrupt another meeting

Hannah Northey, E&E reporter

Published: Thursday, January 22, 2015

The Federal Energy Regulatory Commission's monthly meeting in Washington, D.C., was disrupted today after climate activists opposed to the agency's approval of natural gas projects tied to hydraulic fracturing refused to stop speaking.

After trying at least twice without success to call the meeting to order, FERC Chairwoman Cheryl LaFleur called for an unscheduled recess to allow security guards to usher out a dozen or so Beyond Extreme Energy activists. They chanted, "FERC doesn't work!" and "Stop fracking."

LaFleur repeatedly told protestors there are ample opportunities to comment on FERC cases through dockets and filings -- not at agency meetings.

"This is new territory for FERC, and we're ... learning on the job," LaFleur said.

Protestors stood and called on FERC commissioners -- including the new Democratic member, Colette Honorable -- to be the next "superhero" by promoting renewable energy and taking a stand on global warming.

"You have more power than any other government agency to make sure this system changes. You, the commissioners, can be heroes," protester Kendall Hale of Asheville, N.C., told the stone-faced commissioners. "Being a rubber stamp and approving business as usual ... is a coward's journey. You could be the next Abraham Lincoln or George Washington."

A member of Beyond Extreme Energy said in an email the group plans to continue protesting at upcoming FERC meetings.

LaFleur said after the meeting the agency has for months been discussing how to anticipate protests. Before a rally outside FERC headquarters last year, she said, notices of the event were "all over the Internet" with dates and times.

"To the extent that our meetings are attracting the volume and intensity of protests we're getting, we'll have to step back and think about how to deal with it," LaFleur said.

Pipeline construction is drawing the bulk of opposition, LaFleur said, and protestors generally fit into two camps: those with regional concerns about the effect of specific projects and those fighting big-picture battles against fossil fuels and related infrastructure and drilling techniques, such as hydraulic fracturing.

"It's that latter part that we're mostly seeing at our meetings, and obviously their thoughts are very sincere and compelling, and it's an opportunity to express them," she said.

While acknowledging the right of free speech, LaFleur noted that some of the issues raised don't fall under FERC's jurisdiction. Fracking, for example, is a practice overseen by state regulators. The chairwoman told reporters she's open to suggestions for handling the pushback.

"The idea of making people leave the room is not very FERC-like," LaFleur said.

Climate debate

FERC is also embroiled in climate debates because the agency is the environmental lead on a wave of proposed gas pipelines, export terminals, compressor stations and other facilities that have triggered pushback from environmentalists (*E&ENews PM*, Nov. 3, 2014).

Beyond Extreme Energy demonstrated in the past at Honorable's Senate confirmation hearing last year and rallied outside FERC headquarters with activists from the Great March for Climate Action.

FERC in past decisions has assessed direct greenhouse gas emissions from projects under its reviews required by the National Environmental Policy Act but has so far stopped short of trying to assess or regulate emissions from gas production.

Separately, FERC is also facing increased pressure from Capitol Hill to tackle reliability concerns related to U.S. EPA's Clean Power Plan for curbing greenhouse gas emissions from power plants -- an issue at the center of a series of upcoming technical conferences starting next month.

FERC Commissioner Tony Clark in a letter to Congress this month said the commission had an insignificant role in advising EPA about the Clean Power Plan's potential effects on the grid (*Greenwire*, Jan. 21).

LaFleur said she has tried to be transparent about the meetings that FERC and EPA staff and officials have held in response to Congress and noted that EPA will be participating in the commission's upcoming meeting to discuss the climate rule.

"In my view, those meetings do represent engagement," she said. "Is there a lot more work to do? Absolutely. The EPA is just now doing the tough work of going through millions of comments and putting out the final rule."

LAW:

Key roles seen for 5 up-and-comers as industry confronts new rules

Jeremy P. Jacobs, E&E reporter

Published: Thursday, January 22, 2015

Fifteenth in a series on key players on energy and environment issues in 2015.

It's going to be a big year for lawyers representing industry clients facing a raft of new energy and environment regulations.

With the Obama administration plowing ahead with greenhouse gas standards for power plants, a rule defining U.S. EPA's regulatory reach over wetlands and waterways, and curbs on methane emissions from oil and gas developers, attorneys are ready for litigation.

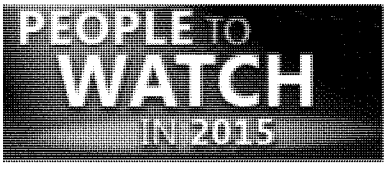
Below are five litigators who will play roles in fights ahead over environmental regulations.

Margaret Peloso, Vinson & Elkins

Margaret Peloso's dedication to the environment grew during her early days as a student at Duke University.

She spent a semester studying at the Duke Marine Lab. Before she knew it, she was a certified scuba diver researching fish in an artificial reef off the North Carolina coast.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

After countless hours at the lab and in the Atlantic, she earned a master's degree but opted for a career that involved less time in a wetsuit.

"There were one too many times when something bumped into me and I wasn't sure if it was my dive partner or a shark," she said. "I thought I might want to do something more policy-centered for a career."

Peloso, 30, didn't abandon marine studies, though. She opted for an unusual joint degree, pursuing a doctorate at Duke while simultaneously getting a law degree at Stanford University.

By 2010 she was done with both, and she'll release a book next year that grew out of her doctoral dissertation on sea-level rise and coastal adaptation. The book looks at the different coastal management structures of states like Texas, California and North Carolina.

In her legal career, she's established herself as a future leader of the environmental bar, said Roger Martella of Sidley Austin, a former U.S. EPA general counsel.

"She is very involved in the American Bar Association to contribute to the greater good on these issues, not only representing her clients," he said.

Margaret Peloso. Photo courtesy of Vinson & Elkins.

At Vinson & Elkins, Peloso advises clients on the technical aspects of complying with a host of EPA regulations, including the agency's greenhouse gas regime and other air standards.

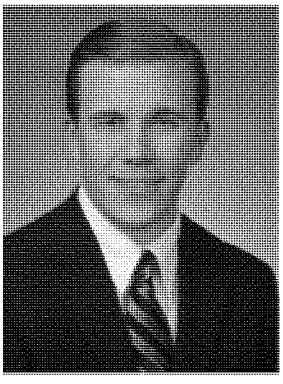
She lives in Washington, D.C., but heads to rural Maryland on the weekends for horseback riding. She and her husband are expecting their first child in March.

Quin Sorenson, Sidley Austin

Quin Sorenson has been a major player in some of the most significant environmental cases at the Supreme Court in the past five years.

He was "second chair" for two greenhouse gas cases at the high court -- *American Electric Power v. Connecticut* of 2011 and *Utility Air Regulatory Group v. EPA* last year.

In both, he helped devise the legal strategy that was executed by former acting Attorney General Peter Keisler, who argued the cases at the Supreme Court (*Greenwire*, Oct. 28, 2014).



Quin Sorenson. Photo courtesy of Sidley Austin.

"Quin is an attorney who just seems much more experienced beyond his years," Martella said, who frequently works with Sorenson. "He has demonstrated the ability to take the most complicated environmental law issues presented to the Supreme Court and present it as simplistically and persuasively as anyone possibly could."

It's an impressive record for someone who didn't know he wanted to practice environmental law when he joined the firm.

Sorenson, 37, grew up near Harrisburg, Pa., before attending Pennsylvania State University for his undergraduate and law degrees.

As a teenager, he became fascinated by government and, in particular, reducing government waste. He initially wanted to be a politician and believed he needed to go to law school to do so.

"I remember quite well reading a legal dictionary when I was in law school," he said. "That didn't serve any useful purpose whatsoever."

After law school, he knew he wanted to be an appellate litigator, which he characterizes as a lawyer who "knows the law and wants to investigate what the law could be."

After joining Sidley, he was shepherded into its environmental and regulatory litigation practice by Keisler

and Joseph Guerra, a former Justice Department official from the Obama administration.

In the next year, Sorenson will be part of the team formulating challenges to EPA's greenhouse gas standards for power plants.

Those rules, he said, "will have a greater impact than the regulations we've already seen."

He lives in Pentagon City, Va., with his wife, a lawyer at the Securities and Exchange Commission, and their dog. He said they are "huge" Washington Capitals fans and attend games whenever they can.

Sandra Snyder, Bracewell & Giuliani

The law is Sandra Snyder's second career.

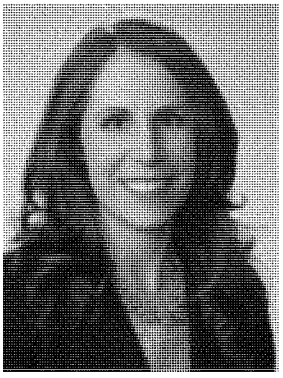
Growing up in the Milwaukee suburbs, Snyder was a preteen environmentalist. She remembers that as a 6-year-old Brownie, she told her group leader they should participate in a "Keep America Beautiful" day because of litter near her school.

She excelled in math and science and after high school accepted a scholarship to the University of Oklahoma to become a chemical engineer.

Snyder, 40, then went to work for Exxon's Baytown Refinery in Houston. Her primary responsibility was regulatory compliance, such as limiting the amount of sulfur in the company's gasoline.

During that time, however, she encountered environmental contamination that made her rethink her career choice. After buying a house, she discovered contamination across the street that stemmed from underground storage tanks. The land was polluted with perchlorate and other potentially toxic substances.

She got involved with a community group and helped prevent a local developer from building more houses on the site. The issue, she said, "changed my life."



Sandra Snyder. Photo courtesy of Bracewell & Giuliani.

"I basically started thinking, 'Wow, I could use my technical background in different ways,'" she said.

She attended Brooklyn Law School on a scholarship and now frequently works as a translator between attorneys and engineers. She has been involved in several high-profile cases, including challenges to EPA's mercury and air toxics standards for power plants.

Snyder will likely play a role in any challenge to EPA's recent proposal to regulate methane from the oil and gas sector, and she also anticipates working on future litigation challenging EPA's greenhouse gas standards (*Greenwire*, Jan. 14).

In her free time, Snyder teaches Xtend Barre classes, a fitness program similar to Pilates. She is also a world traveler, having visited Ghana, Iceland, Argentina and Jamaica.

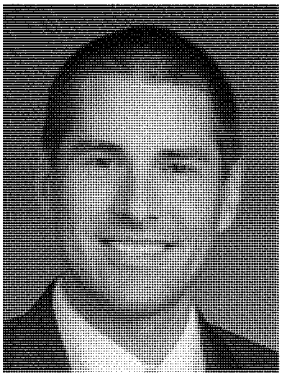
William Jay, Goodwin Procter

Growing up on a horse and cattle farm in eastern Maryland spurred William Jay's interest in environmental issues.

Jay recalled when his father learned his cows could no longer walk through a stream between a pasture and the feed shed on their 250-acre property near Havre de Grace, at the head of the Chesapeake Bay.

"It was useful firsthand experience of how an environmental regulation has to be implemented by an individual farmer," Jay said.

Now 38, Jay still goes by "Willy" and has established himself as a frequent advocate at the Supreme Court on environmental and other issues. A former assistant to the solicitor general, he has argued before the high court 13 times in cases spanning from intellectual property to trademark and administrative disputes.



William Jay. Photo courtesy of Goodwin Procter.

After attending Harvard for both his undergraduate and law degrees, Jay clerked on the San Francisco-based 9th U.S. Circuit Court of Appeals before heading into private practice. After a brief stint at a firm, he clerked for Justice Antonin Scalia and then joined the solicitor general's office.

He was frequently assigned environmental cases, he said, and worked on the government's briefs in the 2012 Supreme Court case *PPL Montana v. Montana*, which centered on the definition of "navigable" in the Clean Water Act.

"I got pretty immersed, no pun intended, in the navigability standard," he said.

Jay worked for the solicitor general's office five years, then returned to private practice.

He is closely watching for EPA to finalize its controversial waters of the United States jurisdictional rule, which will define what streams, bogs, marshes and tributaries qualify for automatic Clean Water Act protections. The rule, he said, is the "culmination" of all of the issues presented in the *PPL Montana* case.

Jay lives in Alexandria, Va., with his wife and three kids. On the weekends, he is a den leader for his eldest son's Cub Scout troop and enjoys camping and biking.

Salo Zelermyer, Bracewell & Giuliani

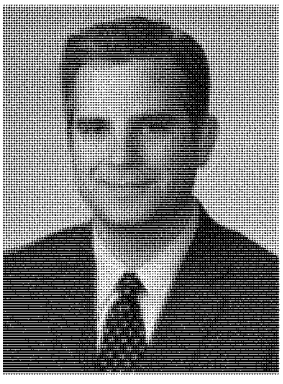
Salo Zelermyer admits that when he began work as a senior counsel at the Department of Energy in 2007, he knew little about energy issues.

On one of his first days, he said, his boss handed him the Supreme Court's decision in *Massachusetts v. EPA*, a 2007 ruling that said EPA and other agencies had authority to regulate carbon emissions under the Clean Air Act.

"And we were off to the races," Zelermyer said.

From 2007 until President Obama's inauguration, Zelermyer, 36, was involved in a host of DOE regulations and programs, from fuel economy standards to DOE's loan guarantee regime to energy efficiency rules.

"It ended up being a fantastic opportunity," he said.



Salo Zelermyer. Photo courtesy of Bracewell & Giuliani.

Zelermyer grew up in West Hartford, Conn., as the son of a rabbi. By the time he was in high school, he said, he "had had enough of religious politics and was ready for the real thing."

He went to George Washington University for his undergraduate degree, taking advantage of internship opportunities including a stint working for Chris Matthews on "Hardball."

Zelermyer headed north to Boston College for law school, then joined a local law firm's litigation practice. After three years, he returned to Washington because politics and government were his "first love."

Now part of a Bracewell & Giuliani practice that combines environmental legal work, government relations and strategic communications work, he has clients that include utilities, energy companies, the clean technology industry and energy efficiency firms.

Zelermyer plans to be busy as the Obama administration proceeds with "an unprecedented number of rules out by the end of next year." In particular, he'll work on the greenhouse gas rules for the power sector and the proposed methane standards for oil and gas operations.

Outside of work, Zelermyer is "obsessed" with New England sports teams. He lives in Silver Spring, Md., with his twin 5-year-olds.

Click here for a look at key environmental attorneys at the Justice Department and nonprofits.

LOBBYING:

Energy, environmental groups spent big on advocacy in 2014

Kevin Bogardus, E&E reporter

Published: Thursday, January 22, 2015

Energy and environmental interests spent hundreds of thousands if not millions of dollars on federal lobbying last year.

A *Greenwire* review of recently filed disclosure forms shows lobbyists for companies and trade groups for every energy sector as well as environmental groups were busy in 2014 despite a gridlocked Congress enthralled with campaign antics.

Tuesday was the deadline for interest groups to file their quarterly reports under the Lobbying Disclosure Act. Those forms detail what they lobbied on as well as how much they spent.

While Capitol Hill may have offered little in legislation to lobby on, the Obama administration proposed a number of controversial regulations that pitted powerful industries against each other in Washington.

One of those moves was a U.S. EPA proposal to lower the 2014 biofuel mandates in the renewable fuel standard, which angered ethanol producers and drew cheers from oil and gas companies. The proposal led to a furious lobbying battle between the two sectors.

"We have been under attack from Big Oil with the RFS," said Tom Buis, CEO of Growth Energy, a trade group that represents ethanol producers. "You can't allow this campaign of misinformation and outright lies to go unchallenged. You have to fight and stand up for your industry."

Growth Energy boosted its lobbying last year, doling out about $1.7 million on K Street advocacy compared with the $1.4 million the group spent in 2013.

There's hope EPA will climb down from its position and reverse the biofuel cuts to the RFS. That decision is expected this year (*Greenwire*, Nov. 21, 2014).

"We are waiting to see what that is. We are frustrated with the delay as everyone else is," Buis said. "Uncertainty is something a lot of businesses have problems with. ... Having that certainty out there is really important."

Defense is often the lobbyists' approach to wheeling and dealing in the nation's capital. Groups found themselves, not just their issues, under attack from political opponents.

Sen. David Vitter (R-La.) has accused the Natural Resources Defense Council of "collusion" with EPA over the agency's rule to cut power plant pollution. The environmental group has pushed back against those allegations, saying the senator's investigation of the group's lobbying of the administration is an "illegitimate fishing expedition" (*Greenwire*, Dec. 11, 2014).

The group has not backed down on its lobbying. Records show it spent about $714,000 on lobbying last year -- more than the $528,000 NRDC spent in 2013. The group has lobbied on everything from the Keystone XL pipeline and renewable energy tax breaks to "Climate and Clean Air Act defense," according to its latest report.

This year will be even more hectic for NRDC as now Republicans control both the House and the Senate after last year's elections.

"The Republican leadership is bringing up a whole range of anti-environmental bills, including Keystone right now. 2015 is going to require much more lobbying," said David Goldston, NRDC's director of government affairs.

Others spent more on lobbying as they, too, came under attack for their politics.

Koch Industries Inc. spent about $13.8 million on lobbying last year, a big jump from the $10.4 million the company spent in 2013. The company has become a household name due to ceaseless attacks by Democrats and liberal-leaning groups on CEO Charles Koch and Executive Vice President David Koch, who are major conservative donors (*E&E Daily*, April 8, 2014).

Koch the company reported lobbying on several issues last year, including a carbon tax, liquefied natural gas, security surrounding chemical facilities and various appropriations bills.

TransCanada Corp., the company behind the proposed Keystone XL pipeline -- its construction a never-ending debate in Washington -- also spent more on lobbying this year compared with 2013. The company doled out $1.4 million in 2014 on K Street efforts, a jump from the $1.1 million it spent the year before.

Spending for most held steady

Several power players in Washington's energy and environmental world, however, saw little change if not small drops in their lobbying spending from 2013 to 2014.

The American Petroleum Institute spent about $9.1 million on lobbying in 2014, not as much as the $9.3 million the group spent the prior year.

The trade group's lobbying operation has often been dwarfed by its public relations effort. A Center for Public Integrity report noted last week that in 2012, API spent $7 million on lobbying while sending out $85.5 million to four PR and advertising firms (*Greenwire*, Jan. 15).

For 2015, API plans to lobby for increased oil and gas production, including building Keystone XL, while battling against new environmental regulations that it argues hinder business.

Michael McKenna, president of MWR Strategies, said he believes lobbying spending will remain flat for energy and environmental interests during the coming year.

"A huge chunk of what these guys do and care about -- energy companies, environmentalists -- is going to be happening at EPA this year, like it did last year. ... A bunch of it will be administrative stuff that will be tough to quantify as advocacy," said McKenna, who is a Republican lobbyist for several energy companies.

Giants in the oil and gas sector also spent big on lobbying in 2014. Exxon Mobil Corp. spent about $12.7 million on lobbying last year, while Chevron Corp. dropped $8.3 million and BP America spent $5.7 million.

Dropping prices for oil could affect oil and gas companies' lobbying operations during 2015.

"As oil prices hurtle downwards, that really hurts their bottom line. You are going to see the Washington presence shrink for some of these companies," McKenna said.

Other energy sectors were active in lobbying, too.

The Nuclear Energy Institute kept its K Street spending about level between 2013 and 2014, going from $2.1 million to $2.2 million. In 2015, the group will be pushing for a finished license for Yucca Mountain, Nev., so it can store nuclear waste as well as reauthorizing the U.S. Export-Import Bank and promoting nuclear energy.

Utilities remained influential in the capital, too, though some lowered their spending on lobbying last year.

The Edison Electric Institute spent $8.5 million on lobbying last year, compared with $10 million in 2013. Others spent big on K Street in 2014, such as Southern Co. with $12.3 million, American Electric Power Co. with $6.5 million and Duke Energy Corp. with $5.9 million.

Greens on defense

Environmental groups also kept their spending on lobbying about the same between 2013 and 2014.

The Sierra Club spent $360,000 on lobbying last year, while Environmental Defense Action Fund spent almost $1 million. The League of Conservation Voters spent $175,000 on lobbying in 2014, a slight increase from $120,000 for the prior year.

Tiernan Sittenfeld, senior vice president of government affairs for LCV, said the bump in lobbying spending last year came about because of growth in the organization.

"Our organization over a whole has grown over the years. Our policy staff has grown as well. That's part of the reason why you see the bump in 2014," Sittenfeld said. "We also had a big lobby day in June 2014 with the state leagues."

Sittenfeld and other environmentalists have a year of playing defense to look forward to as Republicans run the show on Capitol Hill to block various EPA regulations.

"Our top priority remains addressing climate change," Sittenfeld said. "When it comes to Congress, we will be looking to defend the progress that the administration has been making. It just has been attack after attack."

Legislation might not move, though, as campaign season will likely get an early start as Washington's attention begins to focus on the 2016 presidential race.

"Once Hillary Clinton announces she is running for president, the presidential campaign is officially on and Congress is officially over. The agencies will keep cranking out rules no matter what, though," McKenna said.

CLIMATE:

Romney professes belief in man-made warming

Jean Chemnick, E&E reporter

Published: Thursday, January 22, 2015

Even before 14 Senate Republicans put themselves on the record yesterday as believing in man-made climate change, a former GOP presidential standard bearer signaled that he might be changing his position, as well.

Former Massachusetts Gov. Mitt Romney (R), who signaled last week that he might consider a third run for president in 2016, was quoted in the press beginning Monday saying that he believes human emissions play a role in driving global warming.

The Palm Springs Desert Sun reported Monday that the 2012 Republican presidential nominee said during a trip to California that although he would be glad if the views of climate change skeptics prove correct, he thinks it's a major concern.

And Romney told an investment management conference in Salt Lake City last night that Washington, D.C., has done too little to address the threat of climate change.

"I'm one of those Republicans who thinks we are getting warmer and that we contribute to that," he told a conference hosted by Diversify Inc., according to the Associated Press.

The statement was a sharp departure from October 2011, when candidate Romney told a pre-Republican primary crowd in Pennsylvania that it was unclear what role -- if any -- humans play in global warming.

"My view is that we don't know what's causing climate change on this planet, and the idea of spending trillions and trillions of dollars is not the right course for us," he said at the time.

In both speeches, Romney stressed the need for international cooperation on climate change, saying in 2011 that the crisis is "global warming, not America warming," and urging international cooperation.

Republicans have sounded that theme repeatedly, arguing that the Obama administration is moving ahead alone with emissions curbs that place U.S. industry at a competitive disadvantage compared with their overseas competitors.

Early in Romney's term as Massachusetts governor, environmental groups were fairly enthusiastic about his record -- in fact, President Obama's U.S. EPA administrator, Gina McCarthy, worked for the Romney administration. But in the greens' view, Romney became more hostile to their causes as he prepared to run for president in 2008.

Romney spoke last night as 14 Republicans joined Democrats in voting for an amendment to a bill that would approve the Keystone XL oil pipeline that declared that human emissions are a factor in climate change. Five of those Republicans also backed a competing measure that stated that man-made emissions play a "significant" role (*E&E Daily*, Jan. 22).

Sen. John McCain (R-Ariz.), the 2008 GOP presidential nominee, voted for the latter amendment. A one-time supporter of carbon dioxide cap-and-trade legislation, McCain has been reluctant to talk about climate change in recent years.

But while Republicans such as Romney and McCain say climate change is happening, other members of their party are doubling down on climate skepticism.

Senate Environment and Public Works Chairman James Inhofe (R-Okla.) said last night that his decision

to co-sponsor another amendment to the KXL bill that stated that climate change is not a "hoax" did not signal that he was reconsidering his belief that human emissions are not affecting the climate.

"Yes, it is changing, no question," he said on the floor after the vote on the amendment, which was adopted 98-1. "But the hoax, the hoax is that there are people who are so arrogant that they think they have the power to change climate. Now that's the hoax. Not that the climate is changing."

Nor is the parade of climate change-related amendments to the KXL bill over. Sen. Bernie Sanders (I-Vt.) will bring one to the floor this afternoon that says both that man-made warming is happening and that the solution is to move away from fossil fuels. Sen. Joe Manchin (D-W.Va.) and some other Democrats have already signaled that they do not plan to vote for it.

And Sen. Roy Blunt (R-Mo.) has an amendment that underlines the same point Romney has made -- that any response to climate change must include America's foreign competitors. The amendment requires an administration to assess whether commitments by other countries are comparable to any the United States undertakes, and bars the United States from signing on to any agreement that assigns it greater responsibility for emissions cuts than other countries.

WHITE HOUSE:

Obama's agenda on India trip may include nuclear power deal

Published: Thursday, January 22, 2015

A stalled nuclear energy project may see a breakthrough as a result of President Obama's trip to India this week, experts said.

General Electric Co. and Westinghouse Electric Co. have attempted since 2008 to develop nuclear power facilities in India.

"This is potentially some of the biggest nuclear contracts around," said Paul Sullivan, an economics professor at National Defense University. "GE and Westinghouse could be in for tens of billions of revenue from India over the coming few decades if they get the contracts. This is just to build the plants. Then there is the repair, maintenance and other contracts."

But the plans, so far, have foundered amid a fight between GE and Westinghouse and the General Insurance Corp. of India over liability.

"It's down to fine strokes with the lawyers," said Raymond Vickery, an assistant Commerce secretary during the Clinton administration. "There will be some announcement with regard to civil nuclear. Whether it will be a complete breakthrough ... remains to be seen."

Discussions of private investment may come into play during Obama's visit, experts said.

The trip, much like Obama's visit to China two months ago, could help pave the way to a global climate agreement in advance of December's U.N. summit in Paris.

"We're not going to have a successful international climate negotiation unless all major emitters are coming to the table," Deputy National Security Adviser Ben Rhodes said yesterday. "The U.S., China and India are at the front of that line" (Alan Neuhauser, *U.S. News and World Report*, Jan. 22).

During Obama's visit, India also is expected to look to the United States for more private-sector

partnerships to help expand the use of renewable energy.

Prime Minister Narendra Modi has spoken in the past about the dangers of climate change and is a believer that technology can help people adapt to global warming. He said this week that the focus of climate talks should shift from cutting emissions to promoting clean energy and energy efficiency.

India needs almost $200 billion of investments in renewables by 2022 to boost the sector and to expand its solar power capacity by 33 times to 100 gigawatts and its wind power capacity to 60 GW. Roughly half that investment would have to come from abroad (Volcovici/Kalra, Reuters, Jan. 22). **-- AW**

TRANSPORTATION:

Amtrak reauthorization an early priority for House T&I -- Shuster

Sean Reilly, E&E reporter

Published: Thursday, January 22, 2015

House Transportation and Infrastructure Chairman Bill Shuster signaled a desire this morning to move swiftly on Amtrak reauthorization, saying he wants to bring a bill before the full House within months.

"We hope to have it on the floor here in the first quarter," the Pennsylvania Republican told hundreds of participants at the winter meeting of the U.S. Conference of Mayors in a downtown Washington, D.C., hotel.

Besides urging more authority for states, Shuster called for a focus on the Northeast Corridor, the Washington-to-Boston line that accounts for a hefty share of Amtrak's ridership and revenue. It's also one of the few areas in Amtrak's sprawling network where the railroad owns much of its own track.

"We need passenger rail," Shuster said. "We've got to figure out, though, how to do it the right way."

The last Amtrak reauthorization expired in 2013. Last September, the Transportation Committee easily approved a four-year renewal that would have created a $14 billion loan pool within a Federal Railroad Administration credit assistance program for Northeast Corridor improvements (*Greenwire*, Sept. 17, 2014). The bill would have also kept Amtrak's base federal subsidy close to this year's $1.4 billion, with small increases after that.

While the measure didn't go any further, it's likely to be the starting point for any reauthorization in the newly seated 114th Congress.

Other major items on the committee's agenda include pipeline safety authorization, water resources reauthorization, and a long-term highway and transit bill, Shuster said.

The highway and transit measure should run at least five years, Shuster said. But with the Highway Trust Fund facing chronic shortfalls, he acknowledged that funding will be central and suggested a tax code overhaul is a more politically palatable revenue raiser than an increase in the 18.4-cents-per-gallon federal gas tax.

"I just don't believe the votes are there in the Congress at this point to do that," he said.

The last highway and transit reauthorization act, known as MAP-21, was originally set to expire last September but has now been extended through May. While Shuster had initially hoped last year to have a

reauthorization bill on the House floor by early summer, he never sought to bring legislation up within the committee.

INFRASTRUCTURE:

Lawmakers push for highway funding after bridge collapse

Published: Thursday, January 22, 2015

U.S. politicians are weighing in on the need for infrastructure improvements following the collapse of the Interstate 75 bridge in Cincinnati on Monday.

Sen. Bernie Sanders (I-Vt.) said the collapse exposes the poor quality of U.S. highways and bridges and advocated for a proposed $1 trillion infrastructure revamp over the next five years.

"Our infrastructure is collapsing, [and] the Interstate 75 bridge collapse in Cincinnati on Monday is only the latest example," Sanders said.

The bridge collapsed while crews were working to demolish the Hopple Street overpass. The demolition was part of a $2 billion infrastructure project aimed at rebuilding I-75 in the city. The cause of the accident is still under investigation by local officials.

Members of both parties have complained about poor infrastructure around the country. Sen. Sherrod Brown (D-Ohio) said the incident was "tragic" and he hopes Congress will "get serious" about a long-term transportation bill (Deirdre Shesgreen, *Cincinnati Enquirer*, Jan. 20). **– MH**

OFFSHORE WIND:

Interior eyes 300K acres off N.C. for future leasing

Phil Taylor, E&E reporter

Published: Thursday, January 22, 2015

The Interior Department today announced the release of an environmental assessment of a plan to lease up to 300,000 acres off the coast of North Carolina for the construction of offshore wind farms.

The plan calls for leasing a 122,000-acre wind energy area about 28 miles off the coast of Kitty Hawk and two additional areas of 52,000 acres and 134,000 acres beginning about 12 miles off Cape Fear.

North Carolina is the latest of several East Coast states Interior has eyed for commercial wind development.

Interior Secretary Sally Jewell called the environmental assessment "another milestone" in the Obama administration's fight against global climate change.

"In close coordination with our partners in North Carolina, we are moving forward to determine what places make sense to harness the enormous wind energy potential off the Atlantic Seaboard," Jewell said.

The final wind energy areas (WEAs) have been reduced significantly from areas Interior preliminarily identified in late 2012, in response to concerns from the National Park Service, Coast Guard and coastal residents, including in Kitty Hawk.

Kitty Hawk had passed a resolution requesting that turbines be located at least 20 miles from shore, while the Park Service had asked that turbines stay roughly 40 miles from the 19th-century Bodie Island Lighthouse.

The Wilmington West WEA was modified to keep turbines at least 10 miles from shore to reduce visual impacts, and the Wilmington East WEA was modified to accommodate vessels using the Port of Wilmington, among other steps.

The Bureau of Ocean Energy Management's environmental assessment will examine the impacts of issuing wind energy leases and allowing industry to survey the areas with devices like meteorological towers and buoys.

If a lease is issued and a winning bidder wants to build a wind farm, a separate National Environmental Policy Act review will need to be performed.

The public will have until late February to comment on the draft environmental assessment. BOEM will also hold three public meetings in February in the northern Outer Banks, Wilmington and Carolina Shores, or Sunset Beach.

So far, the Obama administration has awarded seven commercial Atlantic coast wind energy leases off Delaware, Massachusetts, Rhode Island, Maryland and Virginia, raising more than $14 million in high bids for over 357,000 acres of federal waters.

So far, no companies have commissioned a commercial-scale facility in the United States, despite more than 7,000 megawatts of projects having been installed around the world, according to the Energy Department.

The 130-turbine Cape Wind project off Nantucket Sound, Mass., which many believed would be the nation's first-ever offshore wind farm, suffered a major setback this month when two utilities opted to terminate agreements to purchase its power (*Greenwire*, Jan. 7).

With a critical 30 percent investment tax credit now expired -- and a Republican-controlled Congress that has resisted proposals to prop up clean energy -- the industry faces major struggles in standing up projects in U.S. waters.

The Offshore Wind Development Coalition, a trade group based in Washington, D.C., that advocated for offshore wind, in mid-2014 merged into the American Wind Energy Association.

ELECTRIC VEHICLES:

Dealers offer discounts amid low gas prices

Published: Thursday, January 22, 2015

Electric car dealers have been cutting prices in an effort to help the alternative vehicles compete in a traditional market with plunging fuel costs.

U.S. gas prices have dropped more than $1 per gallon during the last 12 months, according to AAA, with

the national average at $2.06 per gallon.

With fuel savings out of consumers' minds, electric cars are a tougher sell. Automakers have made huge cuts to the sticker prices of plug-ins, with incentives last year averaging $4,159 per car. Those discounts were 68 percent larger than the ones given in 2013 and helped boost electric sales by 35 percent, according to WardsAuto InfoBank.

Those discounts all occurred before gas prices started their dramatic plummet, and automakers expect the discounts will continue.

In addition to dealer-directed discounts, electric cars qualify for a $7,500 federal tax credit whether they are bought or leased. Many states offer more incentives.

Despite the low gas prices, it is still cheaper to charge an electric car than to buy gasoline. It costs roughly $550 per year to charge the Nissan Leaf for 15,000 miles of driving at a residential electricity rate average of 12 cents per kilowatt-hour. By contrast, to fuel the similarly sized gas-powered Nissan Sentra for 15,000 miles of driving, it would cost $950 to fuel up at $2.06 per gallon. The Sentra averages 33 miles per gallon. At $4 per gallon, it would cost $1,816 (Dee-Ann Durbin, Associated Press, Jan. 21). -- **AW**

MARYLAND:

Hogan halts farm runoff, power plant rules

Published: Thursday, January 22, 2015

New Maryland Gov. Larry Hogan (R) moved quickly yesterday to block several new regulations proposed by former Gov. Martin O'Malley (D), including a measure to curb poultry farmers' use of chicken manure on their fields.

Hogan also blocked a regulation to cut smog-forming air pollution from coal-fired power plants and three other rules relating to medical care that Hogan's office declined to explain.

The governor's action halted publication of the five rules in the *Maryland Register*, which prevents them from taking effect, press secretary Erin Montgomery said.

Montgomery said the new administration was putting a halt to all pending regulations until they could be reviewed for "public input, public hearing and full due process."

Hogan's move drew quick criticism from environmental groups. The Clean Agriculture Coalition said in a statement that Hogan had "turned his back on clean water and sound science" by eliminating the fertilizer rule.

Groups also have warned the smog-reduction rule will mean more unhealthy nitrogen oxide emissions in Baltimore and the Washington, D.C., area (Timothy Wheeler, *Baltimore Sun*, Jan. 21). -- **SP**

WEST VIRGINIA:

State Senate votes to repeal alternative energy law

Published: Thursday, January 22, 2015

Members of the Republican-controlled West Virginia Senate voted yesterday to repeal the state's alternative energy portfolio standards.

The portfolio standards were the target of Republican campaign attacks this election season, with candidates calling it "West Virginia's cap and trade," even though it does not restrict greenhouse gas emissions as failed legislation at the federal level would have done.

The Senate passed its bill that would repeal the act on a 33-0 vote after rejecting an amendment submitted by Democrats to conduct a jobs impact study of the portfolio standards.

Democrats wanted to verify whether the legislation had acted as intended, creating more jobs in coal fields while stabilizing utility rates. Republicans rejected that notion, noting that the portfolio standards required utilities to gradually increase their use of alternative fuels leading up to 2025.

"We're asking for a study telling us about the results of it in 2016?" Senate Majority Leader Mitch Carmichael (R) asked during the debate.

The House version of the bill will be up for a vote today (Phil Kabler, *Charleston* [W.Va.] *Gazette*, Jan. 21). **-- AW**

CHINA:

Smog aids criminal in regulator's popular novel

Published: Thursday, January 22, 2015

A novel written by an environmental regulator has gone viral in China with its plot of a burglar whose break-ins are shielded from view by the country's blanket of pollution.

Author Li Chunyuan said his work as deputy director of the Environmental Protection Bureau in the city of Langfang in Hebei province inspired him to write "Smog is Coming," which was published in June 2014.

The novel follows the path of a masked burglar who is protected in his crimes by the nightly clouds of haze that block the view of security cameras.

Passages of the novel released online have received tens of millions of page views.

Hebei is home to seven of China's 10 worst-polluted cities. It has been pressured to curb its dependence on coal, steel and cement industries but has not been able to find other means of economic development.

While the novel has been hugely popular, some believe it is distracting from implementing real change in the area.

"It's good that it touches on an issue that bears on people's real lives, but let's hope the government can actually improve the environment, too," wrote one microblogger (Megha Rajagopalan, Reuters, Jan. 22). **-- AW**

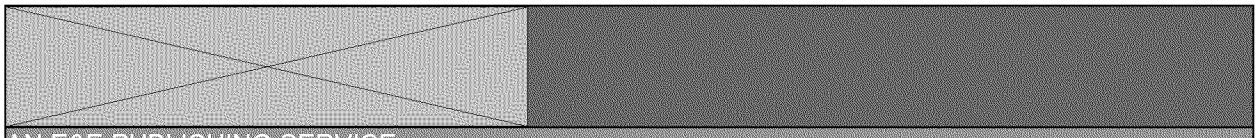
STATE OF THE UNION:

ClearView Energy's Book discusses future of 'all of the above,' climate policies

Published: Thursday, January 22, 2015

With climate change playing a central role in President Obama's first State of the Union address before a Republican-controlled Congress, how will the president's framing of the issue impact the future of legislative and legal action on the Clean Power Plan? During today's OnPoint, Kevin Book, managing director at ClearView Energy Partners, discusses the future of the "all of the above" energy strategy as the Obama administration pushes forward with its proposed action on climate change.

Click here to watch today's OnPoint.



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CLIMATEWIRE — Fri., January 23, 2015

READ FULL EDITION

1.CONGRESS:

Close vote in Senate previews GOP attacks on Obama's global climate strategy

The Obama administration yesterday narrowly survived the first major attack on its efforts to forge a new global climate change agreement.

2.POLITICS:

Senate's pipeline battle likely to spill over into Republican presidential debates

The Senate's rare votes on climate change this week could spill into presidential election campaigns next year and pressure Republican candidates to explain their beliefs about climbing temperatures -- and it might help them.

TODAY'S STORIES

3.SCIENCE:

Heartland Institute finds route into U.S. science news conduit through China

4.REGULATION:

NERC to study whether multistate coordination could help EPA's Clean Power Plan

5.TRANSPORTATION:

Combustion engine still king at auto show, but companies talk big on next wave of low-carbon cars

6.CALIFORNIA:

State's emission reductions feasible through 2030 with existing policies, federal scientists say

7.EMISSIONS:

Growing cities could set plans to cut their energy use by 25% -- study

8.NATIONS:

Could a U.S. plan to push renewable energy in Africa be changed to help India?

9.BUSINESS:

U.S.-China surge made 2014 a banner year for wind power -- report

10.RISK:

Due to impasse over climate change, group moves 'Doomsday Clock' closer to midnight

11.STATES:

Chamber of Commerce tallies Clean Power Plan gripes by state

12.CARBON MARKETS:
European carbon reform stalls after pro-industry committee fails to pick date
13.CITIES:
L.A. looks for water conservation strategies in the face of drought
14.WEATHER:
Dwindling snow for Calif. skiers
15.WEATHER:
Wet winter provides relief, but not an end to Ariz. drought
E&ETV'S THE CUTTING EDGE
16.POWER MARKETS:
***EnergyWire*'s Kuckro talks 'war on coal,' generation forecast**

AN E&E PUBLISHING SERVICE
ENERGYWIRE — Fri., January 23, 2015
READ FULL EDITION

1.YELLOWSTONE SPILL:
Feds issued warning to pipeline company in November
Federal officials issued a warning late last year to the owner of the Montana pipeline that contaminated a city's drinking water for keeping poor records about the condition of the system.

TOP STORIES
2.SECURITY:
A candid glimpse at how the power sector handles cyber rules
3.TECHNOLOGY:
Near or far from home, Nest wants to know where you are
4.INDIANA:
Senate committee OKs substitute energy efficiency bill
ELECTRICITY
5.RENEWABLES:
2 more utilities join with armed forces in solar efforts
6.TRANSMISSION:
Kan. wind power project backers solicit customers
7.UTILITIES:
N.M. coal retirement plan hits snag
OIL AND GAS
8.NATURAL GAS:
Boston's methane emissions 2-3 times higher than previously thought -- study
9.TECHNOLOGY:
Cost-cutting systems start to flood the oil patch
10.TRANSPORT:
DeFazio calls for IG audit of PHMSA over crude-by-rail rule delay
11.OFFSHORE DRILLING:
Texas awards research grants from Gulf spill fines

12.REGULATION:
New rules for ship emissions revs up a market for lighter fuels
13.OIL SANDS:
Slowdown could be Alberta's 'chance to catch up' with boom-time growth
14.ENERGY MARKETS:
Oil researcher doubts crude will return to triple digits
E&ETV'S THE CUTTING EDGE
15.POWER MARKETS:
***EnergyWire*'s Kuckro talks 'war on coal,' generation forecast**

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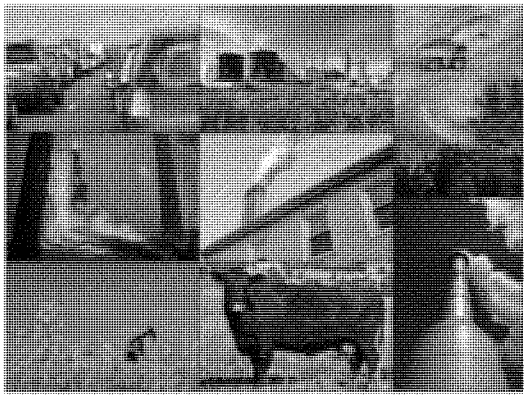

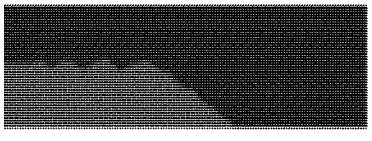

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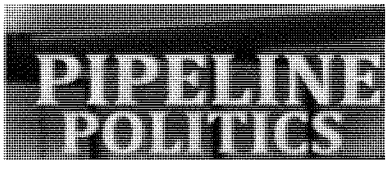
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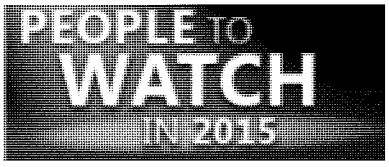
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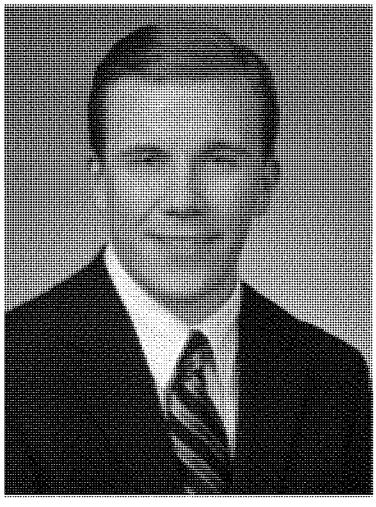
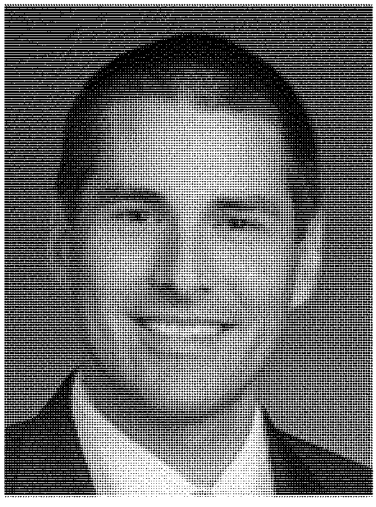
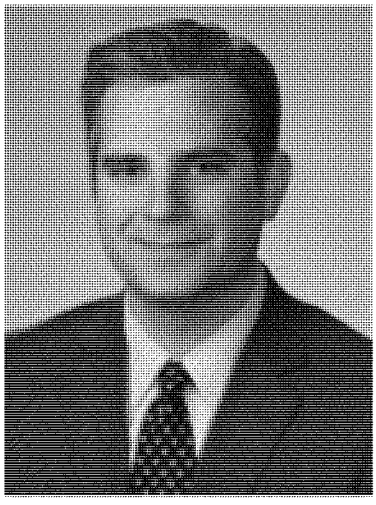
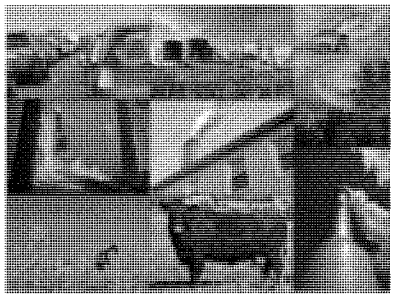
IN 2015









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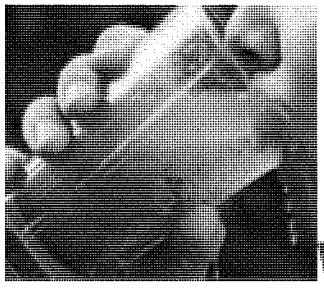
Sent: Fri 1/23/2015 2:55:54 PM
Subject: Water Law News for January 23, 2015



Water Law News

for January 23, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

New Maryland Governor Freezes Rulemaking To Reduce Agricultural Phosphorus Runoff

A new Maryland Department of Agriculture rule to sharply reduce phosphorus runoff from farms was put on hold, after newly inaugurated Gov. Larry Hogan (R) froze all pending regulations until they can be reviewed by his administration....

Hydraulic Fracturing

U.K. Lawmakers Seek to Ban Fracking Unless Regulation 'Loopholes' Closed

U.K. opposition lawmakers are seeking to ban oil and gas hydraulic fracturing unless "loopholes" on safety are closed....

Water Pollution

Bill to Curb EPA Clean Water Act Veto Power Reintroduced by Vitter, Manchin in Senate

Senate legislation was reintroduced Jan. 22 that would limit the authority of the Environmental Protection Agency to veto dredge-and-fill permits that the U.S. Army Corps of Engineers has issued or plans to issue for mining operations....

Water Pollution

Brine Spill From Oil, Gas Operations In North Dakota Contaminates Two Creeks

A nearly 3 million-gallon brine spill from a pipeline that carries produced water from oil and gas operations in the Bakken oil fields has already contaminated two creeks in northwestern North Dakota, the state's Department of Health...

Water Pollution

Court Finds Land Bureau Illegally Discharged Pollutants Into Tributary of Arkansas River

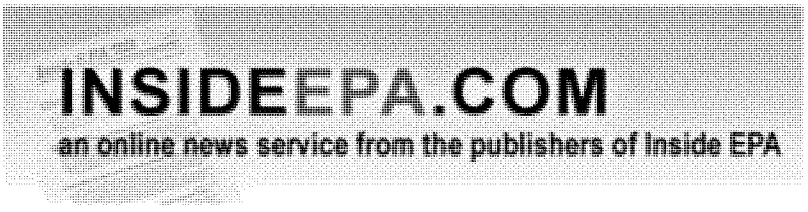
A federal district court found the Bureau of Land Management guilty of violating the Clean Water Act by discharging pollutants into a tributary of the Arkansas River without a permit, but the court stopped short

of granting an injunction to...

Water Pollution

Minnesota Signs Cross-Border Accord To Protect Waters of Lake Winnipeg Basin

Minnesota became the first U.S. state to sign the Lake Friendly Accord to protect waters in the Lake Winnipeg basin on both sides of the U.S.-Canadian border, Manitoba Minister of Conservation and Water Stewardship Gord Mackintosh said....



Inside EPA's **Weekly Report**, 01/23/2015

http://insideepa.com/newsletters/inside-epa

News Briefs

11th Circuit Denies Rehearing In Camp Lejeune Case

The U.S. Court of Appeals for the 11th Circuit has refused a request by former residents of a North Carolina Marine Corps base to reconsider an October ruling that effectively prohibits the residents from making latent disease claims against the federal government under toxic tort law in North Carolina for exposures to contaminated groundwater at the base.

Greenwire

KEYSTONE XL:

'Bring on science!' Canadian ambassador tells Obama

Matt Herbert, E&E reporter

Published: Thursday, January 22, 2015

Canadian Ambassador Gary Doer this morning responded to President Obama's comments during his State of the Union address on the Keystone XL oil pipeline and accused the president of not reading into

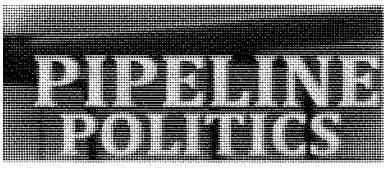
the scientific data regarding the controversial project.

"I heard him at the State of the Union talk about science. Hallelujah," Doer said this morning during a news conference with Sens. John Hoeven (R-N.D.) and Joe Manchin (D-W.Va.), who are sponsoring legislation to approve the pipeline that would carry Canadian crude from the oil sands to Gulf Coast refineries ahead of an Obama administration review of the project.

"Bring on science because the science is in the State Department report," Doer added.

State concluded that KXL is unlikely to have a significant impact on climate.

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline, which could change the energy and economic agenda for both the United States and Canada. **Click here** to view the special report.

Doer said approving the pipeline would put veterans to work, a key point in Obama's speech.

"I heard the president say, 'If you want a job, hire a veteran,'" said Doer. "... We say to the president, the sooner you can approve this, the sooner we can hire those returning veterans. I agree with him. Let's hire veterans. Let's do it for one of these infrastructure projects."

Environmental advocates and other KXL opponents, plus many Democratic lawmakers, say the boosters are overplaying the pipeline's economic benefits. They also question the State Department's conclusions about KXL's climate impacts.

That's why Hoeven, Manchin and Doer aimed to highlight bilateral efforts at protecting the environment.

"Canada is committed to developing the oil sands with good environmental stewardship and already has a strong record of achievement," said Hoeven. "Companies like [Exxon Mobil Corp. and Royal Dutch Shell PLC] are working with their Canadian counterparts to develop new technologies to reduce greenhouse gas emissions as they increase production to help both Canada and the U.S. to become more economically strong and energy secure."

Doer said the United States and Canada have been partners in protecting the environment and continue to work together on environmental legislation. "We work together on clean air policies such as vehicle fuel efficiency standards and acid rain reduction," said Doer. "Canada and the U.S. develop renewable and traditional energy to make our North American neighborhood less dependent on countries that represent potential risk for the future."

Hoeven and Manchin highlighted Exxon Mobil's $10 billion investment in clean production technology and Shell's carbon capture and storage project that will store more than 1 million tons of carbon dioxide per year.

The senators also discussed the pending KXL legislation in the Senate and said they are still working to find a few more Democratic votes to override the president's veto.

Manchin praised Republican leaders for the open amendment process.

"We've had more amendments on this one piece of legislation than I've been able to vote on in a whole year or more," said Manchin. "Just on one piece of legislation. I'm hopeful."

Reporter Manuel Quiñones contributed.

LAW:

Key roles seen for 5 up-and-comers as industry confronts new rules

Jeremy P. Jacobs, E&E reporter

Published: Thursday, January 22, 2015

Fifteenth in a series on key players on energy and environment issues in 2015.

It's going to be a big year for lawyers representing industry clients facing a raft of new energy and environment regulations.

With the Obama administration plowing ahead with greenhouse gas standards for power plants, a rule defining U.S. EPA's regulatory reach over wetlands and waterways, and curbs on methane emissions from oil and gas developers, attorneys are ready for litigation.

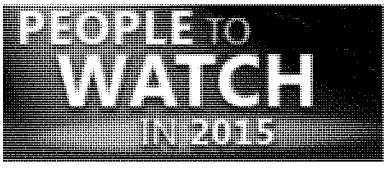
Below are five litigators who will play roles in fights ahead over environmental regulations.

Margaret Peloso, Vinson & Elkins

Margaret Peloso's dedication to the environment grew during her early days as a student at Duke University.

She spent a semester studying at the Duke Marine Lab. Before she knew it, she was a certified scuba diver researching fish in an artificial reef off the North Carolina coast.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

After countless hours at the lab and in the Atlantic, she earned a master's degree but opted for a career that involved less time in a wetsuit.

"There were one too many times when something bumped into me and I wasn't sure if it was my dive partner or a shark," she said. "I thought I might want to do something more policy-centered for a career."

Peloso, 30, didn't abandon marine studies, though. She opted for an unusual joint degree, pursuing a doctorate at Duke while simultaneously getting a law degree at Stanford University.

By 2010 she was done with both, and she'll release a book next year that grew out of her doctoral dissertation on sea-level rise and coastal adaptation. The book looks at the different coastal management structures of states like Texas, California and North Carolina.

In her legal career, she's established herself as a future leader of the environmental bar, said Roger Martella of Sidley Austin, a former U.S. EPA general counsel.

"She is very involved in the American Bar Association to contribute to the greater good on these issues, not only representing her clients," he said.

Margaret Peloso. Photo courtesy of Vinson & Elkins.

At Vinson & Elkins, Peloso advises clients on the technical aspects of complying with a host of EPA regulations, including the agency's greenhouse gas regime and other air standards.

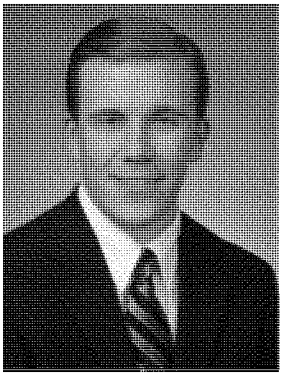
She lives in Washington, D.C., but heads to rural Maryland on the weekends for horseback riding. She and her husband are expecting their first child in March.

Quin Sorenson, Sidley Austin

Quin Sorenson has been a major player in some of the most significant environmental cases at the Supreme Court in the past five years.

He was "second chair" for two greenhouse gas cases at the high court -- *American Electric Power v. Connecticut* of 2011 and *Utility Air Regulatory Group v. EPA* last year.

In both, he helped devise the legal strategy that was executed by former acting Attorney General Peter Keisler, who argued the cases at the Supreme Court (*Greenwire*, Oct. 28, 2014).



Quin Sorenson. Photo courtesy of Sidley Austin.

"Quin is an attorney who just seems much more experienced beyond his years," Martella said, who frequently works with Sorenson. "He has demonstrated the ability to take the most complicated environmental law issues presented to the Supreme Court and present it as simplistically and persuasively as anyone possibly could."

It's an impressive record for someone who didn't know he wanted to practice environmental law when he joined the firm.

Sorenson, 37, grew up near Harrisburg, Pa., before attending Pennsylvania State University for his undergraduate and law degrees.

As a teenager, he became fascinated by government and, in particular, reducing government waste. He initially wanted to be a politician and believed he needed to go to law school to do so.

"I remember quite well reading a legal dictionary when I was in law school," he said. "That didn't serve any useful purpose whatsoever."

After law school, he knew he wanted to be an appellate litigator, which he characterizes as a lawyer who "knows the law and wants to investigate what the law could be."

After joining Sidley, he was shepherded into its environmental and regulatory litigation practice by Keisler and Joseph Guerra, a former Justice Department official from the Obama administration.

In the next year, Sorenson will be part of the team formulating challenges to EPA's greenhouse gas standards for power plants.

Those rules, he said, "will have a greater impact than the regulations we've already seen."

He lives in Pentagon City, Va., with his wife, a lawyer at the Securities and Exchange Commission, and their dog. He said they are "huge" Washington Capitals fans and attend games whenever they can.

Sandra Snyder, Bracewell & Giuliani

The law is Sandra Snyder's second career.

Growing up in the Milwaukee suburbs, Snyder was a preteen environmentalist. She remembers that as a 6-year-old Brownie, she told her group leader they should participate in a "Keep America Beautiful" day because of litter near her school.

She excelled in math and science and after high school accepted a scholarship to the University of Oklahoma to become a chemical engineer.

Snyder, 40, then went to work for Exxon's Baytown Refinery in Houston. Her primary responsibility was regulatory compliance, such as limiting the amount of sulfur in the company's gasoline.

During that time, however, she encountered environmental contamination that made her rethink her career choice. After buying a house, she discovered contamination across the street that stemmed from underground storage tanks. The land was polluted with perchlorate and other potentially toxic substances.

She got involved with a community group and helped prevent a local developer from building more houses on the site. The issue, she said, "changed my life."

Sandra Snyder. Photo courtesy of Bracewell & Giuliani.

"I basically started thinking, 'Wow, I could use my technical background in different ways,'" she said.

She attended Brooklyn Law School on a scholarship and now frequently works as a translator between attorneys and engineers. She has been involved in several high-profile cases, including challenges to EPA's mercury and air toxics standards for power plants.

Snyder will likely play a role in any challenge to EPA's recent proposal to regulate methane from the oil and gas sector, and she also anticipates working on future litigation challenging EPA's greenhouse gas standards (*Greenwire*, Jan. 14).

In her free time, Snyder teaches Xtend Barre classes, a fitness program similar to Pilates. She is also a world traveler, having visited Ghana, Iceland, Argentina and Jamaica.

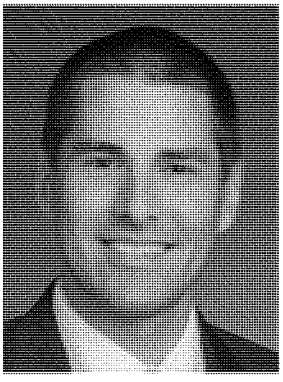
William Jay, Goodwin Procter

Growing up on a horse and cattle farm in eastern Maryland spurred William Jay's interest in environmental issues.

Jay recalled when his father learned his cows could no longer walk through a stream between a pasture and the feed shed on their 250-acre property near Havre de Grace, at the head of the Chesapeake Bay.

"It was useful firsthand experience of how an environmental regulation has to be implemented by an individual farmer," Jay said.

Now 38, Jay still goes by "Willy" and has established himself as a frequent advocate at the Supreme Court on environmental and other issues. A former assistant to the solicitor general, he has argued before the high court 13 times in cases spanning from intellectual property to trademark and administrative disputes.



William Jay. Photo courtesy of Goodwin Procter.

After attending Harvard for both his undergraduate and law degrees, Jay clerked on the San Francisco-based 9th U.S. Circuit Court of Appeals before heading into private practice. After a brief stint at a firm, he clerked for Justice Antonin Scalia and then joined the solicitor general's office.

He was frequently assigned environmental cases, he said, and worked on the government's briefs in the 2012 Supreme Court case *PPL Montana v. Montana*, which centered on the definition of "navigable" in the Clean Water Act.

"I got pretty immersed, no pun intended, in the navigability standard," he said.

Jay worked for the solicitor general's office five years, then returned to private practice.

He is closely watching for EPA to finalize its controversial waters of the United States jurisdictional rule, which will define what streams, bogs, marshes and tributaries qualify for automatic Clean Water Act protections. The rule, he said, is the "culmination" of all of the issues presented in the *PPL Montana* case.

Jay lives in Alexandria, Va., with his wife and three kids. On the weekends, he is a den leader for his eldest son's Cub Scout troop and enjoys camping and biking.

Salo Zelermyer, Bracewell & Giuliani

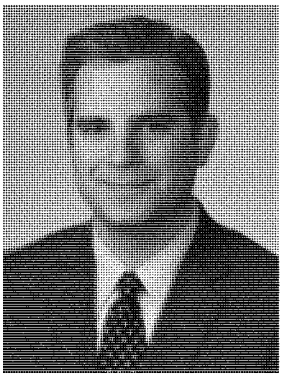
Salo Zelermyer admits that when he began work as a senior counsel at the Department of Energy in 2007, he knew little about energy issues.

On one of his first days, he said, his boss handed him the Supreme Court's decision in *Massachusetts v. EPA*, a 2007 ruling that said EPA and other agencies had authority to regulate carbon emissions under the Clean Air Act.

"And we were off to the races," Zelermyer said.

From 2007 until President Obama's inauguration, Zelermyer, 36, was involved in a host of DOE regulations and programs, from fuel economy standards to DOE's loan guarantee regime to energy efficiency rules.

"It ended up being a fantastic opportunity," he said.



Salo Zelermyer. Photo courtesy of Bracewell & Giuliani.

Zelermyer grew up in West Hartford, Conn., as the son of a rabbi. By the time he was in high school, he said, he "had had enough of religious politics and was ready for the real thing."

He went to George Washington University for his undergraduate degree, taking advantage of internship opportunities including a stint working for Chris Matthews on "Hardball."

Zelermyer headed north to Boston College for law school, then joined a local law firm's litigation practice. After three years, he returned to Washington because politics and government were his "first love."

Now part of a Bracewell & Giuliani practice that combines environmental legal work, government relations and strategic communications work, he has clients that include utilities, energy companies, the clean technology industry and energy efficiency firms.

Zelermyer plans to be busy as the Obama administration proceeds with "an unprecedented number of rules out by the end of next year." In particular, he'll work on the greenhouse gas rules for the power sector and the proposed methane standards for oil and gas operations.

Outside of work, Zelermyer is "obsessed" with New England sports teams. He lives in Silver Spring, Md., with his twin 5-year-olds.

Click here for a look at key environmental attorneys at the Justice Department and nonprofits.

OFFSHORE WIND:

Interior eyes 300K acres off N.C. for future leasing

Phil Taylor, E&E reporter

Published: Thursday, January 22, 2015

The Interior Department today announced the release of an environmental assessment of a plan to lease up to 300,000 acres off the coast of North Carolina for the construction of offshore wind farms.

The plan calls for leasing a 122,000-acre wind energy area about 28 miles off the coast of Kitty Hawk and

two additional areas of 52,000 acres and 134,000 acres beginning about 12 miles off Cape Fear.

North Carolina is the latest of several East Coast states Interior has eyed for commercial wind development.

Interior Secretary Sally Jewell called the environmental assessment "another milestone" in the Obama administration's fight against global climate change.

"In close coordination with our partners in North Carolina, we are moving forward to determine what places make sense to harness the enormous wind energy potential off the Atlantic Seaboard," Jewell said.

The final wind energy areas (WEAs) have been reduced significantly from areas Interior preliminarily identified in late 2012, in response to concerns from the National Park Service, Coast Guard and coastal residents, including in Kitty Hawk.

Kitty Hawk had passed a resolution requesting that turbines be located at least 20 miles from shore, while the Park Service had asked that turbines stay roughly 40 miles from the 19th-century Bodie Island Lighthouse.

The Wilmington West WEA was modified to keep turbines at least 10 miles from shore to reduce visual impacts, and the Wilmington East WEA was modified to accommodate vessels using the Port of Wilmington, among other steps.

The Bureau of Ocean Energy Management's environmental assessment will examine the impacts of issuing wind energy leases and allowing industry to survey the areas with devices like meteorological towers and buoys.

If a lease is issued and a winning bidder wants to build a wind farm, a separate National Environmental Policy Act review will need to be performed.

The public will have until late February to comment on the draft environmental assessment. BOEM will also hold three public meetings in February in the northern Outer Banks, Wilmington and Carolina Shores, or Sunset Beach.

So far, the Obama administration has awarded seven commercial Atlantic coast wind energy leases off Delaware, Massachusetts, Rhode Island, Maryland and Virginia, raising more than $14 million in high bids for over 357,000 acres of federal waters.

So far, no companies have commissioned a commercial-scale facility in the United States, despite more than 7,000 megawatts of projects having been installed around the world, according to the Energy Department.

The 130-turbine Cape Wind project off Nantucket Sound, Mass., which many believed would be the nation's first-ever offshore wind farm, suffered a major setback this month when two utilities opted to terminate agreements to purchase its power (*Greenwire*, Jan. 7).

With a critical 30 percent investment tax credit now expired -- and a Republican-controlled Congress that has resisted proposals to prop up clean energy -- the industry faces major struggles in standing up projects in U.S. waters.

The Offshore Wind Development Coalition, a trade group based in Washington, D.C., that advocated for offshore wind, in mid-2014 merged into the American Wind Energy Association.

INVASIVE SPECIES:

Loss of Lake Tahoe's tiniest residents threatens ecosystem -- scientists

Published: Thursday, January 22, 2015

Troubling changes are coming to the bottom of Lake Tahoe, according to researchers studying the tiny invertebrates living in the cold depths of the nation's second-deepest lake.

University of Nevada, Reno, scientist and associate professor Sudeep Chandra said yesterday he is still reviewing data from scuba divers' first-ever circumnavigation of the lake last fall, but preliminary results show a decline in eight benthic invertebrate species. The dropoff documented in a 2013 article Chandra co-authored indicated 55 to 99.9 percent declines since the 1960s.

"These eight declining animals are multiple canaries in the coal mine indicating that we need to think [about] the functioning of the entire Lake Tahoe ecosystem," he said. "Changes at the bottom may be an indication of things to come."

With tourists swarming the Sierra Nevada in all seasons, Lake Tahoe faces a number of environmental concerns brought on by development, boats and invasive species.

The loss of skunkweed, a native lake plant providing vital invertebrate habitat, and the invasion of nonnative crayfish, which feast on the small animals, have both been linked to invertebrate decline, but Chandra said both factors can be addressed.

"The good news is both of these influences can be fixed, which could promote good plant habitat and improve the home and function of the ecosystem," said Chandra (Michael Fleeman, Reuters, Jan. 21). -- **DTB**

OIL AND GAS:

3M gallons of brine leak from N.D. pipeline

Published: Thursday, January 22, 2015

Almost 3 million gallons of salt water generated by oil drilling have spilled from a pipeline in North Dakota, officials said yesterday.

The leak is three times as large as any previous spills since the state's ongoing oil boom began. Already two creeks have been affected, but it will be difficult to measure the full impacts on the environment and wildlife until after ice melts a few months from now, said Dave Glatt, chief of the environmental health section of the state Department of Health.

Pipeline operator Summit Midstream Partners LLC discovered the leak Jan. 6 and told health officials then. Officials said they were not told the size of the spill, which occurred 15 miles north of Williston, until Tuesday.

The brine is a byproduct of natural gas production that is far saltier than water and can contain petroleum and residue from hydraulic fracturing operations.

"This is not something we want to happen in North Dakota," said Glatt, who noted that previous saltwater spills have taken years to clean.

Currently, the spill does not endanger public drinking water or human health (AP/*Fuel Fix*, Jan. 21). **-- AW**

WATER POLLUTION:

Barge suspected of leaking unknown chemicals in Ohio River

Published: Thursday, January 22, 2015

A chemical sheen reported on the Ohio River near Louisville, Ky., isn't coming from a nearby Valero Energy Corp. refinery, company officials say.

Crews at the Valero terminal reported the chemical sheen to local authorities early this morning, but a company spokesman said the refinery was not the source of the leak because the chemical sheen had been spotted upstream.

Jodi Duncan, spokeswoman for Louisville's MetroSafe, said it's possible a passing barge leaked the chemical.

Crews from the Kentucky Division of Water, the Coast Guard, U.S. EPA and local agencies have been notified, Duncan said (James Bruggers, Louisville *Courier-Journal*, Jan. 21). **-- SP**

OIL AND GAS:

Pipeline spill cleanup stalls on icy Yellowstone River

Published: Thursday, January 22, 2015

A thick layer of ice on the Yellowstone River is hampering cleanup efforts after a ruptured pipeline spilled roughly 50,000 gallons of oil, much of it into the river, contaminating an eastern Montana town's drinking water supply.

Crews have recovered about 10,000 gallons of oil from the rupture directly beneath the river, about 50 feet from the south shore, but Bridger Pipeline Co. spokesman Bill Salvin said yesterday only a "very small" amount of oil has been siphoned from the river.

As crews search for spots to get beneath the ice to the roughly 40,000 gallons still in the Yellowstone River, the town of Glendive downstream had its water treatment plant shut down after cancer-causing benzene was detected in supplies (*Greenwire*, Jan. 21).

Until the plant is back online, Bridger Pipeline has committed to providing bottled water to the town's roughly 6,000 residents, many of whom were frustrated with Monday's water advisory more than two days after the spill and the uncertainty of how long restrictions will last.

The spill's cause remains unclear, but oil sheens have been reported as far away as Williston, N.D.

Montana Department of Environmental Quality Director Tom Livers said he was concerned oil could spread farther downstream when the ice breaks up this spring (AP/*Wall Street Journal*, Jan. 21). **-- DTB**

MERCURY:

Illegal gold mining fouls large swath of Peru river -- study

Published: Thursday, January 22, 2015

Miners in Peru sift through dirt beneath the Madre de Dios River in search of gold but release mercury in the process, scientists say.

"Somebody will dive down to the bottom of the river with a scuba suit or some kind of tube to breathe," said Bill Pan, an assistant professor in the Global Health Institute at Duke University, whose research tracked the spread of mercury from mining areas. "They'll be on the bottom sucking up the dirt."

Miners use balls of mercury to extract tiny specks of gold from the sludge at the river's bottom but release tiny beads of mercury into the river in the process. The illegal mining activity, along with open-pit mines, causes toxic levels of mercury that can travel hundreds of miles downstream, Pan said.

"There's definitely a strong correlation between where the mining is occurring and where people are at risk for mercury toxicity," Pan said.

Peru's government has tried to crack down on the miners, but residents are largely undeterred by the crackdown (Jason Beaubien, NPR, Jan. 21). **-- SP**

MARYLAND:

Hogan halts farm runoff, power plant rules

Published: Thursday, January 22, 2015

New Maryland Gov. Larry Hogan (R) moved quickly yesterday to block several new regulations proposed by former Gov. Martin O'Malley (D), including a measure to curb poultry farmers' use of chicken manure on their fields.

Hogan also blocked a regulation to cut smog-forming air pollution from coal-fired power plants and three other rules relating to medical care that Hogan's office declined to explain.

The governor's action halted publication of the five rules in the *Maryland Register*, which prevents them from taking effect, press secretary Erin Montgomery said.

Montgomery said the new administration was putting a halt to all pending regulations until they could be reviewed for "public input, public hearing and full due process."

Hogan's move drew quick criticism from environmental groups. The Clean Agriculture Coalition said in a statement that Hogan had "turned his back on clean water and sound science" by eliminating the fertilizer rule.

Groups also have warned the smog-reduction rule will mean more unhealthy nitrogen oxide emissions in Baltimore and the Washington, D.C., area (Timothy Wheeler, *Baltimore Sun*, Jan. 21). **-- SP**

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CLIMATEWIRE — Fri., January 23, 2015

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Close vote in Senate previews GOP attacks on Obama's global climate strategy

The Obama administration yesterday narrowly survived the first major attack on its efforts to forge a new global climate change agreement.

2.POLITICS:

Senate's pipeline battle likely to spill over into Republican presidential debates

The Senate's rare votes on climate change this week could spill into presidential election campaigns next year and pressure Republican candidates to explain their beliefs about climbing temperatures -- and it might help them.

TODAY'S STORIES

3.SCIENCE:

Heartland Institute finds route into U.S. science news conduit through China

4.REGULATION:

NERC to study whether multistate coordination could help EPA's Clean Power Plan

5.TRANSPORTATION:

Combustion engine still king at auto show, but companies talk big on next wave of low-carbon cars

6.CALIFORNIA:

State's emission reductions feasible through 2030 with existing policies, federal scientists say

7.EMISSIONS:

Growing cities could set plans to cut their energy use by 25% -- study

8.NATIONS:

Could a U.S. plan to push renewable energy in Africa be changed to help India?

9.BUSINESS:

U.S.-China surge made 2014 a banner year for wind power -- report

10.RISK:

Due to impasse over climate change, group moves 'Doomsday Clock' closer to midnight

11.STATES:

Chamber of Commerce tallies Clean Power Plan gripes by state

12.CARBON MARKETS:

European carbon reform stalls after pro-industry committee fails to pick date

13.CITIES:

L.A. looks for water conservation strategies in the face of drought

14.WEATHER:

Dwindling snow for Calif. skiers

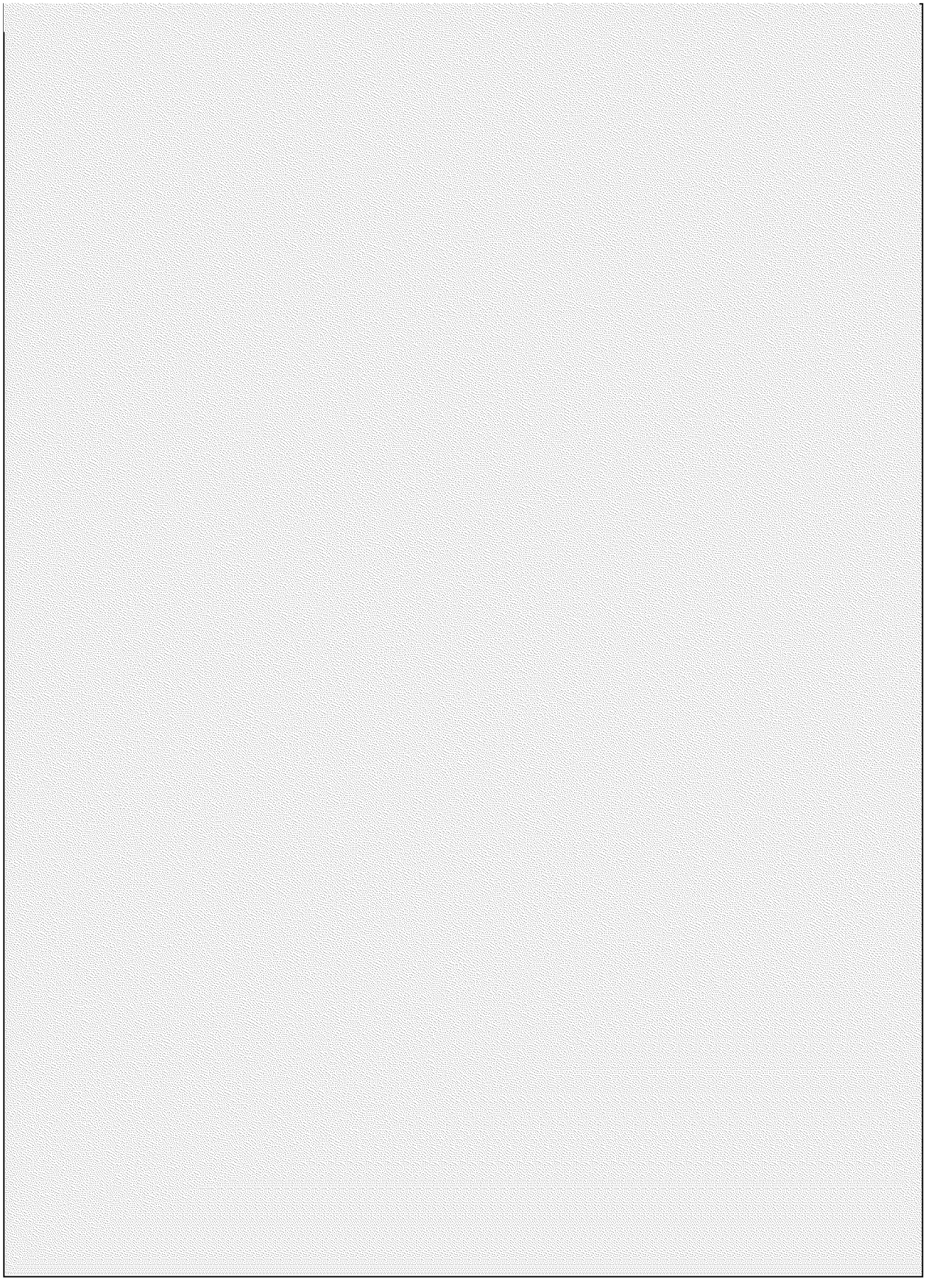
15.WEATHER:

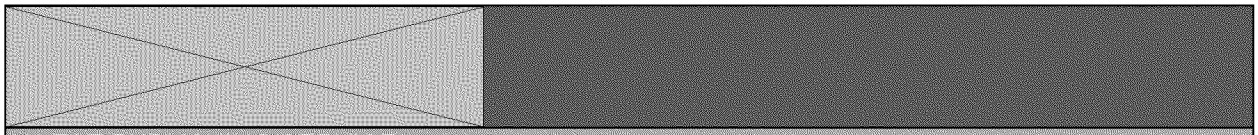
Wet winter provides relief, but not an end to Ariz. drought

E&ETV'S THE CUTTING EDGE

16.POWER MARKETS:

***EnergyWire*'s Kuckro talks 'war on coal,' generation forecast**





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ENERGYWIRE — Fri., January 23, 2015

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1.YELLOWSTONE SPILL:
Feds issued warning to pipeline company in November

Federal officials issued a warning late last year to the owner of the Montana pipeline that contaminated a city's drinking water for keeping poor records about the condition of the system.

TOP STORIES

2.SECURITY:
A candid glimpse at how the power sector handles cyber rules

3.TECHNOLOGY:
Near or far from home, Nest wants to know where you are

4.INDIANA:
Senate committee OKs substitute energy efficiency bill

ELECTRICITY

5.RENEWABLES:
2 more utilities join with armed forces in solar efforts

6.TRANSMISSION:
Kan. wind power project backers solicit customers

7.UTILITIES:
N.M. coal retirement plan hits snag

OIL AND GAS

8.NATURAL GAS:
Boston's methane emissions 2-3 times higher than previously thought -- study

9.TECHNOLOGY:
Cost-cutting systems start to flood the oil patch

10.TRANSPORT:
DeFazio calls for IG audit of PHMSA over crude-by-rail rule delay

11.OFFSHORE DRILLING:
Texas awards research grants from Gulf spill fines

12.REGULATION:
New rules for ship emissions revs up a market for lighter fuels

13.OIL SANDS:
Slowdown could be Alberta's 'chance to catch up' with boom-time growth

14.ENERGY MARKETS:
Oil researcher doubts crude will return to triple digits

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15.POWER MARKETS:
***EnergyWire*'s Kuckro talks 'war on coal,' generation forecast**

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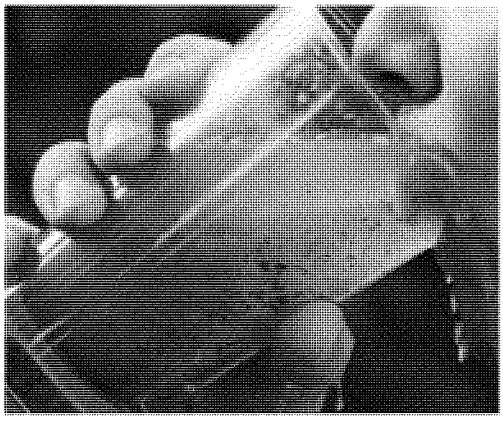

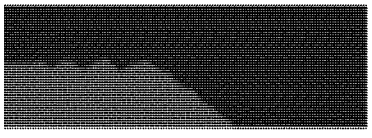

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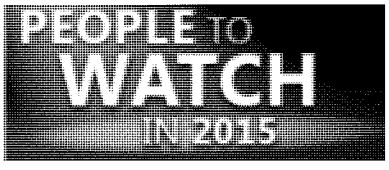
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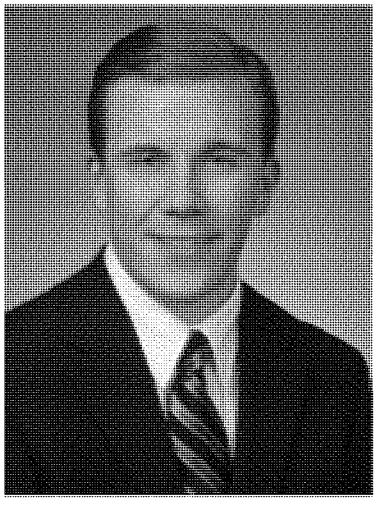

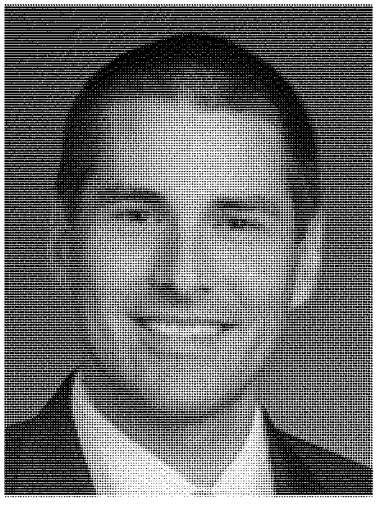

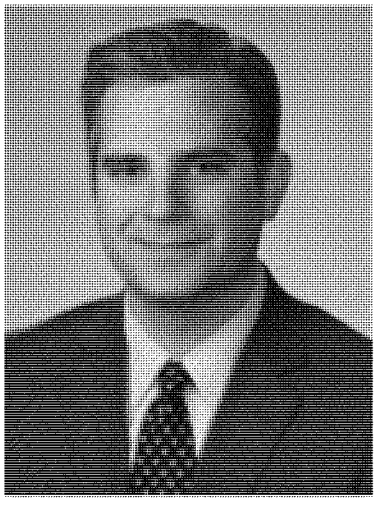

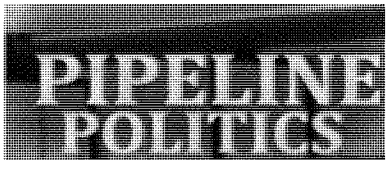
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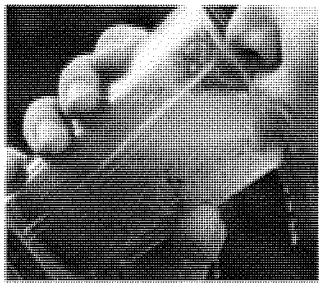

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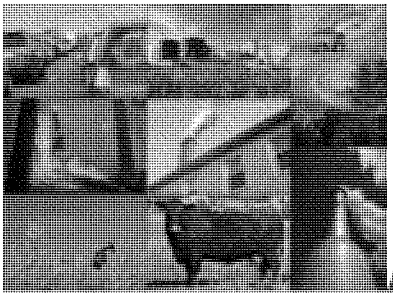

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for January 22, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

European Commission Backs Down On Plan to Modify Key Air Quality Proposal

The European Commission confirmed that it has backtracked on a plan to modify a key draft European Union air pollution law that is the subject of negotiations between the European Parliament and EU member states....

Air Pollution

Missouri Utility to Stop Burning Coal at Three Plants, Partly to Comply With EPA Rules

A Kansas City-area utility will stop burning coal at three of its power plants over the next seven years, in part to comply with Environmental Protection Agency regulations, including mercury and air toxics standards....

Climate Change

15 Senate Republicans Back Consensus That Human Activity Has Role in Climate Change

Fifteen Republican senators joined with the Senate Democratic caucus Jan. 21 to agree with the scientific consensus that human activity contributes to climate change, as Democrats sought to put the Republicans on the record about their position...

Climate Change

Obama Order Launches Steering Panel To Coordinate Federal Arctic Policies

President Barack Obama Jan. 21 created a steering committee that will advise federal agencies and departments on policies that could affect the Arctic region, action that comes as the U.S. is poised to take the helm of the multilateral Arctic...

Climate Change

Supporters Hail Obama Vow to Drive Action On Global Deal; China Actions Questioned

President Barack Obama got high marks from supporters a day after pledging the U.S. would show leadership in crafting a 2015 climate accord, but he failed to temper expected Republican attacks on his environmental agenda....

Climate Science

Carbon Injected Underground May Form Barrier, Not Solidify, MIT Research Finds

Questions are being raised about the basic chemistry of storing carbon dioxide underground, according to research released Jan. 20 by the Massachusetts Institute of Technology....

Congress

Inhofe, Boxer Will Debate Environment Issues, Cooperate on Highway Bill

Sens. James Inhofe (R-Okla.) and Barbara Boxer (D-Calif.) said Jan. 21 they will have vigorous debate as

the leaders of the Senate Environment and Public Works Committee on environmental issues, including Environmental Protection Agency...

Energy

EPA Methane, Mercury, Clean Power Rules Called Key Issues for Energy Industry in 2015

Several Environmental Protection Agency rulemakings are front-and-center on the energy industry's agenda at the start of 2015, industry representatives said Jan. 21....

Energy

Pressure Mounts to Drop Oil Export Ban Amendment; Supporters Say Time Needed

Pressure is mounting on Sen. Ted Cruz (R-Texas) to withdraw an amendment to Keystone XL legislation that would repeal a 40-year-old law banning the export of domestic crude oil, as Republican colleagues and energy industry representatives...

Enforcement

EPA Should Consider Including Next Gen Tools in Civil Settlements, Agency Memo Says

The Environmental Protection Agency's enforcement staff should consider and incorporate, as appropriate, Next Generation Compliance approaches into most civil settlements, the agency's top enforcement official said in a January...

Environmental Reviews

Challenge to Northern Gateway Claims B.C., Not Canada, Must Give Environmental Nod

The latest legal challenge to Enbridge Inc.'s proposed Northern Gateway pipeline project claims British Columbia violated Canada's Constitution by deferring to the federal government rather than exercising its provincial environmental...

General Policy

OMB's Deese to Succeed Podesta

As Obama Environment Adviser

Brian Deese, deputy director for budget at the Office of Management and Budget, will succeed John Podesta in his role as counselor to President Barack Obama for environmental matters, a White House official said Jan. 21....

International Climate

India's Modi May Focus More on Renewables Than Emission Cuts in Meeting With Obama

With President Barack Obama's visit to India just days away, Prime Minister Narendra Modi is focused more on boosting the use of renewables in his country than committing to cuts in greenhouse gas emissions....

Natural Gas

House Sends Natural Gas Pipeline Bill To Senate Despite White House Veto Threat

The House voted Jan. 21 to approve legislation that would expedite the permitting process for new natural gas pipelines despite a veto threat from the White House. ...

Renewable Energy

Amazon Joins Apple in Using Clean Energy at Cloud Data Centers

Amazon.com Inc. is turning to wind to power data centers forming its giant global network after committing in November to drive all operations on renewable energy....

Renewable Energy

China Nears Publication of Plan to Guide Development of Geothermal Energy Resources

China could be nearing publication of a plan to guide the development of geothermal energy resources over the next few years as it plunges ahead with efforts to get more of its energy from renewable sources....

Trade

ITC Paves Way for Steep Duties On Solar Products From China, Taiwan

In a win for SolarWorld, the International Trade Commission Jan. 21 made affirmative injury rulings in cases targeting imports of crystalline silicon photovoltaic products from China and Taiwan, paving the way for steep duties....

CORRECTION

An article in the Jan. 21 report about a Clean Air Act case that was dismissed by the U.S. District Court for the Western District of Oklahoma inaccurately identified one of the quoted attorneys. It should have said that David Bender represented...

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Latest News

Inhofe Reduces Senate EPW Subcommittees To Avoid Jurisdictional Fights

Sen. James Inhofe (R-OK), chairman of the Environment & Public Works Committee (EPW), has cut the panel's subcommittees from six to four in order to avoid jurisdictional fights between members over EPA oversight, which he vows will include scrutiny of EPA's power plant climate rules and its potential stricter ozone standard.

Obama's State Of The Union Includes Vow To Push Climate Agenda Ahead

President Obama is vowing to push ahead with his administration's climate change agenda and veto Congressional measures to block EPA rules and other environmental policies, describing the threat of climate change as the greatest risk to future generations and saying the United States' efforts to curb global warming will spur international action.

News Briefs

Industry Sues EPA Over Utility MACT Startup Revisions

Utilities are suing EPA over its recent rule finalizing changes to provisions in its maximum achievable control technology (MACT) air toxics rule for the sector affecting power plant startups and shutdowns, which created a compliance alternative for utilities who said the provisions in the original rule were too hard to meet.

Greenwire

FEDERAL AGENCIES:

Supreme Court backs whistleblower in homeland security case

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 21, 2015

The Supreme Court today sided with a former air marshal who blew the whistle on the Department of Homeland Security's decision to stop deploying marshals on some commercial flights after the Sept. 11, 2001, terrorist attacks.

In a case that could have significant implications for whistleblower protections, the justices ruled 7-2 in *Department of Homeland Security v. Robert MacLean* that the marshal's disclosure was prohibited only by a regulation -- not a law -- and, therefore, he should not have been fired.

Chief Justice John Roberts in the court's opinion said the government's argument in the case would allow any agency to sidestep protections provided to whistleblowers simply by issuing a regulation.

Based on the government's contentions, he wrote, "an agency could insulate itself ... merely by promulgating a regulation that 'specifically prohibited' whistleblowing. But Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks."

The case concerns MacLean's 2003 decision to anonymously disclose information to a reporter that showed the Transportation Security Administration had decided to stop deploying marshals on some long-distance flights because of budget shortfalls.

TSA's policy came shortly after MacLean was informed of a possible new terrorist plot to highjack commercial airliners. He objected to his supervisor, and, when nothing came of it, he gave the information to an MSNBC reporter.

The resulting news story sparked outrage on Capitol Hill, and TSA eventually reversed the policy.

But when the agency discovered MacLean was the source of the information a year later, it fired him. The agency claimed MacLean had violated a regulation that prohibited the disclosure of "sensitive security information."

The case centered on whether MacLean's disclosure was specifically prohibited by law -- and therefore didn't qualify for protections under the Whistleblower Protection Act -- or only a regulation.

Roberts wrote that the TSA regulations do not have the same force as law.

"Congress did not use the phrase 'law, rule, or regulation' in the statutory language at issue here," he wrote, "it used the word 'law' standing alone."

He added: "The broad interpretation of the word 'law' could defeat the purpose of the whistleblower statute."

Roberts also addressed the government's argument that siding with MacLean sets a dangerous precedent that could put public safety in danger.

"Those concerns are legitimate," he wrote. "But they are concerns that must be addressed by Congress or the President, rather than by this Court."

Justice Sonia Sotomayor dissented and was joined by Justice Anthony Kennedy.

She wrote that the decision leaves "important decisions regarding disclosure of critical information completely to the whims of individual employees."

The case marks the first time the Supreme Court has ever considered a federal whistleblower retaliation suit (*Greenwire*, Oct. 30, 2014). And the ruling isn't unexpected given the tough questions the justices posed to the government at oral arguments in November (*Greenwire*, Nov. 4, 2014).

In a brief phone interview, MacLean, a former member of the Air Force and border patrol agent, said the ruling should send a message to potential whistleblowers that they have legal protections.

"Ultimately, for all whistleblowers," he said, "it's a major decision to risk your career."

Click here for the opinion.

GRID:

FERC had no 'meaningful' input on climate rule -- commissioner

Hannah Northey, E&E reporter

Published: Wednesday, January 21, 2015

U.S. EPA for months has said it worked with grid overseers when crafting its landmark Clean Power Plan in order to protect grid reliability, but at least one member of the Federal Energy Regulatory Commission is publicly questioning the depth of that input.

Republican FERC Commissioner Tony Clark told House and Senate Republicans in a letter this month that no commission members or agency staff had any "significant or meaningful role" in providing analysis to EPA on grid reliability on the Clean Power Plan, either before or after the proposal was released last summer.

Clark said a Dec. 3, 2014, letter FERC Chairwoman Cheryl LaFleur sent Sen. Lisa Murkowski -- the then-ranking Republican and now chairwoman of the Senate Energy and Natural Resources Committee -- shows that FERC staff had a "handful of high-level, general discussions based on a limited review of only portions of the CPP proposal that were provided to FERC."

LaFleur told Murkowski in the letter that EPA in early February 2014 at the commission's Washington, D.C., headquarters "in very general terms" described parts of the Clean Power Plan to her and other commission members. And in March, FERC staff met with officials from EPA and the Energy Department to discuss concerns that grid operators had with the proposal.

The chairwoman also outlined meetings in April, including a telephone conference in which FERC staff provided comments on the draft related to reliability, including the proposal's "contemplated increases in the capacity factor for natural gas combined cycle units, renewable generation and the coal heat rates" and the need for new infrastructure to comply with the proposal.

FERC also commented on the "advisability" of regional collaboration among states and some form of a "safety valve" -- a mechanism that grid operators have since proposed to ensure power supplies remain stable should plants be shuttered too quickly under the rule.

LaFleur said FERC "can and should" advise EPA on the effects its rules could have on the grid, and FERC staff members have communicated "regularly" with EPA.

But Clark said the commission had limited input and little-to-no role in shaping the EPA proposal. He said he will raise concerns at a series of technical conferences FERC is holding on the EPA proposal -- the first on Feb. 19 at FERC headquarters in Washington, D.C. Subsequent staff-led regional technical conferences will be held in Washington, St. Louis and Denver.

"Altogether, the limited input provided by FERC staff to the EPA and the lack of input from the commissioners reinforces the notion that the meetings with EPA were insubstantial in shaping the CPP proposal and mitigating potential reliability impacts," Clark wrote. "Nothing I have seen before or since would suggest otherwise."

Clark, who hails from North Dakota, also warned that FERC in the past hasn't had to tackle reliability problems tied to EPA rules because reserve capacity margins have been generous, but "this is a luxury we no longer have."

Liz Purchia, a spokeswoman for EPA, said the agencies met on "several levels," including a meeting with LaFleur. "During the development of the Clean Power Plan proposal, during the interagency review process, and after the proposal was issued, EPA held meetings with FERC senior staff, as well," she said.

EPA also confers with the commission regulator on matters related to reliability, including monitoring states' and utilities' implementation of the Mercury and Air Toxics Standards (MATS) rule and the Clean Power Plan, she said. "We are committed to continue working closely with FERC and other federal agencies," Purchia said.

Still, Clark's comments call into question just how closely federal grid overseers worked with EPA on a rule that some have warned could affect grid reliability.

Republicans began probing the agencies' level of cooperation after the release of a high-profile report in November 2014 by the North American Electric Reliability Corp., the federally designated grid reliability overseer. It warned that EPA's proposal threatens reliable electricity delivery in 2020, the agency's initial compliance deadline (*EnergyWire*, Nov. 5, 2014).

NERC found that the EPA proposal's 2020 target would cause the retirement of 108,000 to 134,000 megawatts of existing generation capacity, primarily at coal plants, and questioned whether the nation's bulk power system could successfully shoulder such fast-paced changes.

Clark's comments have aligned with those of FERC Commissioner Philip Moeller -- another Republican member of the agency -- in the past. In their response to Congress, Democratic Commissioners Colette Honorable and Norman Bay, slated to chair the agency later this year, said they couldn't weigh in on the issue.

DOE:

Deputy brings national security chops, feng shui to headquarters

Robin Bravender, E&E reporter

Published: Wednesday, January 21, 2015

Elizabeth Sherwood-Randall has been a globe-trotter since she was 9.

That's how old the now-deputy Department of Energy secretary was when her parents sent her and her younger brother (then 5) to live in Europe. They stayed for several weeks with a Swiss farming family in the Alps, learning French.

"Until the time when I was 15, every summer, my parents sent me to live with families in different countries ... to learn languages," Sherwood-Randall said in an interview. She lived with families in Switzerland, France, Germany and Mexico.

Her parents "really wanted to push us out ... to cultivate our independence," said Sherwood-Randall, who goes by Liz. "They were serious about this idea of kids who would not think the world looked like Southern California."

Those early experiences sparked her interest in world affairs that landed her key international relations posts on Capitol Hill, in the Pentagon and in the Obama White House.

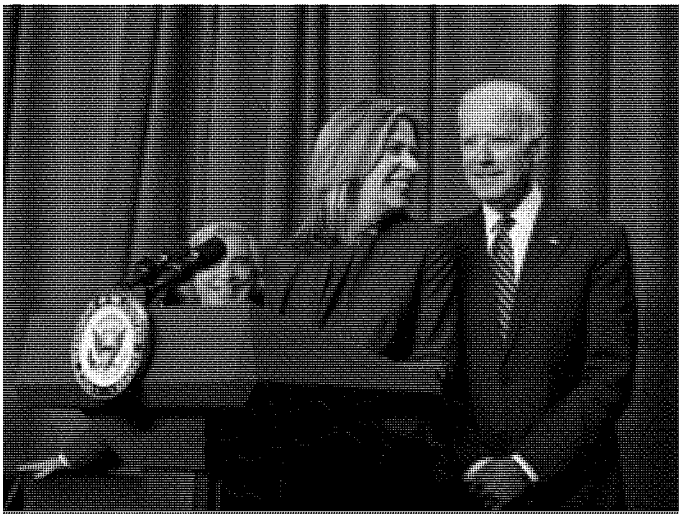
"My orientation was always to look at the world beyond our shores and try to understand it," she said. She studied international relations as an undergraduate at Harvard University and at Oxford University, where she was a Rhodes scholar and received her doctorate.

Her little brother, Ben Sherwood, won his own Rhodes later, making them the first American sister-brother duo to win the Oxford scholarships, the *Los Angeles Times* reported in a 1986 profile.

Ben is now a media bigwig, taking over as president of the Disney/ABC Television Group. Their late father was a Los Angeles lawyer and president and chairman of the Los Angeles County Museum of Art. Their mother, Dorothy (known as Dee), "was a traditional mom who devoted herself to raising her kids and supporting her husband," Sherwood-Randall said.

Sherwood-Randall, who was 26 when the *Times* profile was written, was then a staffer in the office of then-Sen. Joe Biden (D-Del.). She was described as a "slim, attractive, blond, fashionable and outgoing" woman who would occasionally "dash off for a weekend of skiing at the Adirondacks."

That description still fits nearly three decades later, although Sherwood-Randall, now 55, is probably less likely to dash off for a ski weekend now that she holds a top job in the Obama administration and has two teenage sons.



Energy Secretary Ernest Moniz's deputy Elizabeth Sherwood-Randall cut her teeth on nuclear security policy as a staffer in then-Sen. Joe Biden's office. Photo courtesy of DOE.

When Sherwood-Randall was hired to work in the Obama administration in 2009, she transported her kids with her to Washington, D.C., from Northern California. Her husband, neurosurgeon Jeffrey Randall, commutes from California most weekends.

"Three weekends a month, he gets here," Sherwood-Randall said. "He does neurosurgery trauma, so one weekend a month he has to be on trauma call, and so he has to stay in the Bay Area. He's just heroic and all in and a wonderful partner."

'The feng shui is better this way'

Sherwood-Randall's first foray into politics came at age 13, according to the *Times* report. She waged a one-girl campaign in protest of the Hillcrest Country Club's limitations on when girls could use the tennis courts. She won.

She's come a long way since then.

Sherwood-Randall started in September as DOE's No. 2, working under Secretary Ernest Moniz. She's second in command at a department with an annual budget of about $30 billion and a staff of about 14,000 workers.

She came from the White House, where she had been a special assistant to President Obama since the start of his presidency. She was the White House coordinator for defense policy, countering weapons of mass destruction, and arms control after serving for several years as senior director for European affairs at the National Security Council.

Tina Tchen, assistant to Obama and chief of staff to first lady Michelle Obama, called Sherwood-Randall "a quick study" who earned "tremendous respect" for her ability to hop from a meeting on weapons of mass destruction to another on education issues and to navigate a range of issues with ease.

"She's brilliant," Tchen said of her former White House colleague. "You can tell by the range of issues that she has been called upon to work on."

Sherwood-Randall's chops on international issues made her an obvious pick for the DOE post, said

Daniel Poneman, her predecessor in the deputy job.

"This is a job that is hugely ... relevant for national security purposes," Poneman said in an interview. DOE does everything from maintaining the U.S. stockpile of nuclear weapons to engaging in nuclear nonproliferation and energy security work.

As for the remainder of DOE's portfolio, Poneman said, "she has embraced the additional issues that she had not spent so much time on with real enthusiasm."

Sherwood-Randall has made some changes to Poneman's old office on the seventh floor of the James V. Forrestal Building.

For starters, she shifted the desk to the opposite side of the room to get a better view of the National Mall.

"The feng shui is better this way. He was looking at the concrete wall, and I wanted to be looking at the Smithsonian and the Hirshhorn and all that," she said, referring to the museums. And she took down the curtains, replacing them with blinds.

"I'm from California, and I love the light," she said. "And so we just have open windows and it feels good. I love being here."

Captivated by the Cold War

Sherwood-Randall decided as a college student that she wanted to dive into a career navigating the U.S.-Soviet relationship.

"The whole world kind of revolved around that dynamic, and I recognized that to be involved in the most challenging and serious work going on, I needed to learn about nuclear strategy and arms control," she said.

Fresh out of graduate school at Oxford in the midst of the Cold War, she got a job working for Biden as a foreign affairs and defense policy adviser. Her portfolio included issues surrounding nuclear security, arms control, Central America and South Africa.

"There were very few women in this field at the time, and I recognized that I was going to have to earn my spurs there if I was going to be taken seriously, so I did a lot of work to understand these issues," she said. She also found them captivating. "This was about whether we would survive as a nation and survive as a planet."

The stint in Biden's office wasn't Sherwood-Randall's first time on Capitol Hill.

When she was a 16-year-old high school student in 1976 -- during the bicentennial, she recalled -- she moved to Washington for the summer to intern for her home-state senator, California Democrat John Tunney. Her job was to answer the mail using a notebook full of templates for different types of responses.

"There were no computers, so we answered the mail, one by one," she said. "I lived in a dorm in Georgetown, and I took the bus from Georgetown to Capitol Hill and back because I was only 16."

After her stint as a Biden aide, Sherwood-Randall co-founded a Harvard project to generate ideas for reforming U.S.-Soviet relations.

When William Perry became President Clinton's Defense secretary in 1994, he recruited her as deputy assistant secretary of Defense for Russia, Ukraine and Eurasia. "He knew of my work in the new Russia, and he wanted somebody to come and run his Russia, Ukraine and Eurasia team who wasn't a Sovietologist -- who had a fresh perspective on what was possible with these states that had emerged from the breakup of the Soviet Union," she said.

Her job: "Get nuclear weapons out of Kazakhstan, Ukraine and Belarus," she said. "And we succeeded in that. ... We did something that had never before been done and that most people said couldn't be done, which is that we persuaded these countries to give up thousands of nuclear weapons and their delivery systems."

She keeps a photo in her DOE office of a missile being pulled out of a silo in Ukraine. Perry gave it to her to remind her of her "role in history," he wrote in a note scrawled across the bottom.

Her new boss, Moniz, "is fabulous to work with," she said. "I feel so privileged to have him as my partner."

She laughed about the media's obsession with his hair, which has been compared to the styles of George Washington, Benicio Del Toro in "Fear and Loathing in Las Vegas" and Doc Brown in "Back to the Future."

"I sometimes try to imagine -- what would he look like if he didn't have this wonderful, unique do?" Sherwood-Randall said.

CLIMATE:

Republicans defiant after Obama mocks their stance on science

Jean Chemnick and Ariel Wittenberg, E&E reporters

Published: Wednesday, January 21, 2015

President Obama used his State of the Union speech last night to mock Republicans who oppose government action on climate change who say nonscientists lack the chops to engage on global warming issues.

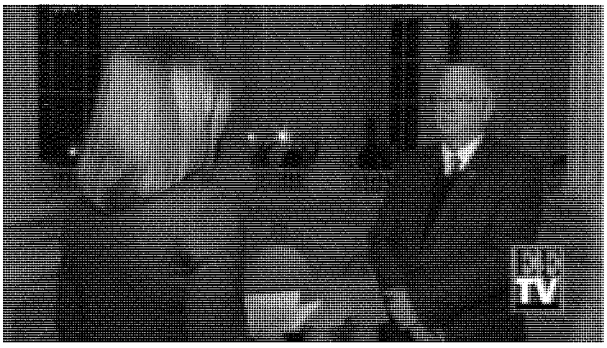
"Well, I'm not a scientist, either," Obama said. "But you know what -- I know a lot of really good scientists at NASA, and [the National Oceanic and Atmospheric Administration], and at our major universities.

"The best scientists in the world are all telling us that our activities are changing the climate, and if we do not act forcefully, we'll continue to see rising oceans; longer, hotter heat waves; dangerous droughts and floods; and massive disruptions that can trigger greater migration, conflict and hunger around the globe."

NASA and NOAA released data last week that showed that 2014 was the planet's warmest year on record. That's part of a trend, Obama said, with 14 of the warmest years in history being recorded in the last 15 years.

While Obama said that should put climate naysayers in their place, Republicans aren't budging.

CONGRESSIONAL REACTION



In his first State of the Union address before a Republican-controlled Congress, President Obama received strong partisan reaction to his climate and energy proposals. In this E&ETV Special Report, members of Congress react to the president's statements on the science of climate change, Keystone XL and U.S. energy production. **Click here** to watch the E&ETV video.

"I agree that the president is not a scientist, and that is surely right," said Sen. Ted Cruz (R-Texas). With Murray Energy Corp. CEO Robert Murray as his guest for the speech last night, Cruz said NOAA and NASA excluded data that would have shown that warming wasn't occurring in the way they say it has.

"An inconvenient truth, so to speak, is the simple fact that for the last 17 years, there has been no recorded increase in temperatures," Cruz said. His office did not respond to requests this morning to elaborate.

Cruz, whose name is routinely included among possible Republican presidential contenders in 2016, dismissed Democrats' tendency to ridicule as "climate deniers" those who question the science behind man-made drivers of global warming. That term, he said, shows that the issue is an article of faith rather than a subject of scientific inquiry.

"Scientists should not be in business in accepting hypothesis as theological fate," he said. "They should be looking to facts and evidence."

Well over 90 percent of climate scientists say the facts and evidence point to a substantial human role in driving recent warming. But Cruz said the crisis was invented by liberals to gain "massive government control of the economy, the energy industry and our lives."

Rep. Joe Barton (R-Texas), a former chairman of the House Energy and Commerce Committee, said man-made climate change runs counter to Judeo-Christian theology.

"To say that climate change is an urgent problem is like the tower of Babylon," Barton said in an interview after the speech. He was referring to the Book of Genesis account of the Tower of Babel.

"In the Bible, the people thought man had so much knowledge that he could reach the heavens by building what we now know is the tower of Babylon," he said. "But there are limits to what man can do. But there is no limit to what God can do."

But House Sustainable Energy and Environment Coalition Co-Chairman Paul Tonko (D-N.Y.) said religions place a value on stewardship of the Earth, including the need to combat warming.

Containing heat-trapping emissions is "better for our future and better for our children to breathe clean air," he said. "Every faith reminds us that we are indeed stewards of the environment."

Obama was widely expected to cite Pope Francis' statement earlier this year that humans are behind harmful warming, but he instead mentioned the pope in the context of liberalizing relations with Cuba.

Democrats also expressed appreciation for Obama's derisive tone in discussing Republican opposition to climate action.

"I think some of the stuff that they say is best responded to lightheartedly, and I thought that was a good moment in the speech for the president," Sen. Sheldon Whitehouse (D-R.I.) said.

Rep. Peter DeFazio (D-Ore.) said of the Republicans, "There is tremendous denial on that side of the aisle. Science isn't too high on their radar."

Reporter Matthew Herbert contributed.

INFRASTRUCTURE:

Obama's SOTU mention raises hopes in both parties

Sean Reilly, E&E reporter

Published: Wednesday, January 21, 2015

President Obama made only fleeting references to broader infrastructure issues in last night's State of the Union speech, but that was enough to elicit mostly hopeful responses from players around the political spectrum.

In the speech, Obama called for passage of a bipartisan infrastructure plan, with a suggestion that it could be financed by closing tax loopholes on U.S. businesses' overseas earnings.

Both the White House and then-House Ways and Means Chairman Dave Camp (R-Mich.) last year proposed using "repatriation" as a means of increasing transportation revenue. Neither's plan triggered any discernible interest among top congressional leaders.

In a statement this morning, however, House Transportation and Infrastructure Chairman Bill Shuster (R-Pa.) labeled Obama's "continued interest in wanting to work together to solve America's infrastructure issues" as a positive step.

"Whether it be the Water Resources Reform and Development Act or our bipartisan public-private partnership panel, the committee has shown that it can solve our nation's problems in a fiscally responsible manner," Shuster said.

Also weighing in was Rep. John Delaney (D-Md.), who yesterday reintroduced bipartisan legislation, H.R. 413, to raise $50 billion for road and other infrastructure projects with the help of repatriation incentives (*E&E Daily*, Jan. 21).

"For two years I've been working to build a new coalition around this approach to infrastructure and I was heartened to see the president offer his support for our framework," Delaney said today in a separate statement. "We're going to continue to work to sustain the momentum behind our bill."

Despite the general consensus that infrastructure is one area where Republicans and Democrats can find common ground, the Highway Trust Fund is again at risk of running short of money this spring, with no deal in sight.

"It leads us to wonder, 'What are you waiting for?'" Pete Ruane, head of the American Road and Transportation Builders Association, said in a statement last night. If Obama wants to accomplish something and the new Congress wants to prove it can govern, finding new money for roads and transit is an area "ripe" for bipartisan action, Ruane said.

"However, policy legacies won't be earned with more short-term gimmicks and temporary patches of the Highway Trust Fund," he added. Both sides will need to agree on "a long-term revenue stream to ensure state governments have the reliable federal partner they need to make overdue improvements."

Although Obama has broached using a financing mechanism known as "qualified public infrastructure bonds" to help pay for projects, that proposal must be seen as a complement -- not a replacement -- for the money Congress needs to find to pay for "a fully funded six-year transportation plan before the Highway Trust Fund runs out of money in May," Sen. Tom Carper (D-Del.) said.

Lawmakers should also relax existing restrictions on using tolls to help build new roads and bridges, argued the head of a trade group that represents toll facility owners and operators.

"Tolling is one of the most powerful, effective and time-tested tools in the funding toolbox," Patrick Jones, executive director and CEO of the International Bridge, Tunnel and Turnpike Association, said in a release. The association, Jones added, "hopes that the president and Congress fulfill their promise to work together to give states the key to unlock this critical funding."

WHITE HOUSE:

Obama's climate focus won't waver as key aides exit -- CEQ chief

Corbin Hiar, E&E reporter

Published: Wednesday, January 21, 2015

The outgoing head of the White House's Council on Environmental Quality said today that he's sure the Obama administration's effort to combat climate change won't waver -- even though President Obama is losing two of his top environmental aides.

"I think you heard from the president last night his commitment on this," acting CEQ Chairman Mike Boots said before the start of a press conference calling for reauthorizing the expiring Land and Water Conservation Fund (*see related story*). He was referring to Obama's State of the Union address, in which the president declared a climate and energy war against the new GOP-led Congress (*E&E Daily*, Jan. 21).

Earlier this month, Boots announced that he was leaving the White House in March -- only a month after Obama's top environmental aide, John Podesta, is also slated to step down. Those departures prompted fears among some environmentalists that the administration's climate agenda would suffer from a lack of experienced, committed leadership within the White House (*E&ENews PM*, Jan. 13).

Boots, however, said that he and Podesta believe those concerns are misplaced. "John and I feel that there's a good team in place, a good team in the Cabinet and across the White House. We have both been strong advocates for it, but there will be two new people after us who will be strong advocates for us, and we're very confident in the agenda he's laid out," he said.

Asked who those successors would be, Boots demurred. "I don't have any personnel announcements at

this time from the White House," he said.

As for his future, Boots said, "I don't have any precise plans. I'm looking at a few different options."

On the agenda, however, is some hard-earned rest and relaxation. "After six years there, I'm looking to take a little bit of a break and figure out what's next," he said.

KEYSTONE XL:

Climate votes likely this afternoon

Manuel Quiñones, E&E reporter

Published: Wednesday, January 21, 2015

Votes on Democratic amendments meant to get senators on the record about the science of climate change will likely get a vote sometime this afternoon.

An amendment by Sen. Brian Schatz (D-Hawaii) to legislation to approve the Keystone XL oil pipeline from Canada details climate science and stresses humans' contribution to climate change.

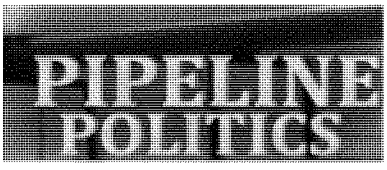
Another amendment by Sen. Sheldon Whitehouse (D-R.I.) is more straightforward, simply stating that climate change is real and not a hoax.

Democrats have introduced numerous climate-related amendments to the KXL bill as a way to make the new Republican majority take tough votes on a controversial issue, particularly for the GOP side.

Schatz said this morning that before lawmakers partake in any broader energy discussions, "We need to agree on the set of [climate] facts that everyone outside this Congress agrees on."

Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) said this morning that Republicans may come up with their own "side-by-side" amendment on climate change.

SPECIAL REPORT



A look at the far-reaching debate on the Keystone XL pipeline which could change the energy and economic agenda for both the U.S. and Canada. Click here to view the special report.

KXL backers note Schatz cited the State Department review on KXL as evidence of climate change but not the part saying the pipeline would likely not have a significant effect.

"We're talking about the challenges that we face," Murkowski said. "But I think as we begin this good, robust debate on things like climate, I think we need to be careful about what we are doing in response." She touted new technologies rather than policies like a carbon tax.

Other amendments up for a vote include one by Sen. Dick Durbin (D-Ill.) pushing for tougher standards for petroleum coke disposal. Another by Sen. Deb Fischer (R-Neb.) would limit federally protected land. Murkowski said lawmakers may tweak it before a vote.

An amendment by Sen. Pat Toomey (R-Pa.) would limit U.S. EPA regulations on power plants that burn waste coal. Another by Sen. Mike Lee (R-Utah) would reform attorneys' fees on Endangered Species Act cases. Both are up for votes, too.

After votes on the previous amendments, both sides are likely to put a new set on the list for floor consideration. It remains unclear whether more climate amendments, including a proposal by Sen. Bernie Sanders (I-Vt.), will come up for votes.

Newly filed amendments that may or may not see floor consideration include one by Sen. Tom Udall (D-N.M.) to set up renewable energy standards and incentives.

Another by Sen. Roy Blunt (R-Mo.) would put the Senate on record against President Obama's recent climate deal with China. An amendment by Sen. David Vitter (R-La.) would boost offshore drilling.

Two new amendments by Sen. Jeff Merkley (D-Ore.) would block KXL unless studies show the pipeline wouldn't exacerbate wildfires or climate-related problems to agriculture, like droughts.

New lobbying disclosure numbers show that TransCanada Corp., the company wanting to build KXL, boosted its spending from roughly $1 million in 2013 to almost $1.4 million last year. Beyond action in Congress, the Obama administration may soon decide whether to allow the project's transboundary crossing.

SENATE:

Inhofe scraps jobs subcommittee, sets hearing on waterways plan

Hannah Northey, E&E reporter

Published: Wednesday, January 21, 2015

Sen. James Inhofe (R-Okla.), the new chairman of the Senate Environment and Public Works Committee, elevated Republican freshmen today to oversee three of the panel's four subcommittees.

"Three of the four subcommittees are chaired by people who are brand new," Inhofe said at the committee's first inaugural business meeting on Capitol Hill. "We'll get great new input and talent."

Inhofe announced that Sen. Shelley Moore Capito (R-W.Va.) will lead the Clean Air and Nuclear Safety Subcommittee, Sen. Mike Rounds (R-S.D.) will oversee the Superfund, Waste Management and Regulatory Oversight Subcommittee, and Sen. Dan Sullivan (R-Alaska) will lead the Subcommittee on Fisheries, Wildlife and Water. The one holdover to lead a subcommittee is Sen. David Vitter (R-La.), the panel's former ranking member, who will oversee the Subcommittee on Transportation and Infrastructure.

Inhofe's office said the panel's Oversight Subcommittee was merged with the Superfund subpanel, and the chairman scrapped the Subcommittee on Green Jobs and the New Economy, which had been led in the last Congress by Sen. Jeff Merkley (D-Ore.).

Eleven members of the committee today also approved the panel budget through February 2017 and

rules for handling amendments.

Inhofe said the committee this year would only have the four subcommittees -- as opposed to up to six subpanels during the past eight years under Democratic leadership -- to ensure the panel gets work done in "well-defined" areas. The senator said the subcommittee appointments are the result of votes taken in conference. "We always had four committees before, [former Democratic Chairwoman Barbara Boxer] was the one who changed it to five," Inhofe said. "If you have too many subcommittees, you really can't get anything done."

The chairman reiterated that a top priority for the committee will be to pass a long-term highway transportation bill similar in scope to the last major transportation bill passed in 2005. The current short-term highway and transit law, known as MAP-21, expires at the end of May.

The Senate committee will hold its first hearing Jan. 28 on highways, featuring testimony from Transportation Secretary Anthony Foxx and three or four governors, Inhofe said.

He acknowledged that he faced Republican pushback last year on a highways bill, adding that he had a hard time explaining to conservatives why a long-term bill was necessary to avoid short-term measures. Inhofe said he and Foxx are aligned on the top priorities for reforming the nation's infrastructure, but the secretary won't likely delve too deep into funding mechanisms during his testimony.

The senator in the past has said "nothing is off the table" in shaping a new bill, including an increase in the gas tax, for funds needed for infrastructure improvements. But Inhofe today clarified that he supports a "user fee increase" similar to inland waterway funding. "Ironically, those who are using it, they're always advocating a larger user fee on themselves -- we need to look at that," Inhofe said. The committee also needs to look at creative partnerships and budgetary solutions.

The committee will then hold a joint hearing Feb. 4 with the House Transportation and Infrastructure Committee to discuss U.S. EPA's Waters of the United States proposal. Inhofe, who is critical of a host of EPA regulations, said that proposal is the most burdensome for farmers -- a critical issue to his home state of Oklahoma.

Boxer at the meeting ceremoniously handed the gavel over to Inhofe, giving him a T-shirt that read "Elections have Consequences." Boxer said she wants to leave behind a legacy of working with Inhofe on infrastructure since she won't be running for office again in 2016 and expressed hope that the committee and the Senate can come to an agreement.

"The uncertainty we're facing with the highway trust fund is dangerous," Boxer said. "I'm concerned that the whole trust fund expires in three-and-a-half months or so -- we know how long it takes to get these bills done."

But Boxer signaled disagreement over Inhofe's aggressive approach to reining in EPA and expressed concerns that House Republicans will not be amenable to a Senate transportation bill.

Inhofe responded that he persuaded 33 House Republicans to vote for a transportation bill last year and said the House will likely be on board again.

POLITICS:

McConnell's wife quits Bloomberg Philanthropies over coal

Manuel Quiñones, E&E reporter

Published: Wednesday, January 21, 2015

Former Labor Secretary Elaine Chao, wife of Senate Majority Leader Mitch McConnell, has resigned from the board of Bloomberg Philanthropies, a spokesman said this morning.

McConnell (R-Ky.) spokesman Robert Steurer pointed to the charity's ongoing focus on reducing U.S. coal use as the main reason for Chao's departure.

PEOPLE

"After learning of the foundation's decision to devote significant new resources to its Beyond Coal initiative, Secretary Chao informed [former New York City] Mayor [Michael] Bloomberg of her decision to resign from the board," said Steurer.

Chao's seat on the board of Bloomberg Philanthropies became a major talking point during McConnell's re-election campaign, with Democratic candidate Alison Lundergan Grimes accusing the couple of not being sufficiently pro-coal.

Chao's claim that she joined the board after members decided to pump millions into the Sierra Club's Beyond Coal campaign didn't quiet critics, some of whom demanded her resignation (*Greenwire*, Aug. 13, 2014).

"As a longtime Kentucky resident who has spent countless hours traveling the commonwealth and listening to the concerns and anxieties of its citizens," Steurer said, "it became clear to the secretary that her service on the board was incompatible with her commitments to Kentucky and its people, particularly its coal miners and their families. It was a respectful parting of the ways."

This morning, Bloomberg Philanthropies said it had partnered with philanthropists Mark Heising and Elizabeth Simons on a $48 million initiative to support state-based initiatives for cleaner energy (*see related story*).

CLIMATE:

Conservative group withdraws DOE records lawsuit

Jean Chemnick, E&E reporter

Published: Wednesday, January 21, 2015

A conservative group withdrew its lawsuit yesterday against the Energy Department that sought records on a Mississippi carbon capture and storage (CCS) project, saying DOE complied with the request weeks ago but the documents had been lost in the mail.

The Energy & Environment Legal Institute filed suit early this month under the Freedom of Information Act seeking documents on costs of Southern Co.'s CCS project in Kemper, Miss. (*Greenwire*, Jan. 7).

Southern's CCS project is under construction but behind schedule and over budget. The institute's Chris Horner said its budgetary woes could show CCS isn't ready for commercial use.

U.S. EPA has based its proposed standard for new power plants' carbon dioxide emissions in part on four projects that are in various stages of development -- including the Kemper facility. The rule, which is set to be finalized this summer, requires new plants to use partial CCS.

"This is not so much about Kemper as it is specifically about what EPA knew, when, about CCS costs and what they did with it," Horner said. "This springs from our understanding of their decision to ignore and misrepresent what they were told as part of the [proposal's] interagency review process."

STATES:

Charitable fund, philanthropists offer $48M for emission programs

Published: Wednesday, January 21, 2015

Two charitable foundations are opening their wallets to states looking to finance emissions-reduction efforts.

Under a plan announced this morning in New York, Bloomberg Philanthropies and California couple Mark Heising and Elizabeth Simons will offer up to $48 million meant to help states cut emissions.

While the funds won't go directly to states, they will finance groups such as the Environmental Defense Fund and Natural Resources Defense Council as well as state or regional groups and think tanks, to advise states.

The funds should help states receive technical assistance to develop ambitious clean-energy plans to comply with an expected final rule next summer under the Obama administration's Clean Power Plan for existing power plants, the groups said.

"The utility businesses are being heavily disrupted," Heising said. "That's creating some real stress for the utilities and their revenue model. It needs to be addressed in a fair and comprehensive way" (Justin Gillis, *New York Times*, Jan. 20). **-- SP**

EPA:

Former White House aide rejoins McCarthy's inner circle

Robin Bravender, E&E reporter

Published: Wednesday, January 21, 2015

U.S. EPA Administrator Gina McCarthy has hired back a former White House aide to be her new deputy chief of staff.

Luseni Pieh started last week in the administrator's office, returning to the agency after a 10-month stint at 1600 Pennsylvania Ave., where he was senior director for Cabinet affairs covering EPA and the departments of Energy, the Interior, Transportation and Agriculture. He had worked previously under McCarthy as EPA's liaison to the White House.

PEOPLE

Pieh is taking over the job after McCarthy's former deputy chief of staff, Arvin Ganesan, left the agency last year to become vice president for federal policy at Advanced Energy Economy (*Greenwire*, Oct. 22, 2014).

As deputy chief of staff, Pieh "will help coordinate day to day interactions between the administrator's office and programs offices and regions on key emerging issues that span national programs and/or regional offices," the agency said in a statement. He'll work closely with Chief of Staff Gwen Keyes Fleming and Matthew Fritz, deputy chief of staff for operations.

The full portfolio of issues Pieh will be working on is still being ironed out, he said today in an interview. For now, he's working with a number of EPA program offices, including the solid waste, management, information technology and enforcement shops.

Pieh is excited to be back at the agency, he said. "I had a really great experience when I was here the first time around," he said. Now he's "focused on trying to add as much value as I can here over the last couple of years of the administration."

Before joining EPA in 2013, he was an attorney at the Milwaukee, Wis., law firm Gonzalez Saggio & Harlan LLP, where he focused on environmental issues. He's an Ann Arbor, Mich., native with a master of law degree in natural resources and environmental law and policy from the University of Denver, a law degree from Indiana University and a bachelor's degree from Michigan State University.

OIL AND GAS:

Koch-owned Oxbow Carbon picks new president

Robin Bravender, E&E reporter

Published: Wednesday, January 21, 2015

The William Koch-owned energy giant Oxbow Carbon LLC has chosen a new president.

Eric Johnson, a veteran of the company who was most recently chief operating officer, took over last week as president of the West Palm Beach, Fla.-based company, Oxbow announced today. The multinational company recycles and sells refinery and natural gas byproducts, including petroleum coke, and has offices or facilities in about two dozen countries.

PEOPLE

Johnson will report to Koch, who remains CEO and chairman of the board. Johnson will lead the company's day-to-day activities from the Florida headquarters and Oxbow's office in The Woodlands, Texas.

"The board and I are very pleased to have Eric expand his leadership role at Oxbow," Koch said in a statement. "Eric has a proven record of success in developing and leading many of the company's

businesses. Eric's service as president is a natural next step for the company and Eric. The promotion will further enhance Oxbow's competitive capabilities globally."

Before joining Oxbow in 2003, Johnson worked for AIMCOR Group, Alcoa Inc. and Koch Industries -- owned by William's brothers, Charles and David -- where he worked in petroleum coke supply and marketing. He's a native of Skiatook, Okla., and has a bachelor's degree in business management from the University of Oklahoma in Norman.

GREEN BUILDING:

'Passive' homes that don't need furnaces gain popularity in U.S.

Published: Wednesday, January 21, 2015

Six row houses in Washington, D.C.'s Ivy City neighborhood built by Habitat for Humanity this year should deliver substantial energy savings because they're so well-insulated they don't need furnaces.

The homes use up to 90 percent less energy than typical homes because they have 12-inch-thick exterior walls, triple-pane windows and insulation twice as thick as in a normal house. Instead of a furnace, the homes use tiny, wall-mounted units for heating and cooling.

Part of a so-called passive house movement popular in Germany, at least 130 such projects have been built in the United States since 2012, and another 125 are planned, according to the Passive House Institute U.S.

Still, the passive house movement is not without controversy. Some have argued the rules are too inflexible and the homes' lack of ventilation could spread chemical fumes or dust. Another argument against the movement is that certification is too expensive.

"We'd like to replicate the [passive] standard as often as possible, but it does come with added cost," Washington, D.C., Habitat for Humanity spokeswoman Heather Phibbs said (Wendy Koch, *National Geographic*, Jan. 20). **-- SP**

CALIFORNIA:

New dust plan could end long 'Chinatown' pollution battle

Published: Wednesday, January 21, 2015

Engineers are trying a new plan to control dust in California's Owens Valley, the site of a lake that the city of Los Angeles controversially drained decades ago, serving as inspiration for the movie "Chinatown."

Owens Lake, once a 110-square-mile body of water that became so dusty that the valley was one of the most polluted parts of the country, used to be refilled with 25 billion gallons of Los Angeles water to keep the dust at bay. Now engineers are going to till 50 square miles of the lake bed to keep dust down while sparing water resources under a new agreement between Los Angeles and the Great Basin Unified Air Pollution Control District.

Mediating the water dispute was like "resolving the Israeli-Palestinian conflict," Los Angeles Department of Water and Power Vice Chairman William Funderburk said. "Bad blood had just been passed on through the generations."

Both sides hope the new deal will help the regions move on from their long history of lawsuits and distrust.

"All we wanted is air pollution control," said Ted Schade, Great Basin's retiring chief enforcement officer. "We just wanted to make it so it's not so dusty."

New Los Angeles Mayor Eric Garcetti has also taken steps to apologize for the city's past actions, a shift from the past, when the city filed lawsuits seeking to reduce its liability.

"The city has accepted its responsibility," Garcetti said last month. "We took the water" (Adam Nagourney, *New York Times*, Jan. 20). **-- SP**

INDIA:

Judges order government to unblock Greenpeace funds

Published: Wednesday, January 21, 2015

Judges at India's high court in Delhi have ordered the government to unblock funds belonging to Greenpeace that have been frozen since June.

The judges ruled yesterday that the freeze on funds collected by Greenpeace India from foreign donors was "arbitrarily illegal" and "unconstitutional."

"This is a vindication of our work and the role that NGOs play in campaigning for sustainable development," said Samit Aich, the executive director of Greenpeace India.

The government has taken administrative actions to target Greenpeace and other international nongovernmental organizations, in what some environmental advocates believe is retaliation for the group's campaigns to draw attention to the environmental consequences of coal consumption.

The Indian Ministry of Home Affairs, which launched the ban, didn't immediately comment on the judges' decision (Jason Burke, London *Guardian*, Jan. 21). **-- SP**

STATE OF THE UNION:

Lawmakers react to president's climate, energy agenda

Published: Wednesday, January 21, 2015

In his first State of the Union address before a Republican-controlled Congress, President Obama received strong, partisan reaction to his climate and energy proposals. In this E&ETV Special Report, members of Congress react to the president's statements on the science of climate change, Keystone XL and U.S. energy production. Lawmakers interviewed include: Rep. Joe Barton (R-Texas), Rep. Paul Tonko (D-N.Y.), Rep. Bill Johnson (R-Ohio), Rep. Gene Green (D-Texas), Rep. Peter DeFazio (D-Ore.), Rep. Pete Olson (R-Texas) and Rep. Bob Latta (R-Ohio).

Click here to watch E&ETV's Special Report.

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CLIMATEWIRE — Thu., January 22, 2015

READ FULL EDITION

1.POLITICS:

Lengthening U.S. pipeline debate gives Canada some choices -- all difficult

So where does Canada go from here? The combination of a presidential veto threat on the Keystone XL pipeline, an uncertain State Department outcome, low oil prices and environmental challenges to alternative pipeline proposals has put the nation in a financial and policy bind.

2.TRADE:

Stiff new sanctions on China, Taiwan result from solar dumping decisions

In a move expected to stoke U.S.-China trade tensions, the International Trade Commission yesterday ruled that U.S. solar manufacturers have been materially injured by a surge of low-cost crystalline photovoltaic solar cells and modules entering the United States from China and Taiwan.

TODAY'S STORIES

3.TRANSPORTATION:

Can cleaning up auto emissions get a bipartisan nod from Congress? It's complicated

4.ADVOCACY:

Philanthropists ready to spend big on Clean Power Plan

5.POLICY:

Obama aims to streamline Arctic policy with executive order

6.NATIONS:

White House to seek India trade reforms as part of climate package

7.BUSINESS:

To curb deforestation, major palm oil trader puts its supply chain information online

8.NATIONS:

Long-awaited Irish climate change bill draws fire

9.RENEWABLE ENERGY:

Misplaced renewable energy plants cost Europe $100B -- report

10.AGRICULTURE:

Indigenous Peruvian potato farmers and crop threatened by climate change

11.ENERGY:

China looks to nuclear energy for near-zero emissions

E&ETV'S ONPOINT

12.STATE OF THE UNION:

ClearView Energy's Book discusses future of 'all of the above,' climate policies

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., January 22, 2015

READ FULL EDITION

1.HYDRAULIC FRACTURING:

Scrapped drilling ban leaves open window for local rules

The fight over local control of oil and gas development in New Mexico isn't over yet. Though a federal court this week summarily struck down a county's ban on drilling and hydraulic fracturing, the ruling leaves room for less restrictive local rules and fails to spell out exactly how far those rules can go.

2.POWER MARKETS:

'War on coal' rhetoric belies robust forecast for coal-fired electricity

There's no doubt the profile of the nation's electric power generation fleet is changing. Still, coal led U.S. generation in the 12 months ending in October at 39 percent, according to the U.S. Energy Information Administration.

TOP STORIES

3.SECURITY:
Nuclear industry's bid to limit cyber rules opens debate over defensive strategies

4.ARCTIC:
Hilcorp's BP drilling deal came with a tight deadline

5.POLITICS:
Coal-gasification plant is front and center in Miss. regulators' races

STATE OF THE STATES

6.HYDRAULIC FRACTURING:
Cuomo pledges millions for upstate N.Y., but landowners not impressed

7.MICHIGAN:
Governor says energy plan coming in March

ELECTRICITY

8.RENEWABLES:
Ill. regulators OK $30M plan to jump-start solar development

9.PEOPLE:
La. PSC taps former congressman for chairman role

10.PEOPLE:
First Energy taps distribution chief to lead utilities arm

11.GRID:
Brazilian blackout triggers economic concerns

OIL AND GAS

12.PIPELINES:
Kinder Morgan to buy billionaire's Bakken network as CEO announces retirement

13.SAFETY:
Authorities identify N.D. oil worker found dead

14.REFINING:
Delta takes a hit on jet fuel gamble

15.OIL:
U.S. supplies squeeze demand for processed Canadian crude

16.OIL:
Price slump won't calm the waters in South China Sea
E&ETV'S ONPOINT
17.STATE OF THE UNION:
ClearView Energy's Book discusses future of 'all of the above,' climate policies

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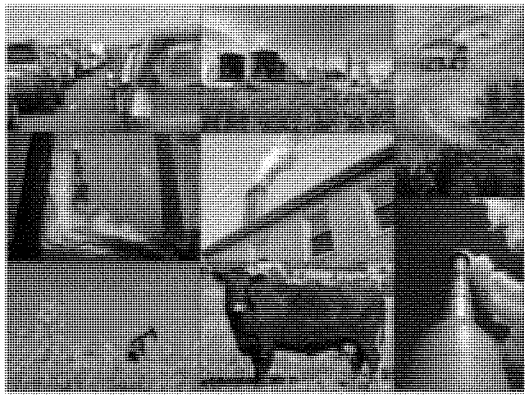

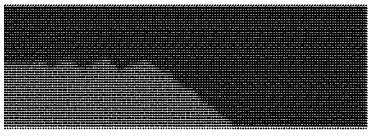

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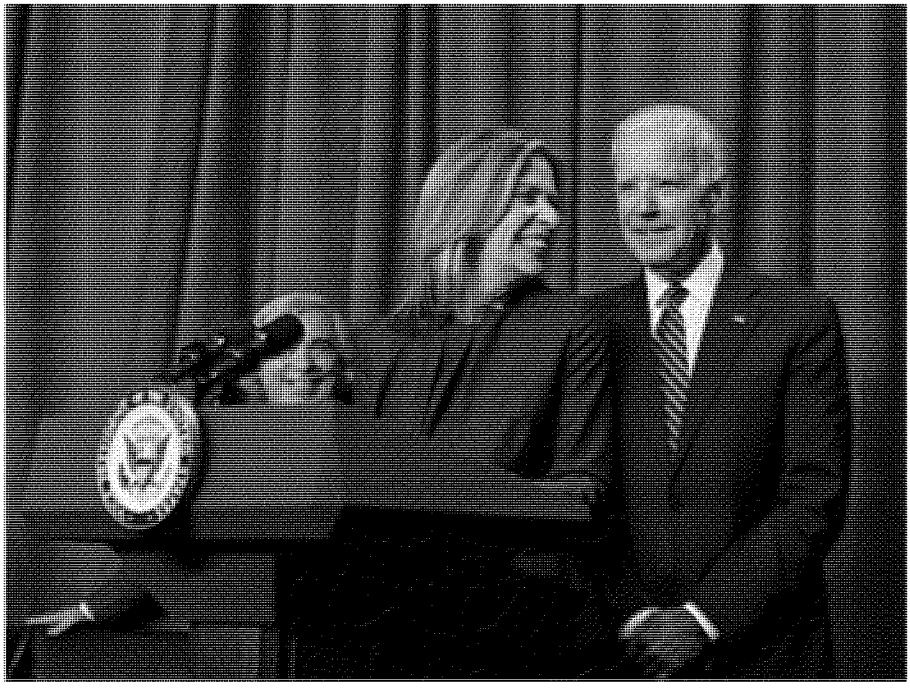

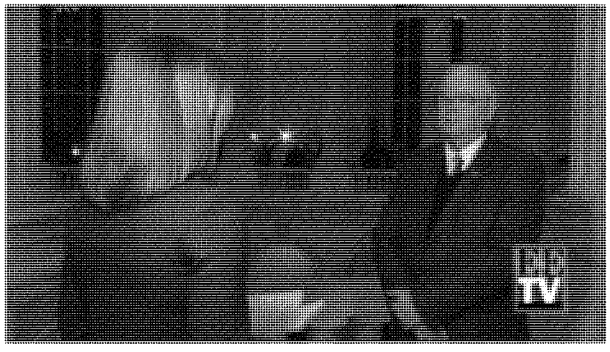

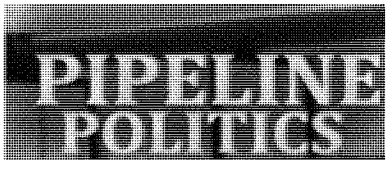
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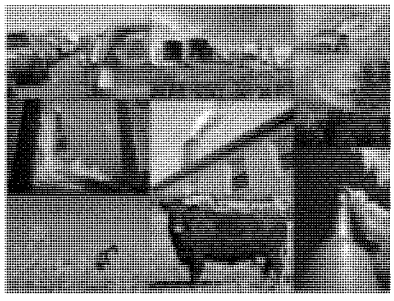

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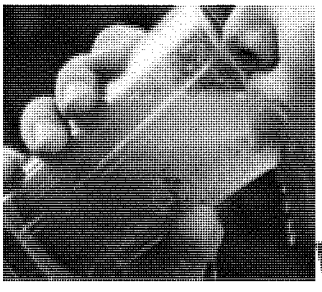
Sent: Thur 1/22/2015 4:07:32 PM
Subject: Water Law News for January 22, 2015



Water Law News

for January 22, 2015

Bloomberg BNA Daily Environment Report™

Hydraulic Fracturing

Environmental Group Challenges Approval Of Leases in Colorado's Pawnee Grassland

Hydraulic fracturing in the Pawnee National Grassland northeast of Denver threatens air, water and wildlife, according to an appeal of a Forest Service decision to permit oil and gas development in the region....

Hydraulic Fracturing

New Mexico County Ordinance Banning Fracking Is Overturned by Federal Judge

A U.S. district court judge in New Mexico has invalidated an ordinance banning oil and gas drilling, including fracking, on land in Mora County, N.M., ruling that the ordinance is unconstitutional and invalid (SWEPI LP v. Mora County, D. N.M.,...

Oil & Gas

Colorado Proposes Reporting, Shutoff, Other Requirements for Oil, Gas Facilities

Oil and gas operators would have new reporting, remote shutoff and anchoring requirements for tanks and other equipment in floodplains, under rules proposed by the Colorado Oil and Gas Conservation Commission. ...

Oil Spills

BP Should Be Fined at Least $11.7 Billion For Deepwater Spill, U.S. Lawyer Tells Judge

BP Plc's exploration unit should be fined at least $11.7 billion for its role in causing the largest offshore oil spill in U.S. history, a Justice Department lawyer said on the opening day of the penalty phase of the BP trial (In re Oil Spill...

Oil Spills

EPA Taking Comment on Oil Spill Rule Revisions

The Environmental Protection Agency will accept public comments through April 22 on proposed updates to procedures for listing materials available to respond to oil spills, according to a notice scheduled for

publication in the Jan. 22 Federal...

Water Pollution

Automakers Volunteer to Reduce Copper In Brake Pads to Improve Water Quality

The automotive industry has agreed to voluntarily reduce the amount of copper and other heavy metals used in making brake pads, thereby curbing levels of the contaminants that wash off highways into nearby waters, the Environmental Protection...

Water Pollution

Tyson Foods to Pay $330,000 for Fish Kill

Tyson Foods Inc. will pay $330,000 to settle a lawsuit arising from a fish kill caused when wastewater containing a highly acidic animal-feed supplement was discharged into the sewer system in southwestern Missouri, the state's attorney...

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Inside EPA's **Weekly Report**, 01/23/2015

http://insideepa.com/newsletters/inside-epa

Latest News

Mayors Urge Congress To Overhaul EPA's CWA Rule 'Affordability' Policy

Mayors are renewing a push for Congress to approve legislation that would overhaul EPA's definition for when Clean Water Act (CWA) mandates are not affordable for low income ratepayers that meet certain requirements, in order to give more flexibility to municipalities in how they craft integrated water pollution control plans.

'Nebulous' Case Law May Complicate DOJ Defense Of Gulf Oil Spill Penalties

The lack of clear case law on how to determine whether Clean Water Act (CWA) violations are the result of gross negligence may complicate the Department of Justice's (DOJ) defense of a district court ruling that could subject BP Exploration & Production to up to $18 billion in penalties for the Deepwater Horizon oil spill and set a precedent for determining CWA civil penalties, legal experts say.

Agriculture Industry Seeks To Keep CWA Farm Dust Suit In Federal Court

Agriculture industry groups are asking a federal district court judge to rule on the merits of their suit aiming to block North Carolina from issuing novel Clean Water Act (CWA) permits for farm dust, saying that EPA's push to remand the case to state court would leave the potential for EPA requiring such permits in other states even if industry wins the suit.

Greenwire

ARCTIC:

Federal agencies at odds over drilling plan for Alaska reserve

Phil Taylor, E&E reporter

Published: Wednesday, January 21, 2015

Correction appended.

What's the best way to drill for oil in a mostly untouched Alaskan tundra, home to migrating caribou, abundant waterfowl, and Native Alaskan hunting and fishing grounds?

It depends on which federal agency you ask.

The Bureau of Land Management, the Army Corps of Engineers, U.S. EPA and the Fish and Wildlife Service are split on how to approve ConocoPhillips Co.'s bid to become the first oil producer in the 22.5-million-acre National Petroleum Reserve (NPR-A) in northwest Alaska.

How they resolve those differences could point to how -- and to what extent -- the nation taps into a reserve believed to hold upward of a billion barrels of crude.

"The federal government is at odds with itself on this decision," said Lindsey Hajduk, Alaska program director for the Conservation Lands Foundation in Anchorage. "The public deserves a thorough, scientific analysis of the project with an outcome that best protects the Arctic's fragile wetlands, wildlife and subsistence resources."

The issue came to a head Friday when the Army Corps issued a Clean Water Act permit to ConocoPhillips that allows an 8-mile gravel road and drill pad and the filling of 73 acres of waters and wetlands. In the corps' view, that road configuration, known as alternative A, was the "least environmentally damaging, practicable alternative," a key litmus test under CWA (*Greenwire*, Jan. 20).

"This alternative meets the overall project purpose, is practicable in consideration of costs, logistics and existing technology, and would result in the smallest footprint impacts to aquatic resources," the corps said in its decision, noting that the shorter route would also affect drier wetlands.

But BLM came to a different conclusion in its final environmental impact statement on the project in October and picked alternative B, calling for a slightly longer road that swings south of Fish Creek, an important hunting ground for Native Alaskans in the nearby village of Nuiqsut.

That route would also eliminate a bridge and pipeline crossing over Crea Creek and the crossing of Barely Creek, improving life for fish, BLM said. While BLM acknowledged that the longer road would require more land disturbance and would be more difficult to build due to poorer soils, it said it wants to adhere to its 2013 comprehensive land-use plan for the reserve that established a 3-mile setback for Fish Creek.

The Fish and Wildlife Service largely took BLM's view in comments to the Army Corps, arguing that alternative B would cause the fewest impacts to fish and aquatic habitat, water quality, and stream hydrology.

EPA backed yet a third option, deeming BLM's alternative D, a "roadless" drilling option that relies on ice roads, airlifted supplies and more facilities at the ConocoPhillips well site, the least environmentally damaging, practicable alternative. EPA's Region 10 also rated BLM's preferred alternative B as "LO," or lack of objections.

EPA has vetoed corps decisions on CWA permits in the past, but only on rare occassions -- roughly a dozen times since 1972. Such vetoes are issued when EPA believes the project will cause "significant loss of or damage to fisheries, shellfishing, wildlife habitat, or recreation areas."

An agency representative in Alaska could not be reached this morning. The agency has said little publicly about the ConocoPhillips project.

That the agencies would have different views is not surprising given their different statutory missions and institutional histories.

Now it's up to BLM, which manages the Indiana-sized reserve, to decide how to proceed.

In the coming weeks, it is expected to issue a record of decision identifying a final alternative as well as a mitigation plan for ConocoPhillips to offset the project's impacts.

"The BLM continues to coordinate with the Corps of Engineers to determine a federally unified, environmentally sound and economically feasible path forward," BLM spokeswoman Celia Boddington said today in a statement. "The BLM is also working with [ConocoPhillips] to establish a robust set of best management practices and mitigation measures that will address the foreseeable impacts of this project and benefit affected environments and parties, including subsistence users."

Environmental groups are lobbying BLM to stick to its guns and protect Fish Creek.

"Under Alternative A, the sensitive Fish Creek watershed would be needlessly damaged by the construction of multiple bridges and other infrastructure," said Nicole Whittington-Evans, Alaska director for the Wilderness Society. "Given that two of the four federal agencies involved in reviewing the GMT-1 proposal agree that Alternative B would cause the least harm to this watershed, BLM should hold firm on its approach."

In a Jan. 9 letter, the CEOs of the Wilderness Society, Conservation Lands Foundation, Natural Resources Defense Council, Alaska Wilderness League and Sierra Club said BLM must protect the creek to "uphold the integrity" of its 2013 integrated activity plan for the reserve.

But BLM faces pushback from ConocoPhillips, Alaska Gov. Bill Walker (I) and the local county

government, all of which back the corps' preferred alternative.

"We support the U.S. Army Corps of Engineers' decision," said ConocoPhillips spokeswoman Amy Burnett. "The alternative they have selected ... has the least environmental footprint and requires the least amount of gravel."

Burnett said BLM's decision must "agree" with the Army Corps in order for the project to proceed.

In addition, the corps argued that its road alternative would have minor impacts to Crea and Barely creeks, use fewer culverts, and "better accommodate the natural hydrology of the area." The proposed road would get no closer than 2.5 miles to Fish Creek, it said.

According to a Dec. 16 letter from Alaska's Department of Natural Resources, BLM told cooperating agencies it thought the environmental impacts from its preferred alternative and that of the corps were similar.

ConocoPhillips' $890 million Greater Mooses Tooth project would drill up to 33 production wells and several injection wells, sending up to 30,000 barrels of oil per day to the Trans-Alaska Pipeline System by late 2017.

Mitigation steps

But in addition to the road route, there's another major battle over which mitigation steps BLM will require of ConocoPhillips.

In exchange for its Clean Water Act permit from the corps, ConocoPhillips agreed to create a 342-acre conservation easement to preserve lands owned by the Native Alaskan Kuukpik Corp. between channels of the Fish Creek Delta as it empties into the Beaufort Sea.

But BLM's mitigation package may demand much more.

The package, which would be spelled out in BLM's record of decision, may include a new "compensatory mitigation fund." Money provided by ConocoPhillips could be used to create a landscape-level mitigation strategy, clean up NPR-A "legacy" wells that were abandoned by the Navy, construct a boat launch on the Ublutuoch River or monitor concerns related to air quality in the Nuiqsut area.

Other mitigation steps may include aircraft and traffic limits to minimize impacts on caribou and an agreement giving local Native communities access to the road.

Burnett, of ConocoPhillips, said the BLM mitigation measures must be "acceptable" in order for the project to move forward for consideration by the company's senior management.

Industry, lawmakers decry ambiguity

All this uncertainty has raised the ire of the oil and gas industry, Walker and Sen. Lisa Murkowski (R-Alaska).

Walker in a Dec. 22 letter to Interior Secretary Sally Jewell said "it appears that rather than a clearly-defined regulatory path, a multi-layered bargaining regime has been put in front of the applicant, the purpose of which appears to be either to extract value from the project or to so negatively affect the economic outcome as to effectively stop project development."

Murkowski in a statement in October slammed BLM for issuing its final EIS on the project but deferring its record of decision and mitigation package to a later date.

"I am concerned about the critical project decisions that are being left for the record of decision, which could impact whether this project moves forward or not," Murkowski said then. "Federal leaseholders need to have a permitting process that is timely and predictable in order to invest the billions of dollars it takes to develop America's energy resources."

Industry and green groups will be watching BLM's decision closely, as it will likely set a template for future NPR-A development as industry moves westward into the untapped reserve.

Correction: *An earlier version of this story identified Alaska Gov. Bill Walker as a Republican. Walker has campaigned as a Republican, but he ran for governor in 2014 as an independent.*

FEDERAL AGENCIES:

Supreme Court backs whistleblower in homeland security case

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 21, 2015

The Supreme Court today sided with a former air marshal who blew the whistle on the Department of Homeland Security's decision to stop deploying marshals on some commercial flights after the Sept. 11, 2001, terrorist attacks.

In a case that could have significant implications for whistleblower protections, the justices ruled 7-2 in *Department of Homeland Security v. Robert MacLean* that the marshal's disclosure was prohibited only by a regulation -- not a law -- and, therefore, he should not have been fired.

Chief Justice John Roberts in the court's opinion said the government's argument in the case would allow any agency to sidestep protections provided to whistleblowers simply by issuing a regulation.

Based on the government's contentions, he wrote, "an agency could insulate itself ... merely by promulgating a regulation that 'specifically prohibited' whistleblowing. But Congress passed the whistleblower statute precisely because it did not trust agencies to regulate whistleblowers within their ranks."

The case concerns MacLean's 2003 decision to anonymously disclose information to a reporter that showed the Transportation Security Administration had decided to stop deploying marshals on some long-distance flights because of budget shortfalls.

TSA's policy came shortly after MacLean was informed of a possible new terrorist plot to highjack commercial airliners. He objected to his supervisor, and, when nothing came of it, he gave the information to an MSNBC reporter.

The resulting news story sparked outrage on Capitol Hill, and TSA eventually reversed the policy.

But when the agency discovered MacLean was the source of the information a year later, it fired him. The agency claimed MacLean had violated a regulation that prohibited the disclosure of "sensitive security information."

The case centered on whether MacLean's disclosure was specifically prohibited by law -- and therefore didn't qualify for protections under the Whistleblower Protection Act -- or only a regulation.

Roberts wrote that the TSA regulations do not have the same force as law.

"Congress did not use the phrase 'law, rule, or regulation' in the statutory language at issue here," he wrote, "it used the word 'law' standing alone."

He added: "The broad interpretation of the word 'law' could defeat the purpose of the whistleblower statute."

Roberts also addressed the government's argument that siding with MacLean sets a dangerous precedent that could put public safety in danger.

"Those concerns are legitimate," he wrote. "But they are concerns that must be addressed by Congress or the President, rather than by this Court."

Justice Sonia Sotomayor dissented and was joined by Justice Anthony Kennedy.

She wrote that the decision leaves "important decisions regarding disclosure of critical information completely to the whims of individual employees."

The case marks the first time the Supreme Court has ever considered a federal whistleblower retaliation suit (*Greenwire*, Oct. 30, 2014). And the ruling isn't unexpected given the tough questions the justices posed to the government at oral arguments in November (*Greenwire*, Nov. 4, 2014).

In a brief phone interview, MacLean, a former member of the Air Force and border patrol agent, said the ruling should send a message to potential whistleblowers that they have legal protections.

"Ultimately, for all whistleblowers," he said, "it's a major decision to risk your career."

Click here for the opinion.

SENATE:

Inhofe scraps jobs subcommittee, sets hearing on waterways plan

Hannah Northey, E&E reporter

Published: Wednesday, January 21, 2015

Sen. James Inhofe (R-Okla.), the new chairman of the Senate Environment and Public Works Committee, elevated Republican freshmen today to oversee three of the panel's four subcommittees.

"Three of the four subcommittees are chaired by people who are brand new," Inhofe said at the committee's first inaugural business meeting on Capitol Hill. "We'll get great new input and talent."

Inhofe announced that Sen. Shelley Moore Capito (R-W.Va.) will lead the Clean Air and Nuclear Safety Subcommittee, Sen. Mike Rounds (R-S.D.) will oversee the Superfund, Waste Management and Regulatory Oversight Subcommittee, and Sen. Dan Sullivan (R-Alaska) will lead the Subcommittee on Fisheries, Wildlife and Water. The one holdover to lead a subcommittee is Sen. David Vitter (R-La.), the panel's former ranking member, who will oversee the Subcommittee on Transportation and Infrastructure.

Inhofe's office said the panel's Oversight Subcommittee was merged with the Superfund subpanel, and the chairman scrapped the Subcommittee on Green Jobs and the New Economy, which had been led in the last Congress by Sen. Jeff Merkley (D-Ore.).

Eleven members of the committee today also approved the panel budget through February 2017 and rules for handling amendments.

Inhofe said the committee this year would only have the four subcommittees -- as opposed to up to six subpanels during the past eight years under Democratic leadership -- to ensure the panel gets work done in "well-defined" areas. The senator said the subcommittee appointments are the result of votes taken in conference. "We always had four committees before, [former Democratic Chairwoman Barbara Boxer] was the one who changed it to five," Inhofe said. "If you have too many subcommittees, you really can't get anything done."

The chairman reiterated that a top priority for the committee will be to pass a long-term highway transportation bill similar in scope to the last major transportation bill passed in 2005. The current short-term highway and transit law, known as MAP-21, expires at the end of May.

The Senate committee will hold its first hearing Jan. 28 on highways, featuring testimony from Transportation Secretary Anthony Foxx and three or four governors, Inhofe said.

He acknowledged that he faced Republican pushback last year on a highways bill, adding that he had a hard time explaining to conservatives why a long-term bill was necessary to avoid short-term measures. Inhofe said he and Foxx are aligned on the top priorities for reforming the nation's infrastructure, but the secretary won't likely delve too deep into funding mechanisms during his testimony.

The senator in the past has said "nothing is off the table" in shaping a new bill, including an increase in the gas tax, for funds needed for infrastructure improvements. But Inhofe today clarified that he supports a "user fee increase" similar to inland waterway funding. "Ironically, those who are using it, they're always advocating a larger user fee on themselves -- we need to look at that," Inhofe said. The committee also needs to look at creative partnerships and budgetary solutions.

The committee will then hold a joint hearing Feb. 4 with the House Transportation and Infrastructure Committee to discuss U.S. EPA's Waters of the United States proposal. Inhofe, who is critical of a host of EPA regulations, said that proposal is the most burdensome for farmers -- a critical issue to his home state of Oklahoma.

Boxer at the meeting ceremoniously handed the gavel over to Inhofe, giving him a T-shirt that read "Elections have Consequences." Boxer said she wants to leave behind a legacy of working with Inhofe on infrastructure since she won't be running for office again in 2016 and expressed hope that the committee and the Senate can come to an agreement.

"The uncertainty we're facing with the highway trust fund is dangerous," Boxer said. "I'm concerned that the whole trust fund expires in three-and-a-half months or so -- we know how long it takes to get these bills done."

But Boxer signaled disagreement over Inhofe's aggressive approach to reining in EPA and expressed concerns that House Republicans will not be amenable to a Senate transportation bill.

Inhofe responded that he persuaded 33 House Republicans to vote for a transportation bill last year and said the House will likely be on board again.

HYDROPOWER:

Portland, Ore., taps water pipes to produce electricity

Published: Wednesday, January 21, 2015

An energy startup has begun producing power from turbines inside a Portland, Ore., drinking water pipe as part of an unprecedented power-selling agreement.

The system is the first of its kind in the United States. Four small turbines using the water moving through a Portland Water Bureau pipe will generate enough electricity to power 150 homes.

Over the course of its 20-year deal with Portland General Electric, Lucid Energy estimates the turbines will generate $2 million worth of electricity, after which the city has the option to take over the system.

Lucid Chief Executive Gregg Semler touted the edge in-pipe hydropower has over conventional production in terms of fish migration and stream flow, as well as the consistent power production versus solar and wind.

"It's not weather dependent. So electric utilities and farmers and industrial users can count on our energy from these pipes for energy around the clock," he said.

Semler said the company is already working on possible projects in California, Arizona and Las Vegas.

"There's a huge amount of potential for this," he said. "Once we've proven Portland over the next few months, we'll announce our next one" (Cassandra Profita, Oregon Public Broadcasting, Jan. 20). **-- DTB**

EPA:

Former White House aide rejoins McCarthy's inner circle

Robin Bravender, E&E reporter

Published: Wednesday, January 21, 2015

U.S. EPA Administrator Gina McCarthy has hired back a former White House aide to be her new deputy chief of staff.

Luseni Pieh started last week in the administrator's office, returning to the agency after a 10-month stint at 1600 Pennsylvania Ave., where he was senior director for Cabinet affairs covering EPA and the departments of Energy, the Interior, Transportation and Agriculture. He had worked previously under McCarthy as EPA's liaison to the White House.

PEOPLE

Pieh is taking over the job after McCarthy's former deputy chief of staff, Arvin Ganesan, left the agency last year to become vice president for federal policy at Advanced Energy Economy (*Greenwire*, Oct. 22, 2014).

As deputy chief of staff, Pieh "will help coordinate day to day interactions between the administrator's office and programs offices and regions on key emerging issues that span national programs and/or regional offices," the agency said in a statement. He'll work closely with Chief of Staff Gwen Keyes Fleming and Matthew Fritz, deputy chief of staff for operations.

The full portfolio of issues Pieh will be working on is still being ironed out, he said today in an interview. For now, he's working with a number of EPA program offices, including the solid waste, management, information technology and enforcement shops.

Pieh is excited to be back at the agency, he said. "I had a really great experience when I was here the first time around," he said. Now he's "focused on trying to add as much value as I can here over the last couple of years of the administration."

Before joining EPA in 2013, he was an attorney at the Milwaukee, Wis., law firm Gonzalez Saggio & Harlan LLP, where he focused on environmental issues. He's an Ann Arbor, Mich., native with a master of law degree in natural resources and environmental law and policy from the University of Denver, a law degree from Indiana University and a bachelor's degree from Michigan State University.

OIL AND GAS:

Pipeline breach found under Yellowstone River, benzene detected in water

Published: Wednesday, January 21, 2015

The company responsible for an oil spill in a Montana river said it has located the breach in the pipeline beneath the Yellowstone River as tests found hazardous chemicals may be present.

An inspection yesterday identified the breach about 50 feet from the river's south shore, Bridger Pipeline spokesman Bill Salvin said (Joshua Cain, *Fuel Fix*, Jan. 20).

Officials said yesterday they found elevated levels of benzene, a cancer-causing component of oil, in the drinking water in Glendive, Mont., near the spill. Officials were delivering truckloads of bottled water and warned residents not to drink or cook with water from the municipal supply (London *Guardian*, Jan. 20).

Because the ruptured section is beneath a frozen part of the river, it may take longer for investigators to examine the pipeline. As a result, Bridger may have to wait longer to reopen the line.

Damon Hill, a spokesman for the Pipeline and Hazardous Materials Safety Administration, said the agency will need to sign off on the investigation before the pipeline can carry oil again (Samantha Sunne, Reuters, Jan. 20). **-- SP**

CALIFORNIA:

New dust plan could end long 'Chinatown' pollution battle

Published: Wednesday, January 21, 2015

Engineers are trying a new plan to control dust in California's Owens Valley, the site of a lake that the city of Los Angeles controversially drained decades ago, serving as inspiration for the movie "Chinatown."

Owens Lake, once a 110-square-mile body of water that became so dusty that the valley was one of the most polluted parts of the country, used to be refilled with 25 billion gallons of Los Angeles water to keep the dust at bay. Now engineers are going to till 50 square miles of the lake bed to keep dust down while sparing water resources under a new agreement between Los Angeles and the Great Basin Unified Air Pollution Control District.

Mediating the water dispute was like "resolving the Israeli-Palestinian conflict," Los Angeles Department of Water and Power Vice Chairman William Funderburk said. "Bad blood had just been passed on through the generations."

Both sides hope the new deal will help the regions move on from their long history of lawsuits and distrust.

"All we wanted is air pollution control," said Ted Schade, Great Basin's retiring chief enforcement officer. "We just wanted to make it so it's not so dusty."

New Los Angeles Mayor Eric Garcetti has also taken steps to apologize for the city's past actions, a shift from the past, when the city filed lawsuits seeking to reduce its liability.

"The city has accepted its responsibility," Garcetti said last month. "We took the water" (Adam Nagourney, *New York Times*, Jan. 20). **-- SP**

WYOMING:

Committee advances bill shielding landowners from pipeline spill culpability

Published: Wednesday, January 21, 2015

A bill that would protect landowners from liability for damage caused by energy pipelines moved out of committee yesterday in the Wyoming Legislature and is expected to be heard later this week by the full House.

Legislators introduced the measure to define an innocent landowner as someone who did not cause or contribute to source contamination as more and more energy transmission lines crisscross Wyoming.

"If you have some old pipelines on your land that you had nothing to do with putting in and then you have a spill, a landowner may not even know they are there," Rep. Stan Blake (D) said. "With this, the landowner would not be held responsible."

Industry officials said the bill puts into statute what is currently interpreted in case law.

"Because there is no statute currently, a landowner would have to go to court," said Jim Magagna, executive director of the Wyoming Stock Growers Association. "With the statute, there would be no legal issue that would require the landowner to go before a judge" (Trevor Graff, *Casper* [Wyo.] *Star-Tribune*, Jan. 20). **-- DTB**

NEW ZEALAND:

Poaching ships evade navy in high seas standoff

Published: Wednesday, January 21, 2015

Three ships the New Zealand navy caught illegally fishing in Antarctic waters got away for now, but officials have started an international push to bring the crews to justice as they seek to crack down on illegal fishing in the vast open waters of the Southern Ocean.

A New Zealand navy patrol boat photographed crews aboard the Kunlun, the Songhua and the Yongding hauling in Antarctic toothfish, a prized catch marketed in North America as Chilean sea bass.

Each ship, which records show have repeatedly changed names, country of registration and ownership, hoisted a flag from Equatorial Guinea but refused to hand over documentation when confronted by the navy.

The fishermen were able to escape with the catches potentially worth millions of dollars as rough seas made it too dangerous to board the ships forcibly, but New Zealand has sent out an Interpol alert to 190 countries to make unloading the catch more difficult.

New Zealand diplomats are also pressuring nations it suspects could be harboring poachers.

Equatorial Guinea's foreign minister reportedly said the ships were not currently registered there, but one of the ships was linked to a 2008 investigation of Spanish company Vidal Armadores, which was fined in 2010 for illegally fishing near Antarctica.

"Everything we have seen points to Vidal Armadores continuing to control and manage this illegal activity," said New Zealand Minister of Foreign Affairs Murray McCully.

A lawyer who previously represented one of the owners of Vidal Armadores denied the company's involvement, but Spain's Ministry of Agriculture, Food and Environment has initiated proceedings under national and European legislation to see if any Spanish citizens are involved.

"It's the start of a lengthy process to try to stamp out such insidious activity," McCully said (AP/London *Guardian*, Jan. 21). **-- DTB**

INDIA:

Judges order government to unblock Greenpeace funds

Published: Wednesday, January 21, 2015

Judges at India's high court in Delhi have ordered the government to unblock funds belonging to Greenpeace that have been frozen since June.

The judges ruled yesterday that the freeze on funds collected by Greenpeace India from foreign donors was "arbitrarily illegal" and "unconstitutional."

"This is a vindication of our work and the role that NGOs play in campaigning for sustainable development," said Samit Aich, the executive director of Greenpeace India.

The government has taken administrative actions to target Greenpeace and other international nongovernmental organizations, in what some environmental advocates believe is retaliation for the group's campaigns to draw attention to the environmental consequences of coal consumption.

The Indian Ministry of Home Affairs, which launched the ban, didn't immediately comment on the judges' decision (Jason Burke, London *Guardian*, Jan. 21). **-- SP**

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CLIMATEWIRE — Thu., January 22, 2015

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Lengthening U.S. pipeline debate gives Canada some choices -- all difficult

So where does Canada go from here? The combination of a presidential veto threat on the Keystone XL pipeline, an uncertain State Department outcome, low oil prices and environmental challenges to alternative pipeline proposals has put the nation in a financial and policy bind.

2.TRADE:

Stiff new sanctions on China, Taiwan result from solar dumping decisions

In a move expected to stoke U.S.-China trade tensions, the International Trade Commission yesterday ruled that U.S. solar manufacturers have been materially injured by a surge of low-cost crystalline photovoltaic solar cells and modules entering the United States from China and Taiwan.

TODAY'S STORIES

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Can cleaning up auto emissions get a bipartisan nod from Congress? It's complicated

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Philanthropists ready to spend big on Clean Power Plan

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Obama aims to streamline Arctic policy with executive order

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White House to seek India trade reforms as part of climate package

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To curb deforestation, major palm oil trader puts its supply chain information online

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Long-awaited Irish climate change bill draws fire

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Misplaced renewable energy plants cost Europe $100B -- report

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Indigenous Peruvian potato farmers and crop threatened by climate change

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China looks to nuclear energy for near-zero emissions

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12.STATE OF THE UNION:
ClearView Energy's Book discusses future of 'all of the above,' climate policies

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ENERGYWIRE — Thu., January 22, 2015

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1.HYDRAULIC FRACTURING:

Scrapped drilling ban leaves open window for local rules

The fight over local control of oil and gas development in New Mexico isn't over yet. Though a federal court this week summarily struck down a county's ban on drilling and hydraulic fracturing, the ruling leaves room for less restrictive local rules and fails to spell out exactly how far those rules can go.

2.POWER MARKETS:

'War on coal' rhetoric belies robust forecast for coal-fired electricity

There's no doubt the profile of the nation's electric power generation fleet is changing. Still, coal led U.S. generation in the 12 months ending in October at 39 percent, according to the U.S. Energy Information Administration.

TOP STORIES

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Nuclear industry's bid to limit cyber rules opens debate over defensive strategies

4.ARCTIC:
Hilcorp's BP drilling deal came with a tight deadline

5.POLITICS:
Coal-gasification plant is front and center in Miss. regulators' races

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Cuomo pledges millions for upstate N.Y., but landowners not impressed

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Governor says energy plan coming in March

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Ill. regulators OK $30M plan to jump-start solar development

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La. PSC taps former congressman for chairman role

10.PEOPLE:
First Energy taps distribution chief to lead utilities arm

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Brazilian blackout triggers economic concerns

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Kinder Morgan to buy billionaire's Bakken network as CEO announces retirement

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U.S. supplies squeeze demand for processed Canadian crude

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17.STATE OF THE UNION:

ClearView Energy's Book discusses future of 'all of the above,' climate policies

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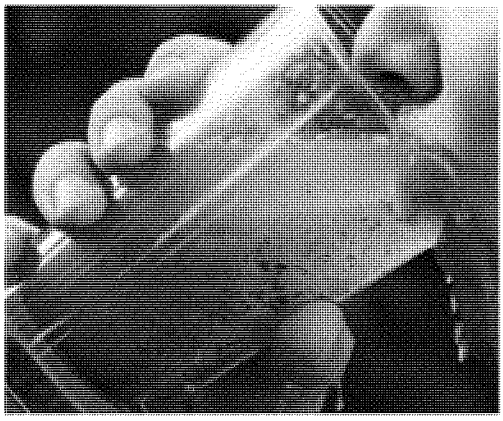

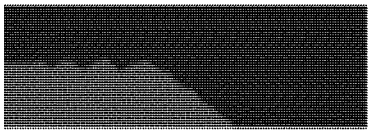

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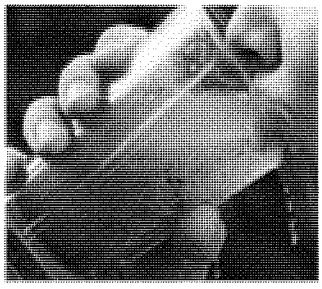

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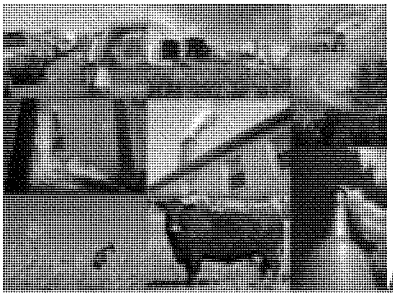
From: Turley, Jennifer
Sent: Wed 1/21/2015 4:14:29 PM
Subject: Air & Radiation Law News for January 21, 2015



Air & Radiation Law News

for January 21, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Defends Approach to Setting Air Toxics Standards for Solid Waste Incinerators

The Environmental Protection Agency told a federal appeals court that the agency is "entitled to considerable deference" in its process for establishing standards for emissions of hazardous air pollutants from solid waste incinerators...

Air Pollution

EPA Prevention of Significant Deterioration Suit Dismissed for Lack of Jurisdiction

A federal district court dismissed a lawsuit brought by the Environmental Protection Agency alleging an Oklahoma utility modified two coal-fired power plants without assessing whether the construction projects would increase air emissions...

Air Pollution

Power Industry Challenges EPA's Alternative Compliance Method for Toxics Rule

A power plant trade group is challenging an Environmental Protection Agency rule establishing an alternative method for power plants to comply with limits on mercury and other toxic pollutants during periods when equipment is starting up...

Climate Change

OECD Cites Need to Prepare for Climate Change Impact on Chemical Accidents

Because climate change "might affect the intensity, frequency and geography of natural hazards," governments and institutions should help companies prepare for chemical accidents that could be triggered by these hazards, said...

Congress

Alexander, Murkowski to Chair Energy, Environment Appropriations Subcommittees

Republican Sens. Lisa Murkowski (Alaska) and Lamar Alexander (Tenn.) will chair the environment and energy subcommittees on the Senate Appropriations Committee, which is where a fierce effort to roll back and stop President Barack Obama's...

Energy

Infrastructure Focus Needed as Markets, Rules Drive Gas Generation, Report Says

Market forces and Environmental Protection Agency regulations are driving the use of natural gas to power electricity generation, but the shift will require new investments in infrastructure to ensure reliability, utility regulators...

Energy

Nebraska Environmental Group Announces New Lawsuits to Block Keystone XL Pipeline

A Nebraska environmental group announced Jan. 20 the filing of two new lawsuits aimed at blocking state approval for a Keystone XL Pipeline route (Steskal v. TransCanada Keystone Pipeline LP,Neb. Dist. Ct., No. D36CI150000006, 1/16/15;...

Energy

Senate to Vote on Climate Amendments Seeking to Put Republicans on Record

The Senate is slated to vote as soon as Jan. 21 on a pair of amendments that seeks to put Republicans on the record about climate change, after voting Jan. 20 to approve an amendment designed to increase energy efficiency in commercial buildings....

Enforcement

EPA Sets Ship Penalty Assessment Policy For Fuel Sulfur Violations in Controlled Areas

The Environmental Protection Agency established a new policy for assessing civil penalties for violations of fuel sulfur standards for ships operating in controlled areas in the waters off of North America and the Caribbean Sea....

Enforcement

Shell Affiliates to Pay $900,000 Fine For Alleged Fuel Standards Violations

Three Shell Oil Co. affiliates have agreed to pay a $900,000 civil penalty to resolve alleged violations of the Clean Air Act at refining, distribution and retail facilities across the U.S....

Hazmat Transport

Minnesota Study Indicates Communities Unsure of Ability to Respond to Oil Incidents

The Minnesota Department of Public Safety has released a study that indicates that many of the state's communities are unsure of their ability to respond to incidents involving oil or other hazardous materials....

Natural Gas

White House Issues Veto Threat for House

Pipeline Bill, Citing 'Confusion,' Litigation

The White House said Jan. 20 it would veto House legislation (H.R. 161) that would expedite the permitting for new natural gas pipelines, saying the bill would cause "confusion and the risk of increased litigation." ...

Trade

European Parliament to Take Up TTIP Issues On Agriculture, Data, Energy, Environment

The European Parliament has started efforts to adopt a resolution to steer the Transatlantic Trade and Investment Partnership while environment, agriculture, civil liberties, energy and industry committees hold debates Jan. 21-22 on...

Vehicle Fuels

Lower Gas Prices Seen Hurting Electric Car Sales Only in Short Term, Automaker Says

Cheap gasoline may make electric cars an even harder sell, according to BMW AG, the German luxury automaker that's aiming for plug-in versions of all its top models....

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Inside EPA's **Environmental Policy Alert**, 01/21/2015

http://insideepa.com/newsletters/environmental-policy-report

Latest News

Obama's State Of The Union Includes Vow To Push Climate Agenda Ahead

President Obama is vowing to push ahead with his administration's climate change agenda and veto Congressional measures to block EPA rules and other environmental policies, describing the threat of climate change as the greatest risk to future generations and saying the United States' efforts to curb

global warming will spur international action.

EPA's Critics Urge High Court To Scrap Utility MACT As Not 'Appropriate'

Power sector groups and states opposed to EPA's landmark utility maximum achievable control technology (MACT) rule are urging the Supreme Court to scrap it because, they argue, the agency failed to meet a Clean Air Act requirement based on legal and regulatory precedent to consider costs in determining whether the rule was appropriate.

EPA's ESPS Small Business Review Spurs Fear Of Industry 'Food Fight'

EPA's planned review of the potential adverse impacts to small business from its greenhouse gas (GHG) rules for existing power plants could ease requirements on smaller companies at the expense of greater burdens on bigger utilities, raising the potential that the review could result in a food fight pitting larger utilities against smaller entities.

News Briefs

Judge Dismisses Libby Asbestos FOIA Lawsuit

A federal district court judge has dismissed a Freedom of Information Act (FOIA) case that law firm Beveridge & Diamond brought against EPA seeking data related to EPA's then-uncompleted toxicity assessment of Libby amphibole asbestos (LAA), with the judge finding the agency did not create or control the information the law firm sought.

D.C. Circuit Delays Litigation Over EPA's Resins MACT

A federal appeals court has granted EPA's unopposed request to put on hold litigation over the agency's maximum achievable control technology (MACT) air toxics rule for amino and phelonic resins production facilities until the agency completes its reconsideration of provisions of the rule that various groups are challenging.

Greenwire

TRANSPORTATION:

Obama's unabashed champion of passenger rail exits

Sean Reilly, E&E reporter

Published: Tuesday, January 20, 2015

Only last spring, Joe Szabo was playing a familiar role in his job as head of the Federal Railroad Administration: fending off criticism of California's high-speed rail project from congressional detractors questioning whether it would ever be built.

Earlier this month, as he prepared to leave the post he'd held for almost six years, Szabo was in a less accustomed spot: celebrating the huge -- and hugely controversial -- endeavor at a ceremonial groundbreaking in Fresno (*Greenwire*, Jan. 7).

Although the timing was coincidental, "I just can't think of a better way to end my tenure," he said afterward.

It was a final high note in what Szabo calls a "wonderful and wild" ride unlike that of any of his predecessors at the small Transportation Department agency -- one marked by partisan strife over unprecedented passenger rail spending, the struggle to implement two landmark laws, and safety worries unleashed by the boom in railroad oil shipments. At congressional hearings, Szabo bore the brunt of Republican attacks on the Obama administration's embrace of high-speed rail. Even allies question whether he was able to change the mindset of an agency historically aligned with the freight rail industry.

Regrets? Szabo, 57, professed none in a follow-up interview just before he officially stepped down this month to take a job in his hometown of Chicago.

"You can't have regrets," he said. "You have to have confidence in the job that you've set out to do."

Among his proudest accomplishments, he said, are a sharp drop in on-the-job deaths among railroad workers and fostering "game-changing" improvements in states' ability to plan and carry out rail projects. FRA's policy office was restructured, he said, with fresh talent. If the Obama administration's vision for high-speed bullet trains remains a tough sell with Republican lawmakers, Szabo predicted it's only a matter of time before Congress catches up with grass-roots pressure to get on board.

"I leave with a high level of satisfaction," Szabo said. Prompting his departure, he said, is the need to tend to his ailing 87-year-old father. Last week, he started a job as senior fellow at the Chicago Metropolitan Agency for Planning. Temporarily taking his place at the railroad administration is Sarah Feinberg, a former White House aide who joined the Department of Transportation as chief of staff 16 months ago. There is no timetable for naming a new permanent administrator, according to DOT Secretary Anthony Foxx.

President Obama nominated Szabo, who had the backing of Sen. Dick Durbin (D-Ill.), to run the railroad administration in March 2009. Unanimous Senate confirmation followed little more than a month later. In naming Szabo, a onetime railyard switchman and train conductor who became a state lobbyist with what was then the United Transportation Union, the White House broke with a tradition of plucking FRA leaders from the ranks of railroad management, said Larry Mann, a rail safety attorney. Mann, who considers Szabo a friend, called him "an excellent administrator."

Federal Railroad Administrator Joe Szabo speaking at the groundbreaking for California 's high-speed rail system, days before stepping down after an almost six-year tenure. Photo courtesy of the California High-Speed Rail Authority.

Despite his labor background, Szabo "did not cater to the unions," Mann said. "His approach was balanced. He called it the way he felt was appropriate."

But because career federal employees cannot be easily removed from their jobs, Mann said, Szabo had less success in overhauling the culture of a regulatory agency long seen by critics as tilted toward the industry it is supposed to oversee.

In 2005, for example, DOT's inspector general reproved one top official for taking vacations with a lobbyist for Union Pacific Corp. Although the review found no evidence of favoritism, the inspector general noted that Union Pacific was inspected proportionately less even though it had the highest average number of train accidents of the four major freight railroads. In addition, all four carriers "had substantial safety and inspection issues," the report said.

Szabo arrived at FRA just after Congress had handed the agency sweeping new mandates with the 2008 passage of two major laws: the Rail Safety Improvement Act and the Passenger Rail Investment and Improvement Act. The first, enacted barely a month after a collision between freight and commuter trains killed 25 people near Los Angeles, was the most comprehensive piece of rail safety legislation in almost 40 years. Most notably, it set a December 2015 deadline for railroads to implement positive train control, an umbrella term for an array of costly anti-crash communication technologies.

The passenger rail investment law was Amtrak's first reauthorization in more than a decade. Among other provisions, it ordered FRA to help the passenger railroad set standards to improve chronically poor train punctuality. In addition, the railroad administration, which had hitherto run only small grant programs, was charged with doling out some $8 billion for high-speed and intercity passenger rail projects appropriated in the 2009 American Recovery and Reinvestment Act.

"Obviously, the plate is full, but I truly cannot think of a better time, a more exciting time to be leading FRA," Szabo said at his Senate confirmation hearing.

High-speed rail controversy

Szabo quickly established himself as a strong advocate of expanding passenger rail service to meet future transportation needs.

But FRA's handling of the high-speed rail program came under fire from critics who said the agency was spreading the money around too many projects to produce much payoff.

In the 2010 elections, Republicans targeted the grants as a prime example of stimulus-related waste. Within months of winning office, newly elected GOP governors in Florida, Ohio and Wisconsin canceled planned high-speed rail ventures, cumulatively rejecting more than $3 billion in previously approved federal funding.

"I laughed at them," Szabo said, adding that Wisconsin is now proceeding with improvements to the Chicago-Milwaukee line "on their own dime."

A large chunk of the returned money was rerouted to California, where boosters credit the shift with helping the state move forward with what is eventually supposed to be a line linking San Francisco and Los Angeles. While further challenges are inevitable, Szabo said, the project has reached a tipping point where "sustained construction is a reality."

On Capitol Hill, however, it remains an object of scorn for Republicans, who question both the ballooning price tag -- now projected at $68 billion -- and California's long-term strategy for paying the bills.

At last April's hearing of the House Transportation Appropriations Subcommittee, Szabo had to rebut a suggestion from then-Chairman Tom Latham (R-Iowa) that the administration had given up on the endeavor. In a news release on the day of the groundbreaking, Rep. Jeff Denham (R-Calif.) again predicted that the link will never be finished.

"It's hard to celebrate breaking ground on what is likely to become abandoned pieces of track that never connect to a usable segment," said Denham, who chairs the House Transportation and Infrastructure railroads subcommittee.

Szabo has also clashed with the Association of American Railroads, the freight rail industry's main trade group, over issues like the minimum crew size needed for freight trains (*Greenwire*, Dec. 23, 2014).

The association has challenged Amtrak's authority to set the performance standards in a lawsuit now awaiting a Supreme Court decision (*Greenwire*, Dec. 8, 2014).

Asked for comment on Szabo's tenure, the association's president and CEO, Edward Hamberger, issued a statement wishing him well and thanking him "for his service and his shared dedication to safely bringing home each rail employee after his or her shift."

'You always have to do better'

The railroad administration nonetheless continues to face criticism that it's not aggressive enough in promoting safety, particularly as crude-by-rail traffic skyrockets.

While Szabo touts across-the-board improvements in every safety area tracked by FRA, the agency is a "pitiful" regulator, said Fred Millar, a rail safety consultant who says more must be done to reroute trains carrying crude and other hazardous materials away from major urban centers.

Following the release of a scathing National Transportation Safety Board report in October on lapses at a New York City-area commuter railroad, Sen. Richard Blumenthal (D-Conn.) called the findings an indictment of FRA oversight. "We must assume that safety and reliability standards receive real enforcement, not just lip service," Blumenthal said in a news release.

"We accept as part of our daily challenge to ourselves that you always have to do better," Szabo responded. But, he added, "our record of success is impressive and it speaks for itself."

Szabo's departure came with the Supreme Court decision pending. The rail industry is expected to miss this December's deadline for positive train control implementation. In Congress, the reauthorization process for the Passenger Rail Investment and Improvement Act has already begun.

Asked how FRA, whose 840-strong workforce is little changed from six years ago, despite the added workload, can do its job without permanent leadership, Szabo said he had the "highest level of confidence" in the agency's permanent staff.

One of the biggest take-aways from his tenure, Szabo said, is the "level of intellect, dedication, the work ethic of the career professionals here, and so I am not concerned."

Reporter Debra Kahn contributed.

ADVOCACY:

Earth Policy Institute to close

Ariel Wittenberg, E&E reporter

Published: Tuesday, January 20, 2015

Environmental think tank Earth Policy Institute plans to close its doors at the end of June, after almost 15 years of operations.

EPI was founded in 2001 by environmentalist Lester Brown. Brown, 80, said in a statement that he had chosen to retire and close EPI "after careful consideration."

"I believe the Earth Policy Institute has accomplished what we set out to do when we began in 2001, and now it's time for me to make a shift," he said.

Although he said he no longer wants the responsibility of managing an organization, Brown, who has published more than 50 books, will continue to research and write on environmental issues.

EPI has published 13 books since its founding. The 14th, about shifting from fossil fuels to solar and wind energy, is expected to be released this spring.

To honor Brown, his alma mater, Rutgers University, has agreed to establish in late 2015 a Lester R. Brown Reading Room, which will house the original editions of his books and also maintain EPI's website as an archive.

Brown began his career as a New Jersey tomato farmer in the early 1950s. He also has worked on farms in India, worked for the Department of Agriculture's Foreign Agricultural Service, administered USDA's International Agricultural Development Service, established the Overseas Development Council and founded the Worldwatch Institute.

In a statement, EPI's board of directors thanked Brown for his service.

"Brown always offered a hope-filled action plan for the future," they wrote. "After a stunning run as a writer, leader and pioneer, Brown's lifework is a reminder of what one can accomplish."

SUPREME COURT:

Justices allow lawsuit by military vets over burn pits

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, January 20, 2015

The Supreme Court agreed today to allow a lawsuit by military veterans seeking damages from contractors for exposure to burn pits and other hazardous conditions in Iraq and Afghanistan to move forward.

In a short order without explanation, the justices declined to take up appeals from Houston-based KBR Inc. and Halliburton Co.

In *KBR v. Metzgar*, more than 60 military personnel or their families claim they breathed carcinogenic emissions from burn pits for medical waste, Styrofoam, asbestos and other materials.

The second case, *Kellogg Brown & Root Services Inc. v. Harris*, was brought by the family of a Green Beret who was electrocuted in a shower at a base near Baghdad. The solider died in January 2008, and the family has sued the contractor charged with maintaining the barracks.

Veterans affairs advocates and public health groups have frequently criticized the use of burn pits in the Middle East, claiming it leads to exposure to toxic air emissions (*Greenwire*, May 5, 2010).

The plaintiffs claim KBR operated the pits without pollution controls, leading to contaminated air and water.

They scored a victory last March at the Richmond, Va.-based 4th U.S. Circuit Court of Appeals, which allowed the case to proceed (*Greenwire*, March 7, 2014).

KBR asked the Supreme Court to review that ruling. In particular, the company claims it is immune from such litigation because it was acting under the guidance of -- and as an arm of -- the military. Further, the company alleged the plaintiffs were improperly seeking to use their lawsuits to change military policy on the burn pits.

The 4th Circuit rejected those arguments.

The Supreme Court in June asked the Obama administration to weigh in on whether to take up KBR's appeal. Solicitor General Donald Verrilli told the court to deny review of KBR's petition but said ultimately the court should rule on a case that presents the issue of whether defense contractors are liable for their actions in a war zone in a more direct way.

Ohio landfill case denied

The high court also rejected a bid by a company accused of polluting an Ohio landfill to force other companies to pay cleanup costs.

In *Hobart Corp. v. Waste Management of Ohio Inc.*, Hobart claims other companies contributed to the contamination at the South Dayton Dump and Landfill and should be required to pay for the cleanup.

The 80-acre dump has been collecting potentially hazardous waste since 1941. Around 2000, U.S. EPA discovered carcinogens like arsenic and mercury in the soil and groundwater around the site.

It proposed adding the landfill to the Superfund cleanup program in 2004 but didn't because it entered into a consent decree with Hobart and others in 2006.

Four years later, Hobart brought two lawsuits seeking to force other companies -- Cargill Inc., Monsanto Co. and others -- to also pay for the cleanup. A federal court of appeals ruled in July, however, that Hobart's claims were barred by a three-year statute of limitations from when it entered the consent decree.

EPA:

McCarthy to press for climate action at Winter X Games

Robin Bravender, E&E reporter

Published: Tuesday, January 20, 2015

U.S. EPA boss Gina McCarthy wants to bring attention to some rarely mentioned potential victims of climate change: snowboarding, skiing and other winter sports.

McCarthy is slated to speak Thursday at the Winter X Games in Aspen, Colo., where she'll appear alongside winter athletes to pitch the need to act on climate to stave off weather changes that could hurt winter recreation.

"A strong economy and a strong environment go hand in hand, which makes acting on climate necessary to protect tourism, recreation and the outdoor industry," EPA said today in a news release announcing McCarthy's trip.

She's scheduled to hold a news conference with Mike Kaplan, CEO of Aspen Skiing Co., and Winter Olympians and X Games snowboarders Gretchen Bleiler and Alex Deibold.

"Outdoor recreation pumps hundreds of billions of dollars to the U.S. economy a year and accounts for millions of jobs," EPA said today. "Snow-based recreation alone contributes $67 billion annually, supporting over 900,000 jobs.

"Shorter seasons or unsatisfactory skiing conditions mean less tourists, less businesses, less hiring for jobs to support those businesses, less spending on things that neighboring businesses sell, and so on."

POLITICS:

NextGen preps ad blasting climate naysayers during SOTU

Daniel Bush, E&E reporter

Published: Tuesday, January 20, 2015

Billionaire environmentalist Tom Steyer's political action committee will launch a television ad attacking foes of action to combat climate change during the State of the Union address tonight.

NextGen Climate's 30-second spot, which was released online today and will air in the Washington, D.C., market during coverage of President Obama's speech tonight, slams skeptics for claiming that climate change is a "hoax."

"Some powerful people want to hold us back," a male narrator says as an image of oil magnate David Koch flashes across the screen. "But the truth is undeniable. This is a fight we will win."

Industry groups and conservative donors -- like the powerful Koch brothers -- spent $721 million last year to support climate skeptics running for office, according to a fact sheet Steyer's PAC released today.

The memo pointed to a recent report by the National Oceanic and Atmospheric Administration that showed 2014 was the hottest year on record and asked supporters to sign a petition urging Congress to reject the Keystone XL oil pipeline.

The prime-time ad will put Steyer back in the political spotlight as the Californian and former hedge fund manager weighs jumping into a race to replace retiring Democratic Sen. Barbara Boxer of California.

Boxer announced earlier this month that she would step down in 2016, setting in motion a scramble for a coveted Senate seat that hasn't been open in more than two decades (*E&E Daily*, Jan. 9).

If Steyer enters the race, he'll face stiff competition in a crowded Democratic primary field. The state's popular Attorney General Kamala Harris (D) threw her hat in the ring last week, making her an instant front-runner in a race that could include many of California's top Democrats.

But even if Steyer decides not to run, he has established himself as a political force in recent years. Steyer spent more than $70 million of his own money in 2014 alone to back candidates who support taking action on climate change.

"The United States stands at a crucial crossroads on energy policy," Steyer said in a statement today. "We can create hundreds of thousands of jobs and a build a bright, prosperous future for our children by tackling climate change head-on, or we can side with special interests who deny basic science."

BIOFUELS:

Federal mandate delay doesn't hinder industry -- Vilsack

Published: Tuesday, January 20, 2015

The biofuel industry is still going strong despite the delay of a federal mandate requiring ethanol and biodiesel to be part of the nation's fuel supply, Agriculture Secretary Tom Vilsack said yesterday.

Speaking with the editorial board of the *Des Moines Register*, Vilsack said he has high hopes for the future of renewable fuels and noted the United States had record ethanol production last year. He also cited the developing export, military and aviation markets, as well as increasing interest in building advanced biofuel plants, as reasons to be optimistic about the industry.

U.S. EPA is expected to set renewable fuel standards in the first half of the year. The standards would confirm the amounts used last year as well as set new requirements for 2015 and 2016.

Vilsack said the delay in setting the standards may have impacted the biofuels industry, but "it hasn't been significant."

He also touted the benefits of setting such standards for renewable fuels.

"I think the industry will have a certain level of predictability for a couple of years, which will be helpful," he said.

Still, Vilsack acknowledged that biofuels will face challenges from the oil industry, especially with gas prices falling.

"There's no question Big Oil is interested in limiting the choices," he said (Donnelle Eller, *Des Moines Register*, Jan. 20). -- **AW**

ELECTRIC VEHICLES:

Tesla co-founder gears up for plug-in garbage trucks

Published: Tuesday, January 20, 2015

The co-founder of Tesla Motors Inc. is hoping to develop electric garbage trucks.

Ian Wright, who owns Wrightspeed, has already made a deal with the Ratto Group, a garbage and recycling company in the San Francisco area, to convert 17 of its garbage trucks to electric vehicles.

"It makes the most economic sense to focus energies on a sector where you can displace the most fuel," Wright said. "When you switch a garbage truck to electric power, you're saving about $60,000 in fuel and $30,000 in maintenance a year."

Wright said that, in addition to being more economically efficient, the trucks would be better for the environment. There are an estimated 2.2 million medium-duty trucks that consume 35 billion gallons of gasoline a year (Marco della Cava, *USA Today*, Jan. 20). **-- MH**

TRANSIT:

Ridership doesn't drop with oil prices, at least in L.A. -- experts

Published: Tuesday, January 20, 2015

The Los Angeles County Metropolitan Transportation Authority saw ridership decline by 4 percent in the second half of last year, but experts say falling gas prices won't dent public transportation usage as much as feared.

Marlon Boarnet, an urban planning professor at the University of Southern California, said Los Angeles lacks the ridership income diversity that other cities have, meaning the drop should hold at only a few percentage points.

"If you're looking at Chicago, New York or Washington, D.C., this would be a different question," Brueckner said.

Experts point to the health of the economy as the primary driver of public transit usage, but while increasing oil prices produced well-documented increases in ridership, decreases are so rare that research is limited.

But experts don't expect much of a change in Los Angeles, as four in five passengers there don't have access to a private vehicle, and more than half of riders live below the federal poverty threshold.

"Taking transit versus driving here basically depends on whether you're rich or you're poor," said Jan Brueckner, a University of California, Irvine, professor who studies urban economics.

Experts said it's more likely that a fare increase in September 2014 and Metro's crackdown on unpaid rides caused the recent dip, but officials said the effects of lower fuel costs won't be known until the agency releases data in the next few months.

"When gas prices spike, we don't see ridership gains until several months later," Littman said. "It takes a while for this stuff to percolate through" (Laura Nelson, *Los Angeles Times*, Jan. 20). **-- DTB**

AIR POLLUTION:

Oklahomans support plan to cut Texas emissions

Published: Tuesday, January 20, 2015

A federal plan to curtail air pollution in Texas that crosses state lines received support last week from Oklahomans attending a public hearing about the proposal.

In November, U.S. EPA released its plan to control emissions from Texas coal plants. Those emissions, according to EPA modeling, cross into Oklahoma and create a view-obscuring haze at the Wichita Mountains National Wildlife Refuge. The haze also affects two national parks in Texas, as well as the Caney Creek Wilderness Area in western Arkansas.

"Oklahoma has a Texas air pollution problem," said Will Cunningham, who lives just north of the Wichita Mountains refuge. "You don't need to be an environmentalist in order to become concerned about pollution from Texas that the prevailing winds bring to us every day."

EPA's plan would require the installation of pollution controls to reduce sulfur dioxide emissions at 14 generating units at seven Texas coal plants. Another plant would need to curb its generation (Paul Monies, *Oklahoman*, Jan. 18). **-- AW**

JAPAN:

Nuclear plant worker dies after falling into tank

Published: Tuesday, January 20, 2015

A worker at Japan's shuttered Fukushima Daiichi nuclear power plant died early this morning after falling into a water storage tank.

The plant's operator, Tokyo Electric Power Co., said the 55-year-old man died of multiple injuries after he fell through an opening atop a 33-foot-tall tank. The worker was one of three men inspecting the tank at the time.

The utility said it was investigating the cause of the accident.

Nearly 7,000 workers are employed at the site for what's expected to be a decades-long decommissioning process (Associated Press, Jan. 20). **-- SP**

JAPAN:

To prepare for Olympics, Tokyo gets $385M hydrogen reboot

Published: Tuesday, January 20, 2015

Tokyo is gearing up for the 2020 Olympics by spending big on hydrogen.

Prime Minister Shinzo Abe has announced he plans to spend ¥45.2 billion ($385 million) on fuel-cell car subsidies and hydrogen stations in advance of the games.

Tokyo is in talks with Toyota Motor Corp. and Honda Motor Co. to put 6,000 hydrogen cars on the roads by 2020, according to Makoto Fujimoto, who works in the metropolitan government's energy department. Tokyo will also build 35 stations to fuel the hydrogen-based vehicles.

Spending on hydrogen infrastructure comes as part of Abe's plan to reduce Japan's reliance on nuclear power. It also is an effort by the Tokyo government to reduce costs in advance of hosting the Olympics.

Abe has previously said he wants to make Japan a "hydrogen society," powering not just cars but homes and office buildings with hydrogen.

Hiroshi Takahashi, a researcher at Fujitsu Research Institute, said the Olympics are "a significant chance to attract new investment and update the city's transportation system to make it fuel-cell friendly" (Hagiwara/Ma, Bloomberg, Jan. 20). -- **AW**

NATURAL GAS:

ANGA's Durbin talks SOTU, impact of White House methane proposal

Published: Tuesday, January 20, 2015

Last week, the White House unveiled a blueprint to regulate methane emissions in the oil and gas sector, along with a goal of cutting methane 40-45 percent by 2025, back to 2012 levels. Did the administration successfully hit the sweet spot of adequate environmental protection while also addressing stakeholder concerns? During today's OnPoint, Marty Durbin, president and CEO of America's Natural Gas Alliance, reacts to the White House's methane proposal and talks about how he expects the president to address natural gas in his State of the Union speech.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Wed., January 21, 2015

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1.POLITICS:

Obama, bracing for battles with Congress, calls climate change the biggest threat

President Obama confronted Republicans on the science of climate change in a sometimes barbed State of the Union address that described rising temperatures as the greatest threat to future Americans.

2.CALIFORNIA:

How will the state get 50% of its energy from 'renewable resources' by 2050?

Gov. Jerry Brown (D) received plenty of early support for his proposal, in his Jan. 5 inaugural speech, to get half of California's electricity from renewable sources by 2030. Observers say the goal points to sweeping changes in how California plans for and procures its energy.

TODAY'S STORIES

3.TECHNOLOGY:

U.S. scientists reclaim solar-cell efficiency crown

4.FINANCE:

Newcomers vie to lend money to booming solar marketers

5.NEGOTIATIONS:

Nations approach the nitty-gritty of shaping new climate change proposals

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Indonesia's forest-protecting policy has room for improvement -- study
7.NATIONS:
India takes a stand on climate change
8.COAL:
Unions' threats stop plan for mine closures in Poland
9.FOOD SECURITY:
Preserving genetic diversity of crops should be priority, U.N. says
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Lawmakers react to president's climate, energy agenda

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ENERGYWIRE — Wed., January 21, 2015

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1.LAW:
Federal judge strikes down N.M. county's fracking ban as unconstitutional

A county's ban on hydraulic fracturing and drilling conflicts with both state and U.S. law, a federal court in New Mexico found this week.

TOP STORIES
2.HYDRAULIC FRACTURING:
Love Canal crusader takes up fracking fight
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North Korea attack cleared way for Obama's cyber agenda
4.UTILITIES:
KCP&L outlines plans to retire a half-dozen coal units in Mo.
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Dynegy purchases delayed as FERC seeks information
6.UTILITIES:
Report calls for reform of Calif.'s rules for communication
7.UTILITIES:
Consumer groups balk at Wisconsin Energy's $9.1B acquisition plan
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N.H. delegation demands more time, data on Kinder Morgan's 'Northeast Energy Direct'
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Proposed Pa.-to-N.Y. project encounters fracking-style resistance
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N.Y. ban opponents prepare to mount legal battles
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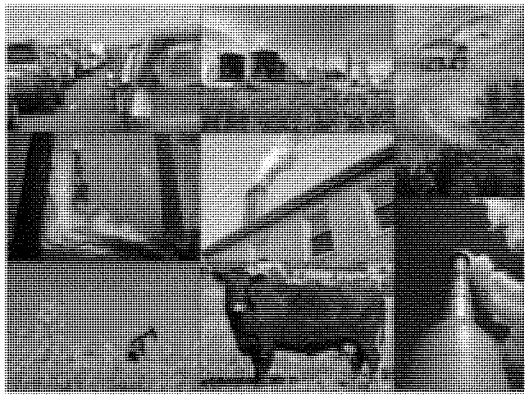

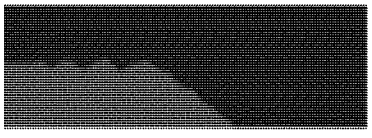

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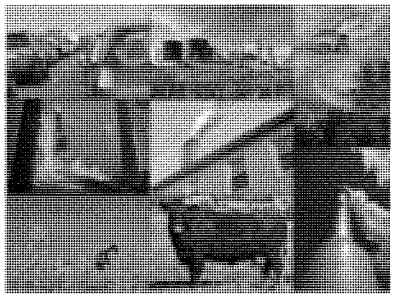

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From: Turley, Jennifer
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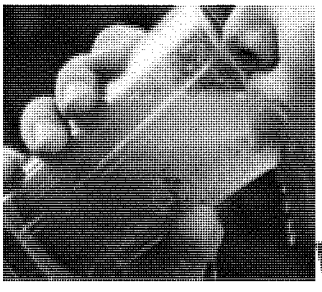
Subject: Water Law News for January 21, 2015



Water Law News

for January 21, 2015

Bloomberg BNA Daily Environment Report™

Congress

Alexander, Murkowski to Chair Energy, Environment Appropriations Subcommittees

Republican Sens. Lisa Murkowski (Alaska) and Lamar Alexander (Tenn.) will chair the environment and energy subcommittees on the Senate Appropriations Committee, which is where a fierce effort to roll back and stop President Barack Obama's...

Energy

Nebraska Environmental Group Announces New Lawsuits to Block Keystone XL Pipeline

A Nebraska environmental group announced Jan. 20 the filing of two new lawsuits aimed at blocking state approval for a Keystone XL Pipeline route (Steskal v. TransCanada Keystone Pipeline LP,Neb. Dist. Ct., No. D36CI150000006, 1/16/15;...

Mining

Pebble Mine Lobbying Spending Dropped By Two Thirds in Last Year, Filings Show

The Pebble Limited Partnership spent $50,000 on federal lobbying efforts in the fourth quarter of 2014, down nearly 67 percent from $150,000 in the fourth quarter of 2013....

Oil Spills

Oil From Pipeline Leak Contaminates Yellowstone River, Drinking Water Supplies

Bottled water is being provided to residents of Glendive, Mont., after oil from the True Cos. Poplar pipeline system leaked into the Yellowstone River....

Oil Spills

Settlement Possible Between U.S., BP In 2010 Gulf of Mexico Oil Spill Case

A federal judge's recent ruling that BP Plc's Macondo well released less oil into the Gulf of Mexico than the U.S. government claimed could trigger a settlement before a decision on the amount it must pay after a trial set to begin this...

Trade

European Parliament to Take Up TTIP Issues On Agriculture, Data, Energy, Environment

The European Parliament has started efforts to adopt a resolution to steer the Transatlantic Trade and Investment Partnership while environment, agriculture, civil liberties, energy and industry committees hold debates Jan. 21-22 on...

Water Pollution

Advocates to Challenge Maryland Permits Issued for Municipal Storm Sewer Systems

An environmental advocacy group filed notice of its intent to challenge permits that Maryland's Department of the Environment issued for municipal separate storm sewer systems in five counties, saying they are too vague to be effective....

Water Pollution

Report Touts Trading Strategy to Curb Phosphorus in Wisconsin's Fox River

An economic feasibility study found "reasonable potential" for water quality trading among municipal wastewater and stormwater systems and nonpoint sources as an efficacious strategy for reducing pollution in Wisconsin's...

Water Resources

Minnesota Governor Proposes 50-Foot Buffer Zone for All State Waterways

Minnesota Gov. Mark Dayton (DFL) has proposed a 50-foot buffer zone for all lands adjacent to state waterways as a means of both protecting state waters and increasing wildlife habitat....

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Inside EPA's **Environmental Policy Alert**, 01/21/2015

http://insideepa.com/newsletters/environmental-policy-report

Latest News

CWA Suit Seeks Jurisdiction Over Isolated Wetland Despite Corps' Finding

A pending Clean Water Act (CWA) suit could set a precedent on whether prairie potholes in a housing development site should be considered jurisdictional under the law because they share a "significant nexus" to downstream waters, despite an Army Corps of Engineers' finding that the potholes share no nexus to interstate commerce.

EPA Proposes New Groundwater Protection Standards For Uranium Mining

EPA is proposing new groundwater protection standards for a growing type of uranium mining that, while it produces far less surface waste than conventional extraction operations, could threaten underground water resources if left unchecked.

Greenwire

ARCTIC:

Army Corps OKs road for Conoco project in Alaska reserve

Phil Taylor, E&E reporter

Published: Tuesday, January 20, 2015

The U.S. Army Corps of Engineers last Friday quietly approved an 8-mile access road for a drilling project that would be the first to produce oil from the National Petroleum Reserve in Alaska (NPR-A).

The Army Corps' record of decision allows ConocoPhillips Co. to continue pursuing its Greater Mooses Tooth project, known as GMT1, to drill up to 33 development and injection wells at an 11.8-acre drilling pad in the northeastern corner of the 22.5-million-acre NPR-A. The Bureau of Land Management still must give final approval for the project.

The Clean Water Act permit "incorporates all practicable avoidance and minimization measures" and

allows up to 73 acres of waters and wetlands to be filled, the corps said.

"The authorization includes special conditions to further avoid and minimize potential adverse impacts and to compensate for unavoidable adverse impacts to the aquatic ecosystem," the corps said.

The approval follows BLM's decision last October to issue a final environmental impact statement (EIS) on the project offering tentative final approval of the project.

BLM's EIS selected alternative B, which would reduce the project's impact on subsistence hunting and fishing in areas used by the nearby Native village of Nuiqsut. Environmental groups are skeptical of the need for a permanent road and have urged BLM to strongly consider roadless and seasonal drilling options. But if a permanent road is to be approved, environmentalists favor alternative B, arguing it better protects Fish Creek.

But the corps permits would authorize Conoco's preferred route, which was analyzed by BLM as alternative A. The corps said that alternative is the "least environmentally damaging practicable alternative."

That alternative is also preferred by Alaska Gov. Bill Walker (R) and the North Slope Borough, the county-level government representing the North Slope.

BLM said the corps' permit decision will inform what alternative it ultimately selects in its own record of decision. A BLM spokesman said there was no immediate timeline for a final decision.

Conservationists have long opposed plans for the gravel road, arguing that it could lead to development of an ecologically damaging network of roads and encourage future exploration deeper into the petroleum reserve. BLM's review of the Conoco project is seen as a bellwether for future projects as industry moves westward into the mostly untapped reserve.

"We have not had a chance to review this decision and the reasons behind it, but we are disappointed that the Army Corps of Engineers has chosen to encroach on Fish Creek, an important watershed and subsistence resource for local communities," said Nicole Whittington-Evans, who directs the Wilderness Society's Alaska office.

In a Jan. 9 letter to Interior Secretary Sally Jewell, the heads of five major environmental groups said BLM must retain a protective buffer for Fish Creek, calling it an important tributary to special protected areas within the reserve.

"The Fish Creek area would be needlessly damaged under Alternative A by the construction of multiple bridges and other infrastructure," said the CEOs of the Wilderness Society, Natural Resources Defense Council, Alaska Wilderness League, Sierra Club and Conservation Lands Foundation. BLM must protect the creek to "uphold the integrity" of its 2013 integrated activity plan for the reserve, they argued.

BLM's record of decision could include additional environmental mitigation measures, including proposals for legacy well remediation, aircraft and traffic limits to minimize impacts on caribou and an agreement giving local Native communities access to the road.

If ConocoPhillips receives the necessary permits and decides to move forward with the GMT1 project, construction could begin during the last quarter of 2015, with first production likely two years later.

The project could add 30,000 barrels of oil per day to the Trans-Alaska Pipeline System by late 2017.

KEYSTONE XL:

TransCanada seeks eminent domain in Neb. as Senate begins debate on bill

Manuel Quiñones, E&E reporter

Published: Tuesday, January 20, 2015

This story was updated at 1:45 p.m. EST.

TransCanada Corp. today said it had filed documents in several Nebraska counties to acquire the land necessary to build the Keystone XL oil pipeline through the state.

The company's announcement this morning comes as the Senate prepares to vote this afternoon on amendments to S. 1 to approve the pipeline's trans-boundary crossing from Canada, setting aside the Obama administration's ongoing review.

TransCanada said it has secured 100 percent of landowner easements in Montana and South Dakota and almost 90 percent in Nebraska, with new voluntary agreements worked out overnight, said the company.

TransCanada said it moved forward with eminent domain, even as negotiations with landowners continue, because its 2013 state permit requires that it secure easements by Thursday.

"As with voluntary easements, landowners continue to own and farm the land," said Andrew Craig, the project's land manager. "TransCanada is acquiring the right to construct, operate and maintain a pipeline below ground."

Earlier this month, the Nebraska Supreme Court upheld the constitutionality of a 2012 law giving the governor authority to permit KXL's route through the state.

However, because the court only decided the issue on a technicality, a group of landowners said Friday it was reigniting the litigation (*Greenwire*, Jan. 19).

Those landowners and their allies in the environmental community, which is staunchly against KXL, are now accusing TransCanada of improperly using the eminent domain process.

"This is just another bullying move by the foreign corporation that swears they are going to be a good neighbor," landowner Jim Tarnick said in a statement released by the group Bold Nebraska.

Landowners are calling on the Obama administration to immediately reject KXL. On Friday, the State Department, which is conducting the administration's review, gave agencies until Feb. 2 to comment.

Project critics are also pointing to an oil spill into the Yellowstone River in recent days to highlight their concerns with KXL. The spill from a pipeline break is likely to become part of the ongoing debate.

Pipeline proponents have often pointed to poll numbers showing significant support for the project. But critics are today highlighting two new surveys.

An NBC News/*Wall Street Journal* poll conducted Jan. 14-17 among 800 adults found that 41 percent of respondents supported KXL, 20 percent opposed it and 37 percent didn't know enough. The survey had a 3.46 percentage point margin of error.

An ABC News/*Washington Post* poll conducted Jan. 12-15 among 1,003 adults found that 34 percent of respondents wanted KXL authorized right away. Another 61 percent wanted the review process to continue. The survey had a 3.5 percentage point margin of error.

Amendment votes begin

The Senate this afternoon is scheduled to begin voting on the first amendments to the KXL bill, according to a bipartisan agreement worked out last week.

Up for a vote is a scaled-down version of the energy efficiency bill touted in the last Congress by Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.). Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) said today that the Portman-Shaheen language may need some modification.

Also in line are amendments by Sen. Al Franken (D-Minn.) to mandate that TransCanada use U.S. steel for KXL, and Sen. Ed Markey (D-Mass.) to prevent the export of KXL crude.

Both Republicans and Democrats have introduced more than 60 amendments, most to advance a number of energy and environment priorities.

One pending Democratic amendment to the KXL legislation by New Jersey Democratic Sen. Robert Menendez would require landowner consent to build KXL.

Democrats, in particular, are keen on getting the new GOP majority on the record on issues like climate change and making Canadian oil sands companies pay into the Oil Spill Liability Trust Fund.

"Now if Republicans oppose us, they will be making it crystal clear to Americans they are on the side of narrow special interests," Sen. Charles Schumer (D-N.Y.) told reporters this morning.

"If the Republicans vote against these amendments," he said, "none of them who support this bill can say it's an American jobs bill with a straight face."

Schumer said this morning about his side's strategy, "Do [Republicans] deny that human activity has helped create climate change? Stay tuned. We'll see."

Asked whether Democrats would try to consolidate some of their amendments on similar issues, Schumer said party members would discuss the issue during policy lunches today.

Sen. John Cornyn (R-Texas), a member of the GOP leadership, said his side may have a climate amendment of its own. "That's one of the options," he said. "But we're going to have to see what their amendments are before deciding what we're going to do."

He added about Democrats, "They're going to have to allow us to set up the votes. I think they're of two minds right now. They don't know whether to obstruct or take the offer that we'll have an open amendment process."

Other new amendments

- Sen. Brian Schatz (D-Hawaii) introduced new language to get the Senate's view on climate change, on top of the amendments he introduced last week (*E&E Daily*, Jan. 14).

- An amendment from Sen. Barbara Boxer (D-Calif.) would require U.S. EPA to conduct a study on KXL's impacts before the law approving the project goes into effect.

- Other Menendez amendments would remove tax oil company preferences, remove oil spill liability limits and promote working with Canadians to meet climate change prevention targets.

- An amendment by Sen. Dan Coats (R-Ind.) would prevent the Office of Surface Mining Reclamation and Enforcement from promulgating new regulations that would impact coal production, revenues and set areas off limits. The measure is directed at the agency's forthcoming Stream Protection Rule.

- An amendment from Sen. Dan Sullivan (R-Alaska) would prohibit EPA environmental enforcement agents from carrying firearms. Alaska lawmakers were critical of a multi-agency Clean Water Act enforcement in the eastern part of the state.

Reporter Nick Juliano contributed.

SUPREME COURT:

Justices allow lawsuit by military vets over burn pits

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, January 20, 2015

The Supreme Court agreed today to allow a lawsuit by military veterans seeking damages from contractors for exposure to burn pits and other hazardous conditions in Iraq and Afghanistan to move forward.

In a short order without explanation, the justices declined to take up appeals from Houston-based KBR Inc. and Halliburton Co.

In *KBR v. Metzgar*, more than 60 military personnel or their families claim they breathed carcinogenic emissions from burn pits for medical waste, Styrofoam, asbestos and other materials.

The second case, *Kellogg Brown & Root Services Inc. v. Harris*, was brought by the family of a Green Beret who was electrocuted in a shower at a base near Baghdad. The solider died in January 2008, and the family has sued the contractor charged with maintaining the barracks.

Veterans affairs advocates and public health groups have frequently criticized the use of burn pits in the Middle East, claiming it leads to exposure to toxic air emissions (*Greenwire*, May 5, 2010).

The plaintiffs claim KBR operated the pits without pollution controls, leading to contaminated air and water.

They scored a victory last March at the Richmond, Va.-based 4th U.S. Circuit Court of Appeals, which allowed the case to proceed (*Greenwire*, March 7, 2014).

KBR asked the Supreme Court to review that ruling. In particular, the company claims it is immune from such litigation because it was acting under the guidance of -- and as an arm of -- the military. Further, the company alleged the plaintiffs were improperly seeking to use their lawsuits to change military policy on

the burn pits.

The 4th Circuit rejected those arguments.

The Supreme Court in June asked the Obama administration to weigh in on whether to take up KBR's appeal. Solicitor General Donald Verrilli told the court to deny review of KBR's petition but said ultimately the court should rule on a case that presents the issue of whether defense contractors are liable for their actions in a war zone in a more direct way.

Ohio landfill case denied

The high court also rejected a bid by a company accused of polluting an Ohio landfill to force other companies to pay cleanup costs.

In *Hobart Corp. v. Waste Management of Ohio Inc.*, Hobart claims other companies contributed to the contamination at the South Dayton Dump and Landfill and should be required to pay for the cleanup.

The 80-acre dump has been collecting potentially hazardous waste since 1941. Around 2000, U.S. EPA discovered carcinogens like arsenic and mercury in the soil and groundwater around the site.

It proposed adding the landfill to the Superfund cleanup program in 2004 but didn't because it entered into a consent decree with Hobart and others in 2006.

Four years later, Hobart brought two lawsuits seeking to force other companies -- Cargill Inc., Monsanto Co. and others -- to also pay for the cleanup. A federal court of appeals ruled in July, however, that Hobart's claims were barred by a three-year statute of limitations from when it entered the consent decree.

POLITICS:

NextGen preps ad blasting climate naysayers during SOTU

Daniel Bush, E&E reporter

Published: Tuesday, January 20, 2015

Billionaire environmentalist Tom Steyer's political action committee will launch a television ad attacking foes of action to combat climate change during the State of the Union address tonight.

NextGen Climate's 30-second spot, which was released online today and will air in the Washington, D.C., market during coverage of President Obama's speech tonight, slams skeptics for claiming that climate change is a "hoax."

"Some powerful people want to hold us back," a male narrator says as an image of oil magnate David Koch flashes across the screen. "But the truth is undeniable. This is a fight we will win."

Industry groups and conservative donors -- like the powerful Koch brothers -- spent $721 million last year to support climate skeptics running for office, according to a fact sheet Steyer's PAC released today.

The memo pointed to a recent report by the National Oceanic and Atmospheric Administration that showed 2014 was the hottest year on record and asked supporters to sign a petition urging Congress to

reject the Keystone XL oil pipeline.

The prime-time ad will put Steyer back in the political spotlight as the Californian and former hedge fund manager weighs jumping into a race to replace retiring Democratic Sen. Barbara Boxer of California.

Boxer announced earlier this month that she would step down in 2016, setting in motion a scramble for a coveted Senate seat that hasn't been open in more than two decades (*E&E Daily*, Jan. 9).

If Steyer enters the race, he'll face stiff competition in a crowded Democratic primary field. The state's popular Attorney General Kamala Harris (D) threw her hat in the ring last week, making her an instant front-runner in a race that could include many of California's top Democrats.

But even if Steyer decides not to run, he has established himself as a political force in recent years. Steyer spent more than $70 million of his own money in 2014 alone to back candidates who support taking action on climate change.

"The United States stands at a crucial crossroads on energy policy," Steyer said in a statement today. "We can create hundreds of thousands of jobs and a build a bright, prosperous future for our children by tackling climate change head-on, or we can side with special interests who deny basic science."

DRINKING WATER:

Yellowstone River spill fouls supplies -- EPA

Published: Tuesday, January 20, 2015

An oil spill from a ruptured pipeline has contaminated the water supply of a Montana town, U.S. EPA said yesterday, prompting Gov. Steve Bullock (D) to declare a state of emergency in the area.

The agency said the spill of about 1,200 barrels of crude oil less than 10 miles south of Glendive, Mont., was "significant."

"The initial results of samples taken from the City of Glendive's drinking water system indicate the presence of hydrocarbons at elevated levels, and water intakes in the river have been closed," EPA said in a statement.

Authorities believe the oil leaked from Bridger Pipeline LLC's 12-inch Poplar line, which has the capacity to carry 42,000 barrels per day of crude oil from the Bakken crude formation (*Greenwire*, Jan. 19). The pipeline runs from Canada to Baker, Mont.

EPA said containment barriers have been deployed 30 miles downstream of the spill, and company officials said more than 50 people were working to clean up the oil.

Bridger was warned by the U.S. Pipeline and Hazardous Materials Safety Administration last year for allegedly failing to properly report inspections of the Poplar line in 2012. No fine was imposed for the company's oversight (Alison Sider, *Wall Street Journal*, Jan. 19). **-- SP**

VERMONT:

Governor floats plan to clean Lake Champlain, tax polluting farms

Published: Tuesday, January 20, 2015

New pollution controls on farming and development will be key to Vermont Gov. Peter Shumlin's (D) plan to increase water quality in Lake Champlain.

The lake, which does not meet federal Clean Water Act standards, has been polluted by phosphorus from farms, parking lots, roads and forestry.

Now Shumlin has released a 59-page draft bill to restore water quality in Lake Champlain and meet phosphorous reduction requirements set by U.S. EPA (John Herrick, *Vermont Digger*, Jan. 18).

The plan, which will tax high-polluting farms, has been praised by environmentalists, but agriculture groups worry it will hurt farms located near Lake Champlain.

The Vermont Legislature also has prioritized Lake Champlain cleanup this session (*Greenwire*, Jan. 6).

Currently, a 1970s law guarantees lower taxes for people who own agricultural or forestry land. The governor's bill would remove polluters from that exemption if they do not reduce their runoff.

Chris Kilian, head of the Conservation Law Foundation of Vermont, noted farm runoff has fed blooms of toxic blue-green algae and hurt businesses that rely on the lake.

Farms, he said, "are a problem that demands immediate action."

But Bill Moore, legislative director for the Vermont Farm Bureau, said the agriculture industry should be given carrots, not sticks, to help reduce phosphorous runoff.

He said the new bill is unnecessary because the state's Agency of Agriculture already has the means to regulate phosphorous but no funding.

"There's no agriculture staff to get out there and work with them and help them comply with the regulations that exist," Moore said (Peter Hirschfeld, Vermont Public Radio, Jan. 19). **-- AW**

AUSTRALIA:

Great Barrier Reef cleanup carries $1.7B price tag -- report

Published: Tuesday, January 20, 2015

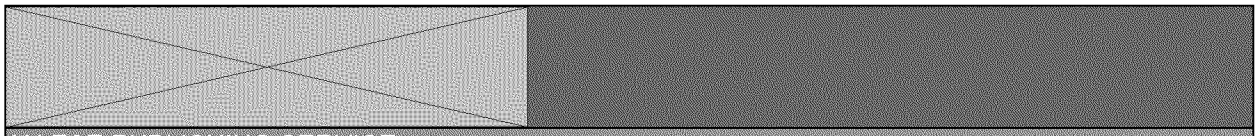
Improving water quality along the Great Barrier Reef would cost an estimated $1.7 billion over the next few years, according to a new report by six regional natural resource management teams in Australia.

To improve the overall health of the ecosystem, roughly $785 million would need to be invested over the next five years in water cleanup, and an additional $1 billion in further improvements would need to be invested after 2020.

The recommended costs include $180 million for enhancing water quality and $200 million to repair pollutant control systems. The remaining funds would go toward upgrading storm management systems, support and education, among other things.

The report said chemicals in agricultural runoff lower water quality. The analysts said farmers need to

change agricultural land-use practices to limit the pollutants entering local water sources that eventually end up in the sea (Oliver Milman, London *Guardian*, Jan. 19). -- **MH**



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Obama, bracing for battles with Congress, calls climate change the biggest threat

President Obama confronted Republicans on the science of climate change in a sometimes barbed State of the Union address that described rising temperatures as the greatest threat to future Americans.

2. CALIFORNIA:

How will the state get 50% of its energy from 'renewable resources' by 2050?

Gov. Jerry Brown (D) received plenty of early support for his proposal, in his Jan. 5 inaugural speech, to get half of California's electricity from renewable sources by 2030. Observers say the goal points to sweeping changes in how California plans for and procures its energy.

TODAY'S STORIES

3. TECHNOLOGY:

U.S. scientists reclaim solar-cell efficiency crown

4. FINANCE:

Newcomers vie to lend money to booming solar marketers

5. NEGOTIATIONS:

Nations approach the nitty-gritty of shaping new climate change proposals

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Indonesia's forest-protecting policy has room for improvement -- study

7. NATIONS:

India takes a stand on climate change

8. COAL:

Unions' threats stop plan for mine closures in Poland

9. FOOD SECURITY:

Preserving genetic diversity of crops should be priority, U.N. says

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Lawmakers react to president's climate, energy agenda

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1. LAW:

Federal judge strikes down N.M. county's fracking ban as unconstitutional

A county's ban on hydraulic fracturing and drilling conflicts with both state and U.S. law, a federal court in New Mexico found this week.

TOP STORIES

2.HYDRAULIC FRACTURING:
Love Canal crusader takes up fracking fight

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North Korea attack cleared way for Obama's cyber agenda

4.UTILITIES:
KCP&L outlines plans to retire a half-dozen coal units in Mo.

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5.ELECTRICITY:
Dynegy purchases delayed as FERC seeks information

6.UTILITIES:
Report calls for reform of Calif.'s rules for communication

7.UTILITIES:
Consumer groups balk at Wisconsin Energy's $9.1B acquisition plan

OIL AND GAS

8.PIPELINES:
N.H. delegation demands more time, data on Kinder Morgan's 'Northeast Energy Direct'

9.PIPELINES:
Proposed Pa.-to-N.Y. project encounters fracking-style resistance

10.WORKFORCE:
Baker Hughes to shrink by 7K employees in Q1

11.PEOPLE:
Apache CEO retires

12.EARTHQUAKES:
Kan. official links quakes to fracking byproduct

13.ARCTIC:
Norway to open new exploration blocks

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N.Y. ban opponents prepare to mount legal battles

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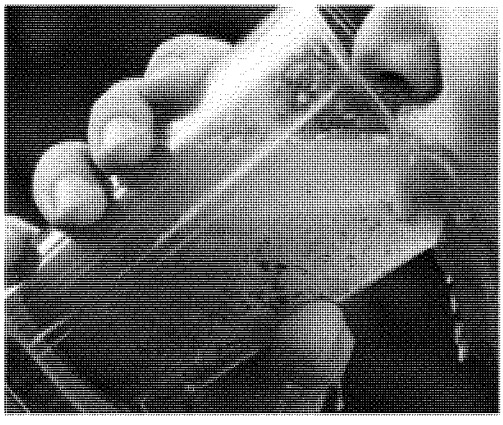

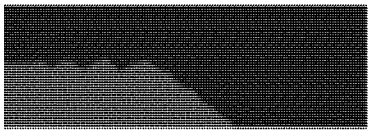

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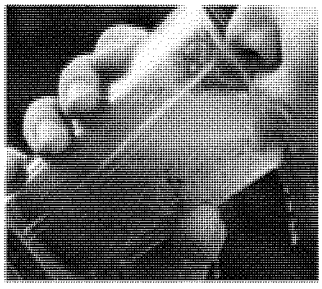

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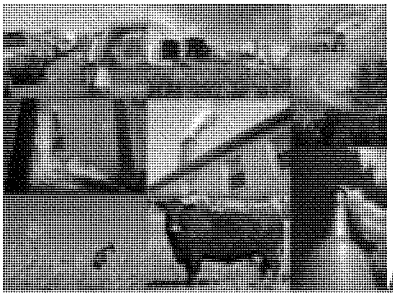


Air & Radiation Law News

for January 20, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

Transport Rule Doesn't 'Over-Control' Upwind States, EPA Tells Appeals Court

The Environmental Protection Agency's cross-state emissions rule for power plants doesn't "over-control" upwind states beyond what is allowed under the Clean Air Act, the agency told a federal appeals court that is considering...

Climate Regulation

FERC Commissioners Recall Little Input On EPA Rule to Curb Power Plant Emissions

The Federal Energy Regulatory Commission didn't meaningfully participate in the development of the Environmental Protection Agency's proposed carbon dioxide standards for power plants, some commissioners told House and Senate...

Climate Science

2014 Was Hottest Year, Government Says, Citing Greenhouse Gas Emissions

The year 2014 was the warmest on record, the National Oceanic and Atmospheric Administration and NASA announced Jan. 16....

Energy

DOE Proposes Commercial Furnace Standards Estimated to Save $2.7 Billion Over 30 Years

Proposed energy efficiency standards for commercial furnaces would save consumers as much as $2.7 billion over 30 years in natural gas savings, according to the proposed rule announced by the Energy Department Jan. 16....

Energy

Study Finds Lifting Ban on Crude Exports Consistent With Policy, Would Cut Gas Prices

Lifting restrictions on the export of domestic crude oil would reduce U.S. gasoline prices by as much as 12 cents per gallon, help prevent a shortage of light crude refining capacity in the U.S. and is consistent with past and present trade policy...

EPA

McCarthy's 2015 EPA Agenda Topped By Rules on Power Plants, Water, Methane

The Environmental Protection Agency in 2015 will finalize regulations on carbon emissions from power plants and the jurisdictional reach of the Clean Water Act, and it will propose emissions rules for heavy-duty vehicles and methane from...

Oil & Gas

Colorado Underestimating Emissions From Oil, Gas Activities, Researcher Says

Colorado is significantly underestimating greenhouse gas emissions and air pollutants emitted from oil

and gas operations, according to a researcher with the National Oceanic and Atmospheric Administration. ...

Sustainability

Michigan Governor Vetoes Three Bills Related to Environment, Signs Others

Michigan Gov. Rick Snyder (R) has vetoed three environment-related bills, including one that would have prevented the state from using biological diversity as a reason for promulgating or enforcing forest-management rules....

Vehicle Fuels

Keystone Amendment Offered to Cut Fuel Standard's Corn Ethanol Mandate

The renewable fuel standard's mandate requiring the use of conventional corn ethanol would be removed under an amendment offered to Keystone legislation (S. 1) Jan. 16 by Sens. Pat Toomey (R-Pa.) and Dianne Feinstein (D-Calif.)....

Vehicle Fuels

Trucking Equipment Company Challenges EPA's Renewable Fuel Standard Delay

A trucking equipment manufacturer is challenging the Environmental Protection Agency's failure to issue renewable fuel standards for 2014 and 2015 in a lawsuit filed Jan. 15 (Plant Oil Powered Diesel Fuel Systems Inc. v. McCarthy, D.C....

OUTLOOK 2015

Brazil

Few Laws on Environmental Protection Seen; Resolution to Improve Air Quality Expected

A conservative Congress will likely approve little environmental legislation in 2015 and may pass laws that adversely impact the environment....

Canada

Oil Prices Force Further Delay in Rules On Energy Sector Emissions; Election Looms

Falling oil prices will further delay regulations to restrict greenhouse gas emissions from Canada's oil and gas sector, the linchpin for efforts to meet international climate change commitments and the environmental policy development...

China

Government Plans Action to Address Air, Water Pollution, Clarify Climate Policies

China is expected to strengthen its main air pollution law and issue an action plan to fight water pollution in 2015 as it continues to move forward on two of its most pressing and publicly contentious environmental issues....

European Union

Legislation on Greenhouse Gas Reductions, Air Quality, Waste Regulation Tops Agenda

The 28 countries of the European Union in 2015 will start to work out details of legislation they have to adopt to deliver on a pledge to cut their collective greenhouse gas emissions by 40 percent by 2030 compared to 1990....

France

Parliament Aims to Pass Framework Law On Energy Transition Ahead of Paris Talks

As France seeks to stoke momentum for climate change talks the nation will host in late 2015, Parliament is expected to pass a major environmental framework law early in the year to boost renewable energy's market viability while strengthening...

Germany

Energy Market Redesign, Competitive Bidding For Renewables Will Top Agenda in 2015

Germany's green energy transition, or Energiewende, will continue to be the government's major environmental project in 2015. But with a far-reaching amendment of the law governing the country's

renewables expansion passed...

India

Government to Add Independent Regulator,
Begin Overhaul of Major Environmental Laws

The year is likely to witness some momentous legislative and regulatory developments in India, including the rewriting of several key environmental laws based on an executive review initiated in 2014. ...

International Maritime Organization

Reporting Ships' Carbon Dioxide Emissions,
Ballast Water Pact Ratification Top Priorities

Hitting upon an agreement to reduce global shipping's carbon dioxide emissions and improving the energy efficiency of ships will be environmental priorities for the International Maritime Organization in 2015, according to a spokeswoman...

Japan

As Nuclear Power Comes Back, Nation Looks
To Conservation, Renewables, Technology

Even with the probable restarting of nuclear power reactors in 2015, Japan is being pressed to expand its renewable energy and conservation programs. There is a widely held view that the resources-poor country must curb its energy appetite...

Mexico

Law Sought to Boost Renewable Energy;
New Regulator of Oil Sector Begins Work

The potential impact of expected rules to encourage greater use of renewable energy will top Mexico's environmental agenda for 2015 and will show the government's relative appetite for balancing a heavily oil- and gas-based energy...

Organization for Economic Cooperation & Development

For Paris Summit, OECD Looks at Alignment
Of Climate Policy With Energy, Other Policies

The Organization for Economic Cooperation & Development plans to contribute policy analysis to efforts to prepare for climate change talks in Paris in late 2015, in particular looking at ways to improve coordination of climate policies...

Russia

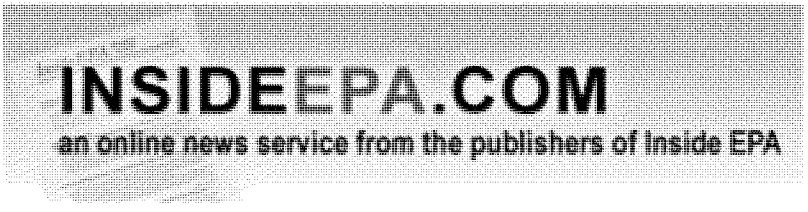
Carbon Dioxide Limits, Arctic Development, Amendments to Framework Law Top Topics

The Russian government is likely to publish methodology in 2015 for monitoring greenhouse gases across industry, in anticipation of mandatory reporting requirements and limits on carbon dioxide....

United Kingdom

Elections Will Decide Low-Carbon Goals For 2020 and Beyond; Shale Gas Fight Looms

The year will be a pivotal one for the United Kingdom, as a general election in May will decide the government that will rule until 2020, a target date for key climate change, renewable energy and energy efficiency goals....



Inside EPA's **Risk Policy Report**, 01/20/2015

http://insideepa.com/newsletters/risk-policy-report

Latest News

McCarthy Pushes Major EPA Rules Despite Budget Threats, GOP Attacks

EPA Administrator Gina McCarthy is pushing ahead with major EPA climate and water rules despite push-back from the Republican Congress and the threat of fiscal year 2016 budget cuts, saying existing FY15 funding will ensure release of EPA's power plant climate rules and other policies and that GOP attacks do not affect her work.

EPA Offers Broad Defense Of Method For Developing, Implementing CSAPR

EPA is offering a broad legal defense of its methodology for developing and implementing its contested Cross-State Air Pollution Rule (CSAPR) emissions trading program, saying the agency was justified in its approach for rejecting or approving state interstate air plans and did not exceed its authority with the pollution caps it imposed on states.

EPA Unveils Policy For Enforcing Ship Fuel Rule In Low Emissions Areas

EPA has unveiled an enforcement policy for how it will penalize ship owners and operators for violating new fuel sulfur limits for vessels steaming near U.S. coastlines with low emissions requirements, aiming to deter potential violations with the threat of fines up to $25,000 per infraction and to quickly resolve noncompliance claims.

News Briefs

IG To Review Benefits Of EPA's STAR Research Grants

EPA's Office of Inspector General (OIG) is preparing to review the benefits of one of the agency's long-standing research grant programs, known as the Science To Achieve Results (STAR) grant program. The objective of OIG's review is to determine the extent to which STAR grant research results are used to benefit the EPA performance goals and objectives, according to OIG's Jan. 15 memo announcing the start of the investigation.

Greenwire

SOLAR:

Bird deaths at Calif. power plant a PR nightmare for industry

Phil Taylor, E&E reporter

Published: Monday, January 19, 2015

NIPTON, Calif. -- The Mojave Desert's gleaming Ivanpah solar plant is bright enough to make Las Vegas-bound air travelers and pilots squint from a distance of 60 or more miles.

The 45-story "power towers" shine with sunlight reflected by 350,000 heliostat mirrors spread across an area four times the size of New York's Central Park. Receivers atop the towers heat to nearly 1,000 degrees Fahrenheit, boiling water to turn turbines that crank out 392 megawatts -- power for more than 100,000 houses.

But that intense heat is incinerating birds that fly into the "flux field" between the mirrors and the towers.

Bird mortality is a problem for Ivanpah developer BrightSource Energy Inc., operator NRG Energy Inc. and other companies that covet the power tower technology. Killing or maiming most bird species -- even by accident -- is illegal under the Migratory Bird Treaty Act.

Ivanpah, which opened a year ago, is testing new ways to prevent bird deaths, trying everything from anti-perching devices to spraying a bubble gum extract that birds hate. Its efforts could be key to the technology's future.

"We take this issue very seriously, and Ivanpah's project owners have gone to great lengths to investigate and minimize wildlife impacts," NRG spokesman Jeff Holland said. "We are evaluating the use of humane avian deterrent systems, similar to those employed by airports and in food industry, and implementing other practices that go beyond conventional operational procedures to reduce avian activity near the towers."

While bird kills happen at all energy projects, Ivanpah has had an outsize amount of press attention -- possibly because it's the largest power tower project in the world and because it got a $1.6 billion loan guarantee from the Department of Energy.

Trouble began last April with the release of a Fish and Wildlife Service forensics report documenting debris, birds and insects -- all known as "streamers" -- going up in smoke at Ivanpah. Vivid pictures of charred birds spawned headlines.

According to the report, Fish and Wildlife enforcement officers reported seeing an average of one streamer every two minutes.

One falconlike bird was seen with a plume of smoke rising from its tail as it flew through the field. It lost stability and altitude but was able to clear the plant's perimeter and land, the officers said. It was never found.

One hundred forty-one bird carcasses were found at Ivanpah from June 2012 to December 2013, one-third of which likely died from the solar flux, with telltale signs including feather curling, charring, melting and breakage. Most were house finches and yellow-rumped warblers whose diets consist mostly of insects.

Federal investigators warned Ivanpah may act as a "mega-trap" where abundant insects attract small birds that are killed or incapacitated by the solar flux. Those birds in turn attract larger predators, "creating an entire food chain vulnerable to injury and death."

Critics and media seized on the report.

An Associated Press story in August suggested a bird was being toasted every two minutes at Ivanpah, even though investigators did not know what percentage of the streamers were birds. The AP also quoted Shawn Smallwood, an ecologist at the Center for Biological Diversity, estimating that 28,000 birds were dying each year at Ivanpah, an estimate the environmentalist admitted was "back-of-the-napkin."

Ivanpah consultants said they believe no more than 1,469 birds a year are being directly killed, 898 of which could be attributed to solar flux.

FWS conceded that "we currently have a very incomplete knowledge of the scope of avian mortality at these solar facilities."

The agency late last summer said it is conducting a "systematic study" at Ivanpah "to determine its true impact on birds."

Impacts on other projects

Ivanpah officials say the plant's impacts pale in comparison to larger human threats.

They include building collisions that kill an estimated 365 million to 988 million birds annually in the U.S., according to a 2014 study by federal scientists in the journal *The Condor: Ornithological Applications*.

Stray and outdoor pet cats each year kill a median of 2.4 billion birds and 12.3 billion mammals, mostly native mammals like shrews, chipmunks and voles, according to a 2013 report from scientists from the Smithsonian Conservation Biology Institute and FWS.

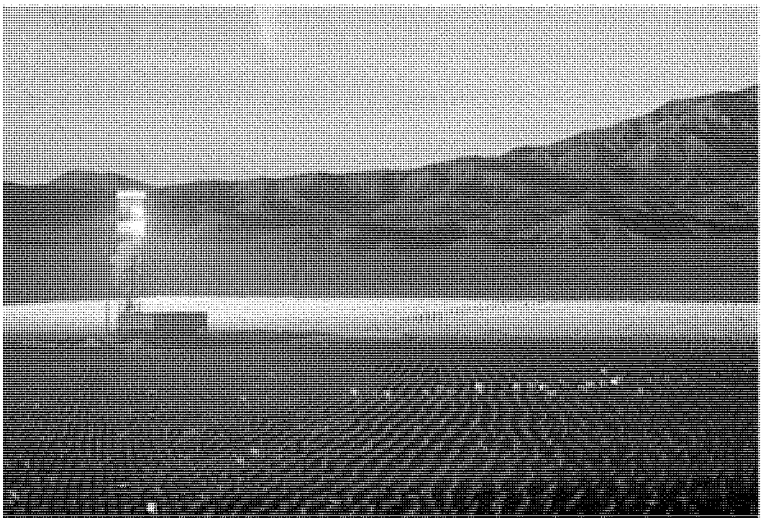
American wind farms kill upward of half a million birds annually, according to peer-reviewed research, and power lines kill hundreds of thousands to 175 million birds annually, according to another study.

But the lurid images of burned birds at Ivanpah seem to resonate with the public. And uncertainty over the towers' impacts could bring headaches to new projects.

The California Energy Commission in December 2013 initially rejected a proposal by BrightSource and Spanish firm Abengoa SA to build two 750-foot-tall power towers capable of 250 megawatts each, citing "insufficient evidence about actual avian impacts from power tower solar flux." The developers' Palen Solar Electric Generating System had been proposed in Southern California's Chuckwalla Valley along a major north-south flyway for migratory birds and within sight of Joshua Tree National Park.

The commission last September approved the project but limited it to one tower after finding that it "would very likely result in significant and unmitigable impacts to biological resources, mainly due to the solar power tower technology's introduction of solar flux danger to avian species."

But the developers withdrew the proposal in September, and BrightSource has since sold its interest in the project to Abengoa, which said it still intends to build one power tower in the valley along with a molten salt technology to store power into the night.



[+] An Ivanpah power tower receives the day's first rays of sunlight in the Ivanpah Valley about 45 miles southwest of Las Vegas. The Clark Mountain Range in the Mojave National Preserve rises behind the plant. Photo by Phil Taylor.

"Abengoa aims to bring forward a project that will better meet the needs of the market and energy consumers," the company said in a statement in November.

"Concentrating solar power, and specifically tower technology with thermal energy storage, can play a key role in helping California achieve its clean energy goals by providing the flexibility needed to maintain grid

reliability."

In a statement today, the firm said it is committed to avoiding and minimizing environmental impacts and compensating for impacts it cannot avoid. "Over the past eight years, the company has not witnessed any significant impact on the wildlife that surrounds our facilities," it said.

'Cautious and somewhat alarmed'

The Palen setback came as the solar industry was in a sweeping transition from concentrated solar power (CSP), which concentrates sunlight to create heat and turn a turbine, to photovoltaic (PV) panels, which turn sunlight directly into electricity.

PV is currently cheaper and faster to build and uses less desert water. Solar industry analysts are skeptical when another CSP plant will be built in the United States.

In addition, the long lead time for CSP plants makes it unlikely any new ones will be built in time to receive a 30 percent federal investment tax credit that expires in December 2016, when it will drop to 10 percent.

SolarReserve LLC's 150 MW Rice Solar Energy Project, which was also to use power tower technology, was put on "indefinite hold" last year in part due to an inability to claim the tax credit, according to a report in the Palm Springs, Calif., *Desert Sun*. Developers dropped the Palen project for the same reason.

But CSP has one major leg up over PV in that it can store the sun's heat for when the sun doesn't shine. It can mimic baseload power sources like coal, natural gas, geothermal and nuclear and is easier to integrate into the electric grid.

The Obama administration has invested heavily in CSP, with at least $5 billion in loan guarantees for five projects representing more than 1,000 MW in Nevada, California and Arizona. "Collectively, these five CSP plants will nearly quadruple the preexisting capacity in the United States, creating a true CSP renaissance in America," the Energy Department said in a May 2014 report.

One of those projects, SolarReserve's 110 MW Crescent Dunes Solar Energy Project in Tonopah, Nev., is set to become the nation's first power tower plant with advanced molten salt energy storage when it comes online in the coming months.

Abengoa's 280 MW Solana CSP plant south of Phoenix, which uses 2,200 mirrored troughs to concentrate sunlight on receiver tubes containing a heat transfer fluid, went online in October 2013 and was the first in the U.S. to offer molten salt storage.

Whether bird deaths at Ivanpah will crimp the technology's development remains to be seen.

Environmentalists are unlikely to endorse the technology until its environmental footprint is better understood.

"We're cautious and somewhat alarmed until we find out the truth," said Garry George, renewable energy project director for Audubon California. "Everything you build is going to have some impact on birds. The question is, how big? Is it affecting populations?"

Ivanpah ramps up monitoring

Ivanpah's owners hope to answer that through better monitoring and the use of bird deterrents.

In mid-October, Ivanpah installed a "BirdBuffer" at the top of one of its towers. The moving box-size machine sprays a concentrated grape juice extract into the air at regular intervals, 45 minutes of every hour. The vapor extract, which is used in food products including bubble gum, causes a "safe yet irritating response" in birds, according to the manufacturer, BirdBuffer LLC of Everett, Wash., which sells the units for $8,995 each.

BirdBuffer CEO Gary Crawford said the plant has since seen a reduction in bird activity.

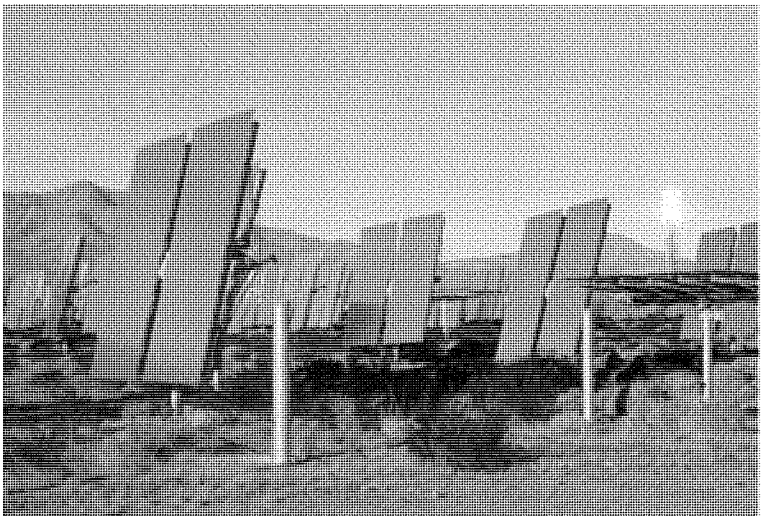
Ivanpah is also exploring anti-perching devices, fogging and sonic deterrents, and waste and water containment to keep birds from scavenging the area for food, NRG's Holland said. It is turning off facility lights at night to attract fewer insects and repositioning heliostats to cut down on glare.

Birds continue to fall from the sky -- 115 carcasses were located last year between May 23 and Aug. 17, about one-third of which showed signed of dying in the solar flux, according to Ivanpah's latest filing with the California Energy Commission.

A *Greenwire* reporter visited the site Dec. 7 but saw no streamers or bird carcasses.

The true number of dying birds is likely underrepresented by human surveys.

Large facilities like Ivanpah are difficult to efficiently search; carcasses are often hidden by vegetation or solar panels, dead birds disappear to scavengers and others degrade too fast to determine cause of death, according to the FWS forensics report.



Ivanpah's nearly 350,000 mirrors track and reflect sunlight onto the boilers atop the three power towers. Photo by Phil Taylor.

Ivanpah is also seeking to better monitor its airspace.

Last May, the plant's owners commissioned the U.S. Geological Survey to study the effectiveness of video cameras, radar, acoustic detectors and other tracking devices to quantify the presence, diversity, movement and behaviors of birds, bats and insects flying near the facility. The results, expected to be published this year in a scientific journal, could spur new research into best management practices.

Birds are not the first major wildlife problem Ivanpah has faced.

In addition to invading avian airspace, the plant took over about 3,500 acres of native desert scrubland with a resident population of federally threatened desert tortoise.

Developers spent $22 million to care for tortoises, moving several dozen from the construction site and building a "head start" nursery where juvenile tortoises and hatchlings are reared until big enough to resist predation from kit foxes, ravens or coyotes.

The company plans to spend $34 million more to meet federal and state mitigation obligations.

"BrightSource was a very good partner for making that work for desert tortoise," said FWS Director Dan Ashe.

Bird mortality will be an ongoing challenge, he said.

"Are we concerned? Um, yes," Ashe said during a Western Governors' Association winter meeting last month in Las Vegas. "Except ... are birds killed at that facility? They are, clearly. Are birds killed by running into this building? They are, and every building. I've had birds run into the glass window of my house. Everybody has. Every time we put a facility on the landscape, it's going to take birds. The question is, is it going to have a population-level impact? We need to figure that out."

'Prosecutorial discretion'

Legal experts do not expect bird deaths to thwart solar development, even as the Justice Department cracks down on wind farms that kill significant numbers of birds and extracts major penalties under the Migratory Bird Treaty Act.

"Enforcement of the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act essentially boils down to prosecutorial discretion," said Andrew Bell, an energy attorney for Marten Law in San Francisco. "Prosecutorial discretion is in turn founded largely on a demonstration of good-faith efforts by companies to address phenomena like avian impacts."

Solar developers typically meet that burden by agreeing to mitigation and bird and bat conservation strategies as a condition of federal permits, Bell said.

Solar farms, particularly future power towers, may need to do more if they want to maintain their green credentials.

George, of Audubon California, said he's reserving judgment on Ivanpah until more studies are completed.

"Right now, we're cautious and not willing to support the permitting of another power tower," he said.

George visited the Ivanpah plant last fall and said the operator had roughly two dozen biologists that day fanning the property looking for dead birds with the help of scent dogs. Through binoculars, he saw plenty of streamers in the sky, though he said it was not clear whether any of them were birds.

"It was a great mystery," he said. "It wasn't the nightmare Wes Craven movie I had in my mind."

WHITE HOUSE:

SOTU guest signals focus on climate change

Robin Bravender, E&E reporter

Published: Monday, January 19, 2015

First lady Michelle Obama will host a sea-level rise researcher at the State of the Union address tomorrow, a signal that climate change will be a major component of the president's speech.

Nicole Hernandez Hammer, a sea-level expert in southeast Florida, was one of nearly two dozen guests announced today by the White House. The first lady typically invites guests to the event who embody the themes the president plans to highlight in his speech.

"Growing up in South Florida, Nicole Hernandez Hammer knows firsthand the impacts of climate change and sea level rise and is raising awareness to the disproportionate effects felt along the coast and beyond," the White House said today in a statement. "As a sea level researcher, she has studied how cities and regions most vulnerable to the effects of climate change also have large concentrations of Hispanics."

Hernandez Hammer is an immigrant from Guatemala with Cuban heritage who works on issues that disproportionately affect the health of Hispanics, according to the White House.

Her research has involved organizing teams to produce sea-level rise vulnerability maps and assessments of natural and urban systems for state and federal government agencies, according to Moms Clean Air Force, a project of the national environmental group Environmental Defense Fund. Hernandez Hammer is a field organizer for Moms Clean Air Force, the site says; she's also a climate change consultant for groups including the Union of Concerned Scientists and the World Resources Institute.

KEYSTONE XL:

Neb. landowners file new lawsuits as federal review moves on

Manuel Quiñones, E&E reporter

Published: Monday, January 19, 2015

Updated at 1:07 p.m. EST.

Nebraska farmers and ranchers have reignited state litigation over the constitutionality of a 2012 law that let the governor pick the route for TransCanada Corp.'s Keystone XL oil pipeline.

The Nebraska Supreme Court upheld the law earlier this month but did so despite a majority of justices maintaining it is unconstitutional and having no justice rule in its favor (*Greenwire*, Jan. 12).

The Nebraska Constitution requires a supermajority of Supreme Court justices to weigh on a law's constitutionality. But three of seven justices stayed mum because they maintained the plaintiffs lacked standing to sue.

Attorneys Dave Domina and Brian Jorde said two new complaints filed Friday in York and Holt counties should resolve the impasse because the plaintiffs are landowners who have heard already from TransCanada about using their land under the 2012 law.

"The taxpayer standing issue is not involved in the new cases," Domina said. "We know now what we did not know when the first case was filed: the identities of the targeted landowners."

Domina added in a statement, "We are committed to getting an answer to the question: is the current Nebraska law constitutional or not under our State structure. These cases will smoke out the final three votes on the Supreme Court."

The previous litigation targeted state officials. This time, landowners are suing TransCanada for moving forward with developing the project under the contested law, said Domina, an unsuccessful Senate candidate last year.

TransCanada responded in a statement, "This is not unexpected. We recognize that some people will continue to oppose this project no matter what process is followed in order to continue to put up roadblocks." The company said it had secured land from most Nebraska landowners.

Nebraska litigation was a key reason the State Department halted work on the company's application to cross the U.S.-Canada border. The Obama administration said the process would resume after the state Supreme Court's ruling.

On Friday, the State Department told eight agencies identified in Executive Order 13337, related to trans-boundary pipeline approvals, they had until Feb. 2 to provide comments on whether KXL should be permitted.

"Once we have received all of the information needed for completion of the review, that information has been analyzed, and the final documents have been prepared, a determination will be made," State said.

Once Secretary of State John Kerry makes a determination on whether KXL is in the national interest, agencies will have another 15 days to comment on whether they agree or disagree. President Obama can step in to make a final decision at any time.

On Friday, U.S. EPA Administrator Gina McCarthy said her agency would comment on one of the more controversial aspects of KXL -- whether the pipeline would have a significant impact on climate change.

Click here to read the Holt County complaint.

Click here to read the York County complaint.

SENATE:

Steyer pledges one-term limit if he can't meet green goals

Published: Monday, January 19, 2015

Billionaire climate activist Tom Steyer is promising supporters of his potential Senate campaign that he would serve only one term if he didn't make progress on environmental, economic and education goals.

Steyer, who's mulling a 2016 run for California Sen. Barbara Boxer's (D) seat, said he would not run for a second six-year term if he didn't put his plans into action.

Steyer's top environmental goal would be to have the federal government commit to a greenhouse gas

reduction policy similar to California's 2006 law. That landmark legislation seeks to bring emissions to 1990 levels by 2020. His goal would be to remove carbon dioxide from the air instead of simply slowing its emissions rate.

The former hedge fund manager is also hoping to close tax loopholes and reform the federal income tax to make the highest earners pay as much as the middle class (Christopher Cadelago, *Sacramento Bee*, Jan. 18). **-- AW**

FEDERAL AGENCIES:

Scientists want food pyramid to account for carbon footprint

Published: Monday, January 19, 2015

A panel of federal scientists is proposing changes to the food pyramid that would take into account different foods' impact on climate change.

Certain foods, such as meat, produce large carbon footprints. Cattle and other livestock belch greenhouse gases, degrade landscapes and require large amounts of water to survive.

The United Nations has pushed for countries to revise dietary policies to include climate impacts, but so far none has.

Representatives from the cattle industry and congressional Republicans have slammed the idea, but environmentalists and animal rights groups welcomed the proposal.

"This is a way to get people to think about how their food is produced," said Kate Clancy, a sustainability advocate who advised the federal panel. "We should not be making it seem like there is no connection between what you eat and its impact on the planet" (Evan Halper, *Los Angeles Times*, Jan. 18). **-- MH**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Tue., January 20, 2015

READ FULL EDITION

1. TECHNOLOGY:

Probing the unknowns of what warming does to the Earth's fertility

SMAP, the Soil Moisture Active Passive instrument, will be launched on Jan. 29 into space, where it will unfurl a giant antenna that looks like a circular fence. As temperatures rise and the summer season lengthens, the soils in Alaska and the Arctic have been thawing. Forests are getting drier and wildfires now rage more frequently, releasing carbon, so scientists do not know how much longer these forests will remain carbon sinks. Measurements are key, and this is SMAP's task. Once it is in space, it will provide scientists with the most frequent and highest-resolution measurements of exactly how frozen the ground is in the northern latitudes.

2. ELECTRICITY:

Potsdam, N.Y., tries to 'island' itself to avoid storm-driven power outages

Were it not for two large universities and a steady flow of traffic on U.S. 11, Potsdam, N.Y., might be just another Norman Rockwell-inspired village along the U.S.-Canada border between Lake Ontario and Montreal. But Potsdam claims in abundance what only a few other upstate towns have -- bad weather, brainpower and a unique set of conditions for engineers trying to build the nation's first fully functional municipal microgrid for the village of Potsdam.

TODAY'S STORIES

3.PUBLIC OPINION:
Poll shows a 'surprise,' broad public support for EPA carbon rule
4.TRANSPORTATION:
How cities and businesses are beginning to conquer gridlock
5.RESEARCH:
Climate change is causing Calif.'s forests to shrink -- study
6.OCEANS:
Researchers see rise in ocean levels accelerating
7.WATER:
Algae blooms could spread in freshwater lakes -- study
8.CARBON MARKETS:
E.U. expected to take first step to bolster carbon market
9.DROUGHT:
Massive rivers in the sky could end Calif. drought
10.ENERGY:
Island in Maine looks to Denmark for inspiration
11.TECHNOLOGY:
China develops electric car infrastructure from Beijing to Shanghai

E&ETV'S ONPOINT

12.NATURAL GAS:
ANGA's Durbin talks SOTU, impact of White House methane proposal on industry

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., January 20, 2015

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1.SAFETY:

In Texas oil patch, sheriffs struggle with highway deaths amid state budget cuts

KENEDY, Texas -- As Texas' oil production has reached 40-year highs, traffic deaths have spiked in oil-producing counties, stretching the resources of local police agencies and angering local residents. Karnes County, an hour southeast of San Antonio, may be the starkest example.

TOP STORIES

2.GRID:
Reliability requires early warnings about natural gas supply threats -- NARUC study
3.SAFETY:
OSHA investigating Bakken oil tank death
4.STATES:
From nuclear to fracking, Ill.'s new governor faces buffet of energy issues

ELECTRICITY

5.REGULATION:
Texas lawmakers question state board's rules on utility rates

6.TECHNOLOGY:
Icelandic data center gets $98M cash infusion
7.SECURITY:
Partnership offers scorecard for risks to grid
8.PIPELINES:
Boston residents oppose natural gas transmission project near quarry blast zone
OIL AND GAS
9.ARCTIC:
Top driller says 'short-term oil prices' won't guide long-term plans
10.FINANCE:
Oil services leader sees opportunity in merger of its rivals
11.LOUISIANA:
Drillers, law professors debate merits of public trust in coastal restoration case
12.PEOPLE:
ConocoPhillips appoints 2 new directors
13.OIL:
Northeast expects cheaper heat this winter
14.OFFSHORE DRILLING:
Repsol cancels Canary Islands exploration
15.HYDRAULIC FRACTURING:
Denton ban opposition spent more than $500K just before Election Day
E&ETV'S ONPOINT
16.NATURAL GAS:
ANGA's Durbin talks SOTU, impact of White House methane proposal on industry

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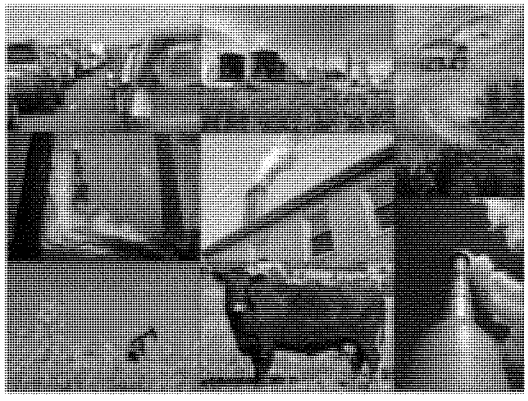

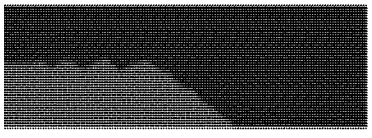

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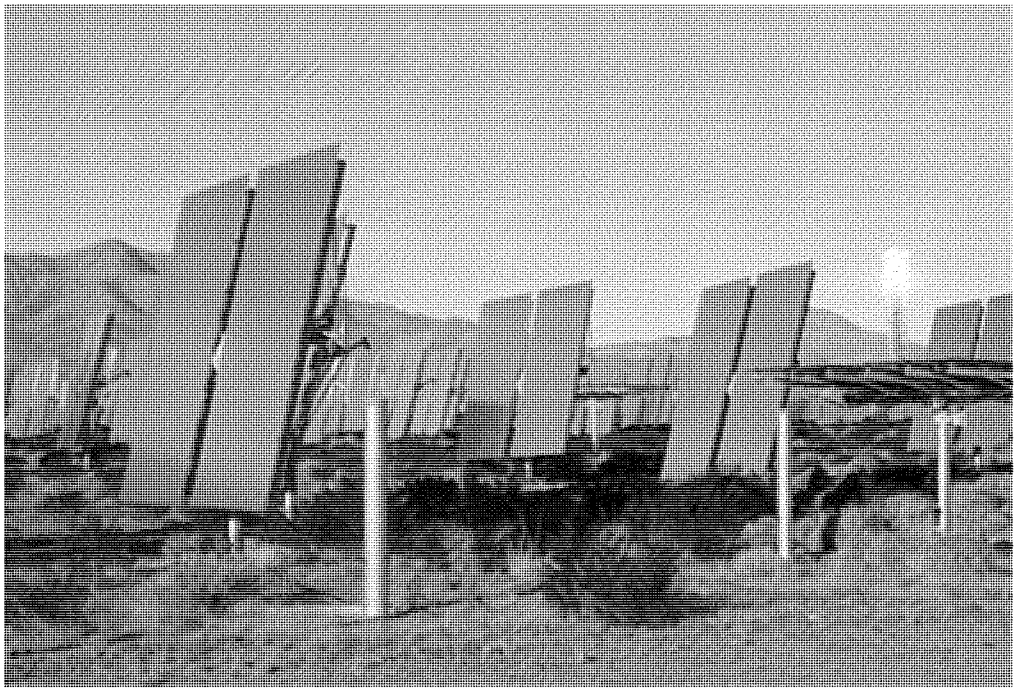

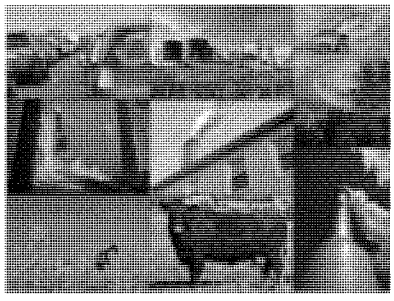

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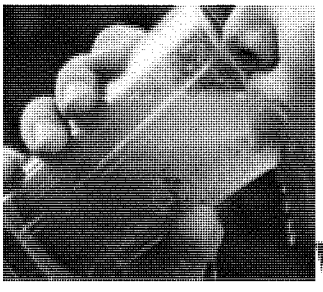
Sent: Tue 1/20/2015 4:13:43 PM
Subject: Water Law News for January 20, 2015



Water Law News

for January 20, 2015

Bloomberg BNA Daily Environment Report™

EPA

McCarthy's 2015 EPA Agenda Topped
By Rules on Power Plants, Water, Methane

The Environmental Protection Agency in 2015 will finalize regulations on carbon emissions from power plants and the jurisdictional reach of the Clean Water Act, and it will propose emissions rules for heavy-duty vehicles and methane from...

Mining

Canada Conditionally Approves Gold Mine Project

Canada has concluded that the $885 million Rainy River gold mine project in northern Ontario will not cause significant environmental impacts, Environment Minister Leona Aglukkaq said Jan. 12 in a decision statement. The Canadian Environmental...

Oil & Gas

As Drilling Nears Urban Areas in Colorado,
Broader Planning May Become Necessary

Colorado's top oil and gas regulator suggested that requiring operators to enter into comprehensive drilling plans may be one way to address the increasing concerns of local governments as energy development ramps up near urban areas...

Water Pollution

Administration Launches Financing Center,
Municipal Bond for Water Infrastructure

Vice President Joe Biden announced Jan. 16 the launch of a new center at the Environmental Protection Agency that would serve as a one-stop shop for communities, municipal utilities, and private entities seeking financing for water and wastewater...

Water Pollution

New Washington State Toxics Standards
Proposed to Reflect Fish Consumption Values

The Washington Department of Ecology—under pressure from the Environmental Protection Agency—proposed changes to how it calculates water quality standards by increasing its assumption of

how much fish people eat....

China

Government Plans Action to Address Air, Water Pollution, Clarify Climate Policies

China is expected to strengthen its main air pollution law and issue an action plan to fight water pollution in 2015 as it continues to move forward on two of its most pressing and publicly contentious environmental issues....

International Maritime Organization

Reporting Ships' Carbon Dioxide Emissions, Ballast Water Pact Ratification Top Priorities

Hitting upon an agreement to reduce global shipping's carbon dioxide emissions and improving the energy efficiency of ships will be environmental priorities for the International Maritime Organization in 2015, according to a spokeswoman...

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Inside EPA's **Risk Policy Report**, 01/20/2015

http://insideepa.com/newsletters/risk-policy-report

Latest News

McCarthy Pushes Major EPA Rules Despite Budget Threats, GOP Attacks

EPA Administrator Gina McCarthy is pushing ahead with major EPA climate and water rules despite push-back from the Republican Congress and the threat of fiscal year 2016 budget cuts, saying existing FY15 funding will ensure release of EPA's power plant climate rules and other policies and that GOP attacks do not affect her work.

EPA Unveils Policy For Enforcing Ship Fuel Rule In Low Emissions Areas

EPA has unveiled an enforcement policy for how it will penalize ship owners and operators for violating new fuel sulfur limits for vessels steaming near U.S. coastlines with low emissions requirements, aiming to deter potential violations with the threat of fines up to $25,000 per infraction and to quickly resolve noncompliance claims.

North Dakota's Radioactive Drilling Waste Disposal Plan May Set Precedent

North Dakota is proposing new regulations on radioactive drilling waste that significantly loosen the concentration-based radiation standard for materials to be deposited in solid waste landfills -- the first in an expected wave of rules dealing with the spike in such waste from hydraulic fracturing operations, and one that could set a standard for other states.

White House Launches New Water Infrastructure Financing Initiatives

The White House is launching a Water Finance Center at EPA and is proposing the creation of a new type of municipal bond to level the playing field for municipalities seeking private investment as part of a host of initiatives intended to improve water and other infrastructure by facilitating public-private partnerships (P3s).

States Moving To Implement Expanded EPA Green Infrastructure Funding

States are beginning to implement new Clean Water Act (CWA) provisions expanding the types of green infrastructure projects that can be paid for with clean water state revolving fund (SRF) money, efforts that could be enhanced by a new EPA interpretive guidance the agency finalized Jan. 6.

Greenwire

KEYSTONE XL:

Neb. landowners file new lawsuits as federal review moves on

Manuel Quiñones, E&E reporter

Published: Monday, January 19, 2015

Updated at 1:07 p.m. EST.

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Click here to read the Holt County complaint.

Click here to read the York County complaint.

FISHERIES:

Good news for the 'most important' fish in the sea

Emily Yehle, E&E reporter

Published: Monday, January 19, 2015

The Atlantic menhaden is not overfished, but its numbers are still below historical levels, according to a new stock assessment that promises to rekindle a debate over how to manage the tiny forage fish.

The menhaden is often called the "most important" fish in the sea because of its key role as food for everything from striped bass and whales to ospreys and egrets. But it's also commercially profitable, fueling a large industry that harvests the oily fish for diet supplements and animal feed.

The new assessment -- released last week -- comes two years after fishery managers from 15 states came together to enact the first-ever catch limit on menhaden for the East Coast. That 2012 limit decreased catch by 20 percent, raising objections from the menhaden industry and cheers from environmentalists and recreational fishermen (*Greenwire*, Nov. 9, 2011).

The Atlantic States Marine Fisheries Commission (ASMFC) is poised to look at the issue again, using the new stock assessment as a guide. The fish are mostly caught in state waters, meaning they are not regulated as a federal fishery under the Magnuson Stevens Fishery Management Act.

But stakeholders are still figuring out the finer points of a 600-page technical document that uses new models and assumptions.

All agree that it is good news. While the commission has previously determined that the menhaden was probably overfished, the new stock assessment found that it is "not overfished and overfishing is not occurring." In short, the fish's numbers and biomass have rebounded since 2013.

The menhaden fishing industry -- dominated by main harvester Omega Protein -- asserts that such conclusions show the 2012 assessment was "far too pessimistic" and immediately called for less harsh catch limits.

"This new assessment exemplifies the impact of pursuing and incorporating the best available science in menhaden management," the Menhaden Fisheries Coalition wrote in a press release. "If these models and data sources were available in 2012, it appears the assessment would have yielded significantly different results."

But environmentalists warned that the assessment still shows a fish in trouble. The number of fish is still well below historical levels, they say.

Joseph Gordon, the director of northeast oceans at the Pew Charitable Trusts, said fishery managers are now "at a crossroads." They can move forward to a "modern management system" that looks at the fish's role in the ecosystem, he said, or they can return to a past regulatory approach that caused the population to plummet.

"There are signs that it's better, but there are also reasons for caution," Gordon said.

While the stock assessment shows a healthier menhaden population than previously thought, it also appears to support the development of ecosystem-based management. It recommends that scientists, fishery managers and stakeholders work together to develop ecological reference points that "reflect a broader ecological perspective on the Atlantic menhaden fishery."

"As a species both valued commercially in its own right, and as an important prey species for other valued predatory Atlantic coast fish species, Atlantic menhaden management should examine trade-offs among these two potentially, but not necessarily conflicting values for the species," the report's authors wrote.

Bill Goldsborough, a member of the ASMFC, said the stock assessment is an improvement over the 2012 estimates. But he also said he plans to delve into how scientists came up with the new assumptions and data when the commission meets Feb. 3.

For example, scientists decided to classify 2-year-old menhaden as reproducing, while before they set mature fish at 3 years old. His question: Was that because they were wrong before, or because the fish is under enough stress to reproduce earlier?

"I think this assessment is positive news," said Goldsborough, who is the fisheries director at the Chesapeake Bay Foundation. "It's a total revision of the population model that they've been using. I'm looking forward to the meeting in a couple of weeks."

PEOPLE:

Top new DOJ enviro attorney takes reins of Gulf spill litigation

Published: Monday, January 19, 2015

The new head of the Department of Justice's Environment and Natural Resources Division, John Cruden, has a long history with the department.

Cruden, 68, worked as a career lawyer at DOJ for about 20 years and once supervised the Exxon Valdez case. Now he's heading to New Orleans to take the lead in the next phase of litigation over the 2010 Deepwater Horizon oil spill.

"It clearly ranks up there as one of the most significant environmental disasters of our lifetime and deserves the nation's attention to look and to watch and all of our energy to make sure nothing like this ever happens again," Cruden said.

Cruden, who supervises 650 employees, will play a key role in the next two years overseeing not only the litigation against BP PLC, but also defending legal challenges to President Obama's Clean Power Plan and working to stop wildlife trafficking.

Cruden said he also wants to work with Native American tribes to protect the environment within reservations and defend the Indian Child Welfare Act (Carrie Johnson, NPR, Jan. 19). **-- SP**

OIL AND GAS:

Colo. panel split over question of local control

Jennifer Yachnin, E&E reporter

Published: Monday, January 19, 2015

GREELEY, Colo. -- Members of Colorado's Oil and Gas Task Force remained sharply divided Friday over how much say local governments should have in future oil and gas development in the state -- suggesting that the panel could face a difficult fight when it meets next month to publicly discuss its legislative and regulatory recommendations.

The 21-member panel, created by Gov. John Hickenlooper (D) last year as part of a compromise agreement to kill a series of ballot initiatives that called for greater restrictions on hydraulic fracturing in the state, is tasked with recommending legislative protections for Coloradans who live near existing or proposed oil and gas drilling sites, as well as balancing state and local energy regulation.

Following a series of meetings around the state -- including panels of local officials and public health

experts and hours of public testimony -- the task force is set to begin formally debating and adopting its recommendations next month at public meetings in Denver.

Despite those months of discussion, however, in the second half of a two-day session here in Greeley --- located in Weld County, which claims 40 percent of the state's active wells -- task force members expressed sharply polarized views on how much influence local governments should have in approving new energy development.

Task force member Peter Dea, president and CEO of Cirque Resources LP, argued that local jurisdictions should not be given veto authority over new wells, pointing to communities that have passed moratoriums on development, including Boulder County.

"We need to be reminded that we've got irrational communities out there like Boulder," Dea said Friday, in a discussion group that included half the panel.

His remark prompted former Boulder mayor and Boulder County Commissioner Will Toor to chide: "Peter, I don't think we should attack individual communities."

Dea later continued to argue against giving a "check box" option to counties to approve new wells, adding: "The ultimate goal is to engage more of the local input, facilitate discussion with the stakeholders. ... You wouldn't want to have a situation where a community says, 'I can check the box no,' and not even given themselves the advantage of working with industry on a reasonable basis."

Task force members also quibbled about the need to set state standards on health and safety issues, such as increasing the current 1,000-foot setback in "urban mitigation" areas, or whether such decisions should be left to each locality.

"One size doesn't fit all, so whatever the solution is, we need to all acknowledge it's different situations across the state, from way out in Timbuktu to urban drilling. It needs to be some kind of flexibility," Dea said.

During the session, the full task force also participated in a poll on several broad policy questions, although the members fell shy of reaching a two-thirds vote on any of the topics.

In response to a query on whether the task force should recognize the "benefits" of consolidating multi-well production facilities located near residential areas, 65 percent of the panel agreed, while 30 percent said they would agree to the statement with some changes and 5 percent did not agree.

Similarly, 60 percent of the task force agreed with a statement that the "lack of clarity" over local government authority of energy development "is creating significant tension" over oil and gas development in the state. Another 20 percent agreed if allowed to modify the statement, and 20 percent did not agree.

Divisions among the task force members could prove problematic as the group aims to meet a late February deadline to make legislative recommendations along with potential regulatory or other proposals to state lawmakers.

The panel, which includes six energy industry representatives, needs to garner a two-thirds approval to request any new legislation from state lawmakers, but only a majority vote to recommend regulatory changes or to support an "existing request," such as a budget increase, for state offices.

Task force members will begin to formalize their recommendations this week in individual proposals submitted to the Keystone Center, a private entity that serves as a moderator for the group's meetings.

Those proposals will be publicly discussed at the task force's next meeting, Feb. 2 in Denver.

"We're still in a space where we really need to continue to encourage recommendations to come out. I know there's been some tentativeness in getting some of those ideas out there," the Keystone Center's Sarah Alexander said Friday.

OIL AND GAS:

BP lays off 200 employees as prices plummet

Published: Monday, January 19, 2015

BP PLC has announced it will lay off 200 staff and cut 100 contracting jobs due to plummeting oil prices.

The cuts will be made to onshore, not offshore, positions, the company announced Thursday.

Regional President Trevor Garlick said that BP must take "specific steps" because of the current economic environment but that the company is still committed to its North Sea operations.

Union officials said they worry other companies will follow suit if oil prices continue to drop. The price for benchmark U.S. crude has fallen 41 percent in the past three months (*Casper* [Wyo.] *Star-Tribune*, Jan. 18). **-- AW**

CHEMICAL SECURITY:

Iowa water plant agrees to reinstate risk plan for large storage of chlorine

Sam Pearson, E&E reporter

Published: Monday, January 19, 2015

An Iowa water treatment plant has agreed to file a risk management plan by July 31 after U.S. EPA officials found the site had dropped out of the key safety program more than five years ago.

Records show the John W. Pray Water Treatment Plant in Fort Dodge, which stores thousands of pounds of chlorine, filed a safety plan in 2004 but failed to update it five years later, as required.

Still, it took years after the city-run plant stopped complying for EPA to take action. George Hess, an environmental scientist at EPA's Region 7, said officials flagged the plant when it failed to update its security plan in 2009, but it took until August 2013 for inspectors to visit. It was the first time safety officials had viewed the facility.

"We found out that not only did they miss the deadline, but they actually weren't implementing a risk management program," Hess said.

The violations included failing to maintain operating procedures for safely operating the facility, update safety records, test equipment and evaluate handling of the chlorine, according to the administrative compliance agreement EPA reached with the city earlier this month. The city could face fines of up to $37,500 per day if it does not file a risk management plan by July 31 -- more than six years after its previous plan expired.

EPA secured the administrative agreement after the plant operators took no action after receiving a copy of the inspection report showing they were not following chemical management rules, Hess said.

"We believe we have a very safe mechanical system as well as process controls," David Fierke, Fort Dodge's city manager, said in an email. "I don't believe we ever put employees or the general public in danger. The EPA has very detailed, rigorous requirements related to the RMP for the storage of chlorine gas. We don't dispute the necessity for it, so we are working diligently to comply."

The Clean Air Act requires that facilities that handle more than specified quantities of certain chemicals file risk management plans with EPA and local emergency response committees. EPA finalized rules for the program in 1996, and compliance has been mandatory since 1999, though the agency still encounters facilities that fail to update the plans within five years or provide incomplete information about the chemicals they use. When the plant filed its risk management plan in 2004, it reported that it stores up to 9,000 pounds of chlorine -- well above the 2,500 pounds at which a risk management plan is required.

Greenpeace Legislative Director Rick Hind said in an email that a 1-ton cylinder of chlorine could put residents within 2.5 miles of the site at risk if it was released due to a plant mishap or intentional act. The plant's storage levels indicate it could have had at least four 1-ton cylinders of chlorine on the premises.

EPA is working on new regulations to update the risk management program, though it's not clear how aggressive the new rules will be or whether they will be completed by the end of President Obama's term (*Greenwire*, Oct. 30, 2014).

Though EPA, the Department of Homeland Security, the Occupational Safety and Health Administration, and others have tried to work together since 2013 to find "outlier" chemical facilities that do not participate in safety programs, officials at EPA's Region 7 said the enforcement action against the treatment plant predates the initiative.

Some chemical safety advocates have said even with a risk management plan, it's unsafe and unnecessary to store so much chlorine. Some water treatment facilities have shifted to alternative processes like liquid bleach or ultraviolet light, or have arranged to receive more frequent shipments of chlorine so that lower quantities of the chemical are kept on site. As a result, they aren't required to meet the stricter emergency preparedness and security requirements that are triggered by large chemical stockpiles.

Only three states -- Texas, Illinois and California -- have more facilities that handle dangerous chemicals than Iowa, according to a Congressional Research Service analysis released by Sen. Ed Markey (D-Mass.) last year, though facilities closer to major cities pose a risk to far larger numbers of people. The CRS also found at least 373 facilities of the 12,544 in the program -- just under 3 percent -- have missed the five-year deadline to update their plans.

WATER POLLUTION:

Company linked to W.Va. spill cited for violations

Published: Monday, January 19, 2015

A company with ties to Freedom Industries Inc., the firm that leaked a coal-cleaning chemical into Charleston, W.Va.-area drinking water supplies last year, has been cited for similar environmental violations.

The new company, Lexycon, has been cited eight times by state regulators since September for pouring chemicals without a permit, lacking adequate spill containment systems and storing tanker trailers of unknown chemicals. Lexycon also is storing 4-methylcyclohexane methanol, or MCHM, at the site despite an earlier promise that it would not work with that chemical.

Lexycon has close ties to Freedom Industries and its former president, Gary Southern. Two of the six Freedom officials facing criminal charges over the MCHM leak have consulted for Lexycon.

Lexycon operates a Nitro, W.Va., site to which Freedom moved its chemicals shortly after the MCHM spill at its location next to the Elk River. Lexycon bought the site from Freedom three months after the chemical leak.

Lexycon's founder, David Carson, had previously done business with Freedom Industries and has hired employees who used to work for the bankrupt firm.

"I've noticed that when something goes wrong, you sell the company, you change the name," said Maya Nye of the advocacy group People Concerned About Chemical Safety. "Then, suddenly, it looks like a shiny new package. But the way things operate is very similar. It's just kind of status quo" (Jonathan Mattise, AP/Charleston [W.Va.] *Gazette*, Jan. 16). **-- SP**

MONTANA:

Pipeline spills oil into Yellowstone River

Published: Monday, January 19, 2015

A ruptured oil pipeline spilled up to 50,000 gallons of oil into the Yellowstone River near Glendive, Mont., officials said yesterday.

The Bridger Pipeline Co. said the spill happened at about 10 a.m. Saturday. The company said it thinks between 300 and 1,200 barrels of oil spilled.

State officials said the river was frozen over at the area where the spill occurred, so not all the oil may have entered the water.

"Our primary concern is to minimize the environmental impact of the release and keep our responders safe as we clean up from this unfortunate incident," said Tad True, Bridger Pipeline's vice president (AP/*Fuel Fix*, Jan. 19). **-- SP**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Tue., January 20, 2015

READ FULL EDITION

1.TECHNOLOGY:

Probing the unknowns of what warming does to the Earth's fertility

SMAP, the Soil Moisture Active Passive instrument, will be launched on Jan. 29 into space, where it will unfurl a giant antenna that looks like a circular fence. As temperatures rise and the summer season lengthens, the soils in Alaska and the Arctic have been thawing. Forests are getting drier and wildfires now rage more frequently, releasing carbon, so scientists do not know how much longer these forests will remain carbon sinks. Measurements are key, and this is

SMAP's task. Once it is in space, it will provide scientists with the most frequent and highest-resolution measurements of exactly how frozen the ground is in the northern latitudes.

2.ELECTRICITY:

Potsdam, N.Y., tries to 'island' itself to avoid storm-driven power outages

Were it not for two large universities and a steady flow of traffic on U.S. 11, Potsdam, N.Y., might be just another Norman Rockwell-inspired village along the U.S.-Canada border between Lake Ontario and Montreal. But Potsdam claims in abundance what only a few other upstate towns have -- bad weather, brainpower and a unique set of conditions for engineers trying to build the nation's first fully functional municipal microgrid for the village of Potsdam.

TODAY'S STORIES

3.PUBLIC OPINION:

Poll shows a 'surprise,' broad public support for EPA carbon rule

4.TRANSPORTATION:

How cities and businesses are beginning to conquer gridlock

5.RESEARCH:

Climate change is causing Calif.'s forests to shrink -- study

6.OCEANS:

Researchers see rise in ocean levels accelerating

7.WATER:

Algae blooms could spread in freshwater lakes -- study

8.CARBON MARKETS:

E.U. expected to take first step to bolster carbon market

9.DROUGHT:

Massive rivers in the sky could end Calif. drought

10.ENERGY:

Island in Maine looks to Denmark for inspiration

11.TECHNOLOGY:

China develops electric car infrastructure from Beijing to Shanghai

E&ETV'S ONPOINT

12.NATURAL GAS:

ANGA's Durbin talks SOTU, impact of White House methane proposal on industry

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., January 20, 2015

READ FULL EDITION

1.SAFETY:

In Texas oil patch, sheriffs struggle with highway deaths amid state budget cuts

KENEDY, Texas -- As Texas' oil production has reached 40-year highs, traffic deaths have spiked in oil-producing counties, stretching the resources of local police agencies and angering local residents. Karnes County, an hour southeast of San Antonio, may be the starkest example.

TOP STORIES

2.GRID:
Reliability requires early warnings about natural gas supply threats -- NARUC study
3.SAFETY:
OSHA investigating Bakken oil tank death
4.STATES:
From nuclear to fracking, Ill.'s new governor faces buffet of energy issues

ELECTRICITY

5.REGULATION:
Texas lawmakers question state board's rules on utility rates
6.TECHNOLOGY:
Icelandic data center gets $98M cash infusion
7.SECURITY:
Partnership offers scorecard for risks to grid
8.PIPELINES:
Boston residents oppose natural gas transmission project near quarry blast zone

OIL AND GAS

9.ARCTIC:
Top driller says 'short-term oil prices' won't guide long-term plans
10.FINANCE:
Oil services leader sees opportunity in merger of its rivals
11.LOUISIANA:
Drillers, law professors debate merits of public trust in coastal restoration case
12.PEOPLE:
ConocoPhillips appoints 2 new directors
13.OIL:
Northeast expects cheaper heat this winter
14.OFFSHORE DRILLING:
Repsol cancels Canary Islands exploration
15.HYDRAULIC FRACTURING:
Denton ban opposition spent more than $500K just before Election Day

E&ETV'S ONPOINT

16.NATURAL GAS:
ANGA's Durbin talks SOTU, impact of White House methane proposal on industry

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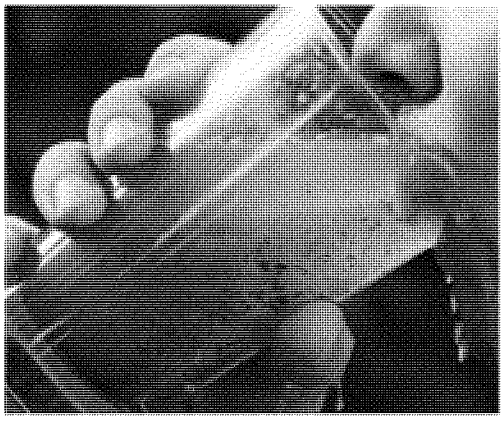

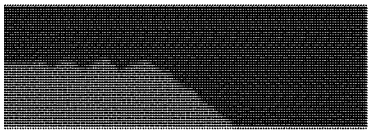

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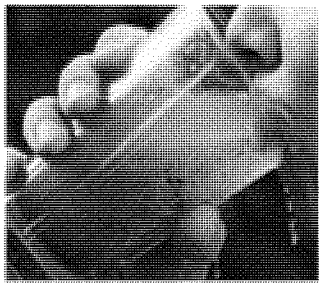

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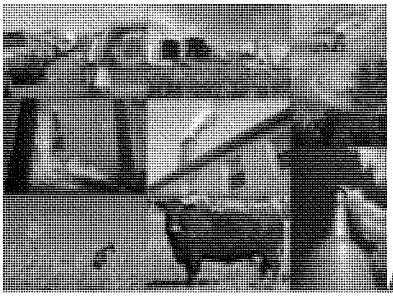

Air & Radiation Law News

for January 16, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

China Calls for Local Targets to Curb Coal Use

China asked four regions including Shanghai and Guangdong to set targets for reducing coal use by the end of June as part of efforts to curb pollution. Shanghai and the provinces of Guangdong, Jiangsu and Zhejiang are among eight "key regions"...

Air Pollution

State Agencies May Seek More Funding, Revisions in EPA Ozone Monitoring Proposal

A national association of state and local air agencies anticipates that it will seek increased federal funding to implement a proposal to extend the ozone monitoring season for most states, while the state that would see the largest change...

Air Pollution

Supreme Court Review of EPA Regulations Won't Be Enough to Save Coal-Fired Plants

The U.S. Supreme Court's decision to review government regulations forcing the closure of coal-fired power plants won't be enough to save those already scheduled to shut....

Asbestos

EnPro Industries Strikes $357.5 Million Deal on Future Garlock Asbestos Claims

EnPro Industries Inc., the non-bankrupt parent of bankrupt Garlock Sealing Technologies LLC, negotiated a settlement under which the official representative of future asbestos claimants will support court approval of a Chapter 11 plan...

Climate Change

Pope Francis Weighs in on Climate Change, Says Humans 'Slapped Nature in the Face'

Pope Francis has made his strongest statements yet on climate change, saying he believed it was "mostly" due to human activity, and he criticized United Nations climate negotiations for a "lack of courage."...

Climate Change

Scientists: Even Richer Nations Face Global Warming 'Danger Zone'

With prospects of containing global warming slipping away, a team of scientists urged policymakers to redouble their efforts to rein in pollution, saying human activity risks turning even rich nations into a "danger zone."...

Congress

House Bills Would Replace Gas Tax With Fee On Carbon, Bar International Climate Funding

House legislation introduced this week would repeal the current gas tax and replace it with a tax of $50 per metric ton of carbon dioxide and other greenhouse gas emissions....

Corporate Responsibility

World Bank Sells Record Green Bond Tied to 'Ethical' Companies

The World Bank sold $91 million of green bonds tied to an index of "ethical" companies, its largest offering of green bonds linked to an equity index and the first to be offered to individual investors....

Courts

Dozens of Environment Cases Being Litigated, Including High Court Review of Mercury Rule

Among the dozens of environmental cases U.S. courts will consider in 2015 are challenges to an Environmental Protection Agency rule limiting mercury emissions from power plants, the first-ever carbon dioxide limits for the plants and whether...

Emissions Trading

Warm Weather, European Economy Could Hurt EU Emissions Market

Europe's attempt to revive its carbon market is being thwarted by a lack of pollution....

Enforcement

EPA to Target High-Impact Cases in 2015, Address Coal-Fired Plants, Stormwater Issues

The Environmental Protection Agency will continue to focus its enforcement efforts on the "biggest pollution problems" in 2015, including coal-fired power plants, the agency's top enforcement official told Bloomberg BNA....

General Policy

European Parliament Lawmakers Criticize Plans to Withdraw Draft Air, Waste Laws

A majority of European Parliament lawmakers voted Jan. 15 against a European Commission plan to withdraw draft EU laws on air quality and waste management in order to revise and re-propose them....

Motor Vehicles

Japan Moves Toward Self-Service Stations As Prime Minister Talks of 'Hydrogen Era'

Japan will introduce self-service hydrogen filling stations and ease some regulations related to fuel cells to promote the technology, which carmakers including Toyota Motor Corp. are using in vehicles....

Regulatory Policy

House Eyes RAPID Expedited Permit Bill; Senate Regulatory 'Look-Back' Bill Introduced

Fresh off the success of passing a bill to overhaul federal regulatory procedures, House Republicans are signaling that they are readying a measure to expedite permits and other project approvals delayed by environmental reviews. ...

Right to Know

California Launches Rulemaking To Improve Proposition 65 Warnings

California's Office of Environmental Health Hazard Assessment released a proposed rulemaking Jan. 15 to improve the public warnings required under the state's right-to-know law, Proposition 65....

Taxes

Wind Power Industry Seeks Phaseout Of Tax Credit Amid Republican Scrutiny

The wind power industry is lobbying for a gradual phaseout of its production tax credit as it faces the reality that an increasingly skeptical Republican-controlled Congress may choose to let the lucrative incentive remain expired, according...

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Latest News

EPA Response To Advisors Resulted In Changed Libby Asbestos Risk Level

EPA adopted changes to its final non-cancer inhalation risk estimate for Libby amphibole asbestos that included a new, moderately less-strict, risk estimate for lung diseases from inhaling the fibers compared to the draft version, largely due to exposure-response analysis alterations recommended by agency science advisors, according to EPA documents.

EPA Urged To Halt Grants To New Jersey Over State's GHG Rule Opposition

Environmentalists are urging EPA to halt federal grants to New Jersey until the state drops its opposition to the agency's proposed greenhouse gas (GHG) rule for existing power plants, saying the agency should withhold thousands of dollars in funding for climate-related efforts in the state because of its refusal to take steps to cut GHGs.

News Briefs

EPA Grants More Time For Input On Aluminum NESHAPs

EPA is extending the deadline for public comment -- from Jan. 22 to Feb. 6 -- on two aluminum production national emissions standards for hazardous air pollutants (NESHAPs) following requests from industry groups who said they needed more time to weigh the complex air toxics rules in order to provide adequate input on them.

EPA Critics Fault Adequacy Of GAO 'Sue And Settle' Study

GOP lawmakers and conservatives are faulting as inadequate a Government Accountability Office (GAO) report finding little impact on EPA's regulatory agenda from rulemaking deadline settlements that critics call sue and settle, arguing that GAO failed to consider all such suits and relied too much on EPA's statements in the study.

EPA Defers PM2.5 NAAQS Designations For Three States

EPA is deferring a decision on issuing fine particulate matter (PM2.5) national ambient air quality standards (NAAQS) attainment designations for three states while it waits for additional air monitoring data to inform its eventual decision, but is moving to designate 14 areas in six other states as being in NAAQS nonattainment.

Greenwire

CLIMATE:

Imposing carbon price would spur bioenergy, slash emissions -- MIT study

Amanda Peterka, E&E reporter

Published: Thursday, January 15, 2015

Bioenergy production would boom and spur steep reductions in greenhouse gas emissions if a global price is slapped on carbon, Massachusetts Institute of Technology researchers say in a report released today.

Examining bioenergy production under a $15-per-metric-ton carbon price that would rise steadily to $59 in 2050, researchers found production hitting 150 exajoules by 2050 -- compared with below 50 exajoules without a carbon price.

Global greenhouse gas emissions would plunge 16 percent under that scenario, the report says, cautioning that the carbon price studied doesn't take into account land-use changes. Taking into account emissions from land-use changes, including deforestation, it says greenhouse gas reduction would be nearly 60 percent from the no-carbon-price baseline.

"The study is one of the most in-depth evaluations to date of how bioenergy might fit into a low-carbon future," MIT said in a release. "The research team developed a cutting-edge modeling tool covering a comprehensive range of bioenergy pathways."

The MIT Joint Program on the Science and Policy of Global Change says its study goal was to see how bioenergy would compete with other low-greenhouse-gas options on a level playing field.

The researchers used the Economic Projection and Policy Analysis model to create both the carbon price scenarios and assumptions about economic, productivity and population growth without a carbon price. The model examined seven first-generation biofuel crops and two cellulosic biofuel conversion technologies -- bioelectricity and heat.

The model also accounted for international trade, ethanol blending limits, changes in land and production costs, and existing policies such as the federal renewable fuel standard, among other factors.

"Biofuels are only one channel for bioenergy," said Niven Winchester, an environmental energy economist at MIT. "If you want to study how land can be used to meet our energy needs, you have to think of all the different ways to use what grows on that land -- including food, feed and fuel."

The carbon price scenario resulted in efficiency improvements and energy use reductions, the report says. Electricity consumption in 2050 dropped 19 percent, while there was 73 percent less electricity from coal.

With a carbon price in the MIT model, bioenergy use rose from 8.5 exajoules in 2015 to 152.4 exajoules in 2050 -- or about a quarter of global energy needs.

The model found that corn ethanol would be produced in the United States until 2025, when it would become uneconomical.

After 2025, cellulosic ethanol would become the primary form of bioenergy; by 2020, cellulosic ethanol would account for about 57 percent of the globe's total bioenergy consumption.

Increased energy prices under a carbon price would make grasses -- one of the main inputs for cellulosic ethanol -- more attractive, while cellulosic producers would face lower land costs than other biofuel producers, according to the report. Rising electricity prices would also increase the revenue that cellulosic producers could receive from producing electricity as a co-product.

Africa and Brazil would become the largest bioenergy producers in a world where cellulosic ethanol is the main form of bioenergy, the MIT study found.

"Africa can become a key player in supplying global energy, if agricultural expertise can be transferred to this region," Winchester said. "It has the right climate and a large amount of land, but also the potential for deforestation if policy safeguards aren't in place."

The growth in cellulosic ethanol assumes that production costs fall over the next 35 years and that ethanol-blending constraints disappear by 2030 partly through the use of more flex-fuel cars.

MIT found that pricing greenhouse gas emissions from bioenergy land-use changes significantly increases the amount of greenhouse emission reductions that occur as a result of bioenergy expansion.

Pricing land use changes would prompt a global reforestation of 800 million hectares between 2010 and 2050, according to the study. In 2050, cumulative carbon-dioxide-equivalent emissions would be 37,381 million metric tons if land-use changes were priced, compared to 74,140 million metric tons if they were not.

"The report concludes that changes spurred by the carbon price, including bioenergy production, could cut greenhouse gas emissions by more than half, with a catch -- to achieve the cut, the carbon price must cover emissions from changing land use," MIT said. "Without this safeguard, deforestation becomes a major concern as forests are cleared to make way for farmland."

EPA:

Stalled Obama nominee starts as science adviser

Robin Bravender, E&E reporter

Published: Thursday, January 15, 2015

President Obama's nominee to head U.S. EPA's scientific research office started a new job at the agency this week as his confirmation has been held up for more than a year.

Thomas Burke, Obama's pick to lead EPA's Office of Research and Development (ORD), started Monday as the agency's science adviser and the deputy assistant administrator in ORD, according to an announcement sent to staff this week.

Burke was first nominated for the research chief job in November 2013, but his nomination is one of six for high-profile EPA posts that have been languishing in the Senate amid political gridlock. Several of Obama's picks for federal energy posts won confirmation just before Democrats relinquished their control of the Senate last year, but no EPA nominees were among them, and it appears unlikely that the Senate Republican majority will approve them anytime soon.

Like Burke, several other nominees awaiting confirmation are also working at the agency. EPA acting air chief Janet McCabe was nominated to head the air office in December 2013 but still hasn't been approved; Ken Kopocis, who was picked to lead the agency's water shop in 2011, is deputy assistant administrator in that office.

Burke's new appointment was first reported by *Inside Washington Publishers*.

Before starting at EPA this month, Burke was a professor and associate dean for public health practice and training at the Johns Hopkins Bloomberg School of Public Health in Baltimore. He was previously deputy commissioner of health for New Jersey and director of the Office of Science and Research in the New Jersey Department of Environmental Protection and served on EPA's Science Advisory Board.

In ORD, Burke will be working under Lek Kadeli, who is acting as chief of the research branch.

EPA's former science adviser, Glenn Paulson, stepped down from his post last April to join ORD, while his slot was temporarily filled by Robert Kavlock, ORD's deputy assistant administrator for science (*E&ENews PM*, April 30, 2014).

"We look forward to Tom's leadership as he works closely with Lek Kadeli and others in ORD to continue advancing our scientific research that so importantly factors into our policy decisions," said the memo sent to staff this week. "Given his deep scientific and management background, Tom is uniquely well positioned to provide invaluable expertise in shaping the agency's science efforts."

DOE:

Director of Obama nuclear-waste panel picked for top spot at DOE

Hannah Northey, E&E reporter

Published: Thursday, January 15, 2015

The White House has appointed the staff director of President Obama's Blue Ribbon Commission on nuclear waste to the second-highest post at the Department of Energy's Office of Nuclear Energy.

John Kotek, now a managing partner at Gallatin Public Affairs in Boise, Idaho, will join DOE on Jan. 26 as principal deputy assistant secretary in the nuclear office.

Kotek, 47, will oversee DOE's strategy for managing spent fuel from nuclear reactors and high-level radioactive waste and nuclear research and development programs and infrastructure -- including the Idaho National Laboratory, according to a Gallatin release.

Kotek served in 2012 as the staff director of Obama's Blue Ribbon Commission on America's Nuclear Future, which prepared reports on the United States' decades-long impasse over nuclear waste storage.

He joined Gallatin in 2007 after working at national labs and DOE.

From 2003 to 2006, he served as the deputy manager of DOE's Idaho Operations Office, where he helped develop and manage the Idaho National Laboratory contract.

Before joining DOE in 2003, Kotek worked as the research program manager at Argonne National Laboratory, directing the lab's participation in an international effort to develop next-generation nuclear energy systems.

Kotek was the American Nuclear Society's 2002 Glenn T. Seaborg congressional fellow, serving in the office of then-Sen. Jeff Bingaman (D-N.M.), the former chairman of the Senate Energy and Natural Resources Committee.

Kotek also held several positions at DOE's Office of Nuclear Energy, Science and Technology. He has a bachelor's degree in nuclear engineering from the University of Illinois and a master's in business administration from the University of Maryland.

ENERGY POLICY:

API launches ad campaign, keeps KXL focus ahead of State of the Union

Manuel Quiñones, E&E reporter

Published: Thursday, January 15, 2015

The American Petroleum Institute said this morning it would launch an ad campaign to coincide with the president's State of the Union address scheduled for Tuesday.

API CEO Jack Gerard said the effort was to focus Americans on the changing landscape from "20th-century energy scarcity to 21st-century energy abundance," largely thanks to shale oil and gas drilling. The ads will appear on national television, cable, radio and online.

"If history is any guide, President Obama's State of the Union address will include a mix of rhetoric claiming credit for energy achievements with a list of policy proposals that would actually undermine them," he said, blasting the administration's new methane emissions reduction plans as an example.

The trade group is already running an ad focused on approval of the Keystone XL oil pipeline from Canada. And today, Gerard again pressed the Obama administration on the issue.

Gerard said API was working with congressional leaders on pending legislation to bypass the president in approving the pipeline's trans-boundary crossing.

Asked whether he supported the inclusion of an amendment to lift the crude export ban, Gerard said, "I think it's very clear there's an effort to pass this bill cleanly." He said there would be time later this Congress to discuss other API priorities.

A newly released CNN/ORC International Inc. poll found that 57 percent of Americans supported KXL, with a 3-point margin of error. Twenty-eight percent said they opposed it, and 15 percent said they weren't sure. Pollsters contacted 1,011 adults between Dec. 18 and 21.

Yesterday, Canadian Minister of Natural Resources Greg Rickford, who is on his fourth official visit to the United States, briefed reporters on meetings with the State Department and with key lawmakers on Capitol Hill.

Rickford said he sat down with Democratic Sens. Heidi Heitkamp (N.D.) and Joe Manchin (W.Va.), plus independent Sen. Angus King (Maine), among others. King has opposed legislation to authorize KXL but has expressed discomfort with administration permitting delays.

Rickford said the recent Nebraska Supreme Court decision on permitting there "clears the way for the State Department to complete the process." He said the State Department didn't say when the national interest determination would continue but that it would pick back up from where the department halted it pending the Nebraska decision.

This morning, the Great Plains Tribal Chairman's Association released a recent letter to Obama stressing ongoing proceedings in South Dakota to renew KXL's permit and outlining concerns against the pipeline. The group asked for an emergency meeting with Interior Secretary Sally Jewell.

Agencies including the Interior Department and U.S. EPA have the chance to provide their input to State.

Several environmental groups also this morning released a memo outlining their climate concerns associated with the pipeline, including its ability to encourage more Canadian oil sands production, particularly amid low crude prices.

"The idea that Keystone XL's impact on the climate would be negligible is based on the assertion made in the State Department's flawed environmental analysis from early last year, that Canadian tar sands will come out of the ground regardless of whether or not this project goes forward," they wrote, trying to rebut recent news articles and opinion columns.

But Rickford said relying less on rail and more on pipelines for transporting oil sands would be friendlier to the environment and would allow other products to reach the marketplace. "There are economic pieces to this that beg for approval," he said.

Rickford also dismissed claims that low oil prices were making KXL uneconomical or a make-or-break project for oil sands development. "I'm not sure there's evidence to support that theory," he said.

Asked about Obama's veto threat of the Senate KXL legislation, Rickford said he understood the president wanting to protect his own ability to approve the pipeline. And despite negative comments from Obama in recent months, Rickford said the review "appears to point toward approval of the process."

POLITICS:

CAP takes voters' pulse on Republican energy agenda

Phil Taylor, E&E reporter

Published: Thursday, January 15, 2015

The Center for American Progress this morning released a new poll of likely 2016 voters that it says found strong opposition to the energy and environmental agenda of the Republican leadership in Congress.

The CAP-commissioned poll by Hart Research Associates surveyed 1,101 likely voters by telephone from Dec. 5 to 9 with a 3.1-point margin of error.

It found that Americans' top priorities are advancing the growth of renewable energy sources, the left-leaning think tank said.

For example, 80 percent of respondents said they support a greater reliance on solar energy over the next five years compared with 24 percent who favored greater reliance on oil.

More than two out of three voters opposed allowing oil and gas companies to export more U.S. oil and

gas to foreign countries, including 75 percent of Democrats, 69 percent of independents and 61 percent of Republicans, the poll found.

"The new Congress is already moving quickly on an agenda backed by fossil-fuel interests that would weaken protections for clean air and clean water, roll back investments in renewable energy, fast-track exports of American oil, and prioritize special interest giveaways on America's public lands," said former Ohio Gov. Ted Strickland (D), a counselor to CAP and president of the CAP Action Fund. "The fossil-fuel agenda of the new Congress is out of step with public opinion, and it's out of step with the priorities of middle-class families who want more renewable energy, cleaner air for their kids and places that will be set aside for future generations to enjoy."

The poll did find majority support for some Republican proposals.

It found 55 percent of respondents support opening the Atlantic and Pacific oceans to new oil and gas drilling, and 51 percent supported approval of the Keystone XL pipeline.

The poll also found significant support for domestic drilling and mining.

When asked "which is the better approach for the United States to achieve energy independence from foreign oil," 44 percent said it was through development of domestic oil, gas and coal, while 41 percent said it was through renewable energy including solar and wind.

But in several other categories, Republicans find themselves among the minority of voters, according to the poll.

A slim majority of respondents said they opposed reducing tax incentives for renewable energy, including solar and wind, and 60 percent opposed opening the Arctic National Wildlife Refuge to drilling.

Nearly 60 percent opposed Republican proposals to block U.S. EPA from regulating carbon dioxide emissions from power plants, and more than two-thirds opposed loosening protections for endangered wildlife.

Nearly three in four respondents opposed selling national forests or public lands to help balance the budget.

Forty-four percent of respondents said they trust President Obama more to have the "right approach" on issues related to energy and the environment, while 40 percent said they trust Republicans in Congress.

TRANSPORTATION:

Conservative group again urges gas tax cut

Sean Reilly, E&E reporter

Published: Thursday, January 15, 2015

The Club for Growth will oppose legislation to shore up the Highway Trust Fund through tax increases or more transfers of general Treasury revenue and instead favors slashing the federal gas levy, the conservative group's president, David McIntosh, said in a letter to Republican congressional leaders released this morning.

The "Transportation Empowerment Act," introduced in the 113th Congress by Sen. Mike Lee (R-Utah)

and Rep. Tom Graves (R-Ga.), would have reduced the 18.4-cents-per-gallon gas tax to less than 4 cents over time, with states having the option to increase their own fuel levies to make up the difference.

"That would free up the states to fund their own projects without the interference of the federal government," McIntosh, a former Republican congressman from Indiana, said in the letter to House Speaker John Boehner (R-Ohio) and Senate Majority Leader Mitch McConnell (R-Ky.). "It would be consistent with the principles of federalism and ... would find no louder cheerleader than the Club for Growth."

The club is best known for backing primary challengers to GOP incumbents it views as insufficiently conservative. Out of about $8.6 million spent by the organization during the 2014 election cycle, more than 60 percent went to defeat Republicans, according to the Center for Responsive Politics, a nonpartisan research group.

But even in the newly seated 114th Congress, fully controlled by the GOP, the legislation will face steep odds. While Graves' version, H.R. 3486, picked up 55 co-sponsors, it never came out of committee. Senate leaders allowed a vote on Lee's bill, S. 1702, during last summer's debate on an extension of trust fund legislation. It failed by a 29-68 margin, with McConnell and 14 other Republicans voting no.

Lee -- who was backed enthusiastically by the club when he challenged then-Sen. Robert Bennett (R-Utah) in 2010 -- plans to reintroduce his bill, possibly around the time lawmakers begin considering a replacement for the latest extension, which expires at the end of May, a spokesman said by email this morning. A Graves spokesman could not be reached.

The trust fund, the main federal conduit for road and transit funding, has needed tens of billions of dollars in Treasury revenue in recent years as fuel tax receipts have failed to keep up with congressionally imposed spending demands. While the federal gas tax has not been raised in more than two decades, the Obama administration has been cool to proposals for an increase, while Boehner last week expressed doubts that any such bill would pass (*Greenwire*, Jan. 8).

ADVOCACY:

Industry's PR spending leaves lobbying in dust -- report

Published: Thursday, January 15, 2015

The country's largest trade groups, especially energy and natural resources associations, are investing considerably more of their money in lobbying the public than federal officials, according to a new Center for Public Integrity investigation.

Industry investment in advertising and public relations campaigns, which call for far less disclosure about the money and donors involved, dwarfed lobbying efforts as energy and natural resource industries led the way in employing the services of PR and advertising firms.

One hundred fourty-four trade groups reported $3.4 billion in contracts from 2008 through 2012. The largest category -- at 37 percent, or more than $1.2 billion -- was advertising, public relations and marketing. Lobbying came in a distant second, at $682.2 million, or 20 percent of total expenditures.

Advertising agencies were the top five U.S. Chamber of Commerce contractors in 2010 and 2012. PR giant Edelman far outpaced the pack, bringing in $346.8 million from trade groups between 2008 and 2012.

In 2012, the American Petroleum Institute put more than $7 million toward traditional lobbying, compared with $85.5 million paid to four public relations and advertising firms. Annual tax filings show from 2008 to 2012, the group paid Edelman $327.4 million for advertising and public relations services (Quinn/Young, Center for Public Integrity, Jan. 15). **-- DTB**

SOLAR:

Industry job growth up in 2014 -- report

Daniel Bush, E&E reporter

Published: Thursday, January 15, 2015

The solar energy industry added tens of thousands of domestic jobs last year and will soon support almost twice as many jobs as the coal industry, according to a new report by nonprofit advocacy group the Solar Foundation.

Solar companies added more than 31,000 jobs in 2014 and now employ about 173,000 workers nationwide, said the annual survey, released today.

The solar industry created almost 50 percent more jobs last year than the oil and gas industries, the National Solar Jobs Census found. Solar will also soon provide two "living wage" jobs for every worker in the coal industry, the report said.

"Solar's explosive growth rate indicates solar energy will be a key part of our nation's future energy mix," said Amit Ronen, director of the George Washington University Solar Institute, which helped produce the report.

Since the annual survey was launched in 2010, solar companies have added almost 80,000 new jobs, an increase of 86 percent. The solar industry accounted for almost 2 percent of all new domestic jobs created last year alone, the report found.

The falling price of solar panels and installation costs, and a federal investment tax credit for solar established in 2008, has fueled the industry's growth in recent years.

The industry is poised for another banner year in 2015, with solar companies expected to add up to 36,000 jobs, the report said.

Still, solar producers face some challenges in the coming years.

The 30 percent tax credit for commercial-scale solar projects that Congress created eight years ago is set to expire at the end of 2016. If lawmakers don't extend the benefit, it will drop to 10 percent starting in 2017.

A long-term extension of the tax credit could be part of a broader tax reform deal being discussed in the House and Senate.

But an effort to strike a broad tax agreement last year -- which would have included an extension of a temporary production tax credit for wind power -- failed to materialize. It remains to be seen whether the Republican-controlled Congress and the Obama administration can reach a similar deal now, or whether it would include a tax credit for solar.

Another option would be a stand-alone solar tax credit bill, but the measure would likely face strong opposition from conservative Republicans and the electric utilities industry.

"The upcoming expiration of federal tax incentives and pushback from utilities losing market share may dramatically slow solar job growth in future years," Ronen said.

EPA:

Latest buyouts trimmed nearly 200 employees

Robin Bravender, E&E reporter

Published: Thursday, January 15, 2015

U.S. EPA shed nearly 200 staffers in the latest round of buyout and early retirement offers, according to the agency.

A total of 196 employees accepted the incentives to leave EPA's ranks by last Friday, according to EPA spokeswoman Liz Purchia. That's just shy of the roughly 200 workers agency management said it planned to trim through the offers.

Purchia would not say what EPA's total staffing level is after the departures, but the agency has said it planned to cut staffing to about 15,000 employees this year -- which would be the lowest level the agency has seen since the George H.W. Bush administration.

Buyout and early retirement offers were made to employees in EPA's Office of Administration and Resources Management, Office of Chemical Safety and Pollution Prevention, Office of Research and Development, Office of Water, Office of Solid Waste and Emergency Response, Office of Air and Radiation, and Office of International and Tribal Affairs. Workers in two regional offices -- the New York-based Region 2 office and the Chicago-based Region 5 office -- also received offers.

Last fall, EPA sent draft documents to employees outlining which positions would be targeted (*Greenwire*, Oct. 3, 2014).

Eligible employees were offered a lump sum of up to $25,000 to leave -- the maximum amount allowed by the Office of Personnel Management. The early outs allowed certain employees to retire early and immediately receive annuity payments.

About 540 staffers left EPA under the first round of buyouts and early outs last year (*E&ENews PM*, March 19, 2014).

EPA:

Agency watchdog probing employee text messages

Robin Bravender, E&E reporter

Published: Thursday, January 15, 2015

U.S. EPA's watchdog office is launching an investigation into employees' use of text messages for official business.

The EPA Office of Inspector General this week notified the agency that -- at the request of a House GOP lawmaker -- it plans to scrutinize whether EPA followed the law and adequately preserved texts used for official business.

House Science, Space and Technology Chairman Lamar Smith (R-Texas) asked the IG's office in November to review EPA's compliance with rules requiring officials to maintain government records. Smith accused the Obama administration of routinely withholding information from the public, referring to reports that EPA Administrator Gina McCarthy appeared to have deleted thousands of text messages on her work phone (*E&ENews PM*, Nov. 10, 2014).

"Federal guidelines are clear that all messages sent between agency heads and their colleagues must be preserved. Why delete thousands of text messages unless you have something to hide?" Smith said at the time.

The IG's office said it plans to determine whether EPA employees used text messages on their personal or work devices for official business, and whether text messages had been inappropriately deleted or lost.

The watchdog also plans to investigate whether EPA has policies and procedures in place to determine which texts must be preserved and whether the agency implemented processes to respond to congressional and Freedom of Information Act requests involving agency employees' text messages.

EPA has pushed a federal court to dismiss a lawsuit that centers on Freedom of Information Act requests by the conservative group Competitive Enterprise Institute. CEI has argued that officials' text messages were illegally destroyed (*Greenwire*, Oct. 24, 2014).

EPA spokeswoman Liz Purchia said last year after Smith requested the probe that EPA wasn't aware of any evidence that federal records had been unlawfully destroyed.

DOE:

Moniz pitches reforms in managing department projects

Kevin Bogardus, E&E reporter

Published: Thursday, January 15, 2015

Energy Secretary Ernest Moniz said today that his department is now getting a handle on some of the government's most massive projects.

In a speech at the University Club in Washington, D.C., Moniz laid out several reforms he said DOE has instituted to improve management of efforts that have dealt with everything from environmental cleanup to nuclear waste. Many of those projects have lingered on the department's books for years, blowing past deadlines and budgets with abandon.

"The theme I want to emphasize is that we see these problems. We're tackling them head on, and we're going to be transparent, we're going recognize the problem," Moniz said.

The speech was organized in part with the National Academy of Public Administration and inspired by a DOE report released last month that looked into how the department could improve its management of large projects, such as the nuclear waste site in Hanford, Wash., and the Mixed Oxide Fuel Fabrication Facility in South Carolina.

Moniz said that his department is known for its work in scientific research and nuclear security but that it must improve its management of these large projects.

"If we do not up our game in terms of management performance, we are not going to be effective in accomplishing those missions," he said.

Moniz said the department has begun implementing several changes to how it manages projects of that size and difficulty. DOE will make certain that there is a clear owner of the project to take responsibility, that there will be a clear line of communication between that project manager and senior DOE officials, and that there will be strong independent oversight of those projects as they move toward completion.

Moniz noted that "we have some very high-profile, multibillion-dollar projects with a performance that none of us finds acceptable at this time."

In addition, the secretary will strengthen DOE's Energy Systems Acquisition Advisory Board by having it meet regularly and review project management across the department. Moniz has also created the Project Management Risk Committee, which will meet biweekly and provides assessments of projects to senior officials.

Those assessments could prove key for getting a better hold on projects that have run away from managers with costs in the billions of dollars.

For example, the DOE project management report notes that cleanup at the Hanford site was supposed to cost $5.78 billion and be completed in July 2011, according to a March 2003 baseline. By December 2006, those estimates were revised to $12.26 billion and November 2019 for the project to be finished.

With less than two years left in the Obama administration, the Energy secretary recognizes it will be tough to secure his reforms at DOE. Nevertheless, Moniz believes his changes to project management will last beyond his term because they will bring results.

"If we show in the next two years that value is being added ... that's the way we institutionalize something by performing," Moniz said.

FEDERAL WORKFORCE:

Obama gives agency employees 6 weeks paid parental leave

Kevin Bogardus, E&E reporter

Published: Thursday, January 15, 2015

President Obama is requiring federal agencies to provide their employees with six weeks of paid parental leave.

Among a number of initiatives being launched by the White House to help working families, Obama signed a presidential memorandum today that will direct agencies to advance up to six weeks of paid sick leave for federal workers who have a new child. In addition, he called on Congress to pass legislation that would authorize an additional six weeks of paid parental leave for the federal workforce.

In a post yesterday on the business social network site LinkedIn, Valerie Jarrett, a senior adviser to the president, said new parents should be able to keep their jobs while caring for their new children.

"How many moms and dads have been denied the ability to bond with their newborn, or to care for an aging parent, all because they could not afford to miss work? These are real, significant moments in life that nearly everyone faces at some point," Jarrett wrote in the post. "The last thing we should do is add guilt, fear, and financial hardship on working parents as they try to do what's right -- while keeping their job."

The Family and Medical Leave Act provides workers with 12 weeks of unpaid leave per year to deal with illness in their families or take care of new children. Several other industrialized nations have gone further, though, providing paid maternity leave so new mothers can be with their children.

Jarrett noted that "the United States remains the only developed country in the world that does not offer paid maternity leave."

The American Federation of Government Employees, the country's largest federal worker union, applauded the move.

"Federal employees are only able to accumulate a maximum of 30 days of annual leave, which is hardly enough time to provide care to a newborn or newly adopted child. Because of this, employees are forced to either take off work without pay or return to work far too soon, robbing their children of early nurturing that's vital for future development," J. David Cox Sr., president of AFGE, said in a statement. "The federal government already reimburses its contractors for the cost of paid parental leave. It's time for government to extend these benefits to its own employees."

ALTERNATIVE FUELS:

Honda unveils hydrogen-powered vehicle

Published: Thursday, January 15, 2015

Honda Motor Co. will begin selling a hydrogen-powered car to Japanese customers in March 2016.

The new FCV was announced at the Detroit auto show this week. It will be able to travel 300 miles after being fueled.

Honda's manager of fuel cell vehicle sales, Steve Ellis, admitted that the car will only appeal to customers who live near hydrogen fueling stations.

In the United States, those stations are virtually nonexistent except for in Southern California, where 50 stations are expected to be operational by 2016.

While Honda plans to start sales of the FCV in Japan, Ellis said that by the end of this year, enough fueling stations could exist in Southern California to justify production of the FCV there.

"We are seeing the ramping up now of these facilities, and it's only going to accelerate from there," he said (Aaron Kessler, *New York Times*, Jan. 13). **-- AW**

WYOMING:

Governor vows to fight for coal

Published: Thursday, January 15, 2015

Wyoming Gov. Matt Mead (R) took on what he called the Obama administration's anti-coal agenda in his State of the State address yesterday, describing it as an onslaught unlike any other he has seen against a single industry.

Entering his second consecutive term leading the nation's largest coal-producing state, Mead said U.S. EPA continues to have "a green light to go after the coal industry" as demand for coal decreases in light of the natural gas boom and new federal power plant regulations.

Despite Oregon's rejection of an energy company's proposal to build a coal terminal on the Columbia River, Mead promised to keep searching for a way to export Wyoming coal from Pacific coast ports.

"In coming years, I will continue to work with bulldog determination on coal initiatives, port expansion, new technology and value-added products," Mead said. "And in coming years, we don't need to let up, we need to double down. We must assure coal's continuity."

Mead also announced his administration is seeking $18.6 million to build 10 small reservoirs in the next 10 years, in addition to other projects aimed at protecting Wyoming's water supplies from downstream demands (Ben Neary, AP/*Houston Chronicle*, Jan. 14). **-- DTB**

OREGON:

Fired transportation official was governor's ally, liability

Published: Thursday, January 15, 2015

Catherine Mater, the head of the Oregon Transportation Commission, whom Gov. John Kitzhaber (D) fired this week, agreed with the governor on key issues but didn't consult closely enough with the administration.

Kitzhaber fired Mater after she opposed a $2 million state subsidy to help a coal export terminal, though the governor also opposes the proposal. Mater said Kitzhaber urged her to approve the subsidy, but she declined (*Greenwire*, Jan. 13).

Mater's position, though, threatened the governor's push to secure funding from state lawmakers to address a $5.1 billion backlog in seismic upgrades and other spending projects.

Kitzhaber spokeswoman Melissa Navas said the governor's issues with Mater were about principles, not the coal project.

"She was not asked to step down for the reasons she claims," Navas said. "The governor and the chair were not in alignment about the roles and responsibilities of the commission."

The firing is also a sign that Kitzhaber is starting his new term with less power than before, analysts say.

"It is a weakened governor," said Jim Moore, a Pacific University political science professor. "We're not sure what that weakness is going to manifest itself as. This is the first time we've seen something like this. But not a surprise" (Rob Davis, Portland *Oregonian*, Jan. 13). **-- SP**

CHINA:

Nation met water, air pollution reduction goals in 2014

Published: Thursday, January 15, 2015

China met its air and water pollution reduction goals for 2014, the country's environmental protection minister said today.

The Chinese government banned 7 million high-emission vehicles from the road, shut down 50,000 coal-fired furnaces, installed denitrification and desulfurization equipment at power plants and factories, and added new sewage treatment plants, said Zhou Shengxian, the environmental protection minister.

In September 2014, reports said China was on track to meet and even exceed its target for reducing water pollution for the year (Adam Rose, Reuters, Jan. 15). **-- MH**

CHINA:

Nuclear reactor faces more delays

Published: Thursday, January 15, 2015

Construction of China's first advanced nuclear reactor is facing another delay and is now not expected to start up until 2016 at the earliest.

Wang Zhongtang, chief engineer of China's State Nuclear Power Technology Corp., said at an industry conference that the delay is being caused by "new problems" discovered during tests. He did not say what types of problems had been found.

The delay is the second for the project, which is being developed with U.S. firm Westinghouse Electric Co. It initially had been set to start by the end of 2013 but was postponed due to safety issues and design changes.

Li Ning, a nuclear industry expert at China's Xiamen University, said Chinese officials are "certainly very frustrated" by the delays.

"I think they feel Westinghouse oversold the system, oversold the technology and promised more than they could really deliver," he said.

Westinghouse did not immediately respond to a request for comment (Yap/Spegele, *Wall Street Journal*, Jan. 15). **-- AW**

JAPAN:

After meltdown, consumers won't drink sake from Fukushima

Published: Thursday, January 15, 2015

The stigma of the 2011 Fukushima Daiichi nuclear disaster remains palpable for nearby sake producers.

Consumers -- both domestic and international -- have become wary of buying any sake, an alcoholic drink

made from fermented rice and water, that originated in Fukushima prefecture.

"They do not openly say they will not buy Fukushima's products, but they never buy them," said Hiroyuki Karahashi, chairman of the Fukushima Prefecture Sake Brewers' Association.

China has banned all imports of sake from Fukushima due to radiation fears. South Korea, previously the second-largest overseas market for the beverage, has stopped buying Fukushima sake.

Consumers are worried that radiation released into the air after the nuclear disaster made it into local rice fields and water supplies used in producing sake. But sake manufacturers note that nearly all the ingredients used in Fukushima sake come from far outside the exclusion zone surrounding the nuclear facility where the disaster occurred.

That hasn't stopped even Japanese customers from being skittish about Fukushima sake. Karahashi said he recently received a call from a man who received a bottle of Fukushima sake as a gift from a friend but did not want to accept it.

"He asked me if he could return the bottle to us," Karahashi said. "I told him to discard it if he would not drink it, but he said it would contaminate his place to do so" (Barbara Balfour, BBC News, Jan. 14). **-- AW**

CLIMATE:

EDF's Symons says regulating existing source emissions critical to meeting White House methane targets

Published: Thursday, January 15, 2015

The White House this week unveiled its plans to regulate methane emissions from the oil and gas sector through a combination of voluntary and regulatory approaches. How will the Obama administration structure its rule proposal to meet its target of cutting methane 40 to 45 percent by 2025, back to 2012 levels? During today's OnPoint, Jeremy Symons, senior director of climate policy at the Environmental Defense Fund, discusses the plan and its impact on overall greenhouse gas emissions. He also discusses the role of natural gas as part of the administration's overall energy and climate policy.

Click here to view today's OnPoint.

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1.EMISSIONS:

Mexico's former president says cities face 'the last window' of opportunity to clear the air

The world's cities present the biggest hurdles as well as some of the most fertile opportunities to slow global climate change in the coming decades.

2.STATES:

Ore. braces for a fight over funding seaport to ship Powder River coal to

A governor, an ousted commission chairwoman and a crowd of concerned citizens made their voices heard in Salem,

Asia

Ore., yesterday as the Oregon Transportation Commission considered whether or not to supply public funds for a project initially aimed at shipping coal to Asia.

TODAY'S STORIES

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There is time to lessen impacts of industrial fishing in the oceans -- study

4.FINANCE:
Some investors drop coal stocks to boycott the industry; others buy 'green bonds' to make money

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Calif. marks entry into 4th year of drought; still able to increase water deliveries

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So whom do you call to teach climate change? How about the Green Ninja

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Governors use 'state of the state' speeches to open fire on EPA's Clean Power Plan

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W.Va. board reverses changes to climate change curriculum

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China develops nuclear power capacity

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Man mostly to blame for climate change, pope says

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Rising seas, more worms?

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12.POLITICS:
***E&E Daily*'s Quiñones talks Keystone amendments, SOTU preview**

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Development shows no signs of slowing on Alaska's North Slope

At a time when rig counts are declining in much of the nation, oil development on Alaska's North Slope is thriving this winter thanks in large part to tax relief that state voters endorsed in a referendum last year.

TOP STORIES

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NRG describes coming transformation, even as stock price falters

3.UTILITIES:
For Ga., carbon market may be 'least worst option' for EPA carbon compliance

4.SECURITY:
Obama's cyber-bill plan tackles information-sharing quandaries

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Exelon, Pepco merger moves forward with N.J. settlement
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Ark. PSC has 2 new members after latest appointment
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'Blackhat' film seeks to capture cyber anxieties
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Bidding opens for $18B Oncor auction

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Schlumberger cuts 9K from payroll
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Drilling task force gathers support as it closes in on deadline
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Pickens among Texas' new energy advisers
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Oil field equipment firms set to benefit from methane rules
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Texas workforce will still grow in 2015 -- economist
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Oil and gas worker safety shouldn't be an 'afterthought' -- governor

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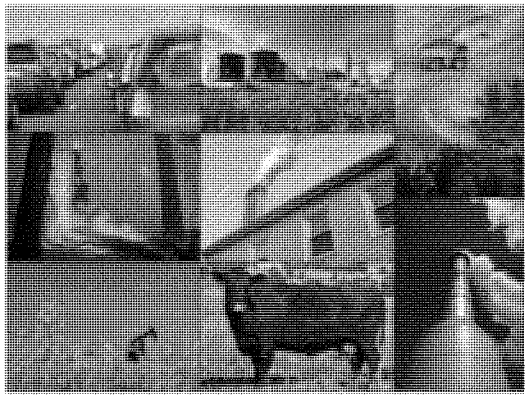

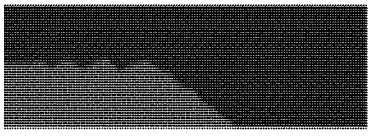

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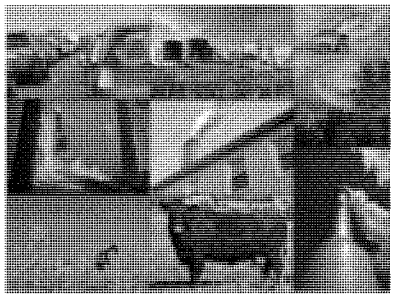

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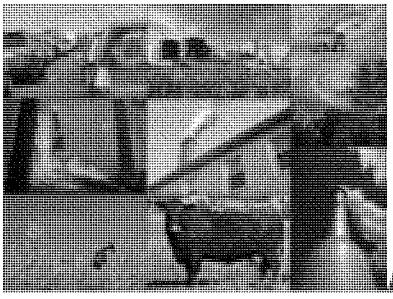

Air & Radiation Law News

for January 15, 2015

Bloomberg BNA Daily Environment Report™

Climate Change

Democrats Push Flurry of Climate Change Amendments on Keystone Legislation

Republican leaders in the Senate may face a tough decision in the next week as Democrats seek to use amendments to the Keystone pipeline bill to put the chamber on record as supporting the scientific link between climate change and human activity....

Climate Regulation

EPA Will Regulate Methane From New Oil, Gas Wells as Part of White House Strategy

The Environmental Protection Agency will directly regulate methane emissions from new oil and natural gas wells for the first time as part of an Obama administration strategy expected to curb methane emissions by as much as 45 percent by 2025....

Congress

House Chairman Sees Floor Action on Yucca, TSCA Overhaul, Coal Ash Bills This Summer

Republicans hope to move bills to the House floor this summer to open Yucca Mountain for nuclear waste storage, revamp a nearly 40-year-old chemical safety law and bar the Environmental Protection Agency from regulating coal ash as hazardous...

Congress

Lobby Limits to End for 11 Former Senators, Congressional Staff in Energy, Environment

Lobbying restrictions are ending at some point in 2015 for at least 11 former senators and congressional staff members who now work on energy or environment issues or worked on those subjects during their time on Capitol Hill, according to a...

Emissions Trading

Report: California's Carbon Market Cutting Emissions, Allowing Economic Growth

California's economy has thrived in the two years since the state launched its multi-sector greenhouse gas emissions cap-and-trade program, according to a report the Environmental Defense Fund released Jan. 14....

Energy

Industrial Energy Costs in Brazil Expected To Rise in 2015 Due to Continued Drought

The cost of electricity for Brazilian industries rose by an average 23 percent in 2014 and is expected to rise by an average 27 percent in 2015, according to a report issued in January by the Rio de Janeiro State Industrial Federation (Firjan),...

Energy

Merkel Calls for Energy Savings, Says Low Oil Prices 'Won't Be the Future'

Analysts who believe oil prices will rise just got a powerful ally: German Chancellor Angela Merkel....

EPA

Federal Court Rules that Groups Can't Obtain EPA Records from National Security Agency

Three nonprofit organizations can't obtain information about Environmental Protection Agency officials' phone calls, e-mails and text messages from the National Security Agency, despite reports that the NSA has collected...

Natural Gas

Bill to Expedite LNG Exports Delayed By 'Red Tape' Introduced in House

The Energy Department would be required to expedite consideration of applications to export liquefied natural gas under legislation introduced in the House Jan. 14....

Oil & Gas

Denton City Council Votes to Continue Public Hearing on Proposed Gas Ordinance

The city of Denton, Texas, needs to implement a strong natural gas well ordinance before the state Legislature takes action that could make it difficult for municipalities to pass new rules for oil and gas activities, the Denton City Council...

Oil & Gas

Repeal of Export Ban on U.S. Crude Oil Needed for Impending Surplus, CEO Says

The U.S. needs to lift its ban on crude oil exports to prevent a growing volume of shale oil from creating a domestic crude surplus that will discourage oil production and forego jobs and economic benefits, Chief Executive Ryan Lance of ConocoPhillips...

Radioactive Waste

U.S. Robotic Arm Developed to Tackle Water Leaks in Japan's Fukushima Plant

Kurion Inc. in California said it's developing a robotic arm to go where humans can't and repair water leaks in the Japan nuclear power plant crippled by an earthquake and tsunami almost four years ago....

Regulatory Policy

Bill Reintroduced in Senate to Block Costly EPA Rules That Negatively Affect Economy

Sens. Dean Heller (R-Nev.) and Bill Cassidy (R-La.) Jan. 14 introduced a bill that would block the Environmental Protection Agency from finalizing energy-related rules estimated to cost more than $1 billion that the Energy Department determines...

Regulatory Policy

Chamber Charts Aggressive Course To Shape Legislative Priorities in 2015

The U.S. Chamber of Commerce will pursue a pro-business legislative agenda in 2015 that includes energy and statutory limits on regulation....

Regulatory Policy

EPA Settlements in Deadline Lawsuits Have Limited Effect on Priorities, GAO Finds

Citizen lawsuits challenging the Environmental Protection Agency for missing statutory deadlines for rulemakings have a limited effect on the agency's priorities, according to the Government Accountability Office....

Regulatory Policy

EU Court Limits Right Of Environmental Groups to Obtain Review of Official Decisions

The right of European Union environmental advocacy groups to question environmental decisions taken by the bloc's executive, the European Commission, shouldn't include decisions of "general scope," according to a double...

Renewable Energy

Biomass Facility Only Eligible for ARRA Grant
For Portion Necessary to Generate Electricity

The operator of biomass-based steam turbines at a chicken rendering plant is eligible for reimbursement of construction costs under the American Recovery and Reinvestment Act only for the portion of the facility needed to generate electricity,...

Renewable Energy

Ecolab to Use Solar Power in Minnesota

Ecolab Jan. 13 announced it had signed a contract with SunEdison that will allow it to offset about 90 percent of the electricity it uses for its Minnesota operations with solar power. The St. Paul, Minn.-based company, which sells hygiene,...

Sustainability

Global Green Bond Market Tripled in 2014,
Continuing Record Growth, Data Show

The global green bond market saw its biggest year yet in 2014, driven in large part by a strong showing from new corporate bond issuers and the entrance of municipal bond issuers, according to figures released Jan. 14 by the London-based Climate...

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Latest News

GAO Finds 'Limited' Impact On EPA's Agenda From 'Sue And Settle' Pacts

The Government Accountability Office (GAO) in a new report finds limited impact on EPA's agenda as a result of legal settlements that commit the agency to rulemaking deadlines, downplaying concerns about

what the agency's critics have called sue and settle pacts that force EPA to prioritize developing expensive new regulations.

Energy Utilities Tentatively Support EPA's Stream Monitoring Climate Plan

The energy utility industry is cautiously supporting EPA's draft proposal to develop regional monitoring networks (RMNs) to detect climate change effects in stream ecosystems, saying the plan could provide necessary data to address industry's concerns about downscaling global climate change models to the regional or local level.

EPA Seeks Direct Methane Limits On New Drilling To Help Meet GHG Goal

EPA is seeking direct regulation of the greenhouse gas (GHG) methane from new and modified oil and gas production sources in order to help meet President Obama's new goal of reducing the sector's methane emissions 40 to 45 percent from 2012 levels by 2025, while avoiding direct regulation of existing drilling operations.

News Briefs

U.S. Chamber Urges Congress To Push Regulatory Reform

The U.S. Chamber of Commerce is urging the 114th Congress to prioritize regulatory reform legislation including greater oversight of new rules from EPA and other agencies and accelerating environmental permitting, while GOP lawmakers take early steps to limit new rules such as imposing a cost cap on future EPA regulations.

Advocates Warn House-Approved Bill Would Limit EPA Rules

Environmentalists are warning that legislation the House approved Jan. 13 would significantly limit EPA's ability to craft new regulations to protect human health and the environment, and are looking to President Obama to follow through on his vowed veto of the measure if it also clears the Senate in the coming weeks or months.

Greenwire

CLIMATE:

Obama's methane curbs split gap between industry, greens

Jean Chemnick, E&E reporter

Published: Wednesday, January 14, 2015

The Obama administration announced plans today to regulate methane emissions from new and modified oil and gas operations -- but not from existing pollution sources.

U.S. EPA plans to propose new source rules for methane this summer and finalize them in 2016. The agency will follow the same timeline to expand its rules for ozone-forming emissions at existing oil and gas wellheads, which will reduce smog and leaking methane. States would have to address those sources as part of their plans for curbing ozone.

The administration strategy is part of an interagency blueprint on methane aimed at reducing by 2025 petroleum-sector emissions of the potent greenhouse gas by 40 to 45 percent from 2012 levels. The Interior and Energy departments will also do their parts to hit the target.

White House energy and climate adviser Dan Utech said the methane strategy is integral to President Obama's promise at a China summit in November that the United States would slash its emissions by 26 to 28 percent from 2005 levels by 2025.

"I think that will make a significant contribution to our overall effort to meet the goal the president laid out in Beijing," he said.

In promulgating methane rules for new sources but not existing ones, EPA is splitting the difference between the all-regulatory approach favored by environmentalists and the mostly voluntary one advocated by industry.

Environmentalists hoped EPA would use the Clean Air Act's Section 111 (b) and (d) to go after both new and existing petroleum-industry methane emitters -- the nation's largest unregulated source of greenhouse gases. The American Petroleum Institute and America's Natural Gas Alliance said they would accept an expansion of EPA's wellhead ozone controls but urged the agency to limit methane curbs to voluntary measures.

Utech and acting EPA air chief Janet McCabe stressed today that EPA engaged with industry ahead of releasing its plans and looks forward to "cooperating" with producers on voluntary reduction measures for existing emitters. They promised that the mandatory requirements for new sources would be cost-effective and allow the domestic petroleum industry to continue to grow.

Utech cast the effort as a key part of Obama's "all-of-the-above approach to develop homegrown energy."

McCabe said the new source rules were designed to keep the sector's emissions from growing as the industry continues to boom. Emissions from the industry are likely to grow by 25 percent by 2025 under a business-as-usual scenario because domestic production is growing so quickly.

"We're going to focus our rulemaking on the emissions sources that make the most sense to address now: new emissions sources in areas of this industry where new investment and growth are occurring, and where emissions are increasing as a result," she said.

By using Section 111(b) to curb new and modified emission sources, EPA is obligating itself to eventually write rules for existing sources under Section 111(d).

Utech left the door open for eventual regulations on existing emitters.

"What additional steps are appropriate beyond those steps that we're outlining today will become more clear over time as we work through the steps we're outlining today," he said.

But the upshot of today's announcement is that Obama will leave office before existing-source methane rules are written, and the Clean Air Act doesn't provide a deadline for the next administration to finish the job.

"There's no clock in the law," said Dina Kruger, an environmental consultant and former director of EPA's climate division. "If a new administration came in and was not interested in doing existing [source] regulations, they would have to be sued, and then the question is how much deference does the court give EPA for balancing its own regulatory agenda?"

Courts have held that EPA has the authority to set its own timeline, she said. So it is likely to be some time before EPA writes methane rules under Section 111 (d).

Greens seek 'clearer road map'

Environmentalists signaled earlier in the week that they would not be happy with any option that limits future methane emissions but leaves today's infrastructure alone.

Conrad Schneider, advocacy director of the Clean Air Task Force, and other environmentalists had urged EPA to regulate all existing petroleum-sector equipment -- from wellheads to pipelines. "If they don't, they're going to miss the lion's share of the emissions," he warned.

But today's announcement is likely to capture more emissions than would a simple extension of EPA's 2012 regulations for volatile organic compounds (VOCs) at new hydraulically fractured gas wells.

Environmentalists estimate that approach would have captured only a 10th as many emissions as the Section 111 rules would, and it would likely have taken direct methane regulation off the table indefinitely.

Fred Krupp, president of the Environmental Defense Fund, said in a statement the White House's overall methane strategy is "a landmark moment."

"However, we will need a clearer road map and more decisive action to ensure the administration tackles the most important part of the problem -- emissions from existing wells, pipelines and facilities," he said. "There is no reason to wait 10 years to fix a problem that can be addressed right now at low cost."

Gene Karpinski, president of the League of Conservation Voters, also referred to today's announcement as a "first step."

"We look forward to continuing to work with the Obama administration to reduce methane pollution across the board to hold polluters accountable and protect our planet for future generations," he said in a statement.

Industry 'disappointed'

But while environmentalists expressed frustration over the lack of immediate regulation for existing sources, industry was unhappy that the administration plans to regulate new ones.

API President Jack Gerard said the new rules could "disrupt America's energy renaissance."

The petroleum sector has reduced emissions by 16 percent since 1990 even as development grew by more than a third. He said that was because the industry has invested in new technology. The industry already has an incentive to capture and sell as much of its product as possible, and methane is the main component of natural gas, he said.

"Another layer of burdensome requirements could actually slow down industry progress to reduce methane emissions," he asserted.

ANGA President and CEO Marty Durbin also expressed surprise that EPA didn't limit itself to voluntary programs.

"We are disappointed the administration is choosing to take a regulatory approach that will take years to

implement, rather than a cooperative approach with the industry that we believe will ultimately result in greater emissions reductions in a shorter timeframe," he said in a statement.

The industry said before today's announcement that it could back an expansion of EPA's 2012 regulations for VOCs to cover other segments of the petroleum supply chain, and EPA included those rules in today's strategy.

Those rules will apply to existing wellheads in ozone nonattainment areas and will be implemented largely by states.

"We've been working with both the industry and the states ever since we started developing our 2012 rule, so we have a good basis of working relationship there, and information," McCabe said today.

Interagency effort

EPA is not the only agency that will participate in the administration methane strategy.

Interior's Bureau of Land Management is also readying a proposal to change how royalties are levied on millions of acres of mostly Western public lands (*E&ENews PM*, Jan. 5).

Utech said today that the BLM draft, which is due this spring, will not only curb methane but ensure a fair return to taxpayers.

But he said the White House would ensure that the BLM rules and the EPA rules don't overlap in a way that will be burdensome to industry.

"We're certainly aware that we don't want to have that outcome, and we're working hard to prevent that," he said.

Obama will also include $15 million in his fiscal 2016 budget request for a DOE program to improve the way methane leaks are detected and repaired. An additional $10 million will be requested to fund a new DOE program aimed at better assessing how much methane is released from natural gas infrastructure, with the results included in EPA's annual Greenhouse Gas Inventory.

The Department of Transportation will issue new pipeline safety standards.

AIR POLLUTION:

Renegade regulators group takes aim at EPA advisers, regs

Amanda Peterka, E&E reporter

Published: Wednesday, January 14, 2015

Correction appended.

State air regulators who split from the National Association of Clean Air Agencies two years ago over the 34-year-old nonprofit's positions supporting federal emission rules have their breakaway group up and running.

The new Association of Air Pollution Control Agencies (AAPCA) now has an executive director and is

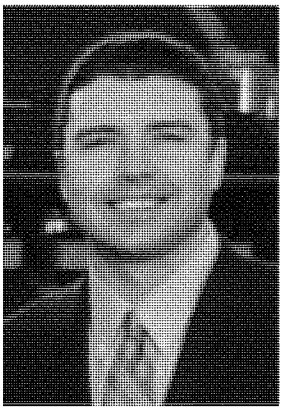
hosting meetings, organizing committees and assembling comments for its members on U.S. EPA's landmark proposal for curbing greenhouse gas emissions from power plants.

AAPCA has "the advantages of being the nonincumbent," Executive Director Clint Woods said in an interview at a Washington, D.C., coffee shop last month.

"I think being kind of new to the scene and being driven by exactly what our members want us to do allows us to not necessarily reinvent the wheel but think about how we can do things better, make better use of our time and be a little bit more nimble on some of these specific issues," said Woods, a former Hill staffer and conservative advocate.

AAPCA is the brainchild of former Ohio EPA Director Scott Nally, who argued in 2012 that the National Association of Clean Air Agencies, or NACAA -- which represents nearly all air agencies -- was lobbying EPA and Congress and taking positions in favor of climate regulations against the consensus of its members (*Greenwire*, Jan. 23, 2013).

But the split in NACAA began in the mid-2000s when Texas fled.



Clint Woods, the new executive director of the Association of Air Pollution Control Agencies. Photo courtesy of Woods.

"We just felt like our viewpoints weren't being represented the way we thought they should have been," said Steve Hagle, deputy director of the Texas Commission on Environmental Quality's air office. "The reason we decided to join with Ohio and the other states is that there are a lot of benefits to an organization like NACAA, being able to share the ideas and thoughts and having access to EPA staff to give us updates on rules and guidance."

So AAPCA's birth was announced in January 2013. It has 17 state members, including six -- Ohio, Florida, Indiana, Louisiana, North Dakota and Texas -- that have left NACAA. Eleven states decided to join but retain NACAA memberships: Alabama, Georgia, Kentucky, Mississippi, Nevada, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and Wyoming.

To help the group get started, Battelle Memorial Institute managed AAPCA under contract until Woods came aboard last year from the House Science, Space and Technology Committee, where he was a Republican staffer since 2011 specializing in environmental policy and issues related to EPA, the National Oceanic and Atmospheric Administration, and NASA Earth Science.

Before his Hill stint, Woods directed the energy, environment and agriculture task force at the American Legislative Exchange Council (ALEC), which has been behind state-level opposition to EPA regulations and has recently experienced an exodus of tech companies because of its position on climate change. He also served as lobbyist for the Recreation Vehicle Industry Association.

Woods is based at AAPCA's headquarters in Lexington, Ky., near the Kentucky Horse Park. When not at work, he enjoys spending time with his greyhound and taking advantage of the "great horse racing, great live music and bluegrass" in the Bluegrass State. Does he miss anything about Washington? "They don't have a bocce league -- it's the only thing I miss about D.C.," he said.

Woods said he hopes to leverage some of the experience working with state legislatures that he gained at ALEC. "Environmental agencies are funded by their state legislatures, so there's a natural give-and-take and figuring out where you want to be, what your options are, as you're developing state plans or choosing particular options," he said.

AAPCA's mission is to focus on technical issues around local implementations of the Clean Air Act, Woods said. Decisions by the group are made by consensus of the state members.

"It means we may not necessarily be taking a position on every regulation, every piece of legislation that deals with the Clean Air Act," Woods said. "But when we do, it's powerful, and I think it enables us to really home in on the issues where we can be helpful."

AAPCA states have expressed concern with EPA's recent proposed regulations for stemming carbon dioxide from existing power plants, and several of their attorneys general have filed suit against the proposal. But AAPCA didn't take an overall position on the proposed rules.

In fact, Woods said EPA should get "great credit" for its outreach to state governments throughout the public comment period.

"Hopefully, the state issues that were raised during our calls and our comments will be reflected in the final rule," he said.

'We're not lobbying'

Woods is currently AAPCA's only full-time employee.

According to Woods, AAPCA is funded by state and local membership fees that are based on population and other factors, as well as meeting fees. The annual budget is "well under $500,000 at this point."

NACAA, on the other hand, brought in revenue of about $1.75 million, according to the IRS 990 form it filed for 2012. Of that, about $200,000 represented dues and $85,000 registration fees; another $1.46 million came from government grants and contributions. NACAA Executive Director Bill Becker said the departure of AAPCA states did not put a dent in the organization's activities.

AAPCA rents its Lexington office space from the nonpartisan Council of State Governments, whose members include state legislatures, courts and executive officials. Under the agreement with the council, AAPCA can make use of council resources -- including meeting planners and lawyers -- in any of the council's offices around the country.

Typical work for AAPCA includes helping coordinate calls between state regulatory agencies and EPA, organizing meetings, and providing assistance with comments on major Clean Air Act rules.

Woods said he wasn't sure yet whether the group would take a position on where EPA should set the ozone standard in its current review; in November, the agency proposed to tighten the standard from 75 parts per billion to between 65 and 70 ppb.

One area in which AAPCA is considering taking a more active role is in potential reform of EPA's scientific advisory board. States are hoping for greater participation sooner in the regulatory process, he said.

He said he expected AAPCA to grow in 2015, both in terms of state members and local agencies. The group's primary focus remains on EPA, rather than on Capitol Hill, Woods said.

"We're not lobbying, and I don't foresee us necessarily taking any perspective on any particular piece of legislation," he said.

Still, AAPCA has had some engagement with Capitol Hill. Last May, Sen. David Vitter (R-La.), then-ranking member on the Senate Environment and Public Works Committee and a vocal opponent of tightening the federal ozone standard, led a letter by GOP senators to AAPCA asking its members to weigh in on the transparency in science behind EPA's review of the standard.

"No, the process is not open or transparent," AAPCA member Louisiana wrote back to the senators, going on to warn that industries in the state "would have to install costly controls" in order to comply with the tighter standard EPA is currently considering.

Vitter then highlighted the responses later in the year when he held two field briefings in his home state that focused on the costs of the standard.

NACAA 'not apologetic'

Given the public statements in opposition to various EPA regulations, pro-NACAA critics charge that AAPCA is little more than a cover for fossil fuel interests.

Environmentalists have characterized efforts to reform EPA's scientific review process as thinly veiled attempts to discredit agency science. "Privately, we refer to AAPCA as the National Association of Dirty Air Agencies," said Frank O'Donnell, president of the advocacy group Clean Air Watch. "It was spawned by fossil fuel interests opposed to the progressive aims of NACAA."

O'Donnell highlighted claims by Nally, the former Ohio EPA chief who now works for Columbus-based Quasar Energy, opposing NACAA's views on climate change. NACAA supported the failed 2009 legislation that would have created a national cap-and-trade program.

NACAA chief Becker said he doesn't regret that positions taken by his group drove away some members.

"They felt we had advocated a bit too aggressively to clean up the air, and we're not apologetic for anything we said in the past or we do in the future if it means that we're going to try and clean up the air in the most cost-effective way," he said in a phone interview.

Becker is quick to point out that NACAA's membership far surpasses that of AAPCA. Forty-one states and 116 local agencies -- all of the nation's local agencies engaged in air pollution control except for California's San Joaquin County -- are members.

NACAA is "stronger than any other association, environmental or other, that exists," Becker said.

Woods, though, argues that AAPCA's 17 states protect that air quality for roughly 40 percent of the U.S. population and generate about 50 percent of U.S. electricity production.

Neither Becker nor Woods said he held any bad will toward the other.

Becker said he was supportive of AAPCA and willing to work together with the group. NACAA and AAPCA, for example, organized a series of webinars on specific aspects of EPA's carbon dioxide rule proposal.

Woods said the relationship between the two groups has been "very positive."

"There's been nothing but collaboration on my end," Woods said, "and I think there's enough public dynamic regulation environment that there's plenty of issues and plenty of approaches for various associations."

Correction: *An earlier version of this story misstated the 2012 revenue of the National Association of Clean Air Agencies.*

HOUSE:

Judiciary chairman pledges to fight 'excessive regulation'

Robin Bravender, E&E reporter

Published: Wednesday, January 14, 2015

House Judiciary Chairman Bob Goodlatte yesterday succeeded in winning the chamber's support for a bill aimed at reining in government regulations.

And there's more where that came from, the Virginia Republican promised today.

The sweeping regulatory reform bill that cleared the House yesterday was just the opening salvo in this year's battle against federal rules, Goodlatte said during an event hosted by *The Christian Science Monitor*, according to his prepared remarks.

"I'm committed to restoring accountability and providing relief from excessive regulation to our nation's small businesses and job creators who need it most," Goodlatte said as he laid out his committee's agenda for the upcoming Congress. "America's small business owners are suffocating under mountains of bureaucratic red tape."

Goodlatte touted the House passage yesterday of the "Regulatory Accountability Act," which he co-sponsored with Rep. Collin Peterson (D-Minn.), as an effort to "rein in excessive regulatory costs" by forcing federal agencies to adopt the least expensive regulatory options for implementing the law. The Obama administration and advocacy groups on the left have blasted the bill as an effort to undermine needed health and environmental rules (*E&E Daily*, Jan. 14).

Still, Goodlatte and other GOP lawmakers are intending to plow ahead with that and other regulatory reform bills that failed when Democrats controlled the Senate, in hopes that they'll gain traction in the upper chamber and to signal their political opposition to the Obama administration's regulatory policies.

"With the new Congress, the House Judiciary Committee will be looking to build upon our work from the 113th Congress," Goodlatte said. "Under my leadership, the committee will continue to advance an agenda that is focused on creating jobs and making America more competitive and free."

ENERGY POLICY:

Subcommittee chair seeks action by summer on ash, TSCA, nuclear waste

Hannah Northey, E&E reporter

Published: Wednesday, January 14, 2015

Rep. John Shimkus (R-Ill.), returning chairman of a critical House Energy and Commerce subcommittee, told reporters today that he wants to move three bills to the House floor by this summer that would regulate disposal of coal combustion waste, reform 1970s toxic substances laws and inject money into the now-defunct Yucca Mountain nuclear waste site in Nevada.

"I want to have all three of these bills to the floor by this summer," Shimkus, who leads the Subcommittee on Environment and the Economy, said at a press briefing on Capitol Hill.

Shimkus signaled that he plans to rely on bicameral, bipartisan conference negotiations to find common ground on the measures, something he said Congress has been missing in recent years.

"People should not be afraid of individual bills and going into a conference committee and working things out," Shimkus said. "I actually look forward to it, we just haven't had a chance to do that. And that just empowers members."

First up is a subcommittee hearing on coal ash Jan. 22. Shimkus said standards U.S. EPA released last year for the disposal of coal combustion waste were helpful, largely because the agency decided against a hazardous waste designation. But he said the rule left a large amount of uncertainty, and he hopes to hear from stakeholders about how to move forward.

The subcommittee is then scheduled to address reforming the Toxic Substances Control Act of 1976 -- an effort that last year picked up steam in both chambers before unraveling amid partisan bickering (*E&E Daily*, Jan. 12).

Shimkus said he hopes to move a bill to reform TSCA with Democratic support. If Democrats don't sign on, the congressman said he still plans to move a bill and conference with the Senate.

"If we can get clarity and help them identify policy for several thousand chemicals that haven't really gone through scrutiny, that would be a positive thing," he said, but quickly shied away from aligning himself with close EPA coordination. "EPA cheering for what we're doing, I'd lose all my Republican support," he quipped.

After coal ash and TSCA reform, Shimkus said he has asked for a hearing on a bill he plans to introduce in the coming weeks to fund Yucca Mountain -- a measure that could set the House up against a push for new repositories and short-term storage sites in the Senate. Shimkus, who hails from nuclear-heavy Illinois, said it's "undetermined" how much money the bill would include for the repository.

Shimkus said conversations about finding a waste solution have eased in light of the diminished stature of Senate Minority Leader Harry Reid (D-Nev.). And how much money Yucca gets -- considering the project's currently zeroed-out funding -- will be a step in the right direction, he added.

"I don't see the amount being a deciding factor of success or failure," he said. "And remember, we still have a lot of ways go to in the process."

But the push for Yucca has failed to mesh with the upper chamber, where other members, including Sen.

Dean Heller (R-Nev.), have vowed opposition and others have signaled more regional interest.

Sen. Lamar Alexander (R-Tenn.), the new chairman of the Senate Energy and Water Appropriations Subcommittee and a proponent of Yucca Mountain, is said to be working on legislation. He has said he's hopeful the two chambers will have a meeting of the minds despite their differing views (*E&E Daily*, Jan. 9).

But when asked whether the House would accept any legislative language that doesn't specify Yucca Mountain, Shimkus was clear.

"Absolutely not," he said, adding that neither chamber should be forced to accept differing legislation. "We'd say we could both pass a bill and go to conference."

Reporter Manuel Quiñones contributed.

CAMPAIGN 2016:

Podesta to join Clinton camp

Robin Bravender, E&E reporter

Published: Wednesday, January 14, 2015

John Podesta is preparing to join Hillary Clinton's political team as she considers jumping into the 2016 race for the White House.

Podesta -- President Obama's counselor and top energy and environmental aide -- anticipates playing a lead role in a possible Clinton campaign after he leaves the White House next month, a source familiar with Podesta's plans told *Greenwire* today.

The move has long been anticipated. The former chief of staff to President Bill Clinton signed on for a yearlong stint when he joined the Obama administration early last year, and he's been rumored to be in the running for a top job -- including campaign chairman -- if Hillary Clinton decides to run.

Signing Podesta onto the team is the latest indication that Clinton is laying the groundwork for her potential White House bid, *The Wall Street Journal* reported yesterday. The paper reported that Podesta has attended informal meetings with Clinton aides in recent months centered on her possible presidential run.

Asked about his post-White House plans in November, Podesta said on PBS' "Charlie Rose" talk show, "If [Clinton] runs -- as I hope she will -- I'll do whatever she asks me to do. But right now, she hasn't made a decision to run, and so I'm expecting to return to what I was doing before, which is teaching law at Georgetown law school and working at a think tank."

Podesta is expected to leave his post in February; he had agreed to stay on until after Obama's State of the Union address, which is scheduled for next week.

Many supporters of the Obama administration's environmental agenda have expressed disappointment that Podesta won't be in the White House to help shape energy policies for the rest of the president's term. Still, many greens are hopeful that Podesta will be a driving force on those issues in a possible Clinton campaign.

Another of Obama's top environmental advisers, acting Council on Environmental Quality Chairman Mike Boots, will be departing the White House in March, raising questions about who will take on their portfolios (*E&ENews PM*, Jan. 13).

TRANSPORTATION:

Obama resubmits 2 nominees

Sean Reilly, E&E reporter

Published: Wednesday, January 14, 2015

President Obama is again seeking to place Carlos Monje and Daniel Elliott in key transportation posts after the two failed to win Senate confirmation last year.

In fresh nominations submitted yesterday to the Senate, Obama tapped Monje to become assistant Transportation Department secretary for policy and Elliott to return to the Surface Transportation Board, which oversees the freight rail industry.

Elliott had been the board's chairman from 2009 until the end of last month, when he had to step down after a holdover year on his initial term expired. Monje, a former White House aide, has been a counselor to Transportation Secretary Anthony Foxx since last February.

Their candidacies last year appear to have fallen victim to a time crunch in the waning days of the 113th Congress. Monje, originally nominated in August, won easy approval to assume the assistant secretary's job last month from the Senate Commerce, Science and Transportation Committee. While Elliott's original term -- not including the holdover year -- expired at the end of 2013, Obama only renominated him for the chairman's post in November.

Last week, Obama also renominated Therese McMillan to head the Federal Transit Administration. McMillan, who has been at the agency since 2009, is currently acting administrator.

ELECTRICITY:

Suburb suffers morning of darkness after substation zaps squirrel

Published: Wednesday, January 14, 2015

A squirrel's untimely demise left 4,500 Duke Energy Corp. customers in southwestern Ohio without power Monday morning.

The Cincinnati suburb of Forest Park and surrounding areas went dark after the squirrel was zapped entering a substation.

Most customers had power restored by noon or shortly thereafter but not before one high school dismissed classes (AP/Albany *Times Union*, Jan. 13). **-- DTB**

FEDERAL WORKFORCE:

Agencies shed 19,000 jobs in 2014

Kevin Bogardus, E&E reporter

Published: Wednesday, January 14, 2015

The federal workforce shrank again in 2014, according to data from the Bureau of Labor Statistics.

Federal agencies, excluding the U.S. Postal Service, shed about 19,000 jobs over the course of the year.

The job losses fit into an ongoing decline in the size of the federal government's workforce. Agencies also lost jobs in 2013 and 2012, though losses in those years were greater than last year.

Agencies have had a tough time in Washington, D.C., in recent years.

Congress has looked to cut down on spending, and the Obama administration has put a tighter leash on pay and bonuses for federal employees. Sequestration has eaten into agencies' budgets as well.

Other indicators show that working for the federal government is not ideal.

Bonuses decreased for senior executives in government last year, according to a recent study by the Office of Personnel Management (*Greenwire*, Jan. 13). And morale among government workers is at a low, according to a report released last month by the Partnership for Public Service (*Greenwire*, Dec. 9, 2014).

Lawmakers have tried to brighten federal workers' prospects, though. Democrats in the House and Senate introduced legislation yesterday to give government employees a 3.8 percent pay raise (*Greenwire*, Jan. 13).

RAIL:

Utility hits CSX with rate complaint

Sean Reilly, E&E reporter

Published: Wednesday, January 14, 2015

One of Michigan's largest utilities is accusing CSX Transportation Inc. of illegally overcharging to ship coal to a key power plant.

In a complaint filed yesterday with the Surface Transportation Board, Consumers Energy Co. said CSX's rates to deliver coal to the J.H. Campbell Generating Station in western Michigan are unreasonable and asked the board, which handles freight rail disputes, to investigate and set new "new lawful maximum rates and charges."

At CSX, headquartered in Jacksonville, Fla., spokeswoman Melanie Cost said the railroad is reviewing the filing but will mount a vigorous defense.

"We continue to feel CSX's rates are fair and reasonable," Cost said in an email. Also yesterday, CSX reported its 2014 revenue hit a record $12.7 billion.

Consumers, the main subsidiary of CMS Energy, provides electricity to about 1.8 million residential,

commercial and industrial customers, most of it through coal-fired generation. Campbell, which has 1,455 megawatts of baseload capacity, is its largest coal-fired plant, consuming as much as 5.5 million tons of low-sulfur coal from Wyoming's Powder River Basin, according to the complaint.

While BNSF Railway Co. moves the coal from Wyoming to Chicago, CSX is the only railroad able to then ship it to Michigan, the complaint says. The last contract between Consumers and CSX expired last month; despite long-running negotiations, the two sides have not reached a new agreement.

As of Jan. 1, however, CSX is charging $14.95 per ton, the complaint says. In an email, Kelvin Dowd, an attorney with Slover & Loftus LLP, a Washington, D.C., law firm representing Consumers, this morning declined to say what CSX's rate had previously been on the grounds that the information is confidential. Asked what Consumers considers a maximum reasonable rate, Dowd replied that the utility will spell out its evidence in the course of the STB proceedings.

Any reduction in rail rates that the board ultimately orders, the complaint adds, will also benefit Consumers Energy customers "through their monthly electric bills."

ELECTRIC VEHICLES:

Musk expects Tesla profit by 2020

Published: Wednesday, January 14, 2015

Tesla Motors should become profitable in five years after it introduces a cheaper electric car that more consumers will buy, CEO Elon Musk said.

Speaking at an automotive conference yesterday, Musk said Tesla will need to sell at least 500,000 cars per year to make money.

He said the company should reach those sales levels after its new Model 3 is in production.

"I think there's going to be huge societal pressure toward electric cars," Musk said. "They're just fundamentally better" (Durbin/Krisher, Associated Press, Jan. 13). **-- SP**

COAL:

Worker safety rule protects miners from underground machines

Manuel Quiñones, E&E reporter

Published: Wednesday, January 14, 2015

The Mine Safety and Health Administration yesterday released a final rule meant to protect workers from large underground coal mining machines.

The rule, scheduled to be published in the *Federal Register* tomorrow, will require mining companies to install technology to prevent miners from getting pinned by the high-power scrapers.

Thirty-five coal miners have died since 1984 after getting hit or crushed by the machines. "Simply put," said MSHA head Joe Main, "the proximity detection final rule will save lives and has the potential to dramatically improve the safety of mining operations."

The technology, MSHA said, can be programmed to automatically shut down the continuous mining machines before they kill a worker. Components are installed on the machines and worn by miners.

The rule includes standards for maintaining the technology and training workers. It will come into effect 60 days after its publication, but the agency included phase-in periods to make sure companies have time to install MSHA-approved equipment.

About half the nearly 900 continuous mining machines in underground coal mines around the country already have the technology. MSHA predicts they will be in compliance with the new rule right away or with just minor tweaks.

Luke Popovich, spokesman for the National Mining Association, said the trade group is still reviewing the final rules but was initially pleased the standards took into account many companies' limited experience with the technology.

MSHA has moved forward with numerous rules under the Obama administration. And it will soon propose standards meant to protect workers from other machines.

Click here to read the new rule.

AIR POLLUTION:

Texas refinery emits white powder

Published: Wednesday, January 14, 2015

A Houston-area Marathon Petroleum Corp. refinery released a fine, white powder yesterday at a fluid catalytic cracking unit that stuck to cars in the area.

The Texas City Office of Emergency Management said the incident occurred at about 8:30 a.m. CST at the Galveston Bay Refinery.

Refinery officials said the material was not hazardous but warned it may cause skin, eye or lung irritation.

The material primarily contained silica sand and aluminum oxide, the company said.

The company said it isn't sure what caused the release (Dale Lezon, *Houston Chronicle*, Jan. 14). **-- SP**

AIR POLLUTION:

Chicago aldermen approve petcoke regulation

Published: Wednesday, January 14, 2015

Chicago's attempt to regulate piles of petroleum coke cleared its first hurdle yesterday.

A panel of city aldermen gave preliminary approval to allow city officials to set limits on the amount of petcoke that can be stored in city limits.

Southeast Side residents have complained about dust blowing from mounds of the oil refining byproduct stored at the KCBX Terminals.

KCBX Terminals, a firm controlled by Charles and David Koch, had previously announced a plan to come into compliance with a different city rule. The company is proposing to build a $120 million storage structure along the Calumet River to enclose the mounds (John Byrne, *Chicago Tribune*, Jan. 12). **-- AW**

CALIFORNIA:

FBI questions failed energy efficiency credit bill

Published: Wednesday, January 14, 2015

FBI agents are looking into an environmental bill advanced by California Senate President Pro Tem Kevin de Leon (D) in 2013, but it's not clear what they hope to find.

A source who was interviewed by the FBI said agents asked for basic information about the bill but did not indicate they were looking into illegal activity. An FBI representative reached yesterday was not aware of an active investigation.

De Leon and his staff have not been contacted by the FBI, Chief of Staff Dan Reeves said. Reeves said the bill was originally proposed by the Environmental Defense Fund.

De Leon introduced the bill in 2013, but it was rejected by the Senate Energy, Utilities and Communications Committee after legislative aides said it would harm consumers.

The bill would have required utilities to develop programs to lend customers the cost of energy-efficiency projects and allow customers to repay the debts through their utility bills. The bill could have benefited companies that offer alternative energy and energy-efficiency services by making it easier for customers to purchase their products (Patrick McGreevy, *Los Angeles Times*, Jan. 13). **-- SP**

WASHINGTON:

Inslee stumps for carbon cap in State of State address

Published: Wednesday, January 14, 2015

With combatting climate change already a priority for his administration, Washington Gov. Jay Inslee (D) used his State of the State address yesterday to promote his recent proposal of a carbon cap-and-trade program in the state.

The cap-and-trade program would seek to meet a 2008 legislative mandate to drastically reduce greenhouse gas emissions in the state by requiring large industrial polluters to pay for each ton of carbon they release.

Inslee said the plan would raise nearly $1 billion in its first year to fund transportation projects and education.

"We face many challenges, but it is the growing threat of carbon pollution that can permanently change the nature of Washington as we know it," he said. "For all we do here together in the next few months, for all our financial woes, for all our short-term demands, we know that the most enduring legacy we can

leave is a healthy, clean, beautiful Evergreen State."

State Republicans said after the speech that they do not support Inslee's proposal.

Sen. Ann Rivers (R) said she believes conservation is a good business practice that businesses will want to do on their own, and called cap and trade a penalty that would discourage businesses from locating in Washington.

"Do we need to beat them, or do we acknowledge the work that they've done that's been helpful?" she said (Rachel La Corte, AP/*Houston Chronicle*, Jan. 13). **-- AW**

MASSACHUSETTS:

Enviros fret over governor's picks for energy team

Published: Wednesday, January 14, 2015

Republican Gov. Charlie Baker's picks to lead Massachusetts' energy office have concerned environmentalists who worry the appointments signal a shift in state priorities.

On Monday, Baker announced three appointments in the Executive Office of Energy and Environmental Affairs: Robert Hayden as commissioner of the Department of Public Utilities, Angela O'Connor as chairwoman of the DPU and Ron Gerwatowski as assistant secretary of the Executive Office of Energy and Environmental Affairs. Gerwatowski will serve under Secretary Matthew Beaton, a former Republican state representative.

Hayden previously ran an unsuccessful bid for Congress in which he campaigned against government regulations. O'Connor is a former lobbyist for the region's fossil fuel industry, and Gerwatowski previously served as the senior vice president for regulation and pricing at National Grid, one of the state's largest utilities.

Together, the appointments mark a stark change from former Democratic Gov. Deval Patrick's administration, which promoted renewable energy.

During his campaign, Baker promised to comply with the Massachusetts Global Warming Solutions Act, a Patrick initiative to cut carbon emissions in the commonwealth by 25 percent below 1990 levels by 2020.

Beaton confirmed he will promote renewable energy but said renewables had to remain competitive with other types of energy generation.

"There's a fine balance," he said. "But we need to keep Massachusetts competitive."

That stance worries state environmentalists who fear Beaton will forgo renewable energy issues and focus instead on building out the state's natural gas pipeline network.

"The administration is clearly putting the fox in charge of the chicken coop on energy policy," George Bachrach, president of the Environmental League of Massachusetts, said. "These are disappointing appointments that will likely represent the interests of the utilities and the industries they regulate" (David Abdel, *Boston Globe*, Jan. 14). **-- AW**

INDIA:

Government cracks down on enviro groups' anti-coal campaigns

Published: Wednesday, January 14, 2015

The Indian government is cracking down on environmental groups campaigning against coal production in the country.

Greenpeace, the Sierra Club, 350.org, Avaaz and the Bank Information Center said they have been targeted for protesting against coal production and carbon emissions in the country.

Coal accounts for 80 percent of India's power production, and the environmental groups argue the country needs to develop more renewable energy. Prime Minister Narendra Modi, however, has pledged to cut back on regulations, including environmental ones, to make the country more business-friendly.

"The groups who've been working on coal and climate change are the groups that are being singled out," said Priya Pillai of Greenpeace. "But this is a democratic country, and I have a right to speak my mind."

Pillai was blocked from traveling to London for business recently. Another Greenpeace staffer was barred from entering the country in September, and the organization has filed suit after the Indian government blocked the group from accessing wired funds.

"The so-called free speech they are talking about is not free speech, it's not free opinion; it's paid opinion," said G.V.L. Narasimha Rao, the national spokesman for Modi's ruling Bharatiya Janata Party. "They are acting as foreign propagandists and foreign agents" (Shashank Bengali, *Los Angeles Times*, Jan. 13). **-- MH**

CHINA:

Government plans boost for green vehicle sector

Published: Wednesday, January 14, 2015

China plans to introduce new policies encouraging more "green" energy vehicles to help fight its pollution problem and dependence on foreign oil, according to state-run media yesterday.

Official news agency Xinhua reported Zeng Xiaoan, a director at the Ministry of Finance, said China will use new fiscal policy to spur growth and innovation, including more charging stations and support infrastructure.

The policy changes accompany other efforts by government officials to strengthen the industry, providing a boon for firms like China's biggest electric car manufacturer, Warren Buffett-backed BYD Co. Ltd. (Brenda Goh, Reuters, Jan. 14). **-- DTB**

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U.S. cities lag behind others in the world in meeting the challenge of sea-level rise

In December, residents in Marin, a county in the northern part of the San Francisco Bay Area nestled across from the Golden Gate Bridge, woke up to find that some of their roadways, docks and parking lots were underwater.

2.RELIGION:

Whether they want it or not, Republicans get religion on climate change

On the rare chance any Republican congressmen or senators leave the premises of the Hershey Lodge during their joint caucus retreat today, they'll be greeted by an interfaith religious service aimed at motivating the GOP lawmakers to take action on climate change.

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New methane rules fuel oil and gas split over existing infrastructure

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Homes with rooftop solar sell at a premium, study finds

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Global lust for gold pushes more mining activity into rainforests -- study

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Nonprofits launch program to help Peruvian indigenous groups report illegal logging

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Low oil prices offer unique opportunity to reform Philippine energy sector -- World Bank

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EDF's Symons says regulating existing source emissions critical to meeting White House methane targets

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Methane rules hint Obama is taking a tougher line on oil and gas

The Obama administration's approach to regulating methane could signal a tougher approach to the growing domestic oil and gas industry as President Obama tries to build his environmental legacy.

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Legal tussles over Indian Point enter 'crucial year,' but final permit rulings unlikely

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U.S. now employs more solar installers than coal miners -- study

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Plant closures squelch coal demand

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Lobbying records show industry infighting over tank car rule

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Fracking can be done safely, report says; green groups howl

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Oil drop could sweeten deals for investors in Mexico

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Oil sands giant to cut budget, staff in 2015

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New Pa. governor picks leaders for drilling oversight posts

16.NORTH DAKOTA:
GOP lawmakers seek reassessment of 'arbitrary' flaring standard

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Oil prices spell bad news for national economy -- central bank

E&ETV'S ONPOINT

18.CLIMATE:
EDF's Symons says regulating existing source emissions critical to meeting White House methane targets

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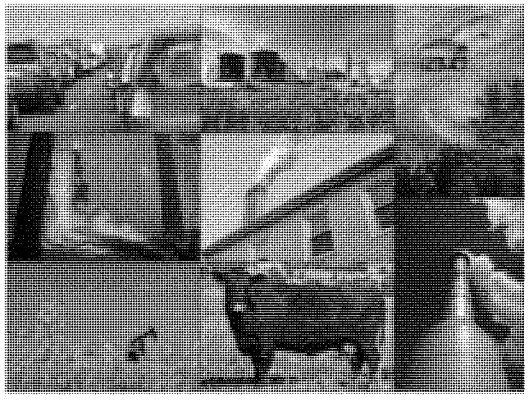

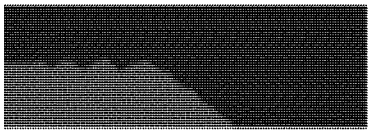

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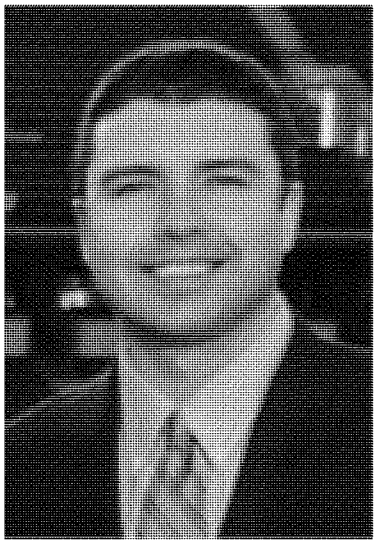

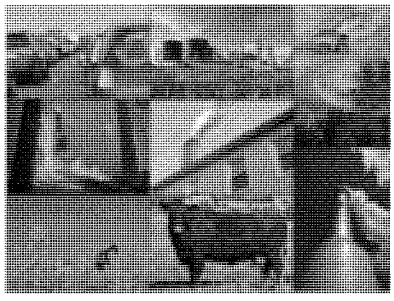

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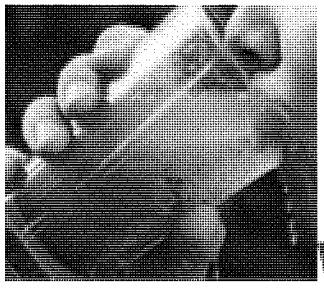
Subject: Water Law News for January 15, 2015



Water Law News

for January 15, 2015

Bloomberg BNA Daily Environment Report™

Agriculture

FDA: Water Quality Standards Under FSMA May Have Adverse Environmental Impact

Water quality under the Food Safety Modernization Act's produce safety rule may have an adverse impact on the environment, the Food and Drug Administration reported....

Climate Change

Democrats Push Flurry of Climate Change Amendments on Keystone Legislation

Republican leaders in the Senate may face a tough decision in the next week as Democrats seek to use amendments to the Keystone pipeline bill to put the chamber on record as supporting the scientific link between climate change and human activity....

Energy

Industrial Energy Costs in Brazil Expected To Rise in 2015 Due to Continued Drought

The cost of electricity for Brazilian industries rose by an average 23 percent in 2014 and is expected to rise by an average 27 percent in 2015, according to a report issued in January by the Rio de Janeiro State Industrial Federation (Firjan),...

Enforcement

Georgia Company Would Close, Rebuild Wastewater Site Over Waste Violations

A Georgia company would have to close and rebuild its wastewater treatment site over hazardous waste violations, according to a proposed consent decree now open for public comment (United States v. Renessenz, S.D. Ga., No. 14-cv-00185, 1/2/15)....

Hydraulic Fracturing

Local Fracking Bans Could Be Considered Regulatory Takings Under Colorado Bill

A Colorado lawmaker is proposing a bill (S.B. 93) that would deem the property of a mineral rights owner as "taken" when a local government regulation reduces its value via a ban on hydraulic fracturing. ...

Water Pollution

90 Percent of Sewage Discharged Into Major Indian Rivers Is Untreated, Study Finds

A parliamentary report found that 90 percent of sewage discharged into 14 major rivers and other water bodies in India was untreated....

Water Pollution

IMO Test Program for Ballast Water Microbe Removal Ineffective, Study Finds

Tests of shipboard ballast water treatment systems that remove disease-causing organisms have been ineffective because in most cases the tested ballast was below regulatory limits before treatment, according to a study published Jan....

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Inside EPA's **Weekly Report**, 01/16/2015

http://insideepa.com/newsletters/inside-epa

Latest News

GAO Finds 'Limited' Impact On EPA's Agenda From 'Sue And Settle' Pacts

The Government Accountability Office (GAO) in a new report finds limited impact on EPA's agenda as a result of legal settlements that commit the agency to rulemaking deadlines, downplaying concerns about what the agency's critics have called sue and settle pacts that force EPA to prioritize developing expensive new regulations.

Energy Utilities Tentatively Support EPA's Stream Monitoring Climate Plan

The energy utility industry is cautiously supporting EPA's draft proposal to develop regional monitoring networks (RMNs) to detect climate change effects in stream ecosystems, saying the plan could provide

necessary data to address industry's concerns about downscaling global climate change models to the regional or local level.

News Briefs

U.S. Chamber Urges Congress To Push Regulatory Reform

The U.S. Chamber of Commerce is urging the 114th Congress to prioritize regulatory reform legislation including greater oversight of new rules from EPA and other agencies and accelerating environmental permitting, while GOP lawmakers take early steps to limit new rules such as imposing a cost cap on future EPA regulations.

Advocates Ramp Up Bid For EPA To Limit Use Of Dispersants

A coalition of citizen groups plans to continue its push for EPA to restrict the use of toxic dispersants in oil spill responses, contending that changes to environmental laws are still needed to erase the legal mandate for dispersant use even while conceding the agency's just-released proposed spill response rule revisions take steps in the right direction.

Greenwire

WATER POLLUTION:

EPA proposes expanded oversight of uranium mining

Manuel Quiñones, E&E reporter

Published: Wednesday, January 14, 2015

U.S. EPA is proposing new water protection and monitoring regulations for a controversial form of uranium mining, according to a copy obtained by *Greenwire*.

Administrator Gina McCarthy signed the proposed rule Dec. 31, and the agency is scheduled to make it public in the near future. The proposal comes under EPA's effort to address concerns surrounding in-situ recovery uranium extraction sites.

In-situ recovery, also known as in-situ leach, involves injecting fluids underground to free uranium deposits, which are then pumped out. It is now, where geologically possible, the preferred method for uranium mining.

The proposed rule, according to an agency fact sheet, sets standards for companies to study existing water resources prior to the mining process.

While environmentalists complain the practice jeopardizes drinking water resources, the industry maintains it only touches already-polluted water (*Greenwire*, Dec. 23, 2011). Companies generally have to obtain an aquifer protection exemption from EPA.

The new proposed EPA standards would require companies to comply with whichever standard is tougher -- either under the Safe Drinking Water Act, the Resource Conservation and Recovery Act, or the Uranium Mill Tailings Radiation Control Act -- to protect water from 13 pollutants.

"If the water in the aquifer meets the ground water standards before ISR operations begin," said the fact sheet, "it would have to be restored to meet them again after operations have stopped."

However, if the concentration of pollutants like arsenic, cadmium, chromium, uranium and others already exceeds standards, then companies would have to restore the water to pre-operational conditions.

And if companies can't achieve that standard, the rule says, then they can request a so-called alternate concentration limit, as long as they meet certain conditions.

Environmental groups like the Natural Resources Defense Council, the Information Network for Responsible Mining, Uranium Watch and several others are now looking forward to weighing in on the long-awaited rule and are likely to push for stronger standards.

"Given the problems the industry has had with groundwater restoration, aquifers have been left much more contaminated than they were prior to mining," said Shannon Anderson, organizer for the Powder River Basin Resource Council. "New standards are desperately needed to better protect dwindling groundwater supplies in our Western states.

National Mining Association spokesman Luke Popovich said the group opposes the proposal for several reasons. "First," he said, "the requirement for three decades of post-recovery monitoring when there is no evidence in 40 years of experience that in-situ uranium mining presents an environmental risk justifying this extreme requirement."

Popovich also said the rule would discourage investment in new and existing uranium mining. "Another day, another dumb rule," he said.

Other actions

EPA is also moving forward with new rules for conventional uranium mining and milling facilities.

Last May, it proposed an update to radon emission standards by eliminating numeric limits on radon emissions and, instead, having uniform requirements for "generally available control technology" to achieve compliance and protect the environment (*Greenwire*, May 2).

Environmental advocates faulted the agency for its proposal and for not holding a hearing closer to Toronto, Ontario-based Energy Fuels Inc.'s White Mesa mill in southern Utah, the only operating conventional uranium mill in the country.

"The EPA is setting the White Mesa Mill up to be the next chapter in the toxic legacy of uranium mill contamination on the Colorado Plateau," said Jennifer Thurston, director of the Information Network for Responsible Mining, in a statement.

Energy Fuels, for its part, is also questioning EPA facts surrounding the proposal. The company said in June the agency's action "could potentially make it impossible to operate our existing facilities and build some of our proposed facilities."

Last year, the Grand Canyon Trust sued Energy Fuels in Utah U.S. District Court over radon releases. A company spokesman denied the group's allegations.

Groups have also been fighting a permit for a proposed conventional uranium mill in Colorado, which would be the first new one in decades in the United States.

Energy Fuels had been expanding operations in the country but recently sold the permit to private investors, including the company's previous CEO, amid a slump in uranium prices.

This year, however, the company announced a merger with Wyoming-based Uranerz Energy Corp. to create the top uranium mining company focused on U.S. assets.

Uranium producers had long been hoping for a mining renaissance to fuel new nuclear power plants. But the 2011 meltdown in Japan hurt the industry dramatically. A pound of uranium was selling for about $35, according to tracker Ux Consulting Co. But it was selling for more than $70 before the meltdown and for about $60 right after.

Still, producers such as Energy Fuels see the expected growth in nuclear production around the globe, particularly from China, as eventually providing demand to sustain U.S. mining plans.

HOUSE:

Judiciary chairman pledges to fight 'excessive regulation'

Robin Bravender, E&E reporter

Published: Wednesday, January 14, 2015

House Judiciary Chairman Bob Goodlatte yesterday succeeded in winning the chamber's support for a bill aimed at reining in government regulations.

And there's more where that came from, the Virginia Republican promised today.

The sweeping regulatory reform bill that cleared the House yesterday was just the opening salvo in this year's battle against federal rules, Goodlatte said during an event hosted by *The Christian Science Monitor*, according to his prepared remarks.

"I'm committed to restoring accountability and providing relief from excessive regulation to our nation's small businesses and job creators who need it most," Goodlatte said as he laid out his committee's agenda for the upcoming Congress. "America's small business owners are suffocating under mountains of bureaucratic red tape."

Goodlatte touted the House passage yesterday of the "Regulatory Accountability Act," which he co-sponsored with Rep. Collin Peterson (D-Minn.), as an effort to "rein in excessive regulatory costs" by forcing federal agencies to adopt the least expensive regulatory options for implementing the law. The Obama administration and advocacy groups on the left have blasted the bill as an effort to undermine needed health and environmental rules (*E&E Daily*, Jan. 14).

Still, Goodlatte and other GOP lawmakers are intending to plow ahead with that and other regulatory reform bills that failed when Democrats controlled the Senate, in hopes that they'll gain traction in the upper chamber and to signal their political opposition to the Obama administration's regulatory policies.

"With the new Congress, the House Judiciary Committee will be looking to build upon our work from the 113th Congress," Goodlatte said. "Under my leadership, the committee will continue to advance an agenda that is focused on creating jobs and making America more competitive and free."

OFFSHORE WIND:

Turbines create more jobs, energy than drilling rigs -- group

Emily Yehle, E&E reporter

Published: Wednesday, January 14, 2015

A new report from Oceana makes the case for offshore wind development along the East Coast, asserting it would create more jobs and energy than offshore drilling.

The nonprofit hopes to influence the Bureau of Ocean Energy Management as it decides whether to open the Atlantic Ocean to oil and gas leasing in its 2017-22 leasing plan. The agency already allows companies to conduct oil and gas surveys, which use air gun blasts to narrow down the location and quantity of mineral deposits (*Greenwire*, July 18, 2014).

Oceana's argument is twofold: Offshore drilling is not economically worth it, and it would threaten the health of oceans and marine life that in turn support other industries.

BOEM estimates there is 4.72 billion barrels of technically recoverable oil and 37.51 trillion cubic feet of technically recoverable natural gas in the Atlantic outer continental shelf (*E&ENews PM*, July 18, 2014). But Oceana's report points out that almost half of that may not be economically viable to extract -- and even if it was, the total reserves would meet domestic oil and gas consumption for only 250 days and 526 days, respectively.

Offshore wind, on the other hand, could produce power "long after the finite oil and gas deposits in the Atlantic [outer continental shelf] run dry," according to the report. By converting wind energy to "barrels of oil equivalent," the report estimates that offshore wind could produce more energy than offshore drilling after 13 years.

On the issue of jobs, the report asserts that offshore wind has the potential to create twice as many as offshore drilling by 2035. It also links drilling -- and the sonic blasts to find mineral deposits -- to oceans-based industries such as fishing and tourism that pump tens of billions of dollars into the East Coast.

"Based on the government's own estimates, seismic blasting in the Atlantic could harm fish populations while injuring as many as 138,000 marine mammals like whales and dolphins, disturbing the vital activities of as many as 13.5 million more," Andrew Menaquale, an energy analyst at Oceana who authored the report, said in a statement. "Instead of working to fully understand the implications of rushing to develop offshore oil and gas, our elected officials are being blinded by imaginary short-term profits and missing the real opportunity that wind provides."

OIL AND GAS:

API creates midstream division

Phil Taylor, E&E reporter

Published: Wednesday, January 14, 2015

The American Petroleum Institute announced yesterday the creation of a midstream department to focus on oil and gas transportation and infrastructure, a reflection of the shortage of pipelines and processing facilities in drilling plays, including in North Dakota and New Mexico.

The new department will be headed by Robin Rorick, a 19-year veteran of the trade group who for the last five years has worked as API's director of marine and security, a post overseeing maritime transportation issues and emergency response.

His new title will be group director of midstream and industry operations.

"American families and businesses rely on oil and natural gas every day, and it takes a strong and diverse supply chain to meet America's needs," Rorick said in a statement. "Every method of transportation that we use has an important role to play in the safe, reliable and efficient movement of oil and natural gas from the wellhead to consumers."

API President Jack Gerard said the oil and gas industry's continued "renaissance" depends on a "world-class infrastructure system."

"Creating a division within our organization focused on midstream issues will enable the industry to address the critical issues around energy infrastructure," he said.

A committee of API member company representatives will oversee the department's work. It will be led by Harry Pefanis, president and chief operating officer of Plains All American, API said.

FEDERAL WORKFORCE:

Agencies shed 19,000 jobs in 2014

Kevin Bogardus, E&E reporter

Published: Wednesday, January 14, 2015

The federal workforce shrank again in 2014, according to data from the Bureau of Labor Statistics.

Federal agencies, excluding the U.S. Postal Service, shed about 19,000 jobs over the course of the year.

The job losses fit into an ongoing decline in the size of the federal government's workforce. Agencies also lost jobs in 2013 and 2012, though losses in those years were greater than last year.

Agencies have had a tough time in Washington, D.C., in recent years.

Congress has looked to cut down on spending, and the Obama administration has put a tighter leash on pay and bonuses for federal employees. Sequestration has eaten into agencies' budgets as well.

Other indicators show that working for the federal government is not ideal.

Bonuses decreased for senior executives in government last year, according to a recent study by the Office of Personnel Management (*Greenwire*, Jan. 13). And morale among government workers is at a low, according to a report released last month by the Partnership for Public Service (*Greenwire*, Dec. 9, 2014).

Lawmakers have tried to brighten federal workers' prospects, though. Democrats in the House and Senate introduced legislation yesterday to give government employees a 3.8 percent pay raise (*Greenwire*, Jan. 13).

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CLIMATEWIRE — Thu., January 15, 2015

READ FULL EDITION

1.ADAPTATION:

U.S. cities lag behind others in the world in meeting the challenge of sea level rise

In December, residents in Marin, a county in the northern part of the San Francisco Bay Area nestled across from the Golden Gate Bridge, woke up to find that some of their roadways, docks and parking lots were underwater.

2.RELIGION:

Whether they want it or not, Republicans get religion on climate change

On the rare chance any Republican congressmen or senators leave the premises of the Hershey Lodge during their joint caucus retreat today, they'll be greeted by an interfaith religious service aimed at motivating the GOP lawmakers to take action on climate change.

TODAY'S STORIES

3.FOSSIL FUELS:

New methane rules fuel oil and gas split over existing infrastructure

4.RENEWABLE ENERGY:

Homes with rooftop solar sell at a premium, study finds

5.RESEARCH:

Global lust for gold pushes more mining activity into rainforests -- study

6.FORESTS:

Nonprofits launch program to help Peruvian indigenous groups report illegal logging

7.NATIONS:

Low oil prices offer unique opportunity to reform Philippine energy sector -- World Bank

8.FINANCE:

Harvard invests tens of millions in fossil fuels

9.TRANSPORTATION:

Battery-powered train hits U.K. tracks

10.CARBON MARKETS:

Ontario carbon pricing in the works, finally

11.FLOODS:

At least 48 dead in Malawi floods

E&ETV'S ONPOINT

12.CLIMATE:

EDF's Symons says regulating existing source emissions critical to meeting White House methane targets

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ENERGYWIRE — Thu., January 15, 2015

READ FULL EDITION

1.CLIMATE:

Methane rules hint Obama is taking a tougher line on oil and gas

The Obama administration's approach to regulating methane could signal a tougher approach to the growing domestic oil and gas industry as President Obama tries to build his environmental legacy.

TOP STORIES

2.NUCLEAR:

Legal tussles over Indian Point enter 'crucial year,' but final permit rulings unlikely

3.UTILITIES:

Ind. proposals set up legislative showdown over energy efficiency, solar

4.FINANCE:

Bakken boomtown moves to stem losses from oil-price plummet

ELECTRICITY

5.ECONOMY:

U.S. now employs more solar installers than coal miners -- study

6.PEOPLE:

N.Y. grid operator extends CEO's run to mid-2016

7.TRANSMISSION:

High-stakes Oncor auction could come in March

8.POWER MARKETS:

Plant closures squelch coal demand

OIL AND GAS

9.TRANSPORT:

Lobbying records show industry infighting over tank car rule

10.BAKKEN SHALE:

N.D. sees tax losses as oil prices cut into drilling

11.CALIFORNIA:

Fracking can be done safely, report says; green groups howl

12.OIL EXPORTS:

U.S. refinery 'crunch' is just 2 years away, CEO warns

13.OFFSHORE DRILLING:

Oil drop could sweeten deals for investors in Mexico

14.WORKFORCE:

Oil sands giant to cut budget, staff in 2015

15.PEOPLE:

New Pa. governor picks leaders for drilling oversight posts

16.NORTH DAKOTA:

GOP lawmakers seek reassessment of 'arbitrary' flaring standard

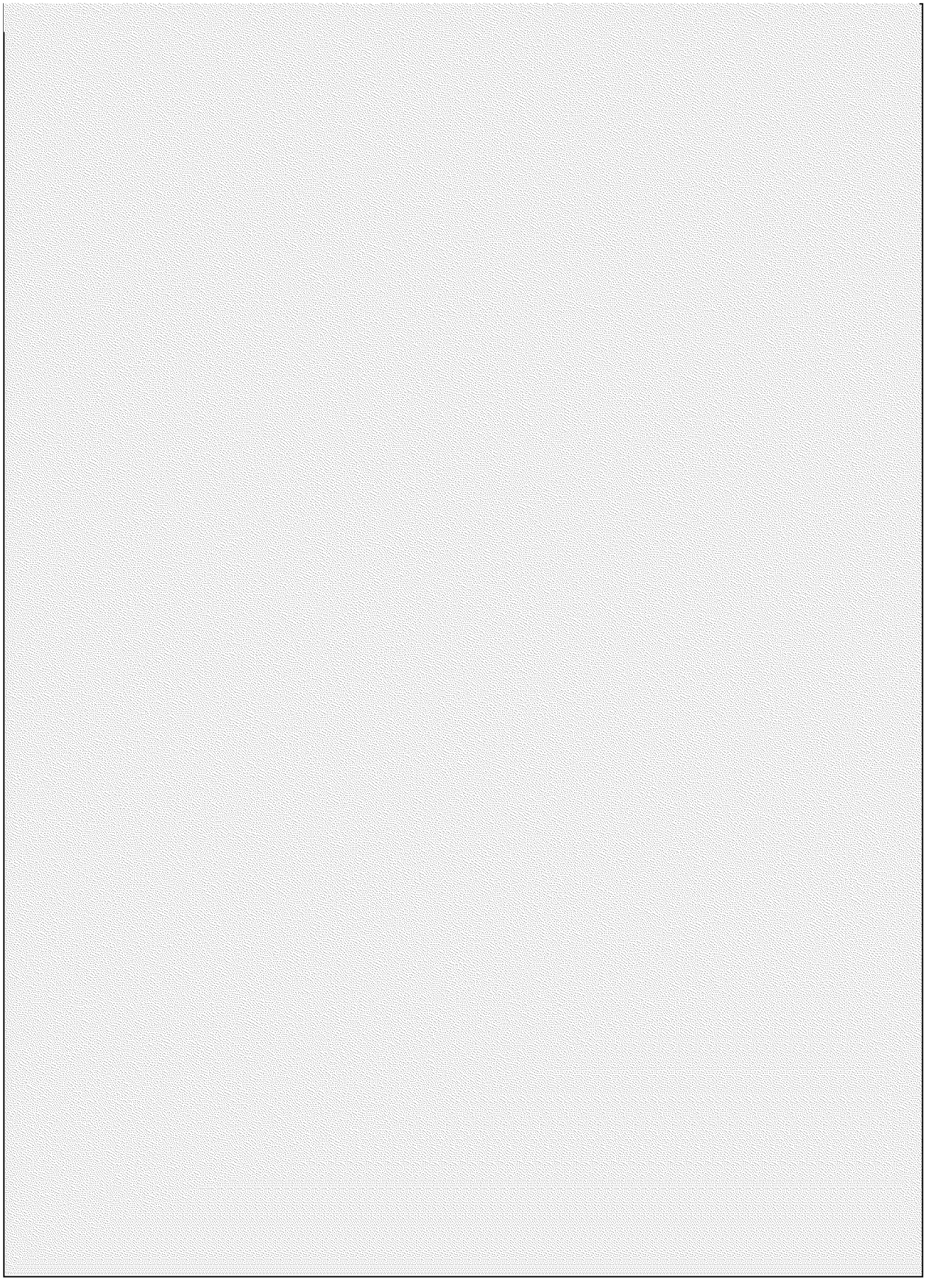
17.CANADA:

Oil prices spell bad news for national economy -- central bank

E&ETV'S ONPOINT

18.CLIMATE:

EDF's Symons says regulating existing source emissions critical to meeting White House methane targets



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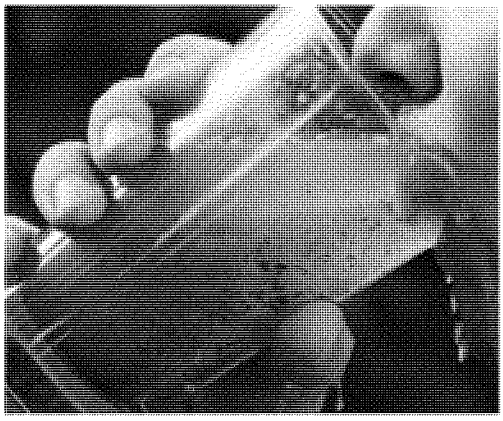

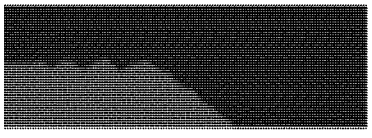

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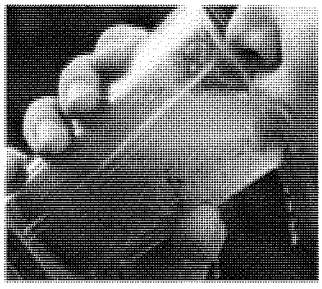

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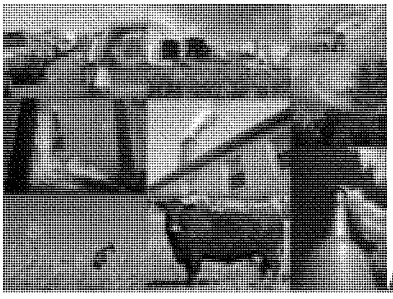


Air & Radiation Law News

for January 14, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

Company Can Skip Demonstration Stage, Install Controls, EPA Says in FIP Proposal

The Environmental Protection Agency is proposing a revision to the Arizona Regional Haze Federal Implementation Plan that would allow one company to forgo demonstration requirements for control technology so it can install the equipment...

Air Pollution

Current Lead Standard Insufficient For Children's Health, EPA Panel Says

The Environmental Protection Agency's proposal to retain current national air standards for lead will not adequately protect children's health, according to a federal advisory committee....

Air Pollution

New OSHA Proposal Calls for Power Plants To Report Worker Exposure to Arsenic

Companies operating coal-fired electric power plants would have to begin monitoring workers' exposure to inorganic arsenic and filing reports with the Occupational Safety and Health Administration, according to a proposal slated...

Climate Policy

White House Environmental Adviser to Step Down in March, Council Says

Mike Boots, who over the last year has helped implement the Obama administration's climate change agenda as head of the White House Council on Environmental Quality, will step down in March, CEQ confirmed to Bloomberg BNA....

Climate Regulation

EPA Plan to Require Methane Controls In Oil, Gas Industry Expected This Week

The Obama administration is expected this week to announce its plan to require the oil and gas industry to cut methane emissions by as much as 45 percent over the next decade, an expansion of its efforts to curb greenhouse gases tied to climate...

Congress

House Energy Panel Gets Subpoena Power; Democrats to Receive Advance Notice

The head of the House Energy and Commerce Committee Jan. 13 was given broad power to subpoena witnesses, a move made over the objection of committee Democrats....

Energy

Senate Votes on Keystone Exports, Energy Efficiency Expected Next Week

The Senate will vote next week on amendments that would bar the export of oil and refined products from TransCanada Corp.'s Keystone pipeline and increase energy efficiency in federal buildings, after reaching

agreement to proceed to...

Environmental Reviews

Administration Pushed Regulators for Less Rigorous Coal-Export Terminal Review

Even as President Barack Obama stands accused of waging a "war on coal," his administration has pressured federal regulators to conduct a less rigorous environmental review than they thought was proper for a proposed coal-export...

Hazmat Transport

API Starts Energy Infrastructure, Transport Section

The American Petroleum Institute has started a "Midstream Department" to address issues related to oil and natural gas transport and energy infrastructure, the API announced Jan. 13. The department will examine transportation...

Hazmat Transport

NTSB Includes Rail Tank Car Safety On 2015 'Most Wanted List' of Improvements

The National Transportation Safety Board named rail tank car safety to its "most wanted list" of its advocacy priorities in 2015, according to a list that was released Jan. 13....

Hazmat Transport

Rail Transport of Crude Oil, Chemicals, PHMSA Program Authorizations Top Agenda

Transportation of crude oil and other hazardous materials by rail is likely to remain the most prominent topic of debate on Capitol Hill and for the Transportation Department's hazardous materials regulatory agenda in 2015, according...

Natural Gas

FERC Seeks Public Comment on Impact Of Pipeline Linking Marcellus With Pa., N.J.

The Federal Energy Regulatory Commission is requesting comments on what issues to consider including in its environmental impact statement for a proposed 108.8-mile gas pipeline to serve Pennsylvania and New Jersey....

Pipeline Safety

California PUC Orders PG&E to Disclose 65,000 E-Mails Between Utility, Commission

The California Public Utilities Commission, under fire for accused cozy relationships with the regulated community, Jan. 13 ordered Pacific Gas & Electric Co. to disclose 65,000 e-mails between PG&E and the CPUC as requested by...

Radioactive Waste

Congress May Advance Yucca Mountain As NRC Continues Licensing Process

With Republicans in control of Congress, a proposed repository for radioactive commercial spent nuclear fuel at Yucca Mountain in Nevada might advance in 2015....

Regulatory Policy

House Passes Bill Giving EPA, Other Agencies New Procedures for Developing Regulations

The House of Representatives Jan. 13 passed a bill by a vote of 250-175 that would require environmental, job safety and financial regulatory agencies to clear new procedural hurdles—the first of several measures being readied by Republicans...

Renewable Energy

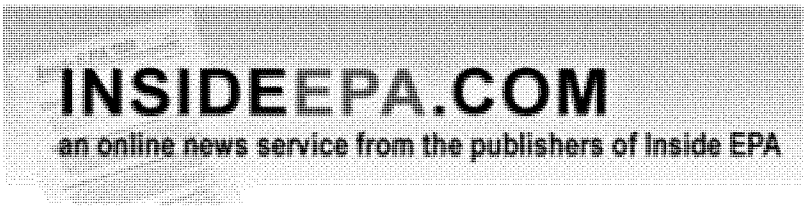
Installation of Wind, Solar Facilities to Lead Gains in Power From Renewables, EIA Says

The amount of electricity generated in the U.S. from nonhydropower renewable sources is expected to increase to 7.9 percent by the end of 2016, led by new installations of wind and solar power, the U.S. Energy Information Administration said...

Trade

Public Opposition to Dispute Settlement Clause in TTIP Forces Commission Rewrite

The European Commission is working on a compromise on the issue of including an investor-state dispute settlement (ISDS) component in the Transatlantic Trade and Investment Partnership (TTIP) after an overwhelming majority of respondents...



Inside EPA's **Clean Air Report**, 01/15/2015

http://insideepa.com/newsletters/clean-air-report

Latest News

Industry Wary Of Direct Methane Limits In EPA's Imminent Emissions Plan

Oil and gas industry officials are wary that EPA could impose some direct regulation of the greenhouse gas (GHG) methane through its imminent plan for reducing the sector's methane emissions, while reiterating their belief that the pending strategy is likely to combine mandatory emissions controls with voluntary measures.

Suit Revives Legal Fight Over EPA's Power To Reject Interstate Air Plans

Kansas and utility Westar Energy are reviving a legal fight over EPA's authority to reject state implementation plans (SIPs) as inadequate for implementing the agency's Cross-State Air Pollution Rule (CSAPR) even when a SIP met Clean Air Act requirements at the time of its submission, posing the latest challenge to CSAPR's reinstatement.

News Briefs

Stalled EPA Research Nominee Takes On Advisory Roles

Thomas Burke, whose nomination by President Obama to lead EPA's Office of Research and Development (ORD) stalled in the Senate during the 113th Congress, has stepped into key advisory roles at the agency. Burke joined EPA Jan. 12 as ORD's deputy assistant administrator and EPA science advisor, an agency spokeswoman says. Neither role requires Senate confirmation.

Greenwire

AIR POLLUTION:

EPA air chief 'confident' as rulemakings face legal, political fire

Amanda Peterka, E&E reporter

Published: Tuesday, January 13, 2015

U.S. EPA hasn't finalized a new ozone standard, but it's already focusing on how the high-profile smog curbs would be implemented and how it could affect future rulemakings, the agency's acting air chief said in an interview last week.

Janet McCabe discussed priorities for her Office of Air and Radiation in a sit-down with *Greenwire* at EPA headquarters in Washington, D.C. Near the top of a long list is the ozone standard, which industry critics say would be the most expensive rulemaking ever.

Ground-level ozone -- a component of smog -- is formed when nitrogen oxides react with volatile organic compounds in sunlight. Citing smoggy air's threat to public health, EPA last November proposed tightening the standard of 75 parts per billion -- set in 2008 during the George W. Bush administration -- to between 65 and 70 ppb. The agency is also taking comment on a 60 ppb standard, which is favored by public health advocates and environmentalists (*Greenwire*, Nov. 26).

"This is an incredibly important rulesetting. Ambient air quality standards is one of the most important things that the [EPA] administrator does," McCabe said. "This is all about public health. It's about letting people know what's a safe level of air pollution ... to breathe."

Though EPA isn't expected to finalize the standard until later this year and it will likely be the target of multiple lawsuits, the agency is thinking ahead to how states would meet a tighter standard, McCabe said. EPA expects states would be able to draw from other rulemakings that indirectly affect ozone-related pollutants.

"We find that a lot of the programs that have been put in place here in recent years are actually ... delivering cleaner air and will be delivering cleaner air in anticipation of a revised ozone standard -- if that's what the administrator ultimately decides," McCabe said.

States will get help reaching a tighter ozone standard from the mercury and air toxics standards, McCabe said. The rule will require power plants and other industry facilities to cut emissions of mercury, arsenic and acid gases, among other pollutants. EPA says the rule will prevent 11,000 premature deaths and provide $90 billion in annual health benefits.

But the toxics rule faces a big legal hurdle: The Supreme Court in November agreed to take up a challenge to the MATS rule from more than 20 states and industry groups angry about estimated compliance costs of $9.6 billion a year (*Greenwire*, Nov. 25).

Acting U.S. EPA air chief Janet McCabe. Photo courtesy of U.S. EPA.

McCabe said EPA's "very confident" the rule is "very sound" and that the agency was moving forward with putting it in place as the litigation runs its course. The rule's initial compliance date is coming up in April, before the Supreme Court ruling.

"We're also very pleased at the work that is going on across the country to actually move forward with MATS implementation. Utilities are well along the way," McCabe said. "We feel very good that the reductions that that rule is looking for are on the way. And we'll get through the remainder of the legal issues."

Industry, EPA spar over ozone

With the MATS rule in place, EPA says, the benefits of the ozone proposal would yield significant savings in health care costs and outweigh costs by as much as 3 to 1.

A new standard set at 70 ppb would cost the nation $3.9 billion a year by 2025, though that figure excludes California, according to EPA. A 65 ppb standard, on the other hand, would cost $15 billion a year. The estimates are based on both the cost of existing pollution control technologies and the cost of technologies the agency expects will become available in the future.

EPA's cost estimates also take into account Tier III vehicle emission fuel standards and the agency's proposed plans to reduce carbon dioxide emissions from power plants, which McCabe announced last week would be finalized this summer (*Greenwire*, Jan. 7).

Industry critics, though, say that EPA is underestimating costs of a new ozone standard, pointing to their own estimates and EPA's calculation from a few years ago -- when the agency proposed a new standard that ultimately was not finalized -- that a standard set at 70 ppb would cost between $19 billion and $25 billion. Those figures did not take into account the new rulemakings that have been issued or proposed since then.

"Did the extra cost of regulation go away, or they're just paying through different devices?" said Ross Eisenberg, vice president of natural resources and energy policy at the National Association of Manufacturers. "It's a bit of a shell game."

Industry groups have also argued that states haven't yet paid the bill for meeting the current standard of 75 ppb. The agency hasn't issued its implementation rules for that standard yet, which give states

guidelines for how to bring areas that are in nonattainment with the standard into compliance.

"We're in a situation where EPA has not even finalized their rule for the implementation of the existing standard that was enacted in 2008," said Cal Dooley, president and CEO of the American Chemistry Council, "and it seems like we can make a pretty compelling case. ... EPA should have the guidance and implementation rule finalized before moving forward with a further reduction."

The final 2008 implementation rule has been at the White House Office of Management and Budget since October for interagency review. McCabe said that the rule would be coming out "very soon" and that it had no bearing on EPA's review of the standard.

"I, of course, want to get rules out in as timely a way as possible," she said. "And I think we've done a lot of work to improve EPA's timeliness, so I'm not concerned that the absence of those rules are any barrier of course to the science work of what EPA's ozone standard should be."

Drawing on her experience serving as Indiana's air director, McCabe added that states are well aware of the actions they need to be taking to meet both the 2008 standard and a potential tighter new standard.

"We're working all the time on the actual strategies, whether those are regulatory approaches at the federal level or the state levels, whether they're voluntary approaches," she said. "That's all going on even as the mechanical work of writing the implementation rule is being finished."

EPA will accept public comment on the proposed new range for the standard until March 17. The agency will also hold three public hearings on the new standard in Arlington, Texas; Washington, D.C.; and Sacramento, Calif., beginning in the end of January.

McCabe said that the agency would meet a court-ordered deadline of Oct. 1 to complete the rule.

"It's always challenging. It's a big rule. It's an important rule. There's a lot of science involved, of course, and I know we'll get lots and lots of public input that we'll have to think about very carefully. There are issues to be addressed," she said. "But I'm confident that we'll meet the deadline."

Regional haze delay

Partly as a result of the ozone rulemaking, EPA is considering delaying a key deadline for state plans that address haze pollution affecting visibility in national parks, McCabe said.

Under the regional haze rule issued in 1999, states have until 2018 to submit updates to 10-year plans to control pollutants such as sulfur dioxide and nitrogen oxides at individual sources that cause visibility-limiting haze at national parks and wilderness areas.

EPA will decide later this year, likely through a formal rulemaking, whether to bump that deadline back by three years, McCabe said.

Some states have requested the delay, McCabe said, in order to incorporate the potential new ozone standard, EPA's mercury and air toxics rule, the agency's Clean Power Plan, and other new rulemakings into their regional haze plans.

"Folks have articulated, I think pretty compellingly, 'Let's think about these things together and have a few more years to have those programs further along,'" McCabe said. "A lot of these programs, they may have different ultimate public health or environmental goals, but it's the same reductions that get you there. So that makes a lot of sense."

EPA first publicly raised the potential for a delay in October at a meeting of the agency's Clean Air Act Advisory Committee. Conservationists have already slammed the plan, saying the delay would lead to more visibility-causing pollution in national parks.

"Ridding our national parks of haze and air pollution is a no-brainer," said John Walke, director of the clean air program at the Natural Resources Defense Council, in a recent statement. "Delays in the regional haze program mean more pollution and more harm to public health. It's as clear as day that we should move expeditiously, and decisively, to improve visibility and protect the public."

McCabe acknowledged that some states are further along than others and "just as happy" to keep the deadline the same.

She also rejected the idea that the proposed delay in the deadline would result in increased air pollution, as the agency does not plan to change the next revision deadline of 2028.

"This is not about pushing something back, and it's certainly not about pushing some of the environmental deadlines back," McCabe said. "We've heard some concerns from some stakeholders that delaying a planning obligation is not a good thing and others who say they think it's fine. It's kind of as you would expect."

KEYSTONE XL:

Senate leaders work on deal to avoid midnight vote

Manuel Quiñones, E&E reporter

Published: Tuesday, January 13, 2015

Senate leaders are working toward a deal that would allow debate to proceed on legislation to approve the Keystone XL pipeline for bringing Canadian oil sands crude to Gulf Coast refineries.

The Senate voted 63-32 last night to invoke cloture on the bill, but without a deal, they'll have to vote again at around midnight tonight on a motion to proceed.

"All senators should know that we'll get on this bill today, and we'll begin the amendment process," Majority Leader Mitch McConnell (R-Ky.) said this morning. "We can do it the easy way, or we can do it the hard way."

McConnell has promised an open amendment process, but some Democrats have already started expressing concern over whether the chamber's new leadership will truly allow votes on controversial issues, like putting senators on record about their views on climate change.

McConnell said this morning, "I want to make it clear to everybody we're committed to an open amendment process, but not an open-ended one."

A Senate Republican aide also called Democratic concerns ironic because he said the minority has yet to formally introduce an amendment.

Assistant Democratic Leader Dick Durbin of Illinois said this morning that Sen. Barbara Boxer of California, top Democrat on the Environment and Public Works panel, was working with Democrats on gathering amendments.

"She is working now with her staff to come up with amendments that she believes will withstand any procedural challenge on the floor," he said, "and hopefully they will be brought up soon."

The Energy and Natural Resources Committee's ranking Democrat, Sen. Maria Cantwell of Washington, who's leading the debate on her side of the aisle, couldn't say for sure whether lawmakers could avoid a midnight vote.

"Well, you never know with all the people who can object," she said, but noted that Democrats wanted to set the debate and amendment consideration parameters for the coming days.

Durbin added, "There's no effort to obstruct. We had generally agreed that we wouldn't be voting today on amendments. It is possible before the end of the day that we'll have an agreement to move forward in terms of the introduction and debate on the amendments and the votes to occur perhaps next week."

Republicans have talked about amendments to promote energy efficiency, push for crude oil exports, scrap ethanol fuel mandates and push back on Obama administration regulations.

Democrats have promised to introduce amendments to prevent exports of KXL oil, mandate the use of American products during construction and require oil sands producers to pay into the Oil Spill Liability Trust Fund.

Cantwell said today, "I think getting them to pay a tax for spills is important."

West Virginia Sen. Joe Manchin, the Senate's main Democrat supporting the KXL legislation, said this morning he was keen on supporting those amendments.

Even if lawmakers reach an agreement, Senate lawmakers are unlikely to get much work done today. The chamber will not be in session tomorrow and Thursday for off-site retreats.

And even though the Senate will be back in session Friday, Cantwell said she didn't expect any votes. The president's State of the Union address is scheduled for next Tuesday.

KXL opponents are rallying today around the country to pressure lawmakers and the White House to oppose the pipeline. But activism appears unlikely to change minds. A League of Conservation Voters letter to lawmakers last week warning them that voting for KXL may affect their environmental record didn't keep almost 30 Democrats from voting yes.

Amid the ongoing debate, Canadian Minister of Natural Resources Greg Rickford today begins his fourth official visit to the United States. He is planning to meet with Energy Secretary Ernest Moniz and State Department officials on their ongoing review of KXL's request to cross the U.S.-Canada border.

Reporter Nick Juliano contributed.

CLIMATE:

Petroleum groups huddle with McCarthy on methane curbs

Jean Chemnick, E&E reporter

Published: Tuesday, January 13, 2015

U.S. EPA Administrator Gina McCarthy met with major petroleum trade associations last week ahead of a likely announcement about proposed curbs on their industry's methane emissions.

The American Petroleum Institute (API) and America's Natural Gas Alliance (ANGA) had separate meetings with the EPA chief. The Independent Petroleum Association of America (IPAA) and the American Gas Association (AGA) met with McCarthy on the rule last year, and IPAA said Air and Radiation Office staff also reached out to discuss the agency's methane reduction options.

Lee Fuller, IPAA's top lobbyist, said his group has also heard from the White House about the administration's broader methane strategy.

AGA, which represents local distribution companies, said EPA reached out to it even though the rule isn't expected to affect its members' core activities.

EPA is expected to settle the question this week about whether and how it will regulate petroleum sector methane emissions, and President Obama is likely to refer to the issue during his State of the Union speech next Tuesday.

ANGA and API say they used their meetings last week to drive home the point that industry is already making strides to limit the venting of natural gas at all stages of production and transmission; such curbs leave companies more gas to sell. Regulations, they say, would add administrative burdens while contributing no additional environmental benefit.

"When you start doing regulation, it comes with its own set of burdens -- whether those are reporting burdens, whether those are requirements -- whereas we think the individual companies know the best way to get reductions," said API's Regulatory Affairs Director Howard Feldman.

API and ANGA have said they might support an expansion of the 2012 rule requiring new natural gas wellheads to use so-called green completion technology to limit volatile organic compounds (VOCs) -- a requirement that also reduces methane. EPA has asked for input on whether it should apply similar restraints to a wider variety of sources, and Feldman and Fuller said EPA could use it to go after venting from other equipment covered in the five methane white papers EPA released last April (*Greenwire*, April 15, 2014).

But environmentalists hope EPA will instead promulgate a set of rules tailored to methane under Section 111 of the Clean Air Act. That approach will capture 10 times more methane from a broader swath of oil and gas production, transmission, and distribution systems, they say, because VOCs disappear after natural gas is processed.

ANGA says President and CEO Marty Durbin used his one-on-one meeting with McCarthy on Thursday to make the case that the industry is already reducing methane emissions.

"So the administration has an opportunity to work cooperatively with the industry to achieve a shared goal rather than initiate yet another rule making process that adds uncertainty on both timing and substance," said ANGA in an email to *Greenwire*.

Fuller said that EPA would expend substantial resources trying to regulate existing sources of oil and gas methane with marginal environmental benefit. IPAA is concerned only with oil and gas production, and its methane emissions are "a small target," Fuller said.

The industry says that technology developments in recent years have reduced venting of natural gas during production, limiting methane in the process. Representatives point to EPA's own 19th "Inventory of U.S. Greenhouse Gas Emissions and Sinks," which showed that the sector's emissions went down in

2012. But greens counter that those reductions happened at wellheads and were linked to EPA's green completions rule for VOCs and are therefore an argument for regulation, not against it.

WHITE HOUSE:

Biden to host Caribbean energy summit

Robin Bravender, E&E reporter

Published: Tuesday, January 13, 2015

Vice President Joe Biden is preparing to host a Caribbean energy security summit in Washington, D.C., later this month, the White House announced yesterday.

Biden will welcome Caribbean heads of government, members of the private sector and other officials Jan. 26 at the event, aimed at promoting "a cleaner and more sustainable energy future in the Caribbean through improved energy governance, greater access to finance, and donor coordination," according to the White House.

The event will be hosted by the White House and the State Department in partnership with the Atlantic Council and the Council of the Americas. It is a "key component of the Caribbean Energy Security Initiative" Biden announced last year, the White House said.

Representatives from countries including the Dominican Republic, Jamaica, Trinidad and Tobago, and Grenada are expected to attend the summit, according to Biden's office.

Last June, the vice president announced the initiative to support Caribbean nations struggling with high costs of imported fuel and electricity (*Greenwire*, June 20, 2014).

That initiative laid out several methods for transforming the Caribbean's electricity sector, including increasing access to financing for energy projects, using pilot projects as models for other nations, and improving the coordination of donors funding technical and policy assistance programs.

"Energy security is a major challenge for the Caribbean," and the high cost of energy "diverts resources away from economic development, reduces competitiveness and renders the energy sectors of Caribbean nations vulnerable to supply shocks," the White House said last year when the initiative was launched.

"However, the region has access to an abundance of renewable and other energy resources," it added. "A concerted effort to provide assistance to Caribbean islands on difficult policy and regulatory reforms can attract the private finance required to implement new energy technologies and approaches."

FEDERAL WORKFORCE:

Dems seek 3.8 percent pay boost for government workers

Robin Bravender, E&E reporter

Published: Tuesday, January 13, 2015

House and Senate Democrats are spearheading an effort to fatten federal workers' paychecks.

Rep. Gerry Connolly (D-Va.) and Sen. Brian Schatz (D-Hawaii) are introducing companion bills in both chambers of Congress today that would give government employees a 3.8 percent raise in 2016. That would mark a significant uptick after government workers have received two consecutive years of 1 percent raises after a three-year pay freeze.

The House version of the "Federal Adjustment of Income Rates," or "FAIR Act," is co-sponsored by Maryland Democratic Reps. Steny Hoyer, Elijah Cummings and Chris Van Hollen; Reps. Stephen Lynch (D-Mass.) and Donald Beyer (D-Va.); and others, according to Connolly's office. Sen. Ben Cardin (D-Md.) is co-sponsoring the Senate bill.

"Our federal workers deserved to be fairly compensated for the important work they do on behalf of Americans across the country," Hoyer said in a statement.

"They have contributed $138 billion toward deficit reduction as their pay was frozen for three years and as they endured furloughs caused by sequestration and a government shutdown. So many of the public functions we often take for granted are the purview of the hard working men and women who constitute our federal workforce, and they deserve fair pay and benefits."

Similar efforts to raise government workers' pay have been floated in recent years and failed to advance. Their prospects don't appear any better in this GOP-led Congress as Republican lawmakers continue to press for cuts to agency budgets and worker benefits.

Connolly and several Democratic allies introduced legislation in the House last year that would have raised workers' pay by 3.3 percent in 2015; Schatz and Cardin introduced a companion bill in the Senate (*Greenwire*, May 23, 2014).

Still, government employee unions urged lawmakers to enact the significant pay increase.

William Dougan, national president of the National Federation of Federal Employees, called the 3.8 percent salary boost "well-earned and much needed" after federal employees have been "treated like a punching bag for years by too many members of Congress."

"As the cost of living increases for all Americans, federal employees have been left behind with [stagnant] wages," Dougan said. "A 3.8 percent pay adjustment is a step in the right direction to account for the increased cost of living over the past years. Federal workers have earned a pay adjustment that reflects the increased cost of living."

TRANSPORTATION:

Graves to chair House highways and transit panel

Sean Reilly, E&E reporter

Published: Tuesday, January 13, 2015

Rep. Sam Graves (R-Mo.) will be the one fresh face in the lineup of subcommittee chairmen on the House Transportation and Infrastructure Committee this year as he takes over the Highway and Transit subpanel, according to an announcement this morning.

Graves replaces former Rep. Tom Petri (R-Wis.), who retired. The remainder of the roster is unchanged from the 113th Congress. Rep. Jeff Denham (R-Calif.) will lead the Railroads, Pipelines and Hazardous

Materials Subcommittee, and Rep. Bob Gibbs (R-Ohio) will chair the Water Resources and Environment Subcommittee.

PEOPLE

Graves, who is starting his eighth House term, has served on the T&I Committee throughout his congressional career, a spokesman said. He takes charge of the Highways and Transit Subcommittee as lawmakers are again trying to craft a surface transportation bill. A stopgap extension to MAP-21, the 2012 authorization act, expires at the end of May.

The 114th Congress "has a tremendous opportunity to secure a long-term highway bill that will improve and rebuild our nation's highway system, increase the efficiency and expedite the approval process on new projects, and create thousands of jobs," Graves said in a news release. "I look forward to working with my colleagues on the committee, as well as stakeholders, in tackling the many pressing challenges we will face in the coming Congress."

Rounding out the list of chairmen are Rep. Frank LoBiondo (R-N.J.) at the Aviation Subcommittee, Rep. Duncan Hunter (R-Calif.) at the Coast Guard and Maritime Transportation Subcommittee and Rep. Lou Barletta (R-Pa.) at the Economic Development, Public Buildings and Emergency Management Subcommittee. Rep. John Duncan (R-Tenn.) will remain as the full committee's vice chairman.

With the addition of Graves and with the committee's GOP leadership otherwise stable, "I am confident we will be able to continue effectively addressing the needs of our transportation system," T&I Chairman Bill Shuster (R-Pa.) said in today's announcement.

While Rep. Peter DeFazio of Oregon will be the full committee's top Democrat, the ranking subcommittee members have not been announced. A spokeswoman for T&I Democrats could not be reached for comment this morning on when that will happen.

NUCLEAR:

Petition demands tests for degraded concrete at U.S. plants

Hannah Northey, E&E reporter

Published: Tuesday, January 13, 2015

Neighbors of New Hampshire's Seabrook nuclear power plant are asking federal regulators to require extensive testing for concrete degradation at all U.S. facilities -- even though the problem has only been identified at Seabrook.

C-10, a nonprofit group representing about 5,000 people near Seabrook -- about 40 miles north of Boston -- petitioned the Nuclear Regulatory Commission last year to craft new rules to require physical testing, not just visual exams.

Filed by C-10 Executive Director Sandra Gavutis with help from the Union of Concerned Scientists, the petition is open to public comment through March 31.

"There's a discussion that [this problem] is at other plants and hasn't been brought forward. There has been some detection in nuclear plants in the United States," Gavutis said during an interview. "The main

reason we did it is because we've been requesting for the past two years that they make this a regulatory requirement, but the industry has said they endorse the standard practice -- but they haven't made it a regulation."

Neil Sheehan, a spokesman for NRC's regional office in King of Prussia, Pa., said the concrete problem is unique to NextEra Energy Seabrook LLC's plant. Seabrook was built in the 1970s using aggregate from a Maine quarry that's vulnerable to internal chemical reactions and cracking, he said. The reactor has been operating since 1990.

"You get this gel that comes out and cracking on the face of the wall," Sheehan said. "The concern is the structural integrity can be impacted by this. It's been the subject of many years of review by the NRC and NextEra." NextEra, he added, has a research project underway with the University of Texas to study the issue; results will be released later this year.

Alan Griffith, spokesman for NextEra Energy Seabrook, said the company has conducted thousands of hours of analysis and inspection and has identified no safety issues.

But the issue is also at the heart of NextEra's request for a license renewal for Seabrook. The plant's license expires March 2030, and the company applied for an extension five years ago. But the NRC first wants to know how NextEra will address the concrete problems.

"We are not prepared to issue a decision on a license renewal until they come up with a long-term plan to address concrete degradation at Seabrook," Sheehan said. "They have lots of time left."

TRANSMISSION:

Dairy, utilities end dispute as family sells farm in closely watched case

Published: Tuesday, January 13, 2015

A coalition of utilities behind a $2 billion power line project are buying a family-owned Minnesota dairy farm, potentially setting a precedent for other farms along the line's route.

Cedar Summit Farm, which the Minar family has farmed since 1926, announced "with a heavy heart" last week that it will close this Friday or earlier if it runs out of its signature cream-topped, organic milk.

Already stretched thin in the tough organic dairy market, the Minar family sued CapX2020 under Minnesota's "Buy the Farm" law, arguing the 345,000-volt power line across their land constituted a threat to the farm's existence that required the utilities to buy the land if they wished to sell.

In August, a judge agreed, rejecting the utilities' position that Buy the Farm didn't apply because the transmission structure took up less than an acre of the $1.4 million farm.

Dave and Florence Minar declined to comment, but statements from both CapX2020 and Cedar Summit Farm mentioned the family might relocate and resume dairy production.

Thom Petersen, director of government relations for the Minnesota Farmers Union, said other farmers were waiting to see what happened. Many are interested in relocating, but most talk about continuing to farm if they can find land.

"It's hard to find a farm," Petersen said. "I think they all want to replicate the operation they have currently."

Farmers elsewhere are questioning whether Buy the Farm should be expanded from only land crossed by power lines to farms affected by pipelines or wastewater ponds.

"I can't tell you how many calls I've gotten with ... people saying, 'Why can't we have Buy the Farm for this or that?'" he said (Emma Nelson, Minneapolis *Star Tribune*, Jan. 12). **-- DTB**

FEDERAL WORKFORCE:

Fewer DOE, EPA executives receive bonuses -- report

Kevin Bogardus, E&E reporter

Published: Tuesday, January 13, 2015

Fewer elite civil servants employed by the government's energy and environmental agencies have received bonuses for their work.

A recent report by the Office of Personnel Management found that in fiscal 2013, fewer members of the Senior Executive Service (SES) across the government received performance awards compared with fiscal 2012. In addition, the dollar amount for the senior executives' average bonus declined during that time period.

Senior executives at the Department of Energy were not immune to these trends.

Seventy-four percent of the department's top career employees received a bonus in fiscal 2012, compared with 73 percent the following year. Further, the average bonus for DOE senior executives went down by $322.

SES members at the Department of the Interior also saw fewer and smaller bonuses during that time period.

Almost 83 percent received a bonus in fiscal 2012, while nearly 80 percent picked up a performance award in fiscal 2013. The Interior executives' average bonus fell as well by $247.

Sixty-four percent of U.S. EPA's senior executives picked up bonuses in fiscal 2013 -- a substantial drop from the 72 percent who did the same the preceding year. EPA's average performance award, however, rose by $584.

Across the government, almost 13 percent fewer senior executives received a bonus in fiscal 2013, while the average award went down by $523.

Performance ratings fell as well, with a little more than 45 percent of senior executives across agencies receiving the highest performance rating in fiscal 2013 -- about a 2 percent drop from fiscal 2012.

Carol Bonosaro, president of the Senior Executives Association, was disheartened by those figures. She said that government senior executives work in a "pay for performance system" and that "all their pay and awards are based on performance and are at the discretion of the agency."

"This is a system not working," Bonosaro said. "We are forgetting about performance, and it's being driven by budgetary concerns, by optics, by politics."

The civil service has often found itself in the crossfire between Congress and the Obama administration. The White House has worked to limit bonus pay for government workers while agencies such as EPA have seen their budgets slashed by lawmakers on Capitol Hill (*E&E Daily*, Dec. 10, 2014).

That has taken its toll on federal employees' morale. The Partnership for Public Service found in a report last month that job satisfaction continues to plummet across the government (*Greenwire*, Dec. 9, 2014).

Some lawmakers have tried to raise stagnant pay at government agencies. Legislation was introduced today to give federal workers a 3.8 percent pay raise (*see related story*).

Nevertheless, declining bonuses won't help much in keeping and bringing in talent to the federal workforce.

"It does little to encourage high-performing executives to stay and high-performing candidates to opt in," Bonosaro said.

NASA:

Agency launches 5 climate research projects

Published: Tuesday, January 13, 2015

NASA is starting five projects this year to study how the Earth's atmosphere influences climate change, including one that comes with an assist from Washington, D.C.-area government contractors.

The project, a collaboration between NASA's Langley Research Center in Hampton, Va., and Pennsylvania State University professor Kenneth Davis, aims to track the flow of carbon dioxide and methane in the atmosphere.

NASA awarded a $3.5 million contract to Exelis Inc. to modify a laser instrument to collect carbon dioxide measurements as part of the project.

Eric Webster, vice president of the company's weather systems business, said Exelis' work was part of a new effort to obtain more work related to climate science. Webster said the project will help the company test its laser instrument, which the company hopes can eventually be used in space.

Amin Nehrir, a research and instrument scientist at the Langley Research Center, said the scientists will board two planes and conduct measurements over Wallops Island, Va.; Shreveport, La.; and Sioux City, Iowa (Amrita Jayakumar, *Washington Post*, Jan. 11). **-- SP**

COAL:

Executive shakeup at Alpha

Manuel Quiñones, E&E reporter

Published: Tuesday, January 13, 2015

Paul Vining, the well-known president of Alpha Natural Resources Inc., will be leaving the coal mining company at the end of the month, Alpha said yesterday.

Vining will become CEO of a subsidiary of the Cline Group focused on the acquisition and operation of coal mines outside the United States, Alpha said.

PEOPLE

"Paul has been an asset and leader for a number of coal companies throughout his career, and the same was true at Alpha," said Alpha CEO Kevin Crutchfield. "We are grateful for Paul's three and a half years of service and wish him success in his new international venture."

Crutchfield said Brian Sullivan, the company's executive vice president and chief commercial officer, and Keith Haine, mining operations executive vice president, would take on more responsibility.

Notably, Sullivan will take on work related to Alpha's land holdings and natural gas ventures. Alpha appears to be following in Consol Energy Inc.'s footsteps in boosting its focus on natural gas amid the ongoing coal market downturn.

Earlier this year, Alpha -- with 60 mines in Virginia, West Virginia, Pennsylvania, Kentucky and Wyoming -- announced the departure of Chief Financial Officer Frank Wood, who will retire next month. Philip Cavatoni, the company's chief strategy officer, will step in to take on CFO duties.

Last year, Consol announced it would spin off its thermal coal business into a separate public company. The company is also forming a subsidiary to deal with metallurgical coal operations.

BIOFUELS:

Algae company gets boost from EPA

Amanda Peterka, E&E reporter

Published: Tuesday, January 13, 2015

U.S. EPA has determined that ethanol derived from algae at a company in Florida qualifies as an advanced biofuel under the federal renewable fuel standard.

The agency last month approved an application by the company Algenol LLC to market its fuel, which it makes by pumping carbon dioxide into hanging bags containing blue-green algae, as advanced biofuels.

According to the renewable fuel standard, a new renewable fuel qualifies as an advanced biofuel if it reduces greenhouse gas emissions by 50 percent compared to a petroleum baseline. Algenol's ethanol reduced emissions by 69 percent, according to EPA's analysis.

EPA's approval of the algae fuel means refiners can now use it to meet annual mandates under the renewable fuel standard. Algenol is trying to be the first algae company to commercially produce all four major fuel products: ethanol, gasoline, diesel and jet fuel (*Greenwire*, April 9, 2014).

"The EPA approval is a milestone event for Algenol," said Paul Woods, founder and CEO of Algenol, in a

statement today. "The EPA validates that our suite of fuels meet the GHG reduction requirements set by the EPA for advanced biofuels and allows blenders and refiners to use our fuels to meet their Clean Air Act obligations under the RFS."

The company's petition is one of 10 petitions approved by EPA since the agency altered its review process in a bid to speed up approvals. The agency, however, failed to set final 2014 volume targets for renewable fuels last year after a proposal to scale back the levels came under intense criticism by biofuels and oil interests (*Greenwire*, Nov. 21, 2014).

BUSINESS:

Think tank takes over *Transportation Weekly*

Sean Reilly, E&E reporter

Published: Tuesday, January 13, 2015

The Eno Center for Transportation has acquired *Transportation Weekly*, with Jeff Davis, the publication's editor and former sole proprietor, joining the nonprofit think tank as a senior fellow.

Davis, a former congressional staffer, will remain as editor and primary author; the publication, which follows federal transportation funding and policy and is currently sent to about 400 subscribers via email in PDF format, has been renamed *Eno Transportation Weekly*, the organization announced in a news release this morning.

The two are "a perfect match," Eno President and CEO Joshua Schank said in the release, adding that Davis' knowledge, writing and analysis make the publication a must-read for anyone in the federal transportation policy arena. Eno "is excited to be able to provide this information to the community in an accessible and useful manner," Schank said.

Davis, who founded *Transportation Weekly* in 1999, likewise said he is excited to keep the publication going "while joining the Eno team to make it an even more complete, reliable and valuable news product." In the release, Davis said he will also be working on other Eno projects and "taking a greater role in the public debate over how to best address federal transportation funding issues."

While the publication's paid circulation is relatively small, it is widely forwarded on Capitol Hill, the U.S. Department of Transportation and state DOTs, Eno spokeswoman Ann Henebery said in a phone interview this morning.

Eno will continue sending the publication out as a PDF for the next week or so, Henebery said, but then plans to make it accessible via a secure link on the center's website. The subscription price might also change from the current $1,295 annual rate, Henebery said, but she declined to specify whether it would increase or decrease.

AUTOS:

Uber to share ride data with cities

Published: Tuesday, January 13, 2015

Ride-sharing company Uber is planning to share something else with cities: data.

Every time the company gives a ride, it collects data about the customer, like where the car picked up the passenger, what time of day it was, the location of the destination and how long it took to get there. Put all data on all riders together, and what Uber has is a comprehensive look at traffic patterns in a given city.

Uber announced today that it will share more data with local governments. The company will first partner with Boston to share quarterly anonymized trip-level data. Trip information shared will include the date, time and distance traveled for individual trips. The company also will share the ZIP codes of where trips start and finish.

Uber has traditionally kept its sought-after data private, and many see its announcement today as a bid for better publicity and goodwill after the company got bad press when one official threatened to track the travel of a critical Buzzfeed reporter.

Justin Kintz, Uber's head of policy for North America, said the data sharing is meant to show that the company is a responsible steward of data it collects on its customers.

"We want what's best for cities," Kintz says. "The more cities can invest in themselves, invest in improving ways people can get around the city safely, conveniently, affordably, then Uber's going to benefit, too, over the long haul" (Emily Badger, *Washington Post*, Jan. 13). **-- AW**

OREGON:

Agency chief says governor fired her for failing to OK coal-export subsidy

Published: Tuesday, January 13, 2015

The chairwoman of the powerful Oregon Transportation Commission says she was fired after refusing to approve a $2 million subsidy for a controversial coal export project.

Catherine Mater, a civil engineer appointed last summer by Gov. John Kitzhaber (D), said the governor pressured her to approve the subsidy before an August commission vote. Ultimately, Mater was the deciding vote in a 3-2 decision not to offer the incentive to Ambre Energy Ltd., which is proposing to export 8.8 million tons of coal through the state.

Kitzhaber has spoken out against coal exports, so it's not clear why he would want to offer financial incentives to encourage the activity. The governor's office didn't respond to a request for comment on Mater's allegations.

Mater said she rejected the proposed subsidy because the project was not ready for construction since it had not received required permits from the Department of State Lands, a requirement to qualify for state grants.

"I would've turned the project down if it had been a corn project, an alfalfa project or a lumber project," Mater said. "It just didn't meet the requirements" (Rob Davis, Portland *Oregonian*, Jan. 12). **-- SP**

PERU:

Mine pit pollutes Andean city

Published: Tuesday, January 13, 2015

A Peruvian city is being eroded and polluted by a nearby mine pit.

Residents of Cerro de Pasco, located 14,000 feet above sea level in the Andes, are used to living next to the mine with its heavy machinery that emits smoke into the air and debris into the water.

The mine was opened in 1956, bringing multiple environmental hazards to a city founded 500 years ago when the Spanish found silver there.

The water in Cerro de Pasco is a purple color and even boiling it does not remove the metallic components. Children there have three times the safe limit of lead in their bodies and often have brain damage and learning disabilities.

Because of the mine pit, which is as deep as the Empire State Building is tall, Peru's Congress passed a law in 2008 calling for all 70,000 Cerro de Pasco residents to be relocated. The law did not indicate how that would be done or how to compensate residents, so few people have actually moved (Anya Boryga, *New York Times*, Jan. 13). **-- AW**

TRADE:

SEIA's Smirnow discusses new Commerce Dept. sanctions against China

Published: Tuesday, January 13, 2015

As part of an ongoing dispute, the U.S. Department of Commerce recently moved to impose broad tariffs on solar panels from China. How will U.S. companies be affected by the latest round of tariffs? During today's OnPoint, John Smirnow, vice president of trade and competitiveness at the Solar Energy Industries Association, discusses the solar industry's reaction to the new sanctions and talks about a possible update to 2012 dumping estimates that could result in tariff reductions.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Wed., January 14, 2015

READ FULL EDITION

1. FORESTS:

Climate change threatens to release some of nature's largest CO2 stockpiles

Peatlands across the world are vulnerable to fires as a result of climate change, according to a paper published this month in the journal *Nature Geoscience*.

2. AGRICULTURE:

Will we be hungry in a warming world? USDA wants to know

The agricultural livestock field will have to undergo systematic changes to cope with food security and sustainability problems in a climate-changed world, according to a new report commissioned by the National Academy of Sciences.

TODAY'S STORIES

3.OIL AND GAS:
White House announces plan to slash industry's methane emissions

4.TECHNOLOGY:
Energy storage business poised to explode -- study

5.AUTOS:
GM introduces the Chevrolet Bolt, a cheaper electric car

6.SCIENCE:
Thunderstorms rain down ozone, study says

7.HEALTH:
Physicians say they are seeing impacts of climate change in patients

8.CALIFORNIA:
Interests line up to spend cap-and-trade fund that could top $2.3B

9.EDUCATION:
W.Va. board reviews K-12 science standards

10.STATES:
Mich. nonprofit prepares cities for climate change

11.CARBON MARKETS:
Carbon trading begins in South Korea; industry objects

12.AGRICULTURE:
Aging Australian farmers underestimate climate threat

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., January 14, 2015

READ FULL EDITION

1.ELECTRICITY:

Utilities, Mich. governor agree to sweeping UP energy settlement

Michigan Gov. Rick Snyder yesterday announced a series of agreements involving the state, electric utilities in the Upper Peninsula and the area's largest employer, aimed at stabilizing energy supplies in the region and sparing residents from a dramatic spike in electric bills.

TOP STORIES

2.ELECTRICITY:
Texas eyes solar expansion after years of lagging growth

3.SECURITY:
White House asks Congress to strengthen cyberthreat detection, prosecution

4.WATER POLLUTION:
Duke scientists identify new oil and gas wastewater contaminants

ELECTRICITY

5.POLITICS:
Fla. conservatives get boost in push to bring solar financing to the 2016 ballot

6.UTILITIES:
Calif. orders PG&E to release 65,000 emails

7.SOLAR:
Utility-backed financing bill wins initial support in Ga. House
8.UTILITIES:
Philadelphia under pressure to replace gas lines

OIL AND GAS

9.MARKETS:
Oil's free fall clouds latest federal energy forecast
10.REGULATION:
Drilling well blowouts down in Texas after a year of new rules
11.HYDRAULIC FRACTURING:
Halliburton warns of 'chilling effect' from chemical disclosure without safeguards
12.WORKFORCE:
As Halliburton announces Houston layoffs, survey sees more cuts to come
13.TRANSPORT:
Oil train safety added to federal watchdog's 'Most Wanted List'
14.FINANCE:
Canadian gas giant sticks by budget despite oil slump
15.HYDRAULIC FRACTURING:
Frac sand faces uncertain future -- Moody's
16.OIL:
Price drop won't affect OPEC -- U.A.E. energy minister

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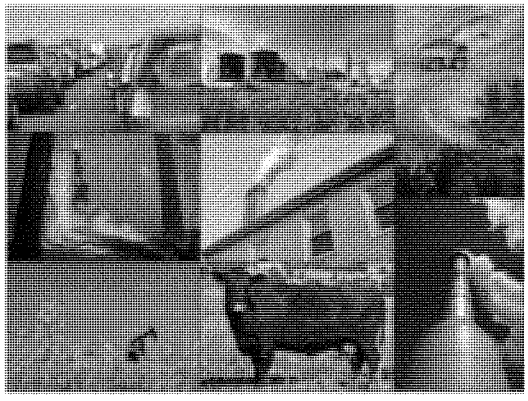

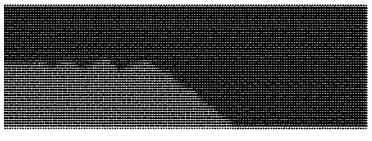

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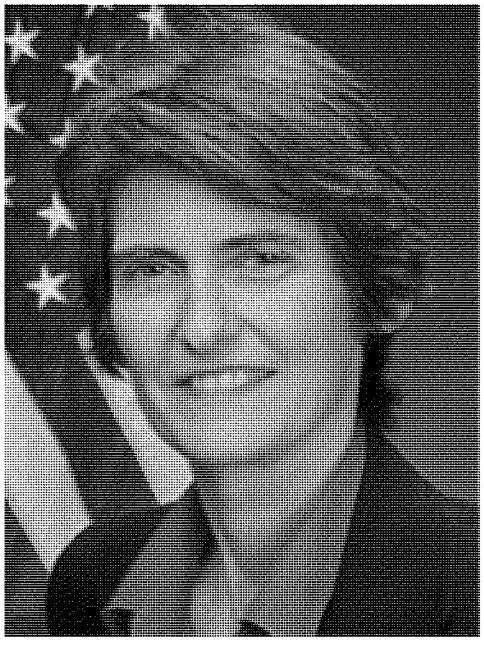

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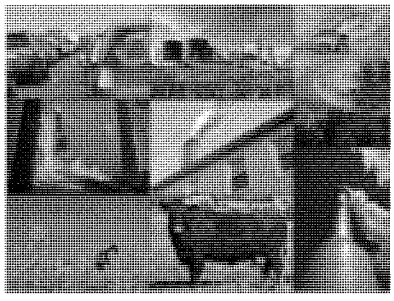

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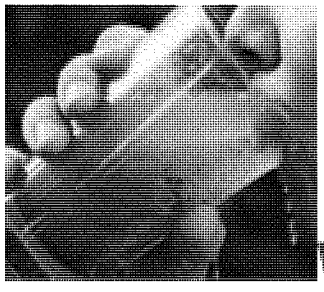
From: Turley, Jennifer
Sent: Wed 1/14/2015 3:30:55 PM
Subject: Water Law News for January 14, 2015



Water Law News

for January 14, 2015

Bloomberg BNA Daily Environment Report™

Everglades

Bills Would Give Federal Authorization For $1.9 Billion Everglades Restoration Plan

A $1.9 billion Everglades restoration plan that faced delays last spring could get federal authorization under bipartisan bills that have been introduced. ...

Oil Spills

Oil Spill Dispersant Proposal Incorporates Lessons From Deepwater Accident, EPA Says

The Environmental Protection Agency announced proposed updates to procedures for listing materials available to respond to oil spills to incorporate "lessons learned" from the April 2010 Deepwater Horizon oil spill. ...

Water Pollution

Gibbs to Remain as House Water Subpanel Chairman

Rep. Bob Gibbs (R-Ohio) will have a third term as chairman of the House Transportation and Infrastructure Subcommittee on Water Resources and Environment, Committee Chairman Bill Shuster (R-Penn) said Jan. 13. Gibbs said he plans to pursue...

Water Pollution

Ohio Lawmakers Reintroduce Bills Tackling Harmful Algal Blooms in Drinking Water

Legislation directing the Environmental Protection Agency to tackle harmful algal blooms that could contaminate drinking water supplies in the Great Lakes and its tributaries have been reintroduced in Congress by members of Ohio's...

Comment Period on Chlorpyrifos Study Begins

The Environmental Protection Agency has begun accepting comments from the public on a human health risk assessment it released last week that found new risks to farmworkers and drinking water supplies from the widely used insecticide chlorpyrifos...

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Latest News

EPA Proposes To Strengthen Requirements For Use Of Oil Spill Agents

EPA is proposing to strengthen requirements governing the use of chemical and biological agents in the cleanup of oil spills, announcing long-awaited revisions sought by environmentalists that are expected to boost the toxicity and efficacy testing of agents and set new limits on their use.

Under Pressure From EPA, Washington Proposes Water Quality Standards

Washington state has formally proposed its long-awaited water quality standards revisions, and state officials say they are confident the state will be able to finalize the changes before August, when EPA has said the effort must be completed or the agency will move forward with federally developed standards for the state.

Drinking Water Utilities Say Science Is Lacking For EPA Strontium Standard

Drinking water utilities are warning EPA to consider further research before finalizing a decision to set an enforceable drinking water limit for strontium and are funding studies to address whether strontium levels are high enough to warrant regulation and to evaluate treatment technology options.

News Briefs

Stalled EPA Research Nominee Takes On Advisory Roles

Thomas Burke, whose nomination by President Obama to lead EPA's Office of Research and Development (ORD) stalled in the Senate during the 113th Congress, has stepped into key advisory roles at the agency. Burke joined EPA Jan. 12 as ORD's deputy assistant administrator and EPA science advisor, an agency spokeswoman says. Neither role requires Senate confirmation.

Greenwire

WATER POLLUTION:

EPA proposes new rule for chemical dispersants

Phil Taylor, E&E reporter

Published: Tuesday, January 13, 2015

U.S. EPA today announced a plan to update regulations governing the use of oil-dispersing chemicals such as those that were used to respond to the 2010 Deepwater Horizon oil spill, a move that drew guarded praise from environmental groups.

EPA said it is amending requirements under the National Contingency Plan, which serves as the nation's blueprint for responding to oil spills and hazardous chemical releases and includes a list of dispersants that are either authorized or eligible to be pre-authorized for use.

The plan would allow dispersant manufactures to use a "new, well-tested and peer reviewed laboratory method" for gauging the effectiveness of their products in different environments, EPA said. It is also proposing an aquatic toxicity threshold to ensure qualifying products offer "greater performance at less environmental impact."

The proposal also describes chemical ingredient disclosure options, new evaluation criteria and a process to remove products from the product schedule.

"Our emergency officials need the best available science and safety information to make informed spill response decisions when evaluating the use of specific products on oil discharges," said Mathy Stanislaus, assistant administrator for EPA's Office of Solid Waste and Emergency Response. "Our proposed amendments incorporate scientific advances and lessons learned from the application of spill-mitigating substances in response to oil discharges and will help ensure that the emergency planners and responders are well-equipped to protect human health and the environment."

Environmental groups said the proposed rule has been in the making since 2001 and is long overdue. They said they looked forward to commenting on EPA's proposed toxicity testing, the information manufacturers must provide and what monitoring is required when chemicals are used.

"For fourteen years, waterfront communities who experience oil spills have waited for EPA to modernize the regulatory process to safely evaluate and manage the use of dispersants," said Marc Yaggi, executive director for the Waterkeeper Alliance, in a statement. "We are glad to see this proposed rule finally issued, and will closely evaluate its technical and legal merit to ensure it protects waterways, wildlife and water-dependent businesses."

Nearly 2 million gallons of dispersants were applied above and below the waters of the Gulf of Mexico in an attempt to break apart the nearly 5 million barrels of oil spilled from BP PLC's Macondo well in 2010 and prevent it from washing ashore.

One study in 2012 found those chemicals could have done more harm than good to microscopic organisms that live in the water (*Greenwire*, Dec. 3, 2012). An August 2010 study by EPA determined the dispersant-oil combination isn't worse for shrimp, fish and other sea creatures than oil alone already is.

In August 2012, environmental groups led by Earthjustice filed a lawsuit against EPA to prod the agency to write new rules governing the use of oil-dispersing chemicals (*Greenwire*, Aug. 7, 2012).

EPA is taking 90 days of public comment on the proposed rule.

HYDRAULIC FRACTURING:

Amid drilling bans, mineral rights owners mourn losses

Jennifer Yachnin, E&E reporter

Published: Tuesday, January 13, 2015

DENVER -- Colorado resident Bill Peltier can trace his roots in the Centennial State back four generations, and since the time his great-grandfather arrived in the mid-1800s, the family has relied on its ownership of mineral rights to produce income.

But Peltier is worried the income source could dry up for future generations as Colorado jurisdictions put temporary or permanent restrictions on new energy developments within their boundaries.

"We're not a big company, we're not rich," said Peltier, who owns about 1,500 acres of mineral rights in places including Boulder, where the Board of County Commissioners approved a moratorium on new energy development through mid-2018. "We've been here for 150 years, and we've never left the state. We're a regular family, we're nothing special."

He added: "Everybody thinks it's big businesses, and there's no one impacted but Anadarko and whoever ... but there's a lot of regular people who depend on the royalties for the minerals."

Mineral rights owners like Peltier are hoping a pair of bills introduced in the Colorado state Legislature could help guarantee an income stream, even if voters or local lawmakers opt to halt oil and gas developments -- something that a half-dozen cities and counties in Colorado have pursued in recent years.

Both state Rep. Perry Buck (R) and state Sen. Jerry Sonnenberg (R) have authored bills this session that would require local jurisdictions to compensate mineral rights owners when moratoriums or bans on new development limit access to their properties.

"I have people come to me and say if they do some of this, I won't be able to access my property rights, and that didn't make sense to me," said Sonnenberg, who serves as chairman of the state Senate Agriculture, Natural Resources and Energy Committee.

Although mineral rights owners would still be required to file lawsuits to procure a payment -- suing the government via "takings" law, in which a property owner argues that regulation of his or her land is equivalent to eminent domain and the landowner should receive compensation -- Sonnenberg said his bill would help ease that process.

"What my bill does is actually clarify those takings statutes ... that indeed according to the Colorado Constitution mineral rights are property," Sonnenberg said.

The Republican lawmaker, who said he is not aware of any takings cases filed to date over bans in the state -- although lawsuits have overturned bans in Fort Collins, Longmont and Lafayette, and could also do so in Broomfield -- described the bill as a pre-emptive measure.

In an effort to fend off a host of ballot initiatives in the 2014 elections, Colorado Gov. John Hickenlooper (D) proposed a special Oil and Gas Task Force charged with issuing recommendations on how to balance state and local control of energy development.

The 21-member panel, which meets this week in Greeley, is faced with a February deadline to issue its proposals, and the Legislature could be asked to pass related bills this session.

But Colorado legislators have expressed doubt that the task force will achieve its mission and warned voters could be faced with a new round of local or state initiatives (*EnergyWire*, Jan. 6).

Sonnenberg said he believes his bill could draw bipartisan support in the narrowly divided Senate, where

Republicans claim a one-seat majority, and projected optimism about its chances in the House, where Democrats claim a three-seat majority.

"I think it has a good chance of passing. It's common sense to protect somebody's property. That value needs to be protected," Sonnenberg said.

The state lawmaker has previously helmed an effort to punish communities that opted to limit oil and gas development. Sonnenberg sponsored a 2014 ballot initiative that would have prohibited those jurisdictions from receiving state revenues devised from energy production but withdrew the measure under the compromise agreement that scrapped all drilling-related initiatives from the ballot.

Buck, who noted her bill varies somewhat from Sonnenberg's proposal, said she hopes the measure serves as an "educational process" for citizens and lawmakers unaware of the difference between property rights and mineral rights.

"If people look at their mineral rights as private property rights, it's no different than [the government saying] 'We're going to put a highway through your front lawn and we're going to compensate you for that,'" said Buck, who is married to freshman congressional Rep. Ken Buck (R).

According to a study produced last year by the National Association of Royalty Owners, hypothetical takings lawsuits filed by mineral rights owners in the Wattenberg Field could cost Boulder County more than $1 billion in settlements.

But even if Sonnenberg's or Buck's proposals were to be signed into law, pursuing takings claims can be a challenging option for mineral rights owners.

"Takings lawsuits are difficult but very fact-specific," explained attorney Wayne Forman, who specializes in water law and land-use litigation at the Denver offices of the firm Brownstein Hyatt Farber Schreck.

"Whether you've got a legitimate takings claim will depend very much on the facts that are presented, including the impact of the governmental action on your property rights, in this case on the mineral interests," Forman said. Other factors can include length of ownership, how much has been invested in developing the resources and "whether a moratorium or a ban was something that could be reasonably anticipated or did it come out of whole cloth?"

When takings claims are successful, mineral rights owners are entitled to the fair market value, typically viewed as the worth of the property before the government's actions made it difficult or impossible to reach the minerals, oil or gas, Forman said.

But he said such market values might differ from those determined in property rights lawsuits: "Courts have made some adjustments based on the fact that a mineral owner continues to own the minerals ... because they're not conveyed to the government."

Avoiding surprises

At a public comment session held as part of a Colorado Oil and Gas Task Force meeting in November 2014, dozens of citizens addressed the panel to express concern about drilling facilities close to their homes, voicing anxieties about the impact on their property values, along with complaints about noise and traffic and even health concerns.

But Peltier, who said he has not attended any of the task force's meetings to date, said he too has been blindsided in the fight over natural resource development in the state.

"If I was notified, I would at least go and say there's a family that's been here a lot longer than any of you have been here that's been really negatively impacted by this," Peltier said of moratoriums in Boulder County, where he estimates his family has about 1,000 acres that cannot be developed, unlike the 480 acres in Weld County that the oil and gas industry has access to.

"If you're a property owner and they're going to put a stop light in the corner ... they send you a notice and say we're going to do this. If you're a mineral owner, you don't get a notice at all on a moratorium," said Peltier, who added that he now monitors local government websites to avoid such surprises.

Peltier also accused Boulder County officials of hypocrisy, noting that while he is unable to develop his mineral rights, he still must pay taxes on the properties each year.

"The least you can do is lease the minerals from me while you figure it out, and I would say sure," Peltier said.

KEYSTONE XL:

Senate leaders work on deal to avoid midnight vote

Manuel Quiñones, E&E reporter

Published: Tuesday, January 13, 2015

Senate leaders are working toward a deal that would allow debate to proceed on legislation to approve the Keystone XL pipeline for bringing Canadian oil sands crude to Gulf Coast refineries.

The Senate voted 63-32 last night to invoke cloture on the bill, but without a deal, they'll have to vote again at around midnight tonight on a motion to proceed.

"All senators should know that we'll get on this bill today, and we'll begin the amendment process," Majority Leader Mitch McConnell (R-Ky.) said this morning. "We can do it the easy way, or we can do it the hard way."

McConnell has promised an open amendment process, but some Democrats have already started expressing concern over whether the chamber's new leadership will truly allow votes on controversial issues, like putting senators on record about their views on climate change.

McConnell said this morning, "I want to make it clear to everybody we're committed to an open amendment process, but not an open-ended one."

A Senate Republican aide also called Democratic concerns ironic because he said the minority has yet to formally introduce an amendment.

Assistant Democratic Leader Dick Durbin of Illinois said this morning that Sen. Barbara Boxer of California, top Democrat on the Environment and Public Works panel, was working with Democrats on gathering amendments.

"She is working now with her staff to come up with amendments that she believes will withstand any procedural challenge on the floor," he said, "and hopefully they will be brought up soon."

The Energy and Natural Resources Committee's ranking Democrat, Sen. Maria Cantwell of Washington, who's leading the debate on her side of the aisle, couldn't say for sure whether lawmakers could avoid a

midnight vote.

"Well, you never know with all the people who can object," she said, but noted that Democrats wanted to set the debate and amendment consideration parameters for the coming days.

Durbin added, "There's no effort to obstruct. We had generally agreed that we wouldn't be voting today on amendments. It is possible before the end of the day that we'll have an agreement to move forward in terms of the introduction and debate on the amendments and the votes to occur perhaps next week."

Republicans have talked about amendments to promote energy efficiency, push for crude oil exports, scrap ethanol fuel mandates and push back on Obama administration regulations.

Democrats have promised to introduce amendments to prevent exports of KXL oil, mandate the use of American products during construction and require oil sands producers to pay into the Oil Spill Liability Trust Fund.

Cantwell said today, "I think getting them to pay a tax for spills is important."

West Virginia Sen. Joe Manchin, the Senate's main Democrat supporting the KXL legislation, said this morning he was keen on supporting those amendments.

Even if lawmakers reach an agreement, Senate lawmakers are unlikely to get much work done today. The chamber will not be in session tomorrow and Thursday for off-site retreats.

And even though the Senate will be back in session Friday, Cantwell said she didn't expect any votes. The president's State of the Union address is scheduled for next Tuesday.

KXL opponents are rallying today around the country to pressure lawmakers and the White House to oppose the pipeline. But activism appears unlikely to change minds. A League of Conservation Voters letter to lawmakers last week warning them that voting for KXL may affect their environmental record didn't keep almost 30 Democrats from voting yes.

Amid the ongoing debate, Canadian Minister of Natural Resources Greg Rickford today begins his fourth official visit to the United States. He is planning to meet with Energy Secretary Ernest Moniz and State Department officials on their ongoing review of KXL's request to cross the U.S.-Canada border.

Reporter Nick Juliano contributed.

FEDERAL WORKFORCE:

Dems seek 3.8 percent pay boost for government workers

Robin Bravender, E&E reporter

Published: Tuesday, January 13, 2015

House and Senate Democrats are spearheading an effort to fatten federal workers' paychecks.

Rep. Gerry Connolly (D-Va.) and Sen. Brian Schatz (D-Hawaii) are introducing companion bills in both chambers of Congress today that would give government employees a 3.8 percent raise in 2016. That would mark a significant uptick after government workers have received two consecutive years of 1 percent raises after a three-year pay freeze.

The House version of the "Federal Adjustment of Income Rates," or "FAIR Act," is co-sponsored by Maryland Democratic Reps. Steny Hoyer, Elijah Cummings and Chris Van Hollen; Reps. Stephen Lynch (D-Mass.) and Donald Beyer (D-Va.); and others, according to Connolly's office. Sen. Ben Cardin (D-Md.) is co-sponsoring the Senate bill.

"Our federal workers deserved to be fairly compensated for the important work they do on behalf of Americans across the country," Hoyer said in a statement.

"They have contributed $138 billion toward deficit reduction as their pay was frozen for three years and as they endured furloughs caused by sequestration and a government shutdown. So many of the public functions we often take for granted are the purview of the hard working men and women who constitute our federal workforce, and they deserve fair pay and benefits."

Similar efforts to raise government workers' pay have been floated in recent years and failed to advance. Their prospects don't appear any better in this GOP-led Congress as Republican lawmakers continue to press for cuts to agency budgets and worker benefits.

Connolly and several Democratic allies introduced legislation in the House last year that would have raised workers' pay by 3.3 percent in 2015; Schatz and Cardin introduced a companion bill in the Senate (*Greenwire*, May 23, 2014).

Still, government employee unions urged lawmakers to enact the significant pay increase.

William Dougan, national president of the National Federation of Federal Employees, called the 3.8 percent salary boost "well-earned and much needed" after federal employees have been "treated like a punching bag for years by too many members of Congress."

"As the cost of living increases for all Americans, federal employees have been left behind with [stagnant] wages," Dougan said. "A 3.8 percent pay adjustment is a step in the right direction to account for the increased cost of living over the past years. Federal workers have earned a pay adjustment that reflects the increased cost of living."

FISHERIES:

Feds push electronic monitoring, reporting in Southeast

Emily Yehle, E&E reporter

Published: Tuesday, January 13, 2015

The National Marine Fisheries Service recently drafted a plan for electronic monitoring and reporting in its Southeast fisheries, marking a step toward the use of technology to better monitor catch quotas and prevent overfishing.

The plan outlines a six-phase framework for implementing various technologies such as on-board video cameras and satellite surveillance systems. The aim is to improve data on both sides of the ledger: Electronic monitoring captures information on fishing locations and catches, while electronic reporting moves logbooks and other reports beyond paper.

In recent years, NMFS has come under pressure to more widely adopt such methods, both as a way to potentially save money and to ensure more accurate data (*E&E Daily*, May 22, 2013). As of last October,

NMFS had implemented four electronic monitoring programs, none of which is used for scientific or management purposes, according to the Commerce Department's inspector general.

The agency's plan for its Southeast region details several challenges that prevent broad adoption, including the cost of implementation and calibration with old data collection methods. Industry support is also "mixed," varying by region and the degree of burden imposed on fishermen, according to NMFS.

But the plan also highlights fisheries that could benefit from specific technology. The Gulf of Mexico shrimp fishery, for example, may warrant "expanded use" of electronic monitoring because of the need for more oversight on bycatch. That would usually mean more observers, but electronic monitoring could "serve as an alternative" for documenting sea turtle and sawfish interactions in southwest Florida, according to the plan.

In a press release, NMFS pointed to the "growing need for more timely and accurate data for fisheries management and science." The agency is currently accepting comment on the plan.

FEDERAL WORKFORCE:

Fewer DOE, EPA executives receive bonuses -- report

Kevin Bogardus, E&E reporter

Published: Tuesday, January 13, 2015

Fewer elite civil servants employed by the government's energy and environmental agencies have received bonuses for their work.

A recent report by the Office of Personnel Management found that in fiscal 2013, fewer members of the Senior Executive Service (SES) across the government received performance awards compared with fiscal 2012. In addition, the dollar amount for the senior executives' average bonus declined during that time period.

Senior executives at the Department of Energy were not immune to these trends.

Seventy-four percent of the department's top career employees received a bonus in fiscal 2012, compared with 73 percent the following year. Further, the average bonus for DOE senior executives went down by $322.

SES members at the Department of the Interior also saw fewer and smaller bonuses during that time period.

Almost 83 percent received a bonus in fiscal 2012, while nearly 80 percent picked up a performance award in fiscal 2013. The Interior executives' average bonus fell as well by $247.

Sixty-four percent of U.S. EPA's senior executives picked up bonuses in fiscal 2013 -- a substantial drop from the 72 percent who did the same the preceding year. EPA's average performance award, however, rose by $584.

Across the government, almost 13 percent fewer senior executives received a bonus in fiscal 2013, while the average award went down by $523.

Performance ratings fell as well, with a little more than 45 percent of senior executives across agencies

receiving the highest performance rating in fiscal 2013 -- about a 2 percent drop from fiscal 2012.

Carol Bonosaro, president of the Senior Executives Association, was disheartened by those figures. She said that government senior executives work in a "pay for performance system" and that "all their pay and awards are based on performance and are at the discretion of the agency."

"This is a system not working," Bonosaro said. "We are forgetting about performance, and it's being driven by budgetary concerns, by optics, by politics."

The civil service has often found itself in the crossfire between Congress and the Obama administration. The White House has worked to limit bonus pay for government workers while agencies such as EPA have seen their budgets slashed by lawmakers on Capitol Hill (*E&E Daily*, Dec. 10, 2014).

That has taken its toll on federal employees' morale. The Partnership for Public Service found in a report last month that job satisfaction continues to plummet across the government (*Greenwire*, Dec. 9, 2014).

Some lawmakers have tried to raise stagnant pay at government agencies. Legislation was introduced today to give federal workers a 3.8 percent pay raise (*see related story*).

Nevertheless, declining bonuses won't help much in keeping and bringing in talent to the federal workforce.

"It does little to encourage high-performing executives to stay and high-performing candidates to opt in," Bonosaro said.

AUSTRALIA:

Authorities rescue cargo ship that broke down near Great Barrier Reef

Published: Tuesday, January 13, 2015

A cargo ship was rescued today after breaking down near the Great Barrier Reef off the coast of Australia.

The Thor Commander, traveling from Chile to Townsville, Australia, suffered mechanical problems Sunday and had to be rescued by an Australian Maritime Safety Authority tugboat. The vessel was carrying copper ingots.

Neither the ship nor the reef sustained damage, said the Maritime Safety Authority.

Conservationists said the government has advocated for increased ship traffic to the area and the incident needs to be a warning.

"It only takes one ship to have an accident to cause irreparable damage to the reef and the $6 billion tourism industry that relies on it," said Felicity Wishart, a reef campaigner at the Australian Marine Conservation Society.

In December, a new two-way shipping route was established in order to keep ships away from the thousands of reefs and islands that make up the Great Barrier Reef ecosystem. The Maritime Safety Authority said reef shipping is well regulated and accidents are rare (Oliver Milman, London *Guardian*, Jan. 12). **-- MH**

PERU:

Mine pit pollutes Andean city

Published: Tuesday, January 13, 2015

A Peruvian city is being eroded and polluted by a nearby mine pit.

Residents of Cerro de Pasco, located 14,000 feet above sea level in the Andes, are used to living next to the mine with its heavy machinery that emits smoke into the air and debris into the water.

The mine was opened in 1956, bringing multiple environmental hazards to a city founded 500 years ago when the Spanish found silver there.

The water in Cerro de Pasco is a purple color and even boiling it does not remove the metallic components. Children there have three times the safe limit of lead in their bodies and often have brain damage and learning disabilities.

Because of the mine pit, which is as deep as the Empire State Building is tall, Peru's Congress passed a law in 2008 calling for all 70,000 Cerro de Pasco residents to be relocated. The law did not indicate how that would be done or how to compensate residents, so few people have actually moved (Anya Boryga, *New York Times*, Jan. 13). **-- AW**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., January 14, 2015

READ FULL EDITION

1.FORESTS:

Climate change threatens to release some of nature's largest CO2 stockpiles

Peatlands across the world are vulnerable to fires as a result of climate change, according to a paper published this month in the journal *Nature Geoscience*.

2.AGRICULTURE:

Will we be hungry in a warming world? USDA wants to know

The agricultural livestock field will have to undergo systematic changes to cope with food security and sustainability problems in a climate-changed world, according to a new report commissioned by the National Academy of Sciences.

TODAY'S STORIES

3.OIL AND GAS:

White House announces plan to slash industry's methane emissions

4.TECHNOLOGY:

Energy storage business poised to explode -- study

5.AUTOS:

GM introduces the Chevrolet Bolt, a cheaper electric car

6.SCIENCE:

Thunderstorms rain down ozone, study says

7.HEALTH:

Physicians say they are seeing impacts of climate change in patients

8.CALIFORNIA:

Interests line up to spend cap-and-trade fund that could top $2.3B

9.EDUCATION:

W.Va. board reviews K-12 science standards

10.STATES:

Mich. nonprofit prepares cities for climate change

11.CARBON MARKETS:

Carbon trading begins in South Korea; industry objects

12.AGRICULTURE:

Aging Australian farmers underestimate climate threat

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., January 14, 2015

READ FULL EDITION

1.ELECTRICITY:

Utilities, Mich. governor agree to sweeping UP energy settlement

Michigan Gov. Rick Snyder yesterday announced a series of agreements involving the state, electric utilities in the Upper Peninsula and the area's largest employer, aimed at stabilizing energy supplies in the region and sparing residents from a dramatic spike in electric bills.

TOP STORIES

2.ELECTRICITY:

Texas eyes solar expansion after years of lagging growth

3.SECURITY:

White House asks Congress to strengthen cyberthreat detection, prosecution

4.WATER POLLUTION:

Duke scientists identify new oil and gas wastewater contaminants

ELECTRICITY

5.POLITICS:

Fla. conservatives get boost in push to bring solar financing to the 2016 ballot

6.UTILITIES:

Calif. orders PG&E to release 65,000 emails

7.SOLAR:

Utility-backed financing bill wins initial support in Ga. House

8.UTILITIES:

Philadelphia under pressure to replace gas lines

OIL AND GAS

9.MARKETS:

Oil's free fall clouds latest federal energy forecast

10.REGULATION:

Drilling well blowouts down in Texas after a year of new rules

11.HYDRAULIC FRACTURING:

Halliburton warns of 'chilling effect' from chemical disclosure without safeguards

12.WORKFORCE:
As Halliburton announces Houston layoffs, survey sees more cuts to come
13.TRANSPORT:
Oil train safety added to federal watchdog's 'Most Wanted List'
14.FINANCE:
Canadian gas giant sticks by budget despite oil slump
15.HYDRAULIC FRACTURING:
Frac sand faces uncertain future -- Moody's
16.OIL:
Price drop won't affect OPEC -- U.A.E. energy minister

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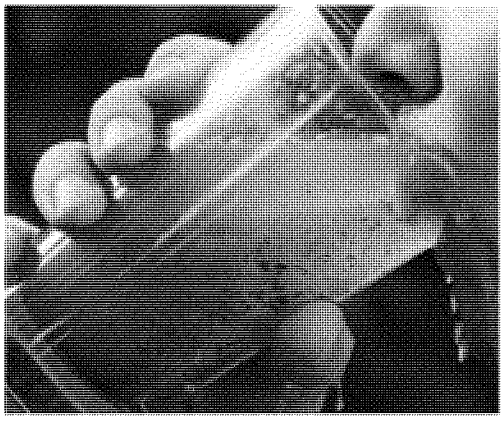

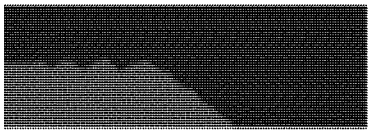

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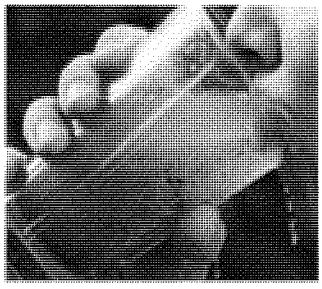

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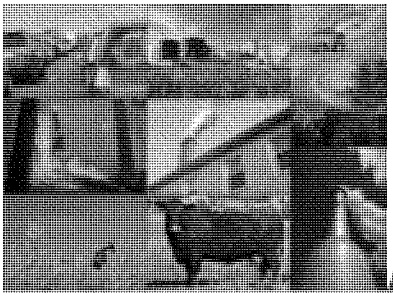


Air & Radiation Law News

for January 13, 2015

Bloomberg BNA **Daily Environment Report™**

Climate Change

Canada Addresses Permafrost Below, Snow Weight Atop Northern Buildings

Canada has published new standards to mitigate permafrost loss below buildings in its northernmost regions, and to deal with increased snow weight on top of such buildings, trying to minimize the growing risk of damage from climate change....

Climate Change

New Study Finds Social Cost of Carbon Could Be Six Times Higher Than Estimated

The economic damage caused by a ton of carbon dioxide emissions could be six times higher than the federal government's current estimate, according to a new study from two Stanford University scientists....

Energy

Barrasso, 13 Other Lawmakers Urge FERC To Complete Jordan Cove LNG Project Review

The Federal Energy Regulatory Commission should complete a final environmental impact statement for the Jordan Cove liquefied natural gas export project as soon as possible, Sen. John Barrasso (R-Wyo.) and 13 other Western lawmakers said...

Enforcement

Judge Approves Hyundai, Kia Consent Decree

A federal district judge Jan. 9 approved a consent decree in which automakers Kia Motors Corp. and Hyundai Motor Co. agreed to pay a $100 million penalty and forfeit nearly $200 million in credits after overstating the fuel economy of several...

Enforcement

Plastics Company Settles Risk Management Charges

A Texas-based plastics company will pay a $59,000 fine and spend at least $180,000 improving its recycling of hazardous hydrogen-fluoride gas to settle alleged violations of the Clean Air Act and the Emergency Planning and Community Right-to-Know...

Hazmat Transport

Stronger Tank Cars Better for Crude Delivery Than Rail Speed Limits, Railway Chief Says

Tougher tank cars are needed to reduce the risk of an oil spill if a train carrying crude derails, the chairman of BNSF Railway Co. said....

International Issues

U.S., Mexican Presidents Pledge $3 Billion To Fund North American Development Bank

A recent meeting between U.S. President Barack Obama and Mexican President Enrique Pe¤a Nieto yielded a pledge of $3 billion in capital increases for the North American Development Bank. ...

Oil & Gas

Colorado Announces Streamlined Process For Public to Submit Oil, Gas Complaints

The Colorado Oil and Gas Conservation Commission has announced a streamlined process for handling public complaints related to oil and gas development. ...

Oil & Gas

Commission to Consider Setback Requirement

The Wyoming Oil and Gas Conservation Commission will consider a proposal to increase the minimum distance between oil and gas wells and occupied structures to 500 feet. The commission will hold a public hearing on the proposed amendments March...

Oil & Gas

Cruz Plans Crude Export Amendment To Keystone Legislation, Spokeswoman Says

Sen. Ted Cruz (R-Texas) plans to offer an amendment to lift the 40-year-old ban on the export of crude oil to Keystone XL pipeline legislation being considered on the Senate floor, according to a spokeswoman for the senator....

Regulatory Policy

House to Take Up Legislation to Add Layers Of Regulatory Procedures; Veto Threatened

House Republicans are to begin floor debate Jan. 13 on a House bill that would require environmental, job safety and other federal agencies to navigate new layers of regulatory procedures, but the measure would have to overcome a White House...

Renewable Energy

Montana Manufacturer to Help Build India's Biggest Solar Panel Factory

SunEdison Inc. will invest $4 billion to build the biggest solar panel factory in India, advancing Prime Minister Narendra Modi's effort to rein in pollution by expanding renewable energy....

OUTLOOK 2015

Energy

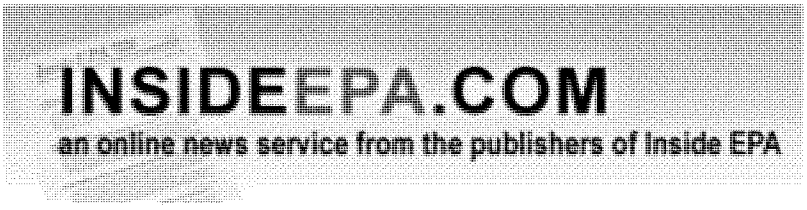
Republicans Set for Battle With White House As They Focus Energy Policy on Fossil Fuels

Congressional Republicans are expected to push the energy policy focus on Capitol Hill further toward fossil fuel, with plans to take up legislation on oil and natural gas development, setting up a series of battles with the White House in 2015....

Vehicle Fuels

Congress Could Reform Renewable Fuels Law in 2015 Following EPA Delays

Lawmakers frustrated with the Environmental Protection Agency's ongoing delays in issuing the annual renewable fuel standard have vowed to alter the law in 2015, but analysts are mixed about how successful those efforts will be....



Inside EPA's **Risk Policy Report**, 01/13/2015

http://insideepa.com/newsletters/risk-policy-report

News Briefs

Suit Seeks EPA Response To Power Plant Air Permit Objection

Environmentalists are suing EPA to try and force a response to their request that the agency object to a Clean Air Act permit for a power plant at the center of a dispute over interstate emissions, while EPA separately works on crafting a response to a Maine town's petition asking the agency to directly regulate the facility's air pollution.

Greenwire

CLIMATE:

Republican statehouse gains load the dice for anti-EPA bills

Jean Chemnick, E&E reporter

Published: Monday, January 12, 2015

Environmentalists are girding for an onslaught of new state bills to delay or kill U.S. EPA's Clean Power Plan as state legislatures return to work beginning this week with Republicans now in control of two-thirds of the nation's legislative chambers.

November's midterm elections gave the GOP new majorities in 11 legislative chambers, placing 68 of the nation's 98 partisan chambers in its control. And greens worry that these new Republican strongholds could be fertile ground for legislative proposals by the conservative American Legislative Exchange Council that would make it harder to implement the greenhouse gas rule for the existing power plants.

ALEC acts as a clearinghouse for state bills aimed at limiting regulation across a broad swath of topics, including the environment. The group did not respond to calls for this story.

"We're definitely seeing ALEC escalating its environmental rhetoric because there are more Republicans in charge of the legislatures, or we're watching or tracking to see what that really means," said Aliya Haq of the Natural Resources Defense Council.

Lawmakers from two states -- Virginia and Missouri -- prefiled legislation before those legislatures returned for the new session on Jan. 8 that could affect the states' ability to submit implementation plans to comply with EPA's deadlines beginning in 2016.

One draft pending in Missouri, to be offered by state Sen. Gary Romine (R), would require the state Division of Environmental Quality to submit a blueprint of any implementation plan for a Clean Air Act or Clean Water Act rule to the Legislature and the governor for review one month ahead of filing it with EPA, complete with an assessment of its potential economic costs. If lawmakers don't move to block it, the measure would travel to EPA for its approval.

The proposal would affect implementation of the existing-plant rule in much the same way as a law Pennsylvania enacted in October would. It requires state officials to report to the Legislature on plans to implement the Clean Power Plan only. A similar draft is also pending in the Virginia Senate to be offered by state Sen. Charles Carrico (R).

The bills are derived from an ALEC proposal that would have required legislatures to approve any state plan -- in effect, a state version of the "Regulations from the Executive in Need of Scrutiny (REINS) Act," a bill likely to be reintroduced this Congress to limit the executive branch's rulemaking powers.

The Pennsylvania law and Carrico's and Romine's proposals do not require legislative action, though Haq said they would create an "unnecessary delay" before state agencies can submit their plans to EPA for approval. But Missouri Rep. Mike Moon (R) is planning to introduce a more sweeping bill that would bar state agencies from implementing any federal regulation written under any law without approval from both the Legislature and its Joint Committee on Administrative Rules.

While it would not stop the state from writing an implementation strategy for the existing-power-plant rule, a law already on the books in Kentucky seems likely to ensure that any plan the Kentucky Energy and Environment Cabinet writes will be rejected by EPA.

The Kentucky law -- enacted last April and based on another ALEC model bill -- would bar the Kentucky agency from writing a plan that encourages fuel switching from coal to natural gas, increased use of renewable energy or energy efficiency. These three areas and heat-rate improvements at coal-fired power plants are the "building blocks" EPA used to set state emissions targets under the rule. The proposal would require Kentucky to cut its utility-sector emissions by 18 percent below 2012 levels by 2030.

Carrico sponsored legislation in Virginia last year that, like Kentucky's law, would have limited the commonwealth's plan to "widely deployed efficiency measures" on site at plants (*Greenwire*, Jan. 30, 2014). But his bill was overhauled in committee, and the version that eventually became law called for a study only and passed without opposition from environmentalists.

Virginia's Legislature is now wholly in the control of Republicans after the November election, so Carrico's new proposal might stand a better chance of progressing even if Gov. Terry McAuliffe (D) does not sign it into law.

Republicans have commanding majorities in both chambers of Missouri's Legislature, though the state also has a Democratic governor.

Kentucky, Pennsylvania and Virginia are three of the eight states that currently have laws on the books that deal with EPA's existing-power-plant rule, though most are limited in scope and would not affect compliance. Seventeen states have adopted nonbinding resolutions.

Bluegrass stakes

Kentucky seems destined to be the nation's test case for what happens to a state that enacts laws that make it impossible to comply with the Clean Power Plan.

That would be the law's effect, said the state official tasked with writing Kentucky's plan, barring some "creative" interpretation of the law that ignores the clear intent of the state Legislature, which passed it unanimously.

Kentucky's Assistant Secretary for Climate Policy John Lyons said state officials submitted comments to EPA as if the state's environmental agency could write a plan that went beyond the fence line, but in reality regulators would have to confine their work to modest heat-rate improvements on site at power plants. EPA assumes the nation's coal-fired power fleet can improve its efficiency enough to cut carbon by 6 percent. But Lyons said his state's coal units -- which provide more than 90 percent of the state's power -- could improve theirs by no more than 2 percent.

So Kentucky is on track to submit a plan to EPA that fulfills only a fraction of its obligations under the rule and that EPA will reject. And Lyons acknowledges that the state as a result will eventually be subject to the federal implementation plan EPA will release this summer.

"Would that be detrimental to where we now are and where we could take ourselves if we were given the latitude to do our own plan?" he said. "It's a big risk."

The state has a burgeoning manufacturing base because it has cheap power supplied overwhelmingly by coal, he noted. A federal plan not tailored to Kentucky's concerns might do less to insulate consumers from rising rates.

"And not being able to chart your own course is certainly not a palatable thing, and not something that the Cabinet would recommend that we allow to happen in the state," he said.

Lyons said he was not doing outreach to lawmakers, but he wasn't shy about offering an opinion.

"I think it's in our best interest to put together a plan that benefits Kentucky and supports our interests here," he said.

Nor is a federal implementation plan the only weapon in EPA's arsenal, should the agency choose to use it. EPA could pull transportation funding from a state that refuses to comply with its Clean Air Act rules or even impose a de facto moratorium on industrial expansion in the state. The Clean Air Act allows the federal agency to require new facilities that will be major emissions sources to offset up to double their proposed emissions -- a burden that could stifle the manufacturing sector Kentucky's law seeks to protect.

Kentucky is assigned one of the nation's lightest targets under the rule, and Bill Becker, executive director of the National Association of Clean Air Agencies, said the final rule EPA publishes next summer is likely to incorporate many of the additional concerns states raised in the public comments.

EPA showed flexibility in October, he said, when it issued a set of proposed alternatives to the draft rule. Among many other things, the document asked for comment on whether EPA should reduce states' near-term reduction targets -- something more than one state has asked it to do.

"The ALEC representatives are espousing legislative positions to fix problems that they haven't even given EPA time to solve, especially since the agency has acknowledged that it's going to do its best to solve them," Becker said.

Tying the hands of state agencies would do nothing to reduce federal requirements, he said. It would just mean the state has fewer options for how to fulfill them. Kentucky would have to cut its CO2 output by 18 percent just through efficiency upgrades at coal plants.

Not a party-line battle?

But not everyone takes such a dim view of Kentucky's law and its consequences.

Bill Bissett, president of the Kentucky Coal Association, said the possibility of a federal implementation plan was part of the discussion when Kentucky lawmakers debated and passed the law last year.

"It's something that we continue to monitor," he said.

But Bissett said state lawmakers chose to move ahead with the law to send EPA the message that Kentucky had serious concerns about how it would fair under EPA regulations and to limit their impact while the courts sort out whether the rule will go forward.

"Several of the lawyers we talk to -- and they rarely talk in such optimistic terms -- suggest that this will likely never occur because there are a lot of legal issues here," he said. "But Kentucky cannot afford to wait to see what happens legally because the specter of these regs are already forcing public utilities to make decisions now that are going to have long-range effects."

He noted that EPA's proposal allows for a one-year extension for submission of state implementation plans and said lawmakers, utilities and public utility commissions would ultimately decide together whether changes to the law are warranted.

In the meantime, Bissett said he expected other states to adopt similar proposals not because their legislatures are increasingly controlled by Republicans but because it is good policy to do so.

"I think our opponents would suggest it breaks down along party lines, but definitely in Kentucky that's not the case," he said.

A Democrat-controlled state Legislature passed the law and Gov. Steve Beshear (D) signed it, he noted. And state Attorney General Jack Conway (D) -- who is likely to be the Democratic nominee for governor this year -- has already signed on to a lawsuit with 11 other attorneys general calling on EPA to rescind the rule.

ENERGY MARKETS:

Supreme Court appears split over FERC's regulatory reach

Jeremy P. Jacobs, E&E reporter

Published: Monday, January 12, 2015

Major natural gas producers argued to the Supreme Court today that a federal law shields them from state antitrust lawsuits stemming from the California energy crisis.

ONEOK Inc. v. Learjet Inc. concerns whether the Natural Gas Act pre-empts local antitrust lawsuits filed against natural gas producers for price manipulation.

The case may determine the scope of the Federal Energy Regulatory Commission's jurisdiction over regulating wholesale natural gas prices and markets.

It stems from fraudulent trading practices that led to the California energy crisis of 2000-02, causing rolling brownouts across the West.

A FERC investigation a year later found that major energy producers used practices that illegally manipulated natural gas indexes composed by trade publications. Those indexes contribute to setting the price of gas.

Their customers, led by Learjet, soon filed several lawsuits against American Electric Power Co., ONEOK Inc. and others under state antitrust provisions.

After the cases were consolidated, a federal district court judge sided with the energy companies. The judge said the federal Natural Gas Act grants FERC jurisdiction over wholesale natural gas sales, which were influenced by the illegal trades. The state laws, therefore, were pre-empted and the companies were shielded from the litigation.

A federal appeals court reversed that decision. The 9th U.S. Circuit Court of Appeals applied a presumption against state law pre-emption and argued that the trading affected retail sales -- not just wholesale -- which is outside of FERC's jurisdiction under the federal law and therefore subject to the state antitrust suits.

Neal Katyal of Hogan Lovells, representing the energy companies, argued today that Congress clearly intended uniform regulation under FERC -- not a piecemeal approach where each state sets its own regulations.

"FERC is regulating in this area," he said.

That argument appeared to gain some traction with the conservatives on the bench.

Justice Antonin Scalia said that at the core of the antitrust suits is a complaint about price manipulation.

"There is no doubt," he said, that "falls within the scope of the Commission."

The court's four liberal justices -- Elena Kagan, Stephen Breyer, Sonia Sotomayor and Ruth Bader Ginsburg -- all appeared skeptical of Katyal's position, however.

Kagan argued that the authority to regulate could be "concurrent" and not mutually exclusive.

"I don't see a reason," she said, "why you would exclude the state entirely."

Much of the argument, however, focused on complex hypotheticals where the justices sought to ascertain the exact scope of the case.

A key to the ruling may be whether the case presents a question of "field" pre-emption of state laws -- meaning the federal law is comprehensive in scope and therefore overrides state regulation -- or a question of "conflict" pre-emption -- meaning there is a specific provision of the federal law that overrules state regulation.

The gas customers, represented by Jeffrey Fisher of Stanford Law School, argued that it is conflict pre-emption so they aren't trying to overrule FERC authority entirely.

"We don't have to fight FERC's power," he said. Based on the plain language of the law with regard to retail sales, he added, "You can't oust the states."

Notably, the Obama administration urged the court not to review the case because the legal circumstances it presents are unlikely to recur. In 2003, FERC issued guidance concerning the regulation of gas price reporting. Congress, two years later, amended the Natural Gas Act to expand FERC authority to oversee market trading (*Greenwire*, June 3, 2014).

Today, the administration backed the energy companies. Anthony Yang, an assistant to the solicitor general, argued for broad field pre-emption.

But Kagan and Justice Anthony Kennedy, a usual swing vote, were skeptical of that argument. Both pressed him on whether a specific "conflict" exists that would warrant pre-emption.

A decision in *ONEOK Inc. v. Learjet Inc.* is due by the end of June.

GRID:

Key roles seen for 6 utility execs, regulators in debate over EPA regs

Hannah Northey, E&E reporter

Published: Monday, January 12, 2015

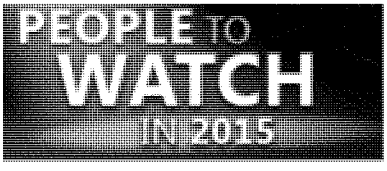
Fourteenth in a series on key players on energy and environment issues in 2015.

Foes of U.S. EPA's proposed carbon curbs for power plants say they threaten the reliability of the electric grid.

The Clean Power Plan's potential impacts on electricity generation and transmission will likely dominate technical conferences and hearings this year, spotlighting federal and state regulators, grid operators and industry executives.

Up first is the Feb. 19 technical conference at the Federal Energy Regulatory Commission's headquarters in Washington, D.C., where attendees will discuss the Clean Power Plan's rollout, the growing need and timelines for building new natural gas pipes and electrical wires, and the proposal's potential effect on the gas and power markets.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

That conference -- as well as three follow-up meetings in Washington, D.C.; St. Louis; and Denver -- could reveal the complex regional issues tied to implementing the Clean Power Plan, said Marc Spitzer, a former FERC commissioner and now a partner at Steptoe & Johnson.

"The issue isn't easy, because it's this matrix of the country," he said. "California is very different from New England and the Northeast."

Big questions likely to surface in coming months: Are FERC and grid overseers playing big enough roles? Are timelines too tight for the power sector's compliance? And will the necessary infrastructure be built fast enough to replace closing coal-fired generators?

Here's a look at a few individuals to watch in the debate:

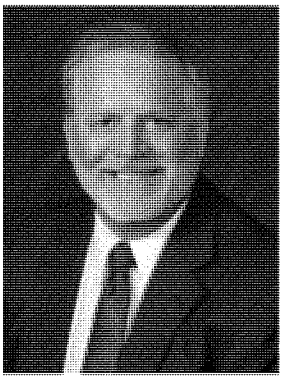
Gerry Cauley, CEO of the North American Electric Reliability Corp.

As president and CEO of the electric industry's reliability watchdog, Gerry Cauley is sure to be called upon to explain how EPA's proposal will affect the nation's expansive energy network.

Not everyone will like what Cauley has to say.

"He's in a box, because if he says the rule is great, he'll get lambasted from the right. If not, he'll get lambasted from the left," Spitzer said. "Whatever answer he gives, people are going to be unhappy. He's a straight-arrow guy and his testimony is important."

NERC grabbed the spotlight on and off Capitol Hill last year after releasing a preliminary report that the Clean Power Plan could threaten reliable electricity delivery in 2020, the plan's initial compliance deadline.



Gerry Cauley, chief executive of NERC. Photo courtesy of NERC.

Months later, NERC came under fire from clean energy groups for hiring Northern Virginia consulting firm Energy Ventures Analysis Inc. (EVA) -- a firm that publicly slammed the EPA proposal -- to assess the proposal's effects. Even so, NERC officials said they had worked for many years with EVA and had no issues with its objectivity (*Greenwire*, Dec. 17, 2014).

Cauley, a nuclear engineer by training, assumed his role at NERC in 2010. Before that, he served two years as president and CEO of the SERC Reliability Corp., a regional council overseeing the electric reliability in 16 states in the southeastern and central United States. From 1996 to 2007, Cauley was NERC's vice president, and had a hand in crafting the first reliability standards for the bulk power system in North America. He also served as a program manager of grid operations and planning at the Electric Power Research Institute.

Cauley earned a master's degree in business administration, organizational management and marketing from Loyola University Maryland near Baltimore, and has a master's degree in nuclear engineering from the U.S. Military Academy at West Point.

His hobbies include golf, according to an online profile.

Colette Honorable, FERC commissioner

Colette Honorable is under the microscope as a newly confirmed commissioner.

The former chairwoman of the Arkansas Public Service Commission, the Democratic appointee attracted strong bipartisan support last year as she moved through Senate confirmation; Republicans signaled that she could serve as a rare Democratic ally for grid operators and energy companies concerned about the timelines and costs for implementing the EPA proposal.

As an Arkansas official, Honorable warned that the EPA proposal would generate significant costs for Arkansas and threaten electric reliability. The state, notably, burns coal for half its electricity (*Greenwire*, Dec. 5, 2014).

Now a federal regulator, Honorable will be tasked with looking at EPA's proposed rule from a different perspective.

Colette Honorable, new Democratic FERC commissioner. Photo courtesy of the Arkansas Public Service Commission.

"She's given a lot of public statements about affordability because Arkansas has coal and nuclear and is one of the poorest states in the union, so she's going to have the challenge right off the bat because her personal views aren't consistent with that of, say, California," Spitzer said.

A native of St. Louis and mother of one, she had a lengthy legal career before arriving at FERC. She studied criminal justice and criminology during her undergraduate years at Memphis State University and earned a law degree at the University of Arkansas, Little Rock, William H. Bowen School of Law.

In the past, she worked under then-state Attorney General, former Sen. Mark Pryor (D-Ark.). After Pryor was elected to the Senate, she worked for his successor, Mike Beebe (D). After Beebe was elected governor, Honorable worked on his legislative team and later served as his chief of staff.

Honorable is active as a mentor to young women in her church, law school and sorority.

Don Santa, president and CEO of the Interstate Natural Gas Association of America

The Obama administration has called for ramped-up investment in infrastructure to tap into the country's vast shale plays, and many states are poised to lean harder on natural gas to comply with the Clean Power Plan.

The timing of that construction -- and what role Congress should play in helping it along -- is sure to put the spotlight on Don Santa, the public face of the country's interstate natural gas pipeline industry.

In an interview, Santa highlighted the complexity of discussions to come.

Don Santa, president and CEO of INGAA. Photo courtesy of INGAA.

"A lot of it has to do with sorting out on the electric side what they'll need to comply [with the EPA proposal]," he said. "We're in a bit of a chicken-and-an-egg stage before you even get go the point where a utility can sign up for capacity [on a pipeline]. The pipeline industry doesn't go out and build on speculation."

Santa recently voiced support for legislation that would fast-track the permitting of new pipelines, the "Natural Gas Pipeline Permitting Reform Act" (H.R. 16), which Rep. Mike Pompeo (R-Kan.) reintroduced this week. The bill would limit the amount of time federal regulators have to sign off on or deny proposed pipelines (*E&E Daily*, Jan. 9).

Santa has a meaty resume of experience both on Capitol Hill and as a regulator. Before joining INGAA, he was a partner for the D.C. office of the law firm Troutman Sanders LLP, and he served as deputy general counsel at LG&E Corp. in Louisville, Ky., from 1997 to 2001.

Santa served as majority counsel to the Senate Energy and Natural Resources Committee from 1989 to 1993 and was nominated in 1993 be a member of FERC, where he served until 1997. Santa earned a law degree from Columbia University School of Law and a bachelor's degree in political science from Duke University Trinity College of Arts and Sciences.

Santa grew up in Connecticut and in his free time cheers on the Duke University Blue Devils and races sailboats on the Chesapeake Bay near his home in Edgewater, Md., southwest of Annapolis.

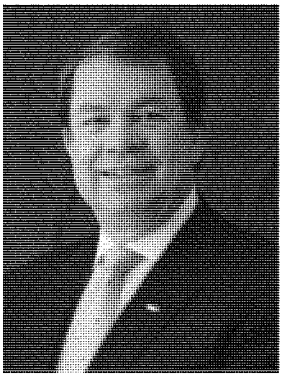
Terry Boston, PJM Interconnection president

As president and CEO of one of the biggest electric grid operators in the country, Terry Boston is one to watch as discussions around EPA's Clean Power Plan unfold.

Boston, who has held the top perch at PJM since 2008, will be called upon -- as will other grid operators -- to explain how the Mid-Atlantic and Midwest are dealing with implementing EPA's rules, an unprecedented wave of coal plant retirements, a shift to natural gas, and a high-profile court case that threw FERC's demand-response program into uncertainty.

The grid operator is already taking a cautious approach.

Last year, PJM, a member of the ISO/RTO Council, which represents nine regional grid operators in the United States, asked EPA to offer a "safety valve" while implementing its carbon rule. PJM and other grid operators said such a mechanism could provide regulatory relief from state plans if reliability coordinators determine they might risk electricity outages (*ClimateWire*, Dec. 3, 2014).



Terry Boston, PJM Interconnection's president. Photo courtesy of PJM Interconnection.

PJM also asked FERC last year for permission to keep a handful of power plants operating beyond their scheduled shutoff dates to offset a "historic" wave of retirements, severe weather and uncertainty around demand response.

Before joining PJM, Boston served as the executive vice president of the Tennessee Valley Authority -- the nation's largest public power provider -- for more than three decades.

He grew up on a farm near Nashville, Tenn., before meeting his wife, Brenda, in an organic chemistry class at Tennessee Technological University in Cookeville, Tenn., according to a Dec. 23, 2013, article in *Transmission & Distribution World*.

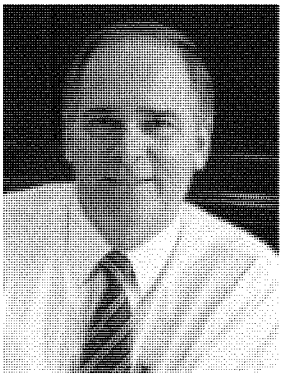
Boston has three children. His daughter, Rachel, was crowned Miss Tennessee Teen USA in 1999 and is now a television actress who starred in the TV series "Witches of East End."

Nick Akins, American Electric Power Co. Inc.'s chairman, president and CEO

AEP's Nick Akins isn't shy about expressing his concerns with EPA's proposed Clean Power Plan -- he is head of one of the biggest owners of coal-burning power stations in the country.

Akins last summer told analysts the Clean Power Plan threatens the reliability of the electricity system and doesn't give utilities enough time to wean themselves off coal (*EnergyWire*, July 29, 2014). Columbus, Ohio-based AEP serves 11 states, each with a different target in EPA's plan.

Akins has also been critical of the idea that natural gas generators can run at a 70 percent capacity factor. He told analysts that "neither the plants, natural-gas-pipeline system or the electric system is in place to support it," and the Clean Power Plan, as proposed, is not "credible."



Nick Akins, president and CEO of American Electric Power Company Inc. Photo courtesy of AEP.

Akins, an electrical engineer, grew up in Bossier City, La., the son of a used car manager in Louisiana who worked his way through the management ranks over 30 years, including a number of positions with Central and South West Corp., a power company AEP bought in 2000, according to an April 1, 2011, article in *Columbus Business First*.

He holds a bachelor's degree in electrical engineering from Louisiana Tech University in Ruston, La., and a master's degree in electrical engineering from Louisiana Tech.

Audrey Zibelman, chairwoman of the New York State Public Service Commission

Audrey Zibelman stands out amid a sea of regulators pushing to accommodate their state's needs.

Zibelman, a lawyer, energy executive and founder of the smart grid company Viridity Energy Inc., spearheaded a program in the Empire State called "Reforming the Energy Vision" -- an initiative to reform New York State's energy industry and regulatory practices to make the electric system more productive and efficient.

It's a vision that is slated to change the way electricity is bought, sold and delivered in New York and beyond.

But Zibelman is also known for expressing concerns with EPA's Clean Power Plan.

Audrey Zibelman, chairwoman of the New York State Public Service Commission. Photo courtesy of the New York State Public Service Commission.

She recently joined officials from other Northeastern states in expressing support for the basic structure of the proposal but said EPA hadn't gone far enough in crediting emissions reductions among members of the Regional Greenhouse Gas Initiative (RGGI) compared to more polluting states.

Zibelman was appointed chairwoman of the state agency by Gov. Andrew Cuomo (D) and was confirmed in 2013 to a term ending in February 2018.

Zibelman served as PJM's executive vice president and chief operating officer and sits on a number of boards, including RGGI's board of directors. She has also served as vice president of Xcel Energy Inc., general counsel to the New Hampshire Public Utilities Commission and special assistant attorney general in the Minnesota Office of Attorney General.

Zibelman, who was born in Philadelphia, earned a bachelor's degree from Pennsylvania State University and a law degree from Hamline University School of Law.

She enjoys biking, skiing, traveling and spending time with her adult children and grandchildren.

KEYSTONE XL:

Pipeline foe calls court ruling 'gift from the heavens'

Manuel Quiñones, E&E reporter

Published: Monday, January 12, 2015

Attorneys for Nebraska landowners opposed to TransCanada Corp.'s Keystone XL oil pipeline from Canada said today more litigation is possible if the company insists on using the currently approved route.

Last Friday the state's Supreme Court upheld the constitutionality of a 2012 law that gave the governor authority to set the route, but it did so on a technicality (*Greenwire*, Jan. 9).

Four of the seven justices -- three Democratic appointees and one Republican appointee -- said stripping the Public Service Commission's authority to set KXL's route was unconstitutional. But the state's permitting process says a supermajority of justices is needed.

The remaining three justices -- two Republican appointees and one Democratic appointee -- didn't rule on the question because they said landowners didn't have standing to bring the suit in the first place. That means no justice went on the record supporting the law's constitutionality.

"Since last Friday I've seen hundreds, maybe thousands, of news stories saying that a hurdle to TransCanada's construction was removed," attorney Dave Domina said in a video released today. "Any thoughtful reading of the Supreme Court's opinion clearly discloses that's not the case."

Attorney Brian Jorde followed up in an email, saying, "The decision on Friday was a gift from the heavens for all our Nebraska landowner clients and anyone hoping for further delays of this project."

In the video, Jorde, of the Domina Law Group, said that "it's perplexing, confusing and unclear at first glance what it really means." He added the constitutionality question was "pushed down the road, or punted away to be answered on another day in the future."

The three dissenting justices also said the court needs a supermajority to rule on the standing question. But with four justices disagreeing, the court remains on the record upholding the landowners' right to sue.

Even though Jorde and Domina, who ran unsuccessfully for the Senate last year, didn't detail their strategy this morning, they are likely to take advantage of the standing decision plus the lack of a firm high court decision to revive the case.

Jorde said key state law questions remain unanswered. "And until they are answered," he said, "the question is open and unresolved in the state of Nebraska."

To be sure, TransCanada doesn't agree with the pipeline foes.

CEO Russ Girling said the ruling removes an obstacle for KXL and puts pressure on the Obama administration to make up its mind on the pipeline's transboundary crossing.

"Along the route, we have acquired 100 percent of land easements from private landowners in Montana and South Dakota, with 84 percent of those acquired along the new route in Nebraska," he said.

The State Department, which is reviewing KXL's application, said the ruling means different agencies would now be able to provide input on whether the project should move forward. The administration had cited uncertainty over KXL's route as a reason for permitting delays.

"So the next step is to request that the agencies complete their consideration of whether the proposed project serves the national interest and provide their views to the department," State spokeswoman Jen Psaki said Friday.

"That will, of course, be factored into the national interest determination," she said, "which is what ultimately at some appropriate time the secretary will issue."

Meanwhile, the House last week approved legislation to bypass the administration and approve KXL. A test vote on the same bill is scheduled for the Senate this evening. The White House has threatened to veto the legislation, supporting the ongoing review.

Environmentalists, pipeline backers and landowners agree on one thing -- that action in the states does not preclude the administration from making a decision on KXL. The legislation also would not pre-empt state permitting authority.

Domina and Jorde said landowners were waiting to see what TransCanada does. "But if it chooses the route that we think is unconstitutional," Domina said, "the property owners of this state and we as their lawyers are prepared to meet TransCanada."

Jorde said, "It's up to TransCanada to make the next move, play the next card. And they don't have many cards to play." Domina added, "The landowners here aren't finished fighting, and neither are we."

CLIMATE:

Methane blueprint expected this week, ahead of State of the Union

Jean Chemnick, E&E reporter

Published: Monday, January 12, 2015

The White House is likely to roll out its strategy to curb methane emissions from the oil and natural gas

sector this week ahead of next week's State of the Union address, and environmentalists are watching to see if it includes U.S. EPA's commitment to regulate new and existing sources of the potent greenhouse gas.

Senior White House adviser John Podesta said in December that the interagency strategy would be out ahead of the president's annual address. EPA had previously committed to unveiling its plans to curb methane emissions by the end of autumn, but administration officials said additional time was needed to allow other agencies to ready their own parts of the package (*E&ENews PM*, Dec. 17, 2014).

The methane blueprint will answer questions about whether EPA will promulgate rules for methane before the end of this administration and how expansive those rules will be.

Greens have made comprehensive, direct regulation of methane from new and existing oil-and-gas-sector sources a top ask for President Obama's second term.

David Doniger, who directs climate policy for the Natural Resources Defense Council, said last week that direct methane restrictions are "the biggest opportunity to move the ball forward on climate change that the administration has not achieved."

Mark Brownstein, chief counsel at the Environmental Defense Fund, said they're necessary to ensure that EPA's Clean Power Plan is effective, because the rule for existing power plants will rely at least in part on utilities swapping coal for natural-gas-generated electricity.

"There are many folks in the environmental community who have raised a question about whether natural gas represents a viable alternative to coal, given the fact that methane emissions [are] existing," he said this morning. Rules for new and existing oil and gas sources written under Section 111 of the Clean Air Act are needed, he said, to ensure the environmental integrity of EPA's flagship power plant rule.

The American Petroleum Institute, meanwhile, has signaled that it will oppose direct regulation of methane, though it might accept a broadening of EPA's existing rules requiring new natural gas wellheads to use green completions technology to capture emissions (*Greenwire*, Dec. 5).

EPA has stayed mum about its plans. In an interview last week with *Greenwire*, acting EPA air chief Janet McCabe said the agency is "looking at building on the regulation that we did in 2012," with the green completion rule.

"But there are a number of other facilities that weren't addressed by that rule," she added.

She went on to reference voluntary actions EPA is already undertaking with industry to curb emissions, concluding that "we're hopeful there will be a combination of things that we can do."

EPA is not the only agency that is likely to participate in the methane strategy. The Bureau of Land Management is expected to make an announcement about steps it will take to discourage the venting of natural gas during production on federal lands. One possibility would be to assess royalties based on wellheads produced, rather than on the amount of natural gas that is processed.

And the Pipeline and Hazardous Materials Safety Administration, the Department of Transportation agency responsible for pipeline maintenance, may also weigh in.

Energy Secretary Ernest Moniz held a series of roundtable discussions early this year aimed at finding ways to curb methane leakage across petroleum systems, and the Energy Department is expected to announce actions this week based on those discussions (*EnergyWire*, July 30, 2014).

Reporter Amanda Peterka contributed.

BIOFUELS:

Defunct Miss. plant fuels bitter legal battle

Published: Monday, January 12, 2015

A legal fight in Mississippi is turning nasty as a bankrupt biofuel producer and its billionaire backer accuse state officials of employing a "hyper-aggressive litigation scheme."

Last month, the Mississippi Development Authority called for converting Pasadena, Texas-based KiOR's Chapter 11 reorganization into a Chapter 7 liquidation, arguing the company lacked real business prospects and owed the state $79 million, which would not be returned in a bankruptcy. It also claimed KiOR was manipulating the case to benefit controlling shareholder Vinod Khosla, the venture capitalist who has a new company waiting in the wings to buy up KiOR's assets.

"The motion reflects a continuation of the MDA's aggressive and scorched-earth litigation in this case, which apparently is intended to extort a recovery from the debtor and the Khosla-related plan support parties," lawyers wrote in documents filed in U.S. Bankruptcy Court in Delaware.

Mississippi originally cooperated with KiOR in hopes of maximizing profits collected from the sale of KiOR's defunct Columbus refinery, but state officials are now deposing Khosla and hundreds of thousands of pages of documents.

KiOR accused MDA of trying to "force the abandonment of promising biofuel, alternative energy technology that can deliver real hydrocarbon transportation fuels from cellulosic feedstock" (AP/*Fuel Fix*, Jan. 12). **-- DTB**

BIOFUELS:

Engineered crops likely pose only minor risks -- DOE

Amanda Peterka, E&E reporter

Published: Monday, January 12, 2015

Specially engineered biofuels crops may pose some environmental impacts, including increased risk of invasiveness, but most concerns can be alleviated by best management practices, according to a draft environmental review by the Department of Energy.

The draft programmatic environmental impact statement examined potential future funding through DOE's Advanced Research Projects Agency-Energy (ARPA-E) for the creation of new crops engineered to improve biofuels production.

Along with raising concerns about invasiveness, the impact statement also found that some species of "engineered high energy crops" may pose increased wildfire risks. But in most cases, DOE found ways to mitigate negative effects. In certain cases, the introduction of engineered biofuels crops could yield environmental benefits, DOE said.

"The potential for environmental impacts varies by EHEC species, the modifications to the EHECs, field

trial location, and the size of the field trial," the review concluded. "However, the development of EHECs may have potential benefits once EHECs are commercially viable (after completion of the field trials); such benefits may include decreased greenhouse gas emissions due to the reduced need for and use of fossil fuels as an energy source."

DOE made the draft impact statement available Friday and will accept public comments for 60 days.

The review encompassed the creation and testing of crops containing genetic material that has been introduced through biotechnology or other engineering processes. The addition of new genetic material could act in a number of ways to improve biofuels production, including increasing photosynthesis, improving crop yield and adding molecules found in petroleum-based fuels.

The review examined the environmental impacts of field trials of newly engineered crops in the Southeast in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. DOE examined confined field trials of up to 5 acres, 250 acres and 15,000 acres; the largest field trial would provide enough energy crops for a small-scale commercial ethanol plant.

According to the review, the potential for invasiveness is a concern for field trials of up to 250 and 15,000 acres. But detrimental impacts caused by increases in invasiveness are likely to be relatively minor and could be mitigated by certain best management practices, DOE said.

"Invasiveness was a concern (area of controversy) discussed at the scoping meetings" for the review, DOE said. "Agencies and interested groups expressed concern that engineered crops may increase the risk of invasiveness and recommended that rigorous screening protocols and monitoring, mitigation, and eradication protocols be established for all field trials to manage potential risk."

At a minimum, projects involving engineered biofuels crops would have to follow permit requirements set by the Department of Agriculture's Animal and Plant Health Inspection Service, DOE said.

DOE also found that planting woody crops that have been engineered to have increased terpene -- a strong-smelling aromatic hydrocarbon -- could result in an increased risk of wildfires. The impact from larger field trials could be major or long term, DOE said.

"However, it is not clear that genetically modifying a woody crop could present a greater fire hazard than existing pine plantations commonly found in the Southeastern United States," DOE said.

The department also said the risk could be mitigated through a variety of best management practices.

In general, perennial nontree plants "would have the smallest potential for environmental impacts" and may result in potential benefits, the review said. Planting engineered perennial biofuels crops, for example, would decrease fertilizer and pesticide use compared with corn production, thereby leading to less nutrient runoff into local waterways.

Along with cataloging potential environmental impacts, DOE emphasized the need for funding federal field trials.

"In the absence of DOE funding and support for EHEC programs," the department said, "scientific understanding and innovation in the responsible use of EHECs and, ultimately, commercial deployment of EHECs would develop more slowly or not at all."

OIL AND GAS:

Ohio refinery explosion breaks windows, releases no toxins

Published: Monday, January 12, 2015

An explosion at an Ohio oil refinery that prompted a fire that burned for more than 14 hours Saturday did not release any dangerous pollutants, Ohio regulators said.

The explosion at 6 a.m. Saturday at the Husky Energy Inc. refinery in Lima, Ohio, started a fire that sent black smoke into the air. While nearby streets were closed for nearly seven hours, no one was evacuated, and about 20 homeowners reported broken windows from the incident.

Tests performed by U.S. EPA; Allen County, Ohio; and the energy company did not detect levels of benzene, carbon monoxide, sulfur dioxide, hydrogen cyanide, hydrogen sulfide and asbestos, Ohio EPA spokeswoman Heidi Griesmer said, though the company will continue monitoring for the chemicals this week.

Husky Energy spokesman Mel Duvall said the company is still assessing damage from the explosion (Associated Press, Jan. 11). **-- SP**

RAIL:

DOT management shuffle sends chief of staff to railroad administration

Sean Reilly, E&E reporter

Published: Monday, January 12, 2015

Sarah Feinberg, who joined the Department of Transportation in 2013 as chief of staff, will now serve as acting head of the Federal Railroad Administration. She replaces Joe Szabo, whose final day was Friday.

"With her ability to bring clarity, focus and direction to complex challenges, [Feinberg] has become a proven leader within our agency," DOT Secretary Anthony Foxx said in a news release this morning. "Sarah has the right mix of experience and skills to adeptly lead the FRA as it continues its important work to ensure the safe, reliable and efficient movement of people and goods."

A former White House aide whose background is in communications, Feinberg joined the Transportation Department in September 2013 after stints at Bloomberg LP and Facebook Inc. As she moves to the railroad administration, her deputy, Dorval Carter, will become acting DOT chief of staff, while Dan Katz, who has been counselor to Foxx, will fill in as acting deputy chief of staff, a department spokesman said this morning.

Szabo, who had served as FRA administrator for almost six years, is returning to Chicago to become a senior fellow for the Chicago Metropolitan Agency for Planning. President Obama has not yet nominated a successor.

Karen Hedlund, who had been FRA's deputy administrator, left that post late last summer and has also not been replaced, raising questions about who would lead the agency with Congress expected to tackle both passenger rail and surface transportation reauthorization legislation this year.

The railroad administration, a branch of the Transportation Department with a budget of $1.6 billion and

about 840 employees, is the lead safety regulator for both the freight and passenger rail industries.

DOE:

Agency hits contractor with $57M fee reduction after nuclear waste accident

Published: Monday, January 12, 2015

The Department of Energy is reducing the fees for a contractor managing a nuclear weapons laboratory in Los Alamos, N.M., by 90 percent following a nuclear waste accident in 2014.

Los Alamos National Security LLC is taking a $57 million fee reduction following the eruption of a 55-gallon drum packaged with plutonium waste from bomb production. The eruption occurred after the drum was placed in a 2,150-foot underground dump in the New Mexican desert.

DOE is still investigating the cause of the chemical reaction, but officials said a packaging error is the likely cause.

After the incident occurred, 21 workers were exposed to low-level doses of radiation.

The lab was fined $36.6 million by the New Mexico Environment Department in December 2014, and the state said it violated two dozen rules and regulations. Last week, however, DOE and the Los Alamos consortium said the state lacked legal jurisdiction to issue the fine (Hennigan/Vartabedian, *Los Angeles Times*, Jan. 11). **-- MH**

ELECTRIC VEHICLES:

GM rolls out new plug-in Chevy

Published: Monday, January 12, 2015

General Motors Co. unveiled a new electric vehicle concept today at the North American International Auto Show in Detroit.

The Chevrolet Bolt EV would get 200 miles per charge, and company officials say they plan to price it at about $30,000.

GM also announced a 2016 production model of its Chevy Volt that would be able to drive 50 miles before switching to gasoline and have a 400-mile driving range (David Muller, *Ann Arbor News*, Jan. 12).

The Bolt is meant to be a more affordable alternative to the Volt, which at $40,000 per vehicle has not sold as well as expected.

The Bolt will likely be the main competition for Silicon Valley automaker Tesla Motors Inc., which plans to roll out a $35,000 electric car by 2017 (Tom Krisher, Associated Press, Jan. 12). **-- AW**

AIR POLLUTION:

Enviros challenge permit for Utah coal plant

Amanda Peterka, E&E reporter

Published: Monday, January 12, 2015

Environmentalists have challenged the operating permit for a 30-year-old coal-fired power plant in Utah, arguing the permit's conditions don't go far enough to clean up the air.

In documents filed last week with the U.S. EPA Environmental Appeals Board, WildEarth Guardians said the permit issued by EPA in December does not require the Bonanza power plant to install best available pollution controls as required by the Clean Air Act.

"Once again, [EPA] has given the Bonanza coal-fired power plant a free pass to pollute," Jeremy Nichols, WildEarth Guardians' climate and energy program director, said in statement. "This is about standing up for our clean air, which shouldn't take a backseat to coal."

Bonanza is a 500-megawatt coal-fired power plant owned and operated by the Deseret Generation and Transmission Co-op in northeast Utah within the Uintah and Ouray Indian Reservation. The plant was built in the early 1980s.

According to the environmentalists, Deseret upgraded the plant in the early 2000s without installing required pollution controls. WildEarth filed a lawsuit to compel EPA to issue an overdue operating permit for the plant to bring it into compliance with the Clean Air Act but says the resulting permit failed to address its concerns.

According to EPA, the plant has the potential to emit 9,228 tons of nitrogen oxides and 1,968 tons of sulfur dioxide per year. Most of the pollutants emitted by the plant come from the main boiler tall stack, which stands about 600 feet high, EPA said.

In a comment last year to EPA, Deseret said it had followed all permitting requirements and installed necessary air pollution controls at the Bonanza plant.

MERCURY:

Groups urge limits on cremation emissions

Published: Monday, January 12, 2015

Environmental groups are urging E.U. officials to consider mercury emissions caused by human cremations when they debate new pollution controls later this month.

Cremations are on the rise in Europe as land shortages make burials more expensive. Between 2 and 4 grams of mercury are released in an average cremation, scientists say.

In Europe, public health researchers have found about 200,000 babies are born each year with mercury levels that may harm their development.

Reducing the amount of mercury generated by human cremations can present difficult ethical dilemmas, particularly because one technique -- removing teeth from corpses before cremating them -- may be viewed as insensitive by a deceased person's family members.

"What matters is to deal with protecting the living environment from extremely hazardous pollutants," said Christian Schaible, a senior official at the European Environmental Bureau, an advocacy group (Barbara Lewis, Reuters, Jan. 12). **-- SP**

UTAH:

Concerned midwife questions oil industry's role in infant deaths

Published: Monday, January 12, 2015

A suspicious number of infant deaths in a small Utah town reliant on the oil industry has many people scratching their heads, including a concerned midwife.

Donna Young, who has provided midwife services for 20 years in Vernal, Utah, began questioning the high number of infant deaths in May 2013 after 13 babies died.

Young wondered whether emissions from oil drilling around the town were contributing to the deaths.

After speaking out and attending public meetings regarding the issue, Young was villainized by many oil industry supporters in town and received threats.

The oil industry provides the town of 35,000 with jobs and is vital to the local economy. A portion of the $100 million in mineral leases from energy companies helped build a new $15 million city hall.

While a state investigation is underway, a National Oceanic and Atmospheric Administration study showed ozone levels in the area were higher than the U.S. EPA's recommended safety levels. The studies did not link the ozone levels to the deaths (John M. Glionna, *Los Angeles Times*, Jan. 10). **-- MH**

SOUTH CAROLINA:

Chief of state environment, health agency resigns

Published: Monday, January 12, 2015

Catherine Templeton has resigned from her post leading South Carolina's Department of Health and Environmental Control.

PEOPLE

Templeton's resignation takes effect today. She announced her decision near the end of a DHEC board meeting in Columbia, S.C., on Thursday.

Templeton did not say what she would do next but hinted that she was considering another public service job. It is widely speculated that Templeton could be a future Republican candidate for the state's 1st District, which Rep. Mark Sanford (R) currently holds.

Gov. Nikki Haley (R) appointed Templeton to head DHEC in 2011. It is not clear who will replace her

(Fretwell/Holleman/Shain, Columbia [S.C.] *State*, Jan. 8). -- **AW**

INTERNATIONAL:

World Resources Institute's Steer discusses challenges to advancing new climate agreement

Published: Monday, January 12, 2015

How critical is the advancement of U.S. EPA's power plant regulations to the success of the next international climate agreement? During today's OnPoint, Andrew Steer, president and CEO of the World Resources Institute, discusses the challenges for the United States, China and other key players ahead of this year's final round of international discussions. He also talks about the impact low global oil prices could have on clean energy investments.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Tue., January 13, 2015

READ FULL EDITION

1.TRANSPORTATION:

Americans who drive less force a U.S. agency to make a U-turn on years of overestimates

In a document published in May 2014 that appears to have publicly surfaced last week, the Federal Highway Administration reined in its long-term forecast for driving growth in the United States, estimating that driving will increase at less than half the rate at which it has grown during the past 30 years.

2.POLICY:

Researchers say the social cost of carbon will be 6 times the Obama administration's estimate

Climate change could have much larger impacts on the economy than the U.S. government is anticipating, according to an analysis released yesterday that suggests the social cost of carbon should be six times higher.

TODAY'S STORIES

3.NATIONS:

Can clean energy trump chaotic politics?

4.SCIENCE:

River network on Greenland may help researchers solve the sea-level rise mystery

5.POLITICS:

Yale report suggests Republican voters are split on greenhouse gas reductions

6.RENEWABLE ENERGY:

U.S. can triple renewable energy use by 2030, U.N. agency says

7.ENERGY EFFICIENCY:

Money is not the best incentive to save energy -- study

8.DROUGHT:

Sacramento posts record water conservation numbers, beats L.A.

9.FINANCE:

Stanford professors call for divestment of all fossil fuel equities

10.RENEWABLE ENERGY:

Polish wind farm receives German utility RWE's support

11.FORESTS:

Indonesians try eco-tourism to save forests

E&ETV'S ONPOINT

12.TRADE:

SEIA's Smirnow discusses new Commerce Dept. sanctions against China

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., January 13, 2015

READ FULL EDITION

1.POLICY:

In Wis., renewable energy advocates reluctantly take on underdog role

MADISON, Wis. -- Speakers at an all-day conference on energy policy in Wisconsin evoked two images of the state's renewables sector. And neither is encouraging for clean energy advocates.

TOP STORIES

2.CALIFORNIA:

New energy storage road map lays out path to commercialization

3.NATURAL GAS:

What manufacturing renaissance? Economists say shale-led boom is 'actually very, very modest'

4.FINANCE:

How falling oil prices could bring down drilling costs

ELECTRICITY

5.ELECTRICITY:

Health is a more powerful motivator than money in efficiency push -- study

6.SECURITY:

Cyberthreat could lead to nuclear closures in South Korea

OIL AND GAS

7.HYDRAULIC FRACTURING:

Senate bill would let states regulate fracking on federal land

8.TEXAS:

Rising sales taxes likely to offset drop in energy revenue

9.PEOPLE:

Former State Dept. envoy joins IHS

10.REGULATION:

Colo. GOP pushes for lower renewable energy requirements

11.EARTHQUAKES:

Researchers to investigate Dallas-area temblors

12.OIL:

Price slump shakes Greenland's faith in oil boom

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13. TRADE:
SEIA's Smirnow discusses new Commerce Dept. sanctions against China

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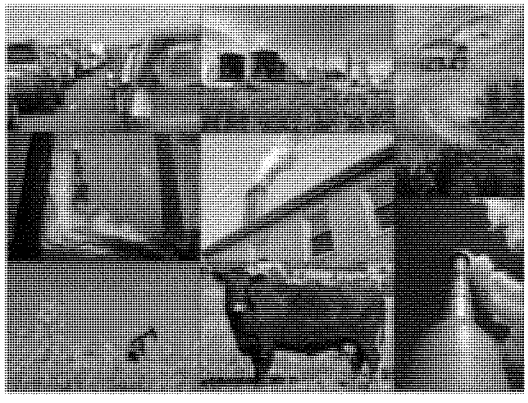

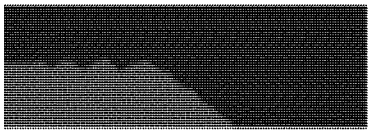

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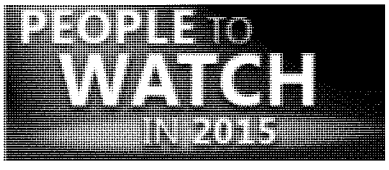
Greenwire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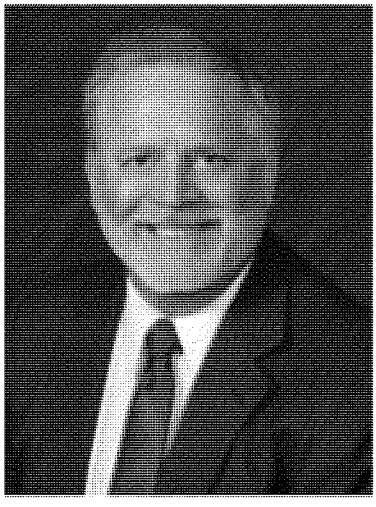

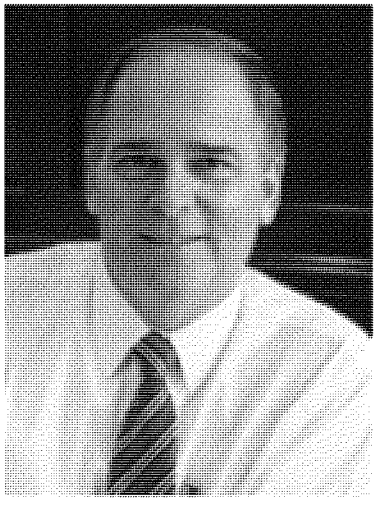

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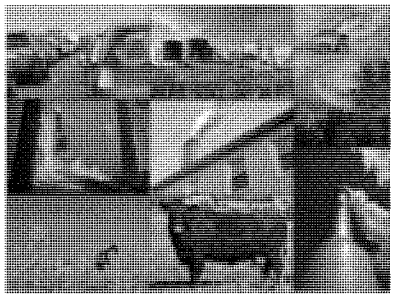

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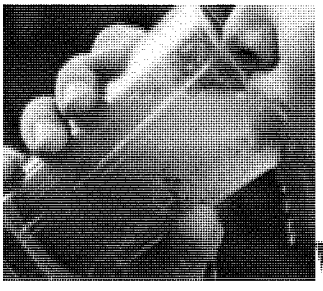
Subject: Water Law News for January 13, 2015



Water Law News

for January 13, 2015

Bloomberg BNA Daily Environment Report™

Drinking Water

New Website Tracks Water Losses From Leaky Pipes

Accounting for water losses by state is now accessible through a new website launched by the Natural Resources Defense Council. The "Cutting Our Losses: State Policies to Track and Reduce Leakage form Public Water Systems" website...

Oil & Gas

Cruz Plans Crude Export Amendment To Keystone Legislation, Spokeswoman Says

Sen. Ted Cruz (R-Texas) plans to offer an amendment to lift the 40-year-old ban on the export of crude oil to Keystone XL pipeline legislation being considered on the Senate floor, according to a spokeswoman for the senator....

Water Infrastructure

Colorado Provides $9.5 Million for Water Improvements

Colorado has awarded $9.5 million for 15 community drinking water and wastewater systems throughout the state. The funding, provided through legislation passed in 2014 (SB 165, SB 25), will go to the design and construction of public water...

Drinking Water

EPA to Focus on Strontium, Perchlorate, Injection Wells, Resiliency, Grevatt Says

The Environmental Protection Agency's drinking water program in 2015 will focus on new and revised regulations for contaminants and a health advisory for several algal toxins, the underground injection control program, resiliency...

Hydraulic Fracturing

Changing Federal Regulations on Oil, Gas May Highlight Fracking But Go Well Beyond

Interior Department regulations to update standards on oil and gas drilling and production, including hydraulic fracturing, will help keep tensions high among the federal government, industry and state governments on energy regulation...

Hydraulic Fracturing

New Drilling Rules, More Legal Conflicts Over Local Fracking Bans Expected in States

States will face complex regulatory issues in 2015 as the domestic energy boom continues, driven by widespread use of horizontal drilling and hydraulic fracturing to extract oil and gas from shale formations....

Mining

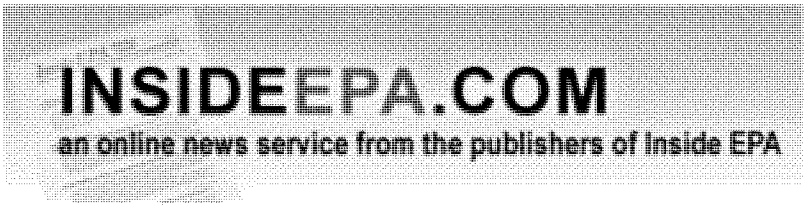
Stream Protection Likely to Top Agenda On Mining for Interior, Congress in 2015

An Interior Department stream protection proposal is expected in the spring and will remain a top priority for the mining industry, environmental groups and state mining authorities in 2015....

Water Pollution

Jurisdiction Rule to Draw Most Attention; Utility, Dental Discharge Rules Also Expected

A final rule clarifying the definition of "waters of the U.S." is likely to garner the most attention from Congress and industry, among a handful of Clean Water Act rulemakings expected in 2015....



Inside EPA's **Risk Policy Report**, 01/13/2015

http://insideepa.com/newsletters/risk-policy-report

Latest News

Farm Bureau Criticizes EPA's Argument For Releasing CAFO Information

Agriculture industry groups are urging a federal court to enjoin EPA from further releasing identifying information from concentrated animal feeding operations (CAFOs), saying the agency's recent proposal to redact identical information for unpermitted CAFOs undermines its legal argument that the information should not be withheld.

Environmentalists' Challenge Could Raise Bar For SDWA Permits For EOR

Environmentalists are pursuing an EPA Environmental Appeals Board (EAB) challenge to a Safe Drinking Water Act (SDWA) permit for an enhanced oil recovery (EOR) well that claims the "Class II" permit is inadequate to protect drinking water, which could lead to stricter permits for EOR wells in lieu of new EPA policy on the issue.

News Briefs

Rep. Kaptur Reintroduces Bill To Require Algal Blooms Advisory

Rep. Marcy Kaptur (D-OH) has reintroduced legislation that would require EPA to establish a health advisory for microcystin, a toxin produced by a type of freshwater cyanobacteria that can create harmful algal blooms (HABs), after the House failed to act on the measure in the last Congress.

Greenwire

AGRICULTURE:

Opposition to Obama water rule a key theme at Farm Bureau meeting

Tiffany Stecker, E&E reporter

Published: Monday, January 12, 2015

SAN DIEGO -- From the opening bars of the national anthem, opposition to the Waters of the United States rule rang clear at the annual American Farm Bureau Federation meeting.

AFBF President Bob Stallman drilled into the proposal at his annual address at the convention yesterday.

"As damaging as the weather or economic winds can be, farmers' and ranchers' biggest challenges these days seem to come from their government," Stallman said.

Since the release of the proposal from U.S. EPA and the Army Corps of Engineers last year, "Farm Bureau members have come together like never before," he added.

The administration's proposal would expand the number of streams receiving automatic protection under the Clean Water Act. The agriculture sector, led by the bureau, has expressed concern that a finalized rule would be difficult to comply with and could expose farmers to hefty fines.

Kacey Clay, a Missouri Farm Bureau member who created a spoof of "Let It Go" -- the hit song from the Disney movie "Frozen" -- as part of the bureau's campaign against the rule, sang the national anthem.

Stallman promised that AFBF would aggressively lobby Congress to pass a measure to prevent the implementation of the rule.

"Congress can act because the Farm Bureau has been as successful, if not more successful, than any group in Washington in implementing policy priorities," said Stallman, adding that his group would focus on speaking to the centrist politicians, an increasingly scarce group in the highly politicized 114th Congress.

Stallman also spoke against local and state-led efforts to attach labels to foods, particularly ones grown from genetically engineered seeds.

"We need a national, fact-based approach to food labeling, not patchwork regulation that will do nothing for food safety but will raise the cost of food," he said in his speech.

As demand for labels and organic food is expected to rise, farmers are stuck deciding whether the ease and benefits of genetically modified crops are worth the potential loss in customers.

Executives at Wal-Mart Stores Inc., the largest food retailer in the country, expect demand for organically grown food -- which excludes genetically modified organisms -- to continue to rise and for consumers to demand transparency in food production.

"There are more and more opinions in the world from people on what is the right thing to do, what the right position is, what they expect from companies," said Tom Leech, senior vice president of global food and consumable sourcing for Wal-Mart, speaking on a panel Friday.

Skepticism of GMOs abroad has also put farmers in a tight spot. Several lawsuits were filed against agriculture company Syngenta AG after large shipments of corn grown from the firm's GMO seed were rejected from Chinese ports (*Greenwire*, Dec. 22, 2014).

Companies alleged that Syngenta continued to sell the corn despite knowing the ban in China would place growers at a disadvantage.

Stallman defended seed companies yesterday, saying he believed they had provided sufficient facts for growers to make the right decisions.

"I think there's enough information out there for farmers to be aware," he said.

SUPREME COURT:

Justices opt not to wade into Calif. water war

Jeremy P. Jacobs, E&E reporter

Published: Monday, January 12, 2015

The Supreme Court today declined to wade into a high-profile dispute over federal protections for a tiny threatened fish that limit California's ability to provide water to its residents.

State water contractors led by the Metropolitan Water District of Southern California, several farmers and four states asked the justices to take up a federal appeals court decision upholding the Fish and Wildlife Service's determination that the state's water infrastructure threatens the small, silvery delta smelt.

The Supreme Court denied review in a one-line order without comment, as is custom.

FWS's "biological opinion" mandated reducing flows from the Sacramento-San Joaquin River Delta to Southern California's sprawling agricultural areas and its most densely populated cities and suburbs.

The Central Valley Project and State Water Project are two of the country's largest infrastructure projects. Together, they provide water to more than 20 million agricultural and residential customers, according to the district's appeal.

With 80 percent of the state suffering drought conditions, the San Francisco-based 9th U.S. Circuit Court of Appeals' decision last March will have a significant impact on the state's water management.

The case stems from the Bureau of Reclamation asking FWS in 2008 to analyze the impact of the water projects on the smelt. The resulting biological opinion -- the most complex ever issued -- concluded that the projects threaten the 2- to 3-inch fish, whose population has plummeted to the point of near-extinction. Fish and Wildlife recommended alternatives to protect the smelt, including reducing water exported to Southern California. The bureau and state authorities indicated they would comply with the recommendations in accordance with the Endangered Species Act.

A federal district court threw out the biological opinion, concluding it did not rely on the best available science.

But the 9th Circuit, in a 2-1 decision, reversed that decision. The court acknowledged the "enormous practical implications" of its decision (*Greenwire*, March 13).

The Supreme Court appeal centered on whether FWS should have considered economic impacts when determining whether there were "reasonable and prudent alternatives" to the biological opinion.

In some ways, the case resembled a landmark 1978 Endangered Species Act Supreme Court case, *Tennessee Valley Authority v. Hill*, which blocked the construction of a dam that threatened the habit of another small endangered fish, the snail darter.

The contractors and farmers in *State Water Contractors v. Jewell* and *Stewart & Jasper Orchards v. Jewell* contended that the justices should revisit that precedent.

Delta smelt are endemic to the San Francisco Bay-Delta region. FWS concluded that pumping activities have harmed the species, as well as increased saltwater intrusion into the ecosystem.

Conservationists also say the fish is particularly vulnerable to deteriorating environmental conditions. They applauded the Supreme Court's order today.

"Today's decision is good news for the thousands of fishermen, Delta farmers and everyone who depends on the health of California's Bay-Delta estuary and its native fisheries and wildlife," said Kate Poole of the Natural Resources Defense Council. "After six years of hard-fought litigation, today's court decision ends debate over the validity of these protections."

Fla. anti-dock ordinance challenge denied

The court also declined to take up an appeal led by the Pacific Legal Foundation of a Florida city's denial of a property owner's request to build a dock.

Kentner v. City of Sanibel concerned David and Susan Kentner's desire to build a dock off their property in San Carlos Bay.

They claimed that the city's 1993 anti-dock ordinance -- which banned the construction of docks in some areas to protect seagrass -- was unfairly enforced because the city built docks but denied them the opportunity.

The case hinged on property rights. The Kentners claimed they were building a dock over their land, but the city said the land at issue actually belonged to the state. A federal appeals court sided with the city last May, and the order from the Supreme Court today leaves that ruling in place.

GULF SPILL:

Appeals court refuses to rehear BP's liability argument

Published: Monday, January 12, 2015

BP PLC and Anadarko Petroleum Corp. could face Clean Water Act penalties after failing to convince the 5th U.S. Circuit Court of Appeals otherwise.

In a 7-6 vote, the court upheld a 2012 ruling from U.S. District Judge Carl Barbier in New Orleans.

On Jan. 20, Barbier will begin a nonjury trial to determine BP's pollution fines. That trial follows Barbier's Sept. 4 ruling that the company was grossly negligent in causing the spill. BP could be fined up to $18 billion as a result.

BP and Anadarko owned 65 and 25 percent, respectively, of the Macondo well that blew out in April 2010 after the Deepwater Horizon drilling rig exploded. The companies argue they are not responsible for pollution because the broken riser that caused the spill was controlled by Transocean Ltd., which owned the rig (Jonathan Stempel, Reuters, Jan. 9). **-- AW**

OIL AND GAS:

La. governor appeals court ruling allowing levee authority to sue industry

Published: Monday, January 12, 2015

Louisiana Gov. Bobby Jindal (R) is not giving up hope on a law that would prevent local levee authorities from suing oil and gas companies over damage they inflict on wetlands.

Last month, a Judicial District Court judge declared the Jindal-supported law unconstitutional, saying it violated the state's public trust doctrine. Judge Janice Clark also ruled the law would not have applied to a levee authority because of its status as an "independent political subdivision and not a state agency."

Last week, Jindal's attorneys filed an appeal with the state Supreme Court.

"We are pleased that the ruling has been appealed and that the constitutionality of the statute is being defended," Jindal's communications director Mike Reed said.

The state Legislature passed the law in 2014 in an effort to stop the Southeast Louisiana Flood Protection Authority-East from suing 80 oil, gas and pipeline companies.

Opponents of the law say Jindal's appeal is a way for him to cozy up to potential donors in advance of the 2016 presidential elections.

"This entire effort to derail this lawsuit and making oil companies fix what they broke is driven by the governor's frivolous presidential aspirations to please his potential donors -- the oil industry," said Gladson Jones, the lead attorney for the Southeast Louisiana Flood Protection Authority-East (Mark Schleifstein, New Orleans *Times-Picayune*, Jan. 10). **-- AW**

GREAT LAKES:

Scientists who sounded microbead alarm warn of microfiber hazard

Published: Monday, January 12, 2015

Scientists who previously found tiny bits of plastic, or microbeads, in the Great Lakes are finding a new hazard: synthetic fibers from garments, cleaning cloths and other products.

Known as microfibers, the fine filaments of polyester and nylon break off and eventually enter the lakes, scientists say.

"When we launder our clothes, some of the little microfibers will break off and go down the drain to the wastewater treatment facility and end up in our bodies of water," said Sherri Mason, a chemist with the State University of New York, Fredonia.

Microfibers account for 4 percent of the plastic litter Mason and her students have collected from the Great Lakes but have received little attention compared with microbeads. Mason said the fibers seem to get stuck inside fish in ways that other microplastics do not.

"The longer the plastic remains inside an organism, the greater the likelihood that it will impact the organism in some way," Mason said (AP/London *Guardian*, Jan. 9). **-- SP**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Tue., January 13, 2015

READ FULL EDITION

1.TRANSPORTATION:

Americans who drive less force a U.S. agency to make a U-turn on years of overestimates

In a document published in May 2014 that appears to have publicly surfaced last week, the Federal Highway Administration reined in its long-term forecast for driving growth in the United States, estimating that driving will increase at less than half the rate at which it has grown during the past 30 years.

2.POLICY:

Researchers say the social cost of carbon will be 6 times the Obama administration's estimate

Climate change could have much larger impacts on the economy than the U.S. government is anticipating, according

to an analysis released yesterday that suggests the social cost of carbon should be six times higher.

TODAY'S STORIES

3.NATIONS:
Can clean energy trump chaotic politics?

4.SCIENCE:
River network on Greenland may help researchers solve the sea-level rise mystery

5.POLITICS:
Yale report suggests Republican voters are split on greenhouse gas reductions

6.RENEWABLE ENERGY:
U.S. can triple renewable energy use by 2030, U.N. agency says

7.ENERGY EFFICIENCY:
Money is not the best incentive to save energy -- study

8.DROUGHT:
Sacramento posts record water conservation numbers, beats L.A.

9.FINANCE:
Stanford professors call for divestment of all fossil fuel equities

10.RENEWABLE ENERGY:
Polish wind farm receives German utility RWE's support

11.FORESTS:
Indonesians try eco-tourism to save forests

E&ETV'S ONPOINT

12.TRADE:
SEIA's Smirnow discusses new Commerce Dept. sanctions against China

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., January 13, 2015

READ FULL EDITION

1.POLICY:

In Wis., renewable energy advocates reluctantly take on underdog role

MADISON, Wis. -- Speakers at an all-day conference on energy policy in Wisconsin evoked two images of the state's renewables sector. And neither is encouraging for clean energy advocates.

TOP STORIES

2.CALIFORNIA:
New energy storage road map lays out path to commercialization

3.NATURAL GAS:
What manufacturing renaissance? Economists say shale-led boom is 'actually very, very modest'

4.FINANCE:
How falling oil prices could bring down drilling costs

ELECTRICITY

5.ELECTRICITY:
Health is a more powerful motivator than money in efficiency push -- study

6.SECURITY:
Cyberthreat could lead to nuclear closures in South Korea

OIL AND GAS

7.HYDRAULIC FRACTURING:
Senate bill would let states regulate fracking on federal land

8.TEXAS:
Rising sales taxes likely to offset drop in energy revenue

9.PEOPLE:
Former State Dept. envoy joins IHS

10.REGULATION:
Colo. GOP pushes for lower renewable energy requirements

11.EARTHQUAKES:
Researchers to investigate Dallas-area temblors

12.OIL:
Price slump shakes Greenland's faith in oil boom

E&ETV'S ONPOINT

13.TRADE:
SEIA's Smirnow discusses new Commerce Dept. sanctions against China

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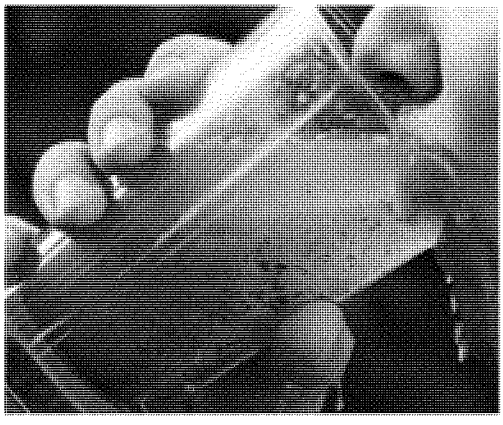

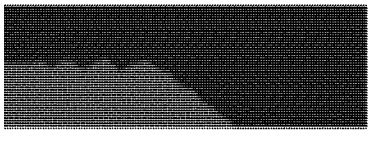

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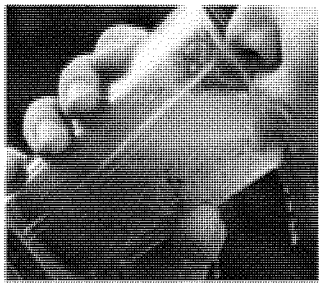

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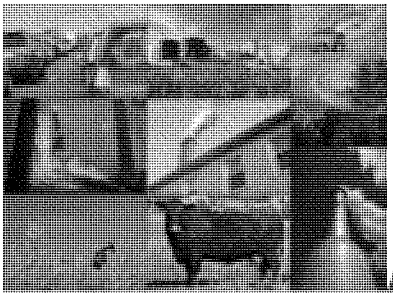


Air & Radiation Law News

for January 12, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Issues MOVES2014 Technical Guidance

The Environmental Protection Agency has issued updated guidance on the latest version of its Motor Vehicle Emission Simulator (MOVES2014) emissions modeling system. In a Jan. 9 memorandum, the EPA said the updated version provides guidance...

Budget

California Budget Proposal Outlines Spending Cap-and-Trade Revenue, Water Bond Money

California Gov. Jerry Brown (D) unveiled Jan. 9 a budget for fiscal year 2015-2016 proposing to spend $1 billion in revenue derived from the state's carbon market on programs to further shrink the state's carbon footprint and another...

Climate Regulation

Judges Question Trucking Groups' Standing In Challenge to Greenhouse Gas Standards

Federal appellate judges questioned the standing of trucking and construction groups seeking to force the Environmental Protection Agency to conduct an additional scientific review of its greenhouse gas standards for cars and trucks in...

Energy

Keystone Approval Passed by House Amid President Obama's Veto Threat

The House voted to approve TransCanada Corp.'s Keystone XL pipeline, moving toward a showdown with President Barack Obama, who has said he would veto the measure....

Energy

Nebraska Supreme Court Declines to Strike Law That Led to State Approval of Keystone

A divided Nebraska Supreme Court declined to strike down a state law that paved the way for approval of a route through the state for TransCanada Corp.'s proposed Keystone XL pipeline (Thompson v. Heineman, 2015 BL 4497, Neb., No. S-14-158,...

Energy

Senate Democrats Plan Climate Amendment For Keystone to Put Republicans on Record

Senate Democrats are planning to use a vote on legislation that would deem the Keystone pipeline approved to put their Republican counterparts on the record about climate change and global warming. ...

Natural Resources

FHWA Offers 'On-Call' Assistance For Ecosystem-Based Planning Approach

The Federal Highway Administration is offering "on-call technical assistance" to help agencies implement an integrated planning approach for developing infrastructure projects based on ecological priorities....

Regulatory Policy

White House Names Candidate for Post Of Assistant Interior Secretary for Policy

Kristen Sarri will be nominated by President Barack Obama to be assistant interior secretary for policy, management and budget, the White House said Jan. 8....

Renewable Energy

Investment in Clean Energy Rose in 2014; Increase May Be Difficult to Sustain

Clean energy investment rose for the first time in three years in 2014, overcoming a slump in oil prices that unsettled the outlook for the industry....

OUTLOOK 2015

Air Pollution

EPA on Track to Finalize Ozone Decision, Implement Cross-State, Mercury Rules

The Environmental Protection Agency in 2015 will work toward finalizing several significant air regulations, including a final decision on national ozone standards, while defending two of the Obama administration's signature air...

Climate Regulation

EPA Readies Aggressive Slate of Rules On Climate as Focus Turns to Paris Talks

The Environmental Protection Agency has an aggressive slate of climate change rules to complete is 2015 as the U.S. looks to demonstrate its world leadership in the run-up to end-of-year negotiations in Paris toward a global climate change...

Climate Regulation

States to Focus on EPA Carbon Proposal; Washington, Oregon to Consider Carbon Price

States will watch the Environmental Protection Agency closely in 2015 as the federal agency finalizes proposed guidelines and requirements for reducing carbon dioxide emissions from existing power plants, state officials and other observers...

International Climate

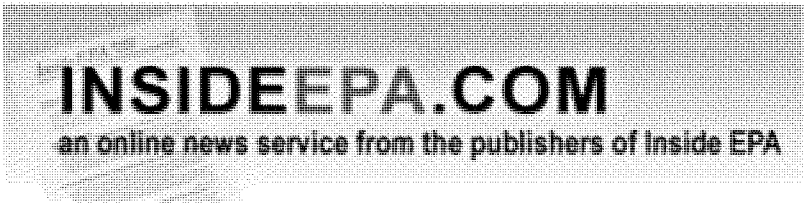
Six Years After Near-Collapse in Copenhagen, Nations Poised to Rebound With Global Deal

International climate negotiators from more than 190 nations face daunting challenges in 2015 to make tangible progress on a global climate accord to be finalized by year's end in Paris, an agreement that would for the first time commit...

Sustainability

Corporate Sustainability Reporting May Get Boost From Stock Exchanges in 2015

The number of companies that report on sustainability is expected to reach new levels in 2015, with a potentially significant push coming from the world's stock exchanges....



Latest News

Judges Doubt Petitioners' Standing To Challenge EPA Vehicle GHG Rules

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit was highly skeptical of trucking and biofuel challenges to the first round of EPA's greenhouse gas (GHG) vehicle and truck rules, suggesting at Jan. 9 oral arguments that the petitioners likely lack standing to challenge the regulations.

EPA's Olden Seeks International Consortium To Boost Environmental Health

DENVER -- Ken Olden, chief of EPA's National Center for Environmental Assessment, is calling for a greater understanding of the role that environmental exposures play in the development of common diseases, citing the international collaboration that sequenced the human genome as his model for

environmental health researchers.

News Briefs

House, Senate Bills Aim To Limit EPA's Rulemaking Flexibility

Lawmakers are taking early steps in the 114th Congress to limit EPA's rulemaking flexibility, including a House measure slated for consideration next week to force the agency to weigh alternatives to new rules and a Senate bill to constrain EPA's ability to write new rules and force it to review and potentially scrap existing policies.

Greenwire

KEYSTONE XL:

Neb. high court backs pipeline; House OKs bill to spur project

Manuel Quiñones, E&E reporter

Published: Friday, January 9, 2015

This story was updated at 1:54 p.m. EST.

The Nebraska Supreme Court upheld state approval today for the Keystone XL oil pipeline's route, shifting the focus to the Obama administration's review on the project's crossing from Canada.

But KXL foes are still not giving up on a Nebraska fight. In a press call immediately following the state high court's split ruling, they said the Supreme Court's less-than-clear decision would open the door for more litigation.

The Nebraska ruling arrived as the House began debate on legislation aimed at bypassing the administration in approving the pipeline. The measure, H.R. 3, passed this afternoon, 266-153, including 28 Democrats.

In Nebraska, four of seven justices ruled that landowner plaintiffs had standing to challenge a 2012 state law giving the governor authority over the pipeline's route.

But the Nebraska Constitution requires that at least five justices rule on a law's constitutionality. The three justices who disagreed with the majority on standing stayed silent on the constitutional question.

"No member of this court opines that the law is constitutional," the ruling says. "But the four judges who have determined that L.B. 1161 is unconstitutional, while a majority, are not a supermajority as required under the Nebraska Constitution."

Pipeline boosters say the ruling paves the way for the State Department to complete its national interest determination review and for the White House to greenlight the project.

House Transportation and Infrastructure Chairman Bill Shuster (R-Pa.) said, "The final hurdle has been removed."

Said National Association of Manufacturers CEO Jay Timmons: "The president has no more excuses left to delay a decision on a permit."

Environmental advocates and landowners who oppose KXL say the court ruling is far from conclusive, especially when most judges agreed with them on the standing issue and three didn't weigh in on the law's constitutionality at all.

"Right now we're in this kind of odd limbo," attorney Brian Jorde said in a conference call. "There's clearly another case that can be brought. This will be decided once and for all on another day."

Jane Kleeb, founder of KXL opposition group Bold Nebraska, said, "Obviously we have a bloody nose this morning, but we are not down for the count."

Both sides push Obama

But despite the possibility of more litigation, KXL opponents agree with pipeline backers in saying the State Department and White House now have enough information to make a decision. Those opponents, of course, want an immediate rejection.

Michael Brune, the Sierra Club's executive director, said this morning, "This ruling does not affect the president's authority on the climate test he's going to apply to the pipeline."

President Obama's climate test involves making sure KXL doesn't significantly affect greenhouse gas emissions that lead to climate change.

The State Department's final environmental impact statement suggested the pipeline passed the test. But critics now say low oil prices threaten to make it either uneconomical or a factor in making Canadian oil sands production more viable.

Russ Girling, CEO of TransCanada Corp., the company wanting to build KXL, said he was "very pleased" with the ruling. And he said the pipeline would indeed be a more "efficient and more cost-effective transportation" option for transporting Canadian oil sands.

However, Girling said it's folly for KXL critics to say one pipeline would make a significant difference in production and, therefore, greenhouse gas emissions.

"The answer is absolutely not," he said, pointing to the markets. "At the end of the day, a pipeline does not promote production or consumption."

The White House has cited uncertainty in Nebraska as a reason for delaying a decision on whether to approve KXL's transboundary crossing.

"The President should immediately resume the National Interest Determination that he needlessly suspended last year and Democrats in Congress must stop all the excuses and end the shameful politics used to block Keystone," Terry O'Sullivan, general president of the Laborers' International Union of North America, said in a statement.

Girling and analysts ClearView Energy Partners LLC predicted the Nebraska ruling would pave the way for a decision within weeks.

KXL opponents are also challenging the renewal of the pipeline's permit through South Dakota, which expired because of construction delays. But neither side sees that process as precluding the administration's review.

White House responds

The White House responded quickly to the ruling but didn't provide details about what's ahead.

"The State Department is examining the court's decision as part of its process to evaluate whether the Keystone XL pipeline project serves the national interest," deputy press secretary Eric Schultz said.

Pointing to the ongoing review, the White House reiterated its intention to veto legislation to approve KXL.

"As we have made clear," he said, "we are going to let that process play out."

Democrats who voted for the pipeline this morning include Rep. Brad Ashford of Nebraska, who last year defeated longtime KXL backer Republican Lee Terry.

"I want to get on to talking about more comprehensive energy issues. I'm tired of the pipeline," Ashford, a former state legislator, said in an interview. "Nebraskans are very environmentally conscious, but at the same time [most of them] want this over with."

The Senate is scheduled to take a vote at 5:30 p.m. Monday on whether to proceed with debating the KXL bill there. Backers are likely to get the 60 votes necessary.

Reporter Daniel Bush contributed.

CLIMATE:

Appellate judges skeptical of industry attack on tailpipe rules

Jeremy P. Jacobs, E&E reporter

Published: Friday, January 9, 2015

Federal appellate judges appeared reluctant today to side with industry challengers to the Obama administration's landmark fuel efficiency and greenhouse gas emissions standards for cars and trucks.

The consolidated -- and complicated -- cases seek to undermine U.S. EPA's and the National Highway Traffic Administration's first-ever nationwide program for cars and heavy-duty trucks.

In one, California trucking companies, led by Delta Construction Co. Inc. and trade associations, want to undo the September 2011 standards for heavy-duty engines, which range from large pickups to the largest sleep-cab tractors. They argue that they cannot afford the engines mandated by the so-called truck rule.

Separately, Delaware-based biodiesel engine and fuel manufacturer Plant Oil Powered Diesel Fuel Systems, or POP Diesel, claims EPA failed to adequately consider life-cycle greenhouse gas emissions and should have given its engines the same status as electric vehicles.

It argued that the rules effectively prohibit the company from bringing its product to market because it won't qualify for fuel credits.

And in another case, largely the same California companies are asking the court to throw out EPA and

NHTSA's standards for cars or light-duty trucks. The standards are commonly called the car rule.

In all the cases, the challengers ran into the same procedural hurdle at the U.S. Court of Appeals for the District of Columbia Circuit: whether they have standing to bring their cases.

The three-judge panel voiced several problems with the California trucking companies' arguments, in both the car and truck rule challenges.

Their chief concern was that the arguments challenged only EPA's rules. Even if the court were to throw them out, they said, NHTSA and California's nearly identical rules would remain in place. Therefore, said Judge David Tatel, a Democratic appointee, the court wouldn't redress the companies' reason for bringing the case.

Department of Justice attorney Michele Walter attempted to hammer home that point.

"Even if the court were to vacate EPA's standards," she said, "the NHTSA regulations would still exist."

With regard to POP Diesel's case, Senior Judge Harry Edwards, another Democratic appointee, cited D.C. Circuit precedent that held that a company in similar position is outside the "zone" or "class of litigants" that the law envisioned could bring such a case.

Further, DOJ attorney Daniel Dertke argued that POP Diesel, which makes an add-on engine that allows diesel vehicles to run on an entirely plant-based oil fuel, only sells an engine for model years 2008 and 2009, which aren't part of the fuel efficiency standards. Therefore, he said, the rules in question don't apply to POP's business at this time.

Taken together, the rules are among the most significant efforts by the Obama administration to address global warming. Cars emit nearly 60 percent of all mobile-source greenhouse gases, and the May 2010 car rule will reduce those emissions by 960 million metric tons.

Similarly, trucks account for nearly 19 percent of all mobile-source greenhouse gas pollution, and EPA estimates the rule will save approximately 22.1 billion gallons of gasoline and diesel over the lifetimes of model 2014 through 2018 vehicles. It will result in the reduction of 273 million metric tons of carbon dioxide.

California, Illinois, Iowa, Maryland, Massachusetts, New York, Oregon, Vermont, Washington and New York City intervened on EPA's behalf in the challenge to the truck rule.

In the car rule case, the same trucking companies and associations also raised a procedural issue. They contended that EPA had violated the law by not submitted the rules to its Science Advisory Board for input before finalization.

DOJ's Walter contended that if the court were to reach that argument -- meaning the court found the companies to have standing -- EPA should still prevail.

She said the oversight amounted to "harmless error" and that there is nothing to suggest that the board would have recommended any substantive changes to the standards. Further, the challengers, she said, have not suggested any components of the rules -- cost, technical or otherwise -- that they believe the board would have changed.

Rulings in *Delta Construction Co., Inc. v. EPA* and *California Construction Trucking Association v. EPA* are expected by next summer.

POLITICS:

Kirk attempts to clarify climate stance

Robin Bravender, E&E reporter

Published: Friday, January 9, 2015

Sen. Mark Kirk is insisting that humans do contribute to climate change after coming under fire for comments suggesting otherwise.

The Illinois Republican's office yesterday issued this statement from the senator: "Climate change is real and human beings definitely play a role," according to the *Chicago Tribune*. But he added, "As I have said since 2010, I will not support a carbon tax or similar attempts which hurt the Illinois or American economy."

The clarification came after Kirk told *E&E Daily* on Wednesday that he lamented that "political correctness took over climate science." When pressed specifically on the link between human activity and climate change, Kirk suggested that changes in climate have been regular natural occurrences.

"We had the previous warming period, which was called the global optimum, and the best way to talk about that is when Leif Erickson went west from his home, he discovered a landmass that he called Greenland, because it was," Kirk said Wednesday. "And that was called the global optimum, because the planet was much warmer. By calling Greenland 'green land,' we know that the climate has been changing pretty regularly within recorded memory" (*E&E Daily*, Jan. 8).

Those comments surprised environmentalists, some of whom viewed Kirk as a potential ally on climate legislation. As a member of the House of Representatives in 2009, Kirk was one of just eight Republicans to vote in favor of cap-and-trade climate legislation that passed the chamber and then died in the Senate.

Kirk later renounced that vote after launching his 2010 Senate campaign and has been critical of the Obama administration's climate regulations. He told *E&E Daily* on Wednesday that after voting for carbon cap-and-trade legislation in the House, he wouldn't do so in the Senate.

The Illinois Republican is a top target for Democrats in the 2016 election cycle, when he'll be running for re-election in a presidential year in a state that has voted Democratic in every White House election dating back to 1992.

Kirk spokeswoman Danielle Varallo didn't respond to a request for comment on this story.

WILDFIRES:

Forest Service gets $65M for air tankers -- what will it buy?

Phil Taylor, E&E reporter

Published: Friday, January 9, 2015

Congress gave the Forest Service an early Christmas present last month: $65 million tucked in the fiscal 2015 spending bill for new wildfire-fighting aircraft.

The earmark, which the service didn't officially request, could fund the agency's first purchase of a new air tanker.

Large air tankers are a critical first line of attack when a fire ignites in the woods. They carry thousands of gallons of retardant that can be dropped to stunt a fire's advance, giving ground crews time to build a fire line.

The agency's aerial tanker fleet has been depleted over the years as a result of safety issues as well as contracting hiccups as it leases planes from the private sector.

The service believes more large air tankers are needed as climate change, insect epidemics and residential sprawl combine to make wildfire seasons more costly and dangerous. The agency wants 18 to 28 modern, large air tankers at its disposal that can fly faster and carry enough fire retardant to penetrate thick forest canopies. There is still some dispute over the effectiveness of dropping aerial retardants.

While the Forest Service successfully squelches about 98 percent of the fires requiring initial attack, those that do escape tend to grow quickly, threatening homes and the agency's pocketbook.

But its fleet has shrunk. In-flight structural failures have caused at least six accidents since 1980, forcing the Forest Service to downsize the planes available from 44 in 2002 to eight in early 2013.

According to the spending bill, the $65 million must be spent for "acquiring aircraft for the next-generation airtanker fleet to enhance firefighting mobility, effectiveness, efficiency and safety."

In recent years, the Forest Service has leased large air tankers from private companies. But the procurement process has been fraught with delays as losing bidders challenge contracts given to their competitors, a pattern that has sparked concern among Western lawmakers (*E&ENews PM*, May 17, 2013).

The $65 million appears to offer a new paradigm under which the service would own new, longer-lasting planes and pay private firms to operate and maintain them.

The explanatory statement the House passed with the spending bill said: "It is critical to begin the process of developing a long-term solution for air support in fighting wildfires."

But it's not clear what the agency is supposed to do with the money.

Jennifer Hing, a spokeswoman for House Appropriations Chairman Hal Rogers (R-Ky.), said the legislation does not specify which aircraft to buy or how many.

Forest Service spokeswoman Jennifer Jones said the money will be used to further the agency's goal of bringing 18 to 28 modern air tankers into service. "We will be happy to provide specifics once we have them worked out," she said.

For now, the agency plans to soon issue a solicitation for up to seven additional "next generation" air tankers it hopes will be ready to fly for the 2015 season.

But those in wildfire aviation circles say they believe the Forest Service is eyeing a civilian version of the C-130J built by Lockheed Martin Corp. -- which happens to sell for roughly $65 million.

That's according to Bill Gabbert, former executive director of the International Association of Wildland Fire, who previously managed fires for several national parks, and Frank Gladics, a former forestry aide to Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) who now lives in

Idaho.

As Gabbert notes on his blog *Fire Aviation*, Lockheed is represented by lobbyist Mark Rey, who oversaw the Forest Service during the George W. Bush administration as Agriculture undersecretary for natural resources and the environment. Rey's latest lobbying disclosure says he works on "fire fighting aircraft."

Gabbert also quotes Jason Gagnon, a spokesman for Rep. Ken Calvert (R-Calif.), the chief appropriator for the Forest Service, saying the $65 million is for purchasing "a C-130 to be specific."

Lockheed says on its website that the aircraft can operate from short, unprepared airfields without ground support equipment and could be equipped for missions including aerial firefighting.

Rey was not able to comment for the record for this story.

Gladics also believes the Forest Service plans to buy a single C-130J.

"There have been some people in the Forest Service who have dreamed of their own air force for a long time," he said.

But he said it's hard to imagine Congress will find money to buy many more of those planes in today's tight budget climate. They will also carry high operating and maintenance costs, he said.

"How many $65 million aircrafts can you afford? How much extra money is it going to take to get those planes up and fighting fires? And how long will it take?" Gladics said. "The answers are fairly opaque at this time."

Gladics said he does "minimal consultation" for the American Helicopter Services & Aerial Firefighting Association, which sees government-owned but contractor-operated aircraft as a competitive threat to the private aerial firefighting industry.

Years of debate

The $65 million appears to be have been a compromise between the House and the Senate.

Last summer, the House Appropriations Committee passed a spending bill that would have provided $130 million "only for the purpose of acquiring two aircraft for the next-generation airtanker fleet." The Senate's draft bill for the Forest Service had no such language.

According to the Government Accountability Office, Gagnon and Gladics, there's been support within the Forest Service to purchase new aircraft rather than rely on older aircraft inherited from other federal agencies -- but there's been resistance from the White House Office of Management and Budget.

"While the Forest Service has indicated its long-term intention to rely on a government-owned fleet of C-130Js to meet some or all of its large airtanker needs, the agency has been unable to demonstrate the feasibility of this approach to OMB, which would need to approve such an investment," said a GAO report from August 2013. Since 2005, the Forest Service had submitted two proposals to OMB for the government purchase of a large air tanker fleet, but both were rejected, GAO reported.

Hank Kashdan, a 37-year veteran of the Forest Service who retired four years ago as associate chief, said he was initially a skeptic of the Forest Service owning its own "air force." But after seeing companies dispute contract awards and grind the procurement process to a halt, he's changed his mind.

"I think it is wise for the Forest Service to own a base-level contingent of large modern air tankers," he said. "With a need for up to 17 to 20 large air tankers, if the Forest Service owned a third and private industry the other two-thirds, I think you would have a healthy balance that promotes innovation and product development while assuring that the safety of communities and the protection of resources are not hampered by procurement bureaucracy."

A C-130J, if purchased, would join a fleet of seven C-130H tankers the Forest Service inherited from the Coast Guard, which are also government-owned. The transfer was made possible in late 2013 with Congress' passage of the National Defense Authorization Act.

Each of those planes is capable of carrying up to 4,000 gallons of retardant but will need to be retired in six to 12 years, according to appropriators.

It will also cost a bundle to retrofit those aircraft for service. The Forest Service hopes to have the first of the C-130Hs flying wildfire suppression missions this summer equipped with a Modular Airborne Fire Fighting System (MAFFS). It's not clear when the rest of the planes will come online.

The 2013 defense bill also transferred to the Forest Service 15 C-23B Sherpa aircraft to serve as smoke jumper and cargo transports. The agency also owns a number of helicopters and light planes.

Jones of the Forest Service said the agency expects to have up to 29 air tankers available for wildfire suppression nationwide in 2015, eight of which would be owned by the Defense Department.

They include:

- Up to seven "next-generation air tankers" from contracts awarded in 2013.
- Six "legacy air tankers" from contracts awarded in 2013.
- Up to seven "next-generation air tankers" from contracts awarded in 2015.
- One C-130H owned by the Forest Service and acquired from the Coast Guard through NDAA.
- Up to eight military C-130s equipped with MAFFS

APPROPRIATIONS:

Democrats pick leaders for powerful subcommittees

Phil Taylor, E&E reporter

Published: Friday, January 9, 2015

New Mexico Sen. Tom Udall will be the top Democrat on the Appropriations subcommittee that funds the Interior Department and U.S. EPA in the 114th Congress, committee ranking member Barbara Mikulski (D-Md.) announced this morning.

Udall replaces Jack Reed (D-R.I.), who served as chairman of the Subcommittee on Interior, Environment and Related Agencies for the past two sessions of Congress.

Working opposite subpanel Chairwoman Lisa Murkowski (R-Alaska), Udall will bring a Western perspective to a panel that funds major land management agencies including the Bureau of Land Management, National Park Service, Fish and Wildlife Service and Forest Service, each of which control significant parts of Udall's home state.

He'll likely play defense against Republican efforts to block or roll back Obama administration plans to combat climate change, curb pollution, and preserve public lands and wildlife.

Udall said his funding priorities will include clean water programs; new national park properties, including New Mexico's Valles Caldera; the Interior and Forest Service wildfire budgets; and BLM recreation, conservation, resource management and energy leasing.

"This new leadership position on the Appropriations Committee gives me a strong platform to fight for funding to develop infrastructure that creates jobs and promotes tourism," Udall said in a statement. "From natural resources development on public lands to national parks, to clean air and clean water, to supporting Indian tribal programs, this subcommittee covers many integral parts of New Mexico's economy and communities."

Mikulski named Sen. Jeff Merkley (D-Ore.) as ranking member of the Subcommittee on Agriculture, Rural Development, Food and Drug Administration and Related Agencies.

Merkley replaces former panel Chairman Mark Pryor (D-Ark.), who lost his re-election bid.

The Agriculture panel controls the budget of a variety of farmer conservation and energy programs, as well as certain farm subsidies and nutrition programs.

Sen. Dianne Feinstein of California will remain the top Democrat on the Subcommittee on Energy and Water Development, a post she's held since 2011. That panel funds the Energy Department, U.S. Army Corps of Engineers, Nuclear Regulatory Commission and the Interior Department's Bureau of Reclamation.

Mikulski will remain the top Democrat on the Subcommittee on Commerce, Justice, Science and Related Agencies, whose jurisdiction includes the National Oceanic and Atmospheric Administration.

Reed was named top Democrat of the Subcommittee on Transportation, Housing and Urban Development and Related Agencies, replacing Sen. Patty Murray (D-Wash.).

Reporter Amanda Peterka contributed.

SOLAR:

Renewables developer challenges BLM's rejection of large Calif. project

Scott Streater, E&E reporter

Published: Friday, January 9, 2015

A Spanish renewable energy company is formally challenging the Bureau of Land Management's decision last year to reject a proposed commercial-scale solar power plant in the Southern California desert, saying the agency's decision will cause it and a subsidiary to "suffer substantial economic harm."

Iberdrola Renewables LLC and its subsidiary, Aurora Solar LLC, have notified BLM in a formal notice of appeal that they are appealing to the Interior Board of Land Appeals (IBLA) in an effort to overturn BLM's November decision rejecting a variance application that would have allowed Aurora Solar to build the 200-megawatt Silurian Valley photovoltaic solar project on more than 1,600 acres of federal land in San Bernardino County near Death Valley National Park.

Aurora Solar had applied for a right of way grant to build in an area outside the boundaries of California's two solar energy zones in a so-called variance area identified in the Interior Department's 2012 Western Solar Energy Plan as potentially suitable for utility-scale solar development. Projects proposed in these areas require more information and analysis before BLM can move forward with a lengthy environmental impact statement (EIS) to analyze the project.

But BLM State Office Director Jim Kenna decided that the project would not proceed to the EIS stage, concluding the proposed site was not suitable for commercial-scale solar development.

Kenna concluded that the initial review and analysis of the Iberdrola Renewables project "indicated that the impacts to the Silurian Valley, a largely undisturbed valley that supports wildlife, an important piece of the Old Spanish National Historic Trail, and recreational and scenic values," were too great and "likely could not be mitigated" (*Greenwire*, Nov. 21).

The Silurian Valley project is the first variance application to reach the decision stage.

An attorney for Iberdrola Renewables and Aurora Solar notified BLM of the IBLA appeal in the two-page notice letter sent last month to Kenna and Katrina Symons, manager of BLM's Barstow Field Office in California. Dana Wilson, a BLM spokeswoman in Sacramento, said the companies are expected in the next 10 days to file a formal "statement of reasons" outlining the legal arguments to support their appeal.

An IBLA appeal is the last administrative option for Iberdrola Renewables and Aurora Solar; the companies could file a federal lawsuit in U.S. district court if they do not win the appeal.

Iberdrola Renewables and Aurora Solar say in the notice of appeal that BLM's rejection of the variance application is "ripe for review by the Interior Board of Land Appeals." They say Kenna's decision was "arbitrary, capricious, and otherwise inconsistent with the requirements of the Federal Land Policy and Management Act," as well as the Western Solar Energy Plan, the National Environmental Policy Act and the Administrative Procedure Act.

Aurora Solar has "actively participated in the administrative proceeding" and invested about $500,000 "to pursue the application and variance request," the letter says.

"Because the decision denies the requested variance, Aurora Solar is precluded from advancing its application and obtaining the requested [right of way] grant, and both Aurora Solar and Iberdrola Renewables will suffer substantial economic harm," the letter states.

A BLM spokesman in Washington, D.C., said the agency cannot comment on the appeal.

BLM's decision to reject the variance request was greeted with enthusiasm by conservation groups who said it demonstrates that the Obama administration is serious about properly siting large-scale projects to avoid natural resource conflicts, despite the administration's stated goal of using federal lands to increase green energy production.

The Obama administration since 2009 has approved 52 solar, wind and geothermal power plants on federal land, including 18 in California alone. If all are built, they will have the capacity to produce up to 14,000 MW of electricity -- enough to power 4.8 million homes and businesses.

President Obama's Climate Action Plan unveiled in 2013 challenges the Interior Department to approve an additional 10,000 MW of renewable energy on federal lands by 2020.

While the Silurian Valley project would help Interior move closer to that goal, the valley is not the proper site for a commercial-scale solar power plant, BLM concluded.

"Based on information collected through the variance evaluation process, the BLM has determined that the Silurian Valley solar project was not in the public interest because of its potential impacts to important biological, cultural, recreational and scenic values," Kenna, the BLM California director, said in a statement that accompanied his November decision. "This decision was made based on a rigorous review of the specific set of facts related to a particular place and a particular project."

TRANSIT:

Trial delayed in Denver-area bribery case

Sean Reilly, E&E reporter

Published: Friday, January 9, 2015

A federal judge has pushed back until June the trial of Kenneth Hardin, a former Denver-area transit manager charged with taking bribes in connection with a federal contract decision.

In a brief order issued yesterday, Chief U.S. District Judge Marcia Krieger for the Colorado district agreed with a motion from Hardin's lawyer that more time is needed for defense preparations. In a previous filing, the lawyer, Jeffrey Pagliuca, had also said he was working on other cases that would make it difficult for him to proceed with a trial before May.

The trial, which had been set to begin Monday, is now scheduled to begin June 8, according to Krieger's order. Federal prosecutors did not object to the delay.

Hardin, who had been senior manager of the Regional Transportation District's civil rights division, was indicted in early November for allegedly taking $5,100 in bribes in return for promising to influence the awarding of a federally funded contract (*E&ENews PM*, Nov. 24, 2014).

Scott Reed, a transportation district spokesman, had previously said that Hardin was on administrative suspension with pay; Reed could not immediately be reached for comment this morning on whether that continues to be the case.

Initially on administrative suspension with pay following the indictment, Hardin resigned his post effective Jan. 1, a transportation district spokeswoman said today.

EPA:

Agency kicks off new year with staff cuts

Robin Bravender, E&E reporter

Published: Friday, January 9, 2015

U.S. EPA's staff will be even smaller next week.

Today is the last day for employees who accepted the latest round of buyout or early retirement offers to pack up their desks and leave the agency.

EPA announced plans last year to slim down its staff by about 200 workers by early this year. It's part of an ongoing effort at EPA to bring staffing levels to about 15,000 employees -- the lowest staffing level the agency has seen since the George H.W. Bush administration -- amid continued budget cuts.

The agency saw its funding slashed again in the fiscal 2015 budget passed late last year. House Appropriations Chairman Hal Rogers (R-Ky.) last month touted the budget's trimming of EPA's workforce. "The bill continues reductions to EPA staff, bringing staffing to the lowest level since 1989," he said in a statement (*E&E Daily*, Dec. 10, 2014).

EPA spokeswoman Liz Purchia today declined to say how many staffers had accepted the buyout and early out offers this time around or what staffing levels will be after those employees depart.

Buyout and early retirement offers were made to employees in EPA's Office of Administration and Resources Management, Office of Chemical Safety and Pollution Prevention, Office of Research and Development, Office of Water, Office of Solid Waste and Emergency Response, Office of Air and Radiation, and Office of International and Tribal Affairs.

Offers were also made to workers in two regional offices -- the New York-based Region 2 office and the Chicago-based Region 5 office.

In the Chicago office, 20 to 25 employees are expected to leave under the latest round of buyouts, said John O'Grady, president of the American Federation of Government Employees chapter representing EPA workers in the Chicago region.

O'Grady said staffers who remain are worried about grappling with increased workloads, and some are counting down the years until they can retire. "I would say morale is not good, and people are extremely concerned about how this Republican-controlled Congress will treat federal employees," he said today.

Morale at EPA hit a new low last year, according to a survey released last month. EPA ranked 16th in best places to work among 19 large agencies in an annual report released by the Partnership for Public Service. Employee satisfaction and commitment at the agency are the worst they've been since a nonprofit started tracking it 11 years ago, the survey found (*Greenwire*, Dec. 9, 2014).

EPA Administrator Gina McCarthy said last month that she's hoping some new hires will help that situation. "We are down some employees, but we're actually hiring for the first time in a while. We've had a hiring freeze, which actually is the worst thing for morale, I think, is to not be able to hire in critical places" (*E&ENews PM*, Dec. 9, 2014).

This latest round of buyouts marks the second in the past year. Another round of offers in early 2014 resulted in the departure of about 540 employees. Asked last month whether she anticipates further buyouts in the future, McCarthy said, "I don't have any expectations at this point."

DOE:

Composites innovation institute announced for Knoxville, Tenn.

Ariel Wittenberg, E&E reporter

Published: Friday, January 9, 2015

A consortium of 122 organizations in Knoxville, Tenn., has won a Department of Energy competition to house an innovation institute focused on advanced fiber-reinforced polymer composites, the White House announced today.

DOE and the consortium, which is led by the University of Tennessee, Knoxville, and includes companies, nonprofits and universities, will invest more than $250 million to launch a Manufacturing Innovation Institute for Advanced Composites. DOE will contribute $70 million, with the rest being funded by consortium members.

The composite innovation institute, originally proposed by the Obama administration in February 2014, is the sixth National Network for Manufacturing Innovation institute. Other innovation hubs focus on 3-D printing, smart manufacturing, flexible hybrid electronics, advanced lightweight and modern metals, and digital manufacturing and design (*Greenwire*, Dec. 12, 2014).

The institutes are part of President Obama's effort to make the United States a leader in advanced manufacturing areas like clean energy. In his 2014 State of the Union address, Obama announced he would create nine such institutes.

In December, Congress passed the Revitalize American Manufacturing and Innovation Act of 2014 as part of the consolidated appropriations bill of 2015. The bill requires the Commerce Department to create a national manufacturing strategy and to oversee the public-private innovation centers (*Greenwire*, Dec. 11, 2014).

The Knoxville hub will focus on lowering manufacturing costs of advanced composites by 50 percent, reducing the amount of energy used to produce composites by 75 percent and increasing recyclability of composites to 95 percent during the next decade.

Advanced composites like carbon fiber are stronger and lighter than steel and are used in manufacturing satellites and luxury cars. The materials also show promise for manufacturing fuel-efficient cars as well as longer and lighter wind turbine blades that could produce more energy.

In addition to the University of Tennessee, Knoxville, members of the composite institute include the University of Kentucky, which houses the largest open-access carbon-fiber chemistry laboratory in the United States, and carbon fiber producers and suppliers.

The first innovation center was created in Youngstown, Ohio, and focused on 3-D printing. The Obama administration has heralded that effort as a success after General Electric Co. announced in November that it would locate a $32 million 3-D printing research center near the innovation hub.

AIR POLLUTION:

EPA to propose reclassification for San Joaquin Valley

Amanda Peterka, E&E reporter

Published: Friday, January 9, 2015

U.S. EPA has found it unlikely that California's San Joaquin Valley will meet an April 5 deadline to clean up fine particulate matter air pollution.

The agency tomorrow will propose to reclassify the area, the nation's leading agricultural region, as being in serious nonattainment under the Clean Air Act, according to a prepublication notice in the *Federal Register*. The reclassification would require California to write a new cleanup plan for the area, with a goal of attaining the 1997 fine particulate matter standard by Dec. 31.

Fine particulate matter refers to airborne particles that are about one-thirtieth the width of a human hair. Exposure is linked to adverse health effects such as respiratory and cardiovascular disease, as well as premature mortality.

In the valley, the highest levels occur in the winter, when the weather is stagnant and wood burning increases throughout the region.

In 1997, EPA set the standard for fine particulate matter at 15 micrograms per cubic meter based on a three-year average of concentrations. In 2005, the agency named the 23,000-square-mile San Joaquin Valley area, which includes parts of eight counties, out of compliance with the standard and compelled it to take steps to clean up its air quality by the April deadline.

In September of last year, though, the San Joaquin Valley Unified Air Pollution Control District, which is responsible for developing the plans to clean up the air in the valley, told EPA that it did not believe it was feasible to meet the deadline.

According to tomorrow's *Federal Register* notice, EPA agrees with that determination.

The latest air quality data from 2011 to 2013, according to EPA's notice, pegs three-year average fine particle levels in the valley at 18.1 micrograms per cubic meter. Data for all of 2014 are not yet available. But given that the air quality district reported concentrations of nearly 30 micrograms per cubic meter in the first quarter of 2014, fine particulate matter levels would have to be zero for the remaining three-quarters of the year in order for the area to come close to reaching compliance.

"In sum, air quality data for the 2003-2014 period indicate it is not practicable" for the area to meet the standard, EPA said.

Eight Indian tribes are located within the San Joaquin Valley nonattainment area. EPA is also proposing to reclassify tribal lands as "serious."

The new classification would result in lower emissions caps for major sources of fine particle pollution in the region under the Clean Air Act's New Source Review program and general operating permit program.

EPA in 2012 tightened the federal fine particulate matter standard to 12 micrograms per cubic meter.

CLIMATE:

Greenwire's Chemnick discusses impacts of EPA delay on power plant regulations

Published: Friday, January 9, 2015

How will U.S. EPA's move to delay its final power plant standards affect the future of the regulations? On today's The Cutting Edge, *Greenwire* reporter Jean Chemnick discusses the political and legal maneuvering behind the delay. She also talks about the agency's strategy in announcing plans to release a model rule for state compliance with the Clean Power Plan.

Click here to watch E&ETV's The Cutting Edge.

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CLIMATEWIRE — Mon., January 12, 2015

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Could states use forests to offset emissions from coal plants? Probably not

A funny thing happens when states are told to cut greenhouse gas emissions or shut down their coal plants: They start looking for solutions in unexpected places, like forests.

2.ENERGY:

Growing competition, tougher rules haunt U.S. coal market -- study

The new year will bring continued difficulties for coal-fired electric utilities as new regulations targeting power plant emissions squeeze existing facilities and economics continue to favor inexpensive natural gas over coal for new fossil power generation.

TODAY'S STORIES

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4.SCIENCE:
U.S. lab scientists find small volcanoes have slowed recent global warming

5.CALIFORNIA:
Cap-and-trade fund grows to $1B; groups say it could reach $2B

6.EMISSIONS:
Diesel exhaust and other pollutants heat up planet with darker snow -- study

7.COAL:
Australia pushes 9 new coal projects despite climate impacts

8.ADAPTATION:
Climate change will displace millions globally, experts project

9.ADAPTATION:
Pakistani villagers forced to retreat as coastline erodes

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Climate skeptics speak up at experts' forum in India

E&ETV'S ONPOINT

11.INTERNATIONAL:
World Resources Institute's Steer discusses challenges to advancing new climate agreement

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ENERGYWIRE — Mon., January 12, 2015

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1.SAFETY:

At least 16 drilling industry workers died in fires, explosions last year

It was a few minutes before 8 on a cool spring morning at an oil well in West Texas last year when truck driver Roberto Magdaleno walked over to the site supervisor to get some papers signed. At that moment, a sand separator at the well site exploded, spraying shrapnel more than 1,400 feet, according to Occupational Safety and Health Administration officials who investigated the April 30, 2014, explosion outside Orla, Texas. Magdaleno, 41, and the site supervisor, 46-year-old Amos Ortega, were both killed. Nine others were injured. They were among at least 16 oil and gas workers killed in fires and explosions in 2014, according to a count compiled by *EnergyWire*, adding to the industry's unusually high number of such deaths.

2.TECHNOLOGY:

5 years after crisis, U.S. remains dependent on China's rare earth elements

In 2010, China set in motion a wave of worry around the globe when it dramatically lowered quotas on its exports of rare earth elements, which are crucial to the making of everything from cellphones to missile systems to electric-car batteries. China held 95 percent of the world's supply. Five years after the crisis, experts say that there never actually was a shortage in rare earths, and now most are in surplus. Nonetheless, they add that the United States and the rest of the global economy are nearly as dependent as ever on China, which has consolidated control over its rare earth industry and is positioned to dictate what the world pays for these crucial metals for years to come.

TOP STORIES

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Push for FERC-mandated Southeast market faces hurdles

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Forecasts grow bearish as prices continue to fall

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4 energy executives join clean power board

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Mass. needs more gas pipelines for power, study finds

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Oil price slump not denting crude-by-rail traffic -- BNSF exec

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Price slump could have lasting impact on industry

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15.INTERNATIONAL:
World Resources Institute's Steer discusses challenges to advancing new climate agreement

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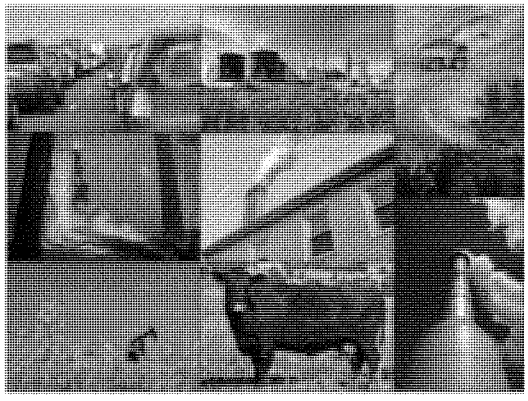

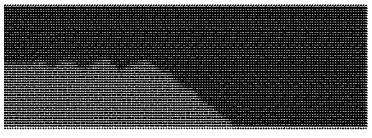

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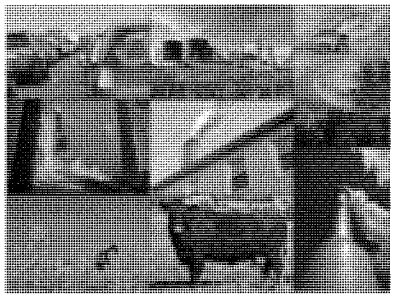

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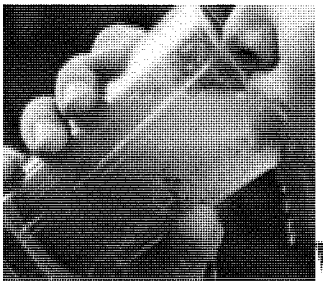
From: Turley, Jennifer
Sent: Mon 1/12/2015 3:41:24 PM
Subject: Water Law News for January 12, 2015



Water Law News

for January 12, 2015

Bloomberg BNA Daily Environment Report™

Budget

California Budget Proposal Outlines Spending Cap-and-Trade Revenue, Water Bond Money

California Gov. Jerry Brown (D) unveiled Jan. 9 a budget for fiscal year 2015-2016 proposing to spend $1 billion in revenue derived from the state's carbon market on programs to further shrink the state's carbon footprint and another...

Hydraulic Fracturing

Fate of Maryland Fracking Proposal Lies With Incoming Republican Governor

Less than two weeks before leaving office, Maryland Gov. Martin O'Malley (D) proposed stringent regulations and best management practices for horizontal drilling and hydraulic fracturing, or "fracking," but the fate of the...

Maritime Affairs

Oceangoing, Coastal Vessel Discharges Of Nine Chemicals Regulated by Japan

Japan will regulate the discharge of nine chemical substances from oceangoing vessels in compliance with International Maritime Organization Marpol Annex II regulations on noxious liquid substances discharged from ships, the Ministry...

Water Pollution

Des Moines Water Works Board Votes to Sue Three Northwest Iowa Counties Over Nitrates

The Des Moines Board of Water Works trustees Jan. 8 voted to issue an intent to sue to three northwest Iowa counties over the amount of nitrates their drainage districts are emitting into the Raccoon River....

Water Pollution

Environmentalists' Lawsuit Challenges EPA Approval of West Virginia TMDLs

The Environmental Protection Agency has improperly approved or failed to require total maximum daily

loads (TMDLs) for many West Virginia waterways, four environmental groups claim in a federal lawsuit (Ohio Valley Envtl. Coal. v. McCarthy,...

Water Pollution

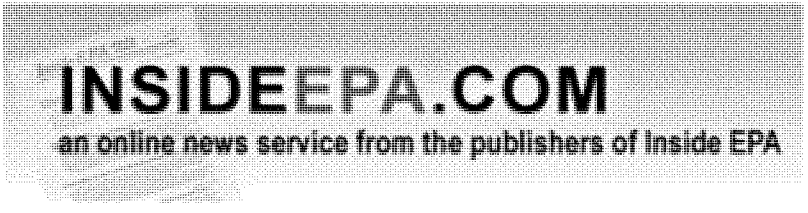
EPA Faces Lawsuit Over Failure to Object To NPDES Permit for Georgia-Pacific Mill

Two environmental groups have sued the Environmental Protection Agency for failing to object to a Clean Water Act permit for a paper mill that they say is discharging unregulated and excessive wastewater into the headwaters of the Ouachita...

Water Pollution

OMB Begins Review of Rule Governing State Water Quality Standards Programs

A draft final rule that would revise how states and tribes operate their water quality standards programs has been sent to the White House Office of Management and Budget for review....



Inside EPA's **Water Policy Report**, 01/12/2015

http://insideepa.com/newsletters/water-policy-report

Latest News

Vitter Eyes Major Overhaul Of EPA's CWA Oversight Power To Limit Vetoes

Sen. David Vitter (R-LA) has introduced a bill to significantly overhaul and restrict EPA's Clean Water Act (CWA) power to block permits for mining and other projects, including narrowing the time frame for when the agency can issue vetoes and scrapping existing decisions such as its threat to block the Pebble Mine and a veto involving Mingo Logan's coal operations.

EPA Advances Contested Final Water Quality Standards For OMB's Review

EPA is advancing for White House pre-publication review its contested and long-awaited final rule imposing new requirements on how states should craft water quality standards (WQS), with industry groups and environmentalists both likely to file litigation with competing criticisms of the regulation following its eventual publication.

Chicago Water District Urges Appellate Court To Sustain Stormwater Pact

A Chicago water district is defending a district court's approval of a consent decree with EPA intended to reduce sewer overflows, arguing in recent appellate filings that despite environmentalists' claims in challenging the pact, the Clean Water Act (CWA) does not require the elimination of all combined sewer overflows (CSOs).

News Briefs

House, Senate Bills Aim To Limit EPA's Rulemaking Flexibility

Lawmakers are taking early steps in the 114th Congress to limit EPA's rulemaking flexibility, including a House measure slated for consideration next week to force the agency to weigh alternatives to new rules and a Senate bill to constrain EPA's ability to write new rules and force it to review and potentially scrap existing policies.

Judge Rejects Bid For Quick Ruling In Farm Dust Suit

A federal district judge has rejected environmentalists' request to immediately send to state court for a ruling an industry lawsuit aiming to block North Carolina from issuing novel Clean Water Act (CWA) permits for farm dust, allowing industry to proceed with the suit in district court -- though a motion to dismiss the case is pending.

Greenwire

KEYSTONE XL:

Neb. high court backs pipeline; House OKs bill to spur project

Manuel Quiñones, E&E reporter

Published: Friday, January 9, 2015

This story was updated at 1:54 p.m. EST.

The Nebraska Supreme Court upheld state approval today for the Keystone XL oil pipeline's route, shifting the focus to the Obama administration's review on the project's crossing from Canada.

But KXL foes are still not giving up on a Nebraska fight. In a press call immediately following the state high court's split ruling, they said the Supreme Court's less-than-clear decision would open the door for more litigation.

The Nebraska ruling arrived as the House began debate on legislation aimed at bypassing the administration in approving the pipeline. The measure, H.R. 3, passed this afternoon, 266-153, including 28 Democrats.

In Nebraska, four of seven justices ruled that landowner plaintiffs had standing to challenge a 2012 state law giving the governor authority over the pipeline's route.

But the Nebraska Constitution requires that at least five justices rule on a law's constitutionality. The three justices who disagreed with the majority on standing stayed silent on the constitutional question.

"No member of this court opines that the law is constitutional," the ruling says. "But the four judges who have determined that L.B. 1161 is unconstitutional, while a majority, are not a supermajority as required under the Nebraska Constitution."

Pipeline boosters say the ruling paves the way for the State Department to complete its national interest determination review and for the White House to greenlight the project.

House Transportation and Infrastructure Chairman Bill Shuster (R-Pa.) said, "The final hurdle has been removed."

Said National Association of Manufacturers CEO Jay Timmons: "The president has no more excuses left to delay a decision on a permit."

Environmental advocates and landowners who oppose KXL say the court ruling is far from conclusive, especially when most judges agreed with them on the standing issue and three didn't weigh in on the law's constitutionality at all.

"Right now we're in this kind of odd limbo," attorney Brian Jorde said in a conference call. "There's clearly another case that can be brought. This will be decided once and for all on another day."

Jane Kleeb, founder of KXL opposition group Bold Nebraska, said, "Obviously we have a bloody nose this morning, but we are not down for the count."

Both sides push Obama

But despite the possibility of more litigation, KXL opponents agree with pipeline backers in saying the State Department and White House now have enough information to make a decision. Those opponents, of course, want an immediate rejection.

Michael Brune, the Sierra Club's executive director, said this morning, "This ruling does not affect the president's authority on the climate test he's going to apply to the pipeline."

President Obama's climate test involves making sure KXL doesn't significantly affect greenhouse gas emissions that lead to climate change.

The State Department's final environmental impact statement suggested the pipeline passed the test. But critics now say low oil prices threaten to make it either uneconomical or a factor in making Canadian oil sands production more viable.

Russ Girling, CEO of TransCanada Corp., the company wanting to build KXL, said he was "very pleased" with the ruling. And he said the pipeline would indeed be a more "efficient and more cost-effective transportation" option for transporting Canadian oil sands.

However, Girling said it's folly for KXL critics to say one pipeline would make a significant difference in production and, therefore, greenhouse gas emissions.

"The answer is absolutely not," he said, pointing to the markets. "At the end of the day, a pipeline does not promote production or consumption."

The White House has cited uncertainty in Nebraska as a reason for delaying a decision on whether to approve KXL's transboundary crossing.

"The President should immediately resume the National Interest Determination that he needlessly suspended last year and Democrats in Congress must stop all the excuses and end the shameful politics used to block Keystone," Terry O'Sullivan, general president of the Laborers' International Union of North America, said in a statement.

Girling and analysts ClearView Energy Partners LLC predicted the Nebraska ruling would pave the way for a decision within weeks.

KXL opponents are also challenging the renewal of the pipeline's permit through South Dakota, which expired because of construction delays. But neither side sees that process as precluding the administration's review.

White House responds

The White House responded quickly to the ruling but didn't provide details about what's ahead.

"The State Department is examining the court's decision as part of its process to evaluate whether the Keystone XL pipeline project serves the national interest," deputy press secretary Eric Schultz said.

Pointing to the ongoing review, the White House reiterated its intention to veto legislation to approve KXL.

"As we have made clear," he said, "we are going to let that process play out."

Democrats who voted for the pipeline this morning include Rep. Brad Ashford of Nebraska, who last year defeated longtime KXL backer Republican Lee Terry.

"I want to get on to talking about more comprehensive energy issues. I'm tired of the pipeline," Ashford, a former state legislator, said in an interview. "Nebraskans are very environmentally conscious, but at the same time [most of them] want this over with."

The Senate is scheduled to take a vote at 5:30 p.m. Monday on whether to proceed with debating the KXL bill there. Backers are likely to get the 60 votes necessary.

Reporter Daniel Bush contributed.

WATER POLLUTION:

One year after W.Va. spill, Manchin pledges work on chemical-storage bill

Sam Pearson, E&E reporter

Published: Friday, January 9, 2015

It was a year ago today that a leak of foul-smelling 4-methylcyclohexane methanol, or MCHM, contaminated the water supply for 300,000 Charleston, W.Va.-area residents -- prompting health and safety fears and calls for regulatory reform that went largely unheeded at the federal level.

Sen. Joe Manchin (D-W.Va.) said today that adding new safety standards is one of his top priorities for this year.

The leak was first detected by residents near the chemical storage site who noticed a licorice smell around 11 a.m. By evening, local officials had ordered residents of five counties and parts of four others not to use the water. Ultimately, the residents lost access to tap water from four to nine days and faced confusing instructions to "flush" their home pipes before resuming use -- not to mention lingering health fears.

Now the Freedom Industries Inc. tank farm on the banks of the Elk River is disassembled, three of its top executives are facing criminal charges, the company is bankrupt and state lawmakers passed a bill setting new regulatory standards for aboveground storage tanks -- but local activists aren't sure the new protections will last. The incident was also a stark example of how little health information the government has on many chemicals, activists say. At the state level, the incident exposed the difficulties of coordinating a large-scale response to an unprecedented public health emergency.

West Virginia Gov. Earl Ray Tomblin (D) said in a statement today the state's new storage tank regulation law "is working, and I am confident we can continue to work together to ensure the safety of our water sources."

Tomblin's administration released the findings of a new state report today evaluating agencies' response to the water crisis. Called the "After Action Review," the report is aimed at helping state agencies respond more effectively to future emergencies, Tomblin said.

"The Freedom Industries chemical leak ... was unique and unprecedented," the report said, noting that the novelty of the incident prompted the Israeli military to send a delegation to study West Virginia's response in case that country's water supply is ever contaminated by terrorists. "There was no roadmap for handling the intricacies of this particular crisis."

The report noted that state agencies' task shifted from identifying the chemicals in the water supply, understanding how they affected human health and testing the water to the longer-term challenge of increasing public confidence in the water supply amid lingering uncertainty about long-term health impacts from the incident.

Among the state's shortcomings, the report said, were news conferences with messages "lost amid confusing and ambiguous statements" from uninformed speakers and government websites that weren't updated. The federal Centers for Disease Control and Prevention, whose scientists were most qualified to comment on the safety of MCHM, would not speak publicly about safety issues, prompting nonscientists to comment instead and sometimes confuse the public, the report said. A survey later found about 25 percent of respondents used the water for purposes that they were told were unsafe (*Greenwire*, May 22, 2014).

West Virginia American Water Co., whose intake system was contaminated by the MCHM, said in a statement that customers are safer today than before the spill.

"The health and safety of our customers and employees has always been and will continue to be our number one priority," said the water system's president, Jeff McIntyre. "Although we did not cause this issue, we have committed substantial resources to address customers' concerns and enhance their confidence in the water supply."

West Virginia American Water will also be installing a new monitoring system at its intake locations early this year, the company said.

Federal officials have said that the spill was preventable and that Freedom Industries knew its storage tanks -- particularly tank 396, the one that leaked -- were vulnerable to failure but chose to do nothing to save money.

Although the U.S. attorney in West Virginia, Booth Goodwin, launched an investigation into the chemical spill that's led to a grand jury indictment of four Freedom Industries executives, Manchin's drinking water protection bill failed to gain traction in last year's divided Congress.

Former Freedom Industries Chief Operating Officer Gary Southern and company executives Dennis Farrell and William Tis pleaded not guilty yesterday and were released on bail bond, according to court records. A trial for the men is expected to begin in March at the U.S. District Court for the Southern District of West Virginia. Southern also faces charges of bankruptcy fraud, wire fraud and lying under oath, accused of making false statements to the U.S. Bankruptcy Court downplaying his role with Freedom Industries (*Greenwire*, Dec. 9, 2014).

Spill wasn't enough to spur Congress to action

Manchin, who has worked hard to fight new regulations in other sectors like coal production, came out in favor of new rules to protect drinking water. His water protection bill, S. 1961, would have set minimum standards for states to establish regulations on aboveground storage facilities near drinking water sources. The bill was later amended in committee to make it more palatable to Republicans (*Greenwire*, April 3, 2014).

Manchin said today it's crucial that the bill advances this year.

"In the aftermath of the spill, I pledged to do everything in my power to make sure the water in West Virginia would be the cleanest and safest in America," Manchin said in a statement. "I still believe that we can achieve that goal, and today, I ask that all West Virginians renew that pledge so that we can once and for all regain the confidence of West Virginia families and communities."

Still, Janet Keating, the executive director of the Huntington, W.Va.-based Ohio Valley Environmental Coalition, said many local environmental groups aren't sure whether they can trust Manchin because of his ties to the coal industry and his previous career as a coal industry executive. It's also unclear whether the new GOP-controlled Congress will have any interest in advancing environmental protection measures as they work to roll back President Obama's U.S. EPA regulations.

"Initially, when this happened, all of our state representatives in D.C. were very vocal and seemed to be -- they just couldn't believe this sort of thing happened, and their response at the time was tremendous," Keating said.

Regulatory changes proved politically easier at the state level, but that didn't stop West Virginia voters from electing a slate of new GOP candidates in the midterm elections last year, which some activists fear could imperil the new protections if lawmakers choose to ease standards to accommodate businesses. The Tomblin administration's report faulted state officials for including only industry groups in efforts to prepare an early draft of the storage tank bill.

West Virginia lawmakers unanimously passed a storage tank regulation bill, S.B. 373, or the Water Resources Protection Act, setting new rules requiring public water utilities to file source protection plans with state officials and creating a new program to manage aboveground storage tanks. That program has already identified about 1,100 storage tanks that failed to pass the new safety inspections, said Angie

Rosser, executive director of the West Virginia Rivers Coalition.

"That shows us that this law was needed," Rosser said.

COAL:

La. parish council denies building permit for export terminal

Published: Friday, January 9, 2015

Louisiana's Plaquemines Parish Council denied a building permit to the controversial RAM Terminals LLC coal export facility.

The terminal had already been dealt a major blow last month when Plaquemines Judge Kevin Connor ruled the facility's coastal-use permit issued by the state Department of Natural Resources was not valid. Connor ordered the state to investigate alternative sites.

Still, eight of the council's nine members voted yesterday to deny a building permit to the facility. The other member abstained from voting.

RAM's proposal would have built a plant on 600 acres near Myrtle Grove, north of Ironton. Terminal officials said the plant, which would process 6 million tons of coal per year, was needed as demand for coal increases.

Environmental and neighborhood groups had opposed the terminal's location due to concerns about it being a health threat to nearby residents. The groups also asserted the coal facility would threaten the construction of a freshwater diversion project planned to run through the site (Benjamin Alexander-Bloch, New Orleans *Times-Picayune*, Jan. 8). **-- AW**

EPA:

Agency kicks off new year with staff cuts

Robin Bravender, E&E reporter

Published: Friday, January 9, 2015

U.S. EPA's staff will be even smaller next week.

Today is the last day for employees who accepted the latest round of buyout or early retirement offers to pack up their desks and leave the agency.

EPA announced plans last year to slim down its staff by about 200 workers by early this year. It's part of an ongoing effort at EPA to bring staffing levels to about 15,000 employees -- the lowest staffing level the agency has seen since the George H.W. Bush administration -- amid continued budget cuts.

The agency saw its funding slashed again in the fiscal 2015 budget passed late last year. House Appropriations Chairman Hal Rogers (R-Ky.) last month touted the budget's trimming of EPA's workforce. "The bill continues reductions to EPA staff, bringing staffing to the lowest level since 1989," he said in a statement (*E&E Daily*, Dec. 10, 2014).

EPA spokeswoman Liz Purchia today declined to say how many staffers had accepted the buyout and early out offers this time around or what staffing levels will be after those employees depart.

Buyout and early retirement offers were made to employees in EPA's Office of Administration and Resources Management, Office of Chemical Safety and Pollution Prevention, Office of Research and Development, Office of Water, Office of Solid Waste and Emergency Response, Office of Air and Radiation, and Office of International and Tribal Affairs.

Offers were also made to workers in two regional offices -- the New York-based Region 2 office and the Chicago-based Region 5 office.

In the Chicago office, 20 to 25 employees are expected to leave under the latest round of buyouts, said John O'Grady, president of the American Federation of Government Employees chapter representing EPA workers in the Chicago region.

O'Grady said staffers who remain are worried about grappling with increased workloads, and some are counting down the years until they can retire. "I would say morale is not good, and people are extremely concerned about how this Republican-controlled Congress will treat federal employees," he said today.

Morale at EPA hit a new low last year, according to a survey released last month. EPA ranked 16th in best places to work among 19 large agencies in an annual report released by the Partnership for Public Service. Employee satisfaction and commitment at the agency are the worst they've been since a nonprofit started tracking it 11 years ago, the survey found (*Greenwire*, Dec. 9, 2014).

EPA Administrator Gina McCarthy said last month that she's hoping some new hires will help that situation. "We are down some employees, but we're actually hiring for the first time in a while. We've had a hiring freeze, which actually is the worst thing for morale, I think, is to not be able to hire in critical places" (*E&ENews PM*, Dec. 9, 2014).

This latest round of buyouts marks the second in the past year. Another round of offers in early 2014 resulted in the departure of about 540 employees. Asked last month whether she anticipates further buyouts in the future, McCarthy said, "I don't have any expectations at this point."

COAL ASH:

Tenn. sues TVA over leaky storage ponds

Published: Friday, January 9, 2015

Tennessee's environmental regulator sued the Tennessee Valley Authority over practices at the authority's coal-burning power plant in Gallatin.

The Tennessee Department of Environmental Conservation alleges in its lawsuit filed Wednesday that coal ash is being disposed of in unlined storage ponds that are leaking contaminants into local groundwater.

In a statement, TVA noted the problems alleged in the lawsuit came from TVA's own monitoring data. The utility said it welcomes the state's aid in managing ash disposal while downplaying the importance of one of the leaking ponds.

The Department of Environmental Conservation has asked the Davidson County Chancery Court to impose up to $17,000 in civil penalties on TVA and to issue an injunction requiring the authority to comply

with solid waste disposal and water quality laws.

The state's lawsuit was spurred by environmental groups' claims that coal ash ponds were leaking toxins into the Cumberland River, a source of drinking water. The environmental organizations threatened to sue if the state did not act.

"While we appreciate the state taking this action today, ultimately it will be the environmental results that count," said Stephanie Durman Matheny, attorney for the Tennessee Clean Water Network (AP/Florence [Ala.] *Times Daily*, Jan. 7). **-- AW**

IOWA:

State's largest water utility to sue counties over runoff

Published: Friday, January 9, 2015

Des Moines Water Works trustees unanimously voted yesterday in support of suing three counties in federal court over farm runoff.

High levels of nitrate in local rivers are forcing Iowa's largest water utility provider to apply additional treatments to water, which is raising costs for its 500,000 customers.

Bill Stowe, Water Works' chief executive, said the treatments cost up to $7,000 a day. Stowe said the utility will need to spend millions of dollars on plant upgrades if high nitrate levels continue.

The state currently allows farmers to voluntarily participate in regulating runoff. Water Works plans to argue that the modern field-drainage systems concentrate runoff and create a large sewer system of pollutants.

If the counties don't address the utility's concerns within 60 days, Water Works will seek relief in federal court (Mark Peters, *Wall Street Journal*, Jan. 8). **-- MH**

NICARAGUA:

Canal dredging could damage lake's biodiversity

Published: Friday, January 9, 2015

The creation of the Interoceanic Canal could be fatal to fish in Lake Nicaragua, according to an independent international panel of experts.

Dredging for the canal, which will run through Lake Nicaragua, could have "unintended adverse consequences" environmentally and economically, scientists from the Inter-American Network of Academies of Science, Nicaraguan Academy of Sciences and the International Council for Science warned.

Building the canal will require doubling the depth of the especially shallow Lake Nicaragua to around 100 feet for 65 miles.

The work could cause considerably lower water quality, which may reduce oxygen levels in the lake, killing fish and creating a "dead zone," according to the scientists.

The biodiversity, engineering and hydrology experts are asking the Nicaraguan government and Chinese builder HKND to move the canal north of the lake (Paula Leighton, *SciDev.Net*, Jan. 8). **-- AW**

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CLIMATEWIRE — Mon., January 12, 2015

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1.REGULATION:

Could states use forests to offset emissions from coal plants? Probably not

A funny thing happens when states are told to cut greenhouse gas emissions or shut down their coal plants: They start looking for solutions in unexpected places, like forests.

2.ENERGY:

Growing competition, tougher rules haunt U.S. coal market -- study

The new year will bring continued difficulties for coal-fired electric utilities as new regulations targeting power plant emissions squeeze existing facilities and economics continue to favor inexpensive natural gas over coal for new fossil power generation.

TODAY'S STORIES

3.NATIONS:
Kerry begins to lay foundation for India-U.S. climate talks

4.SCIENCE:
U.S. lab scientists find small volcanoes have slowed recent global warming

5.CALIFORNIA:
Cap-and-trade fund grows to $1B; groups say it could reach $2B

6.EMISSIONS:
Diesel exhaust and other pollutants heat up planet with darker snow -- study

7.COAL:
Australia pushes 9 new coal projects despite climate impacts

8.ADAPTATION:
Climate change will displace millions globally, experts project

9.ADAPTATION:
Pakistani villagers forced to retreat as coastline erodes

10.SCIENCE:
Climate skeptics speak up at experts' forum in India

E&ETV'S ONPOINT

11.INTERNATIONAL:
World Resources Institute's Steer discusses challenges to advancing new climate agreement

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ENERGYWIRE — Mon., January 12, 2015

READ FULL EDITION

1.SAFETY:

At least 16 drilling industry workers died in fires, explosions last year

It was a few minutes before 8 on a cool spring morning at an oil well in West Texas last year when truck driver Roberto Magdaleno walked over to the site supervisor to get some papers signed. At that moment, a sand separator at the well site exploded, spraying shrapnel more than 1,400 feet, according to Occupational Safety and Health Administration officials who investigated the April 30, 2014, explosion outside Orla, Texas. Magdaleno, 41, and the site supervisor, 46-year-old Amos Ortega, were both killed. Nine others were injured. They were among at least 16 oil and gas workers killed in fires and explosions in 2014, according to a count compiled by *EnergyWire*, adding to the industry's unusually high number of such deaths.

2.TECHNOLOGY:

5 years after crisis, U.S. remains dependent on China's rare earth elements

In 2010, China set in motion a wave of worry around the globe when it dramatically lowered quotas on its exports of rare earth elements, which are crucial to the making of everything from cellphones to missile systems to electric-car batteries. China held 95 percent of the world's supply. Five years after the crisis, experts say that there never actually was a shortage in rare earths, and now most are in surplus. Nonetheless, they add that the United States and the rest of the global economy are nearly as dependent as ever on China, which has consolidated control over its rare earth industry and is positioned to dictate what the world pays for these crucial metals for years to come.

TOP STORIES

3.ELECTRICITY:
Push for FERC-mandated Southeast market faces hurdles

4.OIL:
Forecasts grow bearish as prices continue to fall

5.NEW YORK:
Lawsuit prospects dim for fracking ban opponents

ELECTRICITY

6.SOLAR:
Utilities, advocates unite to push financing bill in Ga.

7.SECURITY:
DOE posts guidance for energy cybersecurity

8.PEOPLE:
4 energy executives join clean power board

9.ELECTRICITY:
Mass. needs more gas pipelines for power, study finds

OIL AND GAS

10.TRANSPORT:
Oil price slump not denting crude-by-rail traffic -- BNSF exec

11.OHIO:
State presses court to toss enviro challenge to drilling law

12.ALASKA:
U.S.'s 'most volatile' state tax system hinges on crude

13.PIPELINES:
Enviros ask Iowa regulators to block permit for Bakken project

14.OIL:
Price slump could have lasting impact on industry

E&ETV'S ONPOINT

15. INTERNATIONAL:

World Resources Institute's Steer discusses challenges to advancing new climate agreement

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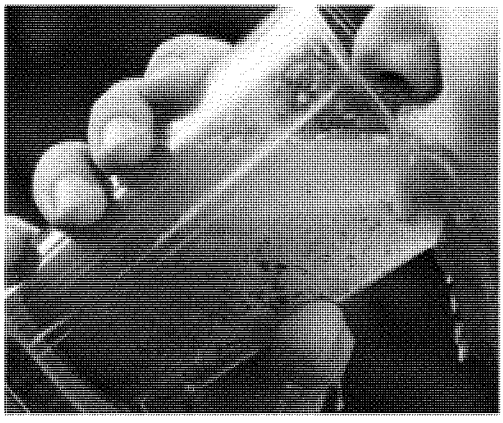

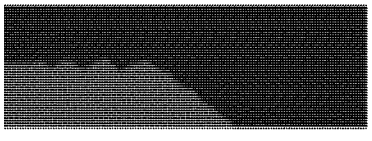

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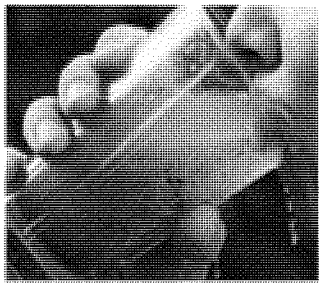

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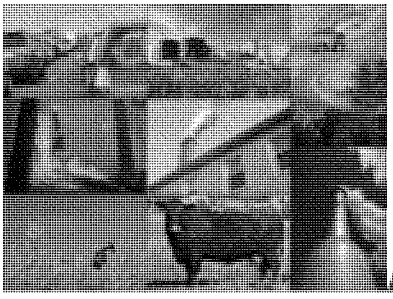
From: Turley, Jennifer
Sent: Fri 1/9/2015 3:29:29 PM
Subject: Air & Radiation Law News for January 9, 2015



Air & Radiation Law News

for January 9, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

DuPont Co. Fined for Alleged Clean Air Act Violations

The Environmental Protection Agency announced Jan. 8 that E.I. du Pont de Nemours & Co. will be fined $531,000 under a proposed consent decree for allegedly violating its Clean Air Act Title V operating permit at its chemical manufacturing...

Air Pollution

EPA Standards Could Make Wood Stoves Prohibitively Expensive, Senator Tells OMB

More stringent emissions standards for wood stoves could make the cost of new stoves so expensive that it would discourage consumers from upgrading, according to Sen. Angus King (I-Maine)....

Air Pollution

States Have One Year Less to Comply
With Ozone Standards Due to Court Decision

Areas that failed to meet the 2008 ozone standards will effectively have one year less than originally expected to demonstrate attainment after a federal appeals court in December ruled that the Environmental Protection Agency unlawfully...

Asbestos

Virginia Supreme Court Ruling on Asbestos
Harm Applies in Honeywell Suit, Court Says

The Virginia Supreme Court's stringent new standard for proving that asbestos exposure caused an illness applies in a lawsuit against Honeywell Inc., the U.S. Court of Appeals for the District of Columbia Circuit ruled Dec. 30, upholding...

Climate Change

2014 Another Year of Above Average
U.S. Temperatures, Federal Agency Says

Last year was the 18 consecutive year of above-average temperatures for the U.S., with California registering the hottest year in more than a century, the National Oceanic and Atmospheric Administration said Jan. 8....

Climate Regulation

Little Time Remaining for Obama to Set
Path for Ambitious Emissions Reductions

The Obama administration may not have the time or resources to take the aggressive action needed to set the U.S. on a path to reduce greenhouse gas emissions by as much as 28 percent from 2005 levels by 2025....

Congress

Boxer Won't Seek Re-Election in 2016,
Draws Praise for Environmental Efforts

Sen. Barbara Boxer (D-Calif.), one of the most tenacious leaders on environmental and climate change policy in Congress, announced Jan. 8 that she will step down at the end of her current term....

Congress

House, Senate Republicans Unveil Flurry
Of Energy, Environmental Bills in First Week

Republicans who now control both the House and Senate wasted little time in the first days of the 114 Congress in putting forth a spate of energy and environmental bills, many of them putting the Environmental Protection Agency's regulatory...

Energy

Energy Efficiency Bill to Be First
Keystone Amendment, Portman Says

A slimmed-down version of long-stalled energy efficiency legislation will be the first amendment considered to Keystone legislation on the Senate floor next week, Sen. Rob Portman (R-Ohio), the bill's Republican author, said Jan....

Energy

Illinois Environment, Energy Agencies
Reluctant to Bail Out Nuclear Industry

Illinois's four environmental and energy policy agencies declined to throw a lifeline to the state's ailing nuclear power industry in a report examining potential facility closures, but the agencies pointed to a series of market-driven...

Energy

India Issues Draft Guidelines for Solar Projects

India plans to add 3 gigawatts of grid-connected solar power projects through competitive bidding as part of the country's National Solar Mission. Comments on the guidelines can be submitted to the Ministry of New and Renewable Energy...

Energy

Murkowski Plans Comprehensive Energy
Legislation to 'Refresh' Current Policy

The chairman of the Senate Energy and Natural Resources Committee unveiled plans Jan. 8 to craft comprehensive energy legislation, saying current energy policy needs to be "refreshed."...

Energy

Senate Energy Committee to Hold Hearing on Natural Gas Exports Bill

The Senate Energy and Natural Resources Committee will hold a hearing later this month on legislation (S. 33) that would require the Energy Department to expedite review of applications to export natural gas, Chairman Lisa Murkowski (R-Alaska)...

International Climate

Inhofe Doesn't Trust China's Climate Pledge, Doubts Paris Talks Will Produce Agreement

Sen. Jim Inhofe (R-Okla.), the new chairman of the Senate Environment and Public Works Committee, said he doesn't believe China is truly serious about tackling climate change despite a series of recent actions from that nation and doesn't...

International Climate

Plunge in Crude Oil Prices Seen Eroding Worldwide Ambition to Cut Carbon Emissions

While the falling price of crude oil is giving consumers cheaper energy, it's threatening long-term global pollution-control efforts....

Oil & Gas

Pennsylvania Royalties Not Locked in Fund For Environmental Protection, Court Rules

Pennsylvania has the authority to use money from oil and gas leasing to supplement the state's general fund rather than leaving all of the money in a fund for environmental protection, a state court has ruled (Pa. Envtl. Def. Found. v. Corbett,...

Radioactive Waste

Schumer Urges Corps to Expedite Cleanup

Of Radioactive Waste at Tonawanda Site

Sen. Charles E. Schumer (D-N.Y.) is urging the U.S. Army Corps of Engineers to expedite a feasibility plan for remediation of a radioactive waste site in western New York....

Regulatory Policy

What to Watch in the 114th Congress: Attempts to Cut Small Business Regulation

The House and Senate Small Business committees can be expected to try to whittle away at regulations and administration policies in the 114th Congress, even though their jurisdictions are limited....

BNA INSIGHTS

Surviving and Thriving Through Environmental Inspections

Environmental inspections by regulatory authorities may occur at any time at any facility subject to environmental rules and regulations as a result of operations conducted at the facility. Because environmental regulatory inspections...

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Latest News

API Cites Burdens In Call For EPA To Scale Back New GHG Reporting Rule

The American Petroleum Institute (API) is citing concerns about major new regulatory burdens in its call for EPA to scale back its proposed new greenhouse gas (GHG) reporting mandates for the sector, warning the agency is grossly underestimating the costs and technological problems associated with its planned requirements.

EPA Urged To Clarify Key Regulatory Definitions In Grain Elevator Air Rule

State and local air officials, grain processors and others are urging EPA to clarify key regulatory definitions in the agency's proposed revised new source performance standards (NSPS) for grain elevators that can store corn used to make ethanol, saying the proposal's unclear definitions create questions about the rule's requirements.

Livestock Sector Urges EPA Against Ammonia Limit In PM Air Planning Rule

Livestock industry officials are urging EPA against creating new mandates for states to set limits on particulate matter (PM)-forming ammonia emissions in a pending agency rule outlining how states should craft plans for complying with EPA's PM air standards, fearing a recent court ruling could boost advocates' calls for such limits.

EPA's FIP Announcement Could Raise Stakes For States On ESPS Plans

EPA's announcement that it will develop a proposed federal implementation plan (FIP) alongside its final greenhouse gas (GHG) standards for existing power plants this summer could raise the stakes for states that are opposed to the rule while also potentially helping cooperative states craft their own compliance plans.

Utility Industry Welcomes EPA's Easing Of MACT Reporting Requirement

Power industry groups are welcoming EPA's decision to ease certain emissions reporting requirements in its utility maximum achievable control technology (MACT) air toxics standard, though New Jersey environment officials are opposing the move and saying it will not ensure states or EPA have all the air data they need from utilities.

News Briefs

House GOP Lawmaker Seeks To Scrap EPA's E15 Waivers

Rep. Jim Sensenbrenner (R-WI) has introduced legislation that would scrap EPA's partial waivers allowing sale of ethanol blends of up to 15 percent (E15) until the agency seeks a National Academy of Sciences (NAS) study on the potential effects of using higher ethanol blends, such as potential harm to vehicles and emissions increases.

Greenwire

KEYSTONE XL:

Energy panel sends pipeline bill to Senate floor

Manuel Quiñones, E&E reporter

Published: Thursday, January 8, 2015

The Senate Energy and Natural Resources Committee this morning cleared legislation on a 13-9 vote to

approve the Keystone XL pipeline from Canada.

Even though several Senate Democrats support the measure, S. 1, Sen. Joe Manchin (W.Va.) was the only Democratic member of the panel to vote yes on the legislation. The panel added no amendments to the measure.

The committee room was packed with observers, reporters and lawmakers, who recognized the political importance of the vote and were keen to weigh in on it.

Chairwoman Lisa Murkowski (R-Alaska) said, "We certainly are viewed as such in the eyes of many outside this country. An energy superpower that respects its neighbors, trades with its allies and builds the necessary infrastructure such as pipelines."

Sen. Maria Cantwell (Wash.), the panel's new top Democrat, said the legislation would "prematurely intervene" in the ongoing State Department review of the pipeline as a "sweetheart deal" for a special business interest. "Why the hurry?" Cantwell said.

Bill sponsor Sen. John Hoeven (R-N.D.) responded, "Well, it has gone through the process for six years, and it's still not through the process."

Sen. Rob Portman (R-Ohio) spoke about attaching part of his efficiency legislation, authored with Sen. Jeanne Shaheen (D-N.H.), to the KXL bill. That language has sections on water heaters and government buildings, among other issues. But he put off amendment introduction for floor debate.

Vermont independent Sen. Bernie Sanders then pushed for an amendment to put Congress on the record acknowledging humans' impact on climate change, plus pushing for moving away from fossil fuels.

He said about global warming, "I have a feeling that our kids and out grandchildren 40 years from now, they're going to be asking us, what were you guys thinking? What were you doing?"

In one of the livelier moments of the debate on Sanders' language, Manchin said he agreed with much of the amendment but not the section on fossil fuels.

Sanders said he was willing to include a section, at Manchin's request, to promote investment in cleaner fossil fuels but would not scrap any of the other provisions.

Manchin said he still wanted a vote on his idea, throwing the panel into confusion because no such language had been drafted. "I'm just asking for a vote on an amendment to the amendment," he said.

In the end, a majority of lawmakers voted to table the Sanders amendment and, in connection, Manchin's request. Both Murkowski and Cantwell said the floor process would provide enough time for discussion. If not, Cantwell said, the panel vote may have taken days.

Today's debate, while brief, can be seen as a preview of what's to come. Lawmakers in the following weeks will delve into climate change concerns and a host of energy issues.

In response to climate change concerns, Hoeven pointed to the State Department's review on KXL, which said Canadian oil sands would likely be developed with or without the pipeline.

But critics now say low oil prices could mean KXL would help facilitate drilling by providing a better transportation method than railroads, which are currently picking up the slack.

Still, Manchin said, "The line will be built. This line will be built sooner or later. We're just delaying the inevitable."

The legislation now moves to the Senate floor, with a procedural vote on whether to proceed with debate scheduled for Monday. It will likely receive the 60 votes necessary to move forward.

Lawmakers briefly touched on the Democratic procedural move this week that scrapped a planned hearing for yesterday. "I think it's a little unfortunate that we moved to markup first," Murkowski said.

Cantwell apologized to colleagues for the changes but not necessarily for her party's procedural move. "I hope we will adhere to regular order," she said about future panel proceedings.

Murkowski, to commemorate her first vote as panel chairwoman, announced using a hatchet from the Tsimshian people in Alaska as a gavel. It belonged to her father, former senator and chairman of the same panel, Frank Murkowski.

Beyond the Senate

The Nebraska Supreme Court, meanwhile, is weighing litigation over which jurisdiction can approve the pipeline's route through the state. The court could rule on the issue as soon as tomorrow morning.

And in South Dakota, TransCanada Corp. is looking to renew its construction permit there, which expired because of delays in beginning construction. But the Public Utilities Commission has rejected opposition demands that it start its review from scratch.

KXL bill opponents have used the ongoing state proceedings as an argument against congressional action. But the legislation does not affect state permitting.

The House today started debate on legislation to approve KXL and is scheduled to vote on the bill tomorrow. Leaders there are not allowing any amendments.

President Obama has threatened to veto the legislation. Boosters are hoping amendments may change the White House view. They have also talked about the possibility of attaching it to a broader bill or trying to override the president's veto.

But getting enough votes in both the Senate and House for an override appears unlikely, at least for now. Today, House Democratic Leader Nancy Pelosi (Calif.) said she expected her side would have enough votes to sustain a veto.

Environmental advocates have been counting on Obama to block any legislation. But they are also mobilizing supporters to call or write lawmakers to prevent the pro-KXL ranks on Capitol Hill from growing any further.

SENATE:

Environmental champion Boxer to retire

Jennifer Yachnin, E&E reporter

Published: Thursday, January 8, 2015

California Sen. Barbara Boxer, the top Democrat on the Environment and Public Works Committee and a key player on climate issues, announced today that she will retire at the end of the 114th Congress rather than seek re-election to a fifth term, ending her tenure on Capitol Hill after more than 30 years.

Boxer, 74, revealed her decision in a video posted to her PAC for a Change website today. During a three-minute mock interview conducted by her grandson Zach, Boxer denied that partisanship within the Senate or her age factored into her decision.

"When you stand up there and you fight to make sure there's a strong middle class and you protect a woman's right to choose, and you fight for jobs and a clean environment, all those things, human rights, civil rights, that's a fight worth making, so that is not a factor in my decision," said Boxer, who had to give up her chairmanship of the EPW Committee after Democrats lost their majority status in the 2014 election.

Boxer added that she would serve out the rest of her term, while also vowing to remain politically engaged after leaving Congress.

"I am never going to retire -- the work is too important -- but I will not be running for the Senate in 2016," Boxer said. "I will continue working on the issues that I love, I'll have more time to help other people through my PAC for Change community."

While Democrats are expected to retain Boxer's Senate seat, she vowed to ensure her successor comes from the party's more liberal wing.

"I have to make sure this Senate seat stays progressive -- that is so critical -- and I want to help our Democratic candidate for president make history," Boxer said. "But you know what? I want to come home. I want to come home to the state I love so much, California."

Boxer's retirement will prompt the first open-seat race for the Senate in the Golden State since 1992, when she succeeded then-Sen. Alan Cranston (D). That same year Sen. Dianne Feinstein (D) won a special election to succeed former Sen. and then-Gov. Pete Wilson (R), before going on to win a full term in 1994.

Among the plethora of potential Democratic candidates who could vie to take over Boxer's seat are Lt. Gov. Gavin Newsom, state Attorney General Kamala Harris, billionaire climate activist Tom Steyer and former Los Angeles Mayor Antonio Villaraigosa, as well as several House lawmakers including Reps. Loretta Sanchez, Jackie Speier and Xavier Becerra.

While Republicans do not have any obvious or immediate candidates in the contest, the state's open party primary could still help tilt the race in their favor -- particularly if too many Democrats appear on the ballot and split the party's support.

Under the blanket primary the state first used in congressional races in 2012, California nominees compete in a single primary regardless of party, with the top two vote-getters advancing to the November election. The format has resulted in numerous general elections featuring a single party, and it succeeded in eliminating Democrats from an otherwise left-leaning House race in 2012 when the party's numerous candidates split the vote.

Democrats nearly saw a repeat of their failure in that seat in 2014, when Redlands Mayor Pete Aguilar (D) narrowly placed second, defeating the third-place Republican by a few hundred votes. He went on to defeat Republican Paul Chabot in the general election.

But some would-be candidates could opt to sit out a crowded 2016 race for the 2018 cycle, when Gov.

Jerry Brown (D) is term-limited, or when Feinstein, who will be 85, could also opt to retire, opening up another Senate race.

Still, while the National Republican Senatorial Committee touted Boxer's retirement as a result of the GOP's dramatic success in the 2014 cycle -- nine victories that handed Republicans control of the Senate -- it notably did not suggest it could win the seat itself.

"This could be the first of many Senate retirements thanks to their new Democrat minority status. Today's news raises the question whether there will be additional Democrat Senate retirements on the horizon," NRSC spokeswoman Andrea Bozek said in a statement. "Senate Democrats are already $20 million in debt and Senator Boxer's retirement can't be welcome news for the [Democratic Senatorial Campaign Committee] who has to defend a costly and hotly contested open seat."

Steyer predicted the "best is yet to come" for Boxer as she continues to advocate for the causes she has supported over the years.

"Over the course of her career, Senator Barbara Boxer has been a warrior for progressive causes -- protecting our climate, championing the rights of women and children, and defending the core Democratic values of civil rights and economic equality for millions of Americans," Steyer said in a statement. "We Californians have been very, very fortunate to have her representing us."

WHITE HOUSE:

Filling Podesta's void

Robin Bravender, E&E reporter

Published: Thursday, January 8, 2015

The looming departure of President Obama's front man on climate issues is sparking speculation in energy circles.

The question on their minds: What will happen to energy and climate issues in a post-John Podesta White House?

"I think there's a lot of anxiety, I think there's a lot of questions," said Eric Washburn, an energy industry lobbyist at Bracewell & Giuliani. "We know these issues are going to be coming up again and again, and no one knows quite how this White House system is going to work in the next two years."

Podesta is slated to leave his post as Obama's counselor in February, a White House spokesman confirmed yesterday. The departure isn't a surprise; the former Clinton White House chief of staff signed on for a yearlong stint when he joined the Obama administration early last year, and he's rumored to be in the running for a top job in Hillary Clinton's potential 2016 White House campaign.

He's been a major force on energy and climate issues since setting up shop in the West Wing last year. He's helped oversee everything from the administration's ambitious rules to curb power plant emissions to a landmark agreement between the United States and China to slash heat-trapping gases.

Greens have viewed him as a reliable ally with the clout to ensure that environmental issues remained central to the president's agenda and as someone who could lead the defensive efforts to protect new energy and environmental policies from nearly constant attacks from Capitol Hill. Podesta's White House arrival came after the departure of several top energy aides left some outsiders wondering who would

take the reins on Obama's second-term climate change agenda

It's unclear whether the White House will appoint a new official to assume Podesta's portfolio on energy and climate issues. Some outsiders are predicting that the administration will hire a new top aide, but a replacement may not have the same environmental policy focus. Ron Klain, former White House "Ebola czar" who worked as chief of staff to then-Vice President Al Gore, has been rumored to be a possible Podesta successor.

"John Podesta has provided critical leadership on a host of energy and the environmental issues, and ... there's speculation that the White House would bring in someone else to perform a similar senior leadership role," said David Gardiner, an environmental strategist who directed the White House Climate Change Task Force under President Clinton.

David Hayes, who was deputy Interior secretary in the Obama and Clinton administrations, said he's hoping the administration will continue to pay a high level of attention to the issues Podesta has been dealing with.

"Particularly on the energy and environmental issues, I certainly am hoping that someone with his type of access and with the trust and confidence of the president and the senior staff will be available to continue to press forward on the agenda," Hayes said.

"I'm also aware of the reality that there's only one John Podesta," he added. "It's not going to be the same and may be almost, by definition, suboptimal." Hayes recently signed on as a visiting senior fellow at the Center for American Progress, a liberal think tank founded by Podesta.

If a new heavy hitter isn't brought in to take on Podesta's energy portfolio, those responsibilities are expected to fall squarely on the shoulders of White House energy and climate "czar" Dan Utech and Mike Boots, the acting chairman of the Council on Environmental Quality.

Utech and Boots are widely viewed as trusted advisers who are capable and savvy on the issues, but who won't have the same level of access to the president that Podesta has.

"Those guys are very, very smart, and they know the issues well, so that's a great starting point for handling these issues going forward," said Washburn of Bracewell & Giuliani. He said Utech and Boots are "quite accessible. All of us who work on these issues will continue to have opportunities to meet and present our case."

But as critics continue to assail the administration's environmental policies and a newly emboldened Senate GOP majority prepares to wage war against new White House rules, "The question is, how strong is the connection between those guys and the folks in the highest ranks of the White House making decisions about where they want to spend their political capital?" Washburn added.

Some outsiders are confident that Podesta has already set up a framework to guide the administration through the remainder of Obama's term.

"I don't think his leaving is going to have much of an impact," said Brian Wolff, executive vice president for public policy and external affairs at the Edison Electric Institute. In what he called a "quintessential" Podesta move, "He sort of put everything on the path already," when it comes to climate change. "I think that with Dan Utech and Mike Boots and that team over there, really it's just about now executing."

Hayes said Podesta's work with Utech and Boots has "really created a special sauce that has facilitated this initiative going forward. ... I hope that there's another combination with much of the same ingredients ... to continue the good work."

Ultimately, prioritizing energy and environmental issues will come down to Obama, said Dan Becker, director of the Safe Climate Campaign.

"Believing that the president gets it and really wants to get it right makes me more relaxed about how he goes about choosing staff to do that," Becker said.

"If the president wants to do it, it'll get done."

TRANSPORTATION:

Boehner dismisses gas tax increase as GOP campaign arm targets Dems

Sean Reilly and Daniel Bush, E&E reporters

Published: Thursday, January 8, 2015

Updated at 2:19 p.m. EST.

House Speaker John Boehner (R-Ohio) today called a long-term highway bill a top "priority" for the new Congress but said that a federal gas tax increase is unlikely to pass the Republican-controlled House and Senate.

"When the Democrats had total control of the Congress, they couldn't find votes to raise the gas tax," Boehner told reporters this morning. "It's doubtful" there will be enough votes now, he added.

The National Republican Congressional Committee is already seeking to tie 18 House Democrats, including some freshmen sworn in only two days ago, to support for an increase after Senate Minority Whip Dick Durbin (D-Ill.) reportedly backed the idea yesterday.

"The year just started and Democrats already want to raise taxes," NRCC spokeswoman Katie Prill said in similarly worded news releases this morning that questioned whether Rep. Gwen Graham (D-Fla.) and 17 other lawmakers also want to increase the 18.4-cents-per-gallon levy. Those members, Prill said in the releases, need to be honest about their party's plan "to raise the cost of living on hard-working families."

A spokesman for Graham, who narrowly upset former Rep. Steve Southerland (R) in the November elections, had no immediate comment. While Rep. John Delaney (D-Md.), another swing district lawmaker targeted by the NRCC, is studying various proposals for a gas tax hike, he overalls believes that repatriation -- bringing back and taxing earnings of U.S. companies currently parked overseas -- is the best way to raise more money for public work's needs, a spokesman said in an email.

Other Democrats singled out include Reps. Lois Capps of California, Dave Loebsack of Iowa, Brad Ashford of Nebraska and Louise Slaughter of New York.

As Prill acknowledged in a brief phone interview, the releases do not say that any of the 18 actually back an increase, but said the NRCC is asking where they stand on a "big policy issue."

The NRCC releases do not mention that Sen. Bob Corker (R-Tenn.) has proposed raising the tax by 12 cents per gallon over two years, while other GOP senators, such as Environment and Public Works Chairman James Inhofe of Oklahoma, have said that an increase should be on the table (*E&E Daily*, Jan. 8).

But the early GOP attack underscores the political obstacles to raising the gas tax, which has been at its current level since 1993, even as lawmakers are scratching for billions of dollars in fresh revenue to avoid road-building cuts that could otherwise hit late this spring when a stopgap extension of the existing highway and transit law expires. While funding a new highway bill is "critically important," Boehner said, "how we'll fund it, we're going to have to work our way through it."

In comments reported by *Politico*, Durbin said that "now's the time" to increase the tax, but added that any boost in the regressive levy should shield low- and middle-income drivers. "We've got to find some tax relief for them," Durbin said.

POLITICS:

Conservative energy group launches scorecard for lawmakers

Daniel Bush, E&E reporter

Published: Thursday, January 8, 2015

A conservative advocacy group supportive of industry has launched a "free market" congressional scorecard to promote energy legislation like the Keystone XL pipeline bill being debated on Capitol Hill this week.

The right-leaning American Energy Alliance's "American Energy Scorecard" will spotlight major energy bills that come up in the House and Senate and create a database that scores lawmakers' voting records on energy issues.

"The American Energy Scorecard educates lawmakers on pro-growth energy policies and empowers Americans to hold their elected leaders accountable for their votes, not their rhetoric," AEA President Thomas Pyle said in a statement.

At the same time, AEA will also send members of Congress alerts ahead of key votes on energy bills, ratcheting up pressure on Republicans and moderate Democrats to support industry-friendly legislation.

As part of its scorecard launch, AEA sent out its first alert today urging lawmakers to back H.R. 3, the House bill that would approve the controversial KXL project.

"The Keystone XL pipeline will create thousands of construction jobs," the alert says. A "yes" vote is the "pro-energy, pro-environment, and freedom vote."

The House is scheduled to vote on the measure tomorrow. The Senate Energy and Natural Resources Committee today passed its version of the bill, the first step toward a full Senate vote on the legislation (*see related story*). Earlier this week, President Obama promised to veto the bill once it reaches his desk.

In addition to highlighting energy bills, the scorecard is meant to counteract similar efforts by environmental groups such as the League of Conservation Voters, which puts out an annual report charting how members of Congress vote on green issues.

Pyle said AEA's scorecard will give conservatives a new weapon in the energy debate.

"For far too long, left-wing environmental groups have been the only ones issuing energy-themed voting scorecards," Pyle said. "That's about to change."

AEA isn't the only conservative group using the House's KXL bill as a litmus test on energy policy. Heritage Action said yesterday that it will include the bill on its legislative scorecard and urged lawmakers to back the measure.

"The new Republican-controlled Congress should undertake an effort to eliminate the federal government's intrusions into America's energy sector," Heritage Action said in an email to supporters.

Reporter Manuel Quiñones contributed.

UTILITIES:

TVA taps D.C. lawyer for vice president, general counsel

Matt Herbert, E&E reporter

Published: Thursday, January 8, 2015

The Tennessee Valley Authority named a Washington, D.C., attorney today as its executive vice president and general counsel.

Sherry Quirk, who recently was an equity partner at Schiff Hardin LLP, will direct TVA legal affairs, sit as corporate secretary to the authority's board of directors and serve as the designated agency ethics official.

PEOPLE

At Schiff Hardin, Quirk led 20 attorneys in the firm's energy and public utilities practice.

"I'm confident that Sherry has the legal background, public power experience and leadership attributes to serve TVA well as our general counsel," TVA President and CEO Bill Johnson said.

Quirk has represented clients with business before the Federal Energy Regulatory Commission, the Department of Energy, Congress, regional power marketing administrations and various state agencies.

Quirk will replace Ralph Rodgers, who held the position since 2010 and is retiring after 34 years at TVA.

TVA is a corporate agency that provides electricity to businesses and local power distributors that serve 9 million people in seven states.

Quirk will start work Feb. 2.

OIL AND GAS:

U.S. needs 'modernization' of crude reserve -- Moniz

Published: Thursday, January 8, 2015

A boost in domestic oil production in recent years calls for the "modernization" of how the United States stashes crude for emergencies, Energy Secretary Ernest Moniz said yesterday.

In a vestige of the 1975 OPEC oil embargo, the United States has stockpiled 691 million barrels of light, sweet crude in underground salt caverns in Louisiana and Texas.

This Strategic Petroleum Reserve will be the subject of a quadrennial energy review to be released by the Obama administration later this month.

Speaking to the Woodrow Wilson International Center for Scholars, Moniz said the review will delineate plans to address the reserve's "distributional capabilities."

"The different geography of producing oil and gas has led to a number of distribution issues that we partially uncovered by doing a test sale from the petroleum reserve [last] year," he said.

The Government Accountability Office raised questions about the crude reserve in 2006. While the location of the stockpile puts it near the heart of the nation's refining capacity, GAO warned that the refineries, used to heavy crude, would not be able to efficiently process oil from the reserve (Jennifer A. Dlouhy, *Fuel Fix*, Jan. 7). **-- AW**

WIND:

Community-owned turbine farm files for bankruptcy

Published: Thursday, January 8, 2015

Companies that collectively own two Minnesota wind farms are seeking bankruptcy protection.

With 11 turbines, the community-owned Minwind farms went online in 2002 and 2004, and were profitable until 2012. The farms are still operating, but Minwind has told federal regulators that the companies cannot afford maintenance on the turbines, which includes repairing main bearings.

Minwind also owes the Federal Energy Regulatory Commission a $1.9 million fine for failing to file certain paperwork since 2006, making the project unattractive to potential buyers.

In its bankruptcy case, the Minwind companies have filed for reorganization status, which would allow them to discard liabilities. That could allow the wind farms to be sold for the cost of their remaining debt without additional return to investors.

The Minwind case raises questions about whether smaller, community-owned wind farms can compete with major energy developers' larger wind farms.

Beth Soholt, director of the trade group Wind on the Wires, said she has concerns about whether smaller wind farms reserve enough funds for maintenance during turbines' 25-year operating agreements (David Shaffer, Minneapolis *Star Tribune*, Jan. 7). **-- AW**

EPA:

Denying climate change is 'kind of nuts,' McCarthy tells scientists

Published: Thursday, January 8, 2015

U.S. EPA Administrator Gina McCarthy, addressing a group of scientists in Phoenix yesterday, said it is crucial that researchers keep explaining to the public that climate change is real.

"Science is under attack like it has never been before," McCarthy said. "Now is not the time for us to hide or to begin to be more quiet. It's the time for us to embrace this challenge."

She added, "I can remember how the world was when I was a child. If you don't think it's changed, you're kind of nuts."

McCarthy, who addressed the 95th annual conference of the American Meteorological Society, said the fight against climate change should be seen as an economic opportunity because it provides a reason to invest in new technologies.

"We need to move in a way that's not based on fear, but opportunity," McCarthy said. "That's the way you engage people when change is happening, or else they'll hunker down and do what many are doing now, denying it" (Weldon Johnson, *Arizona Republic*, Jan. 7). **-- SP**

AUTOS:

Obama touts comeback during speech at idled hybrid factory

Published: Thursday, January 8, 2015

President Obama yesterday touted the auto industry bailout and manufacturing gains across the country in a speech at a Ford Motor Co. factory in a Detroit suburb.

Stepping out of a red Mustang during a tour of the Wayne, Mich., factory, Obama said, "This is an American car right here, this Mustang. This is beautiful."

In his speech to autoworkers, the president highlighted the 100,000 manufacturing jobs that have cut Michigan's unemployment rate in half.

The plant where he gave the speech, however, has been temporarily shut down in response to a reduction in demand for the fuel-efficient vehicles the factory makes because of freefalling oil prices. But Ford has brought 1,800 jobs to the Wayne plant alone in recent years.

"The auto industry has proved that any comeback is possible, and so has the Motor City," Obama said, praising the work of new Mayor Mike Duggan as Detroit recovers from bankruptcy.

Michigan Republicans, however, credited their recent business tax breaks and regulation trimming as factors in the resurgence, decrying Obama's visit as "another attempt to take credit for Michigan's auto industry."

"President Obama didn't rebuild our auto industry. The hard-working men and women who design, build and sell cars made that happen," Michigan Republican Party Chairman Bobby Schostak said. "In the wake of Republicans' sweeping victory in Michigan and across the nation, President Obama should take note of the common-sense, responsible policies that are driving the economies in the states like ours" (Michael Martinez, *Detroit News*, Jan. 7). **-- DTB**

ELECTRIC VEHICLES:

Companies partner to produce cheaper battery

Published: Thursday, January 8, 2015

Johnson Controls Inc. will work with Toshiba Corp. to make a 12-volt lithium titanate battery that it says could help boost gas mileage on vehicles.

The companies plan to unveil the battery at the Detroit Auto Show next week, though it won't be produced until 2018.

California-based Johnson Controls is the world's leading supplier of start-stop and conventional lead-acid batteries. The company says the technology could help vehicles achieve reductions in fuel economy without the higher cost that scares consumers away from many existing hybrid and electric vehicles.

"With an advanced start-stop system, drivers could save up to 8 percent every time they fill up their gas tank as the batteries enable the engine to shut off more frequently and for longer periods of time," said Lisa Bahash, vice president of Johnson Controls' power solutions business. "This is also a great solution for our customers because the technology allows for greater fuel savings without major changes to the existing powertrain and electrical systems" (Thomas Content, *Milwaukee Journal Sentinel*, Jan. 8). **-- SP**

AUTOS:

Leading aluminum company homes in on U.S. market amid fuel standards

Published: Thursday, January 8, 2015

American car companies' increased reliance on aluminum to meet fuel efficiency standards has one of the world's largest aluminum companies focusing on the United States.

New government fuel efficiency standards have caused carmakers to turn away from steel and toward aluminum to make up the bodies of their vehicles. By 2025, 18 percent of all U.S. vehicles are expected to have all-aluminum bodies, while less than 1 percent currently do, according to consulting and market research firm Ducker Worldwide LLC.

The trend has caught the eye of Constellium NV, a leading aluminum company based in Amsterdam.

"In Europe, for the time being, the cars that have switched to aluminum are high brand," explained Constellium CEO Pierre Vareille. "In this country, it is the high [volume] sellers, and it has been very brutal, very quick."

Vareille said he expects U.S. aluminum demand to grow to 1 million tons per year by 2020, compared with 100,000 tons per year now. The company expects an increase in European demand from 200,000 tons annually to 600,000 tons annually during the same period (John W. Miller, *Wall Street Journal*, Jan. 7). **-- AW**

AIR POLLUTION:

EPA slaps DuPont with $531K fine for CFC leaks in N.J.

Colin Sullivan, E&E reporter

Published: Thursday, January 8, 2015

NEW YORK -- U.S. EPA today fined DuPont $531,000 for chlorofluorocarbon leaks at a massive chemical plant on the shores of the Delaware River.

The fine, assessed by EPA Region 2, was directed at the 19th-century era Chambers Works Complex, which once produced black gunpowder and has manufactured more than 1,200 chemicals since going into operation in 1892.

EPA said the leaks were from two giant refrigerators that have a capacity of 3,000 pounds of CFCs. The units are used in the chemical production process.

CFCs are known to damage the ozone layer, which shields the planet from radiation linked to skin cancer. EPA said in a release that DuPont has acknowledged and fixed the problem and will comply with the fine.

Because of the age of the Chambers complex, once known as the Carneys Point plant in Carneys Point, N.J., the facility has a history of safety issues associated with chemical research including asbestos exposure. The plant also has a reputation for innovation and has been the home of several inventions, including Teflon in 1938.

The fine has been filed with the U.S. District Court for the District of New Jersey and is subject to a 30-day review process. DuPont is not expected to challenge the fine.

WYOMING:

Other states join fight against EPA over reservation boundary

Published: Thursday, January 8, 2015

Wyoming Gov. Matt Mead (R) praised the 10 states yesterday that have joined Wyoming's lawsuit against U.S. EPA over the boundary of the Wind River Indian Reservation in central Wyoming.

The case before the 10th U.S. Circuit Court of Appeals will decide whether EPA was correct to include Riverton, Wyo., within the boundaries of the reservation for the purposes of a tribal air monitoring program.

"Wyoming -- and no state -- should have its sovereignty affected through federal agency action. The EPA is fundamentally wrong, and I am glad for the support of all these states in this matter," Mead said.

Still, tribal leaders say the other states aren't entirely on board with Mead's position and say the governor should do more to work with tribes.

"Forty states kept a safe distance from Wyoming's attack on the Wind River tribes," Northern Arapaho Business Council Chairman Dean Goggles said. "Alabama and nine other states presented the 10th Circuit with a technical legal argument about the standard of review. All 10 of these states specifically stopped short of joining Gov. Mead in his effort to shrink the Wind River Reservation" (Trevor Graff, Casper [Wyo.] *Star-Tribune*, Jan. 7). **-- SP**

IDAHO:

State fines DOE over stalled nuclear cleanup

Published: Thursday, January 8, 2015

Idaho regulators have started fining the U.S. Department of Energy after federal officials missed yet another deadline in the treatment of 900,000 gallons of liquid radioactive waste stored in the central Idaho desert.

Idaho Department of Environmental Quality said yesterday that it will charge DOE $3,600 per day. The fine will increase to $6,000 per day in July if the waste remains untreated or hasn't been transferred into new containers.

The Integrated Waste Treatment Unit was built more than five years ago to turn the liquid remains of spent nuclear fuel into a more manageable powder, but it remains in test mode, as the waste still resides in three 50-year-old stainless steel tanks at the Idaho Nuclear Technology and Engineering Center.

DEQ's Hazardous Waste Compliance Manager Natalie Clough said the aging tanks are not threatening to leak but do not meet regulatory standards.

A 1992 consent order gave federal officials until Dec. 31, 2014, to phase out the tanks, one of a number of deadlines DOE has missed during the cleanup.

Clough said DOE officials had requested another extension, "but did not propose a date by which they could complete treatment."

DOE spokeswoman Danielle Miller said the department is reviewing DEQ's notice of violation (Luke Ramseth, Idaho Falls *Post Register*, Jan. 7). **-- DTB**

MAINE:

Police detain truck full of state-subsidized light bulbs

Published: Thursday, January 8, 2015

Maine law enforcement officials discovered a truck full of state-subsidized energy-efficient light bulbs yesterday that three men were reportedly planning to sell in Chicago for profit.

Police in Bangor brought in bomb-sniffing and drug-sniffing dogs to investigate a suspicious truck parked outside a federal courthouse. Police found stacks of light bulbs purchased from local stores and subsidized by Efficiency Maine, said police Sgt. Tim Cotton.

Compact-fluorescent bulbs that normally sell for $2 are sold for 25 cents under the program, while LED bulbs that usually sell for $10 are sold between $2 and $5, according to Michael Stoddard, executive director of Efficiency Maine. There is currently a 12-item purchase limit for bulbs at stores.

Police questioned three men who later admitted they planned to sell the light bulbs in Chicago for profit, Cotton said. No charges were filed (Associated Press, Jan. 7). **-- MH**

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CLIMATEWIRE — Fri., January 9, 2015

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Does Congress' 'bipartisan' energy efficiency drama have a 2nd act?

Energy efficiency legislation appears to be heading toward another defeat. But this time, it's President Obama who might wield the death blow, not Republicans.

2.WEATHER:

Despite a cool East Coast, U.S. helped boost planet's record hot spell

Except for a cool Eastern Seaboard, the planet as a whole experienced the warmest year on record in 2014, the National Oceanic and Atmospheric Administration confirmed yesterday.

TODAY'S STORIES

3.SCIENCE:

Researchers see breakthrough in building better biofuels

4.FINANCE:

Clean energy investments moved sharply upward in 2014

5.DROUGHT:

U.S. conditions improve, but groundwater and winter wheat remain problems

6.EDUCATION:

Wyo. climate teaching ban faces removal by Legislature

7.SCIENCE:

Massive deep-sea wave off Tasmania may cause global climate impacts

8.ENERGY:

Europe's largest coal company closes 4 mines

9.WEATHER:

N.M. faces 5th straight year of drought

E&ETV'S THE CUTTING EDGE

10.CLIMATE:

***Greenwire*'s Chemnick discusses legal, legislative impacts of EPA delay on power plant regulations**

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Fri., January 9, 2015

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1.GRID:

Can EPA's climate plan work without a national transmission plan?

The $300 million high-voltage "V-Plan" transmission line running 122 miles across Kansas opened last month, adding capacity to connect more generators to the grid. It has taken more than four years to complete -- a sprint as big power line projects go. Charted by the Southwest Power Pool, the grid operator in nine states from Nebraska to Louisiana, the project exemplifies the long lead times such projects require -- eight years is not remarkable, officials say. That is a central issue raised by SPP and other opponents of U.S. EPA's proposed Clean Power Plan, with its requirement to replace older coal-fired power plants with gas turbines or wind power, some of them in new locations requiring new transmission.

TOP STORIES

2.OFFSHORE DRILLING:
Enviros sue for Gulf of Mexico fracking information

3.REGULATION:
Incoming Texas leaders pan fracking bans

4.TECHNOLOGY:
At tech show, thermostats bid to control locks, sprinklers and everything else

OIL AND GAS

5.GAS EXPORTS:
Panama Canal toll proposal invites LNG traffic

6.NORTH DAKOTA:
Budget-writers watching to see where oil prices land

7.OIL SANDS:
Sediment cores show Alberta river pollutants are naturally occurring -- study

8.SAFETY:
Al-Jazeera program looks at Bakken worker deaths

9.PEOPLE:
Sierra Club appoints new interim leader in Texas

10.PEOPLE:
Texas Railroad Commission welcomes back oil and gas regulator

11.RUSSIA:
Natural gas markets compound Putin's headache

12.OIL:
Falling prices could take most-advanced rigs offline

ELECTRICITY

13.FLORIDA:
Republican groups back solar power push

14.UTILITIES:
New England power companies announce new name

E&ETV'S THE CUTTING EDGE

15.CLIMATE:

Greenwire's Chemnick discusses legal, legislative impacts of EPA delay on power plant regulations

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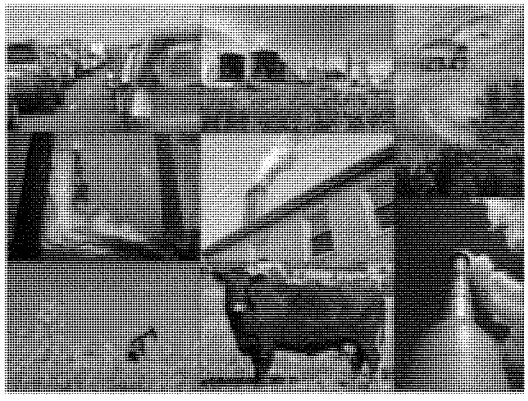

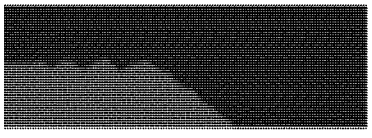

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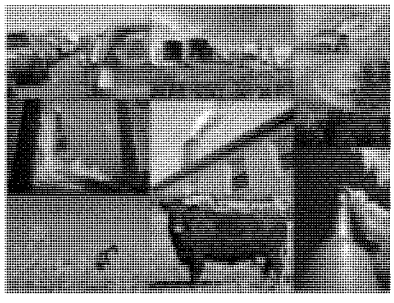

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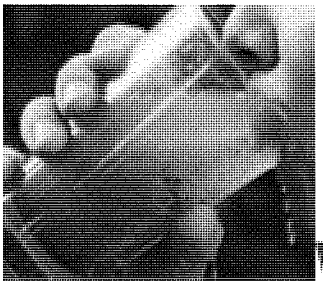
From: Turley, Jennifer
Sent: Fri 1/9/2015 2:59:41 PM
Subject: Water Law News for January 9, 2015



Water Law News

for January 9, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Delaware Bay PCB Reduction Program Seen As Model for Cutting Chesapeake Bay Toxics

Efforts to reduce polychlorinated biphenyls in fish in the Delaware Bay watershed have been successful so far and could be a model for addressing toxic pollution in the Chesapeake Bay watershed, an official said Jan. 8....

Congress

House, Senate Republicans Unveil Flurry Of Energy, Environmental Bills in First Week

Republicans who now control both the House and Senate wasted little time in the first days of the 114 Congress in putting forth a spate of energy and environmental bills, many of them putting the Environmental Protection Agency's regulatory...

Energy

Energy Efficiency Bill to Be First Keystone Amendment, Portman Says

A slimmed-down version of long-stalled energy efficiency legislation will be the first amendment considered to Keystone legislation on the Senate floor next week, Sen. Rob Portman (R-Ohio), the bill's Republican author, said Jan....

Enforcement

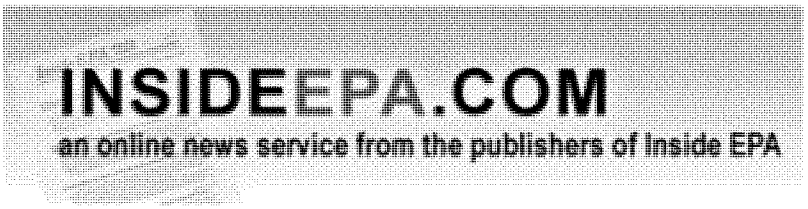
Shell Employee Cops to Violating Pipeline, Criminal Laws in 2012 Wisconsin Fuel Spill

A Shell Pipeline Co. employee pleaded guilty to inadequately monitoring a Wisconsin pipeline and falsifying related records, leading to a 9,030 gallon jet fuel spill, according to a Justice Department plea agreement released Jan. 7 (United...

Pipelines

British Columbia Bans Using LNG Pipelines To Also Carry Oil to West Coast Terminals

British Columbia will prohibit pipelines being built to carry liquefied natural gas to also transport oil or diluted bitumen, addressing concerns that infrastructure for a nascent LNG industry eventually could be used to move oil sands products...



Inside EPA's **Weekly Report**, 01/09/2015

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Greenwire

KEYSTONE XL:

Energy panel sends pipeline bill to Senate floor

Manuel Quiñones, E&E reporter

Published: Thursday, January 8, 2015

The Senate Energy and Natural Resources Committee this morning cleared legislation on a 13-9 vote to approve the Keystone XL pipeline from Canada.

Even though several Senate Democrats support the measure, S. 1, Sen. Joe Manchin (W.Va.) was the only Democratic member of the panel to vote yes on the legislation. The panel added no amendments to the measure.

The committee room was packed with observers, reporters and lawmakers, who recognized the political importance of the vote and were keen to weigh in on it.

Chairwoman Lisa Murkowski (R-Alaska) said, "We certainly are viewed as such in the eyes of many outside this country. An energy superpower that respects its neighbors, trades with its allies and builds the necessary infrastructure such as pipelines."

Sen. Maria Cantwell (Wash.), the panel's new top Democrat, said the legislation would "prematurely intervene" in the ongoing State Department review of the pipeline as a "sweetheart deal" for a special business interest. "Why the hurry?" Cantwell said.

Bill sponsor Sen. John Hoeven (R-N.D.) responded, "Well, it has gone through the process for six years, and it's still not through the process."

Sen. Rob Portman (R-Ohio) spoke about attaching part of his efficiency legislation, authored with Sen. Jeanne Shaheen (D-N.H.), to the KXL bill. That language has sections on water heaters and government buildings, among other issues. But he put off amendment introduction for floor debate.

Vermont independent Sen. Bernie Sanders then pushed for an amendment to put Congress on the record acknowledging humans' impact on climate change, plus pushing for moving away from fossil fuels.

He said about global warming, "I have a feeling that our kids and out grandchildren 40 years from now, they're going to be asking us, what were you guys thinking? What were you doing?"

In one of the livelier moments of the debate on Sanders' language, Manchin said he agreed with much of the amendment but not the section on fossil fuels.

Sanders said he was willing to include a section, at Manchin's request, to promote investment in cleaner fossil fuels but would not scrap any of the other provisions.

Manchin said he still wanted a vote on his idea, throwing the panel into confusion because no such language had been drafted. "I'm just asking for a vote on an amendment to the amendment," he said.

In the end, a majority of lawmakers voted to table the Sanders amendment and, in connection, Manchin's request. Both Murkowski and Cantwell said the floor process would provide enough time for discussion. If not, Cantwell said, the panel vote may have taken days.

Today's debate, while brief, can be seen as a preview of what's to come. Lawmakers in the following weeks will delve into climate change concerns and a host of energy issues.

In response to climate change concerns, Hoeven pointed to the State Department's review on KXL, which said Canadian oil sands would likely be developed with or without the pipeline.

But critics now say low oil prices could mean KXL would help facilitate drilling by providing a better transportation method than railroads, which are currently picking up the slack.

Still, Manchin said, "The line will be built. This line will be built sooner or later. We're just delaying the inevitable."

The legislation now moves to the Senate floor, with a procedural vote on whether to proceed with debate scheduled for Monday. It will likely receive the 60 votes necessary to move forward.

Lawmakers briefly touched on the Democratic procedural move this week that scrapped a planned hearing for yesterday. "I think it's a little unfortunate that we moved to markup first," Murkowski said.

Cantwell apologized to colleagues for the changes but not necessarily for her party's procedural move. "I hope we will adhere to regular order," she said about future panel proceedings.

Murkowski, to commemorate her first vote as panel chairwoman, announced using a hatchet from the Tsimshian people in Alaska as a gavel. It belonged to her father, former senator and chairman of the same panel, Frank Murkowski.

Beyond the Senate

The Nebraska Supreme Court, meanwhile, is weighing litigation over which jurisdiction can approve the pipeline's route through the state. The court could rule on the issue as soon as tomorrow morning.

And in South Dakota, TransCanada Corp. is looking to renew its construction permit there, which expired because of delays in beginning construction. But the Public Utilities Commission has rejected opposition demands that it start its review from scratch.

KXL bill opponents have used the ongoing state proceedings as an argument against congressional action. But the legislation does not affect state permitting.

The House today started debate on legislation to approve KXL and is scheduled to vote on the bill tomorrow. Leaders there are not allowing any amendments.

President Obama has threatened to veto the legislation. Boosters are hoping amendments may change the White House view. They have also talked about the possibility of attaching it to a broader bill or trying to override the president's veto.

But getting enough votes in both the Senate and House for an override appears unlikely, at least for now. Today, House Democratic Leader Nancy Pelosi (Calif.) said she expected her side would have enough votes to sustain a veto.

Environmental advocates have been counting on Obama to block any legislation. But they are also mobilizing supporters to call or write lawmakers to prevent the pro-KXL ranks on Capitol Hill from growing any further.

NOAA:

Mass. Dems urge agency to defend cod decision

Emily Yehle, E&E reporter

Published: Thursday, January 8, 2015

Two months after fishery managers effectively shut down the Northeastern cod fishery, Massachusetts Democratic Sens. Ed Markey and Elizabeth Warren are asking the National Oceanic and Atmospheric Administration to defend the decision's scientific backing.

In a letter this week to NOAA Administrator Kathryn Sullivan, Markey and Warren air numerous concerns from the fishing industry over NOAA's decision to conduct an unusual midseason assessment of cod stock. That preliminary assessment -- which has since been peer reviewed -- found that cod numbers had plummeted.

The data prompted emergency action. In November 2014, NOAA's National Marine Fisheries Service released an interim rule that prohibits cod fishing in large swaths of the Gulf of Maine until May 12. After that, the New England Fishery Management Council is expected to implement an effective moratorium on cod fishing.

In their letter, Markey and Warren highlight the fact that the unscheduled stock assessment update will have "serious economic repercussions" for fishing communities in Massachusetts. NOAA has said it used the cod stock assessment to test out a new process for providing regional fishery councils with more timely information. The results were so grim, officials decided to release them.

"We have ... heard concerns from stakeholders about the process through which this stock assessment update was conducted, as well as the interim rule that was put in place in response," Markey and Warren wrote. "It is essential that fisheries management decisions are based off the best available science and that the scientific basis for management decisions is transparent and inclusive of stakeholders and relevant experts."

Among other things, the senators ask NOAA for the "scientific rationale" of spawning closures and why the agency did not include representatives of the fishing industry and other stakeholders in the stock assessment process. They also ask NOAA to outline its plans for the future of cod, including whether the agency will shift resources for more at-sea monitoring and observer coverage to ensure compliance.

NOAA spokeswoman Jennie Lyons said the agency had "only just received" the letter.

"[W]e appreciate the members bringing their concerns to our attention. We will be looking closely at the letter to address the points and questions within," she said in an email.

PIPELINES:

Worker pleads guilty in spill case

Jeremy P. Jacobs, E&E reporter

Published: Thursday, January 8, 2015

A former Shell Pipeline Co. LP employee pleaded guilty yesterday to failing to conduct required inspections of a pipeline in Wisconsin that leaked 9,000 gallons of jet fuel and caused a more than $19 million cleanup.

From 2010 to 2012, Randy Jones, 44, was the "corrosion coordinator" for Shell's pipeline to the General Mitchell International Airport in Milwaukee.

According to court documents, he did not conduct required voltage tests for the pipeline to protect against corrosion. He later made false reports to the Pipeline and Hazardous Materials Safety Administration.

In January 2012, an investigation revealed a hole in the pipeline that allowed the fuel to seep into the airport's soil and a nearby creek. The fuel also melted some of the airport's asphalt, according to the Department of Justice.

Jones, of Louisiana, was required by law to use a device called a rectifier, which applies a negative current to soil near buried pipelines in order to shield the metal from corrosion.

He was supposed to conduct bimonthly voltage readings of the rectifier to monitor voltage and report to PHMSA. In December 2011, DOJ said, he submitted false data.

Jones faces two counts of violating the Pipeline Safety Act and one for making false statements. Each carries a maximum sentence of five years. He will be sentenced in April.

OIL AND GAS:

U.S. needs 'modernization' of crude reserve -- Moniz

Published: Thursday, January 8, 2015

A boost in domestic oil production in recent years calls for the "modernization" of how the United States stashes crude for emergencies, Energy Secretary Ernest Moniz said yesterday.

In a vestige of the 1975 OPEC oil embargo, the United States has stockpiled 691 million barrels of light, sweet crude in underground salt caverns in Louisiana and Texas.

This Strategic Petroleum Reserve will be the subject of a quadrennial energy review to be released by the Obama administration later this month.

Speaking to the Woodrow Wilson International Center for Scholars, Moniz said the review will delineate plans to address the reserve's "distributional capabilities."

"The different geography of producing oil and gas has led to a number of distribution issues that we partially uncovered by doing a test sale from the petroleum reserve [last] year," he said.

The Government Accountability Office raised questions about the crude reserve in 2006. While the location of the stockpile puts it near the heart of the nation's refining capacity, GAO warned that the refineries, used to heavy crude, would not be able to efficiently process oil from the reserve (Jennifer A. Dlouhy, *Fuel Fix*, Jan. 7). **-- AW**

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CLIMATEWIRE — Fri., January 9, 2015

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Does Congress' 'bipartisan' energy efficiency drama have a 2nd act?

Energy efficiency legislation appears to be heading toward another defeat. But this time, it's President Obama who might wield the death blow, not Republicans.

2.WEATHER:

Despite a cool East Coast, U.S. helped boost planet's record hot spell

Except for a cool Eastern Seaboard, the planet as a whole experienced the warmest year on record in 2014, the National Oceanic and Atmospheric Administration confirmed yesterday.

TODAY'S STORIES

3.SCIENCE:
Researchers see breakthrough in building better biofuels

4.FINANCE:
Clean energy investments moved sharply upward in 2014

5.DROUGHT:
U.S. conditions improve, but groundwater and winter wheat remain problems

6.EDUCATION:
Wyo. climate teaching ban faces removal by Legislature

7.SCIENCE:
Massive deep-sea wave off Tasmania may cause global climate impacts

8.ENERGY:
Europe's largest coal company closes 4 mines

9.WEATHER:

N.M. faces 5th straight year of drought

E&ETV'S THE CUTTING EDGE

10.CLIMATE:

***Greenwire*'s Chemnick discusses legal, legislative impacts of EPA delay on power plant regulations**

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Fri., January 9, 2015

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1.GRID:

Can EPA's climate plan work without a national transmission plan?

The $300 million high-voltage "V-Plan" transmission line running 122 miles across Kansas opened last month, adding capacity to connect more generators to the grid. It has taken more than four years to complete -- a sprint as big power line projects go. Charted by the Southwest Power Pool, the grid operator in nine states from Nebraska to Louisiana, the project exemplifies the long lead times such projects require -- eight years is not remarkable, officials say. That is a central issue raised by SPP and other opponents of U.S. EPA's proposed Clean Power Plan, with its requirement to replace older coal-fired power plants with gas turbines or wind power, some of them in new locations requiring new transmission.

TOP STORIES

2.OFFSHORE DRILLING:

Enviros sue for Gulf of Mexico fracking information

3.REGULATION:

Incoming Texas leaders pan fracking bans

4.TECHNOLOGY:

At tech show, thermostats bid to control locks, sprinklers and everything else

OIL AND GAS

5.GAS EXPORTS:

Panama Canal toll proposal invites LNG traffic

6.NORTH DAKOTA:

Budget-writers watching to see where oil prices land

7.OIL SANDS:

Sediment cores show Alberta river pollutants are naturally occurring -- study

8.SAFETY:

Al-Jazeera program looks at Bakken worker deaths

9.PEOPLE:

Sierra Club appoints new interim leader in Texas

10.PEOPLE:

Texas Railroad Commission welcomes back oil and gas regulator

11.RUSSIA:

Natural gas markets compound Putin's headache

12.OIL:

Falling prices could take most-advanced rigs offline

ELECTRICITY

13.FLORIDA:

Republican groups back solar power push

14.UTILITIES:

New England power companies announce new name

E&ETV'S THE CUTTING EDGE

15.CLIMATE:

***Greenwire*'s Chemnick discusses legal, legislative impacts of EPA delay on power plant regulations**

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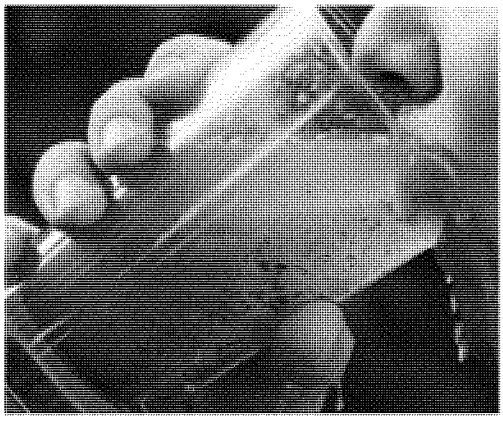

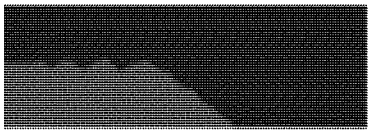

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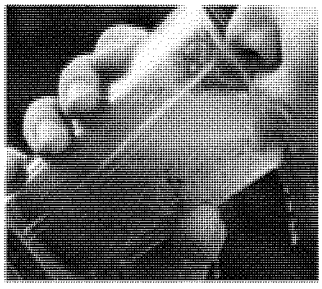

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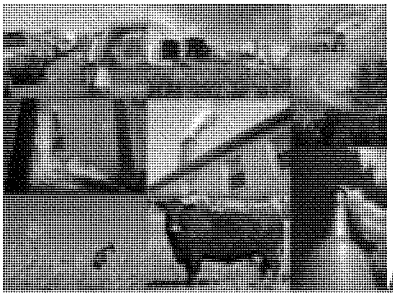


Air & Radiation Law News

for January 8, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

French Study Says PM-10 Pollution Below EU Safety Level Still Significant Health Risk

Increased air pollution from coarse particles is linked to a "significant" rises in nonaccidental and cardiovascular deaths in French cities, even when pollution levels are below the European Commission's safety threshold,...

Air Pollution

New York Proposes Streamlined Air Regulations

The New York State Department of Environmental Conservation has proposed regulations to update and streamline rules to control emissions of criteria and non-criteria air pollutants. The regulations, which were published in the Dec. 31...

Climate Change

'All-Out Attack' Being Waged to Undermine Science on Environment, EPA Chief Says

An "all-out attack" is being waged in Washington, D.C., in an effort to undermine the scientific evidence on a changing global environment, the head of the Environmental Protection Agency said Jan. 7....

Climate Regulation

EPA Delays Timeline for Finalizing Carbon Standards for New, Existing Power Plants

The Environmental Protection Agency is delaying its schedule for issuing final carbon emissions standards for power plants, the agency announced Jan. 7....

Climate Regulation

Nonprofit Groups Sue Energy Department For Kemper Carbon Capture Project Records

Two free-market legal groups filed a lawsuit in federal district court seeking documentation about the status of the Southern Co.'s Kemper County Energy Facility that the Environmental Protection Agency cited as an example of "adequately...

Climate Science

Fossil Fuels Must Remain in Ground To Restrict Warming, Scientists Say

Two-thirds of the world's fossil-fuel reserves must remain unburnt to hold temperature increases below dangerous levels, according to researchers at University College London....

Congress

Highway Bill, Robust EPA Oversight Atop Inhofe 2015 Senate Committee Agenda

Reaching a "robust" highway bill agreement and conducting aggressive oversight of Environmental Protection Agency regulations are the top two priorities for Senate Environment and Public Works Committee Chairman James Inhofe...

Energy

Drop in Natural Gas Price Raises Risk For Aging Coal, Nuclear Power Plants

A 37 percent drop in natural gas prices since June has lowered what U.S. nuclear and coal plants can charge for electricity, potentially speeding the demise of generators teetering on the brink of closing....

Energy Efficiency

Energy Department Seeks Common Definition To Aid Development of Zero Energy Buildings

The Energy Department is seeking public comment on a proposed common definition for zero energy buildings (ZEBs)....

Energy

Infrastructure Recommendations Coming As Efficiency Push Continues, Moniz Says

The Energy Department will release a series of recommendations for modernizing and improving the nation's energy infrastructure in February as the first installment of its Quadrennial Energy Review, Secretary Ernest Moniz said Jan....

Energy

Obama Keystone Veto Threat Sets Up Many Battles on Republican Agenda

President Barack Obama has vetoed fewer bills than any U.S. president since James Garfield held the office for six months in 1881. With Republicans now in control of Congress, that probably will change....

Energy

White House Formally Threatens to Veto House Bill to Approve Keystone XL Pipeline

The White House Jan. 7 formally threatened to veto legislation that would approve the Keystone XL pipeline, saying a House bill (H.R. 3) expected to be approved later this week "conflicts with longstanding Executive branch procedures...

Hazmat Transport

White House Reviewing Proposal Seeking Minimum Crew Size for Trains Carrying Crude

The White House Jan. 7 received for interagency review a Federal Railroad Administration proposed rule that is expected to establish a two-person crew minimum for trains carrying crude oil....

Insurance

Buffett's Commercial Insurer Plans To Offer New Pollution-Coverage Option

Berkshire Hathaway Inc., the firm controlled by billionaire Warren Buffett, is pushing to sell more insurance to energy and construction companies by offering as much as $25 million in new pollution coverage....

Invasive Species

EPA Says Small Vessels Need Ballast Water Coverage Despite Congressional Ban

Vessels shorter than 79 feet will need to seek Clean Water Act permits to cover discharges of ballast water regardless of the three-year moratorium imposed by Congress on the regulation of incidental discharges, according to the Environmental...

Oil & Gas

Colorado Oil, Gas Commission Stiffens Penalties for Rules Violations

The Colorado Oil and Gas Conservation Commission approved rule and policy changes (Rules 522 & 523) significantly increasing penalties for violations of the state's drilling regulations. ...

Regulatory Policy

House Resumes Push to Revamp Regulatory Procedures, Eyes Vote on Accountability Act

House Republicans Jan. 7 formally resumed their campaign to roll back regulatory burdens and revamp the rulemaking process with the introduction of the Regulatory Accountability Act, the first of several deregulation bills likely to get...

Renewable Energy

Cheap Solar Power Emerging From
Mineral Named for Russian Count

Materials that may be cheaper and more efficient than silicon at converting the sun's rays into electricity could be key to the next generation of solar power, scientists say....

Renewable Energy

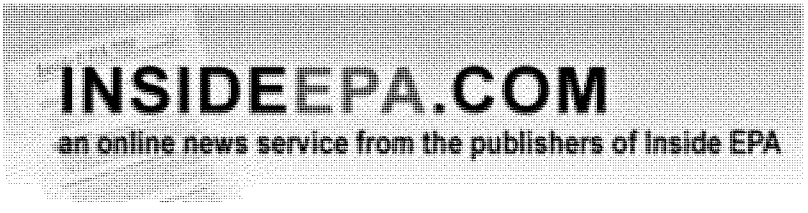
Utilities Cancel Power-Purchase Agreements
After Cape Wind Misses Dec. 31 Deadline

Cape Wind, the $2.6 billion offshore wind farm that's been under development in Massachusetts for 13 years, is facing a significant threat as two utilities seek to terminate contracts to buy electricity....

INTERVIEW

Views on Mexico's New Energy Laws From Juan Acra Lopez,
President of COPARMEX's Energy Commission

Bloomberg BNA: What role do you envision Mexican enterprises playing in the upcoming energy auctions? ...



Inside EPA's **Weekly Report**, 01/09/2015

http://insideepa.com/newsletters/inside-epa

Latest News

Inhofe Vows To Block EPA Climate, CWA Rules But Eyes TSCA Reform Bid

Sen. James Inhofe (R-OK) is vowing to use his chairmanship of the Environment & Public Works Committee (EPW) to advance bills blocking EPA's power plant climate rules and Clean Water Act (CWA) jurisdiction rule, but also plans to push for toxics law reform that may potentially give the agency some new regulatory powers.

EPA Launches Rulemaking To Craft FIP For ESPS, Delays Issuing NSPS

EPA is launching a rulemaking to develop a federal implementation plan (FIP) for its pending greenhouse gas (GHG) rule for existing power plants, a measure that will detail how the agency will implement the rule's requirements in states that choose not to, and likely provide a legal test of the agency's power to requires states to comply.

EPA Advisory Group Weighs Effectiveness Of Programs To Cut Air Toxics

An EPA Clean Air Act Advisory Committee (CAAAC) workgroup is assessing the effectiveness of existing federal and state programs to reduce air toxics as part of a broader review of EPA's efforts to cut hazardous air pollution in urban areas, as well as identifying data gaps on air toxics and steps to better communicate risks from air toxics.

D.C. Circuit Poised To Hear Lawsuits Over EPA's Vehicle, Truck GHG Rules

The U.S. Court of Appeals for the District of Columbia Circuit is poised to hear arguments next week in two cases testing whether EPA's first round of greenhouse gas (GHG) passenger vehicle and heavy-duty truck rules are legally flawed, litigation that if successful could also undermine other aspects of the agency's GHG regulatory program.

EPA Plans To Launch Pilot Project To Further Refine Eco-Label Standards

EPA plans to launch a pilot project to help it further refine draft guidelines for using private-sector environmental performance standards in federal government procurement, and to test out a possible approach to assessing such standards and eco-labels on up to four product categories, according to the agency.

Greenwire

CLIMATE:

EPA delays power plant rules, will write model reg for states

Jean Chemnick, E&E reporter

Published: Wednesday, January 7, 2015

This story was updated at 1:58 p.m. EST.

U.S. EPA will put off finalizing its greenhouse gas rules for new, modified and existing power plants until midsummer, acting EPA air chief Janet McCabe said today.

The new schedule means deadlines will slip for all three regulations.

McCabe also announced EPA will begin writing a federal model rule for the Clean Power Plan for existing power generators.

The model, which will also be final this summer, will offer guidance to states as they begin to assess ways to comply with the rule and will show what EPA would impose if they fail to submit approvable state plans by deadlines beginning in 2016.

McCabe attributed the delays in finalizing the three rules to EPA's choice to extend the public comment period for the existing power plant rule by six additional weeks last fall -- a decision she said on the press call "unavoidably and, we believe, completely appropriately added time to our schedule." The agency also issued a notice of data availability in October that asked for stakeholder comment on several alternatives to the original draft.

The additional time will give the agency an opportunity to sort through more than 2 million comments for the rules for existing and modified power plants, and another 2 million for the new source rule filed ahead of its public comment deadline May 9.

Treating the rules as a package, McCabe said, will allow EPA to address "crosscutting topics" that run through all three rules, including the way natural gas units would be treated in both the new and existing regulations.

The delay means the agency will miss a statutory deadline for finalizing the new power plant rule tomorrow, one year after the proposal was published in the *Federal Register*. But stakeholders have few practical options for enforcing that timeline, and environmentalists have said they're more interested in getting the right rule than in avoiding incremental delays.

President Obama's Climate Action Plan called for the existing power plant rule to be final by June 1, 2015. Proposals for existing and modified plants were issued last June 2.

The new schedule will push the timeline back for legal challenges to the three rules. It will mean the new Republican Congress must wait to attack the regulations using the Congressional Review Act. Those challenges can only be launched against final rules.

Industry and its allies have said that all three rules are vulnerable to court challenge.

The new power plant rule, written under the Clean Air Act's Section 111(b), would require all new coal-fired generating units to use carbon capture and storage (CCS) to reduce their emissions. But coal industry advocates plan to challenge the basis for EPA's determination that CCS is ready to be deployed commercially, noting that no U.S. power plants currently use CCS (*see related story*).

The rule for new facilities must be in place before EPA finalizes its June 2 proposal for existing power plants, and a successful challenge to the new source rule could scuttle both regulations.

While McCabe emphasized that EPA would prefer to see states write their own plans to carry out the existing-plant rule, she said EPA's model rule could be imposed on states if they opt not to write their own.

"What this is about is to make sure we're ready if we should need such a thing," she said.

Lawmakers and regulators in Texas and a few other states have suggested they might not write a plan because they believe it will be thrown out in court.

At least one state also faces internal legal barriers that might prevent it from complying with the federal law. Kentucky has enacted a law that would limit its state agency to writing a plan that would require only emissions cuts that can be achieved inside the property line at a power plant -- a hurdle the state's own officials have said could prevent the state from writing an approvable plan.

David Doniger, climate policy director at the Natural Resources Defense Council, said EPA's announcement actually keeps implantation of its rules on track.

"The agency today underscored the importance of staying on schedule -- and it is. EPA also made clear that it will have ready a federal implementation plan for any state that fails to come up with its own," he said. "So it's full speed ahead for the Clean Power Plan, which will deliver America's first-ever limits on power plant carbon pollution, the main culprit fueling dangerous climate change."

But while today's announcement pushes back EPA's deadlines to finalize the rules, it does nothing to change state deadlines to write and submit Clean Power Plan implementation strategies. Those begin in June 2016 -- less than a year after the agency plans to have issued a final rule.

Opportunities for extensions exist, but Thomas Lorenzen, a former Justice Department environmental lawyer now in private practice at Dorsey & Whitney, said states are already feeling a time crunch on this rulemaking.

"To provide less than a year to states seems very, very aggressive," he said.

McCabe dismissed questions on the call about whether EPA might have pushed back the deadline to frustrate legal or legislative challenges, but Lorenzen said delaying the final new source rule might have its strategic advantages.

"Putting the two out together allows the courts to look at them all as a whole package and potentially allows more time for development of carbon capture," he said.

The coal industry, meanwhile, said EPA's promise to write a federal model is further evidence that it is "doubling down" on a regulation that will be hazardous to the economy.

"The administration is turning a deaf ear to mounting concerns being raised by energy experts, grid operators and state officials and is instead continuing its 'go at it alone' mentality -- all to fulfill a misguided presidential legacy," said Mike Duncan, president and CEO of the American Coalition for Clean Coal Electricity.

ENERGY MARKETS:

Supreme Court to hear case that could alter scope of federal regulation

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, January 7, 2015

The Supreme Court on Monday will hear a high-profile case concerning whether federal law shields energy companies from state antitrust suits that stemmed from the California energy crisis.

ONEOK Inc. v. Learjet Inc. pits some of the country's largest natural gas vendors against their customers.

The court's decision could define the scope of the Federal Energy Regulatory Commission's authority to regulate natural gas and other markets.

Major energy producers, including American Electric Power Co., Duke Energy Corp. and ONEOK, are seeking to overturn an April 2013 decision by the 9th U.S. Circuit Court of Appeals that would allow antitrust suits filed under state laws to proceed.

The lawsuits stemmed from a 2003 FERC investigation into the California energy crisis of 2000-02, which resulted in rolling brownouts across the West. FERC concluded that gas sellers used trading practices that illegally manipulated natural gas indexes composed by trade publications, which contributed to setting the price of gas.

Commercial and industrial gas consumers, led by Learjet, filed antitrust suits in 2005 in various states seeking damages. A federal district judge consolidated them but sided with the sellers. The judge reasoned that the federal Natural Gas Act gives FERC exclusive jurisdiction over wholesale natural gas sales. The state laws, therefore, are pre-empted.

The 9th Circuit reversed. It applied a presumption against state law pre-emption and argued that the cases centered on retail sales, not wholesale, which fell outside the scope of FERC's Natural Gas Act jurisdiction.

In asking the court to review the case, ONEOK and the venders argued that Congress intended uniform natural gas regulations. The lower-court ruling, they said in court documents, "created a recipe for regulatory chaos" by "authorizing every state to impose its own unique regulatory regime on the wholesale gas market."

The customers counter that a specific provision of the Natural Gas Act specifically preserves regulation of retail sales for the states, not FERC. Further, they contend that nothing in the law demonstrates an effort by Congress to override state antitrust law.

The Natural Gas Act, they say in court filings, "creates a scheme of dual federalism" that "gives FERC authority over certain wholesale sales but reserves to the State exclusive regulatory power and thus expressly forbids FERC from exercising jurisdiction over" retail sales.

The justices asked the Obama administration to weigh in on whether to review the case. Solicitor General Donald Verrilli urged the court not to, in large part arguing that subsequent lawmaking has rendered the controversy moot.

In particular, FERC in 2003 issued guidance concerning the regulation of gas price reporting. Two years later, Congress amended the Natural Gas Act to expand FERC oversight authority so the price manipulation at issue in the California crisis is unlikely to arise again.

"Significant changes in the regulatory environment make it highly unlikely that the factual scenario giving rise to the respondents' claims will recur," Verrilli wrote, "and FERC's expanded authority under the [law] would presumably alter the preemption analysis going forward" (*Greenwire*, June 3, 2014).

Court watchers have suggested that the justices' ruling in the case would define FERC's authority under other similar statutes as well, including the Federal Power Act.

A decision in *ONEOK Inc. v. Learjet Inc.* is due by the end of June.

RENEWABLE ENERGY:

Big setback for Cape Wind as utilities terminate power deals

Ariel Wittenberg, E&E reporter

Published: Wednesday, January 7, 2015

The Cape Wind project suffered a major blow yesterday when two utilities opted to terminate agreements to purchase power from the planned offshore wind farm.

Northeast Utilities and National Grid had agreed to purchase more than 75 percent of the power produced by Cape Wind's planned 130-turbine wind farm in Nantucket Sound. Today, the utilities attributed their decision to terminate the contract to Cape Wind's failure to meet a Dec. 31 financing deadline for the $2.5 billion project.

"National Grid is disappointed that Cape Wind has been unable to meet its commitments under the contract, resulting in [the] termination of the power purchase agreement," National Grid spokesman Jake Navarro said in a statement.

Northeast Utilities spokesman Michael Durand wrote in an email that, under the terms of the contract, Cape Wind could have posted financial security in order to extend the deadline for financing but decided not to.

"Therefore the contract is now terminated," he wrote.

Cape Wind has previously characterized its power purchase agreements as key to securing financing, and the utilities' decision raises questions about whether the developer will be able to close financing without the contractors.

But Cape Wind spokesman Mark Rodgers said the developer does not "regard the decision to terminate the contract as valid," citing a contract provision that would allow delays in reaching project milestones caused by "unusual, unexpected and significant events."

Those events should include the "unprecedented and relentless litigation the Alliance to Protect Nantucket Sound" has filed to block the project, Cape Wind President Jim Gordon wrote in a letter to the utilities Dec. 31 urging them not to terminate their contracts.

The alliance, which opposes the project for economic and aesthetic reasons, has filed more than 20 administrative and judicial challenges to Cape Wind.

"This exceptional level of litigation against Cape Wind for the purpose of delay is extraordinary, unusual, unexpected and significant," Gordon wrote. "It has been completely beyond Cape Wind's control and could not have been prevented or avoided."

Gordon said he expected the project to overcome the latest challenge and secure financing in 2015.

Alliance President and CEO Audra Parker heralded the utilities' decision, saying it "speaks to the poor economics of the project."

Northeast Utilities had agreed to purchase 27.5 percent of Cape Wind's production, and National Grid had agreed to purchase 50 percent. The average residential electricity customer would have paid an extra $1.50 per month under the contract.

"This is very bad for Cape Wind but great news for ratepayers across Massachusetts," Parker said.

Outgoing Massachusetts Gov. Deval Patrick (D) has championed the Cape Wind project since taking office in 2007. His administration has even funded the construction of a $100 million new port facility in New Bedford, Mass., to cater to the needs of the offshore wind industry. In September, Cape Wind signed a lease to use the facility beginning in 2015.

Patrick spokeswoman Jesse Mermell said today that the news about Cape Wind has not put a damper on the governor's enthusiasm for the industry.

"The future of offshore wind in the commonwealth remains bright," she said.

CLIMATE:

Conservative group sues DOE in strike against power plant rule

Jean Chemnick, E&E reporter

Published: Wednesday, January 7, 2015

A conservative group sued the Energy Department this week for documents on a major carbon capture and storage project in a bid to chip away at a key component of U.S. EPA's draft rule for curbing greenhouse gases from new power plants.

The Energy & Environment Legal Institute filed the Freedom of Information Act lawsuit Monday, asking the U.S. District Court for the District of Columbia to order the release of DOE's financial assistance contract with Southern Co., which received nearly $300 million in federal support for a CCS project in Kemper County, Miss.

DOE provided the assistance in order to secure cost and technical data that it has so far been reluctant to share with the public, the institute's Chris Horner said.

The document his group has requested, he said, should show Kemper's billions of dollars in cost overruns are mostly linked to its use of CCS. If that's true, he said, it should undermine EPA's year-old proposal to mandate CCS use for all future coal-fired power plants.

The rule proposal is based on the agency's assertion that CCS is commercially viable. EPA cites four projects in the draft to help make the case that CCS has developed to the point that it can be used on a commercial scale.

Kemper -- the most prominent of the CCS projects -- has faced delays and about $3 billion in cost overruns (*ClimateWire*, Oct. 3, 2014).

DOE hasn't revealed what part of the project is primarily responsible for the added expense, Horner said. The agency has provided only a heavily redacted version of the contract. But the lawsuit should require the department to fill in the blanks, he said.

"We'll be able to put numbers against any claim," Horner said.

EPA faces a statutory requirement to finalize its new power plant rule this month, but many observers expect that to slip. The new power plant rule must be in place and finalized before EPA finishes its existing power plant rule for CO2.

Click here to see the lawsuit.

EPA:

Senate Democrat presses for answers on fake spy, private emails

Robin Bravender, E&E reporter

Published: Wednesday, January 7, 2015

Sen. Mark Warner has been pressing U.S. EPA to respond to his constituents' outrage over recent agency scandals.

The Virginia Democrat received a series of notes last year from residents of the Old Dominion State fretting about the scandal surrounding the former EPA employee who posed as a CIA agent and about a senior agency official's use of a private email account for official business. Warner forwarded their notes to EPA, asking the agency for answers, according to documents recently obtained under the Freedom of Information Act.

Last January, Warner received two emails from Virginia residents incensed by the case of John Beale, a former EPA official who pleaded guilty in 2013 to stealing nearly $900,000 in salary and benefits while lying about being a CIA operative and faking a case of malaria. Beale is now serving out a 2½-year sentence in a federal prison in Maryland (*Greenwire*, Dec. 18, 2013).

"Will convicted EPA employee John Beale, who committed a crime against the American public, receive full pension and retirement benefits?" a resident of Fort Belvoir, Va., wrote to Warner.

The Beale scandal had become the brunt of jokes and was the subject of a segment on Comedy Central's "The Daily Show with Jon Stewart" in late 2013.

At least one of Warner's constituents wasn't amused.

"Frankly, I don't think this is a laughing matter -- like the comedians out here seem to think," a resident of Deltaville, Va., said in a note to Warner's office with the subject line "EPA -- JOHN BEALE FIASCO."

She added, "The fact that this happened with the EPA -- leads me to believe that not only was Bush thinking this Agency is a JOKE -- but, SADLY -- OBAMA DOES TOO. Exactly what is going on in DC -- ALL of you are becoming a SAD JOKE!!!! ... A very sad day for this Country -- and THE PLANET!!!" The constituents' names were redacted in the documents released by EPA.

In March, Warner forwarded their concerns to Joyce Frank in EPA's congressional and intergovernmental relations office, asking for answers. "I would appreciate it if you could look into this matter and provide me with an appropriate response," he said.

Warner heard back from Craig Hooks, who was then head of EPA's administration and resource management office.

"In the aftermath of the conviction of Mr. Beale, the agency did explore what, if any, opportunities existed to prevent receipt of his federal annuity," Hooks wrote. According to federal rules, employees are entitled to their federal annuities unless they're convicted of "one of several offenses directly related to treason or espionage," Hooks said.

"While the government could not cancel Mr. Beale's annuity due to his fraud, he has repaid to the U.S. Treasury nearly $900,000 and forfeited over $500,000 to the taxpayers as an additional penalty," Hooks said. He added that EPA was also working to recover money from Beale for periods of time that weren't recovered by his plea agreement.

Congressional Republicans have also fumed about Beale receiving a pension after stealing government cash. Sen. David Vitter (R-La.) called it "outrageous" that Beale was receiving a pension at all, and urged the Office of Personnel Management to ensure that he wasn't getting a dime more than the law required (*E&E Daily*, Nov. 6, 2013).

Another Virginia resident expressed concerns to Warner last February about reports that EPA's New York-based Region 2 administrator had been using her private email account for business purposes.

"EPA Region 2 Administrator Judith Enck has been found using her private email account to communicate to environmental activists about securing government funding, getting meetings with high level officials and attending events," wrote the Harrisonburg, Va., resident.

"This is against the rules of the EPA and is a way to avoid transparency requirements of the agency. Judith Enck should be terminated as a government employee immediately."

That Feb. 24 message to Warner was sent the same day *The Daily Caller* published a story saying Enck had used a private email account to give advice "to environmental activists, including securing government funding, getting meetings with high-level officials and attending events."

Warner asked EPA for a response to those concerns in a March letter, hearing back from Laura Vaught in EPA's congressional affairs office in October.

Vaught suggested that Warner's constituent may be interested in reviewing a September 2013 Office of Inspector General report about EPA officials' use of private email accounts. "The OIG 'found no evidence that the EPA used, promoted or encouraged the use of private "nongovernmental" email accounts to circumvent records management responsibilities or reprimanded, counseled or took administrative actions against personnel for using private email or alias accounts for conducting official government business,'" she wrote (*E&ENews PM*, Sept. 30, 2013).

Warner's office didn't respond to a request to comment for this story.

Reporter Kevin Bogardus contributed.

RAIL:

Feds turn out in force to support Calif.'s bullet train

Debra Kahn, E&E reporter

Published: Wednesday, January 7, 2015

FRESNO, Calif. -- California Gov. Jerry Brown (D) is forging ahead on his high-speed rail plans, breaking ground yesterday on the first stretch of a construction plan 35 years in the making.

A two-block stretch of dirt and asphalt in downtown Fresno marks the site of the first station planned for California's bullet train, which is now beginning to take shape, six years after voters approved funding for it.

Brown received vocal support yesterday from the Obama administration and elected officials, who have given the project $3.4 billion in funding from the 2009 stimulus package and congressional appropriations.

"California will now set the standard for the nation when it comes to high-speed rail in America," said Federal Railroad Administrator Joe Szabo. "Today we make history."

The entire first phase of the system -- stretching 520 miles from San Francisco to Los Angeles -- won't be completed until 2029, and there is no timeline yet for the ultimate aim: to connect the northern and southernmost cities of Sacramento and San Diego.

"I know there are a lot of critics," Brown said. "We listen, and we change, and we modify. But we still can build."

U.S. EPA Administrator Gina McCarthy was also on hand and had high praise, as well, for Brown's proposal in his inaugural speech Monday to raise the state's share of renewable energy to 50 percent and halve the use of petroleum in cars and trucks by 2030 (*E&ENews PM*, Jan. 5).

"California has been a leader in my world for so long," McCarthy said. "All I do is chase it. ... We are with you, and someday, I'm going to come close to catching you, but not for a while."

"This administration will continue to work with states and will continue to work with the passenger communities," she said. "We're going to build a rail network that will connect 80 percent of Americans to high-speed rail in 25 years."

Brown, who at age 76 just began his fourth term as governor, expressed impatience with the timeline for the project. The first stretch of operational line -- 300 miles from Merced to Burbank -- will not start carrying passengers until 2022, although the state plans to allow Amtrak to use the line starting in 2019 while high-speed trains are being tested.

"We've been talking about this 35 years, and they tell me we've still got 15 to go," he said. "Well, I'm going to try to cut a few corners here and get it going."

The project has faced opposition from citizens concerned about its ballooning price tag -- $68 billion currently, up from the $33 billion estimate in 2008, when voters approved $9.95 billion in bonds to pay for it. Congressional Republicans have also tried to take away the project's existing federal funding, with Rep. Jeff Denham, who represents California's Central Valley, leading the way.

"There is simply no way the [California High-Speed Rail] Authority will meet the 2017 deadline to spend the stimulus funding, a failure 10 years in the making," he said yesterday in a statement. "It's hard to celebrate breaking ground on what is likely to become abandoned pieces of track that never connect to a useable segment."

The state agency has also weathered criticism for its decision to start construction in the Central Valley, rather than the urban cores of Los Angeles and San Francisco. The state has also had to scale back its plans, relying on existing rail systems at both ends and upgrading them sooner than planned, in order to bring the cost down and win over local governments looking for tangible benefits.

A group of about 15 protesters shouted through the fence into the invitation-only event. Fresno resident Cherylyn Smith, a retired teacher, was carrying a sign reading "Do not bail high-speed rail."

"This is a very private-interest kind of endeavor," she said, arguing that the money would be better spent on solar, wind and other renewables that create jobs. "If we have $68 billion to spend, let's do that."

Brown shrugged off concerns about the funding, comparing the undertaking to other massive infrastructure projects like the State Water Project and the Bay Area Rapid Transit system.

"It's not that expensive; we can afford it," he said. "All these projects are a little bit touch-and-go all the way, because you'll always have critics [saying], 'Why spend the money?' My inclination is not to spend a thing. But on the other hand, I like trains. I like clean air."

Federal officials, as well, acknowledged the criticism but said the project would prove itself over time.

"I tell my Republican friends who have difficulty with this today that they're pulling a John Kerry, in the sense that they were all for it before they became against it," said Rep. Jim Costa (D-Calif.), who as a California state legislator in the 1980s wrote a bill that authorized the first studies of high-speed rail. "They all had some sort of epiphany of sorts."

Szabo also downplayed the threat of congressional involvement.

"It's really somewhat insignificant, given the fact that no additional federal funding is needed at this time," he said. FRA gave California an extension earlier this year on providing matching funds for the federal grant so that Brown could pass his budget, which gave high-speed rail $250 million per year in funds from the state's cap-and-trade program (*Greenwire*, Feb. 24, 2014).

Private investment from foreign companies could fill in any funding gaps, he said. "The project really has reached a tipping point now," Szabo said. "Time will tell, over the next decade, but clearly at this point and into the near foreseeable future, there's no need for additional federal dollars."

Construction at the site has been under way since June, with contractors relocating underground utility lines, demolishing buildings and removing hazardous material. Yesterday's groundbreaking was more symbolic in nature, with a pile of metal scraps as the only evidence of a former Del Monte packing plant on the site.

The city is banking on high-speed rail to lift it back to its former prominence as a railroad hub.

Fresno, with 500,000 residents, is the fifth-largest city in California but has not recovered from the recession. Fresno County has an unemployment rate of 9.5 percent, well above the 7.3 percent statewide and 5.5 percent nationwide rates.

"This project establishes Fresno as the central cog, the essential connecting point for Northern and Southern California," Mayor Ashley Swearengin said.

The rail line accompanies a new general plan for the city, approved last month, that encourages more development in the city center, which has been neglected for decades in favor of urban sprawl.

Local real estate developer Cliff Tutelian, who owns an office building near the site, said the rail station is essential to Fresno's redevelopment plans.

"It's going to create activity that we don't have that we should have for a community of this size," he said.

TRANSPORTATION:

Highway Trust Fund woes could feed economic woes -- Utah governor

Sean Reilly, E&E reporter

Published: Wednesday, January 7, 2015

The shaky status of the federal Highway Trust Fund poses a threat to state economies across the country, Utah Gov. Gary Herbert (R) warned yesterday as he called on Congress to approve a long-term reauthorization of road and transit programs.

The trust fund pumps more than $50 billion annually into such programs. If lawmakers don't act soon, reimbursements to states for construction work already under way will be at risk as early as this spring, Herbert, the vice chairman of the National Governors Association, said in a "state of the states" address at the National Press Club. On a related front, a stopgap extension of the existing authorization law, known as MAP-21, expires at the end of May.

"The uncertainty created by these two pending events will leave jobs and economic growth at risk in all of our states," Herbert said. While a multiyear reauthorization of surface transportation programs should maintain flexibility for public-private partnerships and other financing options, he said, they "cannot replace the continued federal investment necessary to create a cohesive national transportation system."

Congress approved the current extension at the end of July 2014, the day before the Department of Transportation planned to begin delaying and reducing road-building reimbursements to states. In recent years, the fuel tax receipts that are supposed to be the trust fund's primary source of support have been running chronically short of congressionally imposed spending demands; finding the money needed to prevent cutbacks could present an early -- and daunting -- challenge to the newly installed 114th Congress.

Joining Herbert for yesterday's joint address was Colorado Gov. John Hickenlooper (D), the governors association's current chairman, who said that a lack of federal infrastructure investment is handicapping U.S. businesses that operate in global markets.

"What was new 65 years ago now has to be rebuilt or repaired," Hickenlooper said. But while states boosted their transportation funding by more than 10 percent in fiscal 2014, he added, the federal share declined slightly. To bridge the gap, Hickenlooper also touted public-private partnerships, saying they can leverage the financing and expertise needed to deliver new roads, tunnels and other public works projects "at a lower cost and more quickly."

KEYSTONE XL:

Senate, House leaders continue laying groundwork for pipeline debate

Manuel Quiñones, Nick Juliano and Daniel Bush, E&E reporters

Published: Wednesday, January 7, 2015

Republicans are sticking by their plan for quick consideration of legislation to approve the Keystone XL pipeline despite Democratic accusations that they are abandoning regular order.

After Democrats yesterday used a procedural maneuver to thwart a planned Energy and Natural Resources Committee hearing on the legislation, McConnell resolved to use a tactic known as Rule 14 to send S. 1 straight to the floor. He did so again this morning.

"As we announced last month," McConnell said during floor remarks, "the bipartisan Keystone energy bill will be on the floor and it will be open for amendment next week."

Senate Democrats are continuing to accuse the new GOP majority of breaking its regular order pledge. They point to a McConnell statement expecting to use Rule 14 only sparingly.

Sen. Dick Durbin (Ill.), the member of the Democratic leadership who yesterday objected to the hearing, touched on the issue during remarks this morning.

He said Democrats want to ensure the proper functioning of the Senate and suggested Republicans had not done the same during their time in the minority.

"Though we hope that our minority status in the Senate is short-lived, I think that we will establish that the Democrats are a much better minority when it comes to the Senate than perhaps those on the other side of the aisle," he said. "Only time will tell."

The back-and-forth on how the Senate should be run has been ongoing for years. Republicans blame Democrats for unfairly blocking their proposals and say they will be better stewards of the chamber.

Despite today's canceled hearing, the ENR panel will likely meet tomorrow to vote on KXL legislation. Its main sponsor, Sen. John Hoeven (R-N.D.), said today he expected McConnell to file cloture on the motion to proceed soon after, setting up a procedural vote for Monday. KXL backers say they have the 60 votes necessary to clear the hurdle.

Leaders expect to begin processing amendments the following week because of a rule requiring an intervening day before amendment consideration begins. Republicans are scheduled to be out after Wednesday morning for their traditional policy retreat at the start of each session.

Hoeven said some senators expected Democrats could agree to a unanimous consent agreement to speed up the process, but he did not think that was likely.

"I think we'll vote and follow the standard procedure," Hoeven said. "But it really doesn't change anything -- you're talking being able to process amendments Tuesday or not, but either way people can tee them up. So I don't think it really changes much."

He also suggested there wouldn't be much fallout from today's hearing cancellation, given that Republicans still plan to allow for open amendment debate on the floor.

On the House side, the Rules Committee meets this afternoon to set parameters for debate on its version of the legislation, H.R. 3, which is identical to S. 1. A floor vote is planned for Friday. Chamber leaders are unlikely to allow amendments.

On the other side of Pennsylvania Avenue, the White House today reiterated its veto threat. It accused lawmakers of wanting to circumvent the executive process for weighing trans-boundary pipelines.

Doing so would cut short consideration of important issues relevant to the national interest, the White

House said. The bill also would authorize the project despite uncertainty due to ongoing litigation in Nebraska.

House Speaker John Boehner (R-Ohio) told reporters this morning that a veto would send Americans who support the pipeline the message that Obama "doesn't really care what they think."

House Majority Whip Steve Scalise (R-La.) added, "I would urge the president to sign that bill and create those jobs to move the American economy forward."

COURTS:

Energy scientist's killer gets 58 years in jail for 2004 murder

Colin Sullivan, E&E reporter

Published: Wednesday, January 7, 2015

NEW YORK -- The killer of a cold fusion energy theorist was sentenced to 58 years in jail yesterday for his part in a 2004 murder related to a tenant eviction.

Mozzelle Brown was tried and convicted by the New London, Conn., Superior Court for the brutal beating of Eugene Mallove, formerly the director of the New Hampshire-based New Energy Foundation and author of several controversial books on cold fusion.

Brown, 41, intends to appeal, according to court documents, and denied he was the murderer following the sentence, according to local press reports.

Mallove was 56 at the time of the murder and had evicted several of Brown's relatives for failing to pay rent at Mallove's childhood home in Norwich, Conn. Chad Schaffer, Brown's cousin, was also charged in the case and is currently serving 16 years for manslaughter.

Brown was not arrested in the case on the current felony charges until November 2013 after an initial rap was dismissed in 2008 because police suspected the crime was connected to a burglary. According to a report at FoxCT.com, Brown and Schaffer had attempted to stage the murder scene as if Mallove had been robbed.

Mallove's case has sparked some conspiracy theories because he had penned an open letter months before his death published on the *Infinite Energy* website detailing a "universal appeal for support" for what he called "radically new forms of energy."

In the letter, Mallove argued passionately for more funding and research in fields related to cold fusion, including what he called "new hydrogen physics" and "vacuum energy" or zero point energy. On new hydrogen physics, Mallove suggested scientists and government officials in the energy field were ignoring alternatives to fossil fuels that could revolutionize energy use.

The 2003 letter was addressed to "all the people of the world" and distributed in a press release from the New Energy Foundation. Among other topics, Mallove urged that more attention be paid to energy from water because "within ordinary water there is a heretofore unimaginably large energy reservoir that may be as great as 300 gallons of gasoline energy equivalent within each gallon of plain water!"

He added: "This energy would be non-polluting, would have no hazardous radiation, and would, in effect, have a zero fuel cost. Only one cubic kilometer of ocean water would provide energy equivalent to all the

known oil reserves on Earth."

Mallove argued further that his theories had been frozen out of "the supposedly well-ordered and ethical house of science."

Mallove held bachelor's and master's degrees from the Massachusetts Institute of Technology and a doctorate from Harvard University. Among his more notable works were a 1991 book "Fire from Ice" on cold fusion theory and a 1981 paper on using solar sails to reach the nearest star to our solar system, Alpha Centauri.

NATURAL GAS:

Rural homeowners tap untreated 'raw' fuel, raising safety concerns

Published: Wednesday, January 7, 2015

Some rural homeowners may be receiving "raw gas" -- an untreated blend tapped directly from long-distance pipelines -- rather than the clean-burning fuel most expect.

Texas homeowner Jon Salis learned that his natural gas service through Atmos Energy Corp. at the cabin he lives in about 80 miles west of Arlington was what he called a "raw gas cocktail" from a natural gas pipeline running beneath a nearby lake.

The practice of connecting rural homes to raw gas through what's known as a farm tap started decades ago because it was considered cheaper and easier. But the gas contains higher concentrations of ethane and butane, which means it can freeze more easily in cold weather and can corrode appliances, which could cause the appliances to misfire and emit carbon monoxide.

In Texas, no one tracks how many customers receive raw gas at their homes, and the state's Railroad Commission does not set standards for the quality of natural gas that may be sent through pipelines.

Salis said he turned off his furnace when he learned of the risks.

"I don't want to be on this gas," Salis said. "I want to be off it as quick as I can."

A spokeswoman for Atmos Energy said the practice was safe and posed minimal risk for homeowners like Salis.

"Safety is our No. 1 priority," Atmos spokeswoman Jennifer Altieri said. "Like with any utility service, there is a risk things can go wrong. But there are thousands of people who live in Texas that are fully aware of the risks of wet gas and yet still choose to utilize it as an energy source for their homes" (Malewitz/Baker, *Texas Tribune*, Jan. 6). **-- SP**

ELECTRIC VEHICLES:

Drivers mull conventional autos amid gas price plummet

Published: Wednesday, January 7, 2015

Electric car manufacturers are hoping to keep drivers interested this year even as gas prices drop dramatically.

In the past, electric and hybrid vehicle sales have fallen along with fuel prices, but this year, alternative-fuel vehicle sales rose 22 percent over last year despite the drop.

Stifel auto analyst James Albertine said one reason for electric cars' rising sales could be that consumers are more open to alternative-fuel vehicles than in the past.

"The hurdles to overcome are arguably lower," Albertine said.

Washington state is one of the best markets for plug-in cars. On average, Washington electric car drivers pay a third as much as motorists operating gas-run vehicles, even with lower fuel prices, according to the Department of Energy.

Not all consumers recognize that, however. Jim Johnson, owner of MC Electric car dealership in Washington, said a couple came into the showroom this week looking for an electric car. Soon they started discussing the drop in gas prices and how much they could save if they bought a traditional-fuel vehicle.

"I pointed out to them how much you can save if you don't use any gas at all," Johnson said.

Washington state officials hope drivers will continue to choose electric cars, with Gov. Jay Inslee (D) setting a goal to increase the number of plug-ins on state roads from 10,000 to 50,000 by 2020 (Hal Bernton, *Seattle Times*, Jan. 6). **-- AW**

AUTOS:

EPA, DOE debunk winter idling myth

Published: Wednesday, January 7, 2015

Contrary to popular belief, idling cars during the winter months does not help the vehicle's performance and actually does more harm than good, according to federal agencies.

Both U.S. EPA and the Department of Energy suggest 30 seconds of idling is sufficient for the car to warm up and said driving can actually speed the warming process.

Anything longer than 30 seconds is wasting energy and emitting pollution, both agencies said.

"When a car idles for more than 30 seconds, it has several negative effects, such as increasing air pollution unnecessarily, wasting fuel and money, and causing excessive wear or even damaging a car's engine components, including cylinders, spark plugs and the exhaust system," said the EPA's Office of Transportation and Air Quality (Chris Mooney, *Washington Post*, Jan. 6). **-- MH**

AIR POLLUTION:

Low oil prices may cause more smog in India, China

Published: Wednesday, January 7, 2015

As oil prices continue to tumble, experts fear that air pollution in India and China will increase.

Since last year, gas prices in India have fallen by 14 percent and prices in China have fallen by 23 percent.

In November 2014, both countries attempted to slow the falling prices by raising taxes on transportation fuels. India has increased taxes twice on both gasoline and diesel fuels since then.

"Too low a price in gasoline and diesel will only spur demand and consumption and may cause some direct setbacks to our goal to cut emissions," said Yin Zhongqing of the National People's Congress in China. "I think people may live with higher taxes in exchange for better air quality."

Regardless of the tax increases, gasoline and diesel consumption has risen in both countries (Guo/Shanker/Katakey, Bloomberg, Jan. 6). **-- MH**

CHINA:

Court encourages lawsuits to curb pollution

Published: Wednesday, January 7, 2015

China's highest court joined Beijing's effort to curb harmful emissions today, granting public interest groups more power to sue polluters.

The Supreme People's Court announced on its website that social groups will have their court fees reduced if they sue to fight polluters. Social groups also can sue firms or individuals located in different parts of the country.

The court's decision applies to both nongovernmental organizations and government-backed ones. It is not clear whether the special status would apply to individual environmentalists.

Last year, Premier Li Keqiang said China, the world's largest emitter of greenhouse gases, was "declaring war" against pollution. Since then, the country has announced a number of programs to curb pollution (AFP/London *Guardian*, Jan. 7). **-- AW**

ENERGY POLICY:

Advanced Energy Economy's Woolf says EPA climate rule to converge with utility business evolution in 2015

Published: Wednesday, January 7, 2015

As Republicans gain control of both chambers of Congress this week, energy and climate issues are expected to dominate discussions on Capitol Hill. How will the power shift, oil price dynamics and the Obama administration's executive actions on climate impact policies coming out of the 114th Congress? During today's OnPoint, Malcolm Woolf, senior vice president for policy and government affairs at Advanced Energy Economy, previews crucial legislative and regulatory energy battles expected this year. He also explains how the debate, and likely vote, on the Keystone XL pipeline could set the stage for subsequent energy measures.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Thu., January 8, 2015

READ FULL EDITION

1.POLICY:

U.S. EPA delays and combines its new power plant rules

U.S. EPA is delaying the final rollout of its new rules aimed at lowering the power sector's greenhouse gas emissions by 30 percent by 2030. And while the agency insists the two delays -- one a matter of months, the other a matter of weeks -- are aimed at helping states develop compliance plans, observers say the moves could help shield the efforts from legal and congressional challenges.

2.STATES:

EPA's Clean Power Plan backstop: carrot or stick?

For months, U.S. EPA has been encouraging states disinclined to cooperate with new power plant regulations to develop their own plans for reducing greenhouse gas emissions or else deal with a federal version that might not be as tailored to their preferences. Yesterday, acting air chief Janet McCabe said that alternative will become public by midsummer.

TODAY'S STORIES

3.SCIENCE:
Most fossil fuels should stay in the ground to avoid dangerous temperature rise -- study

4.FINANCE:
World Bank advises developing countries to use drop in oil prices to cut subsidies

5.ELECTRICITY:
Which power sources kept the lights on during the 2014 polar vortex?

6.SPECIES:
Polar bears move north, looking for ice

7.NATIONS:
Climate change denier named Brazil's new science minister

8.STATES:
With 'yes' vote, Ore. environment department moves clean fuels program forward

9.POLICY:
Low energy prices are good news, but foreign concerns linger in 2015 -- Energy secretary

10.FORESTS:
New battle erupts over forest certification groups

11.ENERGY:
Renewable energy takes the lead in Germany

12.WEATHER:
Fierce winter storms pummel Middle East

13.SOLAR:
Google invests in Utah's largest solar power plant

14.REGULATION:
Outrage erupts over U.K. effort to reduce E.U. scrutiny of emissions reductions

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., January 8, 2015

READ FULL EDITION

1.NUCLEAR:

Ill. agencies lay out menu of options to support Exelon nukes

Illinois agencies outlined a range of policy solutions in a report issued yesterday aimed at helping prop up three Exelon Corp. nuclear plants that the company said have struggled to remain profitable in recent years.

2.ALASKA:

Hilcorp eyes Arctic exploration despite plunging oil price

At a time when falling world oil prices are triggering market cutbacks, America's race to the Arctic appears to be expanding with a second company joining Royal Dutch Shell PLC in applying to explore in Alaska's icy northern waters.

ELECTRICITY

3.REGULATION:

Mercury rule costs trigger Georgia Power regulatory tussle

4.PEOPLE:

Okla. electric utility to get new chief operating officer

5.UTILITIES:

AEP hires Goldman Sachs to help sell Ohio plants

6.TRANSPORTATION:

Railroad ordered to share coal plan following shortages

OIL AND GAS

7.FINANCE:

Pioneer acts fast to stanch effects of sliding oil prices

8.ALASKA:

Governor sacks gas board members, citing secrecy pledge

9.OIL AND GAS:

Environmental groups sue EPA for inaction on toxic emissions

10.REGULATION:

Pa. Gov.-elect looks for reductions of methane in Marcellus Shale

11.LAW:

Pa. court upholds state plan to balance budget with royalties

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Permian drillers flinch as icy blast cuts into operations

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Crude price slump to trigger oil field write-downs -- analysts

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Alberta firms move ahead with plans despite cheaper crude

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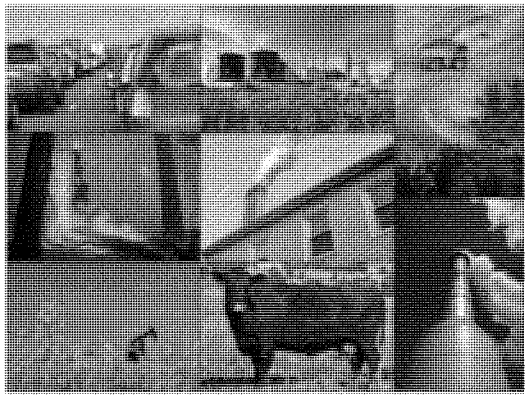

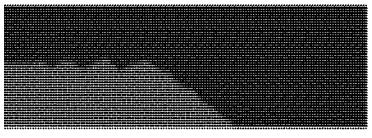

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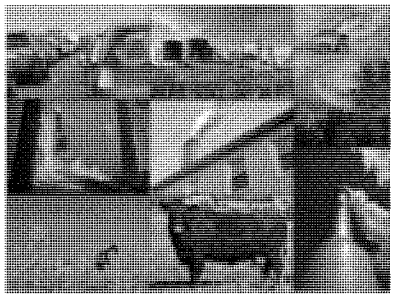

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Solid Waste & Emergency

Response Law News

for January 8, 2015

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Latest News

Greenwire

OIL AND GAS:

Shell reaches $83M deal with Nigerians over 2008 spills

Published: Wednesday, January 7, 2015

Royal Dutch Shell PLC has agreed to pay more than $83 million to villagers in Nigeria affected by two oil spills in 2008.

The company said it will pay $83.3 million to claimants who accept the settlement agreement. About $53 million will be given to individuals, and about $20 million will be used on community projects.

Shell has spent three years in a legal fight at a London court with 15,600 Nigerians -- many fishermen in the Niger Delta -- who say they were harmed by the oil spills. The company previously agreed to pay $15.5 million to settle lawsuits brought in the United States by Nigerians in the area.

"From the outset, we've accepted responsibility for the two deeply regrettable operational spills in Bodo," Mutiu Sunmonu, managing director of Shell's Nigerian unit, said in a statement. "We've always wanted to compensate the community fairly and we are pleased to have reached agreement."

Martyn Day, an attorney representing the villagers, said he was glad the oil company agreed to compensate his clients but said it was "deeply disappointing" it had taken so long.

The company said it would start cleaning up the oil spills now that it has reached the agreement (Bloomberg/*Fuel Fix*, Jan. 7). **-- SP**

COAL:

Sequestration, market woes hit abandoned mine funding

Manuel Quiñones, E&E reporter

Published: Wednesday, January 7, 2015

The Office of Surface Mining, Reclamation and Enforcement yesterday said it would dole out more than $226 million to states and tribes for the cleanup of abandoned coal mines and related water problems.

The total in fiscal 2015 grant funding to states, however, was more than $70 million lower than the previous year's figure. OSMRE blamed the drop in U.S. coal production for at least some of the reduction in funding.

The agency, an arm of the Interior Department, collects fees from mining companies based on the amount of coal they produce. The money then goes into an interest-bearing fund.

Beyond a drop in mining, OSMRE said states and tribes would have received almost $18 million more in funding if it weren't for automatic spending cuts known as sequestration.

States have for years been urging the White House Office of Management and Budget to reassess whether payments are subject to sequestration. They say current law allows the administration leeway.

Some states receive payments from the Treasury based on a formula developed under amendments to the Surface Mining Control and Reclamation Act. State advocates, including the Interstate Mining

Compact Commission, say any tweak to payments can have a cascading effect.

Wyoming, the nation's top coal-producing state, is the top recipient at almost $50 million. Even though the state is certified to have finished cleaning up its abandoned coal mines, Wyoming's congressional delegation has defended the payments because of the fees collected there. The same goes for other certified states and tribes.

Other top grant recipients include West Virginia at $31.2 million and Pennsylvania at $44 million. The Keystone State has the longest inventory of abandoned mine sites needing cleanup.

DRINKING WATER:

Bill Gates swigs 'delicious' water processed from human waste

Published: Wednesday, January 7, 2015

Microsoft Corp. founder Bill Gates recently watched human waste make its way through a processing plant to become drinking water, then took a swallow and smiled.

"I watched the piles of feces go up the conveyer belt and drop into a large bin," Gates wrote. "They made their way through the machine, getting boiled and treated. A few minutes later I took a long taste of the end result: a glass of delicious drinking water."

Gates was visiting Janicki Bioenergy in Washington state last year. The machine, called an OmniProcessor, produced water that "tasted as good as any I've had out of a bottle," Gates wrote. "And having studied the engineering behind it, I would happily drink it every day. It's that safe."

Gates said the technology could help an estimated 2 billion people in the developing world who use latrines that are not properly drained of human waste (Nick Kirkpatrick, *Washington Post*, Jan. 7). **-- SP**

SINGAPORE:

Officials scramble to contain massive spill after tanker collision

Published: Wednesday, January 7, 2015

One of Asia's largest oil spills in years has officials in Singapore braving rough seas to shield the nearby Indonesian tourist island of Bintan from the slick.

The collision of a Libyan-registered oil tanker and a Singaporean cargo ship Friday in the busy shipping lanes northeast of Singapore dumped an estimated 4,500 tons of crude oil into the ocean.

"By today's standards 4,500 tons is a significant spill and the largest in this region for some time," said Euan Graham, senior fellow at Singapore's S. Rajaratnam School of International Studies.

While it isn't the first collision, Graham said Singapore's shipping lanes are well-regulated and have a good safety record.

"Rough seas in the area may have been a contributing factor to the collision but may also assist in breaking up the spill," he said.

The Maritime and Port Authority of Singapore said yesterday satellite images and aerial surveillance didn't show any oil headed toward Bintan, but the agency dispatched four vessels armed with dispersants and skimmers to contain the oil after notifying Indonesian authorities of a possible oil patch headed toward northern Bintan (Eric Yep, *Wall Street Journal*, Jan. 6). **-- DTB**

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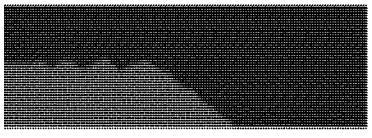

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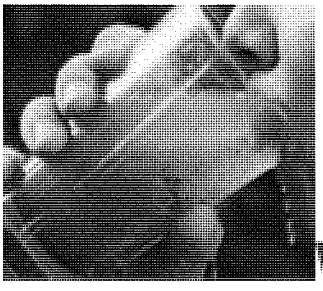


Water Law News

for January 8, 2015

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Some Maryland Farmers Eligible for Rules Exemption

The Maryland Department of Agriculture (MDA) announced Jan. 7 the approval of final regulations that allow farmers who have voluntarily met their Chesapeake Bay total maximum daily load nutrient and sediment reduction requirements to obtain...

Drinking Water

Elk River Spill Shows Better Tap Water Flushing Method Is Needed, Scientists Say

Science-based methods to flush tap water after source water is contaminated should be developed to expedite recovery, minimize health effects and reduce contaminant concentrations in homes, according to research published in "Environmental...

Energy

Obama Keystone Veto Threat Sets Up Many Battles on Republican Agenda

President Barack Obama has vetoed fewer bills than any U.S. president since James Garfield held the office for six months in 1881. With Republicans now in control of Congress, that probably will change....

Energy

White House Formally Threatens to Veto House Bill to Approve Keystone XL Pipeline

The White House Jan. 7 formally threatened to veto legislation that would approve the Keystone XL pipeline, saying a House bill (H.R. 3) expected to be approved later this week "conflicts with longstanding Executive branch procedures...

Hydraulic Fracturing

Draft Virginia Fracking Rule Would Require Public Disclosure of All Fluid Ingredients

Companies using hydraulic fracturing to extract oil and natural gas in Virginia would have to disclose to the public all ingredients used in the process, including all ingredients in substances claimed as trade

secrets, under a Department...

Invasive Species

EPA Says Small Vessels Need Ballast Water Coverage Despite Congressional Ban

Vessels shorter than 79 feet will need to seek Clean Water Act permits to cover discharges of ballast water regardless of the three-year moratorium imposed by Congress on the regulation of incidental discharges, according to the Environmental...

Oil & Gas

Colorado Oil, Gas Commission Stiffens Penalties for Rules Violations

The Colorado Oil and Gas Conservation Commission approved rule and policy changes (Rules 522 & 523) significantly increasing penalties for violations of the state's drilling regulations. ...

Storage Tanks

West Virginia Water Crisis Spawned Safeguards, But Some Tanks Called Unfit

In the year following West Virginia's drinking water emergency, the state has become a national model for aboveground storage tank regulation, yet it still is home to 1,100 chemical containers deemed "unfit for service," according...

Water Pollution

EPA Approves Trash Reduction Plan for River, Harbor

The Environmental Protection Agency and the Maryland Department of the Environment Jan. 6 announced a total maximum daily load program for trash in sections of Maryland's Patapsco River. The 39-mile-long river empties into the Baltimore...

Water Pollution

EPA to Hold Webinar on e-NPDES Reporting Rule

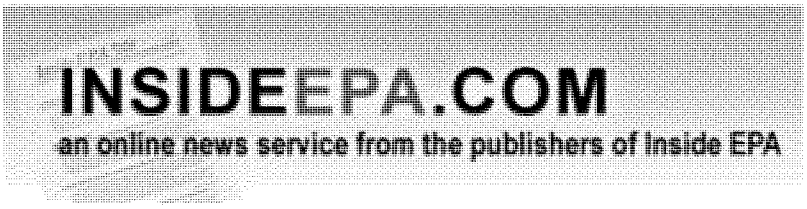
The Environmental Protection Agency on Jan. 20 will hold a webinar to discuss the supplemental notice

to the proposed rule on electronic reporting under the Clean Water Act discharge permit program. The Dec. 1 supplemental notice sought to...

Water Pollution

Groups Ask Courts to Force EPA Responses To Petitions on Two States' NPDES Authority

The Sierra Club and allied groups filed suit Jan. 7 to force the Environmental Protection Agency to respond to their petitions seeking federal takeover of Clean Water Act permitting programs in Kentucky and West Virginia....



Inside EPA's **Weekly Report**, 01/09/2015

http://insideepa.com/newsletters/inside-epa

Latest News

Inhofe Vows To Block EPA Climate, CWA Rules But Eyes TSCA Reform Bid

Sen. James Inhofe (R-OK) is vowing to use his chairmanship of the Environment & Public Works Committee (EPW) to advance bills blocking EPA's power plant climate rules and Clean Water Act (CWA) jurisdiction rule, but also plans to push for toxics law reform that may potentially give the agency some new regulatory powers.

News Briefs

Advancing Chemical Spill Bill Tops Manchin's Priorities

Sen. Joe Manchin (D-WV) is making the prevention of chemical spills from above-ground storage tanks a top priority in the 114th Congress and plans to soon reintroduce legislation to create a new EPA Safe Drinking Water Act (SDWA) program addressing the issue, a spokeswoman for the senator and other sources say.

Suit Seeks EPA Response On Mining States' CWA Authority

Environmental groups are suing EPA in a bid to force a response to their requests for the agency to revoke Clean Water Act (CWA) permitting authority for the Appalachian states of Kentucky and West Virginia over what the groups say is a failure by the states to implement the water law in permits related to mountaintop mining.

Settlement Talks Fail In Idaho Water Quality ESA Suit

Environmentalists and EPA have failed to reach a settlement in a case seeking to resolve nearly two decades of delay in consulting with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) over Idaho's revised water quality standards, and are asking a federal district court to allow the litigation to move forward in January.

Greenwire

KEYSTONE XL:

Senate, House leaders continue laying groundwork for pipeline debate

Manuel Quiñones, Nick Juliano and Daniel Bush, E&E reporters

Published: Wednesday, January 7, 2015

Republicans are sticking by their plan for quick consideration of legislation to approve the Keystone XL pipeline despite Democratic accusations that they are abandoning regular order.

After Democrats yesterday used a procedural maneuver to thwart a planned Energy and Natural Resources Committee hearing on the legislation, McConnell resolved to use a tactic known as Rule 14 to send S. 1 straight to the floor. He did so again this morning.

"As we announced last month," McConnell said during floor remarks, "the bipartisan Keystone energy bill will be on the floor and it will be open for amendment next week."

Senate Democrats are continuing to accuse the new GOP majority of breaking its regular order pledge. They point to a McConnell statement expecting to use Rule 14 only sparingly.

Sen. Dick Durbin (Ill.), the member of the Democratic leadership who yesterday objected to the hearing, touched on the issue during remarks this morning.

He said Democrats want to ensure the proper functioning of the Senate and suggested Republicans had not done the same during their time in the minority.

"Though we hope that our minority status in the Senate is short-lived, I think that we will establish that the Democrats are a much better minority when it comes to the Senate than perhaps those on the other side of the aisle," he said. "Only time will tell."

The back-and-forth on how the Senate should be run has been ongoing for years. Republicans blame Democrats for unfairly blocking their proposals and say they will be better stewards of the chamber.

Despite today's canceled hearing, the ENR panel will likely meet tomorrow to vote on KXL legislation. Its

main sponsor, Sen. John Hoeven (R-N.D.), said today he expected McConnell to file cloture on the motion to proceed soon after, setting up a procedural vote for Monday. KXL backers say they have the 60 votes necessary to clear the hurdle.

Leaders expect to begin processing amendments the following week because of a rule requiring an intervening day before amendment consideration begins. Republicans are scheduled to be out after Wednesday morning for their traditional policy retreat at the start of each session.

Hoeven said some senators expected Democrats could agree to a unanimous consent agreement to speed up the process, but he did not think that was likely.

"I think we'll vote and follow the standard procedure," Hoeven said. "But it really doesn't change anything -- you're talking being able to process amendments Tuesday or not, but either way people can tee them up. So I don't think it really changes much."

He also suggested there wouldn't be much fallout from today's hearing cancellation, given that Republicans still plan to allow for open amendment debate on the floor.

On the House side, the Rules Committee meets this afternoon to set parameters for debate on its version of the legislation, H.R. 3, which is identical to S. 1. A floor vote is planned for Friday. Chamber leaders are unlikely to allow amendments.

On the other side of Pennsylvania Avenue, the White House today reiterated its veto threat. It accused lawmakers of wanting to circumvent the executive process for weighing trans-boundary pipelines.

Doing so would cut short consideration of important issues relevant to the national interest, the White House said. The bill also would authorize the project despite uncertainty due to ongoing litigation in Nebraska.

House Speaker John Boehner (R-Ohio) told reporters this morning that a veto would send Americans who support the pipeline the message that Obama "doesn't really care what they think."

House Majority Whip Steve Scalise (R-La.) added, "I would urge the president to sign that bill and create those jobs to move the American economy forward."

MINING:

Green group declares win over project near Mount St. Helens

Manuel Quiñones, E&E reporter

Published: Wednesday, January 7, 2015

The Obama administration and a Canadian mining company last month decided not to pursue an appeal as part of federal litigation related to a long-running dispute over mining near Mount St. Helens.

The Gifford Pinchot Task Force, which sued in 2013 to halt exploration, said the move is a blow to Vancouver, British Columbia-based Ascot Resources Ltd.'s plans to explore for gold, copper and molybdenum near Mount St. Helens National Volcanic Monument.

Beyond that, conservationists say the administration and company backing off their 9th U.S. Circuit Court of Appeals case means an Oregon lower court ruling will stand, with potential repercussions for other

cases.

But Ascot, while pulling away from its appeal, is not backing off exploration, company executive Bob Evans said in an email this morning.

"Last year's court judgement set out a number of areas where our application was deficient," he said. "Rather than appeal this decision Ascot is, and has been, actively working with the government agencies to provide the supplemental environmental analysis the court required."

The Forest Service and Bureau of Land Management approved Ascot's exploration activities in 2012. But last year U.S. District Judge Marco Hernandez said the administration ran afoul of the National Environmental Policy Act and the Land and Water Conservation Fund Act.

When it comes to NEPA, Hernandez said regulators should have done more to study potential water resource impacts of exploration activities near Mount St. Helens, the Tumwater Inventoried Roadless Area and the Green River.

More importantly, from the perspective of conservationists, Hernandez said federal agencies reviewing the so-called Goat Mountain exploration scheme didn't put enough weight on the fact that the federal government bought the lands in question in the 1980s for conservation purposes.

The Obama administration and Ascot tried to rebuff arguments by the Gifford Pinchot Task Force and its attorneys with the Western Mining Action Project.

"As the agencies properly recognized, there is nothing in the Weeks Act, Reorganization Plan or the LWCF Act that prohibits the permitted prospecting activity," Ascot wrote in a filing early last year.

The company added that "the LWCF Act merely provides for appropriations and does not govern how land is to be used once it is acquired."

Hernandez wasn't convinced. "If Defendants and Ascot prevailed on their argument, the subsequent development of land purchased under the LWCF Act could completely undermine the Congressionally stated primary purpose for the purchase of such land, rendering it meaningless," he ruled. "Such an argument is unsupportable."

Western Mining Action Project attorney Roger Flynn yesterday said, "The district court's ruling has far-reaching ramifications, as millions of acres of public lands across the country were purchased with LWCF monies."

Matt Little, task force executive director, added, "This is the third attempt by the mining industry in recent years to develop a mine in this area, and the third time we have stopped them."

Conservationists said the company drilling dozens of holes and developing drill pad sites, plus related infrastructure, could have threatened salmon and steelhead in the Green River.

"This decision confirms what the Task Force has known all along -- the Green River valley, adjacent to Mount St. Helens National Monument, is no place for a mine," Little said.

Sen. Maria Cantwell (D-Wash.), incoming ranking member of the Energy and Natural Resources Committee, has also expressed concern about mining in the area, citing water and landscape issues (*E&ENews PM*, Dec. 20, 2011).

FISHERIES:

Conflict looms as fishermen aim to open access off Maine coast

Published: Wednesday, January 7, 2015

A proposal to open up a 500-square-mile protected zone off the Maine coast to commercial fishing is drawing concern from conservationists.

Cashes Ledge, located 100 miles off the coast of Maine, is a haven for cod, pollack and other sea life that thrive on the area's dense kelp forests.

Under a plan being considered by the New England Fishery Management Council, which regulates the industry, the closed zone would shrink by 70 percent. But "bottom-trending" fishing equipment, such as draggers and trawlers, would be banned from most of the area. Fishermen could continue groundfishing for species such as haddock, cod and pollock in surrounding mudflats.

Supporters of the plan argue the groundfishing industry isn't as prosperous as it was a few decades ago. Fishermen said regulations and a dropoff in fish populations have caused the declines. Only 50 industry ships are left in Maine, down from 350 in 1990.

Conservationists said that commercial fishing has devastated aquatic environments and fish populations off the New England coast and that Cashes Ledge is one of the last remaining areas of the native ecosystem left in the region (Kevin Miller, *Portland* [Maine] *Press Herald*, Jan. 6). **-- MH**

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Published: Wednesday, January 7, 2015

The Office of Surface Mining, Reclamation and Enforcement yesterday said it would dole out more than $226 million to states and tribes for the cleanup of abandoned coal mines and related water problems.

The total in fiscal 2015 grant funding to states, however, was more than $70 million lower than the previous year's figure. OSMRE blamed the drop in U.S. coal production for at least some of the reduction in funding.

The agency, an arm of the Interior Department, collects fees from mining companies based on the amount of coal they produce. The money then goes into an interest-bearing fund.

Beyond a drop in mining, OSMRE said states and tribes would have received almost $18 million more in funding if it weren't for automatic spending cuts known as sequestration.

States have for years been urging the White House Office of Management and Budget to reassess whether payments are subject to sequestration. They say current law allows the administration leeway.

Some states receive payments from the Treasury based on a formula developed under amendments to the Surface Mining Control and Reclamation Act. State advocates, including the Interstate Mining Compact Commission, say any tweak to payments can have a cascading effect.

Wyoming, the nation's top coal-producing state, is the top recipient at almost $50 million. Even though the state is certified to have finished cleaning up its abandoned coal mines, Wyoming's congressional delegation has defended the payments because of the fees collected there. The same goes for other certified states and tribes.

Other top grant recipients include West Virginia at $31.2 million and Pennsylvania at $44 million. The Keystone State has the longest inventory of abandoned mine sites needing cleanup.

GREAT LAKES:

Record freeze prompts shippers to request more icebreakers

Published: Wednesday, January 7, 2015

Great Lakes shippers are asking Congress to beef up the U.S. Coast Guard's icebreaking fleet after the regional economy was frozen by last year's record winter.

Jim Weakley, president of the Cleveland-based Lake Carriers' Association, said shippers lost $705 million in revenue and an estimated 3,800 jobs due to the thickest and most expansive ice cover on the lakes in 35 years.

The association praised the efforts of the nine Coast Guard vessels with icebreaking capabilities but said the economic dip between Dec. 1, 2013, and May 30, 2014, illuminated the need for a second larger, more powerful icebreaking cutter.

Lt. Davey Connor, spokesman for the Coast Guard's Cleveland office, disagreed, citing upgrades being given to the existing vessels.

Last winter was "kind of a 30-year exception to the norm," he said. "If we had a fleet prepared to deal flawlessly with the worst-case scenario, then for 29 of the other 30 years we'd have too much. We feel that's not the best stewardship of taxpayer money and Coast Guard resources."

After joining a Coast Guard crew on an icebreaking mission last year, Rep. Candice Miller (R-Mich.), chairwoman of the House Homeland Security Subcommittee on Border and Maritime Security, empathized with the shipping industry.

"I certainly understand why Great Lake shippers want more icebreakers and think that it is a request worth looking into and discussing with the U.S. Coast Guard," she said (John Flesher, Associated Press, Jan. 6). **-- DTB**

DROUGHT:

Californians conserving more water, but state still in 'a world of hurt'

Anne C. Mulkern, E&E reporter

Published: Wednesday, January 7, 2015

Californians reduced their water use in November, but more conservation is needed as drought conditions persist, the state Water Resources Control Board said yesterday.

Golden State residents on average pared consumption 9.8 percent compared with November 2013, the state Water Board said. That was an improvement from October, when residents conserved 6.8 percent versus the same month last year. The November number is the most recent available.

The agency is debating moves to drive more conservation. Even though there have been recent rains, they weren't enough to end the three-year drought, Water Board Chairwoman Felicia Marcus said. Amid warmer temperatures, the precipitation has come mostly as rain and not snow.

"We're still in a world of hurt until we get more snow," Marcus said. "Our reservoirs are still at a dismally low level."

The Shasta and Oroville reservoirs are "at a fraction of normal, and we have very little snowpack," she said. "We just don't have the storage that we need to get through the spring and the summer."

The drought has left the Sacramento and San Joaquin river basins -- a water supplier for 25 million Californians and 3 million acres of farmland -- 11 trillion gallons below normal levels, NASA scientists recently said. That amount that would fill the country's largest reservoir, Lake Mead, 1.5 times (*ClimateWire*, Dec. 17, 2014).

The data released yesterday showed there were big differences throughout the state in how much water residents used.

Sacramento and the San Francisco Bay Area were among the places with the largest conservation efforts, while some cities in Southern California increased their water use from November 2013.

The Santa Fe Irrigation District, located in an affluent part of north San Diego County, used 377 gallons of water per capita per day, up from 330 in November 2013.

That compares with the 50 to 100 gallons of water per capita per day used by districts in the Sacramento and San Francisco Bay regions.

The Santa Fe district, which serves about 19,000 people, supplies water to "residential homes on large, landscaped estate lots, horse farms and citrus groves," spokeswoman Jessica Parks said in an email. "The minimum lot size in Rancho Santa Fe is 3 acres as determined by the land use agency (County of San Diego)."

She added that the average daily maximum temperature in November 2014 was 5.3 degrees above normal and 3.3 degrees higher than a year earlier.

"Warmer temperatures and a lack of rainfall for November 2014 are considered the primary drivers in the increased demands over November 2013," Parks said. "Because of the land use characteristics of the District service area, water demands for irrigation of landscape and agricultural use is highly variable and dependent on weather and precipitation patterns."

Parks added that water demands in the district have declined 20 percent since 2007 and that the agency is on target to meet a state goal of reducing per-capita urban water use 20 percent by 2020.

Southern Calif. improves

On average, Southern California didn't cut back as much as its northern neighbors. The regional conservation rate of 3.2 percent was slightly better than October's 1.2 percent, the state agency said. The improvement was enough to push up the state's total, however, because 56 percent of all the residential water customers statewide live in the "South Coast" region.

"While the South Coast has been a water conservation leader for several decades, we remain concerned the current drought effort has not translated into more aggressive conservation there," Marcus said. But she said that she was encouraged, however, by Los Angeles Mayor Eric Garcetti's 20 percent reduction goal.

The Sacramento region, in contrast, had a conservation level of about 25.6 percent, the Water Resources Control Board said.

El Dorado Irrigation District, in the Sacramento area, cut its water use 36.3 percent to 77 gallons per capita per day in November, compared with 121 in the same month in 2013. The agency serves about 128,500 residents.

The district has a conservation goal of 30 percent. It has restrictions in place that include limiting outdoor watering to once per week per household, between 7 p.m. and 10 a.m. It prohibits use of irrigation systems during rain events.

There are more than 400 water districts in the state with different rules for water use. The Water Board has asked its aides for suggestions on the best ways to spur continued conservation.

Right now, the board has told the districts that if they have a drought plan, it has to be activated. But there are not parameters for what the blueprints must contain. One option is requiring that the plans meet certain criteria, Marcus said. Other options are targeting reductions by commercial and industrial water consumers, or specific uses like ornamental fountains, she said.

WATER POLLUTION:

Medical firm to pay fine over improper cleanup

Published: Wednesday, January 7, 2015

A medical imaging company will pay more than $50,000 in fines and cleanup costs for its role in a 2013 chemical spill that employees improperly cleaned up.

Trius Diagnostic Imaging Inc. will pay penalties, cleanup charges and investigative costs associated with the Santa Rosa, Calif., incident.

Local authorities found the company's workers spilled an unknown liquid while moving a piece of radiology equipment onto a truck in 2013. The employees improperly hosed down the liquid into a storm drain leading to a nearby creek. Tests later found that the liquid contained petroleum.

Trius did not report the spill, but a local resident observed the incident and contacted police, who responded with a hazardous materials crew from the local fire department. Eventually, the company hired a contractor to remove the material (AP/*San Francisco Chronicle*, Jan. 7). **-- SP**

DRINKING WATER:

Bill Gates swigs 'delicious' water processed from human waste

Published: Wednesday, January 7, 2015

Microsoft Corp. founder Bill Gates recently watched human waste make its way through a processing plant to become drinking water, then took a swallow and smiled.

"I watched the piles of feces go up the conveyer belt and drop into a large bin," Gates wrote. "They made their way through the machine, getting boiled and treated. A few minutes later I took a long taste of the end result: a glass of delicious drinking water."

Gates was visiting Janicki Bioenergy in Washington state last year. The machine, called an OmniProcessor, produced water that "tasted as good as any I've had out of a bottle," Gates wrote. "And having studied the engineering behind it, I would happily drink it every day. It's that safe."

Gates said the technology could help an estimated 2 billion people in the developing world who use latrines that are not properly drained of human waste (Nick Kirkpatrick, *Washington Post*, Jan. 7). **-- SP**

IOWA:

Water utility may sue state over runoff

Published: Wednesday, January 7, 2015

Iowa's largest water provider may sue the state for not having strict enough regulations for fertilizer runoff.

High levels of nitrate in the Des Moines and Raccoon rivers have forced the Des Moines Water Works company to conduct additional water treatment methods, which have raised costs for customers.

Since September 2014, the levels of nitrate in the rivers have been high, and the company attributes the excess fertilizer runoff to voluntary regulations.

"When it comes to public safety, voluntarism simply doesn't work, and those of us who are in the business of protecting the natural resources and public safety and health of this state ultimately have not found any kind of comfort through legislative action in Iowa," said Bill Stowe, CEO of Des Moines Water Works.

The company's board of directors plans to meet tomorrow to discuss possible legal action against the state (O. Kay Henderson, Radio Iowa, Jan. 6). **-- MH**

SINGAPORE:

Officials scramble to contain massive spill after tanker collision

Published: Wednesday, January 7, 2015

One of Asia's largest oil spills in years has officials in Singapore braving rough seas to shield the nearby Indonesian tourist island of Bintan from the slick.

The collision of a Libyan-registered oil tanker and a Singaporean cargo ship Friday in the busy shipping lanes northeast of Singapore dumped an estimated 4,500 tons of crude oil into the ocean.

"By today's standards 4,500 tons is a significant spill and the largest in this region for some time," said Euan Graham, senior fellow at Singapore's S. Rajaratnam School of International Studies.

While it isn't the first collision, Graham said Singapore's shipping lanes are well-regulated and have a good safety record.

"Rough seas in the area may have been a contributing factor to the collision but may also assist in breaking up the spill," he said.

The Maritime and Port Authority of Singapore said yesterday satellite images and aerial surveillance didn't show any oil headed toward Bintan, but the agency dispatched four vessels armed with dispersants and skimmers to contain the oil after notifying Indonesian authorities of a possible oil patch headed toward northern Bintan (Eric Yep, *Wall Street Journal*, Jan. 6). **-- DTB**

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CLIMATEWIRE — Thu., January 8, 2015

READ FULL EDITION

1.POLICY:

U.S. EPA delays and combines its new power plant rules

U.S. EPA is delaying the final rollout of its new rules aimed at lowering the power sector's greenhouse gas emissions by 30 percent by 2030. And while the agency insists the two delays -- one a matter of months, the other a matter of weeks -- are aimed at helping states develop compliance plans, observers say the moves could help shield the efforts from legal and congressional challenges.

2.STATES:

EPA's Clean Power Plan backstop: carrot or stick?

For months, U.S. EPA has been encouraging states disinclined to cooperate with new power plant regulations to develop their own plans for reducing greenhouse gas emissions or else deal with a federal version that might not be as tailored to their preferences. Yesterday, acting air chief Janet McCabe said that alternative will become public by midsummer.

TODAY'S STORIES

3.SCIENCE:
Most fossil fuels should stay in the ground to avoid dangerous temperature rise -- study
4.FINANCE:
World Bank advises developing countries to use drop in oil prices to cut subsidies
5.ELECTRICITY:
Which power sources kept the lights on during the 2014 polar vortex?
6.SPECIES:
Polar bears move north, looking for ice
7.NATIONS:
Climate change denier named Brazil's new science minister
8.STATES:
With 'yes' vote, Ore. environment department moves clean fuels program forward
9.POLICY:
Low energy prices are good news, but foreign concerns linger in 2015 -- Energy secretary
10.FORESTS:
New battle erupts over forest certification groups
11.ENERGY:
Renewable energy takes the lead in Germany
12.WEATHER:
Fierce winter storms pummel Middle East
13.SOLAR:
Google invests in Utah's largest solar power plant
14.REGULATION:
Outrage erupts over U.K. effort to reduce E.U. scrutiny of emissions reductions

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., January 8, 2015

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1.NUCLEAR:

Ill. agencies lay out menu of options to support Exelon nukes

Illinois agencies outlined a range of policy solutions in a report issued yesterday aimed at helping prop up three Exelon Corp. nuclear plants that the company said have struggled to remain profitable in recent years.

2.ALASKA:

Hilcorp eyes Arctic exploration despite plunging oil price

At a time when falling world oil prices are triggering market cutbacks, America's race to the Arctic appears to be expanding with a second company joining Royal Dutch Shell PLC in applying to explore in Alaska's icy northern waters.

ELECTRICITY

3.REGULATION:
Mercury rule costs trigger Georgia Power regulatory tussle
4.PEOPLE:
Okla. electric utility to get new chief operating officer
5.UTILITIES:
AEP hires Goldman Sachs to help sell Ohio plants
6.TRANSPORTATION:
Railroad ordered to share coal plan following shortages

OIL AND GAS

7.FINANCE:
Pioneer acts fast to stanch effects of sliding oil prices
8.ALASKA:
Governor sacks gas board members, citing secrecy pledge
9.OIL AND GAS:
Environmental groups sue EPA for inaction on toxic emissions
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Pa. Gov.-elect looks for reductions of methane in Marcellus Shale
11.LAW:
Pa. court upholds state plan to balance budget with royalties
12.TEXAS:
Permian drillers flinch as icy blast cuts into operations
13.PEOPLE:
Energy lawyer joins D.C.'s Sutherland
14.OIL:
Crude price slump to trigger oil field write-downs -- analysts
15.OIL SANDS:
Alberta firms move ahead with plans despite cheaper crude

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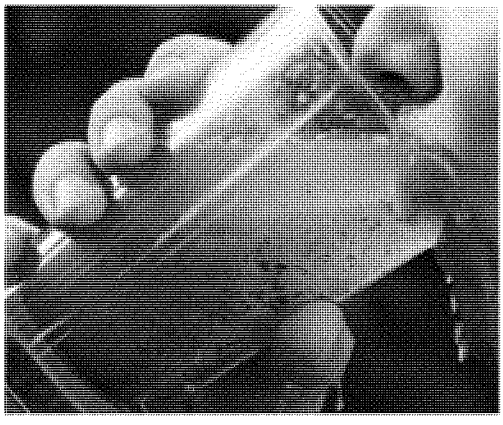

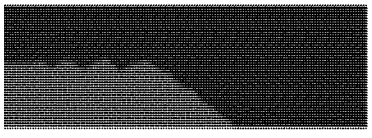

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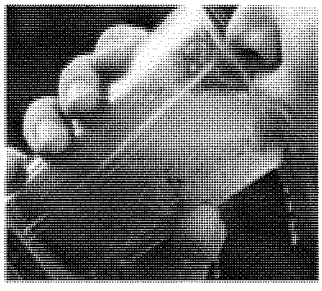

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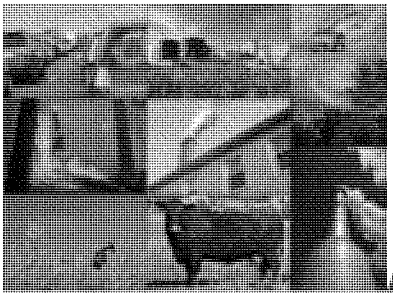


Air & Radiation Law News

for January 7, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

California Court Approves Lake Dust Project

A California Superior Court in Sacramento has issued a decision resolving a three-year battle between Los Angeles and the Great Basin Unified Air Pollution Control District over how to control dust blowing off the dry Owens Lake in the Eastern...

Air Pollution

Slump in Oil Prices Heightens Challenge For Cleaner Air in Asia's Largest Cities

A brisk walk in India's capital New Delhi on Christmas Eve was rated "hazardous" to health, while a similar stroll in the Chinese city of Shanghai was ranked "unhealthy." Two of Asia's biggest cities with the same...

Air Pollution

Virginia to Propose Tougher VOC Emissions Rules

The Virginia Department of Environmental Quality will propose amendments to reduce emissions of volatile organic compounds from three types of business in Northern Virginia: lithographic printers, industrial solvent cleaning operations...

Climate Change

U.S., Mexico to Boost Cooperation on Energy, Climate by Expanding Trade in Technology

The U.S. and Mexico Jan. 6 agreed to strengthen cooperation on climate change and clean energy by expanding cross-border trade of energy-related technologies and more collaboration between the nations' energy agencies. ...

Climate Regulation

Clean Power Plan Includes Time, Flexibility To Address Grid Reliability, EPA Official Says

The Environmental Protection Agency placed a significant focus on grid reliability in developing its proposed carbon dioxide standards for existing power plants, the agency's top air official said Jan. 6....

Congress

House Rules Require Committees to Report Number of Regs Mandated by Legislation

House Republicans pushed through a rules package Jan. 6 designed to ensure new bills don't add to regulatory burdens for industry, including a requirement that committees tally the number of rules that would be mandated by the legislation....

Congress

Pallone to Defend Obama on Environment, Sees Room for Compromise on Some Issues

The top Democrat on the House Energy and Commerce Committee told Bloomberg BNA he will strongly defend President Barack Obama's environmental agenda from Republican attack, but sees room for compromise on some environmental issues...

Energy

Murkowski Says Gas, Oil Exports, Radioactive Waste Among Energy Committee Priorities

Natural gas and oil exports, nuclear waste and critical minerals will be among the Senate Energy and Natural Resources Committee's top priorities in the 114th Congress, committee Chairman Lisa Murkowski (R-Alaska) told Bloomberg BNA...

Energy

Oil, Gas Industry Burnishes Its Arguments For Year of Energy Legislation, Regulation

The American Petroleum Institute set the stage for a year of congressional and administration activity on energy issues by urging action to lift the ban on U.S. crude oil exports, approval of the Keystone XL oil import pipeline, permits for...

Regulatory Policy

Scope of Environment Citizen Suit Litigation Is Evolving, Environmental Law Panelists Say

While Congress designed environmental citizen suits to fill the regulatory enforcement gap, citizen plaintiffs increasingly are using this litigation tactic to advance their national policy goals, environmental law panelists said during...

Inside EPA **Environmental Policy Alert**, 01/07/2015

http://insideepa.com/newsletters/environmental-policy-report

Latest News

Environmentalists Suggest Suit Over EPA's Treatment Of Biomass In ESPS

Environmentalists are suggesting they will sue EPA over its plan to allow states to take greenhouse gas (GHG) credit for the use of biomass under its proposed existing source performance standards (ESPS), saying the plan is unlawful because it assumes the use of out-of-sector emission cuts that are incompatible with the proposal.

News Briefs

API Warns Suite Of EPA Rules Could Harm Energy Sector

The American Petroleum Institute (API) is warning that a suite of EPA air, climate and other regulations poses significant economic harm to the energy sector, as the regulations could impose massive compliance costs on the industry that will be passed on to consumers through higher fuel prices and other costs.

EPA Extends Deadline For Revising Refinery Air 'Factors'

EPA and environmentalists have agreed to extend until April the agency's legally binding deadline for issuing a final decision on whether to revise emission factors used to estimate emissions from oil refineries for compliance purposes, following a proposed version of the rule that industry says could lead to overestimates of air pollution.

Greenwire

KEYSTONE XL:

Obama unlikely to sign new Senate bill -- White House

Manuel Quiñones, E&E reporter

Published: Tuesday, January 6, 2015

This story was updated at 1:54 p.m. EST.

The White House said this afternoon that President Obama was unlikely to sign Senate legislation to approve the Keystone XL oil pipeline from Canada.

"I would not anticipate the president would sign this piece of legislation," press secretary Josh Earnest told reporters after the bill's introduction this morning.

The White House has been sending mixed messages on the KXL bill for months, but Earnest said, "The text of this legislation was made public since the last time we discussed this."

Earnest spoke just hours after Sens. John Hoeven (R-N.D.) and Joe Manchin (D-W.Va.) unveiled the measure to approve KXL's trans-boundary crossing. The lawmakers formally introduced it immediately after the Senate opened the new session, making S. 1 the chamber's first bill of the 114th Congress.

The legislation has 60 sponsors, ensuring its ability to overcome procedural hurdles. Hoeven and Manchin said three additional lawmakers have indicated their support.

"Obviously, we're continuing to work to get more support for the legislation," Hoeven said. He cited the Constitution's Commerce Clause as authority for lawmakers to approve the pipeline's transboundary crossing, bypassing the ongoing State Department review.

Senate Majority Leader Mitch McConnell (R-Ky.) has promised an open amendment process. With the State of the Union and lawmaker retreats scheduled for the coming weeks, debate may take some time.

"Leadership has indicated to me that we'll be on the bill for at least several weeks," Hoeven said.

In an apparent swipe at Democratic leader Harry Reid of Nevada, Manchin said the planned amendment and debate process was the most open and deliberative he had seen on a major bill since his 2010 arrival in the Senate. "I'm very pleased with that," he said. "I think it will be a very energetic process that we go through."

Democrats, now in the minority, plan to introduce a number of amendments, including measures to prevent the export of KXL's oil and ensure American products are used to build the pipeline.

Manchin said he was open to such changes, which could attract more support.

"We're going to go into those in more detail, but there's a lot of good stuff," he said during a gathering with reporters.

Republican leaders would like to send Obama the cleanest possible bill, telling members they'll have other opportunities to advance priorities. They also don't want to appear to be breaking their "regular order" pledge.

"But remember, any amendment that passes is going to need to have 60 votes," Hoeven said. "So it's going to have to be bipartisan."

Hearing canceled

The Energy and Natural Resources Committee was planning to hold a hearing on the legislation tomorrow and a vote on the bill Thursday. KXL backers were then looking to have the bill on the floor by next week.

But Sen. Richard Durbin (D-Ill.), a member of the Senate Democratic leadership, threw a wrench into those plans this afternoon by objecting to the hearing. Consent was necessary because Senate committees are still getting organized.

Robert Dillon, spokesman for the Energy panel's incoming chairwoman, Sen. Lisa Murkowski (R-Alaska), said the hearing was canceled and the vote remained uncertain. But he promised progress on KXL would continue.

The House has promised to vote on the same bill Friday. But the Rules Committee has yet to set the parameters for debate. Early indications are that leaders won't allow amendments.

Natural Resources Defense Council attorney Anthony Swift said this morning that no amendment could make the environmentalists accept the bill. He said low oil prices mean the pipeline would encourage Canadian oil sands development and, therefore, lead to increased greenhouse gas emissions.

David Goldston, NRDC's government affairs chief, said the Democratic amendments were more to "create additional issues" for pipeline supporters and not to make the bill acceptable. He doesn't think Republican leaders in Congress will have the votes to override a presidential veto.

Manchin said low oil prices should be welcomed but are not a reason to deny KXL. "The bottom line: It's a product that's going to be produced, it's a product that's going to be sold," he said.

Manchin said his office got in touch with the White House this morning on the issue. He did not provide details about the ongoing talks.

Reporters Jean Chemnick and Nick Juliano contributed.

BIOFUELS:

Peer reviewers question EPA emission estimates for palm oil

Amanda Peterka, E&E reporter

Published: Tuesday, January 6, 2015

A U.S. EPA-commissioned panel of independent peer reviewers is questioning the agency's calculations of greenhouse gas emissions tied to palm oil biofuels.

Two reviewers on the five-member panel say EPA may have significantly overestimated greenhouse gas emissions from palm oil biodiesel and renewable diesel production when it decided in 2012 to disqualify palm oil fuels from the federal renewable fuel standard (RFS).

But two other reviewers suggested the agency may have lowballed emission estimates because of uncertainties in its data.

EPA, which published the peer review last month, said its results would figure into an evaluation of whether palm oil biodiesel and renewable diesel should qualify for RFS credits.

"We will continue dialogue with government, industry, civil society and scientific experts to understand all of the technical issues," EPA said.

The standard requires EPA to evaluate greenhouse gas emissions of new biofuels before refiners can use them to meet their annual RFS obligations. A new biofuel is allowed to qualify only if it reduces emissions by at least 20 percent from a petroleum fuel base line.

In its 2012 assessment, EPA found that neither palm oil biodiesel nor renewable diesel would meet the 20 percent threshold. Palm oil biodiesel would result in life-cycle greenhouse gas emission reductions of 17 percent and renewable diesel 11 percent, the agency said.

EPA said several factors would contribute to high emissions for palm oil biofuels. Among them was the expected expansion of palm oil plantations onto carbon-rich peat soils in Southeast Asian countries such as Indonesia and Malaysia. The agency estimated that draining tropical peatlands would result in 95 metric tons of carbon dioxide-equivalent emissions per hectare of drained peat soil.

An independent firm organized the peer review for EPA. The five reviewers were Scott Bridgham of the

University of Oregon; Kristell Hergoualc'h of the Center for International Forestry Research; Monique Leclerc of the University of Georgia; the president of the Indonesian Peat Society, Supiandi Sabiham of Bogor Agricultural University; and Arina Schrier of the firm Climate and Environmental International Consultancy.

Three of the five reviewers stated that EPA had chosen an appropriate estimate of emissions from drained peatlands, but Leclerc and Schrier raised concerns that uncertainties in the data could lead to an increase in life-cycle emissions estimates.

Two reviewers disagreed. Hergoualc'h and Sabiham found that EPA's figure overestimated emissions from peatland expansion.

They recommended a peat soil emission factor in the range of 40 metric tons of carbon dioxide-equivalent emissions per hectare of drained peat soil -- a figure similar to the most recent recommended emissions factor published by the U.N. Intergovernmental Panel on Climate Change and other studies.

"The emission factor that the EPA proposes to adopt is based on a single study and thus definitely does not meet the 'representativeness across Southeast Asia' criterion," Hergoualc'h wrote.

Environmental groups have criticized the 2013 IPCC estimates of emissions tied to digging up peat soils for palm oil operations, arguing that emissions are at least twice as high. They've pointed to massive amounts of deforestation in areas where palm oil plantations are prevalent (*ClimateWire*, Nov. 18, 2013).

One reviewer, the University of Georgia's Leclerc, also specifically recommended against the IPCC number.

"This estimate is likely to be too low," she said. "It is based on earlier, older literature data and also does not recognize the many factors outlined in the present review."

Although EPA's initial 2012 analysis shut out palm oil biofuels from the RFS, the issue has remained controversial, with palm oil interests in Southeast Asia urging the agency to allow the fuels to qualify. The questions raised by the peer reviewers over EPA's analysis are likely to drive continued debate.

"This review report shows that there is indeed a lack of consensus in the scientific community about the magnitude of the emissions from drained peatlands," said Louis Verchot, research director for forests and environment at the Center for International Forestry Research.

EPA said it "will consider the peer review results along with the public comments received."

"The agency," EPA added, "will also continue to evaluate new data and scientific analysis of other important factors in the lifecycle analysis of palm oil biofuels, including deforestation and methane emissions."

Reporter Tiffany Stecker contributed.

HOUSE:

GOP moderate to step down when term ends

Nick Juliano, E&E reporter

Published: Tuesday, January 6, 2015

New York Rep. Chris Gibson, a rare moderate Republican on issues related to climate change and environmental regulations, announced today he would be leaving the House after the two-year term he begins today, possibly to run for statewide office.

Gibson was first elected to the House in 2010 and said at the time that he would impose term limits on himself. Today, he announced his third term would be his last in the House and outlined a list of priorities for the next two years.

Gibson has outscored fellow Republicans on every League of Conservation Voters annual scorecard released since he joined the House, although his lifetime score fell to 33 percent last year from 68 percent the previous year. He reportedly said last month that he plans to introduce a resolution this year that would endorse the prevailing view of scientists that human industrial activity is contributing to climate change.

"I hope that my party -- that we will come to be comfortable with this, because we have to operate in the realm of knowledge and science, and I still think we can bring forward conservative solutions to this, absolutely, but we have to recognize the reality," Gibson told an event hosted by moderate Republican environmental groups, according to *National Journal*. "So I will be bringing forward a bill, a resolution that states as such, with really the intent of rallying us, to harken us to our best sense, our ability to overcome hard challenges."

In announcing his impending resignation today, Gibson listed several policy goals he would support over the next two years, including tax reform, regulatory reform and "common sense provisions, grounded in science, that balance the priorities of lowering our energy costs while protecting our environment."

Beyond the next two years, Gibson, a 50-year-old Iraq War veteran, said he was contemplating a run for statewide office in New York in 2018, when Sen. Kirsten Gillibrand (D) will be up for re-election and statewide offices like governor, lieutenant governor, comptroller and attorney general will be up for grabs.

"When I think of the words 'duty,' 'honor,' and 'patriotism,' I think of Chris Gibson," said Rep. Greg Walden (R-Ore.), chairman of the National Republican Congressional Committee, in a statement. "There are few people in our Congress today that better embody public service."

Gibson's upstate New York district is sure to be a major battleground in 2016. The district, in the Catskill Mountains and northern Hudson Valley, gave President Obama a 6-point victory in the 2012 White House election, and New York media today are already full of names of potential candidates for the seat.

On the Republican side, possible contenders include Rensselaer County Executive Kathy Jimino, state Assemblymen Pete Lopez and Steve McLaughin, Dutchess County Executive Marc Molinaro and state Sen. Jim Seward.

On the Democratic side, Ulster County Executive Mike Hein and former state Sen. Terry Gipson have been mentioned. Sean Eldridge, the wealthy husband of Facebook co-founder Chris Hughes, may also try again. Eldridge spent $4 million of his own money on a challenge to Gibson last year and lost by more than 25 points.

Reporter Josh Kurtz contributed.

CLIMATE:

State methane regs seen offering maps for EPA action

Jean Chemnick, E&E reporter

Published: Tuesday, January 6, 2015

States that already regulate the oil and gas industry's methane emissions directly or indirectly may offer guides for U.S. EPA's own proposal for curbing the powerful greenhouse gas.

Environmentalists are pointing to several recent state efforts as worthy models for a federal policy whose release is expected this month.

"The states have the ability to move quickly, and when motivated they can really do that," said Matt Watson of the Environmental Defense Fund. "In roughly a year, you went from no states having policies to a majority of the oil- and gas-producing states having adopted policies."

Some state regulations focus on curbing volatile organic compounds (VOCs) from petroleum development but capture methane, as well. Improving local air quality in communities affected by drilling is more of a driver in some cases than climate change.

Wyoming and Ohio both unveiled restrictions last year requiring oil and gas producers to prevent the leak of ozone-causing VOCs at oil and gas wells, a measure that captures methane. And California enacted a law in September requiring petroleum companies to find and fix methane leaks (*EnergyWire*, Sept. 23).

Watson said Pennsylvania might soon follow. While the state under Gov. Tom Corbett (R) hasn't restricted methane, Watson said, that's likely to change under Gov.-elect Tom Wolf (D), who talked frequently on the campaign trail about the need to curb emissions. "In certain respects, you can see the Wolf victory as a referendum of the mismanagement of the gas industry that has happened under the current administration," he said.

Colorado's methane rules are often held up by green groups as the gold standard of state policies and a good starting point for federal action (*ClimateWire*, Feb. 25).

The Centennial State is praised for gaining the cooperation of industry for a program that state authorities say will help avoid 65,000 metric tons of methane leakage each year. Gov. John Hickenlooper (D) called for a "zero tolerance" policy on methane in a 2013 speech before the Colorado Oil and Gas Association. Methane is more than 30 times more climate-forcing over a 100-year period than carbon dioxide.

Martha Rudolph, director of environmental programs for the Colorado Department of Public Health and Environment, said the governor was aware that communities in Colorado's Front Range had air pollution problems linked to hydraulic fracturing and horizontal drilling.

State regulators offered a proposal requiring leakage detection and repair, replacement of high-emitting pneumatic devices with low-bleed options, and new requirements to reduce emissions from storage tanks. But the rules approved by the Colorado Air Quality Control Commission sprang from negotiations between three oil and gas companies -- Noble Energy Inc., Anadarko Petroleum Corp. and Encana Corp. -- and EDF. As the state now moves to implement the rules, Rudolph said industry is cooperating rather than protesting.

"At this point, we're not getting the feedback that the regulations are a problem or are stifling production and operation in the state," Rudolph said. "It's basically the social license to do business here in Colorado."

Adam Berig, Encana's head of air quality, said his company got involved when it became clear the

"writing was on the wall" for methane emissions.

The companies parted ways with EDF on how frequently industry would be required to use infrared monitoring to find leaks. Monitoring is one of the chief expenses associated with the program, but Berig said the final rule struck a compromise, requiring monitoring based on the size of a facility.

"We found something that was doable for industry from a resources standpoint," he said. "We'll be catching a lot of waste, we'll be fixing a lot of leaks, and we'll be making an impact on greenhouse gas emissions."

Berig disputes green groups' argument that natural gas captured will offset the cost of monitoring, maintaining and upgrading infrastructure. Environmentalists point to a study by ICF International that put these net benefits as high as $100 million a year.

But Berig said compliance is more expensive than environmentalists know.

"We as a company are spending a lot of money on this program. We've hired four full-time people just to do leak inspections," he said. "It's definitely a significant investment."

But, he added, Encana wants to be a "good neighbor."

"We understand that we operate near people and we're a source of greenhouse gas emissions," he said. "We'll do our part."

What's up with EPA?

EPA has said little about the coming methane plan, except that it will include both regulatory and voluntary components.

The American Petroleum Institute said in December it wouldn't automatically oppose an expansion of EPA's 2012 rule requiring "green completion" technology to be used at wellheads. But the group warned EPA not to regulate methane directly as Colorado has done, saying such a rule would be "overly prescriptive and overly burdensome."

"If you have blanket, prescriptive requirements, it may not be a good solution for regulators, the public and industry, because it may be an inefficient way of getting at the sources you want to get at," said Erik Milito, API's director of upstream operations.

Environmentalists, meanwhile, have said an expansion of the green completion rule would achieve only a tenth of the methane reduction benefit that EPA could achieve with a more targeted set of rules, because VOCs disappear after natural gas is processed. So the rules could not cover downstream emissions.

Greens hope EPA announces plans this month to use Sections 111(b) and (d) of the Clean Air Act to tackle oil and gas methane -- the same provisions EPA has proposed using to regulate power plant carbon. A new power plant proposal under 111(b) is due to become final this month, and the Clean Power Plan draft would use 111(d) to limit carbon from today's power grid.

But while the Clean Power Plan is complex and likely to spur states to write very different implementation strategies, oil and gas methane rules rely on a limited universe of low-tech fixes that amount to finding leaks and plugging them up.

"This is auto mechanics, not rocket science," said Conrad Schneider of the nonprofit Clean Air Task

Force in a recent interview. If states vary in the implementation plans they write for a methane rule under 111(d), it would probably be in what sources they cover rather than in the activities that would satisfy the rule.

But even though a methane rule for existing sources would likely be simpler than the Clean Power Plan, EPA might just not have the bandwidth to do it in the last two years of this administration, said Dina Kruger, founder and principal of consulting firm Kruger Environmental Strategies and former director of EPA's Climate Change Division.

And even though states such as Colorado probably have the policies that would satisfy a rule for existing sources, the process of writing a state strategy for submission to EPA might prove too burdensome and expensive, she said.

EPA might instead opt to write a rule for new methane sources only -- which it could do without the help of states. It would then leave the task of writing existing source standards and vetting state plans to the next administration, which would be obligated to craft those standards at some point in the future.

This would mean environmentalists would not get everything they want, but they would probably prefer it to the industry-preferred option of requiring a few more wellheads to use green completion technology in exchange for taking comprehensive methane regulation off the table.

"If the agency does end up regulating methane from this sector, then that would be a significant step forward from the perspective of the environmental community," Kruger said. "If the agency doesn't do everything they ask for, they will regroup and they'll continue pressing for more.

"That's kind of the dynamic of regulation," she added. "You just kind of keep making your case until the job is done."

Schneider offered a different compromise. Environmentalists want to see EPA commit to regulate the oil and gas sector's largest sources of methane by the time President Obama leaves office, he said, but they are willing to see it skip some significant sources of the gas while it makes progress on others.

EPA should move immediately to require leak detection and repair at all wellheads, gas processing plants, compressor stations and large aboveground distribution facilities, he said. Also on the list should be reducing emissions from pneumatic devices and barring venting from oil and existing gas wells, which the 2012 VOCs rule does not cover.

But the agency could delay action on other distribution facilities, interstate transmission pipelines and some other sources that would take more time to promulgate rules for, he said.

TRANSPORTATION:

White House remains cool to gas tax hike

Sean Reilly, E&E reporter

Published: Tuesday, January 6, 2015

The Obama administration is again downplaying the option of raising the federal gasoline tax to generate more money for road projects and other public works improvements.

"We don't believe that the best way to fund modernizing our infrastructure is to raise the gas tax, but

some people do," Josh Earnest, the White House's top spokesman, said at yesterday's regular press briefing. While the administration is willing to consider those proposals, Earnest said, "we believe that the best way to do that is to close [tax] loopholes that only benefit the wealthy and well-connected corporations."

The tax, currently 18.4 cents per gallon, was last increased in 1993. While Sens. Bob Corker (R-Tenn.) and Chris Murphy (D-Conn.) last June jointly proposed hiking it by 12 cents per gallon over two years, the idea remains a hard sell despite a recent plunge in gas prices that would buffer the impact of any increase. Earnest's comments yesterday mirrored his position when asked about the Corker/Murphy proposal in July. The best way to replenish the Highway Trust Fund, he said then, "is along the lines of the proposal that the president put out that we can close loopholes that benefit the wealthy and well-connected."

The White House had previously proposed taxing corporate earnings held overseas to help pay for its $302 billion, four-year road, transit and rail funding bill. That approach went nowhere on Capitol Hill, as did a similar proposal by then-House Ways and Means Chairman Dave Camp (R-Mich.), who broached it as part of a broader tax code overhaul.

But the trust fund, the main federal conduit for road and transit spending, is again facing a crisis at the end of May when a stopgap extension approved last summer expires. On Sunday, Sen. John Thune (R-S.D.), the incoming chairman of the Senate Commerce, Science and Transportation Committee, said he did not favor any tax increase but acknowledged the need to look at all options.

"I don't think we take anything off the table at this point," Thune said on "Fox News Sunday," when asked about the Corker/Murphy proposal. "I think it's important to recognize that we have a problem, an issue that we need a solution for, and we need to look at all the possible ways out there in which we can address the challenge and address the problem," Thune told host Chris Wallace. "But that's one proposal that's out there, and Bob Corker has ... taken a strong stand on that issue."

On the same show, Corker reiterated his support for a gas tax hike but noted that he and Murphy had proposed offsetting the cost by making some temporary tax breaks permanent.

That latter part, Corker said, "seems to get left out of the conversation most of the time."

COAL:

Leasing reforms at Interior should go further -- CAP

Manuel Quiñones, E&E reporter

Published: Tuesday, January 6, 2015

The Interior Department needs to do more to ensure taxpayers are getting their due from the leasing of federally owned coal reserves to mining companies, said a new analysis from the left-leaning Center for American Progress.

At issue is a proposed rule by Interior's Office of Natural Resources Revenue, which the agency announced last month and published in this morning's edition of the *Federal Register*.

Watchdogs say the rule would help close a loophole that they argue allows coal mining companies to reduce their royalty payments by selling or marketing the fuel through a network of affiliates (*Greenwire*, Dec. 19, 2014). The problem is particularly worrying, they say, because of the rise in exports.

Industry critics often point to a Reuters report that cited statistics arguing that taxpayers would have made $40 million extra in 2011 alone if federal regulators would have calculated royalties based on the export price to Asia rather than prices for domestic use.

"I said from the beginning that taxpayers must receive every penny they are owed when coal companies sell resources extracted from public lands," said Sen. Ron Wyden (D-Ore.), who formerly led the Energy and Natural Resources Committee and pressed for the changes. "I applaud Interior Secretary Sally Jewell beginning to take common-sense steps to make sure that happens."

The mining industry has strongly denied claims of wrongdoing. Companies have said environmental groups just want to reduce or eliminate coal use. And while exports have increased, only a small fraction of leased coal is sent overseas.

But CAP, in a document released this morning to coincide with the proposed rule's publication, said mining companies would still be able to use hundreds of affiliates to avoid paying millions of dollars in royalties, plus receiving subsidies.

"Increasingly, the major coal companies are selling Powder River Basin coal not on an open market, but to an elaborate network of shell companies that they own and control," said Matt Lee-Ashley, CAP public lands project director and report co-author.

The Powder River Basin, which is in Montana and Wyoming, is the nation's top coal-producing region. The CAP report said companies doing business in Wyoming, the top producing state, used transactions with affiliates to sell or market more than 40 percent of the coal produced, up from 4 percent in 2004.

"This gaming of the system is costing federal and state governments millions of dollars in lost royalty payments and giving the Powder River Basin an unfair advantage over other U.S. coal producing regions," Lee-Ashley said. "While Interior's proposed rule is a good first step toward preventing the worst abuses, clearly more must be done to modernize the royalty system and rein in the largest subsidies it provides."

CAP says Interior should calculate royalty payments based on the sale of coal to the end user rather than to the first so-called arm's length transaction. The think tank is also calling for Interior to scrap royalty reductions for mines hit with tough market conditions and deductions for washing and transporting coal.

"Making such a change would not come without opposition from coal companies, which have built a complex system of corporate entities to game the current system and shortchange taxpayers," the report said.

Indeed, the National Mining Association and pro-coal lawmakers on Capitol Hill have strongly questioned assertions by groups like CAP that taxpayers are missing out on royalty payments (*E&E Daily*, July 10, 2013). They say the federal government may even be getting more than fair market value because of sealed bids.

Even though reports by the Government Accountability Office and the Interior Department Office of Inspector General criticized parts of the coal leasing program, mine boosters say the problems outlined were nowhere near as deep as many critics allege (*Greenwire*, Feb. 4, 2014).

NMA and a host of industry representatives, including those from companies such as Cloud Peak Energy Inc., Alpha Natural Resources Inc. and Peabody Energy Corp., made their case during a November White House Office of Management and Budget meeting on the rulemaking.

They shared a presentation arguing that affiliates are often engaged in other aspects of coal marketing and transport, rather than mining. Costs associated with the process, companies said, therefore add up.

"Changes to the existing regulations are not justified as there have been no significant market changes in the last 25 years and markets are even more transparent," said the presentation.

It also said it's "[f]undamentally unfair and illogical to impose different valuation structure on affiliate of lessee and independent traders."

CAP scholars, including Lee-Ashley, met with OMB in December and have called for a presidential commission to study the issue.

The Sierra Club, National Wildlife Federation and the Western Organization of Resource Councils also met with OMB on a different date in the same month.

Today's *Federal Register* notice sets up a 60-day comment period on the proposal. In the meantime, the Bureau of Land Management released new manuals and handbooks meant to help offices determine fair market value for federal coal and take exports into account (*Greenwire*, Dec. 19, 2014).

Click here to read the rule.

Click here to read the CAP paper.

Click here for the NMA presentation.

BIOFUELS:

Industry grows despite challenges -- report

Amanda Peterka, E&E reporter

Published: Tuesday, January 6, 2015

The advanced biofuels industry is slated to grow over the next few years but faces challenges due to the uncertainty over the direction of federal biofuel policies, according to a new report out today.

Advanced biofuel capacity will grow from about 800 million gallons of gasoline equivalent in 2014 to more than 1.7 billion gallons in 2017 at the high end of estimates, according to the annual Environmental Entrepreneurs (E2) report. At the low end, the report predicts capacity will reach 1.06 billion gallons.

The report comes as U.S. EPA has yet to make a decision about where to set the nation's biofuel blending mandates for 2014. In November, the agency announced it was punting a decision on a controversial proposal to lower the targets (*Greenwire*, Nov. 21).

"There have been some significant challenges to commercializing advanced biofuels in the United States, and 2014 has proven to be one of the most difficult regulatory periods," the report said. "The companies that continue to weather these challenges have developed more resilient business models and backup plans as a result."

The report tracks projects that are expected to achieve at least a 50 percent reduction in greenhouse gas emissions compared with a petroleum baseline, the threshold set by the renewable fuel standard for a

fuel to qualify as an advanced biofuel. According to E2, there are 165 advanced biofuels facilities either planned, under construction or operating in the country.

Low-end estimates include projects that have shown demonstrated progress toward completion, while on the high-end, estimates assume all active companies will complete projects.

For all advanced biofuels except for biodiesel, E2 tracked capacity through 2017 -- not actual production values, which are often below capacity. For biodiesel, which E2 projects will remain the dominant advanced biofuel, E2 estimated anticipated production.

In all, private investors have pumped nearly $4 billion into the advanced biofuels industry since 2007, the year Congress passed the renewable fuel standard into law, according to E2. In that same time period, producers have netted more than $848 million in grants.

Despite the predicted growth, the industry remains far below the targets Congress wrote into the 2007 renewable fuel standard, which called for 9 billion gallons of advanced biofuels in 2017. Investors have also generally backed off projects since the third quarter of 2013, when EPA first released its proposal to use its authority to lower the blending targets, E2 said.

Delays in ramping up California's low carbon fuel standard due to court action have also hampered the industry, E2 said.

"A number of promising plants have been delayed or idled because of difficulties in production or financing within this new industry," the report said.

FEDERAL AGENCIES:

As gas prices fall, employee reimbursement rate rises

Published: Tuesday, January 6, 2015

Federal employees who drive their car on official business will be reimbursed at a higher rate this year, despite dropping gas prices.

Last week, the General Services Administration increased its mileage reimbursement rate for 2015 from 56 cents to 57.5 cents per mile.

That 2.7 percent increase in reimbursement comes despite a 31 percent decline in the average price of gas since June. Oil prices are expected to fall further.

The reason for the discrepancy is partially because the reimbursement covers not just gas used on official business, but routine wear and tear on a vehicle.

The GSA uses the Internal Revenue Service's "single standard mileage rate" -- which is also used by taxpayers in deducting business travel -- as a benchmark when setting reimbursement rates. In determining its own single standard mileage rate, the IRS uses a yearly study, which in the first half of 2014 would have shown gas prices rising (Josh Hicks, *Washington Post*, Jan. 6). **-- AW**

AUTOS:

Consumers buying bigger cars as gas prices drop

Published: Tuesday, January 6, 2015

Lower fuel prices paved the way for more consumers to buy gas guzzlers last month.

Automakers sold 17 million cars in 2014, making it the fifth straight year of growth for the industry.

Sales of trucks, SUVs and luxury vehicles increased dramatically while demand for hybrid and alternative fuel vehicles dropped.

Jeep sales were up 40 percent in 2014.

But auto experts say manufacturers will not be fooled by this year's rush on trucks and SUVs. Instead, they will take a lesson from 2008, when the industry -- then focused on larger vehicles -- was almost destroyed when fuel prices skyrocketed.

"What you cleared out of the system in the last four or five years was 40 or 50 years of accumulated, perhaps, bad behavior," said Scott Painter, founder and CEO of the auto sales website TrueCar.

Industry analyst Stephanie Brinley said that this time around, manufacturers are adjusting production for demand so that if gas prices rise again, they will be ready to produce more hybrids and fuel-efficient vehicles (Sonari Glinton, NPR, Jan. 5). **-- AW**

NUCLEAR WASTE:

Entergy sues to recoup storage costs at Pilgrim plant

Published: Tuesday, January 6, 2015

The owner of Massachusetts' Pilgrim Nuclear Power Station is suing the federal government to recover the costs of storing radioactive spent fuel.

The federal government has not fulfilled its obligation to build a repository for nuclear waste, costing Entergy Corp. millions of dollars, according to the suit, filed by Entergy in the U.S. Court of Federal Claims on Dec. 30.

In 1982, Congress enacted the Nuclear Waste Policy Act that required the government to build a repository for nuclear waste that would be funded by fees paid by nuclear operators.

Entergy has paid $167 million into the waste fund since purchasing the Pilgrim Power Station in 1999, though no repository has been built.

Nevada's Yucca Mountain has been considered as a place to locate the repository since 1987, but no plans have come to fruition due to local resistance and environmental concerns.

The lawsuit marks the second time Entergy has sued the federal government over the nuclear waste issue. In December 2008, the company won $4.1 million for costs incurred building spent fuel pool racks and $27,000 for legal fees. This time, the company is seeking to recoup money spent building a dry field storage area (Christine Legere, *Cape Cod Times*, Jan. 6). **-- AW**

NUCLEAR WASTE:

Schumer slams N.Y. landfill cleanup delays

Published: Tuesday, January 6, 2015

Residents in Tonawanda, N.Y., are concerned about a stalled radioactive waste cleanup at the Tonawanda Landfill after the Army Corps of Engineers failed to meet a deadline to pick a plan to remove the waste by the end of 2014.

Sen. Charles Schumer (D-N.Y.) said at a news conference there yesterday that the delay is unacceptable for residents.

"They were supposed to complete this work by the end of 2014," Schumer said. "It is now 2015."

The waste, byproducts of the World War II-era Manhattan Project found at the landfill in 1991, could pose a threat to residents if it's disturbed by soil erosion.

Lt. Col. Karl Jansen, the Army Corps' Buffalo District commander, said the agency hopes to have a feasibility study and project plan ready in the spring.

"We are committed, within the limits of our authority and funding, to work towards a solution that is protective of human health and the environment, technically sound, environmentally sustainable and economically justified," Jansen said (Ed Reilly, WKBW, Jan. 5). **– SP**

VERMONT:

Renewable portfolio standard, lake cleanup top lawmakers' priority list

Published: Tuesday, January 6, 2015

Vermont lawmakers have set their environmental priorities for this session, and topping the list are creating a new renewable portfolio standard and improving water quality in Lake Champlain.

Lawmakers hope a renewable portfolio standard requiring utilities to own power generated by wind, solar and other renewables will help reduce greenhouse gases in the state.

The new standard would replace the state's current renewable energy program known as SPEED, which implemented voluntary renewable goals for utilities.

Gov. Peter Shumlin (D) favors the swap, while Republican state House leaders say they will not support policies if they increase electric rates.

The Shumlin administration has also proposed measures to restore water quality in Lake Champlain and to avoid federal regulators' intervention.

Shumlin's proposal, which has already been presented to U.S. EPA, would implement a fertilizer tax and a development fee to pay for it. If it does not work, EPA could place regulations on the state and pull federal funding (John Herrick, *Vermont Digger*, Jan. 5). **-- AW**

ARIZONA:

Solar companies lack 'intellectual honesty' -- state official

Published: Tuesday, January 6, 2015

The outgoing chairman of Arizona's Corporation Commission issued a blunt warning to rooftop solar panel companies at a ceremony swearing in two new members of the panel yesterday.

Bob Stump, who was replaced as chairman this week but remains a commissioner for another two years, said the companies "need more intellectual honesty."

The commission has struggled in recent years to manage how much utilities should subsidize solar energy sources and has sought to protect the utilities from expected revenue losses caused by customers switching to rooftop solar panels.

The all-Republican commission has added a fee averaging $5 per month for new solar users and has allowed utilities to enter the rooftop solar business -- both moves that came amid opposition from rooftop solar leasing companies.

"The pursuit of utopian energy policy is pure folly," Stump said. "If you are taking government subsidies, you can't balk at government oversight" (Ryan Randazzo, *Arizona Republic*, Jan. 5). **-- SP**

PAKISTAN:

Nation eliminates solar taxes to curb energy crisis

Published: Tuesday, January 6, 2015

In an attempt to stave off a worsening energy crisis, Pakistan has reversed course on its solar power policy.

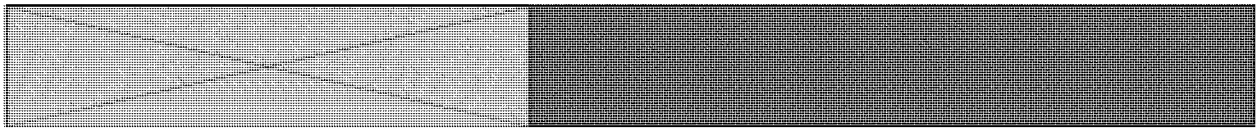
The government has eliminated a 32.5 percent tax on imported solar equipment that was just recently implemented. It has also approved connecting rooftop solar installations to the grid and net metering.

Asajad Imtiaz Ali, chief executive of the public organization Alternative Energy Development Board, said the new stance on solar could spur development across the country.

"The initiative will help scale up demand for solar energy across Pakistan," he said.

Pakistan currently faces a 6,000-megawatt power shortfall. As a result, rural areas suffer blackouts lasting up to 11 hours per day, and urban areas face up to eight hours of power cuts daily.

Solar panel importer Nauman Khan said eliminating the tax on foreign panels will help the industry. In 2013, Pakistan's private sector imported 350 MW of solar. In 2014, that amount was halved after the government implemented its import taxes (Aamir Saeed, Reuters, Jan. 6). **-- AW**



AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., January 7, 2015

READ FULL EDITION

1.BUSINESS:

American Petroleum Institute shares spotlight with renewables in its annual report

The most noteworthy message from the American Petroleum Institute's 2015 annual report isn't its finding that the U.S. oil industry is experiencing a "petroleum renaissance" born of a drilling boom in domestic fields such as the North Dakota's Bakken and Texas' Eagle Ford shale formations.

2.RELIGION:

'Rock-star pope' intends to amplify his climate message

Pope Francis has led the Catholic Church for less than two years. But during that short window, he has breathed new life into a religion struggling with apathy and scandal; earned the praise of social justice activists around the world for an intense focus on poverty; and even played a role in ending a half-century-old stalemate between Cuba and the United States.

TODAY'S STORIES

3.COAL:

Stressing treaty rights, Lummi Nation tribe seeks rejection of huge West Coast coal terminal

4.ADAPTATION:

Study finds combination of sea-level rise and man-made flooding problems threatens Bangladesh

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AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., January 7, 2015

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1.LAW:

Speaking for the trees, lawyer pushes unconventional doctrine

Attorneys for a Pennsylvania energy company were baffled when they reviewed a November court filing seeking to intervene in the company's lawsuit against a township government.

Though industry lawyers are accustomed to involvement from conservation groups and others affected by alleged environmental harms, this was far from a standard intervenor motion. The filing came from the environment itself -- the Little Mahoning Creek and all the water and land ecosystems that feed into it.

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Industry group pushes for lasting legislative solution to oil exports

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Grid report shows needs fueled by Texas' energy economy

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Some states faring better than others on smart meters

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Marcellus operator eliminates 250 landmen

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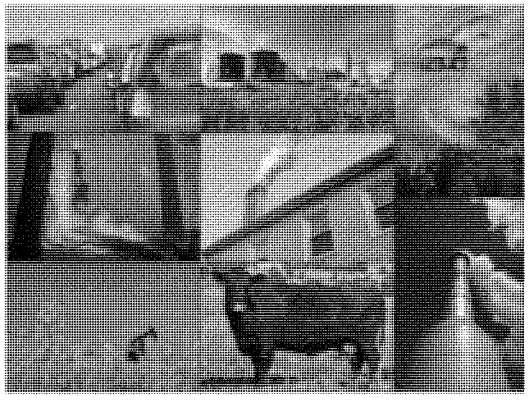

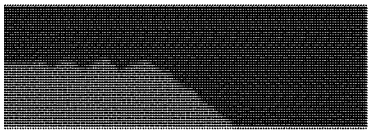

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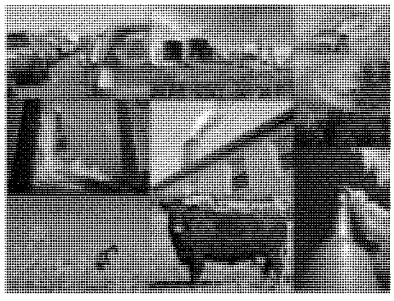

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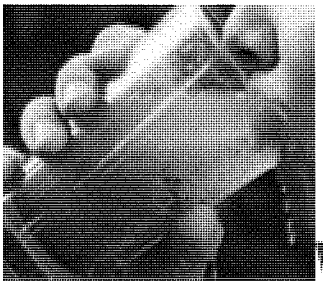
Subject: Water Law News for January 7, 2015



Water Law News

for January 7, 2015

Bloomberg BNA Daily Environment Report™

Congress

House Rules Require Committees to Report Number of Regs Mandated by Legislation

House Republicans pushed through a rules package Jan. 6 designed to ensure new bills don't add to regulatory burdens for industry, including a requirement that committees tally the number of rules that would be mandated by the legislation....

Hydraulic Fracturing

Many Quakes in British Columbia Gas Region Attributable to Fracking, Regulator Report Says

More than 200 seismic events recorded in northeastern British Columbia's natural gas producing region between August 2013 and October 2014 were caused by hydraulic fracturing in oil and gas operations, according to a report by the British...

Hydraulic Fracturing

Ohio Researchers Find Five Earthquakes Near Poland Township Activated by Fracking

Hydraulic fracturing triggered a series of earthquakes in Poland Township, Ohio, including a rare quake large enough to be felt by area residents, according to Miami University of Ohio researchers. ...

Oil & Gas

Congress Moving Forward With Keystone Bill Despite Veto Threat From White House

Republicans are moving forward with plans to consider legislation to approve the Keystone XL pipeline, even as a White House spokesman said President Barack Obama would veto the bill. ...

Water Trading

Iowa Cities Considering Water Trading To Meet State Requirements for Nutrients

Iowa municipalities are considering the possibility of implementing a trading program as a cost-effective way of meeting requirements in the state's nutrient-reduction strategy. ...

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Inside EPA **Environmental Policy Alert**, 01/07/2015

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Latest News

Advocates, States Reject EPA Claim Of Deference For CWA Transfer Rule

Environmentalists and some states are asking the U.S. Court of Appeals for the 2nd Circuit to rely heavily on its past rulings dealing with Clean Water Act (CWA) permit requirements for transfers of water in order to strike down EPA's 2008 rule exempting such transfers from permit mandates, arguing the rule is not due judicial deference as EPA and other states have claimed.

EPA Urged To Overhaul Aquifer Exemptions To Improve Water Protection

Environmentalists are urging EPA to overhaul its policy on granting so-called aquifer exemptions -- waivers from Safe Drinking Water Act (SDWA) permitting for certain underground injections -- in order to address what they claim are flaws in the policy that leave drinking water supplies vulnerable to contamination from the injections.

Study, Model May Advance EPA Effort To Finalize Perchlorate Water Goal

DENVER -- An exposure study may provide further backing for EPA's effort to advance a public health goal for perchlorate in drinking water, which has been extended past a statutory deadline in order to strengthen the underlying science and allow federal scientists to expand a perchlorate model as recommended by the agency's science advisors.

News Briefs

FutureGen Urges EAB To Dismiss Suit Over CCS Permits

Developers of the FutureGen carbon capture and sequestration (CCS) project are urging EPA's Environmental Appeals Board (EAB) to dismiss landowners' suit that claims novel permits issued for the facility fail to protect drinking water, with industry arguing that the challengers fail to show any flaws in the permits that justify an EAB case.

Greenwire

KEYSTONE XL:

Obama unlikely to sign new Senate bill -- White House

Manuel Quiñones, E&E reporter

Published: Tuesday, January 6, 2015

This story was updated at 1:54 p.m. EST.

The White House said this afternoon that President Obama was unlikely to sign Senate legislation to approve the Keystone XL oil pipeline from Canada.

"I would not anticipate the president would sign this piece of legislation," press secretary Josh Earnest told reporters after the bill's introduction this morning.

The White House has been sending mixed messages on the KXL bill for months, but Earnest said, "The text of this legislation was made public since the last time we discussed this."

Earnest spoke just hours after Sens. John Hoeven (R-N.D.) and Joe Manchin (D-W.Va.) unveiled the measure to approve KXL's trans-boundary crossing. The lawmakers formally introduced it immediately after the Senate opened the new session, making S. 1 the chamber's first bill of the 114th Congress.

The legislation has 60 sponsors, ensuring its ability to overcome procedural hurdles. Hoeven and Manchin said three additional lawmakers have indicated their support.

"Obviously, we're continuing to work to get more support for the legislation," Hoeven said. He cited the Constitution's Commerce Clause as authority for lawmakers to approve the pipeline's transboundary crossing, bypassing the ongoing State Department review.

Senate Majority Leader Mitch McConnell (R-Ky.) has promised an open amendment process. With the State of the Union and lawmaker retreats scheduled for the coming weeks, debate may take some time.

"Leadership has indicated to me that we'll be on the bill for at least several weeks," Hoeven said.

In an apparent swipe at Democratic leader Harry Reid of Nevada, Manchin said the planned amendment and debate process was the most open and deliberative he had seen on a major bill since his 2010 arrival in the Senate. "I'm very pleased with that," he said. "I think it will be a very energetic process that we go through."

Democrats, now in the minority, plan to introduce a number of amendments, including measures to prevent the export of KXL's oil and ensure American products are used to build the pipeline.

Manchin said he was open to such changes, which could attract more support.

"We're going to go into those in more detail, but there's a lot of good stuff," he said during a gathering with reporters.

Republican leaders would like to send Obama the cleanest possible bill, telling members they'll have other opportunities to advance priorities. They also don't want to appear to be breaking their "regular order" pledge.

"But remember, any amendment that passes is going to need to have 60 votes," Hoeven said. "So it's going to have to be bipartisan."

Hearing canceled

The Energy and Natural Resources Committee was planning to hold a hearing on the legislation tomorrow and a vote on the bill Thursday. KXL backers were then looking to have the bill on the floor by next week.

But Sen. Richard Durbin (D-Ill.), a member of the Senate Democratic leadership, threw a wrench into those plans this afternoon by objecting to the hearing. Consent was necessary because Senate committees are still getting organized.

Robert Dillon, spokesman for the Energy panel's incoming chairwoman, Sen. Lisa Murkowski (R-Alaska), said the hearing was canceled and the vote remained uncertain. But he promised progress on KXL would continue.

The House has promised to vote on the same bill Friday. But the Rules Committee has yet to set the parameters for debate. Early indications are that leaders won't allow amendments.

Natural Resources Defense Council attorney Anthony Swift said this morning that no amendment could make the environmentalists accept the bill. He said low oil prices mean the pipeline would encourage Canadian oil sands development and, therefore, lead to increased greenhouse gas emissions.

David Goldston, NRDC's government affairs chief, said the Democratic amendments were more to "create additional issues" for pipeline supporters and not to make the bill acceptable. He doesn't think Republican leaders in Congress will have the votes to override a presidential veto.

Manchin said low oil prices should be welcomed but are not a reason to deny KXL. "The bottom line: It's a product that's going to be produced, it's a product that's going to be sold," he said.

Manchin said his office got in touch with the White House this morning on the issue. He did not provide details about the ongoing talks.

Reporters Jean Chemnick and Nick Juliano contributed.

FISHERIES:

Feds to revise standards for imported seafood to protect marine mammals

Emily Yehle, E&E reporter

Published: Tuesday, January 6, 2015

The National Marine Fisheries Service plans to propose more stringent standards for imported seafood later this year, after reaching a settlement with environmental groups over the agency's delayed rules for ensuring foreign fisheries protect marine mammals.

The settlement -- filed in the U.S. Court of International Trade -- addresses a provision in the Marine Mammal Protection Act (MMPA) that requires the U.S. government to ban the importation of fish caught

using gear that kills or injures more mammals than allowed under U.S. standards.

While some restrictions exist, NMFS has been slow to update them, and environmental groups say the U.S. government has allowed the import of "millions of tons of foreign seafood" that do not meet the required bycatch standards. In particular, they point to swordfish, which are caught with gear that can catch everything from dolphins to turtles.

The settlement announced today gives NMFS until June 1 to propose a rule implementing the MMPA provision for relevant imported fish. The agency has until Aug. 1, 2016, to finalize its decision.

Sarah Uhlemann, international program director for the Center for Biological Diversity, said in a statement that the new regulations "will force other countries to step up and meet U.S. conservation standards." The group estimates that more than 650,000 marine mammals are killed every year when commercial fishermen unintentionally catch them in their gear.

Nina Young from the NMFS Office of International Affairs said agency officials "welcome the deadline." NMFS has been working for years to bring international standards up to speed with domestic ones, she said, but the process is cumbersome. The United States has 120 trading partners and imports nearly 90 percent of its seafood.

"Crafting something that is going to meet the diversity of those fisheries has been a very daunting task," she said. But "we have made great strides."

The settlement comes as environmentalists sound the alarm on the vaquita, a small porpoise that is the most endangered marine mammal in the world. Less than 100 remain, partly due to fishermen who use gill nets to catch blue shrimp sold in the United States. The vaquita's decline has been hastened in recent years by the illegal totoaba fishery that uses gill nets to catch large sea bass whose bladders are prized in China (*Greenwire*, Dec. 9).

Young said it's difficult to predict the upcoming rule's impact on the vaquita and the blue shrimp fishery. But she pointed to Mexico's recent proposal to ban gillnet fishing in most of the upper Sea of Cortez. NMFS has also been working with the country to develop a survey to estimate the vaquita population and improve enforcement, Young said.

CBD, the Natural Resources Defense Council and the Turtle Island Restoration Network -- who together are the plaintiffs in the settlement -- said the new regulations could prevent similar situations elsewhere in the world.

The MMPA provision "provides real, enforceable protections for marine mammals and sets up an even playing field that allows our fishermen to be competitive in the U.S. market," said NRDC's Zak Smith. "If we'd had these standards 40 years ago, we wouldn't be scrambling today to save the imperiled vaquita. Thankfully, if this law is implemented, other species won't share their fate."

ARCTIC:

Fewer ships traveled through icy waters in 2014

Published: Tuesday, January 6, 2015

Ship traffic in the Arctic waters between Europe and Asia fell in 2014.

Experts predicted there would be less sea ice and more ships would use shipping routes. But only 31

vessels used the Northern Sea Route north of Russia, and 22 used part of the route. In 2013, a total of 70 ships used the Northern Sea Route.

"I think 2014 kind of shows that development and Arctic shipping may be further off than we might have thought a few years ago, that the ice is not melting as quickly as previously predicted," said Malte Humpert, executive director of the Arctic Institute.

Low ice levels in 2007 and 2012 gave optimism to many in the oil, container shipping and tourism industries. But environmental groups warned drilling and exploitation in the Arctic could pose a threat to wildlife and the entire ecosystem (Associated Press, Jan. 5). **-- MH**

MINING:

Company seeks to set up gold mines in remote Idaho wilderness

Published: Tuesday, January 6, 2015

The public has until Feb. 23 to weigh in on a mining company's plan to explore for gold in the Frank Church-River of No Return Wilderness in central Idaho.

American Independence Mines and Minerals Co. is asking to reopen a 4-mile road into the remote region to make 571 motorized trips using pickups, a bulldozer and other vehicles to build 11 drill pads.

Mining is permitted under conditions established when the area was designated as federally protected wilderness so long as mines are proved to be profitable.

"They have to validate these claims before they can extract minerals from them," said Brian Harris, Payette National Forest spokesman. "If the two claims prove to be valid, then the next step is for the owner to submit a complete plan."

According to the 45-page draft record of decision filed Friday, American already has three claims validated nearby in an area where mining started in 1889.

The company wants to check whether one of the mines can still yield gold, but John Robison of the Idaho Conservation League worries the company is on a "treasure hunt" for new deposits, a violation of the wilderness regulations and endangering salmon runs.

"We're going to carefully review the document and then make sure Idaho's wilderness values and clean water are protected," he said (AP/*Idaho Statesman*, Jan. 5). **-- DTB**

WETLANDS:

La. tribe sinks amid struggle for compensation

Published: Tuesday, January 6, 2015

The land that is home to a Louisiana American Indian tribe is disappearing beneath the Gulf of Mexico as the United Houma Nation struggles for any sort of recognition.

Leaders of the 17,000-member tribe say the problem of gradually sinking wetlands was made significantly worse by the 2010 BP PLC oil spill.

Louisiana recognizes the Houma as an official nation, but the federal government denied giving the Houma official status, which in turn has denied it access to settlement money set aside for coastal residents and businesses suffering in the wake of the Deepwater Horizon explosion.

"The United Houma Nation reached out to BP for assistance," Principal Chief Thomas Dardar Jr. said in a congressional hearing in 2012, but BP said it wasn't required to help the Houma because it isn't a federally acknowledged tribe.

A BP representative declined to comment.

After fleeing its previous territory near Baton Rouge to avoid the 1830 Indian Removal Act and the Trail of Tears, the Houma took up residence in the bayous of southeastern Louisiana, largely cut off from the rest of society until the 1950s.

The gradual erosion of the marshes fueled by levee building, booming energy development and climate change has submerged an average of 16.57 square miles of wetlands a year for the past 25 years, according to the U.S. Geological Survey (Stell Simonton, Al-Jazeera, Jan. 5). **-- DTB**

OCEANS:

Anti-whaling group seeks to overturn costly contempt ruling

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, January 6, 2015

A radical anti-whaling nonprofit has asked a federal appeals court to reconsider its decision to hold it in contempt for allegedly continuing to harass Japanese whaling ships, a decision that could put the group on the hook for millions of dollars.

The 9th U.S. Circuit Court of Appeals last month found the Oregon-based Sea Shepherd Conservation Society to be in contempt of court for allegedly violating a court-ordered 500-yard perimeter around Japanese whaling ships off the coast of Antarctica (*Greenwire*, Dec. 22, 2014).

The court also instructed a commissioner to figure out how much Sea Shepherd and its founder, Paul Watson, owe the Japanese Institute for Cetacean Research in legal fees and damages to its ships.

In three court filings, Sea Shepherd, Watson and other former volunteers urge the San Francisco-based 9th Circuit to reconsider the contempt ruling en banc, meaning before a larger panel of judges.

They argue that the panel inappropriately disregarded a nearly 80-page report of a court-appointed commissioner. The commissioner conducted what amounted to an eight-day trial in October 2013 and concluded that they should not be held in contempt.

It stemmed from the organization's effort to cut ties with an anti-whaling campaign by international Sea Shepherd entities, Operation Zero Tolerance, that was already underway when the 9th Circuit issued its original ruling in February 2013.

The court compared Sea Shepherd's tactics of ramming and throwing smoke bombs at whaling ships to piracy (*Greenwire*, Feb. 25, 2013).

Sea Shepherd and Watson then cancelled all involvement with the new operation, ceding them to the international Sea Shepherd arms. Watson also resigned as executive director, as did several other employees.

As a result, the group said in its filing, it has lost 66 percent of its revenues and its "premiere publicity platform," the Animal Planet show *Whale Wars*.

The group's leaders sharply criticized the original ruling equating them to pirates.

"This sensational conclusion grabbed headlines, and has driven the Panel's rulings, in which it has flouted the limits of its jurisdiction, disregarded the restraints on its contempt power, and ignored the rules of procedure," they wrote, "all so it can serve as a police power in the Southern Ocean, to protect a Japanese corporation that kills whales in violation of international law."

The case is several years old and stems from a long-simmering feud between Sea Shepherd and the Japanese research organization. In March 2013, a U.S. District Court judge based in Seattle denied the Japanese group's injunction request, concluding that Sea Shepherd's tactics amounted to low-level harassment.

The 9th Circuit reversed that decision, noting that the Japanese outfit has the proper permits to comply with international whale hunting rules.

Click here for the group's petition for rehearing.

COAL:

Tribe formally petitions Army Corps to deny export permit

Manuel Quiñones, E&E reporter

Published: Tuesday, January 6, 2015

The Lummi Nation yesterday asked the Army Corps of Engineers to reject a major coal export proposal in the Pacific Northwest, saying approval would violate U.S. government commitments to the tribe.

Tim Ballew, chairman of the Lummi Indian Business Council, asked the corps to deny the key Clean Water Act dredge-and-fill permit for the Gateway Pacific Terminal project in Washington state near the border with Canada. It would facilitate the export of tens of millions of tons of coal every year from U.S. mines to Pacific Ocean markets.

"As one of our tribal fishermen said, 'it's like putting a freeway inside the reservation,'" Ballew said yesterday in a statement accompanying his letter to corps Seattle District Commander Col. John Buck.

The tribe says increased shipping traffic, among other impacts of Gateway Pacific, would harm aquatic resources and therefore its members' ability to access salmon and crab fisheries, secured through an 1855 treaty.

"The Corps has an obligation to uphold our treaty rights and comply with the federal laws regarding Lummi rights to fish at Cherry Point," Ballew said. "Our waters are a way of life and survival for our people. The bottom line is, you can't mitigate or buy your way out of the damage that this proposed shipping facility would cause."

The Lummi Nation joins several other tribes in opposing coal export terminal proposals from the Pacific Northwest. Last year, the Yakama Nation cited federal treaty obligations in fighting Ambre Energy Ltd.'s Morrow Pacific project along the Columbia River in Oregon.

Robert Anderson, head of the University of Washington School of Law's Native American Law Center, said at the time that companies and regulators generally take tribal concerns seriously and that courts routinely enforce treaty obligations (*Greenwire*, May 22, 2014).

Developers of three remaining export proposals in Washington and Oregon say they are taking tribal concerns into account. They also say opponents are exaggerating the environmental impacts of the projects.

Beyond the corps, proponents have to deal with state regulators who have expressed skepticism of the proposals. The Washington State Department of Ecology is conducting in-depth reviews of the Gateway Pacific proposal and the Millennium Bulk Terminals project in the southern part of the state.

In Oregon, the Department of State Lands already rejected a key permit for Morrow, the smallest of the three proposals. Ambre and the Port of Morrow, which would house project facilities, are appealing.

The coal-producing states of Montana and Wyoming are also participating in the appeal on a limited basis. Wyoming, in particular, has been active in promoting new export facilities for its coal. Lawmakers there are considering legislation that could lead to state financing for exports.

KANSAS:

Lawmakers peg water issues as priority in 2015

Published: Tuesday, January 6, 2015

Droughts in southwest Kansas and foreboding news from California have Kansas lawmakers prioritizing water issues in 2015.

Lawmakers hope to finalize and fund a 50-year plan to protect the state's water supplies by the end of this year.

A second draft of the plan was already released publicly in mid-November. The draft plan proposes multiple strategies including conservation, water reuse, better management and more drought-resistant crops. It also suggests that billions of gallons of water could be moved from wet areas to dry ones.

The Army Corps of Engineers is studying the proposal to move water, and is set to release its findings in early 2015.

Fourteen planning teams also have been assembled to assess the water supply in different parts of the state (Dave Helling, *Kansas City Star*, Jan. 4). **-- AW**

VERMONT:

Renewable portfolio standard, lake cleanup top lawmakers' priority list

Published: Tuesday, January 6, 2015

Vermont lawmakers have set their environmental priorities for this session, and topping the list are creating a new renewable portfolio standard and improving water quality in Lake Champlain.

Lawmakers hope a renewable portfolio standard requiring utilities to own power generated by wind, solar and other renewables will help reduce greenhouse gases in the state.

The new standard would replace the state's current renewable energy program known as SPEED, which implemented voluntary renewable goals for utilities.

Gov. Peter Shumlin (D) favors the swap, while Republican state House leaders say they will not support policies if they increase electric rates.

The Shumlin administration has also proposed measures to restore water quality in Lake Champlain and to avoid federal regulators' intervention.

Shumlin's proposal, which has already been presented to U.S. EPA, would implement a fertilizer tax and a development fee to pay for it. If it does not work, EPA could place regulations on the state and pull federal funding (John Herrick, *Vermont Digger*, Jan. 5). **-- AW**

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1.BUSINESS:

American Petroleum Institute shares spotlight with renewables in its annual report

The most noteworthy message from the American Petroleum Institute's 2015 annual report isn't its finding that the U.S. oil industry is experiencing a "petroleum renaissance" born of a drilling boom in domestic fields such as the North Dakota's Bakken and Texas' Eagle Ford shale formations.

2.RELIGION:

'Rock-star pope' intends to amplify his climate message

Pope Francis has led the Catholic Church for less than two years. But during that short window, he has breathed new life into a religion struggling with apathy and scandal; earned the praise of social justice activists around the world for an intense focus on poverty; and even played a role in ending a half-century-old stalemate between Cuba and the United States.

TODAY'S STORIES

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Stressing treaty rights, Lummi Nation tribe seeks rejection of huge West Coast coal terminal

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Speaking for the trees, lawyer pushes unconventional doctrine

Attorneys for a Pennsylvania energy company were baffled when they reviewed a November court filing seeking to intervene in the company's lawsuit against a township government.

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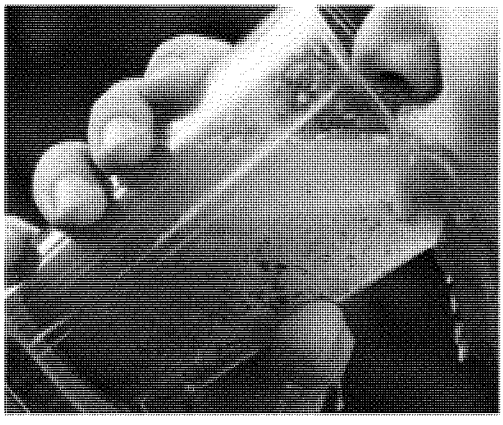

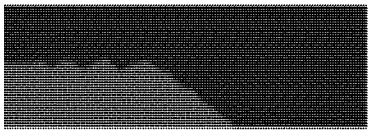

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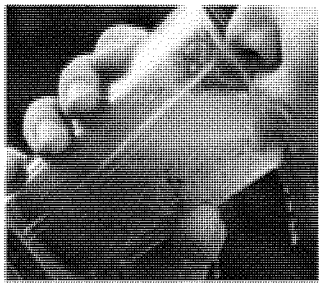

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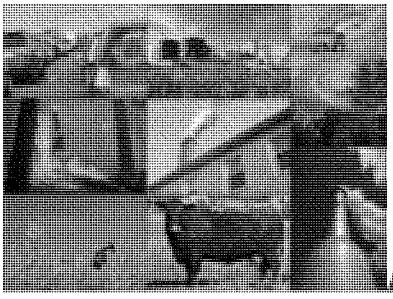
Subject: Air & Radiation Law News for January 6, 2015



Air & Radiation Law News

for January 6, 2015

Bloomberg BNA Daily Environment Report™

Climate Policy

California Governor Proposes Increasing Renewable Portfolio Standard to 50 Percent

California Gov. Jerry Brown (D) Jan. 5 proposed increasing the state's 33 percent renewable portfolio standard to 50 percent over the next 15 years and cutting petroleum use in cars and trucks in half over the same period. ...

Energy

Export Restrictions Among Amendments Senate Democrats Plan for Keystone Bill

A measure that would bar the export of oil and products refined from crude flowing through the Keystone XL pipeline is among the amendments Senate Democrats plan to offer to legislation that would approve the Canada-to-Texas project, according...

Energy

Honorable Sworn In as FERC Commissioner

Colette Honorable was sworn in Jan. 5 as a commissioner of the Federal Energy Regulatory Commission. She had been chairman of the Arkansas Public Service Commission since 2011 and is a former president of the National Association of Regulatory...

Energy

Natural Gas Pipeline Permitting Bill
Slated for House Floor Action, Aide Says

Legislation that would expedite the permitting for new natural gas pipelines will be brought to the floor the week of Jan. 12, Mike Long, a spokesman for House Majority Leader Kevin McCarthy (R-Calif.), told Bloomberg BNA....

Energy

New York Reactor's Survival Tests
Support for Expensive Nuclear Power

Exelon Corp., the biggest U.S. owner of nuclear reactors, needs to almost double power prices to keep a New York plant running in a move that promises to show just how far regulators will go to keep uneconomic plants operating....

Hazmat Transport

Federal Efforts Lacking on Responses
To Rail Spills, EPA Region 5 Official Says

Federal transportation regulators need to coordinate better with environmental and other officials on preparing for potential incidents involving crude oil transported by rail, said Ralph Dollhopf, northern Michigan on-scene response...

Hazmat Transport

Final Hazmat Transport Harmonization Rule
Will Be Effective Retroactive to Jan. 1

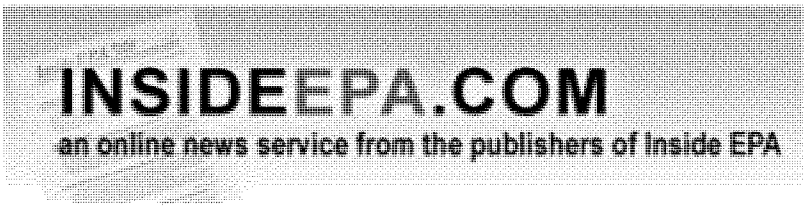
The Pipeline and Hazardous Materials Safety Administration will publish a final rule Jan. 8 harmonizing

domestic rules with a number of international safety standards for transport of various hazardous materials by air, vessel and other...

Trade

Commerce Preliminary Ruling Would Lower Current Duties on Solar Products From China

Antidumping duties imposed by the Commerce Department in 2012 on some solar products from China would be lowered if the department affirms preliminary findings in a recent administrative review....



Inside EPA **Risk Policy Report**, 01/06/2015

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Launches New Rule To Rescind GHG Permits, Vows Enforcement Relief

EPA plans to finalize by the end of the year a new rule for rescinding Clean Air Act permits for sources that triggered the requirements due solely to their greenhouse gas (GHG) emissions, a step the Supreme Court held to be unlawful, while also vowing to limit enforcement against entities that are currently subject to such permits.

Solvents Group Eyes Deadline Suit In Bid For EPA Air Toxics Rule For nPb

Halogenated solvents producers are threatening EPA with a deadline suit to force a response to their long-pending petition seeking Clean Air Act rules for the competing chemical n-Propyl Bromide (nPb), saying it has provided the necessary data for the petition and EPA's years-old delay in granting or rejecting it is unacceptable.

Western States Eye Steps For EPA To Improve Regional Haze Air Program

Western states are drafting recommendations for how EPA could improve key parts of its regional haze emissions reduction program, including how to achieve "reasonable progress" in cutting haze and calling on the agency to focus on controllable sources of haze-forming air pollution rather than uncontrollable

events such as dust storms.

Industry Groups Support Critical Procedural Arguments In ESPS Lawsuits

Industry groups representing the mining, small business and utility sectors are supporting critical procedural arguments in Murray Energy's novel lawsuits targeting EPA's proposed greenhouse gas (GHG) rule for existing power plants, arguing that an appellate court has jurisdiction to rule on the merits of the novel suits' and block the proposal.

News Briefs

D.C. Circuit Sets Arguments In Suit Over EPA 'Tier 3' Air Rule

The U.S. Court of Appeals for the District of Columbia Circuit has scheduled oral arguments for March 20 in the ethanol sector's lawsuit over EPA's Tier 3 vehicle and fuel emissions rule, with the agency defending the policy from the industry's claim that its fuel testing provisions effectively bar higher ethanol blends from the market.

Greenwire

KEYSTONE XL:

GOP makes pipeline first order of business amid mixed signals from White House

Manuel Quiñones, E&E reporter

Published: Monday, January 5, 2015

The Keystone XL oil pipeline has become the first order of legislative business in the incoming 114th Congress, with votes planned in both the Senate and House.

Sen. John Hoeven (R-N.D.) plans to introduce legislation to approve the pipeline's transboundary crossing from Canada tomorrow, an aide said. It will be the same as S. 2280, which failed in the Senate last year by one vote.

Incoming Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) has scheduled a hearing on the issue for Wednesday and a panel vote Thursday. The idea is to get the bill ready for floor consideration by next week.

"The president's going to see the Keystone XL pipeline on his desk, and it is going to be a bellwether decision by the president, whether to go with jobs and the economy -- his own State Department said it's 42,000 new jobs," Sen. John Barrasso (R-Wyo.) said on NBC News' "Meet the Press" yesterday.

Even though Republicans see approving the pipeline as both good policy and good politics, many Democrats and President Obama have increasingly been echoing opposition arguments. For starters, they say the pipeline would create a few dozen permanent jobs.

"Our Republican colleagues say that this is a jobs bill. But that's really not true at all," Sen. Charles Schumer (D-N.Y.), a member of his party's leadership, said on CBS's "Face the Nation" yesterday.

Last week *The Wall Street Journal*, citing unnamed administration sources, said the president was laying the groundwork to turn down TransCanada Corp.'s request.

Opposition sources say they've heard the same thing. But the White House has yet to say for sure whether Obama would veto legislation forcing his hand.

Incoming Senate Majority Leader Mitch McConnell (R-Ky.) has promised an open amendment process for the Keystone XL bill, meaning other measures could be attached to it. Last year he said he expected lawmakers to offer "energy-related" proposals.

That could mean amendments to boost natural gas exports or lift the decades-old crude oil export ban, which has surfaced as a Republican priority for the new Congress.

A Senate Republican aide said the GOP's approach included promoting amendments that would strengthen the bill and potentially make it harder for Obama to reject.

But the Republican amendment plan is still materializing. Now in the majority, many GOP members see the KXL bill as the first chance to advance policy priorities. For Democrats in the minority, the plan is more focused on presenting a clear alternative.

"Consideration of this bill will provide us with the first opportunity to demonstrate that we will be united, energetic and effective in offering amendments that create a clear contrast with the Republican majority," Schumer, the Senate's Democratic Policy Committee chairman, and Sen. Debbie Stabenow (D-Mich.), policy panel vice chairwoman, wrote in a letter to colleagues.

Democrats float amendments

Democrats plan to introduce an amendment to prevent the export of KXL oil. Developers and supporters say the pipeline is not for export, but the refined material would end up in international markets.

Other Democratic amendments would require U.S. materials for the construction of KXL, expand clean energy jobs and boost heating oil assistance for the needy, particularly veterans and seniors. Democrats propose to pay for any expenses through a boost in royalty payments for mineral extraction.

Democrats also want to prevent states from allowing the use of eminent domain for projects by foreign companies. Pipeline supporters say such an amendment would infringe on states' rights.

Schumer and Stabenow's letter said that by floating the amendments, "we would put Republicans clearly on the record about where they stand."

Even if the amendments pass, which is unlikely, Schumer said the president should veto the bill. "And I think there will be enough Democratic votes to sustain the president's veto," he said.

Several Democrats -- including Sens. Joe Manchin (W.Va.) and Heidi Heitkamp (N.D.) -- voted for the pro-KXL bill last year and are likely to do so again, giving the GOP a filibuster-proof majority in the chamber. A veto-proof margin, however, would be difficult at best.

Sen. Amy Klobuchar (D-Minn.), who voted against the legislation last year, said she doesn't expect members of her party to switch their votes from "no" to "yes."

But she said on "Meet the Press," "I believe that this project has merit. But I still don't think that Congress

should be in the business of deciding where a pipeline is located. I think the president needs to make a decision. A lot of us are frustrated that it has taken this long."

Maine independent Sen. Angus King voted against the bill last year but said he could change his mind depending on how much the president stalls on making a decision. King said he may support language setting a timeline for executive action.

House action

In the House, lawmakers could begin consideration of KXL legislation as soon as this week. As in the Senate, the lower chamber of Congress has more than enough votes to pass the bill, not yet enough to override a presidential veto.

"I'm waiting to hear what the president's actually going to tell us about Keystone," said incoming Rep. Debbie Dingell (D-Mich.) on CNN's "State of the Union." "I myself have not decided how I'm going to vote on it."

She added, "I think it does have the potential to create jobs, but I haven't heard what the administration's official position is. And I think what the president tells us is going to be very important."

Last week, Reps. Peter DeFazio of Oregon, Frank Pallone of New Jersey and Raúl Grijalva of Arizona -- all three set to be the top Democrats on key energy and environmental panels -- urged House Republican leaders against fast-tracking a vote on KXL.

"We urge you to use this opportunity to recommit to the value of thoughtful deliberation," they wrote in a letter. "We urge you not to bypass the committee process and regular order for consideration of this controversial legislation."

DeFazio, Pallone and Grijalva pointed to low oil prices, which KXL critics say have either jeopardized the project's viability or boosted its climate footprint.

The State Department's review on KXL said the pipeline would not have a significant impact on the climate because Canadian oil sands crude would find its way to market regardless.

But, with low oil prices, KXL could make projects more economical and therefore have a material impact on whether companies mine the resource or leave it in the ground, environmentalists say (*E&ENews PM*, Dec. 18, 2014).

TransCanada and other KXL backers, like the American Petroleum Institute, see the oil price recovering. They say demand for the pipeline remains strong.

Several dozen people protested near the White House over the weekend against KXL. More demonstrations could materialize as congressional action intensifies.

EPA:

Employees 'AWOL' for thousands of hours each year

Robin Bravender, E&E reporter

Published: Monday, January 5, 2015

U.S. EPA employees have racked up tens of thousands of hours in unexcused absences in recent years as they've gone "AWOL" from their work stations.

Agency employees were absent without leave for more than 53,000 work hours between 2008 and 2013 -- an average of about 9,000 hours per year, according to data released by EPA in response to a Senate inquiry. That includes agency staffers who were found to be "absent from duty without having the absence approved," the agency said.

Craig Hooks, the former top human resources official at EPA, sent the numbers in April to now-retired Sen. Tom Coburn (R-Okla.). Last January, Coburn wrote to EPA chief Gina McCarthy, asking for details about her agency's AWOL staffers.

"I write to learn more about the work force employed by the EPA," Coburn wrote. "Specifically, I am interested in the number of employees each year who have hours where they are absent without leave, or 'AWOL.'" Coburn's letter and EPA's response were released to *Greenwire* last month under a Freedom of Information Act request.

Coburn and other lawmakers have become increasingly interested in EPA's personnel management after a 2013 scandal exposed that a senior EPA air official had been lying for years about doing secret work for the CIA while getting paid to stay home. EPA's critics have called for beefed-up scrutiny of employee supervision and timekeeping practices at the agency that's already been a lightning rod for attacks based on the Obama administration's environmental rules.

The number of EPA employees with AWOL hours ranged from 62 in 2013 to 103 in 2011, the agency said. That represents a small fraction of the agency's total staff; fewer than 1 percent of the agency's workers were found to be AWOL each year from 2008 to 2013.

The annual number of AWOL hours at the agency was as high as 13,193 in 2012 and as low as 4,209 in 2013. EPA's staffing had dropped significantly in 2013 to 16,051 after hovering around 17,500 in previous years.

Employees who are found to be AWOL can face stiff penalties, ranging from written reprimands and suspensions to possibly losing their jobs.

"The AWOL policy includes that upon returning to duty, the employee must explain to the immediate supervisor at the earliest practicable time, the cause of the absence and the reason for his/her failure to obtain approval to be absent," Hooks wrote in response to Coburn's request.

For their first offense, workers who are determined to be AWOL -- which includes leaving their work stations without permission -- are subject to penalties ranging from a written reprimand to a five-day suspension. A second offense carries a penalty of suspension from one to 14 days, and a third offense can trigger penalties ranging from a five-day suspension to removal, Hooks said.

Those penalties typically don't apply to staffers who are tardy for 1.2 hours or less, and penalties depend on the length and frequency of employee absences, Hooks said. If workers are absent for more than five consecutive work days, employees may be removed at any time, he wrote.

Employees who are tardy without excuse, which includes arriving late to work or returning late from lunch or business outings, face penalties ranging from oral admonishment for their first offense to possible five-day suspensions or removal for a fourth offense.

Reporter Kevin Bogardus contributed.

WHITE HOUSE:

Top green donor Steyer a frequent West Wing guest

Robin Bravender, E&E reporter

Published: Monday, January 5, 2015

Green megadonor Tom Steyer has been a regular visitor to the Obama White House.

The billionaire environmentalist -- whose efforts to boost green candidates have made him one of the country's top political spenders -- has logged at least 14 meetings with top White House officials since 2009, according to White House records released last week. That includes one-on-one meetings with former chiefs of staff and several meetings with Obama's top environmental adviser in the run-up to the 2014 midterm elections.

Steyer spent more than $74 million on Democrats and liberal causes during the 2014 elections, according to the Center for Responsive Politics. In addition to being one of the most influential donors on the left, his frequent White House huddles suggest he's also had access to some of the administration's top agenda-setters.

"It shows Tom Steyer has not just got the ear of the president, but he clearly has the president's attention," said Craig Holman, a government affairs lobbyist at the watchdog group Public Citizen. "That's what money does buy; it buys access."

Last year, Steyer attended five White House meetings between February and September, the records show. Four of those were with John Podesta, President Obama's counselor and chief environmental adviser.

On Sept. 10, Steyer met with Podesta twice -- first on his own and later accompanied by Joshua Fryday, chief operating officer at Steyer's political group NextGen Climate Action. Podesta and Steyer also met in March, along with Fryday and Edward White -- a partner at the Denver-based law firm Moye White LLP and managing partner for Fahr LLC, the umbrella group for Steyer's business, policy, political and philanthropic efforts.

In late February, Podesta hosted a lunch meeting with Steyer and George Soros, another Democratic megadonor. That gathering came just days after Steyer's plan to funnel tens of millions to green candidates in last fall's elections went public. The donors and Podesta discussed a range of topics related to climate change at that meeting, Steyer's group told *Greenwire* in August (*Greenwire*, Aug. 5).

Steyer is on the board of directors at the Center for American Progress, the liberal think tank founded by Podesta in 2003. Soros spokesman Michael Vachon -- who also attended the Feb. 20 lunch meeting -- said that Soros and Steyer know each other "as colleagues" and that Podesta has known Soros since Podesta founded CAP; Soros was an early donor to the group.

Given Steyer's work and the long-standing relationship between Podesta and Steyer, the White House meetings aren't out of the ordinary, said Daniel Weiss, senior vice president for campaigns at the League of Conservation Voters.

"It should be no surprise to anyone that a major Democratic Party supporter and head of a climate action organization would meet with senior administration officials to discuss climate policies, particularly when

he had a pre-existing relationship with some of these officials," said Weiss, a former senior fellow at CAP.

To be sure, Steyer isn't the only major Democratic donor who's a frequent White House visitor. Soros, for example, has attended at least nine meetings at the White House during the Obama administration, the visitor logs show. Those included meetings with Vice President Joe Biden, former director of the White House National Economic Council Lawrence Summers and others. Another deep-pocketed Democratic donor, Chicago media mogul Fred Eychaner, has visited the White House at least 15 times since 2009, although most of those visits appear to have been for large gatherings rather than small meetings.

Early meetings with Obama's top aides

Steyer has had face time with other top officials in recent years, too.

On June 25, he met with Rohan Patel, White House deputy director of intergovernmental affairs, who previously worked on climate change and conservation issues at the Council on Environmental Quality. Steyer and several of his allies -- including former Treasury Secretary Hank Paulson -- were presenting a report titled "Risky Business," warning about the dangers of climate change (*Greenwire*, June 24).

Among the others present at that meeting were Treasury Department Deputy Chief of Staff Adewale Adeyemo, former Housing and Urban Development Secretary Henry Cisneros, and NextGen climate and energy director Kate Gordon.

Before 2014, Steyer attended a series of one-on-one meetings with some of Obama's chief advisers.

In 2009 and in 2010, Steyer met with then-White House Chief of Staff Rahm Emanuel. In September 2009, Steyer met Emanuel along with Margaret Sullivan, who was then director of political risk analysis for Steyer's investment firm, Farallon Capital Management. Sullivan is now chief of staff at the U.S. Agency for International Development. Steyer met with Emanuel one-on-one in March 2010, the records show.

Another former Obama chief of staff, Bill Daley, met with Steyer twice in 2011. In January of that year -- Daley's first month on the job -- he hosted Steyer and Sullivan in the West Wing. That October, Daley and Steyer met again.

Steyer visited the White House four times in 2012, a presidential election year. That included two meetings Feb. 1 -- one with Obama's then-counselor Pete Rouse and another with David Lane, who was an assistant to Obama and counselor to the chief of staff. Steyer met with Jon Carson, then-director of the White House Office of Public Engagement, in March, and sat down with Rouse again that December.

In May 2013, Steyer met with Heather Zichal, who was then Obama's top energy and climate adviser.

Before he topped the list of big outside donors in 2014, Steyer had been a steady donor to Obama and other Democrats for years.

He regularly cut checks for Democratic lawmakers' campaigns, including donations to Emanuel's congressional fund in 2006 and 2007 and to the presidential campaigns of Wesley Clark and Joe Lieberman in 2003, according to campaign finance records.

Steyer donated $50,000 to Obama's inauguration fund in 2009, and was a bundler for Obama's 2012 re-election campaign -- meaning he helped raise cash from others after he contributed the maximum amount allowed under campaign finance laws, according to the Center for Responsive Politics' data.

Spokesmen for the White House and for Steyer did not respond to requests for comment about the White

House meetings.

CLIMATE:

EPA rebuffs liberal legal icon's criticism of power plant plan

Jeremy P. Jacobs, E&E reporter

Published: Monday, January 5, 2015

U.S. EPA today struck back at Harvard Law professor Laurence Tribe's criticism of the agency's landmark proposal to regulate greenhouse gas emissions from power plants.

Tribe, a mentor to President Obama, called the proposal a "breathtaking example" of regulatory "overreach" in comments submitted to EPA on behalf of himself and Peabody Energy Corp., one of the world's largest coal producers (*Greenwire*, Dec. 8, 2014).

He also penned a *Wall Street Journal* editorial that echoed those comments and, in particular, criticized the proposal's requirements for states to meet specific emissions limits. Such a mandate, he said, exceeds EPA authority and "violates principles of federalism that are basic to our constitutional order."

EPA General Counsel Avi Garbow dismissed those arguments in a *Wall Street Journal* editorial today.

He argued that the proposal would give states considerable implementation flexibility.

"In developing its proposal," Garbow wrote, "EPA has conducted unprecedented outreach with states and as a result of what we learned, our proposal sets up a national framework that gives states the power to chart their own customized path to meet the carbon-dioxide-emissions targets proposed for each state."

EPA in June released its proposal to limit greenhouse gases from existing power plants for the first time. The standards, expected to be finalized this year, would cut carbon pollution by 30 percent by 2030 from 2005 levels. The standards would dramatically shift the country from coal-based power to renewables including wind and solar.

The power sector has sharply criticized the proposal.

Garbow emphasized that the Supreme Court has held that EPA has authority under the Clean Air Act to regulate greenhouse gases.

He added that "the many approaches" states may take to comply include "cutting energy waste and leveraging cleaner energy sources -- which many states and utilities are already doing."

Tribe has argued more than 30 cases before the Supreme Court and counts Obama, Chief Justice John Roberts and Justice Elena Kagan among his former students.

PEOPLE:

Houston's longtime environmental protector 'singed' but not burned out

Published: Monday, January 5, 2015

Most people don't volunteer their holidays to clear encroaching shrubs from pristine Texas coastal prairie, but for nearly all his life, Brandt Mannchen has done whatever he can to protect the natural areas around Houston from the city's largely unbridled growth.

For decades now, any plan for development in Texas' largest city has been accompanied by a written comment from the 62-year-old Sierra Club member and Houston native.

Jennifer Powis, a lawyer who serves on the Sierra Club's local board, said Mannchen's sometimes-lengthy, well-researched responses have helped preserve many pockets of original Houston landscape.

"He is a stalwart," she said. "Our air quality is better, and our national forests are better managed because of his work."

After retiring in 2004 after nearly 30 years in various roles for the city's air quality bureau, Mannchen devoted himself full time to the Sierra Club and wading through the voluminous reports to ensure someone was speaking on behalf of the environment.

"It can be boring, time-consuming and difficult to read to 500- to 600-page documents," he said. "But if you're not part of the process, you're part of the problem."

Over the course of his activism, Mannchen helped create a policy for timber harvests in the nearby Sam Houston National Forest and raised opposition to the construction of a highway through the rapidly disappearing Katy Prairie in western Harris County.

"I knew that the road was unstoppable, but someone had to say, 'Hey, wait,'" he said. "Sometimes that's good enough."

"It's hard to get a clear-cut victory," Mannchen added. "People get burned out, and I'm singed all over. But I'm lucky because I have found something that I believe in" (Matthew Tresaugue, *Houston Chronicle*, Jan. 2). **-- DTB**

AIR POLLUTION:

Calif. judge orders L.A. to control dust from dried-up lake

Debra Kahn, E&E reporter

Published: Monday, January 5, 2015

A California Superior Court judge has ordered the city of Los Angeles to control additional dust pollution from a dried-up lake that it diverted water from more than a century ago.

Sacramento Superior Court Judge Shellyanne Chang issued a decision Dec. 30 ordering the Los Angeles Department of Water and Power to control dust on a 48.6-square-mile area of Owens Lake, a remote spot in the Sierra Nevada mountain range 200 miles away from Los Angeles.

Dust has been rising from the lake bed since Los Angeles' withdrawal of water from the Owens River via the Los Angeles Aqueduct, starting 101 years ago. The lake bed is the nation's largest single source of dust pollution. U.S. EPA found in 1987 that the Owens Lake region violated national ambient air quality standards for coarse particulate matter.

Under the order, LADWP will have to expand dust control from the existing 43 square miles of lake bed to 48.6 square miles by the end of 2017.

To reduce water use, the order allows the use of a novel method of tilling the lake bed to create clods of dirt that are more resistant to erosion. If tilling does not work, LADWP will resort to the current method of wetting the soil to keep it down. Los Angeles will also continue to test other dust-control methods.

The Great Basin Unified Air Pollution Control District, which brought the suit, said the decision would reduce particulate emissions by 75,000 tons per year. The decision also gives the district the option to order dust controls on another 4.8 square miles of lake bed, which would bring the total to 53.4 square miles.

"The Sacramento judgment is the final piece of a solution to the 100-year problem of dust caused by LADWP's water diversions from Owens Lake," said Ted Schade, air pollution control officer for the district. "Within two years, we expect that the air pollution from the lake bed will finally be controlled and the residents of the Owens Valley will breathe some of the cleanest air in the country."

WIND:

Judge throws out enviros' challenge to turbine project

Published: Monday, January 5, 2015

A federal judge has dismissed arguments by environmentalists challenging a wind turbine project set to be constructed in Vermont's Green Mountain National Forest.

Judge J. Garvan Murtha denied claims made by the group Vermonters for a Clean Environment, which argued that the project's approval process was flawed and the construction would undermine a nearby wilderness site.

Murtha said a decision by a federal agency like the Forest Service could only be overturned if the decision were "arbitrary, capricious [or] an abuse of discretion."

The 15-turbine wind project was proposed by Deerfield Wind, a subsidiary of Iberdrola Renewables LLC (AP/*Seattle Post-Intelligencer*, Jan. 5). -- **MH**

BIOFUELS:

EPA tentatively OKs biomass sorghum to be included in RFS

Amanda Peterka, E&E reporter

Published: Monday, January 5, 2015

U.S. EPA has given biofuels produced from biomass sorghum -- a high-yield type of grass -- a tentative green light to be included in the renewable fuel standard.

In a *Federal Register* notice Dec. 31, the agency said that its analysis of lifecycle greenhouse gas emissions from biomass sorghum biofuels shows that they could be eligible for the highest tier in the RFS. Biomass sorghum biofuels would likely reduce GHG emissions by at least 60 percent compared to a

gasoline baseline, the standard for qualification as a cellulosic biofuel, EPA said.

"We anticipate that biofuels produced from biomass sorghum could qualify for cellulosic biofuel ... if certain fuel production process technology conditions are met," EPA said.

The 2007 renewable fuel standard required the nation to go beyond corn ethanol and develop next-generation biofuels. But before refiners can receive credit for using new types of biofuels, EPA must approve the fuels based on a lifecycle review of greenhouse gas emissions.

Approval by EPA is generally seen as a catalyst for next-generation biofuels because it creates market demand.

In late 2012, EPA approved grain sorghum -- the type that is fed to animals as livestock feed -- as a feedstock for conventional ethanol. But the agency has not yet made a decision on a 2012 petition from the National Sorghum Producers on biofuels produced from biomass sorghum. A few companies in the United States, including Ceres Inc. and NexSteppe, are developing varieties of high-biomass sorghum with the goal of producing a feedstock for biofuels production.

Biomass sorghum is capable of growing about 20 feet tall and is bred to have low moisture at the time of harvest and to need few inputs. An acre of biomass sorghum would likely yield 13 dry tons per acre by 2022, making it more productive than other types of grasses such as switchgrass, EPA said.

There is currently no commercial production of biomass sorghum in the country, but production is likely to be concentrated in Texas, Oklahoma, Kansas, Missouri and Arkansas.

EPA said that it has assumed the emissions associated with biomass sorghum are the same as those associated with the production of biofuels from switchgrass, an analysis that likely yields a conservative estimate of greenhouse gas emissions. Biomass sorghum biofuels would also likely displace less land than switchgrass because of the higher yield of sorghum, EPA said.

The agency said that it would accept public comment on its analysis and incorporate comments into its decision about how biofuels produced from biomass sorghum are treated in the RFS.

EPA has taken heat from the biofuels industry, as well as from sorghum producers, over delays in approving new types of biofuels feedstocks and production processes (*Greenwire*, April 29). Acknowledging the long time frames for approval, the agency in October announced changes in a bid to speed up the approval process (*Greenwire*, Oct. 1).

Since then, EPA has approved a slate of conventional ethanol technologies, but the agency has yet to make a dent in a backlog of advanced biofuel petitions.

ENERGY EFFICIENCY:

DOE squeaks in 2 rules before year's end on ice makers, lighting

Katherine Ling, E&E reporter

Published: Monday, January 5, 2015

The Energy Department announced new energy efficiency standards for lighting and ice makers on the last day of 2014, hitting the agency's goal for 10 new rules last year.

In total, the 10 standards issued in 2014 will cut carbon emissions by more than 435 million metric tons and save Americans $78 billion on their energy bills through 2030, according to DOE.

With these additional cuts, President Obama is now two-thirds of the way toward his goal of reducing 3 billion metric tons of carbon dioxide emissions by 2030 through new energy efficiency standards issued under his administration as part of his Climate Action Plan.

Energy Secretary Ernest Moniz said in a speech last month that DOE's target will be to issue 12 -- "possibly 13" -- more standards this year and "keep cranking it up" in 2016 (*E&ENews PM*, Dec. 9, 2014).

The new rule for linear fluorescent lights typically found overhead in schools, grocery stores and office buildings will alone save the equivalent of the annual energy consumption of 20 million homes and is the largest energy reduction of the 2014 standards. It will also provide $15 billion in savings, DOE said, which is the highest of all the rules last year. Fluorescent lights account for up to 70 percent of the total power consumed by lighting in the country.

DOE estimates the rule will cost companies about 21 percent of the industry's current value of $1.6 billion but will have no significant impact on employment nor cause the closure of any plants.

The rule will not apply to 2-foot fluorescent tube lamps, and it only tightened limits to exemptions for high-color rendering index lamps, both of which the Appliance Standards Awareness Project (ASAP) flagged as a possible loophole that could undermine the total savings targets.

Also as part of the rule, DOE decided not to update standards for incandescent reflector lamps -- used in floodlights -- because that may push consumers to purchase other types of lighting that is currently unregulated. Congress renewed a "light bulb" rider in its 2015 spending bill to prevent DOE from enforcing efficiency standards for lighting that were enacted as part of the 2007 energy law, although there is growing interest in eliminating the ban (*E&E Daily*, Dec. 11, 2014).

"With Congress renewing the light bulb rider in the recent appropriations bill, efficiency standards for some reflector lamps will continue to lag," Andrew deLaski, ASAP's executive director, said in a statement.

Noah Horowitz, director of the Energy Efficiency Center at the Natural Resources Defense Council, said the decision "was a missed opportunity."

"We encourage DOE to revisit this category in the near future as these lamps represent the least efficient bulbs in our homes and significant, cost-effective savings are readily achievable," he said in a blog post on the NRDC website.

DOE's new standard for automatic commercial ice makers, typically found in fast food restaurants and hotels, will save U.S. consumers about $600 million in electricity bills through 2030 and enough electricity to power 1.7 million U.S. homes.

The rule will also conserve 37.5 billion gallons of water during the next three decades, according to ASAP.

The industry stands to lose about 13 percent of its current value of $122 million under the new rule, according to DOE.

Both rules will not take effect until 2018.

POLITICS:

Cheap oil would make carbon tax less costly -- Summers

Jean Chemnick, E&E reporter

Published: Monday, January 5, 2015

The recent dip in oil prices has created an opening for Congress to introduce a new carbon tax without burdening consumers, former Treasury Secretary Lawrence Summers argued in a *Washington Post* column yesterday.

Summers, who is now an economics professor at Harvard University, argued in an op-ed that a $1-per-gallon reduction in gasoline costs over the last six months means that a moderate carbon levy would keep fuel prices lower than they were a year ago, while still creating an incentive for efficiency improvements and generating needed revenue. It would also ensure that lower prices at the pump do not encourage fuel waste, he said.

"While the recent decline in energy prices is a good thing in that it has, on balance, raised the incomes of Americans, it has also exacerbated the problem of energy overuse," Summers said. "The benefit of imposing carbon taxes is therefore enhanced."

The funds could go to offset cuts in income taxes and could fund needed infrastructure projects that in turn would boost the economy, he wrote.

Summers, who headed the Treasury Department from 1999 to 2001, is one of several high-profile former officials who have publicly backed a carbon tax. Former Treasury Secretary Henry Paulson, who served under President George W. Bush, advocates a deficit-neutral model that would return all revenue to the public.

GRID:

PJM seeks permission to postpone plant closures

Hannah Northey, E&E reporter

Published: Monday, January 5, 2015

Operators of the nation's largest wholesale electricity market in the Midwest and Mid-Atlantic want federal permission to keep a handful of power plants operating beyond their scheduled shutoff dates to offset a "historic" wave of plant retirements, severe weather and uncertainty around demand response.

PJM Interconnection last month asked the Federal Energy Regulatory Commission for permission to pay plant owners to keep generating at least 2,000 megawatts through the winter of 2016 -- units that are slated to shutter the first half of this year.

PJM in the filing explained that it had secured commitments for excess capacity of 15.6 percent for the coming delivery year -- June 2015 through May 2016 -- but "recent developments" including a court decision on demand response, more than 11,000 MW of plant retirements and the possibility for severe weather are raising concerns about electric reliability this summer.

Paula DuPont-Kidd, a PJM spokeswoman, said the tariff changes, which need FERC's final approval,

would allow the grid operator to issue "reliability must run" contracts because of the myriad factors at play, including plant closures, a court ruling and possible severe weather. Such contracts are only issued now to deal with transmission constraints, she said.

"What we're proposing to change for this period of time is to allow for [reliability must-run] contracts because we need the additional capacity," DuPont-Kidd said, adding that the changes would be temporary.

PJM could run into reliability problems if the region experiences another onslaught of freezing temperatures like what was seen last winter, the grid operator warned. Last January, power prices soared as temperatures plummeted during a polar vortex that forced temperatures to well below freezing.

PJM's request reflects challenges grid operators face following a federal appeals court ruling in September that vacated FERC Order 745, a rule that required grid operators to pay customers and demand-response providers the market value of unused electricity. The court found FERC exceeded its authority in directing that demand-response providers such as factories or commercial buildings receive full market prices when they curtail electricity use. Demand-response programs are retail market actions, and those are the province of state regulators, not FERC, the judges ruled.

PJM indicated that court ruling could affect 11,257 MW of demand response that have been committed for the period of June 2015 through May 2016.

Adding to the complexity, PJM in recent years has seen an uptick in the number of coal plant closures and said in the filing to FERC that it expects a "historic" 11,769 MW of generators to go offline this year, an amount that "far outstrips the level of retirements ever announced for any other single year."

Separately, PJM, a member of the ISO/RTO Council that represents the nine regional grid operators in the United States, is asking EPA to add a mechanism to its Clean Power Plan to ensure reliability. PJM and other grid operators are asking the agency to offer a "safety valve" to provide regulatory relief from state plans if reliability coordinators determine they might risk electricity outages (*ClimateWire*, Dec. 3, 2014).

NUCLEAR POWER:

Residents see mixed emotions as Vermont Yankee shuts down

Published: Monday, January 5, 2015

Residents of Vernon, Vt., have mixed feelings about the closing of the nuclear power plant next door.

The Vermont Yankee plant was taken off the grid last week, and its nuclear reactor was shut down. In its four decades of operation, the plant had been subject to protests from residents fearing nuclear disaster. Now that it's closing, however, residents are worried about the town's economic future.

A study from the University of Massachusetts' Donahue Institute estimated that the plant contributed almost $500 million to the regional economy in 2014. That number will fall to $13 million after 2020, and will continue to fall, according to the study.

Currently, the plant employs 550 people, a number that will drop to 316 later this month once all the fuel has emptied out of the reactor. Once the fuel has time to cool, staffing will drop to 127 by April 2016. Around the year 2020, staffing will be cut to about 50.

Officials at Entergy Corp., which owns the plant, said they would try to relocate many of the employees to other plants owned by the company.

But Ken Farabaugh, a Vernon resident and former plant employee, said the closure will affect employment beyond just Vermont Yankee.

"There's going to be people filtering out, going elsewhere, because you just can't replace the kind of income and jobs at Wal-Mart that this plant had," he said (Jess Bidgood, *New York Times*, Jan. 4). **-- AW**

NUCLEAR POWER:

Officials report prolonged oil leak at Mich. plant

Published: Monday, January 5, 2015

Officials at a southwestern Michigan nuclear power plant filed a disclosure with the U.S. Nuclear Regulatory Commission on Dec. 20 after a two-month leak from an oil cooling system into Lake Michigan.

Donald C. Cook nuclear plant officials estimated 2,000 gallons of turbine oil had leaked since October, but plant spokesman Bill Schalk said the system is isolated from the plant's radioactive facilities and therefore was not irradiated.

Schalk said that because 0.04 gallon of oil leaked per minute, it was concealed by the 1.5 million gallons of cooling water discharged per minute.

No sheen could be seen on the lake, but the detection delay raised questions about potential environmental impacts and the overall plant system safety.

"It speaks to the quality assurance of all of their other systems," said Michael Keegan, director of the nonprofit Coalition for a Nuclear-Free Great Lakes. "There's a belief some have that the solution to pollution is dilution. It's not."

Operator Indiana Michigan Power Co., a unit of American Electric Power Company Inc., will have to file follow-up reports with the state Department of Environmental Quality and U.S. EPA within the next month (Keith Matheny, *Detroit Free Press*, Jan. 3). **-- DTB**

COAL:

Westmoreland buys 2 Ohio companies

Published: Monday, January 5, 2015

Westmoreland Coal Co. has purchased two Ohio coal companies for $64 million.

Westmoreland's purchase of Oxford Resources GP and Buckingham Coal Co. was announced Friday.

Oxford Resources is a general partner of Oxford Resources Partner LP, a low-cost producer of steam coal in Northern Appalachia.

Under the purchase agreement, Westmoreland received 4,512,500 common units of the Oxford Resources Partners master limited partnership and agreed to contribute royalty-bearing coal reserves.

Based in Colorado, Westmoreland had a productive year in 2014 with its stock up 72.2 percent (Howard Pankratz, *Denver Post*, Jan. 2). **-- AW**

HIGHWAYS:

Plan would set framework for improving road and bridge conditions

Sean Reilly, E&E reporter

Published: Monday, January 5, 2015

State transportation departments would have to use a six-point framework to assess the condition of major roads and bridges and set targets for improvement under a Federal Highway Administration (FHWA) plan formally released today.

The framework, contained in a lengthy notice of proposed rulemaking (NPRM) published in the *Federal Register*, calls on states to report on the percentage of interstate highway pavement in both good and poor condition, with an identical breakout required for other roads in the National Highway System.

Finally, states would also have to spell out the percentage of National Highway System bridges in good and poor shape. State transportation departments -- as well as metropolitan planning organizations -- would have to set two- and four-year progress targets. States failing to make "significant progress" over four years would have to document what they are doing to improve.

The NPRM is the second of three required by the 2012 highway and transit law known as MAP-21, with the aim of using federal transportation dollars more effectively in pursuit of national goals.

Although unable to quantify the proposal's benefits because of their "amorphous nature," FHWA officials expect them to more than equal the plan's long-term price tag of almost $200 million, stemming in part from added data collection and reporting costs.

State transportation departments must already report on cracking and other pavement conditions via a sampling approach, but a review of their submissions "has exposed many inconsistences," the highway administration said in today's notice.

Several states, for example, didn't submit any data for their interstate roads, while others turned in information only for a limited portion of their road network.

Overall, "many anomalies ... have raised questions regarding the accuracy of the data," according to the notice.

Besides the interstates, the National Highway System includes federally funded roads that provide access to major military installations and ports.

The deadline for public comments is April 6. In crafting the proposal, however, the highway administration has already held workshops and listening sessions to gather feedback on the potential impact. What stakeholders primarily wanted, according to the notice, was "simplicity, consistency and flexibility."

AIR POLLUTION:

EPA proposes to keep existing lead standard

Amanda Peterka, E&E reporter

Published: Monday, January 5, 2015

U.S. EPA is proposing to retain the national air quality standard for lead after a review of scientific data on the public health effects tied to exposure.

In a *Federal Register* notice published today, the agency said it would keep the existing standard of 0.15 microgram per cubic meter. EPA will accept public comment on the proposal until April 6.

Under the Clean Air Act, EPA is required to review national ambient air quality standards every five years and revise or retain them so as to provide the public with an adequate margin of safety. The lead standard was last revised downward in 2008 in response to public health science linking exposure to adverse effects such as damage to cardiovascular and reproductive systems.

During the current review of the standard, EPA's science advisers recommended retaining both the public health standard and a secondary standard meant to prevent ecological damage at their 2008 levels.

"The EPA concludes that the current standard provides protection of public health with an adequate margin of safety," the agency said in a fact sheet. "The standard provides protection for children and other at-risk populations against a variety of adverse health effects."

According to EPA, 21 areas in 15 states are out of compliance with the 2008 standard and are in the process of taking steps required by the Clean Air Act to reduce their concentrations. Compliance is based on a rolling three-month average of lead concentrations.

Airborne lead is emitted by large industrial sources such as iron and steel foundries, and some boilers used for electricity generation. The transportation sector has historically been a large source of lead, but emissions have dropped significantly from the phaseout of leaded gasoline.

According to EPA, national concentrations of airborne lead have dropped more than 90 percent since 1980. During that time, the average blood lead concentration in young children -- who are most vulnerable to lead pollution -- has dropped from about 15 micrograms per deciliter to less than 1.2 micrograms per deciliter, EPA said.

IRELAND:

Wind turbine collapses

Published: Monday, January 5, 2015

Investigators are looking into why an 80-meter (260-foot) wind turbine suddenly collapsed in Northern Ireland on Friday.

No one was injured when the turbine, worth £500,000 ($762,000), unexpectedly buckled and fell down. The turbine was one of eight located on the Screggagh wind farm on Murphy Mountain in County Tyrone.

The turbine was supplied by Nordex UK, and the cause of the collapse is unclear (Press Association/London *Guardian*, Jan. 4). **-- AW**

CHINA:

Smog-choked Beijing reports cleaner air in 2014

Published: Monday, January 5, 2015

Beijing's smog levels declined slightly in 2014, although some contaminants remained far above standards, local regulators said.

The municipal Environmental Protection Agency said some pollutants continued to register at levels 150 percent higher than standards. Despite the problems, concentrations of particulate matter 2.5 micrometers or smaller, or PM2.5, fell 4 percent from 2013 levels to 85.9 micrograms per cubic meter, the agency said -- helping Beijing report 93 days of "excellent air quality" during the year.

Sulfur dioxide levels fell 17.7 percent, nitrogen dioxide declined by 1.3 percent, and levels of particles 10 micrometers or smaller, or PM10, fell by 7.1 percent, though dust levels in the city increased.

The city is aiming for an additional 5 percent cut in PM2.5 levels this year and has used policies like restricting coal use, mandatory factory closures, and new fuel standards for cars and trucks to spur the changes (Stian Reklev, Reuters, Jan. 4). **-- SP**

JAPAN:

Fukushima rice passes radiation tests

Published: Monday, January 5, 2015

Rice grown in the area near the Fukushima Daiichi nuclear plant has passed radiation tests for the first time since the 2011 nuclear disaster, said an official.

Of the 360,000 metric tons of rice that was produced during last year's harvest, none tested above the 100 becquerels per kilogram limit set by the government, said Tsuneaki Oonami, who heads the department that oversees Fukushima rice farming.

"The fact that the amount of rice that does not pass our checks has steadily reduced in the last three years indicates that we're taking the right steps," Oonami said.

In 2012 and 2013, small amounts of rice did not pass the radiation tests and had to be destroyed.

Due to meltdowns at Tokyo Electric Power Co.'s nuclear plant following the 2011 earthquake and tsunami, many Japanese fisheries and agricultural exports were suspended due to radiation concerns (Mari Saito, Reuters, Jan. 4). **-- MH**

BIOFUELS:

Bipartisan Policy Center's McKee discusses options for reforming RFS

Published: Monday, January 5, 2015

Following repeated delays by U.S. EPA to set its yearly renewable fuel standard targets, a group of stakeholders with wide-ranging perspectives on the RFS was convened by the Bipartisan Policy Center to devise a set of policy options for reforming the rule. During today's OnPoint, Scott McKee, senior policy analyst at the Bipartisan Policy Center, explains why he believes the RFS should not be repealed and discusses the options lawmakers and the Obama administration have for improving the rule.

Click here to watch today's OnPoint.

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Cap and trade expands to cover gasoline, diesel, but slumping pump prices hide impact

California's landmark cap-and-trade program to limit carbon emissions just got bigger. Effective Jan. 1 it expanded to wrap in gasoline and diesel, a move oil companies have warned would trigger higher pump prices.

2.TRADE:

Punitive solar tariffs against China may shrink

Chinese solar manufacturers whose products have been subject to stiff U.S. tariffs for two years could see those penalties reduced by nearly half this spring after the Commerce Department found the degree of illegal dumping by Chinese firms between 2012 and 2013 was lower than previously estimated.

TODAY'S STORIES

3.FORESTS:

Tropical forests appear to take in more CO2 as emissions rise

4.FINANCE:

Exchanges and asset managers push for more climate risk data

5.HEALTH:

Researchers harness climate models to improve cholera forecasts

6.SPECIES:

Oil companies challenge protection proposed for Arctic ringed seal

7.WARMING:

High temperatures in Alaska forecast trouble

8.EDUCATION:

Climate groups to fight changed science education standards in W.Va.

9.ELECTRICITY:

Climate change may increase risk of blackouts

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If China's massive 'middle-class expansion' goes bust, what happens to energy demand?
Is China's economy about to crash? If you're in the oil and coal business, the answer to that question is critical calculus for investment. Will demand for energy commodities be there?

TOP STORIES

2.EARTHQUAKES:
Scientists link small quakes in Ohio to fracking
3.OIL EXPORTS:
Commerce brings some clarity to condensates debate
4.OIL:
Prices fall to recession-level lows

ELECTRICITY

5.UTILITIES:
Xcel plan would boost renewables, leave largest Minn. coal plant open
6.RENEWABLE ENERGY:
Utilities lose bid to change solar contracts in N.C.

OIL AND GAS

7.PIPELINES:
Enviros urge FERC to revisit Constitution line decision
8.COLORADO:
Energy task force faces criticism from state GOP leaders
9.HYDRAULIC FRACTURING:
Calif. court strikes down industry-favored referendum language
10.COLORADO:
Energy regulators impose $15K daily penalty for worst environmental offenders
11.PEOPLE:
Columbia adds former JPMorgan commodities pro to fellows program
12.ALASKA:
BLM looks for industry input on cleaning up abandoned wells
13.OIL PRICES:
Cheap crude could be a net gain for Canada -- report
14.WYOMING:
Governor plans to home in on energy reform in 2nd term
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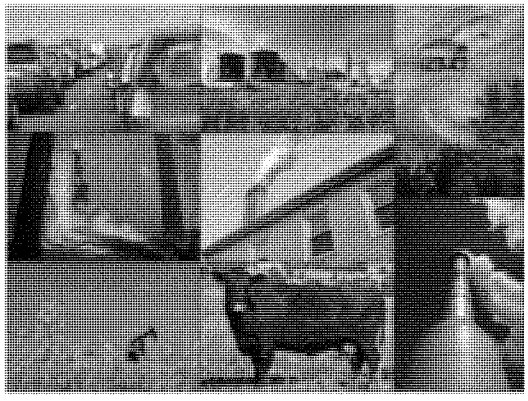

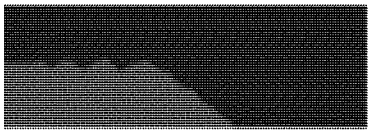

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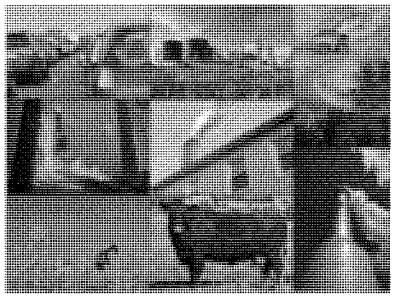

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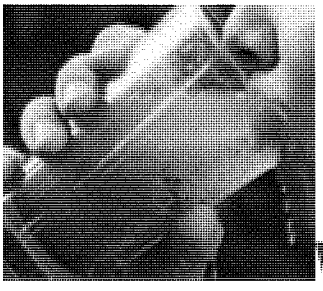
Subject: Water Law News for January 6, 2015



Water Law News

for January 6, 2015

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

Bay Quality Improves Slightly in 2014;
States, Farmers Must Do More, CBF Says

Water quality in the Chesapeake Bay and its tidal waters improved somewhat over the past two years, the Chesapeake Bay Foundation said in its 2014 State of the Bay report....

Oil & Gas

California Approves Final Regulations
For Oil, Gas Well Stimulation Activities

California's Office of Administrative Law has approved permanent regulations for oil and gas well stimulation activities, including hydraulic fracturing, required under legislation (S.B. 4) enacted in 2013....

Water Pollution

Court Affirms Arizona Within Rights
To Issue Temporary Permit for Leachate

The Arizona Department of Environmental Quality was within its statutory authority to issue an administrative regulation authorizing it to accept and approve applications for a temporary individual aquifer protection permit, a state...

Water Pollution

McConnell Says Senate Will Target
EPA Proposed Waters of U.S. Regulation

New Senate Majority Leader Mitch McConnell (R-Ky.) promised to go after a proposed Clean Water Act jurisdiction rule this year, including it in an ever-expanding list of rulemakings Republicans plan to stop or impede....

Wetlands

Fourth Circuit Upholds Summary Judgment
Against Farmers Who Converted Wetland

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Greenwire

KEYSTONE XL:

GOP makes pipeline first order of business amid mixed signals from White House

Manuel Quiñones, E&E reporter

Published: Monday, January 5, 2015

The Keystone XL oil pipeline has become the first order of legislative business in the incoming 114th Congress, with votes planned in both the Senate and House.

Sen. John Hoeven (R-N.D.) plans to introduce legislation to approve the pipeline's transboundary crossing from Canada tomorrow, an aide said. It will be the same as S. 2280, which failed in the Senate last year by one vote.

Incoming Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) has scheduled a hearing on the issue for Wednesday and a panel vote Thursday. The idea is to get the bill ready for floor consideration by next week.

"The president's going to see the Keystone XL pipeline on his desk, and it is going to be a bellwether decision by the president, whether to go with jobs and the economy -- his own State Department said it's 42,000 new jobs," Sen. John Barrasso (R-Wyo.) said on NBC News' "Meet the Press" yesterday.

Even though Republicans see approving the pipeline as both good policy and good politics, many Democrats and President Obama have increasingly been echoing opposition arguments. For starters, they say the pipeline would create a few dozen permanent jobs.

"Our Republican colleagues say that this is a jobs bill. But that's really not true at all," Sen. Charles Schumer (D-N.Y.), a member of his party's leadership, said on CBS's "Face the Nation" yesterday.

Last week *The Wall Street Journal*, citing unnamed administration sources, said the president was laying

the groundwork to turn down TransCanada Corp.'s request.

Opposition sources say they've heard the same thing. But the White House has yet to say for sure whether Obama would veto legislation forcing his hand.

Incoming Senate Majority Leader Mitch McConnell (R-Ky.) has promised an open amendment process for the Keystone XL bill, meaning other measures could be attached to it. Last year he said he expected lawmakers to offer "energy-related" proposals.

That could mean amendments to boost natural gas exports or lift the decades-old crude oil export ban, which has surfaced as a Republican priority for the new Congress.

A Senate Republican aide said the GOP's approach included promoting amendments that would strengthen the bill and potentially make it harder for Obama to reject.

But the Republican amendment plan is still materializing. Now in the majority, many GOP members see the KXL bill as the first chance to advance policy priorities. For Democrats in the minority, the plan is more focused on presenting a clear alternative.

"Consideration of this bill will provide us with the first opportunity to demonstrate that we will be united, energetic and effective in offering amendments that create a clear contrast with the Republican majority," Schumer, the Senate's Democratic Policy Committee chairman, and Sen. Debbie Stabenow (D-Mich.), policy panel vice chairwoman, wrote in a letter to colleagues.

Democrats float amendments

Democrats plan to introduce an amendment to prevent the export of KXL oil. Developers and supporters say the pipeline is not for export, but the refined material would end up in international markets.

Other Democratic amendments would require U.S. materials for the construction of KXL, expand clean energy jobs and boost heating oil assistance for the needy, particularly veterans and seniors. Democrats propose to pay for any expenses through a boost in royalty payments for mineral extraction.

Democrats also want to prevent states from allowing the use of eminent domain for projects by foreign companies. Pipeline supporters say such an amendment would infringe on states' rights.

Schumer and Stabenow's letter said that by floating the amendments, "we would put Republicans clearly on the record about where they stand."

Even if the amendments pass, which is unlikely, Schumer said the president should veto the bill. "And I think there will be enough Democratic votes to sustain the president's veto," he said.

Several Democrats -- including Sens. Joe Manchin (W.Va.) and Heidi Heitkamp (N.D.) -- voted for the pro-KXL bill last year and are likely to do so again, giving the GOP a filibuster-proof majority in the chamber. A veto-proof margin, however, would be difficult at best.

Sen. Amy Klobuchar (D-Minn.), who voted against the legislation last year, said she doesn't expect members of her party to switch their votes from "no" to "yes."

But she said on "Meet the Press," "I believe that this project has merit. But I still don't think that Congress should be in the business of deciding where a pipeline is located. I think the president needs to make a decision. A lot of us are frustrated that it has taken this long."

Maine independent Sen. Angus King voted against the bill last year but said he could change his mind depending on how much the president stalls on making a decision. King said he may support language setting a timeline for executive action.

House action

In the House, lawmakers could begin consideration of KXL legislation as soon as this week. As in the Senate, the lower chamber of Congress has more than enough votes to pass the bill, not yet enough to override a presidential veto.

"I'm waiting to hear what the president's actually going to tell us about Keystone," said incoming Rep. Debbie Dingell (D-Mich.) on CNN's "State of the Union." "I myself have not decided how I'm going to vote on it."

She added, "I think it does have the potential to create jobs, but I haven't heard what the administration's official position is. And I think what the president tells us is going to be very important."

Last week, Reps. Peter DeFazio of Oregon, Frank Pallone of New Jersey and Raúl Grijalva of Arizona -- all three set to be the top Democrats on key energy and environmental panels -- urged House Republican leaders against fast-tracking a vote on KXL.

"We urge you to use this opportunity to recommit to the value of thoughtful deliberation," they wrote in a letter. "We urge you not to bypass the committee process and regular order for consideration of this controversial legislation."

DeFazio, Pallone and Grijalva pointed to low oil prices, which KXL critics say have either jeopardized the project's viability or boosted its climate footprint.

The State Department's review on KXL said the pipeline would not have a significant impact on the climate because Canadian oil sands crude would find its way to market regardless.

But, with low oil prices, KXL could make projects more economical and therefore have a material impact on whether companies mine the resource or leave it in the ground, environmentalists say (*E&ENews PM*, Dec. 18, 2014).

TransCanada and other KXL backers, like the American Petroleum Institute, see the oil price recovering. They say demand for the pipeline remains strong.

Several dozen people protested near the White House over the weekend against KXL. More demonstrations could materialize as congressional action intensifies.

EPA:

Employees 'AWOL' for thousands of hours each year

Robin Bravender, E&E reporter

Published: Monday, January 5, 2015

U.S. EPA employees have racked up tens of thousands of hours in unexcused absences in recent years

as they've gone "AWOL" from their work stations.

Agency employees were absent without leave for more than 53,000 work hours between 2008 and 2013 -- an average of about 9,000 hours per year, according to data released by EPA in response to a Senate inquiry. That includes agency staffers who were found to be "absent from duty without having the absence approved," the agency said.

Craig Hooks, the former top human resources official at EPA, sent the numbers in April to now-retired Sen. Tom Coburn (R-Okla.). Last January, Coburn wrote to EPA chief Gina McCarthy, asking for details about her agency's AWOL staffers.

"I write to learn more about the work force employed by the EPA," Coburn wrote. "Specifically, I am interested in the number of employees each year who have hours where they are absent without leave, or 'AWOL.'" Coburn's letter and EPA's response were released to *Greenwire* last month under a Freedom of Information Act request.

Coburn and other lawmakers have become increasingly interested in EPA's personnel management after a 2013 scandal exposed that a senior EPA air official had been lying for years about doing secret work for the CIA while getting paid to stay home. EPA's critics have called for beefed-up scrutiny of employee supervision and timekeeping practices at the agency that's already been a lightning rod for attacks based on the Obama administration's environmental rules.

The number of EPA employees with AWOL hours ranged from 62 in 2013 to 103 in 2011, the agency said. That represents a small fraction of the agency's total staff; fewer than 1 percent of the agency's workers were found to be AWOL each year from 2008 to 2013.

The annual number of AWOL hours at the agency was as high as 13,193 in 2012 and as low as 4,209 in 2013. EPA's staffing had dropped significantly in 2013 to 16,051 after hovering around 17,500 in previous years.

Employees who are found to be AWOL can face stiff penalties, ranging from written reprimands and suspensions to possibly losing their jobs.

"The AWOL policy includes that upon returning to duty, the employee must explain to the immediate supervisor at the earliest practicable time, the cause of the absence and the reason for his/her failure to obtain approval to be absent," Hooks wrote in response to Coburn's request.

For their first offense, workers who are determined to be AWOL -- which includes leaving their work stations without permission -- are subject to penalties ranging from a written reprimand to a five-day suspension. A second offense carries a penalty of suspension from one to 14 days, and a third offense can trigger penalties ranging from a five-day suspension to removal, Hooks said.

Those penalties typically don't apply to staffers who are tardy for 1.2 hours or less, and penalties depend on the length and frequency of employee absences, Hooks said. If workers are absent for more than five consecutive work days, employees may be removed at any time, he wrote.

Employees who are tardy without excuse, which includes arriving late to work or returning late from lunch or business outings, face penalties ranging from oral admonishment for their first offense to possible five-day suspensions or removal for a fourth offense.

Reporter Kevin Bogardus contributed.

OIL AND GAS:

Local fracking bans 'wrong way to go' -- Jewell

Published: Monday, January 5, 2015

Banning the practice of hydraulic fracturing is the "wrong way to go" for municipalities worried about the practice, Interior Secretary Sally Jewell said in an interview with KQED.

"There is a lot of misinformation about fracking," Jewell said. "I think that localized efforts or statewide efforts in many cases don't understand the science behind it, and I think there needs to be more science."

Jewell said local bans and New York's recent statewide ban on the oil and gas production technique are an example of residents and politicians legislating their fears.

"It's going to be very difficult for industry to figure out what the rules are if different counties have different rules," she said.

But, Jewell said, the responsibility to educate the public about hydraulic fracturing lies with the industry.

"I've made it very clear to industry that it's not my job to defend their practices; it's their job to both ensure their practices are safe and then communicate with communities that their practices are safe," she said (Craig Miller, KQED, Jan. 2). **-- AW**

BLM:

Court affirms agency's approval of massive river art project in Colo.

Phil Taylor, E&E reporter

Published: Monday, January 5, 2015

The Bureau of Land Management was on solid legal ground in November 2011 when it approved a proposal to suspend nearly 6 miles of silvery, luminous fabric above a picturesque river canyon in south-central Colorado, a federal judge ruled Friday.

The 30-page ruling by Judge William Martinez of the U.S. District Court for the District of Colorado was a major boost to New York-based artist Christo, who proposed the public art project decades ago with his late wife, Jeanne-Claude.

The "Over the River" project would consist of eight segments of fabric suspended across a 42-mile stretch of the Arkansas River between Salida and Canon City. But it has been locked in litigation for years by opponents who fear it would harm wild bighorn sheep and birds of prey and snarl traffic on U.S. 50.

As described on Christo's website, the project will provide two viewing experiences: "one from the highway, where the fabric will reflect the colors of the sky, from the golden morning sunlight to the various hues of the sunset; the other from the water level, where rafters, kayakers and canoeists will be able to view the clouds, sky and mountain contours through the translucent fabric."

The project is expected to cost at least $50 million and would be displayed for two weeks in summer 2018 at the earliest. Installation would take 27 months and must begin in a future January to comply with a bevy of BLM mitigation measures to protect wildlife and tourism.

Christo called the court's ruling "a very significant and important step forward in realizing 'Over the River.'"

"I was always confident that the court would uphold the BLM's actions because the environmental impact statement conducted by the BLM was thorough and comprehensive," he said in a statement to media, noting that the project faces only one other lawsuit in a state appeals court.

Steve Coffin, a spokesman for the project, said an exhibition date will not be set until the legal battles have been resolved.

The artists earned notoriety through earlier public art pieces including "The Gates," in which 7,503 orange fabric panels were installed in New York City's Central Park in 2005.

In 1972, they completed "Valley Curtain" near Rifle, Colo., which hung 142,000 square feet of orange nylon across a canyon after more than two years of construction. But the 9-ton curtain was on display only 28 hours before an unexpected sandstorm began tearing it apart.

Rags Over the Arkansas River (ROAR), an opposition group based in Canon City, sued BLM in February 2012, arguing it had violated the National Environmental Policy Act by failing to take a "hard look" at the project's impacts on wildlife and traffic. BLM had also violated the Federal Land Policy and Management Act by failing to prioritize protections for areas of critical environmental concern (ACEC), the group said, among other charges.

But Martinez said the group's arguments merely reflected disagreement with BLM's decision, rather than any substantive violations of federal law. He deferred to BLM's judgment.

"As long as an agency has complied with the procedural requirements of NEPA, the court should not second-guess that agency's decision," Martinez wrote.

Moreover, designation of an ACEC such as the Arkansas Canyonlands ACEC, where part of the project would be located, "shall not, of itself, change or prevent the management or use of public lands."

"The record in this case shows that BLM was conscious of the special management concerns outlined ... with regard to the Arkansas Canyonlands ACEC, and that such concerns were considered throughout the NEPA process," he wrote. "BLM imposed conditions intended to mitigate some of the detrimental impacts, has devised significant monitoring and remediation measures, and has required the posting of a sizable bond to ensure compliance."

ROAR said it is still reviewing the opinion and considering "other steps to prevent the OTR project from ever being allowed to happen, including the possibility of an appeal."

"While the court found that BLM 'technically' complied with the National Environmental Policy Act (NEPA) and the Federal Land Policy Management Act (FLPMA), in no way does the court dismiss the destructive nature of the 'Over the River' project," the group said.

Despite "daunting odds" and multiple defeats in state and federal court, the group has successfully delayed the project for years, it said.

Its separate appeal challenging the Colorado Parks Board is pending in Colorado's Court of Appeals, ROAR said.

The wait has not come without a cost.

Christo has been paying $167,000 annually in "rent" to the federal government since the approval, according to the *Canon City Daily Record*. The project will be funded through sales of Christo's original works of art.

The project, which will be installed along 6 miles of the river among pinyon-juniper woodlands, mixed shrubs and grasslands, is expected to draw some 350,000 people, as well as construction equipment, rail cars, noise, dust, trash and cables over the project's three-year life, according to BLM. Several thousand bolts will be drilled into the riverbank to anchor the project.

How all that commotion will affect herds of bighorn sheep reintroduced to the area a half-century ago is a matter of debate.

The project enjoys support from Gov. John Hickenlooper (D), members of Colorado's congressional delegation, Canyon City, river outfitters and local businesses, among many others.

CHESAPEAKE BAY:

Watershed sees a mixed bag in 2014 -- report

Annie Snider, E&E reporter

Published: Monday, January 5, 2015

The sprawling Chesapeake Bay watershed saw improvements in water quality and oyster harvests over the past two years, but those gains were offset by declines in fisheries' health, according to the latest analysis from a regional environmental group.

Overall, the 64,000-square-mile watershed received a D+ in the Chesapeake Bay Foundation's biennial "State of the Bay" report. The 2014 score of 32 remains unchanged from the bay's 2012 score. Under the foundation's scoring system, which evaluates 13 metrics related to bay health, a 100 would represent the pristine watershed of pre-colonial times and a 70 would represent a restored bay.

"The bay is improving, but it's still a system dangerously out of balance," foundation President Will Baker said during a news conference unveiling the report this morning.

The six bay states and the District of Columbia are engaged in an unprecedented effort with U.S. EPA to restore the long-ailing estuary. The cleanup plan sets a pollution diet, or total maximum daily load, for 92 separate segments of the bay and lays a path to bring the bay to a C+ by 2025.

By 2017, the halfway point in the cleanup plan, states are slated to have 60 percent of their programs online. But Baker said this morning that states are not on track to meet that goal.

Phosphorus represents a particular problem, he said. This bay's phosphorus score fell 2 points in this year's report as manure washed into creeks throughout the region, especially on Maryland's Eastern Shore.

"The message is clear: Agriculture as a sector must do more," Baker said. "Agriculture is the largest sector of pollution coming into the bay, and, fortunately, it is the least expensive to control."

Maryland's outgoing governor, Democrat Martin O'Malley, has moved to finalize new phosphorus regulations before leaving office later this month, but his successor, Republican Larry Hogan, has vowed to undo them (*E&ENews PM*, Dec. 8, 2014).

"I'd like to hear his reasons," Baker said this morning, arguing that the regulations were developed over years with active involvement from farmers.

Many of the country's most powerful agricultural groups have opposed the overall bay cleanup plan, contending it undercuts state and local authority to decide how land should be used. A federal judge upheld the approach, and agricultural groups, led by the American Farm Bureau Federation, are currently appealing the decision.

Along with the report, the Chesapeake Bay Foundation today released a list of actions needed at the state level in Pennsylvania, Maryland and Virginia in order to speed up improvements in the bay. Among the recommendations: Plant more forested buffers in Pennsylvania, strengthen Maryland state permits to stanch urban and suburban runoff, and ensure funding for farmland conservation practices in Virginia.

Click here to read the report.

WATER POLLUTION:

Diabetes drug, other chemicals found in Lake Michigan

Published: Monday, January 5, 2015

The diabetes drug metformin was the most common personal care product found in water tests at Lake Michigan, and researchers are trying to figure out whether it's disrupting the endocrine systems of fish.

Scientists at the School of Freshwater Sciences at the University of Wisconsin, Milwaukee, found the diabetes drug in water samples taken 2 miles off the shore of Lake Michigan. The drug is present there because it is not broken down completely by sewage treatment plants. Other chemicals the researchers found include caffeine; sulfamethoxazole, an antibiotic; and triclosan, an antibacterial and antifungal chemical used in soap and other products.

"It was not even on our radar screen," Rebecca Klaper, a professor of freshwater science at UWM, said of the diabetes drug's presence. "I said, 'What is this drug?'"

Klaper said the findings show that contrary to what many once believed, the Great Lakes are not so large that they cannot be disrupted by modern chemicals. Some of her research has found that metformin may disrupt the endocrine systems of male fish by causing the fish to produce chemicals associated with female hormones (John Fauber, *Milwaukee Journal Sentinel*, Dec. 31, 2014). **-- SP**

CALIFORNIA:

Governor reappoints heads of water, energy agencies

Debra Kahn, E&E reporter

Published: Monday, January 5, 2015

California Gov. Jerry Brown (D) last week reappointed his current chiefs of water quality and energy planning to continue serving in his administration.

Felicia Marcus will continue as chairwoman of the State Water Resources Control Board, which leads

nine regional boards in enforcing state and federal water quality laws and water rights. She has held the position since 2013.

PEOPLE

Marcus, 58, was previously administrator of EPA's Region 9 office in San Francisco from 1993 to 2001 under President Clinton. She also served as Western director at the Natural Resources Defense Council from 2008 to 2012 and as president of the Los Angeles Board of Public Works from 1991 to 1993.

Bob Weisenmiller will stay on as chairman of the California Energy Commission, a position he has occupied since 2011. The agency is in charge of power plant permitting, energy efficiency standards and funding energy research.

Weisenmiller, 66, has served on the CEC since 2010. Prior to that, he co-founded an energy consulting firm, MRW & Associates, and a technology consulting firm, Independent Power Corp.

Brown also named Richard Maullin, 74, to continue on the board of the state's electricity grid overseer, the California Independent System Operator. Maullin is a partner at the national public polling firm Fairbank, Maslin, Maullin, Metz & Associates. He has served as chairman of the board since last year.

All the appointments require confirmation by the state Senate.

CHINA:

Court fines 6 companies for acid waste discharge

Published: Monday, January 5, 2015

A Chinese court has ordered six companies to pay a total of $26 million in fines for discharging acid waste into local waterways.

The Higher People's Court of Jiangsu province said 25,000 tons of acid was discharged into two waterways, Rutai Canal and Gumagan River, between January 2012 and February 2013.

The fine is the biggest to come from a Chinese environmental pollution case and could signal that officials are trying to crack down on polluters.

The companies are located in an industrial district of the city of Taizhou in eastern China.

Jiangsu Changlong Chemical Company Ltd., a company that produces pesticides and herbicides, was fined $13.3 million for the pollution.

Other companies hit with fines were chemical producers Jinhui, Fu'an, Shenlong and Zhenqing, as well as pharmaceutical company Shimeikang (*Columbus Dispatch*, Jan. 1). **-- MH**

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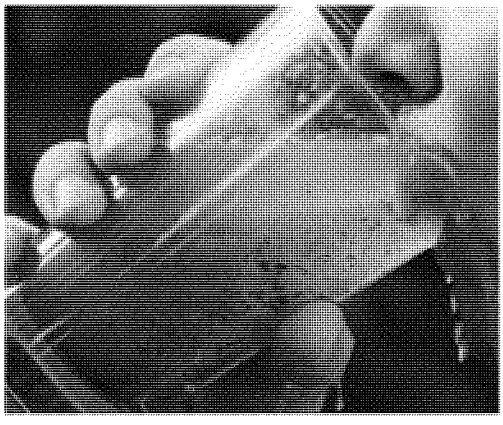

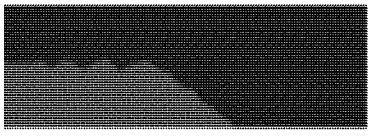

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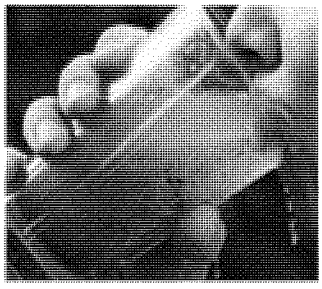

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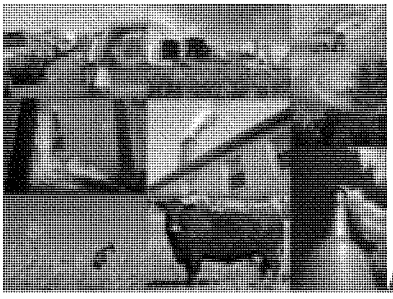
Subject: Air & Radiation Law News for January 5, 2015



Air & Radiation Law News

for January 5, 2015

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Accepting Comments on Lead Proposal

The Environmental Protection Agency is opening a 90-day public comment period on its proposal to retain the current national ambient air quality standards for lead. The agency Jan. 5 will publish a proposed rule to retain the primary and secondary...

Energy Efficiency

Energy Department Issues Final Efficiency Standards for Certain Light Bulbs, Ice Makers

The Energy Department finalized updated energy efficiency standards for certain types of light bulbs and commercial ice makers that the department says will prevent millions of metric tons of greenhouse gas emissions and save consumers...

Natural Gas

Cheniere Energy Receives Authorization To Construct Second LNG Export Terminal

Cheniere Energy Inc., the developer of the first U.S. liquefied natural gas export terminal in decades, received authorization to build a second one....

Oil & Gas

House to Hold Early Keystone Vote As Senate Committee Plans Hearing

The House will vote on a bill to approve the Keystone XL pipeline during the next two weeks, a leadership aide told Bloomberg BNA, as Republicans in both chambers make expediting legislation to bypass White House review of the project among their...

Pipeline Safety

Voluntary Standards on Polyethylene Pipe, Truck Transport Codified in PHMSA Final Rule

Pipeline operators that transport natural gas or hazardous liquids will be required to comply with two new voluntary consensus standards on transportation of pipe by truck and on specifications for polyethylene gas pressure pipe, tubing...

Vehicle Fuels

EPA Expects Fuel From Biomass Sorghum to Qualify as Cellulosic Fuel Under RFS

The Environmental Protection Agency anticipates that biofuels produced from biomass sorghum could qualify as cellulosic fuel under the renewable fuel standard....

CONGRESS 2015

Congress

Keystone Legislation First Up for Energy and Commerce Committee in New Congress

House Energy and Commerce Chairman Fred Upton (R-Mich.), buttressed by the new Republican majority in the Senate, gets a do-over on some of the bills his committee helped to get through the House in the last Congress. First up likely will be approving...

Congress

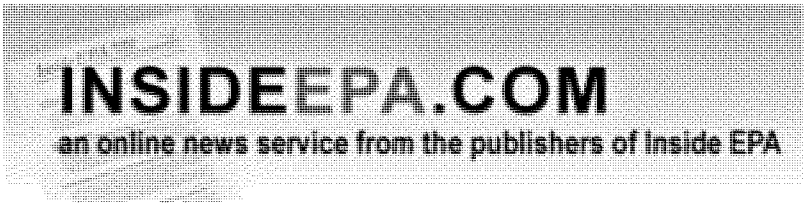
McConnell Discusses How He Will Run The Senate in the 114th Congress

With the Senate coming under Republican management, new Majority Leader Mitch McConnell (R-Ky.) says he plans to open the floor to more amendment votes....

Congress

What to Watch in the 114th Congress: Murkowski to Push Energy Revamp

Sen. Lisa Murkowski (R-Alaska) has spent years developing detailed plans to revamp U.S. energy policy with the goal of making the U.S. independent from oil-cartel imports by 2020....



News Briefs

EPA Proposes Full Approval Of Texas' 'Flexible' Air Permitting

EPA is proposing to fully approve Texas controversial flexible Clean Air Act permitting program as complying with air law requirements for applying new source review (NSR) permits to smaller minor sources of pollution, over the objection of environmentalists who say Texas' program is unlawful and allows excess pollution.

EPA Backs Sorghum As Low-Carbon Fuel Under RFS

EPA says a preliminary greenhouse gas (GHG) analysis shows that liquid fuel produced from sorghum has a small enough carbon footprint to qualify as a cellulosic fuel under the renewable fuel standard (RFS), opening the door to another feedstock being available for refiners who have not been able to meet agency blend mandates due to inadequate supply of cellulosic fuels.

Greenwire

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CLIMATEWIRE — Mon., January 5, 2015

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1.STATES:

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The caricatures of the swaggering, independent Texan and the elitist, trend-setting Californian are on full display in the otherwise dry, technical comments the two major economic drivers submitted on U.S. EPA's Clean Power Plan.

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Talking clouds and climate change with Ulrike Lohmann
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Critics slam newest China solar sanctions
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Frozen ground, friend to the Wis. logger, thawing out due to climate change
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Land of the midnight sun is warming faster than anywhere in the world
7.FOSSIL FUELS:
Powdery sponge holds carbon capture promise
8.BUSINESS:
Dutch company uses wind turbines to make water, not energy
9.ADVOCACY:
Pope Francis to address climate change in 2015 encyclical
10.AVIATION:
Commercial airline emissions did not improve from 2012 to 2013 -- report
11.EMISSIONS:
GHGs from world's top companies rise
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Australian regional and federal governments divided on climate

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Threat to generators gets dissected and partly solved -- then forgotten

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Entergy could pass new generation costs on to La. customers

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Regulators call for transparency on crude-fueled rail delays

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Chesapeake raises settlement offer for Pa. royalty owners

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Obama admin poised to release new oil and gas rules

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Cheniere's second LNG project marks regulatory milestones

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Gov. halts project spending as oil prices drop

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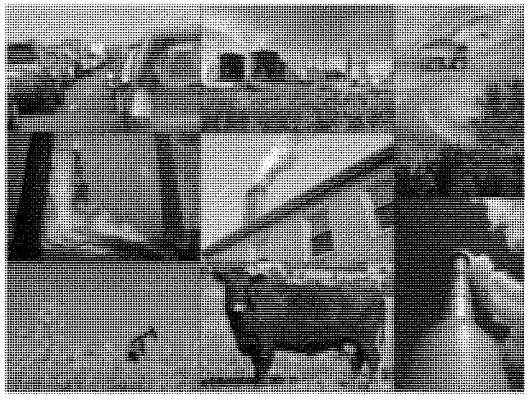

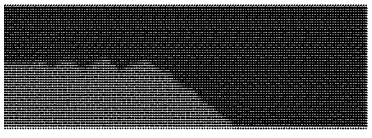

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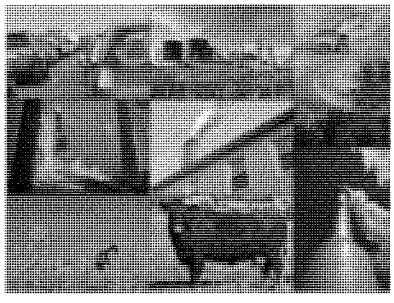

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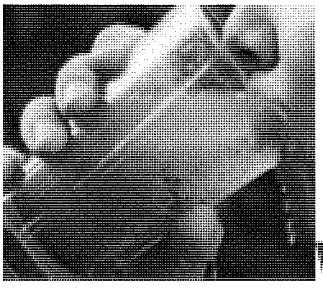
From: Turley, Jennifer
Sent: Mon 1/5/2015 3:21:04 PM
Subject: Water Law News for January 5, 2015



Water Law News

for January 5, 2015

Bloomberg BNA **Daily Environment Report™**

Hydraulic Fracturing

Jewell Says Local, Statewide Fracking Bans Create Uncertainty, Are 'Wrong Way to Go'

Local and statewide initiatives to stop or prevent hydraulic fracturing create uncertainty for industry and frequently are based on misinformation surrounding the activity, Interior Secretary Sally Jewell said....

Oil & Gas

House to Hold Early Keystone Vote As Senate Committee Plans Hearing

The House will vote on a bill to approve the Keystone XL pipeline during the next two weeks, a leadership aide told Bloomberg BNA, as Republicans in both chambers make expediting legislation to bypass White House review of the project among their...

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Voluntary Standards on Polyethylene Pipe, Truck Transport Codified in PHMSA Final Rule

Pipeline operators that transport natural gas or hazardous liquids will be required to comply with two new voluntary consensus standards on transportation of pipe by truck and on specifications for polyethylene gas pressure pipe, tubing...

Water Pollution

California Utilities' Group Sues EPA, Saying Letter on Limits Amounts to Permit Denial

An organization representing Southern California wastewater treatment plants has asked an appeals court to review whether the Environmental Protection Agency can deny Clean Water Act discharge permits through a "formal objection...

Water Pollution

Citizen Plaintiffs Have Right to Jury Trial On CWA, RCRA Civil Penalties, Court Says

Parties to citizen suits filed under the Clean Water Act and the Resource Conservation and Recovery Act

are entitled to a jury trial on the civil penalties in each statute, the U.S. District Court for the Eastern District of North Carolina said...

Water Pollution

Court Dismisses Firm's Lawsuit Accusing EPA Of Not Releasing Records in Wastewater Case

A federal district court dismissed a lawsuit Dec. 31 accusing the Environmental Protection Agency of violating the Freedom of Information Act by failing to disclose records related to its decision to limit the application of an appellate...

Water Pollution

Fort Smith, Ark., Agrees to Spend $200M On Sewer System Upgrades to Cut Overflows

Fort Smith, Ark., will spend more than $200 million over the next 12 years to upgrade its sewer collection and treatment system to reduce discharges of raw sewage and other pollutants into local waterways under a proposed agreement with the...

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Latest News

Despite EPA's Encouragement, SRFs Rarely Used For Nonpoint Projects

States and municipalities are not taking full advantage of EPA's clean water state revolving loan funds (CWSRF) to finance nonpoint source estuary projects, despite encouragement from agency headquarters and clear authority in the Clean Water Act, according to a former EPA financial advisor.

Industry Groups Object To EPA Plan To Set Strontium Drinking Water Limit

Industry groups are asking EPA to reconsider its preliminary decision to set an enforceable drinking water limit for strontium, with drinking water utilities arguing the element is not being detected at levels of concern and manufacturers charging the agency failed to properly analyze the energy costs of compliance, including inconsistently applying a social cost of carbon analysis.

News Briefs

Industry, Advocates Challenge Cooling Water BiOp

Industry and environmentalist groups that oppose EPA recent rule governing Clean Water Act (CWA) permits for cooling water intake structures are also seeking to challenge federal wildlife officials assessment of the policy's potential Endangered Species Act (ESA) impacts.

Court Dismisses FOIA Suit Over EPA's Wet Weather Policy

A federal district court has rejected a Freedom of Information Act (FOIA) suit that industry hoped would produce documents supporting wastewater groups ongoing bid to force EPA to abandon restrictions on the practice of "blending" of partially and fully treated wastewater from wet weather events.

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Frozen ground, friend to the Wis. logger, thawing out due to climate change

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Land of the midnight sun is warming faster than anywhere in the world

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Powdery sponge holds carbon capture promise

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Dutch company uses wind turbines to make water, not energy

9.ADVOCACY:

Pope Francis to address climate change in 2015 encyclical

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Commercial airline emissions did not improve from 2012 to 2013 -- report

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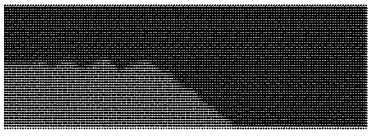

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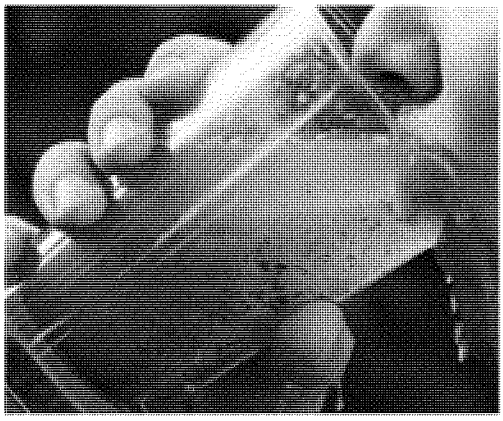
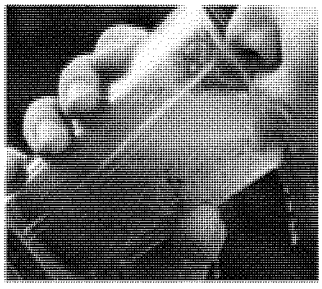
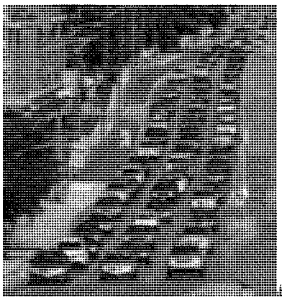




To: Allnutt, David[Allnutt.David@epa.gov]; Anderson, Lea[anderson.lea@epa.gov]; Anderson, Steve[Anderson.Steve@epa.gov]; Aranda, Amber[aranda.amber@epa.gov]; Averback, Jonathan[Averback.Jonathan@epa.gov]; Belser, Evan[Belser.Evan@epa.gov]; Bianco, Karen[Bianco.Karen@epa.gov]; Bogoshian, Matthew[Bogoshian.Matt@epa.gov]; Branning, Amy[Branning.Amy@epa.gov]; Bunker, Byron[bunker.byron@epa.gov]; Chapman, Apple[Chapman.Apple@epa.gov]; Choi, Jake[Choi.Jake@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Crum, Lynda[Crum.Lynda@epa.gov]; Crystal, Roy[crystal.roy@epa.gov]; Davis, Julian[davis.julian@epa.gov]; Dickinson, David[Dickinson.David@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]; Dubey, Susmita[dubey.susmita@epa.gov]; Dubois, Roland[Dubois.Roland@epa.gov]; Embrey, Patricia[Embrey.Patricia@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Froikin, Sara[Froikin.Sara@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Graham, Cheryl[Graham.Cheryl@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Hogan, Stephanie[Hogan.Stephanie@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Horowitz, Michael[horowitz.michael@epa.gov]; Igoe, Sheila[Igoe.Sheila@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Kataoka, Mark[Kataoka.Mark@epa.gov]; Klepp, Robert[Klepp.Robert@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Lee, Michael[lee.michaelg@epa.gov]; Lovett, Lauren[Lovett.Lauren@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Manners, Mary[manners.mary@epa.gov]; Marks, Matthew[Marks.Matthew@epa.gov]; Matthews, Julie[Matthews.Juliane@epa.gov]; McConkey, Diane[Mcconkey.Diane@epa.gov]; Mclean, Kevin[Mclean.Kevin@epa.gov]; Moore, Bruce[Moore.Bruce@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]; Adair, Jocelyn[Adair.Jocelyn@epa.gov]; Okoye, Winifred[Okoye.Winifred@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Pastorkovich, Anne-Marie[Pastorkovich.Anne-Marie@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Rowland, John[Rowland.John@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Senn, John[Senn.John@epa.gov]; Shenkman, Ethan[Shenkman.Ethan@epa.gov]; Silverman, Steven[silverman.steven@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Snyder, Doug[Snyder.Doug@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Stahle, Susan[Stahle.Susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Tate, Ragan[Tate.Ragan@epa.gov]; Thrift, Mike[thrift.mike@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Ting, Kaytrue[Ting.Kaytrue@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Versace, Paul[Versace.Paul@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Wilcox, Geoffrey[wilcox.geoffrey@epa.gov]; Williams, Brent[Williams.Brent@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]; Williamson, Timothy[Williamson.Tim@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Wills, Jennifer[Wills.Jennifer@epa.gov]; Conger, Nick[Conger.Nick@epa.gov]; Blake, Wendy[Blake.Wendy@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]; Vergeront, Julie[Vergeront.Julie@epa.gov]; Tozzi, Lauren[Tozzi.Lauren@epa.gov]; Coursen, David[Coursen.David@epa.gov]; Pilchen, Zach[Pilchen.Zach@epa.gov]; Skinner-Thompson, Jonathan[Skinner-Thompson.Jonathan@epa.gov]; Vijayan, Abi[Vijayan.Abi@epa.gov]; Roder, Aileen[Roder.Aileen@epa.gov]; Walker, Denise[Walker.Denise@epa.gov]; Caballero, Kathryn[Caballero.Kathryn@epa.gov]; Thompson, Christopher[Thompson.Christopher@epa.gov]
From: Turley, Jennifer
Sent: Mon 12/29/2014 3:53:42 PM
Subject: Air & Radiation Law News for December 29, 2014



Air & Radiation Law News

for December 29, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA to Withdraw Process Wastewater Limits For Emissions From Producers of PVC Resin

The Environmental Protection Agency would withdraw by Jan. 21 certain area source process wastewater emissions limits for facilities that produce polyvinyl chloride resin, according to a proposed settlement agreement (Mexichem Specialty...

Air Pollution

Royal Caribbean Agrees to Install Scrubbers To Comply With Marine Emissions Standards

Royal Caribbean Cruises Ltd. will be able to retrofit sulfur dioxide-removing scrubbers on 19 of its ships that ply the waters around Puerto Rico and the U.S. Virgin Islands under an agreement reached with the Environmental Protection Agency...

China

Five Industrial Areas in China Failing To Control Heavy Metals Emissions

A Ministry of Environmental Protection review of annual emissions data has found that heavy metals emissions rose in 2013 in Hunan, Guizhou, Shaanxi and Yunnan provinces, as well as the Inner Mongolia autonomous region, according to a Dec....

Climate Change

Tides Turn East Coast Yards to Wetlands As Warming Takes Toll on Real Estate

Amanda Armstrong schedules her life around the tides. For the past year-and-a-half, she's had to navigate rising waters that saturate the lawn of her red brick house in Norfolk, Va., and sometimes fill a puddle out front with crabs and fish....

Endangered Species

Oil Producers, Naturalists Back Exchanges For Sage Grouse Habitat Instead of Listing

An alliance of oil producers, cattle ranchers, state agencies and environmentalists is organizing a series of habitat exchanges across the West as an alternative to Endangered Species Act protection for the greater sage grouse....

Energy

Grid Operator Wants to Pay Power Plants To Stay Online, Ensure Reliability

The manager of the nation's largest electricity grid wants to keep some power plants running beyond their scheduled closures to ensure reliability next winter....

Energy

Money Out the Window: Congress Drops Chance to Fix Outdated Tax Credits

Energy-efficient windows that homeowners installed in 2014 just became a few hundred dollars cheaper,

thanks to a tax credit Congress revived in December. But lawmakers who think they spurred consumers to pick energy-savers may be in for...

Energy

President Picks Burns to Become Chairman Of NRC Beginning Jan. 1, Agency Announces

President Barack Obama has designated Stephen Burns as chairman of the Nuclear Regulatory Commission, effective Jan. 1, 2015, the agency announced Dec. 23....

Energy

USDA Revises Renewable Loan Guarantees, Grants for Rural Energy Efficiency Program

The Agriculture Department is slated to publish a final rule Dec. 29 to update requirements for applicants seeking funding under grant and loan guarantee programs that support renewable energy and energy efficiency in rural areas, known...

Natural Gas

Energy Companies Seek Route Around U.S. Sanctions on Arctic LNG Project

Total SA and its partners will use a record 16 ice-breaking tankers to smash through floes en route to and from the Arctic's biggest liquefied natural gas development....

Renewable Energy

Court Rejects Effort to Block Wind Farm In Vermont's Green Mountain National Forest

A federal district court has denied an environmental group's effort to block a wind farm from being installed in Vermont's Green Mountains, a project that has been a priority for Obama administration efforts to increase the number...

Sustainability

Tough, Well-Designed Environmental Policies Don't Hurt Economic Growth, OECD Says

Implementing strong, well-defined policies to fight pollution and climate change won't undercut countries' efforts to boost economic growth and could help companies to become more productive, according to a new Organization...

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Inside EPA **Weekly Report**, 12/26/2014

http://insideepa.com/newsletters/inside-epa

Latest News

Gas Industry Eyes EPA Hearing To Query GHG Reporting Rule's Scope

The natural gas industry is looking to an upcoming EPA public hearing to address potential concerns over the scope of the agency's plan to expand its greenhouse gas (GHG) reporting rules for the sector to include hydraulically fractured oil wells and blowdowns of transmission pipelines between compressor stations among others.

EPA Region 7 Chief Touts Regional Bid To Cut Farms' Ammonia Emissions

EPA Region 7 Administrator Karl Brooks is touting the agency's work with Colorado and the livestock indsutry on best practices to reduce particulate matter (PM)-forming ammonia emissions from animal feedlots as an model for other Midwestern states in the region, potentially offering a boost for states looking to cut emissions and attain EPA's PM standards.

DOJ, Sierra Club Say Court Erred In Ruling Seen Limiting NSR Enforcement

The Department of Justice (DOJ) and Sierra Club are claiming a federal district court erred in a ruling that is broadly seen as restricting EPA's ability to enforce the Clean Air Act new source review (NSR) permitting program, and are urging an appellate court to reverse a decision that they say has significant factual and legal flaws.

Exxon's Win In Refinery Air Case Could Further Raise Bar For Citizen Suits

ExxonMobil's recent court victory defeating a citizen enforcement suit for alleged Clean Air Act violations at the largest refinery in the United States could further raise the bar for citizen suits, sources say, as the court said steps Exxon took to address emissions limit exceedances outweighed the severity of the one-time air law violations.

News Briefs

D.C. Circuit Schedules Oral Arguments In CCS Waiver Suit

The U.S. Court of Appeals for the District of Columbia Circuit has set oral arguments for March 26 in industry's suit over EPA's Resource Conservation & Recovery Act (RCRA) waiver excluding carbon capture and sequestration (CCS) activities from strict hazardous waste rules -- a rule that CCS operators say creates liability concerns.

Greenwire

Greenwire will not publish from Dec. 25 through Jan. 4. It will return on Monday, Jan. 5.

KEYSTONE XL:

As decision looms, key players jockey for position

Manuel Quiñones, E&E reporter

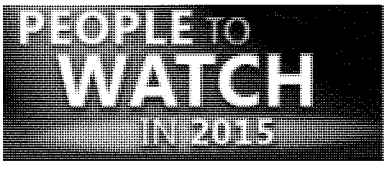
Published: Wednesday, December 24, 2014

Thirteenth in a series on key players on energy and environment issues in 2015.

Debate over TransCanada Corp.'s Keystone XL pipeline is poised to heat up again once Republicans take over the Senate in January, and Congress is almost certain to pass legislation to approve the pipeline.

That means advocates on both sides of the contentious issue will pressure President Obama to either sign the bill, allow it to become law without his input or veto it.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

If the president takes the third option, the action will be back on Capitol Hill, where pro-KXL advocates will have to determine whether they have a chance of overriding the president.

Regardless of what Congress does, Obama still has to decide whether to allow KXL's crossing from Canada, especially if the Nebraska Supreme Court clears ongoing legal problems there.

Dozens of people have emerged as important players in the debate, which spans two countries and

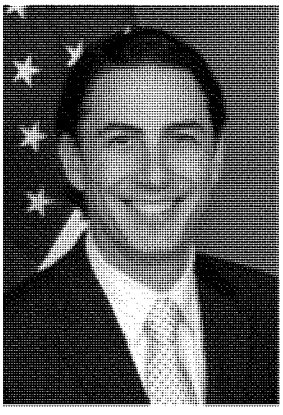
several states, plus multiple levels of government. Here are just some to watch in the weeks ahead:

Amos Hochstein, Department of State

Earlier this month, Secretary of State John Kerry appointed Hochstein as the department's special envoy and coordinator for international energy affairs, with KXL as part of his portfolio.

Hochstein has been on the job in an acting basis since previous envoy Carlos Pascual, a former ambassador to Ukraine and Mexico, left the administration earlier this year.

With State's environmental impact reviews concerning KXL's transboundary crossing complete, the agency must decide whether the project is in the national interest.



Amos Hochstein. Photo courtesy of the U.S. Department of State.

State spokeswoman Nicole Thompson said Hochstein will be involved. She also stressed that others within the agency would be working on KXL documents.

Hochstein has significant experience in politics and on Capitol Hill. He was an adviser for the House Foreign Affairs Committee and a political aide to former Sen. Chris Dodd (D-Conn.). Hochstein was also an executive for the firm Cassidy & Associates Inc.

Lobbying disclosure records show Hochstein advocated in 2008 on behalf of Marathon Oil Corp. on terrorism issues in the National Defense Authorization Act.

Khary Cauthen, American Petroleum Institute

Cauthen has for years been a top lobbyist for the American Petroleum Institute, but is now spending more time helping coordinate pro-KXL efforts.

Lisa Ceglia, API's former federal relations director, used to help bring together pro-pipeline advocates, but she's now government affairs manager for Halliburton Co. So Cauthen is stepping in to help coordinate the coalition.

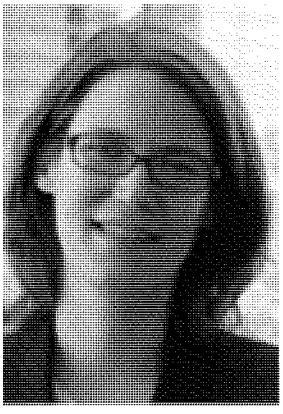
Cauthen was White House Council on Environmental Quality chief of staff during President George W. Bush's administration. Before that, he worked for former New Jersey Gov. Christine Todd Whitman (R) and followed her to U.S. EPA when she became administrator.

Earlier this year, Cauthen pressed for a Senate vote on KXL coupled with bipartisan efficiency legislation. "I don't think you'll see a moment for a while where there is this much positive energy to have a vote," he said at the time.

Angela Becker-Dippmann, Senate Energy and Natural Resources Committee

Becker-Dippmann will lead the Senate Energy and Natural Resources Committee's Democratic staff under incoming ranking member Maria Cantwell (D-Wash.).

That means Becker-Dippman will be by Cantwell's side when the panel, led by Sen. Lisa Murkowski (R-Alaska), debates and likely clears legislation to approve the pipeline early next year.



Angela Becker-Dippmann. Photo courtesy office of Sen. Maria Cantwell (D-Wash.).

Becker-Dippmann's experience includes being a senior energy and environment adviser for the Department of Energy's Pacific Northwest National Laboratory. Areas of focus there included grid and cybersecurity, both hot issues before lawmakers.

Becker-Dippmann was on Cantwell's staff between 2001 and 2007. She then moved on to a stint on the Energy and Natural Resources panel under Chairman Jeff Bingaman (D-N.M.).

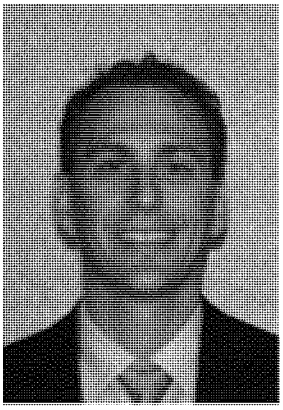
She was also a lobbyist for McBee Strategic Consulting LLC between 2008 and 2011. Clients there included Battelle Memorial Institute and Boeing Co.

Joe Mendelson, Senate Environment and Public Works Committee

Mendelson for the last year has been the Senate Environment and Public Works Committee's chief climate counsel, a position created by Chairwoman Barbara Boxer (D-Calif.) to highlight the issue's importance.

Even though legislation to approve KXL goes through the Senate Energy and Natural Resources Committee, Boxer's EPW has been a voice for all things dealing with climate and environment.

When Republicans take over the Senate next year, Mendelson -- if he sticks around -- will help craft the Democrats' response to the GOP's agenda, including fast-tracking the bill to approve KXL.



Joe Mendelson. Photo courtesy of Joe Mendelson.

Mendelson, a graduate of George Washington University Law School, was director of the National Wildlife Federation's climate and energy program before joining Boxer's staff.

Starting in the mid-1990s through 2008, he was legal director for the Center for Food Safety and the International Center for Technology Assessment, according to his LinkedIn profile.

Mendelson has helped lead landmark climate litigation pushing for the regulation of greenhouse gases under the Clean Air Act, an issue eventually resolved in the Supreme Court's decision in *Massachusetts v. EPA*.

Tiernan Sittenfeld, League of Conservation Voters

Sittenfeld, League of Conservation Voters senior vice president for government affairs, is one of several environmental lobbyists working to oppose KXL legislation on Capitol Hill.

There are numerous figures who have gained prominence for their opposition to the pipeline, including 350.org founder Bill McKibben, billionaire donor Tom Steyer and Bold Nebraska head Jane Kleeb.

But Sittenfeld is among a group of lesser-known advocates who spends more time maneuvering the halls of Congress on the environmental movement's behalf, not only on KXL but a number of other energy and environmental issues (*Greenwire*, Dec. 23).

Tiernan Sittenfeld. Photo courtesy of the League of Conservation Voters.

Beyond lobbying, Sittenfeld is also influential in elections through LCV's endorsements and scorecards. The group said it spent $25 million during the most recent election cycle, which saw the environmental community rise in prominence.

Sittenfeld joined LCV in 2005. Before that, she was a preservation advocate for the U.S. Public Interest Research Group, working on public lands and ocean issues. Sittenfeld was also a co-director for the Heritage Forests Campaign to protect roadless areas.

Thomas Hassenboehler, House Energy and Commerce Committee

Hassenboehler has been chief counsel for the House Energy and Commerce Committee's Energy and Power subpanel since last year, helping craft the Republican majority's pro-energy policies.

Hassenboehler, a Louisiana State University law school graduate, got his start as an aide to former Reps. Bob Riley (R-Ala.) and Billy Tauzin (R-La.).

He went on to serve on the Energy and Commerce panel for the first time, then the Senate Environment and Public Works Committee under ranking member James Inhofe (R-Okla.).

Thomas Hassenboehler. Photo courtesy of the Bipartisan Policy Center.

Hassenboehler lobbied for America's Natural Gas Alliance in 2011 for about a year as vice president of policy development and legislative affairs before returning to Energy and Commerce.

A source with knowledge of Republican energy policies, who spoke on the condition of anonymity, said Hassenboehler sees the pipeline as part of promoting all forms of energy and boosting related infrastructure. The GOP has called it the "Architecture of Abundance."

Other pluses for Hassenboehler -- at least in the minds of pro-KXL advocates -- are his experience with the Senate and working relationship with Maryam Brown, energy policy adviser for Speaker John Boehner (R-Ohio) and another former Energy and Commerce aide.

NRC:

Obama picks former general counsel to lead agency as controversy thickens

Katherine Ling, E&E reporter

Published: Wednesday, December 24, 2014

President Obama has tapped Commissioner Stephen Burns to be chairman of the Nuclear Regulatory Commission starting Jan. 1, 2015, the agency said yesterday.

Burns, a 33-year veteran of the agency, was sworn in as a commissioner last month. He will lead the agency amid a brewing storm over issues including the fate of the nuclear waste repository at Yucca Mountain, Nev.; new safety regulations after the 2011 Fukushima Daiichi disaster in Japan; and a nomination for the open fifth chair on the commission. The contention is likely to intensify as Republicans take control of both chambers of Congress next session.

The impending controversy was already on display earlier this month as Sen. Barbara Boxer (D-Calif.), current chairwoman -- and soon-to-be ranking member -- of the Environment and Public Works Committee, excoriated the NRC for not acting on the 3-year-old safety recommendations quickly enough. Meanwhile, Sen. James Inhofe (R-Okla.) vowed to stop the NRC from what he says is overregulation of the nuclear industry with redundant rules when he takes the committee reins next session (*Greenwire*, Dec. 3).

PEOPLE

Boxer also noted at the hearing that she preferred Burns' fellow commissioner Jeff Baran, a former top aide to Rep. Henry Waxman (D-Calif.), as NRC chairman. The Senate confirmed Baran to a longer term that will end in 2018, instead of this summer, with only one Republican vote from Sen. Dean Heller (Nev.) in the closing days of the session (*E&E Daily*, Dec. 9).

Current NRC Chairwoman Allison Macfarlane announced in October she would resign at the end of the year, saying later she was stepping down because of her mother's illness and the timing of a job opportunity from George Washington University to be director of the Center for International Science and Technology Policy.

Macfarlane said last month her successor has a tricky road ahead to prepare the NRC to be "the right agency for the times" with an industry facing an unexpected downturn -- instead of a proclaimed nuclear renaissance -- as lower natural gas prices and power demands are hurting the market (*E&ENews PM*, Nov. 17).

Burns was NRC general counsel from 2009 to 2012 under the tumultuous chairmanship of Gregory Jaczko and held various positions at the agency -- including executive assistant to then-Chairman Kenneth Carr -- since 1974, when he was hired as an attorney in NRC's Regional Operations and Enforcement Division. He is the second career general counsel to lead the agency since Marcus Rowden became the agency's second chairman in 1976, according to the NRC.

Before returning to the NRC, Burns was the head of legal affairs at the Nuclear Energy Agency of the Organization for Economic Cooperation and Development in Paris for the past two years. He also speaks German, according to his LinkedIn profile.

"I am pleased to have been selected to serve as the NRC's next chairman. It is a great honor to lead the agency to which I dedicated most of my professional career," Burns said in a statement. "I extend my thanks to Dr. Macfarlane for her service and wish her success in her new position. I look forward to working with my fellow commissioners, the NRC staff and our stakeholders in carrying out the NRC's important mission."

Marvin Fertel, president and chief executive of the Nuclear Energy Institute, welcomed the designation of Burns to lead the agency, saying it is important that federal oversight be efficient, effective and based on "sound technical" information "that does not impose bureaucratic compliance burdens that are not justified from a safety perspective."

"We look forward to working with him as he guides the agency in the years ahead, and we urge him to continue to pursue the prioritization of regulatory activities among the agency's 3,800 employees to ensure that NRC and industry resources are properly focused on those issues and programs of the greatest safety significance," Fertel said in a statement. "We also look forward to working with him and the rest of the commission to complete and close out the Fukushima lessons-learned safety enhancement."

FORESTS:

Scientists see hope in climate fight as deforestation drops

Published: Wednesday, December 24, 2014

Deforestation that was rampant decades ago is slowing in many countries, giving hope to scientists who see the carbon sinks as an essential tool in the fight against climate change.

Twenty years ago, deforestation in the Brazilian Amazon rainforest was out of control, and by 2004, nearly 17 percent of the forest had been cut down. Environmentalists and scientists sounded the alarm, and today, deforestation levels are at a record low in Brazil.

Many countries are preserving forests to limit the amount of carbon dioxide emitted from deforestation. Forests act as carbon sinks and store large amounts of carbon. In addition, trees soak up 20 to 25 percent of the carbon dioxide humans emit into the atmosphere, according to reports.

Although deforestation is down and regrowth is occurring in countries such as Brazil and Costa Rica, other countries such as Indonesia are finding it difficult to preserve forests. Palm oil, a product used in foods and cosmetics, is an economic driver in Indonesia, and land is being cleared at a record pace to make room for the plantations.

Even though deforestation continues in many countries, forests can regrow and come back.

"The forests know how to do this," said Robin Chazdon, an ecologist at the University of Connecticut. "They've been doing it forever, growing back" (Justin Gillis, *New York Times*, Dec. 23). -- **MH**

CALIFORNIA:

Governor names renewables adviser to head utilities commission

Debra Kahn, E&E reporter

Published: Wednesday, December 24, 2014

California Gov. Jerry Brown (D) yesterday named longtime advisor Michael Picker to serve as president of the California Public Utilities Commission, a move expected to coincide with major reforms at the agency.

Picker will replace departing President Michael Peevey, who is stepping down amid an email scandal that showed him engaging in back-channel communications with utility executives (*Greenwire*, Dec. 23).

Brown first appointed Picker a year ago to serve as one of the CPUC's five commissioners, who oversee private electric and gas utilities, telecommunications, water, and railroad companies. Picker previously served as Brown's senior adviser for renewable energy, a position he continued from former Gov. Arnold Schwarzenegger's (R) tenure.

PEOPLE

"Michael Picker's deep experience and sound judgment make him uniquely qualified to take on this role," Brown said.

Picker said he would prioritize the state's pursuit of greenhouse gas reductions, as well as safety, an issue highlighted by a 2010 pipeline explosion in San Bruno, Calif., that killed eight people. The CPUC is still debating how much to penalize Pacific Gas & Electric Co. for the incident.

"I'm honored by the governor's trust and confidence, and take his charge to heart -- reduce greenhouse gas emissions, strengthen safety programs and modernize the agency," Picker said.

Picker, 62, first started working with Brown on the campaign trail in the 1970s and joined his administration in 1981, as deputy assistant for toxic substance control, during Brown's second term as governor. Picker also served as chief of staff to Sacramento Mayor Joe Serna Jr. from 1992 to 1999, and was a member of the board of directors of the Sacramento Municipal Utility District from 2012 to 2014.

Brown yesterday also named Liane Randolph to fill the vacant seat on the commission left by Picker's elevation to president. Randolph, 49, is a lawyer who previously served as deputy secretary and general counsel of the California Natural Resources Agency and chairwoman of the California Fair Political Practices Commission.

Both appointees require state Senate confirmation.

State Sen. Jerry Hill (D), who represents San Bruno, has been a vocal critic of Peevey and the CPUC, introducing a bill last week to strip the CPUC president's power to direct the agency's executive director and staff, spreading the responsibility instead across all five commissioners. The bill would also require that the agency meet in Sacramento six times per year, rather than at its headquarters in San Francisco, to give the governor and Legislature greater oversight (*E&ENews PM*, Dec. 18).

A longtime California energy industry participant said Picker would bring an outsider's perspective to reforming the agency.

"He's a tough, challenging thinker, and is not afraid to challenge prevailing wisdom, which I think will be an asset at the PUC but will also ruffle some feathers," said V. John White, executive director of the Center for Energy Efficiency and Renewable Technologies, a nonprofit industry coalition.

"Sometimes he can be abrupt and brutally frank, but I think he has thought a lot about what the agency needs in terms of change," White said.

A utility watchdog group also welcomed Picker's nomination, as well as Randolph's.

"We welcome Picker's appointment as CPUC president and expect him to end the backroom deals and make decisions based upon actual evidence," said Mark Toney, executive director of the Utility Reform Network. "We welcome Randolph's appointment as CPUC commissioner and expect her to be an advocate for open government and CPUC compliance with rules, regulations and statutes."

The Sierra Club singled out Randolph in particular for praise, avoiding comment on Picker.

"Randolph is exactly the type of leader this regulatory body needs to begin restoring public faith in the institution," said Evan Gillespie, director of Sierra Club's My Generation campaign. "Her record of public service demonstrates she will stand on the side of the public and fight for what the people have been asking for -- less dependence on costly fossil fuel projects and a transition to clean energy."

AUSTRALIA:

Data show record drop in emissions

Published: Wednesday, December 24, 2014

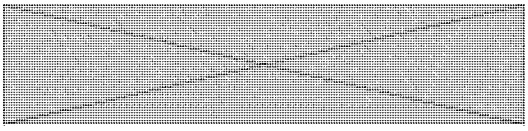
Australia's carbon price worked better in its second, final year of implementation, according to data published quietly this week by Environment Minister Greg Hunt.

Emissions across Australia declined by 1.4 percent from June 2013 to June 2014, compared with an 0.8 percent decline the previous year.

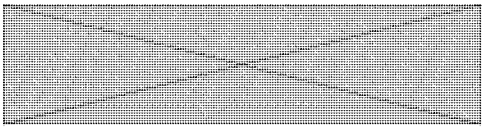
Originally implemented by Julia Gillard's Labor Party government, the carbon tax was abolished by Prime Minister Tony Abbott's Liberal Party government this year.

Data about the carbon tax's effectiveness were quietly published just two days before Christmas. Greens leader Christine Milne, who called the figures "embarrassing" for the Abbott government, said the administration should have released the data before the U.N. climate change conference in Lima, Peru, to show the program's effectiveness.

"This is the biggest ever drop recorded, and the price made it happen," Milne said (Gareth Hutchens, *Sydney Morning Herald*, Dec. 23). **-- AW**



ClimateWire will not publish Christmas Eve through Friday, Jan. 2. It will return Monday, Jan. 5.



EnergyWire will not publish Christmas Eve through Friday, Jan. 2. It will return Monday, Jan. 5.

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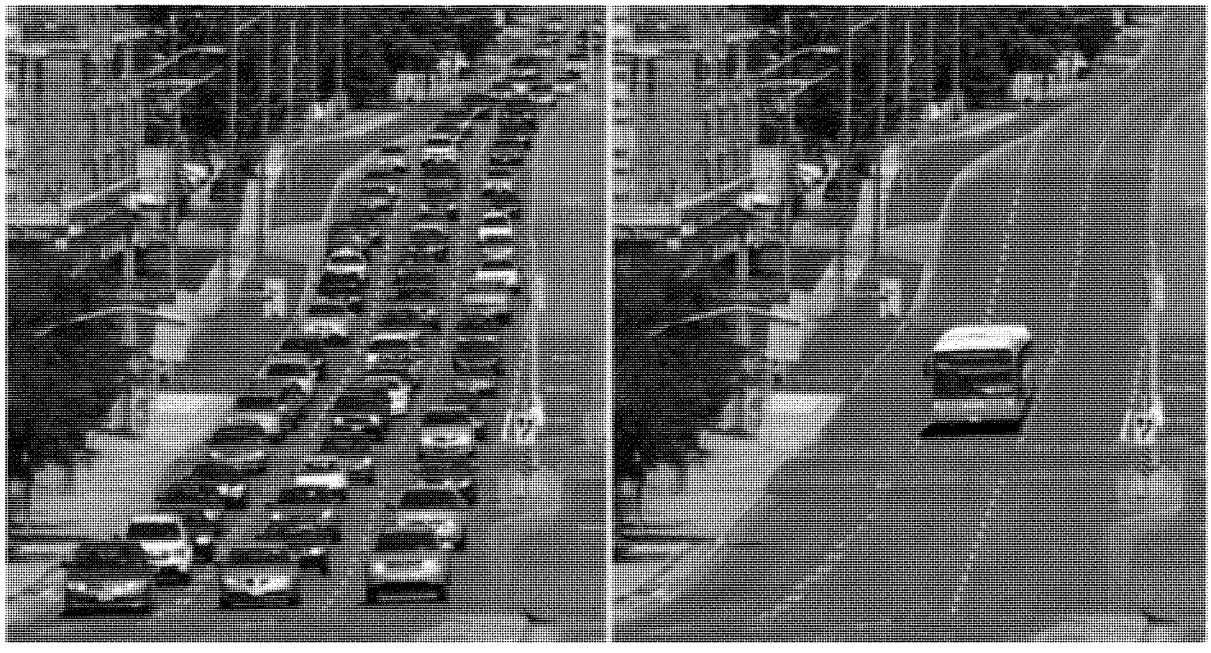

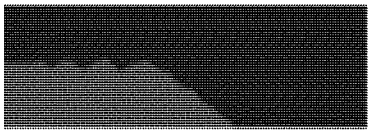

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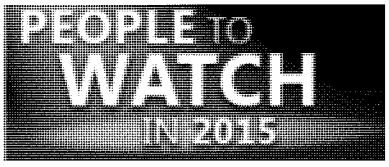
Greenwire

PEOPLE


PEOPLE TO
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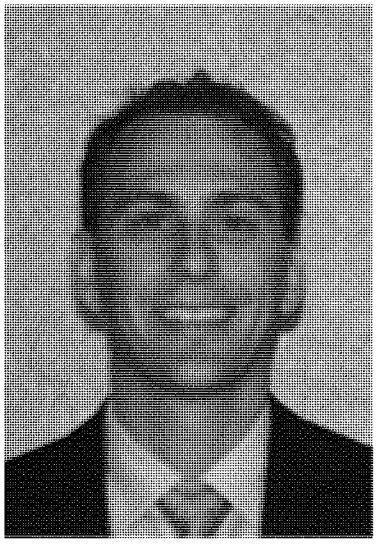
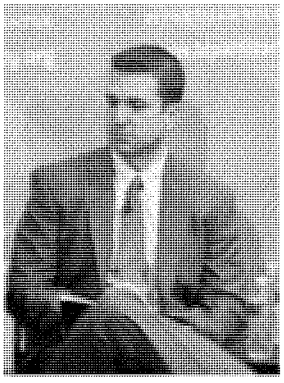
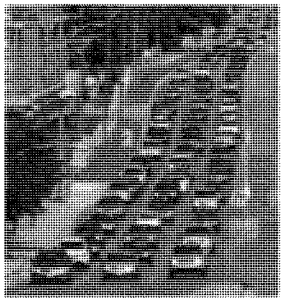
IN 2015







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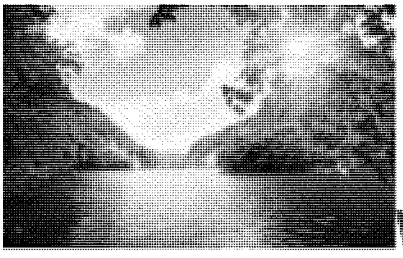
Sent: Mon 12/29/2014 3:19:10 PM
Subject: Water Law News for December 29, 2014



Water Law News

for December 29, 2014

Bloomberg BNA **Daily Environment Report™**

Climate Change

Tides Turn East Coast Yards to Wetlands As Warming Takes Toll on Real Estate

Amanda Armstrong schedules her life around the tides. For the past year-and-a-half, she's had to navigate rising waters that saturate the lawn of her red brick house in Norfolk, Va., and sometimes fill a puddle out front with crabs and fish....

Hydraulic Fracturing

Water Use in Oil, Gas Production Causing Concern as Alberta Proceeds With Planning

The use of large quantities of water in the oil and gas production process known as hydraulic fracturing has emerged as one of the top four issues people in Alberta are concerned about as the Canadian province moves forward with its water-use...

Maryland

Maryland's Gov.-Elect Taps Ben Grumbles To Lead State's Environment Department

Maryland Gov.-Elect Larry Hogan (R) has tapped Benjamin Grumbles, the president of the nonprofit U.S. Water Alliance, to be the state's secretary of the environment....

Water Pollution

European Shippers Uncertain About Use Of Scrubbers to Meet New Sulfur Standards

Marine areas in North America and Europe will start following a strict new standard for sulfur emissions from ships Jan. 1, 2015, but ship owners in the Baltic and North seas still don't know whether scrubbing sulfur from the stacks is an...

Water Pollution

Transfer of Polluted Water Into Clean Water Is Incompatible With Statute, States Say

Unregulated transfer of polluted water into clean water is incompatible with the Clean Water Act's basic goals of protecting the quality of individual water bodies, nine states and one Canadian province jointly told a federal appeals...

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Inside EPA **Weekly Report**, 12/26/2014

http://insideepa.com/newsletters/inside-epa

Inside EPA **Water Policy Report**, 12/29/2014

http://insideepa.com/newsletters/water-policy-report

Latest News

Advocates Sue EPA Over Approval Of Florida's CWA Antidegration Rules

Environmentalists are suing EPA for approving Florida's Clean Water Act (CWA) rules to prevent degradation in several significant waters including the Everglades, arguing EPA and the state failed to meet a CWA duty to gather a broad range of information on waterbody health and harms before developing such plans.

News Briefs

Former EPA Water Chief Grumbles Nominated To Head MDE

Maryland Gov.-elect Larry Hogan (R) has nominated former George W. Bush EPA water chief Benjamin Grumbles to head the state's Department of Environment (MDE) and oversee the state's implementation of the federal Chesapeake Bay cleanup plan, as well as potentially overseeing regulations for hydraulic fracturing.

Greenwire

Greenwire will not publish from Dec. 25 through Jan. 4. It will return on Monday, Jan. 5.

COLORADO RIVER:

Water users scramble as drought foretells scary future

Annie Snider, E&E reporter

Published: Wednesday, December 24, 2014

LAS VEGAS -- After 15 straight years of drought, this desert city is rolling the dice on a major engineering project that it hopes will keep some 25 million households from going dry.

Water levels at Lake Mead have hit historic lows -- uncomfortably close to the city's last-gasp intake pipe -- so the Southern Nevada Water Authority is drilling a little deeper.

Two weeks ago, the authority's new 3-mile-long, 20-foot-wide tunnel under Lake Mead reached the massive new concrete water intake.

"Spot on!" Mary Beth Scow, chairwoman of the authority's board of directors, declared with relief at the Colorado River Water Users' annual conference here later that day.

Such an engineering feat does not come cheaply. Boring the tunnel and constructing water intake cost $817 million. And water authority board members just signed off on plans for a $650 million pumping station for the intake, which will require yet another painful rate hike.

All that money is being spent simply to ensure that the authority can sip from Lake Mead as levels drop. It does nothing to guarantee there'll be water in the big bathtub.

The Colorado River and its tributaries provide drinking water to nearly 40 million people across the West, irrigate 5.5 million acres of farmland, sustain a multibillion-dollar recreation industry and pulse through nine national parks.

But there's a fundamental problem: States -- and their farmers, cities and industries -- have long counted on more water than the basin can offer.

Under a 1922 compact, negotiators parceled out 16.4 million acre-feet between the Upper Basin states, Colorado, Wyoming, Utah and New Mexico; the Lower Basin's Arizona, California and Nevada; and Mexico.

But scientists now say that these calculations were based on an unusually soggy period, and that normal flows are decidedly lower.

The system has been kept afloat by collecting extra runoff from wet years in Lake Mead and Lake Powell, the system's two main reservoirs, and drawing them down until the next big water year came along.

But the current prolonged drought is pushing this approach to its limits, as reservoirs continue to be tapped without replenishment. Today, Lake Powell stands at 48 percent capacity and Mead at 40 percent.

Meanwhile, demand is projected to grow. The Lower Basin states are consuming their full 7.5-million-acre-foot allocation under the compact, but the Upper Basin states are using only about 60 percent of their share. All four Upper Basin states have plans underway to tap more in the future.

A major study by the federal Bureau of Reclamation in 2012 projected the annual gap between supply and demand to grow to 3.2 million acre-feet by 2060 -- enough water to supply roughly the same number of homes (*E&ENews PM*, Dec. 12, 2012).

And climate change stands to challenge the system even further. The latest research suggests flows could decline by as much as 35 percent by midcentury.

"The really scary scenarios are 30 or more percent reduction by midcentury," said Doug Kenney, director of the Western Water Policy Program at the University of Colorado Law School. "In a basin that's really tight as it is, that's really catastrophic."

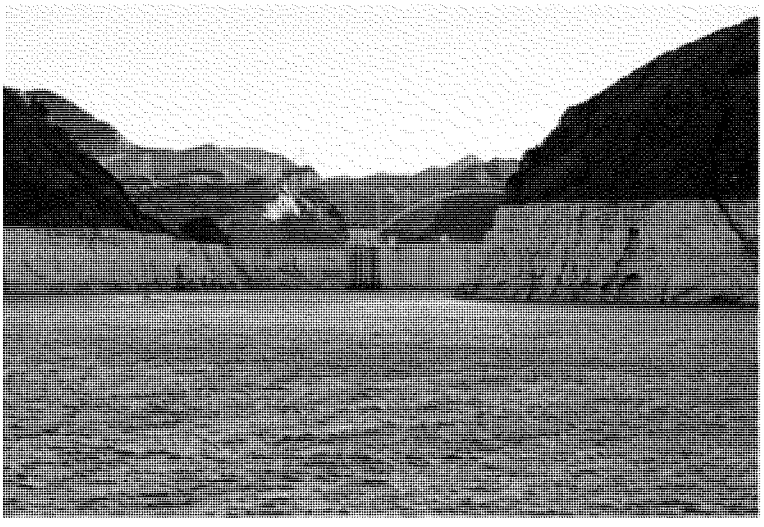
Numbers game

A handful of numbers haunt water managers in this region.

In the Lower Basin, the first number is 1,075. That's the elevation above sea level at Lake Mead when the first round of rationing -- hitting Arizona and Las Vegas -- begins. That's just 12 feet below where the lake stands today.

At 1,050 feet, stricter rationing kicks in and water dips below the level at which the Hoover Dam can continue to produce hydropower. Even harsher restrictions come at 1,025 feet. At 1,000 feet above sea level, Las Vegas' current intakes don't work.

The picture is different in the Upper Basin, where nearly all water users sit upstream of Lake Powell. But that reservoir's water levels still matter.



Falling water levels at Lake Mead have left a bathtub ring of minerals showing where water once stood. Photo by John Locher, courtesy of AP Images.

One reason is hydropower. Glen Canyon Dam produces enough electricity to power 350,000 homes at a far cheaper price than other fuels.

Reclamation estimates there is now a 4 percent chance Lake Powell's water will dip below the level at which the dam can operate by 2018, a scenario that could bring a cascade of effects ranging from reduced Treasury revenue to air quality concerns to problems with Endangered Species Act compliance.

There are also serious legal obligations at play.

Under the 1922 compact, the Upper Basin has to release 75 million acre-feet over 10 years out of Lake Powell to the Lower Basin states and Mexico.

Under this regime, the Upper Basin can afford a dry year or two when it makes lower-than-average deliveries if they are balanced out by wet years when larger deliveries are made.

But multiple years in which less than 7.5 million acre-feet is sent downstream could spell trouble. There are also questions about whether there would be physical limits to the amount of water that could be let out of the dam if water levels dip below the hydropower turbines.

If the Upper Basin's deliveries fall below what's required under the compact, the Interior Department would step in to require states to begin curtailing water use. But what that would look like -- how much from which states, implemented under what rules -- is simply uncharted territory.

"That's the worst-case scenario because we're not ready for it," said Chris Treese with the Colorado River District, Colorado's main water planning agency for the Colorado River Basin. "We're not ready for it to the point that we don't know what would happen."

To be sure, the disaster scenarios are not imminent, and if they do come, water managers will have time to prepare. But right now, they offer a major incentive for officials to act while there is still time to stave them off.

Contingency plans

The path forward will be neither simple nor painless.

"We have to come out of our own particular comfortable positions, we have to work together, we have to listen to each other's concerns in order to reach an agreement that will sustain this river, sustain our communities and environment for generations to come," David Modeer, general manager of Arizona's major pipeline system, preached to leaders at the water users' conference.

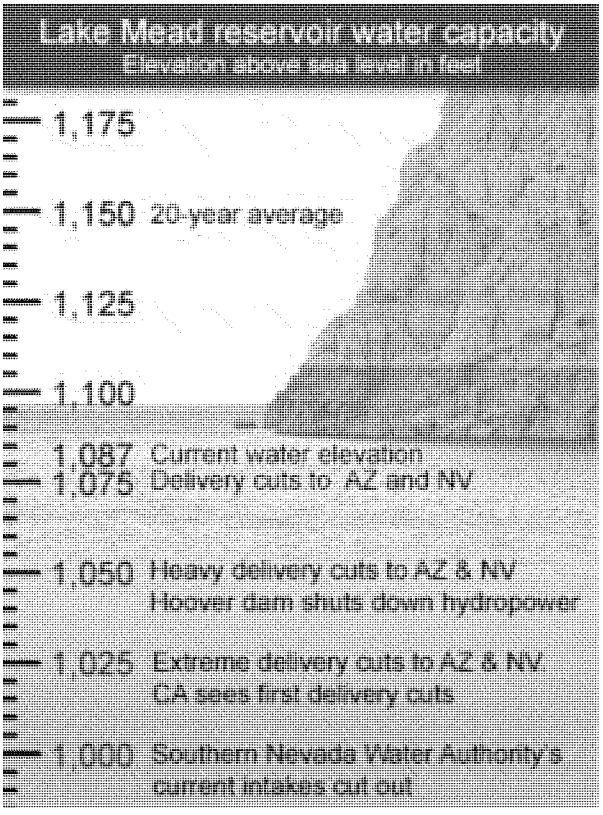
"Failure is not an option," he said.

In the near term, both basins are working on contingency plans.

In the Upper Basin, managers are thinking through whether water could be released from a series of smaller upstream reservoirs in a time of emergency when water levels at Powell are falling near the level that hydropower would cut out.

They are also considering increasing cloud seeding programs in a bid to boost snowpack and spring runoff into the river. A 10-year study recently released by Wyoming suggested seeding the right storms could increase precipitation by as much as 15 percent (*Greenwire*, Dec. 23).

And managers are looking at how they would go about managing demand in the Upper Basin, where users access water before it reaches the main reservoir rather than receiving deliveries from it.



As Lake Mead's water level drops, painful consequences kick in under the law of the river. Data courtesy of the U.S. Bureau of Reclamation.

Plans are further along in the Lower Basin, where Arizona, California and Nevada recently agreed on a plan to voluntarily cut usage by between 1.5 million and 3 million acre-feet over the next five years.

All sides agree that the deal, signed during the users' conference here, won't begin to solve the basin's overarching problems. For one thing, users have only mapped out the path to 750,000 acre-feet of those reductions and are back-weighting the targets.

But it does suggest states are prepared to share the pain rather than battle over the remaining water in court.

It also follows an earlier agreement among water users in the Lower Basin this summer to conduct an $11 million conservation pilot program (*Greenwire*, Aug. 1).

"I think the significance of the system conservation agreement isn't the volume of water; it isn't the amount of money; it's not even the parties who are there," said John Entsminger, general manager of the Southern Nevada Water Authority.

"It's the fact that for the first time on the river, we see major water users acting with the basin as a whole in mind and getting to that equilibrium and treating the system as the beneficiary rather than acting in their own local best interest and trying to put water in their bank accounts."

Conservation

As hard as meeting the near-term crisis of water levels at Lake Mead and Lake Powell is, the long-term

challenge of balancing out supply and demand on the Colorado River promises to be even harder.

Many users feel they have already made major sacrifices. Asking for more, especially when similar action by others isn't guaranteed, is no small request.

Metropolitan areas in the Lower Basin have significantly increased efficiency in recent years. Las Vegas uses about 40 percent less water per person than it did 25 years ago thanks to programs that pay residents to take out grass lawns and treat nearly all the city's effluent so it can be sent back to Lake Mead.

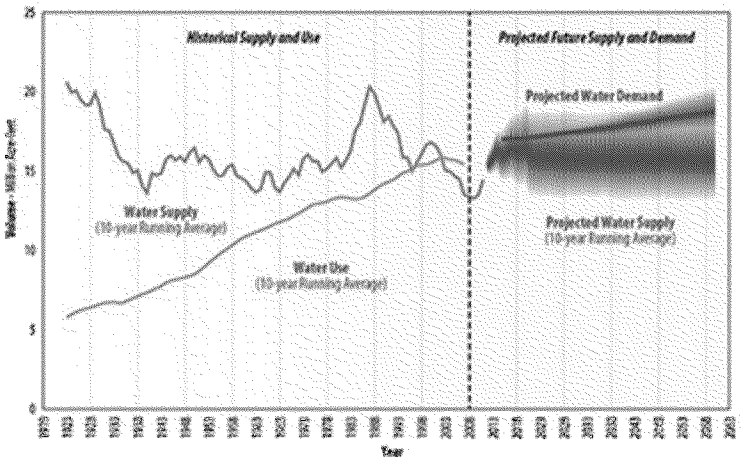
But cities in the region have been growing, a fact that has eaten up any gains.

Agriculture, too, has become more productive, but farmers and ranchers still use roughly three-quarters of the water consumed in the basin.

As the biggest users, often holding senior water rights and receiving subsidized deliveries, farmers and ranchers are often eyed by municipalities and developers with plans for growth. That sets up a potentially explosive political dynamic.

Take, for instance, how Entsminger responded when asked on a conference panel whether demand needs to be reduced in the basin.

"We need to reduce depletions, and I think that's a significant difference," he said -- a comment that provoked a lampooning by the political cartoonist who provided lunchtime entertainment to conferencegoers.



[+] A handful of wet years along the Colorado River have allowed the system to handle heavy demands in the past, but experts say this approach is reaching its breaking point as use continues to grow and drought grips the basin. Graphic courtesy of the Bureau of Reclamation.

Enter the Bureau of Reclamation. The agency, which for much of its history was a phalanx of ambitious engineers, has in recent years set itself up as a convener within stretched river basins to help players face the challenges ahead.

The bureau's 2012 study laying out the projected gap between supply and demand along the Colorado River set the table. Since then, stakeholders have been meeting to begin mapping out a path forward.

The first reporting back on that effort is due out early next month.

Those documents are expected to lay out ideas for water conservation broadly agreed to by both farmers and cities, as well as proposals for keeping water in the river for the benefit of the environment and recreation. Reclamation officials have said they hope to pluck ideas from them to fund as pilot projects.

Meanwhile, hopes persist that more water could be brought into the system.

In addition to plans for increasing precipitation by seeding clouds, ideas have been batted around for years about piping water in from other basins. Desalination of ocean water in California or groundwater in Arizona has also been contemplated.

The basin report estimates that together, desalination and importation could bring another 3.8 million acre-feet into the basin by 2060, albeit at often sky-high prices reaching up to $3,400 per acre-foot for some of the most outlandish ideas, like shipping icebergs to Southern California.

Need for speed

But whether it's conservation or augmentation, one question always surfaces: Who will pick up the tab?

"All of these solutions are meaningless if you can't afford to implement them," said Taylor Hawes, who directs the Nature Conservancy's Colorado River program and is co-chairing Reclamation's work group on environmental and recreational flows.

And as water levels remain precariously low, pressure is mounting to move faster.

Michael Connor, the Interior Department's second in command, who helmed Reclamation for more than four years, had tough words for his former colleagues in the basin.

If conditions worsen without consensus from the states on what to do, the federal government will have to step in, he told them at the conference.

"We need more urgency, more definitive commitments and more collaborative agreements," he said. "Without proactive agreements, I fear the Colorado River Basin will return to its past and replicate what still goes on in many basins, which is conflict, litigation and gridlock."

NATURAL DISASTERS:

NOAA still learning lessons from 2004 Thailand tsunami

Emily Yehle, E&E reporter

Published: Wednesday, December 24, 2014

Dwayne Meadows had his back toward the Indian Ocean that day, turning around only seconds before a wall of water swallowed him whole.

The biologist, who now works at the National Oceanic and Atmospheric Administration, was on vacation when an earthquake in the Indian Ocean set off the infamous 2004 tsunami. On a recent afternoon, he recounted the story to reporters to mark the event's 10-year anniversary this Friday.

Unlike many of the tourists around him, Meadows knew what was coming that day on the Thailand coast. He braced himself inside his bungalow as water tore apart the walls around him.

"I ended up underwater. I was twisting and spinning and flipping, and it was dark. I had no idea where I was, and I was kind of clawing toward the surface, trying to swim up, but I had really no idea what was up," Meadows said. "I kind of said my goodbyes."

A minute later, Meadows popped up to the surface and grabbed hold of the lower half of a silk shop female mannequin. He survived, but more than 230,000 people did not -- a fact that has driven him, and others at NOAA, to spend the last decade improving natural disaster preparedness.

NOAA officials say they've made significant progress, in partnership with governments around the world. But challenges remain, from how to prepare those who may never get enough warning to ensuring continued focus as memories fade and federal budgets decline.

Michael Angove, NOAA's national tsunami program manager, said Meadows' experience in 2004 won't occur again. Residents and tourists on the coast of Thailand had no warning that a tsunami was imminent, despite the fact that more than 90 minutes had elapsed since the earthquake that caused it.

Today, NOAA would detect the tsunami -- and release warnings -- minutes after its creation, Angove said.

"I don't think it's too strong a statement to say that our ability to detect major tsunami waves within five to 15 minutes of their generation is there now, and it wasn't for a large part of the world prior to 2004," he said.

Stuart Weinstein, now deputy director of the Pacific Tsunami Warning Center in Hawaii, was one of two scientists on watch at the center in 2004. He described an incomplete warning system, in which the center geared all its messages to the Pacific basin and, due to a lack of data, was "flying blind" when it came to Indian Ocean activity.

Weinstein found out that a tsunami hit Thailand through a Reuters article.

"For a long time, not a day went by that I did not think about what transpired that day," he said. "If there's any solace I kept in the aftermath of this disaster, it's that I did my best and gave the benefit of my experience to as many people as I could so that something like this never happens again."

Today, the center is part of an international tsunami warning system that includes more data and more coordination than 10 years ago.

Part of that system includes ocean buoys that provide real-time information for better detection of tsunamis. In 2004, NOAA had deployed six buoys in its Deep Ocean Assessment and Reporting of Tsunamis (DART) network. Only three worked. Today, NOAA's DART system comprises 39 buoys, lining coasts around the world -- including the Indian Ocean.

But they're difficult to maintain -- located in harsh conditions in hard-to-reach areas. NOAA aims to keep 80 percent of them operable. In 2012, NOAA proposed tweaking that target to 72 percent to save money. At the time, the agency argued that the change would not affect "mission critical activities," pointing to seismic stations as the primary warning system (*Greenwire*, Feb. 23, 2012).

In the end, Congress did not make the $4.6 million cut NOAA requested. Since 2011, the base-line budget for the agency's tsunami programming has stayed between about $22 million and $23 million. This year, the total is about $27 million, thanks to a boost in money for grants under the National Tsunami Hazard Mitigation Program, a federal-state partnership.

Beyond money, global coordination is another challenge. Warnings still sometimes don't reach coastal communities; a recent Reuters article detailed the chaos following a 2012 earthquake that demonstrated an Indonesian city's unpreparedness.

Furthermore, while warnings for "far-field" tsunamis -- such as the one that hit Thailand in 2004 -- have improved, near-field incidents are a bigger challenge. In many cases, a wave could hit just minutes after an earthquake, leaving no time for any warnings at all.

Vasily Titov, director of NOAA's Center for Tsunami Research, said the "science is there" to model forecasts within minutes. But the agency is still developing the capability. He pointed to the potential for an earthquake along the Cascadia subduction zone in the Pacific Ocean, which could create a tsunami like that in 2011 in Japan. The location of DART buoys today would mean a 30-minute delay in detection; if buoys were right above the fault, that could mean predictions "not in hours, not in minutes, but in seconds," Titov said.

NOAA and its partners are also focused on education, with a program to ensure coastal states are "tsunami ready."

"I'm happy that a similar event will likely cause a lot less damage. Yet we still can't fully predict these complex tsunami waves," Meadows said. "More people need to know about these warning signs and procedures and be better prepared with supplies and skills before all our memories fade."

KEYSTONE XL:

As decision looms, key players jockey for position

Manuel Quiñones, E&E reporter

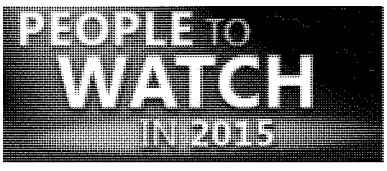
Published: Wednesday, December 24, 2014

Thirteenth in a series on key players on energy and environment issues in 2015.

Debate over TransCanada Corp.'s Keystone XL pipeline is poised to heat up again once Republicans take over the Senate in January, and Congress is almost certain to pass legislation to approve the pipeline.

That means advocates on both sides of the contentious issue will pressure President Obama to either sign the bill, allow it to become law without his input or veto it.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

If the president takes the third option, the action will be back on Capitol Hill, where pro-KXL advocates will have to determine whether they have a chance of overriding the president.

Regardless of what Congress does, Obama still has to decide whether to allow KXL's crossing from Canada, especially if the Nebraska Supreme Court clears ongoing legal problems there.

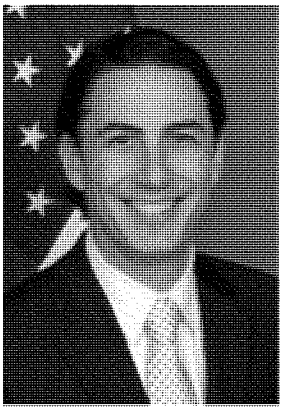
Dozens of people have emerged as important players in the debate, which spans two countries and several states, plus multiple levels of government. Here are just some to watch in the weeks ahead:

Amos Hochstein, Department of State

Earlier this month, Secretary of State John Kerry appointed Hochstein as the department's special envoy and coordinator for international energy affairs, with KXL as part of his portfolio.

Hochstein has been on the job in an acting basis since previous envoy Carlos Pascual, a former ambassador to Ukraine and Mexico, left the administration earlier this year.

With State's environmental impact reviews concerning KXL's transboundary crossing complete, the agency must decide whether the project is in the national interest.



Amos Hochstein. Photo courtesy of the U.S. Department of State.

State spokeswoman Nicole Thompson said Hochstein will be involved. She also stressed that others within the agency would be working on KXL documents.

Hochstein has significant experience in politics and on Capitol Hill. He was an adviser for the House Foreign Affairs Committee and a political aide to former Sen. Chris Dodd (D-Conn.). Hochstein was also an executive for the firm Cassidy & Associates Inc.

Lobbying disclosure records show Hochstein advocated in 2008 on behalf of Marathon Oil Corp. on terrorism issues in the National Defense Authorization Act.

Khary Cauthen, American Petroleum Institute

Cauthen has for years been a top lobbyist for the American Petroleum Institute, but is now spending more time helping coordinate pro-KXL efforts.

Lisa Ceglia, API's former federal relations director, used to help bring together pro-pipeline advocates, but

she's now government affairs manager for Halliburton Co. So Cauthen is stepping in to help coordinate the coalition.

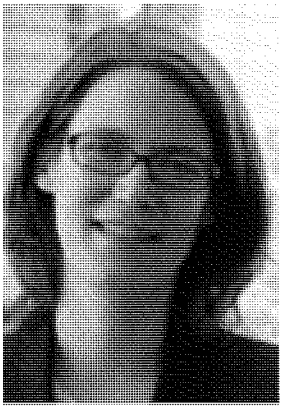
Cauthen was White House Council on Environmental Quality chief of staff during President George W. Bush's administration. Before that, he worked for former New Jersey Gov. Christine Todd Whitman (R) and followed her to U.S. EPA when she became administrator.

Earlier this year, Cauthen pressed for a Senate vote on KXL coupled with bipartisan efficiency legislation. "I don't think you'll see a moment for a while where there is this much positive energy to have a vote," he said at the time.

Angela Becker-Dippmann, Senate Energy and Natural Resources Committee

Becker-Dippmann will lead the Senate Energy and Natural Resources Committee's Democratic staff under incoming ranking member Maria Cantwell (D-Wash.).

That means Becker-Dippman will be by Cantwell's side when the panel, led by Sen. Lisa Murkowski (R-Alaska), debates and likely clears legislation to approve the pipeline early next year.



Angela Becker-Dippmann. Photo courtesy office of Sen. Maria Cantwell (D-Wash.).

Becker-Dippmann's experience includes being a senior energy and environment adviser for the Department of Energy's Pacific Northwest National Laboratory. Areas of focus there included grid and cybersecurity, both hot issues before lawmakers.

Becker-Dippmann was on Cantwell's staff between 2001 and 2007. She then moved on to a stint on the Energy and Natural Resources panel under Chairman Jeff Bingaman (D-N.M.).

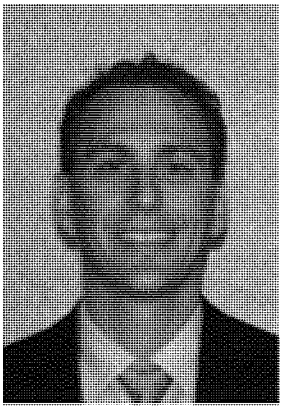
She was also a lobbyist for McBee Strategic Consulting LLC between 2008 and 2011. Clients there included Battelle Memorial Institute and Boeing Co.

Joe Mendelson, Senate Environment and Public Works Committee

Mendelson for the last year has been the Senate Environment and Public Works Committee's chief climate counsel, a position created by Chairwoman Barbara Boxer (D-Calif.) to highlight the issue's importance.

Even though legislation to approve KXL goes through the Senate Energy and Natural Resources Committee, Boxer's EPW has been a voice for all things dealing with climate and environment.

When Republicans take over the Senate next year, Mendelson -- if he sticks around -- will help craft the Democrats' response to the GOP's agenda, including fast-tracking the bill to approve KXL.



Joe Mendelson. Photo courtesy of Joe Mendelson.

Mendelson, a graduate of George Washington University Law School, was director of the National Wildlife Federation's climate and energy program before joining Boxer's staff.

Starting in the mid-1990s through 2008, he was legal director for the Center for Food Safety and the International Center for Technology Assessment, according to his LinkedIn profile.

Mendelson has helped lead landmark climate litigation pushing for the regulation of greenhouse gases under the Clean Air Act, an issue eventually resolved in the Supreme Court's decision in *Massachusetts v. EPA*.

Tiernan Sittenfeld, League of Conservation Voters

Sittenfeld, League of Conservation Voters senior vice president for government affairs, is one of several environmental lobbyists working to oppose KXL legislation on Capitol Hill.

There are numerous figures who have gained prominence for their opposition to the pipeline, including 350.org founder Bill McKibben, billionaire donor Tom Steyer and Bold Nebraska head Jane Kleeb.

But Sittenfeld is among a group of lesser-known advocates who spends more time maneuvering the halls of Congress on the environmental movement's behalf, not only on KXL but a number of other energy and environmental issues (*Greenwire*, Dec. 23).

Tiernan Sittenfeld. Photo courtesy of the League of Conservation Voters.

Beyond lobbying, Sittenfeld is also influential in elections through LCV's endorsements and scorecards. The group said it spent $25 million during the most recent election cycle, which saw the environmental community rise in prominence.

Sittenfeld joined LCV in 2005. Before that, she was a preservation advocate for the U.S. Public Interest Research Group, working on public lands and ocean issues. Sittenfeld was also a co-director for the Heritage Forests Campaign to protect roadless areas.

Thomas Hassenboehler, House Energy and Commerce Committee

Hassenboehler has been chief counsel for the House Energy and Commerce Committee's Energy and Power subpanel since last year, helping craft the Republican majority's pro-energy policies.

Hassenboehler, a Louisiana State University law school graduate, got his start as an aide to former Reps. Bob Riley (R-Ala.) and Billy Tauzin (R-La.).

He went on to serve on the Energy and Commerce panel for the first time, then the Senate Environment and Public Works Committee under ranking member James Inhofe (R-Okla.).

Thomas Hassenboehler. Photo courtesy of the Bipartisan Policy Center.

Hassenboehler lobbied for America's Natural Gas Alliance in 2011 for about a year as vice president of policy development and legislative affairs before returning to Energy and Commerce.

A source with knowledge of Republican energy policies, who spoke on the condition of anonymity, said Hassenboehler sees the pipeline as part of promoting all forms of energy and boosting related infrastructure. The GOP has called it the "Architecture of Abundance."

Other pluses for Hassenboehler -- at least in the minds of pro-KXL advocates -- are his experience with the Senate and working relationship with Maryam Brown, energy policy adviser for Speaker John Boehner (R-Ohio) and another former Energy and Commerce aide.

EVERGLADES:

Army Corps signs off on major restoration project

Annie Snider, E&E reporter

Published: Wednesday, December 24, 2014

The Army Corps of Engineers yesterday gave approval to a major Everglades restoration project aimed at returning flows to the withered River of Grass and curtailing pollution problems in southern Florida's overwhelmed estuaries.

The "chief's report," signed by Army Corps of Engineers Commander and Chief of Engineers Lt. Gen. Thomas Bostick, clears the way for Congress to consider authorizing and funding the Central Everglades Planning Project, or CEPP. The project combines six crucial but complex ecosystem projects in the heart of the Everglades.

"This is a wonderful holiday present for everyone who has worked hard on this project," Col. Alan Dodd, the corps' commander for the Jacksonville district, said in a statement.

But when that consideration will come is an open question. Everglades advocates raced to have CEPP included in this year's Water Resources Reform and Development Act, which authorized new corps projects. The Jacksonville district office tried out a new approach that cut what is usually a years-long -- sometimes decades-long -- review process to just 18 months.

But the corps' headquarters review hit a snag, and the report wasn't done in time to make it into the authorizing bill (*Greenwire*, April 23).

For decades, Congress passed water resources legislation every two years, but in recent years, it has been every seven years. House Transportation and Infrastructure Committee Chairman Bill Shuster (R-Pa.), who shepherded this year's WRRDA bill in the House, has vowed to return to an every-other-year cycle.

Florida lawmakers are hoping to move the project faster, though. They sponsored legislation in both the House and the Senate this year that would authorize CEPP if the corps finalized its chief's report by Dec. 30, 2015. Neither bill moved this session (*E&E Daily*, Sept. 19).

The region's lawmakers yesterday welcomed the milestone.

"No longer will bureaucratic red tape and finger pointing stand in the way of what we all know needs to get done -- sending clean water south," Rep. Patrick Murphy (D-Fla.) said in a statement, noting that the state can begin work on the project while lawmakers press for federal authorization.

DRINKING WATER:

Calif. board's 'fee' proposal faces strong opposition

Anne C. Mulkern, E&E reporter

Published: Wednesday, December 24, 2014

California lacks consistent funding to ensure safe drinking water for all residents, a gap that the state Water Resources Control Board is seeking to remedy.

Options include a fee charged on the sale of agricultural commodities, one on fertilizers containing nitrogen or a water use fee imposed statewide, the agency said in a recent 271-page planning document.

But getting any of those in place appears a challenge.

The state water board, which is formulating a safe drinking water plan for California, just heard back from those interested in shaping the blueprint. In comments filed, several said they had concerns about the fees the board is suggesting.

There are legal and political roadblocks to enacting a fee, some noted. In the Golden State, new taxes require a two-thirds vote of the Legislature. That requirement doesn't exist for fees, but they can be imposed only if they have a direct connection to the benefit received.

"Under Proposition 26, a fee is a tax if it does not link payor charges and benefits," wrote the Association of California Water Agencies (ACWA), a trade group representing 430 public water agencies in the state. "Accordingly, it is clear that the draft plan's statewide 'water use fee' is a tax under Proposition 26, because in areas where safe drinking water problems do not exist, the payor of the water usage fee does not benefit."

The trade group added that it supports ways to provide safe drinking water for all but "urges the State Board to delete the water use fee from the draft plan."

The comments from ACWA and others come as the board crafts the Safe Drinking Water Plan. The document, which will serve as a road map for the state going forward, contains 32 recommendations and a five-year implementation strategy. The agency now will review the comments, revise the analysis and forward it to Gov. Jerry Brown's (D) office to weigh in. It is supposed to arrive at the Legislature by June 2015.

The board can act on some of the items on its own. Others, such as a permanent funding source, require legislative approval.

The look at the water plan represents the first update since 1993. It comes as part of the settlement of a 2009 lawsuit from California Rural Legal Assistance Inc., which charged that the state had failed to comply with a requirement to revise the plan every five years.

Additionally, the Legislature in 2012 passed A.B. 685, the Human Right to Water, a law that says that "every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking and sanitary purposes." State agencies must consider it when forming policies.

The scope of the problem isn't fully clear. About 1 million Californians get their water from local districts that have been identified as having supplies with unsafe levels of contaminants. About 600,000 to 2 million more get water from wells that are too small to be examined by the state, according to a report prepared as part of the California Water Plan Update 2013.

"It's really critical," Laurel Firestone, executive director of the nonprofit Community Water Center, said of the safe drinking water issue. "The problem is that it's going to take some real political will and lift to be able to get any permanent source of funding through. Otherwise, it would have been in place maybe a really long time ago.

"Something like ensuring safe drinking water seems like a really fundamental human right," she added. "You'd think that we would value that enough to impose some kind of fee."

Farmers group opposes

Some of those objecting to imposing new fees are large companies and trade groups with teams of lobbyists. Metropolitan Water District, a large wholesaler in Southern California, was among those lodging disagreement.

"Metropolitan does not support any statewide water use fee or tax to provide 'a stable, long-term funding source,' for safe drinking water solutions," Metropolitan Water District wrote. "Metropolitan recommends that the State Board engage stakeholders in discussions to identify alternative viable stable, long-term funding sources."

The California Farm Bureau Federation in its comments noted that farmers and ranchers in the Central Valley and the Central Coast regions pay about $37 million a year for mandatory Regional Water Board regulatory program monitoring and reporting.

"In addition to complying with mandatory regulations, agriculture has been proactive in addressing groundwater problems locally by investing a significant amount of money partnering with local water agency actions," the farmers trade group wrote. "Farmers are also providing replacement water or treatment systems for communities voluntarily.

"For these reasons we urge the State Water Resources Control Board to move expeditiously towards drinking water solutions utilizing existing funding sources," it added.

Activist groups support fees. Phoebe Seaton, co-director of the Leadership Council for Justice, said the fee on fertilizers is appropriate because nitrate contamination of water is a problem.

She said in addition to a dedicated funding source, there needs to be put in place a mechanism that would provide financial help for residents unable to afford clean water.

"We work with people who spent about 10 percent of their income on water," including the cost of bottled drinking water because their supply isn't safe for consumption, Seaton said. Those people are mostly in Tulare, Fresno and Riverside counties.

Consolidation recommended

The state water board's report on safe drinking water makes other recommendations, including improving communication between a "multitude of state and local agencies involved in the regulation" of water supplies. There are conflicts between different agencies' requirements.

There also is a recommendation that there be reduced barriers to consolidation among some of the agencies within a region.

"For many small water systems, it is too financially and technically challenging to continue operating as a

stand-alone system and, where feasible, consolidating with other communities or a larger system is the best solution," the report said.

The water board further recommended "enactment of legislation to mandate a requirement that a small public water system that is within the sphere of influence of a larger water system should be required to annex to the larger system."

That kind of consolidation is needed, Seaton said. There are more than 7,800 public water systems in California, she said, and that doesn't include people who are on domestic wells.

But in the comments filed with the board, others said they saw potential problems.

"Liability is a major challenge and disincentive facing water districts with respect to consolidation," wrote ACWA, the group representing 430 public water agencies. "Water agencies need clear liability protection when annexing with an existing water system. Currently, there is no legal incentive for a water district that has been in compliance to annex one that is not particularly if the annexing district and its customers will be assuming liability for a potentially expensive problem they did not create."

Seaton said that although her group backs some consolidation, it does not favor mandatory annexation.

"While we support policies and programs that promote annexation in many circumstances, mandatory annexation threatens to expose residents and communities to a lack of representation, unfair rate structures and exclusion from democratic processes," she wrote to the board.

FISHERIES:

Climate change taints taste of shellfish

Published: Wednesday, December 24, 2014

Unless ocean acidification fueled by climate change is kept in check, shrimp aren't going to taste nearly as good as they used to, according to a new study.

Published in the *Journal of Shellfish Research*, the study led by Swedish researcher Sam Dupont of the University of Gothenburg asked 30 local connoisseurs whether they could "taste climate change."

Sampling from shrimp prepared by a professional chef, the taste testers definitively answered yes.

Shrimp raised in water with elevated levels of acidification similar to those expected with elevated carbon emissions were decidedly less palatable than shrimp raised at normal pH levels.

Negative effects of acidification on shrimp, oysters and other species could impair the viability of the seafood industry, a vital source of protein around the globe.

Researchers argued that bad shrimp, while not as overt as rising sea levels or extreme weather events, could bring home the reality of climate change.

"The fact that ocean acidification can have a detectable impact on shrimp sensory quality can be a unique opportunity to communicate about global changes effectively," the researchers wrote. "Can you imagine Scandinavia without a shrimp sandwich?" (Michael Hiltzik, *Los Angeles Times*, Dec. 22). **-- DTB**

OIL AND GAS:

Pipeline leaks into stormy Black Sea

Published: Wednesday, December 24, 2014

Russia's emergencies ministry confirmed an unknown amount of oil leaked into the Black Sea near the port of Tuapse today as crews struggled to contain the spill due to inclement weather.

Russian pipeline monopoly Transneft said it shut down the pipeline after the leak, according to local media, but Tuapse residents said oil could be seen spreading into a river as storms made cleanup difficult.

"I can see dark spots on the river. ... The sea is stormy. I can't say it is fully covered in oil, but there is plenty of oil in the port and on berths, not to mention the coastline," said one worker at the Tuapse oil refinery operated by state oil firm Rosneft.

Tuapse is a busy industrial and oil port but is situated near many Black Sea resorts, including Sochi, the site of the 2014 Winter Olympics, 73 miles down the coast (Nazarov/Gorodyankin, Reuters, Dec. 24). -- **DTB**

NATURAL GAS:

Officials contain leak at Ohio fracking well

Published: Wednesday, December 24, 2014

Crews yesterday contained a leak from a natural gas hydraulic fracturing well in eastern Ohio.

The leak began Dec. 13 and forced 25 families from their homes. Triad Hunter LLC, a subsidiary of Magnum Hunter Resources Corp., operated the well.

The Ohio Department of Natural Resources plans to investigate the cause of the leak.

Bethany McCorkle, a department spokeswoman, said the state will confirm the mechanical integrity of the well before the company can begin operating again (AP/*Fuel Fix*, Dec. 23). -- **MH**

OIL AND GAS:

New filing lowers Enbridge settlement

Published: Wednesday, December 24, 2014

A Michigan oil spill settlement by Enbridge Inc. is worth $6.25 million, not $6.75 million as lawyers said earlier in December.

A new filing made in Grand Rapids Federal Court shows the updated settlement amount for a pipeline leak that spilled 800,000 gallons of crude oil in the Kalamazoo River and Talmadge Creek in 2010 (*Greenwire*, Dec. 11).

The settlement between Enbridge and Kalamazoo residents and landowners must still be approved by Judge Gordon Quist. The sizes of payments will depend on how close residents live to the water (Associated Press, Dec. 24). **-- AW**

MALAYSIA:

Rains, flooding trap tourists in national park

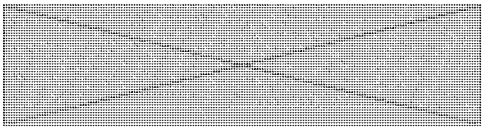
Published: Wednesday, December 24, 2014

Four days of heavy rainfall have marooned almost 100 people, including 60 foreign tourists, in the Mutiara Taman Negara Resort.

Staff said today that the local fire department was sending boats and helicopters to rescue 84 guests, including travelers from Canada, Britain, Australia and Romania and 10 staff members, who were stranded after riverbanks overflowed in the east coast state of Pahang.

This year, the national park recorded its highest rainfall since 1971, according to state news agency Bernama (Al-Zaquan Amer Hamzah, Reuters, Dec 23). **-- AW**

ClimateWire will not publish Christmas Eve through Friday, Jan. 2. It will return Monday, Jan. 5.



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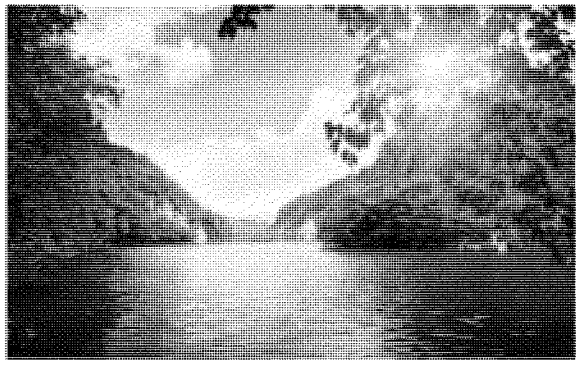

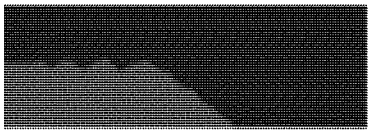

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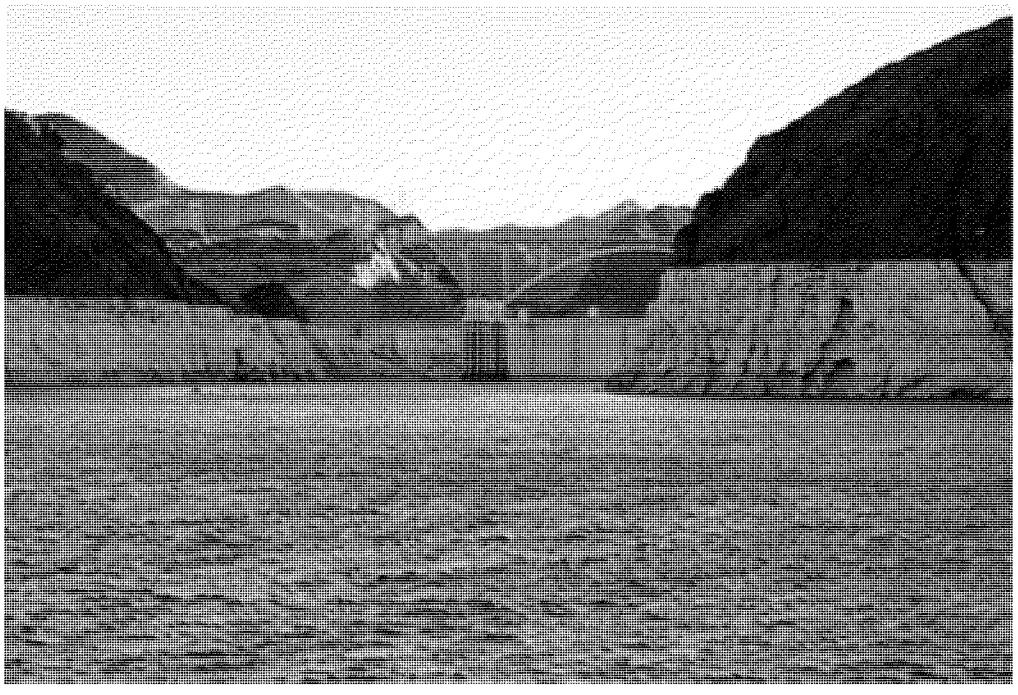
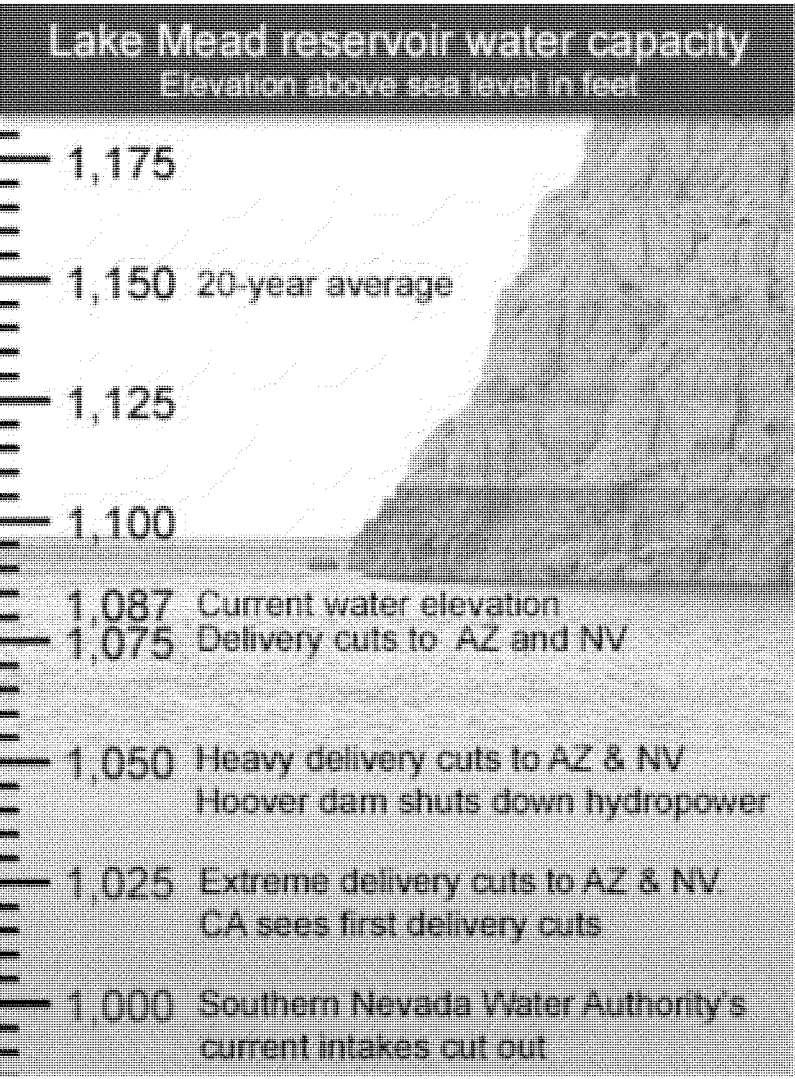
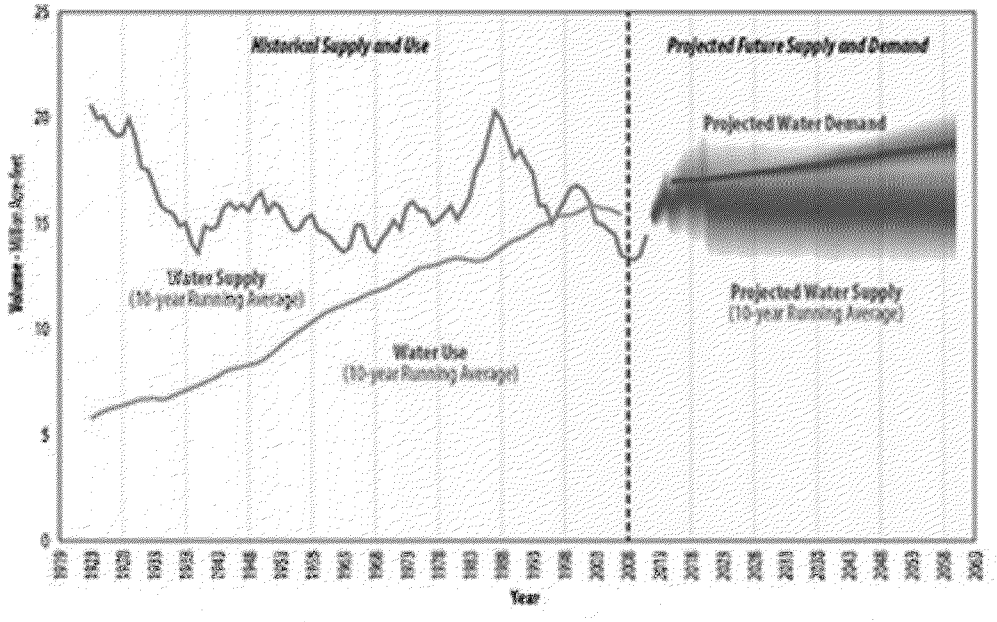



Lake Mead reservoir water capacity
Elevation above sea level in feet
1,175
1,150
20-year average
1,125
1,100
1,087
Current water elevation
1,075
Delivery cuts to AZ and NV
1,050
Heavy delivery cuts to AZ & NV
Hoover dam shuts down hydropower
1,025
Extreme delivery cuts to AZ & NV
CA sees first delivery cuts
1,000
Southern Nevada Water Authority's
current intakes cut out


Historical Supply and Use
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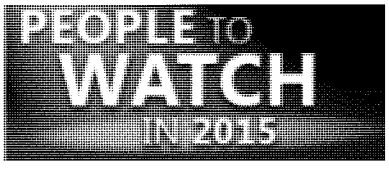
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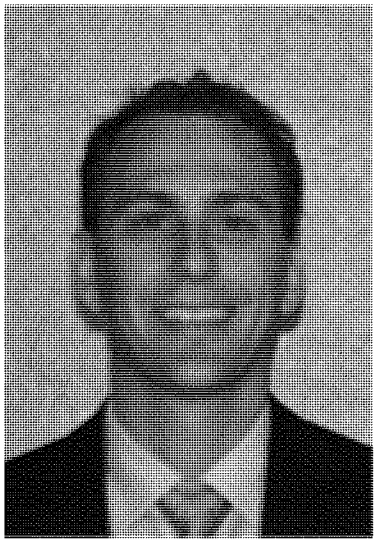

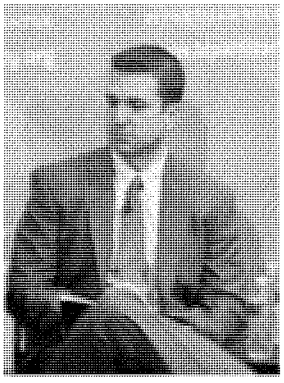

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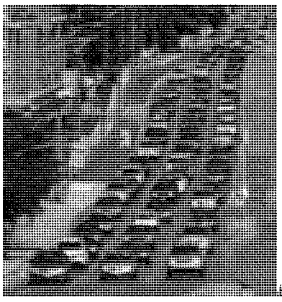


Air & Radiation Law News

for December 23, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Proposal Says Current Lead Standards Adequately Protective, Should Be Retained

The Environmental Protection Agency has proposed to retain the current national ambient air quality standards for lead of 0.15 microgram per cubic meter....

Air Pollution

EPA Proposes to Make Minor Changes to MATS Rule, Remove Affirmative Defense

The Environmental Protection Agency is proposing several technical changes to its 2012 mercury and air toxics standards for power plants, including corrections that would resolve conflicting language....

Air Pollution

Mexico Toughens Emissions Standards For Heavy-Duty Trucks Using Diesel Fuel

Mexico is revising its emissions standards for heavy-duty trucks to make them comparable to standards in Europe and the U.S. following two years of negotiations....

Air Pollution

Sierra Club Sues EPA Over Failure To Rule on Power Plant Air Permit

The Sierra Club has filed a complaint in federal court to compel the Environmental Protection Agency to take action on the group's request for a review of an air pollution permit issued by New Hampshire to a coal-fired power plant (Sierra...

Climate Regulation

EPA Says Rule Change Needed to Rescind Permits Following Supreme Court Decision

The Environmental Protection Agency plans to issue a rule allowing it to rescind greenhouse gas permits that are no longer enforceable following a U.S. Supreme Court decision limiting the application of permitting, according to a memorandum...

Climate Regulation

Federal Highway Administration Issues Order On Climate Change, Extreme Weather Risks

The Federal Highway Administration will consider climate change and extreme weather risks in its planning, operations, policies and programs, and will help state transportation agencies and others address dangers to the nation's...

Climate Regulation

House, Senate Republicans Seek Response From FERC on EPA Power Plant Meetings

Key Senate and House Republicans are asking each commissioner of the Federal Energy Regulatory Commission to describe any meetings with the Environmental Protection Agency regarding the proposed Clean Power Plan....

Emissions Trading

Virginia Republican Delegate Wants State To Join RGGI for Coastal Resilience Funding

A Republican member of the Virginia House of Delegates has proposed that the state join the Regional Greenhouse Gas Initiative with the goal of raising funds for making coastal areas more resilient to climate change....

Energy

Nova Scotia Issues Tariffs for Tidal Energy Projects

The Nova Scotia government has approved applications for special "feed-in" tariffs for four companies to support the development of renewable tidal energy projects in the Bay of Fundy, provincial Energy Minister Andrew Younger...

Enforcement

Colorado Regulators Considering How Much To Increase Fines for Oil, Gas Violations

Oil and gas operators say that proposed higher fines of up to $15,000 a day for permitting violations in Colorado would be inappropriately excessive (Rules 522 and 523). ...

Natural Gas

Moniz Urged to Oppose LNG Exports Bill, Give More Consideration to Climate Impacts

Environmental groups Dec. 22 urged Energy Secretary Ernest Moniz to oppose Senate legislation that would accelerate exports of U.S. liquefied natural gas, arguing that the practice would only add to global emissions of methane, a potent...

Regulatory Policy

Business Roundtable: Cost-Benefit Analyses Inaccurate, Need Repeatability, Transparency

Repeatable, modifiable and mathematically sound cost-benefit analyses should be the mandated standard for all federal regulatory agencies, the Business Roundtable said in a Dec. 22 white paper....

Regulatory Policy

While Justices Question Deference Doctrine, *Perez* Seen as Unlikely Vehicle for Change

A number of Supreme Court justices appear inclined to overturn the long-standing legal doctrine of deference to agencies' interpretations of their own rules, but they are unlikely to reverse it in their upcoming ruling in Perez v. Mortg....

Renewable Energy

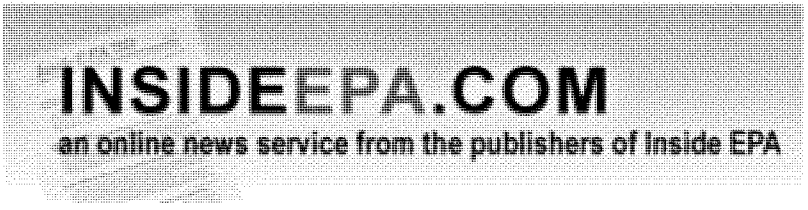
Electric Cars to Be Affected Most In Renewables Industry by Oil Slump

Electric cars are likely to be hurt the most by lower oil prices within the renewable energy industry, according to a report that predicts a limited impact on wind-and solar-power companies....

Renewable Energy

Solar-With-Batteries Market to Hit $1 Billion In U.S. by 2018, Research Company Projects

Demand for rooftop solar paired with energy storage systems will reach $1 billion in the U.S. within four years, according to GTM Research....



Inside EPA **Risk Policy Report**, 12/23/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Proposes Scrapping PVC MACT's Contested Wastewater Air Standard

EPA is proposing to scrap a contested emissions limit for process wastewater treatment systems from its polyvinyl chloride (PVC) sector maximum achievable control technology (MACT) air toxics rule, which would -- if approved by the appellate court hearing a suit over the rule -- resolve a legal challenge to the wastewater limit.

Citizens Appeal EAB Ruling Backing EPA Policy On Air Permit 'Precursors'

Massachusetts citizens are appealing a recent EPA Environmental Appeals Board (EAB) ruling that upheld the agency's policy of pursuing Clean Air Act best available control technology (BACT) permit reviews for "precursor" ozone-forming pollutants individually rather than together, which critics say leads to weaker permits.

Greenwire

NEWSMAKER:

Meet the GOP guru who crafts winning messages for greens

Anne C. Mulkern, E&E reporter

Published: Monday, December 22, 2014

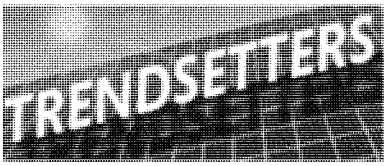
In California politics, there's a secret weapon wielded by both Republicans and Democrats. He's a consultant who's been dubbed "Dr. Death."

Joe Rodota, 54, worked on the campaigns of Golden State Govs. Pete Wilson (R) and Arnold Schwarzenegger (R). He strategized on how to block an initiative that would have halted the state's climate law. And he wrote part of the ballot arguments on why Californians should approve a proposition mandating nonpartisan primary elections.

He's a Republican with a history of teaming with Democrats on environmental matters. But he's also fought efforts to impose new taxes on the oil industry and to expand the state's clean electricity mandate.

Rodota is considered a specialist in opposition research, the person who digs up information aimed at discrediting the other side or making it look bad to voters.

SPECIAL SERIES



Meet the Californians shaping the national conversation on energy and the environment.

"Joe is probably one of the best in the oppo field," said Mike Madrid, a Republican who is a partner at GrassrootsLab, a California-based political consulting and research firm. "A lot of these campaigns aren't really about the policy. If you can successfully define the opposition and make their motives suspect, that oftentimes is enough to win a campaign. If you can make them radioactive, anything they touch is radioactive."

Rodota runs his own shop, Forward Observer, jointly out of Sacramento and Washington, D.C. It had been solely California-based but two years ago expanded to include a location on L Street Northwest, which works on federal policy and national issues. He declined to give specifics or reveal whom he's working for in the nation's capital.

His staff of eight researchers and message crafters most recently was hired by a group battling to protect California's newly passed ban on single-use plastic bags, which takes effect next summer. Opponents are working to collect enough signatures by Dec. 29 to qualify a 2016 ballot measure seeking to overturn the prohibition.

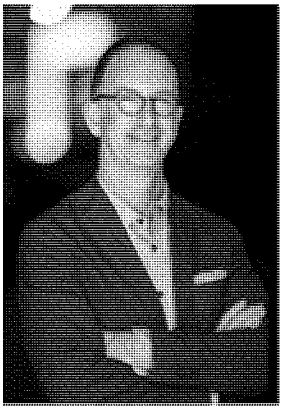
Rodota says he's not just a gun for hire, that he doesn't work for causes he doesn't believe in. A statewide ban is better for businesses than the patchwork of local rules, he said. There are 87 cities and counties with prohibitions, he said. In addition, he said, "the quality of life of California is one of its main competitive advantages."

He doesn't think it's unusual to be a Republican working for green causes. He recently helped compile research and ran a campaign to persuade California's Legislature to pass a measure mandating the first-ever oversight of groundwater.

"California Republicans are often a little more progressive on environmental issues than other Republicans," Rodota said, adding, "Republicans connect with voters better if they have a strong environmental record, especially in California."

Rodota said one of his strategies is to define the message with strong evidence. On plastic bags, one of the biggest opponents of the ban, South Carolina-based bag maker Novolex, argues that the prohibition will kill jobs. Previously known as Hilex Poly, the company has put up $1.7 million so far to get the measure on the 2016 ballot. A New Jersey bag maker and two from Texas have spent another $1.1 million combined.

Rodota found that Hilex Poly didn't directly employ people in California. He also uncovered that the company has started hiring workers to make reusable bags, Madrid said.



Joe Rodota crafts messages to help pass and stop ballot measures. Photo courtesy of Joe Rodota.

"The evidence is pretty compelling that there's not going to be job loss when Hilex Poly has already made the decision to go into the reusable market," Madrid said.

Jon Berrier, spokesman for the American Progressive Bag Alliance, the group fighting the ban, said he knows Rodota and respects him as "a very solid operative and researcher and campaign consultant." But the arguments Rodota might have crafted on the bag ban aren't going to keep the prospective repeal measure off the 2016 ballot, he said.

"Right now, we're in the signature-gathering part of the effort," he said. "The campaign to educate voters begins in earnest in 2016. The messages that they are using right now have no bearing on what the outcome of this will be."

He added that it was never a secret that some of the members of the alliance were located out of state. And he disagreed that the ban wouldn't create job loss.

Thinking differently from Democrats

Rodota brings a perspective to environmental battles that green groups sometimes lack, said Steve Maviglio, president of Forza Communications and a Democratic consultant who also is fighting to preserve the bag ban. He has worked with Rodota on other measures, as well.

"It's extremely important to have someone who doesn't think the way progressive Democrats do," Maviglio said. "He looks at it through the filter of economics and jobs in a way environmentalists don't."

At the same time, Maviglio said, Rodota digs up information that wallops opponents.

"His nickname is Dr. Death because he has a tendency of finding opposition research that will kill your opponent," Maviglio said.

Rodota rejects the Dr. Death nickname, saying it refers to the old days when he worked on more partisan campaigns.

"It's probably tongue in cheek now," Rodota said. "I'm a content person who thinks carefully about substance of arguments. It's not being a heat-seeking missile."

Rodota, who majored in history at Stanford University, sees his job as one of a storyteller. He said when he enters a campaign, he spends a lot of time trying to put himself in the minds of his opponents.

"What's the other side's narrative for them to get to the goal they've set out for themselves? What are they planning to say?" Rodota said. "Point by point, I'll go through and see if it's true or not."

Rodota said he's a voracious reader of biographies, which have him "thinking a lot about narratives, story structure, history, persuasiveness."

Looking around his L Street office, he spied a copy of "Destiny of the Republic: A Tale of Madness, Medicine and the Murder of a President," a book about President Garfield's assassination. He's recently read "Berlin: Portrait of a City Through the Centuries," told through the lives of several residents, and "California Rising: The Life and Times of Pat Brown," former governor and father of current Gov. Jerry Brown (D).

Meanwhile, he's writing plays, including one about the execution of a prisoner during Republican Gov. Wilson's term.

"My job requires really thinking about people, and movement, and goals, and trying to make sense of it all," Rodota said. "It's about curating, simplifying, finding what is the gem, what is the perfect way to illustrate something, to show rather than tell."

Crafting campaign strategy

Rodota didn't intend to have a career in politics. His father was a parks director, and he grew up in a family that saw government work as a "tangible way to try to deliver things."

"It wasn't particularly planned," he said of his career. "I just found my niche and enjoyed it."

Rodota has a long history in the Golden State, which he considers home. At age 32, he worked for Wilson as Cabinet secretary, the person in charge of the entire Cabinet. He took that job after a stint as a consultant on Wilson's 1990 campaign. During that period, Rodota dug up information that he said helped the Republican nominee defeat the candidate Dianne Feinstein (D), a former San Francisco mayor who is now a U.S. senator.

It was not a good year for Republicans, Rodota said. One of the turning points came over term limits, he said. Feinstein was against them, and Wilson had come out in favor. Rodota in a local library in San Francisco found a *San Francisco Chronicle* article in which Feinstein, earlier in her career, had endorsed term limits, arguing that they would create more opportunity for women and minorities, he recalled.

Four years later, Rodota worked on Wilson's re-election campaign against Democrat Kathleen Brown, Jerry Brown's sister, who was then state treasurer. Wilson early in the race was down 22 points in polls. He eventually won by 16 points. Rodota said he found information that helped tilt public opinion.

At the Jimmy Carter presidential library, Rodota said, he ferreted out an internal memo that the Carter administration had written in 1970s, declining a request from Wilson when he was mayor of San Diego to help California with its illegal immigration issue. The reason the Carter administration cited, Rodota said, was the White House not wanting to help Wilson because of speculation that he might later run against Jerry Brown for U.S. Senate.

In the governor's re-election race, Rodota said, they released the letter just before a debate. Wilson commented that the Clinton White House was failing to act on immigration in order to help another Brown.

Rodota worked for President Reagan, then in the private sector as a consultant. In 2003, he joined the Schwarzenegger campaign during California's unusual recall election.

Schwarzenegger had hired Rodota about two years earlier to look at the then-movie star's statements on various issues that were in the public domain -- research for a potential future political career. Rodota wrote a guidebook, "Schwarzenegger A to Z, an Alphabetized Assessment." In 2003, he ran what became known as "Schwarzenegger University," a policy shop that helped direct the candidate on issue positions.

Rodota later was involved in protecting a key initiative passed during Schwarzenegger's term, the California climate law known as A.B. 32. In 2010, opponents of the measure put an initiative on the ballot -- Proposition 23 -- that would have stopped enactment of the climate law until the state unemployment rate dropped to 5.5 percent or lower for a one-year period.

Targeting oil companies

Rodota's name isn't immediately attached to the defeat of Prop 23. But his fingerprints are there, said others who worked to block the measure.

Two of the biggest financial backers of Prop 23 were oil companies Valero Energy Corp. and Tesoro Corp. Rodota dug out that those two companies, based out of state, had racked up in-state pollution violations and health and safety violations, recalled Maviglio, who worked against the ballot measure.

"Even before it was qualified" for the ballot, Maviglio said, Prop 23 "was defined as two Texas oil companies with a reckless record in the environment. That record was key in defining who they were and what they were about, and what their motives were. That research sort of set up the framework for the entire campaign."

Rodota said there also were other groups and consultants pushing the fact that the oil companies had environmental violations.

During that campaign, one of the arguments used by supporters of Prop 23 was that the climate law would kill jobs. Rodota found a Monster.com ad that showed that Valero and Tesoro actually were seeking to hire only two workers in the state, Maviglio said.

"Sometimes you can illustrate those things with a big, fancy economic study, but sometimes you can illustrate it with a screen shot from Monster.com," Rodota said. "Everybody can process that."

Tesoro and Valero both declined to comment on Rodota or the Prop 23 moves.

Rodota during the anti-Prop 23 campaign helped green advocates simplify their messages, said one person who asked not to be identified to speak about conversations at private meetings.

"He was very politically strategic throughout about how things would play with the governor and Legislature," the person said. He was good at getting supporters of California's rules on climate and the environment not to "overthink it," the source added.

"We overintellectualize things, make them seem more complicated," the person said. "Joe was a reminder frequently that we need to think about how we were appealing to the average person versus an environmental group or clean energy executive."

"He's a very astute observer of who his opponents are, how to frame an opponent to win," the source said. "He's someone who can get into the mind of his opponent and kind of come out of that with a narrative that works."

Rodota's company earned about $72,000 for the research and consulting work on the anti-Prop 23 front, according to the California Secretary of State records. That money came from a political action committee with contributors that included the Natural Resources Defense Council; the Union of Concerned Scientists; billionaire environmental activist Tom Steyer, who at the time was co-managing partner of hedge fund group Farallon Capital Management; and venture capitalist John Doerr.

Oil interests ultimately were outfunded 3-to-1 in the campaign.

Opposing green groups

Rodota isn't always in the same camp as environmental groups and Democrats. In 2006, he worked against Prop 87, a defeated measure that would have imposed a severance tax on oil companies for each

barrel pulled from the ground. In 2008, he opposed Prop 7, a failed measure that would have expanded the state's mandate that utilities generate electricity from some green sources. The initiative would have required that they get half of power from renewables by 2025.

Forward Observer was paid nearly $280,000 for the Prop 7 work. Money came from a PAC that largely had been funded by utilities Pacific Gas & Electric Co., Southern California Edison Co. and Sempra Energy, parent of San Diego Gas & Electric Co.

In 2010 Rodota wrote most of the ballot argument for Prop 14, the measure mandating open primaries. His company earned about $75,000. The biggest funder of the yes on Prop 14 campaign was Schwarzenegger's campaign committee.

The idea, he said, was "having November elections count for more than primary elections," instead of having it all decided in June. If a liberal candidate won the primary in a Democratic-leaning district, he was pretty much guaranteed to win the seat in the fall. The same was true for a conservative candidate in a GOP stronghold.

"It came down to a clear statement," Rodota said, that "Sacramento is broken. If you want it to work, you have to send higher-quality people who are more accountable to you."

Washington state had a long history of open primaries, he said, and "this gets high marks among independent ratings bureaus."

Maviglio, who's working with Rodota on the bag ban issue, opposed him back then.

"We had no money, and he had the governor and all the good reform groups," Maviglio said. "We only had $100,000 [in campaign money], and we got 46 percent."

Every editorial board in the state was for it, Maviglio said, and a measure requiring independent-run redistricting was on the same ballot.

"There was a lot of force behind it," Maviglio said.

LAW:

Another busy year ahead for environmental litigators

Jeremy P. Jacobs, E&E reporter

Published: Monday, December 22, 2014

Eleventh in a series on key players on environment and energy issues in 2015.

Three things are certain: death, taxes and litigation on environmental policy.

No new regulation escapes a lawsuit -- either by industry groups calling it a job killer or by environmental groups decrying it as too weak.

SPECIAL SERIES

So courts are playing a major role in reviewing work by U.S. EPA and other regulators.

Over the last year, judges have reviewed EPA's crackdown on mountaintop-removal coal mining in two cases, a sprawling bid to regulate stormwater runoff in the Chesapeake Bay watershed and challenges to climate change regulations that reached the Supreme Court.

Next year will be no different.

The Supreme Court recently agreed to consider EPA's mercury and air toxics standards for power plants, a landmark regulation of President Obama's first term. In appeals courts, judges will review whether EPA must set water quality standards for a low-oxygen "dead zone" in the Gulf of Mexico as well as early challenges to EPA's first attempt to regulate greenhouse gas emissions from power plants.

Here are six attorneys who are playing a major role in shaping environmental policy through litigation:

Selena Kyle, Natural Resources Defense Council

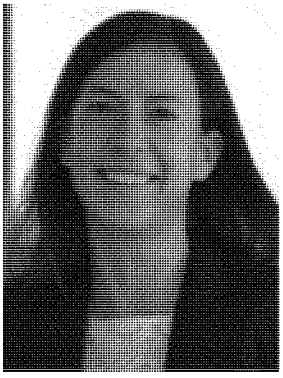
Kyle swears the only similarity between her and Catwoman -- the Batman character whose real name was Selina Kyle -- is that they both like to climb.

Kyle is a part of NRDC's relatively new Chicago litigation team that is already playing a large role in one of the city's major environmental issues: mountains of petroleum coke sitting exposed on the city's South Side.

The coke is owned by KCBX Terminals, which is controlled by the Koch brothers. The company recently announced it will build a multimillion-dollar structure to enclose the dusty substance.

Kyle's team has notified the city that it plans to sue if nothing is done to rid the area of the pollutant.

"It's the kind of work that I came here to do," Kyle, 36, said in an interview.



Selena Kyle of the Natural Resources Defense Council. Photo courtesy of NRDC.

Kyle's father was a State Department diplomat, and she grew up at various places around the world, including stops in Saudi Arabia, Yemen, Iraq and Pakistan. She returned the United States for college at Stanford University, where she majored in economics before going to work for the Walt Disney Co. as a financial analyst.

She eventually returned to Stanford for law school and dove into environmental law because of the social justice aspects.

"I really think of myself as a public interest lawyer first and foremost, and an environmental lawyer second," she said.

Kyle worked in NRDC's Northern California office before moving to Chicago. There, she was part of a team that worked on a variety of issues, from air pollution to toxic landfills. And she was once named the San Francisco Bicycle Coalition's "bike commuter of the year."

She still commutes by bike in Chicago and enjoys running and rock climbing in her spare time.

"This has been a huge surprise for me: The cold doesn't bother me," she said. "Turns out I love being outside more than I hate being cold."

Matthew Littleton, Department of Justice

It's hard to argue with Littleton's record defending EPA in court.

Littleton, 33, is one of about 30 attorneys in the appellate section of DOJ's Environment and Natural Resources Division. That group handles cases challenging regulations that started in federal district court and have progressed to the appellate level.

Littleton has argued two big ones in the last two years at the U.S. Court of Appeals for the District of Columbia Circuit: an industry challenge to EPA guidance on permitting mountaintop-removal coal mining, and another lawsuit brought to undermine EPA's retroactive veto of a Clean Water Act permit for one of the largest mountaintop-removal projects ever proposed.

In both, EPA -- and Littleton -- prevailed.

Littleton grew up in Asheville, N.C., and went to Princeton University, where he studied chemistry. He taught English and math in Honduras and Costa Rica after college, then headed to Harvard Law School, where he got a joint degree in law and government.

After clerking for an appellate judge, Littleton joined DOJ in 2011, knowing he wanted to focus on environmental law.

Matthew Littleton of the Department of Justice. Photo courtesy of DOJ.

"I have a science background but kind of moved away from practicing science," he said. "I still wanted to keep that element in my work."

He said the experience at DOJ is unique because he has ownership of cases that a lawyer his age wouldn't get in private practice.

"One of the great things about working here [is] the willingness of the managers to give attorneys responsibility for these high-profile cases early on," he said.

He just recently argued a case brought by environmental groups in the New Orleans-based 5th U.S. Circuit Court of Appeals in which the nonprofits are trying to force EPA to set water standards to address the low-oxygen dead zone in the Gulf of Mexico.

He'll also handle the retroactive veto case again next year; the case has returned to the D.C. Circuit to decide additional issues involved in EPA's decision.

Littleton lives in Washington with his wife, also a lawyer, and their 2-month-old daughter. He enjoys swimming and hiking in his free time.

Craig Segall, California Air Resources Board

Like Littleton, Segall's interest in environmental issues is rooted in science.

One summer, for example, he worked as a field ecologist in Colorado studying the effects of climate change.

"My job was literally to count flowers," he recalled. "So naturally, I thought, 'Well, I should go to law school.'"

At 33, Segall is one of the youngest lawyers to serve as the senior staff counsel of the California Air Resources Board, which is among the most progressive state environmental agencies in the country.

In the next year, for example, the board will attempt to regulate heat-trapping methane emissions from the oil and gas industry, a task that has proved difficult for EPA. It is also in the middle of implementing the country's most aggressive climate change regime.

ARB and California are parties in several lawsuits involving EPA, often backing the agency in litigation brought by industry groups seeking to undermine environmental protections. It has also defended itself in lawsuits challenging its low-carbon fuel standard, and so far has succeeded in keeping it on the books.

Segall is a big part of all of it, and said he relishes his state's role as a laboratory for addressing global warming.

Craig Segall of the California Air Resources Board. Photo courtesy of Segall.

"Because Congress has been so recalcitrant, the road to a national climate policy ends up running through the states," he said. "It's hard to learn that any better than in a state like California."

Segall grew up in the Midwest and traveled a lot as a kid. He had visited all 50 states by 15, frequently camping in national and state parks.

He became concerned with the effects of climate change early in his life, he said, leading to his interest in science. He studied biology at the University of Chicago.

Segall later -- perhaps in that meadow counting flowers -- came to realize that, for him, it was "more useful to come at it from a law and policy perspective." He went to Stanford Law School, clerked for a federal judge, then joined the Sierra Club as a staff attorney.

An avid backpacker, he has no regrets about those summers as an ecologist.

"It," he said, "was a good chance to live in a shack in the mountains with a marmot."

Emma Cheuse, Earthjustice

When Cheuse argues before the D.C. Circuit, which she does frequently, she almost never forgets to remind judges about health effects of the air or water pollution at issue in the case.

For her, these cases are personal.

"These are sources that a lot of people haven't heard of, but if you are living near those plants, you really feel the impact of that pollution," she said.

Cheuse, 37, has become community groups' go-to lawyer in cases challenging air standards for sources like polyvinyl chloride (PVC) or chrome-plating plants. She also argued for environmentalists in the mountaintop-removal coal mining retroactive veto case.

Her ability to connect to the communities she represents may come from a background in politics. After growing up in Albany, N.Y., and attending Harvard, she worked on several congressional campaigns, including Minnesota Rep. Betty McCollum's (D) first campaign for Congress in 2000.

She later worked on women's leadership campaigns before going to the University of Michigan for law school. From there, it was off to a clerkship with D.C. Circuit Judge Judith Rogers.

Earthjustice attorney Emma Cheuse. Photo courtesy of Cheuse.

Cheuse said she has always had an interest in environmental issues, dating back to her childhood on the Hudson River.

And she emphasized that it's important not to get lost in legalese during arguments.

"When I argue in front of any judge and any court, I am arguing on behalf of my clients -- people living near these sources," she said. "It really hits me personally. I feel very connected to these clients."

Cheuse lives in Takoma Park, Md., with her wife and toddler daughter. When she isn't working, she enjoys baking, calling it cathartic.

Her coconut cake, in fact, is award winning. Cheuse's wife is a civil rights attorney at the Justice Department, and the coconut cake was voted "best office party food" at one of their parties.

Michael Myers, New York assistant attorney general, Environmental Protection Bureau

Myers, like Cheuse, can trace his interest in environmental issues to the Hudson River.

He grew up in Athens, N.Y., a small village on the river. His dad frequently took him fishing, and he vividly remembers his dad telling him it was OK to catch the fish, but they couldn't eat them. The fish, he recalled, were contaminated with toxic polychlorinated biphenyls, or PCBs.

"It was the first time I was aware the relative cleanliness of the water or the air can impact what you are doing on a day-to-day basis," he said.

New York Attorney General Eric Schneiderman (D) is the third attorney general that Myers, 46, has worked for in his 15 years in the office. Myers has helped establish the state as a leader in environmental litigation. In the last two years, for example, he has spearheaded multistate litigation challenging EPA standards for fine particles, or soot, and he also argued at the D.C. Circuit in support of EPA's greenhouse gas regulations.

In 2013, the American Bar Association named Myers the government environmental lawyer of the year (*Greenwire*, Oct. 11, 2013).

Michael Myers of the New York Attorney General's office. Photo courtesy of Myers.

New York is also intervening on EPA's behalf in a pre-emptive challenge to EPA's greenhouse gas standards for existing power plants. And, in the next year, Myers said he expects New York to comment on EPA's proposal to lower the air standard for smog-causing ozone. New York is also backing the agency in the industry challenge to EPA's mercury and air toxics standards now at the Supreme Court.

Myers attended Cornell University and Vermont Law School. He lives in Albany with his wife and two kids, and enjoys playing goalie in a local hockey league.

Jessica O'Donnell, Department of Justice

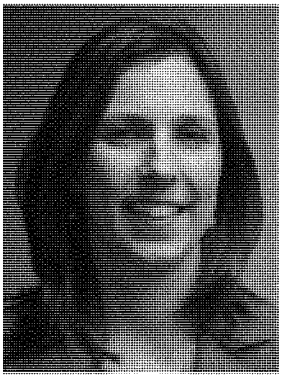
O'Donnell was recently promoted to a leadership post in DOJ's division that handles direct challenges to EPA rulemaking.

Those cases are filed to the D.C. Circuit, and they have increasingly focused on air regulations.

O'Donnell, for example, recently argued a consolidated and complex challenge from states and environmentalists to EPA's designations for what parts of the country are in attainment of the agency's ozone standard. EPA's decisions were under fire from all sides. States claim that some counties found out of attainment are actually meeting the limits. Environmentalists contend EPA should have listed more counties as out of compliance (*Greenwire*, Oct. 21).

It's the type of case that attracted O'Donnell, 41, to DOJ.

"It's a good mix of substantive issues," she said. "And we also see a lot of cases at the forefront of environmental and administrative law."



Jessica O'Donnell of the Department of Justice. Photo courtesy of DOJ.

O'Donnell also became interested in environmental issues during childhood. She grew up on the New Jersey Shore, which has long struggled with pollution problems.

She headed to Rutgers University, then Vermont Law School. After clerking for a federal judge, she worked in private practice at Akin Gump Strauss Hauer & Feld.

In 2004, she made the jump to DOJ. She said she has always wanted to represent the government in environmental litigation.

Next year, she'll be handling a complex case involving issues still remaining in challenges to EPA's air program for pollution that drifts across state lines. The Supreme Court upheld the program earlier this year, but a host of complicated challenges from individual states remain (*Greenwire*, May 2).

She will also represent EPA in a consolidated challenge to EPA's Clean Water Act standards for cooling water intake structures.

O'Donnell lives in Arlington, Va., with her husband and two kids.

Coming next month: a look at key industry attorneys.

ENERGY POLICY:

Enviro groups urge Moniz to oppose LNG export bill

Daniel Bush, E&E reporter

Published: Monday, December 22, 2014

A coalition of environmental groups today urged Energy Secretary Ernest Moniz to oppose Sen. John Hoeven's (R-N.D.) legislation to fast-track domestic liquefied gas exports, saying the measure would increase greenhouse gas emissions.

In a letter to Moniz, 114 green groups including Greenpeace USA and Friends of the Earth said Hoeven's proposal and other measures aimed at expediting the review of LNG exports "would directly contradict President Obama's pledge to reduce the country's greenhouse gas emissions."

"Responsible climate and energy policy is to keep natural gas underground and refuse to export it to other countries," the letter added. "Otherwise, we will sink hundreds of billions of dollars in decades-lasting infrastructure, diverting investment from renewable technologies."

The letter comes one month after Hoeven delayed consideration of his bill, the "Natural Gas Export Certainty Act of 2014," S. 2638, until next Congress in order to gain Moniz's support for the measure (*E&E Daily*, Nov. 13).

Hoeven's bill would require the Department of Energy to make a decision on LNG export projects within 45 days after a company completes its prefiling process with the Federal Energy Regulatory Commission.

"I talked to the secretary of Energy today; he has some things he'd like us to incorporate, and then he's willing to support the bill," Hoeven said last month after pulling the legislation from a Senate Energy and Natural Resources Committee markup.

Hoeven said Moniz was concerned that the legislation would hamstring the Energy Department's ability to review FERC's environmental analysis of proposed projects as required under the National Environmental Policy Act.

But Hoeven also acknowledged there was little chance outgoing Senate Majority Leader Harry Reid (D-Nev.) would take up his bill during the lame-duck session.

The LNG export debate will be back in the spotlight next year once Republicans take full control of Congress. Hoeven's measure is one of several proposals on Capitol Hill, including a bill that passed the House earlier this year that would set a 30-day deadline for DOE to issue its national interest decision once FERC signs off on an export license.

CONGRESS:

Pa. Republican gives President Obama lump of coal

Manuel Quiñones, E&E reporter

Published: Monday, December 22, 2014

Pennsylvania Republican Rep. Mike Kelly this weekend gave President Obama a lump of coal for the holidays to highlight the fuel's importance and to criticize administration energy policies.

"I'm offering the president a lump of coal because this product, right here, holds the potential for a 21st-century economic revival," Kelly said in a statement. "You see, coal is our most abundant and valuable resource."

Kelly made his comments, while holding a large chunk of coal, during this week's Republican address to the country. He repeated GOP arguments against the president's energy and environmental agenda.

"He tells us he's for all of the above. But then he leaves out everything that's below," said Kelly, referring to fossil fuels. He also touted his party's plans to push for approval of the Keystone XL oil pipeline from Canada.

"The president should let us use our God-given resources and talents to help Americans get back to work and make our nation the energy superpower it can be," Kelly said.

Obama also touched on the economy during his own weekly message. Unlike Republicans, however, the president focused on what he sees as administration successes.

"The steps we took nearly six years ago to rescue our economy and rebuild it on a new foundation helped make 2014 the strongest year for job growth since the 1990s," he said.

"Pick any metric you want -- America's resurgence is real," the president said. "And we now have the chance to reverse the decades-long erosion of middle-class jobs and incomes."

Click here to watch the president's address.

Click here to watch the GOP address.

AIR POLLUTION:

Federal judge sides with Exxon in lawsuit over accidental emissions

Amanda Peterka, E&E reporter

Published: Monday, December 22, 2014

A federal judge has ruled in favor of Exxon Mobil Corp. in a lawsuit involving accidental emissions at the nation's largest petroleum and petrochemical complex.

In a 90-page ruling Wednesday, U.S. District Judge David Hittner found that Exxon operated the complex in Baytown, Texas, in good faith and had taken steps to reduce its air pollution.

Environment Texas and the Sierra Club had sought nearly $650 million from the oil company, alleging that the complex repeatedly violated emissions limits written into its operating permit.

"After evaluating all the evidence, the court finds the preponderance of the credible evidence shows Exxon made good faith efforts to comply with the [Clean Air Act]," Hittner wrote.

The complex in Texas, located in a suburb of Houston, sits on 3,400 acres and can process more than 550,000 barrels of crude oil per day into a variety of products from jet fuel to plastic.

In their lawsuit filed in the U.S. District Court for the Southern District of Texas, environmentalists charged that the facility violated its permit limits with unexpected, accidental emissions between Oct. 14, 2005, and Sept. 3, 2013.

They alleged that the emissions created health issues and represented a nuisance to the nearby community. During a 13-day trial in February, four members of Environment Texas and the Sierra Club testified that they either experienced health problems or were concerned about their health while in Baytown.

Texas requires industrial facilities to report emissions events that exceed a certain threshold. According to court documents, the Exxon facility had 241 reportable emissions events during the period in question; an additional 3,735 events were not large enough to be reported under Texas law. The facility in sum deviated from its operating permit limits 901 times.

In his ruling Wednesday, Hittner said that it was "undisputed" that Exxon exceeded emissions standards and limitations but that the case centered on whether those violations were actionable under the Clean Air Act.

According to the ruling, environmentalists for the most part failed to prove that the facility repeatedly violated specific emissions limitations in the operating permit. Hittner said the environmental groups were "inconsistent" in their arguments about which standards the complex violated.

"There is no credible evidence that any of the events or deviations resulted from a recurring pattern or that improvements could have been made to prevent recurrence," Hittner wrote, adding that the total emissions released during accidental events was proportionately small given the facility's large size.

Hittner also noted that state and local regulators had already assessed more than $1 million in penalties for the emissions events and that in 2012 Exxon agreed to undertake four environmental improvement projects totaling $20 million. In nearly 100 emission events, the state found that Exxon could claim a legal shield known as affirmative defense that exempts it from civil penalties.

Exxon also launched an internal investigation for each of the reportable accidental emission releases.

"The court finds Exxon made substantial efforts to improve environmental performance and compliance, including implementing four environmental improvement projects to reduce emissions and employing a vast array of emissions-reduction and emissions-detection equipment," Hittner wrote.

The environmental groups expressed disappointment in the ruling and said they are considering whether to appeal.

"I read the court's decision with a growing sense of shock, disappointment, and outrage," Environment Texas Director Luke Metzger said in a statement. "By allowing Exxon to openly and repeatedly violate its Clean Air Act permits with impunity, this ruling not only puts public health and safety at risk, it creates the

appearance of a two-tier system of justice in this country, in which the richest and most powerful defendants receive the most lenient treatment by the courts."

The case comes in the midst of a shift in how U.S. EPA and the states regulate emissions released during startups, shutdowns and malfunctions. In a move criticized by industry, EPA has proposed to eliminate industry's affirmative defense from a host of Clean Air Act regulations (*Greenwire*, Oct. 16).

In his ruling, Hittner echoed industry arguments against eliminating affirmative defense, noting that it is "not possible to operate any facility -- especially one as complex as the Complex -- in a manner that eliminates all emissions events and deviations."

Click here to read the ruling.

COAL:

Alpha, Consol to install selenium controls in settlements with enviros

Manuel Quiñones, E&E reporter

Published: Monday, December 22, 2014

Coal mining companies Alpha Natural Resources Inc. and Consol Energy Inc. have agreed to use pollution control technologies at nine West Virginia operations in an agreement with environmental groups.

The groups Coal River Mountain Watch, the Ohio Valley Environmental Coalition, the Sierra Club and the West Virginia Highlands Conservancy have in recent years sued Alpha and Consol subsidiaries over releases of the chemical element selenium, which can harm aquatic life.

The proposed settlement agreements, announced Friday, came after U.S. District Judge Robert Chambers for the Southern District of West Virginia had already ruled against company selenium releases but had not established penalties.

Beyond requiring the installation of cleanup equipment, the proposed settlement, which must still go through court and Justice Department reviews, includes more than $800,000 in fines and to help fund environmental improvement projects. Alpha has agreed to $350,000 in payments, Consol to more than $500,000.

Critics of Appalachian coal mining, particularly mountaintop-removal extraction, have been going after selenium releases for years by suing mining companies. Attorneys for Appalachian Mountain Advocates represented the environmental groups.

Greens are also suing U.S. EPA for approving a Kentucky plan to rely more on fish tissue samples rather than water tests for enforcing pollution standards (*E&ENews PM*, Aug. 13). A settlement could be in the works, according to court records.

Separately, earlier this month environmental groups and Alpha announced a proposed settlement regarding conductivity, or a waterway's ability to carry an electric charge, which groups see as a barometer of stream health (*E&ENews PM*, Dec. 15).

CALIFORNIA:

Utilities commission names interim director

Debra Kahn, E&E reporter

Published: Monday, December 22, 2014

SAN FRANCISCO -- The embattled California Public Utilities Commission named an interim executive director late last week, continuing the turnover of top agency officials.

Longtime agency employee Tim Sullivan will replace retiring Executive Director Paul Clanon, who stepped down last week as the agency's lead administrative official, in charge of coordination between appointed commissioners and agency staff.

Commission President Michael Peevey is stepping down at the end of the year amid an email scandal that showed him asking Pacific Gas & Electric executives for contributions to an agency party and to a campaign against an environmental ballot initiative (*EnergyWire*, Dec. 19).

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The disclosures have also engulfed another commissioner, Mike Florio, who told a PG&E executive that he would help him get a particular administrative law judge assigned to a natural gas rate case (*EnergyWire*, Nov. 20).

In the wake of the emails, Clanon ordered new transparency requirements for outside parties communicating with commissioners and their advisers (*E&ENews PM*, Oct. 9).

Utility watchdogs who have been critical of the agency praised Sullivan, who previously served as acting chief administrative law judge. Sullivan will serve until a permanent executive director is named.

"Tim Sullivan is an excellent choice for interim director," said Mark Toney, executive director of the Utility Reform Network. "He has a track record of paying attention to details and getting things done."

RENEWABLE ENERGY:

World's largest tidal project to begin construction in 2015

Published: Monday, December 22, 2014

Construction of the world's largest tidal energy project is set to begin in January off the coast of Caithness in northeastern Scotland.

The MeyGen project will include a network of 269 turbines that will have the capacity to power 175,000 homes.

Atlantis Resources Ltd., the majority owner of MeyGen, said the project will begin providing electricity in 2016 (Press Association/London *Guardian*, Dec. 19). **-- MH**

ENERGY STORAGE:

U.S. rooftop solar with battery market to top $1B in 3 years -- report

Katherine Ling, E&E reporter

Published: Monday, December 22, 2014

The U.S. market of rooftop solar panels paired with battery storage that some analysts have declared ring the death knell for the nation's utilities will be worth more than $1 billion by 2018, according to a new report from GTM Research.

The nation is poised to have almost 320 megawatts of capacity of non-utility solar hooked to energy storage in three years, pushed by a storage mandate from California, the 30 percent federal investment tax credit and the promise of a price drop as Tesla Motors Inc.'s battery "Gigafactory" comes online, according to the report unveiled last week.

While the amount is still a drop in the bucket compared to the more than 1,000 gigawatts of total U.S. power capacity, the market is "nearing a tipping point," the report says.

"The key driver for this growth in commercial solar-plus-storage deployments is attractive end-customer economics," Ravi Manghani, a senior energy storage analyst at GTM and lead author of the report, said in a statement. "In this report, we quantify end-customer economics for three end-customer types across multiple utilities and conclude that for some of those customer-utility combinations, the economics look promising even today."

One in 10 commercial solar systems will be paired with storage in 2018, and those could save a typical commercial end-customer up to 30 percent on electricity bills depending on the size of the system, according to the report.

Also contributing to the market's growth is the push for "resilience," the report says -- a top priority for the White House and cities to better prepare the nation's infrastructure to withstand the impact of severe weather events like Superstorm Sandy in 2012, which scientists have predicted will increase because of climate change.

The current market of rooftop solar with energy storage is valued at $42 million, with the cost of batteries a significant barrier. Although battery prices continue to see considerable price cuts, technology costs will continue to prohibit explosive growth, the report says. Another barrier, according to the report, is regulatory structures that do not allow energy storage to participate or capture the value of services it can provide to kick in if electricity consumption is too high -- known as demand response -- or help balance the grid, also known as ancillary services.

On the utility side, a report from analyst firm Navigant Research released earlier this fall predicted worldwide revenue for utility-scale energy storage on the grid to reach $15.6 billion in 10 years, from a current value of $675 million.

Energy storage already had a strong showing last month in Southern California Edison contracts to fill the void left by a recently closed nuclear power plant, winning bids to supply resources that are more than five times what was required by state regulators (*E&ENews PM*, Nov. 5).

ELECTRIC VEHICLES:

Battery-swap station can send Teslas back on road in 3 minutes

Published: Monday, December 22, 2014

Tesla Motors drivers in California will soon have a faster way to recharge their batteries when driving from San Francisco to Los Angeles.

The company says the battery-swapping station it opened Friday will allow customers to recharge their vehicles in about three minutes. Eventually, Tesla hopes to replace a battery in as little as one minute.

Tesla already has high-speed "supercharger" stations in many areas of the country, but that equipment takes three hours to fully recharge a battery -- though that's still faster than many other electric vehicle charging stations.

Unlike the supercharger stations, which Tesla lets vehicle owners use at no cost, battery-swapping will require paying a surcharge, which it said would be "slightly less than a full tank of gasoline for a premium sedan."

The company said the new battery-swapping station is located in an area of Interstate 5 just north of the Los Angeles area, near a supercharger station that is popular with drivers (David Baker, *San Francisco Chronicle*, Dec. 19). **– SP**

TRANSIT:

Public transportation ridership rises -- group

Published: Monday, December 22, 2014

Despite dropping fuel prices, more commuters are opting to take public transit rather than drive themselves to work, according to a new report from the American Public Transportation Association.

In the third quarter of 2014, roughly 2.7 billion passenger trips were taken on transit systems, a 48-million-trip increase over the same period last year. The change is the largest increase since the trade organization began record keeping in 1974.

San Francisco, New York and Chicago all reported increases in public transit ridership.

Association President Michael Melaniphy said that while a ridership hike during a time when gas prices are so low may seem counterintuitive, he believe the quality of public transit has improved enough to encourage riders to continue using it.

"People are saying, 'I came because of fuel prices; I'm staying because of the experience,'" he said (Jon Hurdle, *New York Times*, Dec. 21). **-- AW**

HIGH-SPEED RAIL:

Calif. to reroute planned bullet train through Bakersfield

Published: Monday, December 22, 2014

California must consider a new route for a bullet train through Bakersfield as a concession in a lawsuit settlement filed Friday.

Bakersfield, as well as Kern County, the city of Shafter, a hospital and a church, all objected to the original route proposed by California's High-Speed Rail Authority.

After the settlement, the city and state will look into rerouting the train so it travels through North Bakersfield and arrives at a station a few miles from the existing Amtrak station.

A statement from the Rail Authority said the settlement "demonstrates the commitment between both parties to work together" (Ralph Vartabedian, *Los Angeles Times*, Dec. 19). **-- AW**

OHIO:

New regs threaten wind energy development

Published: Monday, December 22, 2014

Wind energy projects in Ohio are up in the air after new laws were enacted regulating energy standards and amid the uncertainty over the renewal of the federal wind tax credit.

One of the new laws establishes a two-year freeze on state standards for renewable energy and energy efficiency. Supporters of the law said the state needs to limit using mandates to favor one type of energy over another.

Supporters of alternative energy, and those in the wind industry, are watching to see whether Congress will renew funding for the renewable energy production tax credit, which began in 1992. President Obama has proposed making the tax credit permanent, but it is unknown what congressional Republicans will do when they take control of both chambers in 2015.

The Ohio Power Siting Board, which reviews and certifies projects, has approved 11 wind farms with a total of 764 turbines that could generate 1,401 megawatts of electricity.

These projects, however, are now in limbo due to the new regulations and concerns. Of the approved projects, only one has had recent construction work (Dan Gearino, *Columbus Dispatch*, Dec. 22). **-- MH**

SOUTH KOREA:

Nuclear plant operator hacked

Published: Monday, December 22, 2014

Blueprints of some South Korean nuclear reactors have been leaked after computers at the country's nuclear plant operator were hacked.

Korea Hydro and Nuclear Power Co. Ltd. said today that it is looking into the breach, which also released radiation exposure estimates and other internal data about reactors.

The state-owned operator said that its plants are not in danger from the cyberattack and that the controllers for the reactors are not at risk because they are not linked to external networks.

The Korea Hydro attack became public Dec. 15 when company data were released on a Twitter account.

An account owner said it was a group from Hawaii that opposed nuclear power, though that could not be verified. The group has demanded that the company's nuclear reactors be shut down by Christmas Day (Jeyup Kwaak, *Wall Street Journal*, Dec. 22). **-- AW**

JAPAN:

Officials remove final fuel rods from heavily damaged reactor

Published: Monday, December 22, 2014

Officials have removed radioactive fuel from one of the most vulnerable reactor buildings at the Fukushima Daiichi nuclear plant in Japan.

After nearly four years of complications following the plant's meltdown, the final fuel rods from the damaged No. 4 reactor building were removed and safely contained Saturday. The building had 1,500 fuel rods, and officials had put a high priority on removing the rods because they sat in an unprotected storage pool that had been damaged by the hydrogen explosion.

The damage to the plant occurred March 11, 2011, following an earthquake and tsunami. The events caused a triple meltdown at the facility, and radioactive materials were released.

The plant's operator, Tokyo Electric Power Co., still faces an uphill battle in removing radioactive materials. Although the most at-risk fuel rods were removed from the No. 4 reactor building, experts warn the cleanup of the other buildings could take decades (Martin Fackler, *New York Times*, Dec. 20). **-- MH**

CLIMATE:

Former EPA climate director Kruger previews road ahead for methane regulations

Published: Monday, December 22, 2014

Last week, on the same day that U.S. EPA signaled it would hold off until next year in announcing whether it will pursue methane emissions regulations, New York Gov. Andrew Cuomo banned fracking in his state, citing health concerns. How much uncertainty currently exists in the natural gas sector? During today's OnPoint, Dina Kruger, co-founder of Kruger Environmental Strategies and the former director of the climate change division at EPA, discusses her expectations for the upcoming methane announcement and weighs in on the role states are playing in the regulation of fracking.

Click here to watch today's OnPoint.

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Industry groups wary of Clean Power Plan precedent

Manufacturers and oil refiners are paving the way for a hard-fought battle over U.S. EPA's greenhouse gas standards for the power sector, fearing the agency could use similar tactics to write climate regulations for their industries.

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Utilities eyeing direct investment in shale gas

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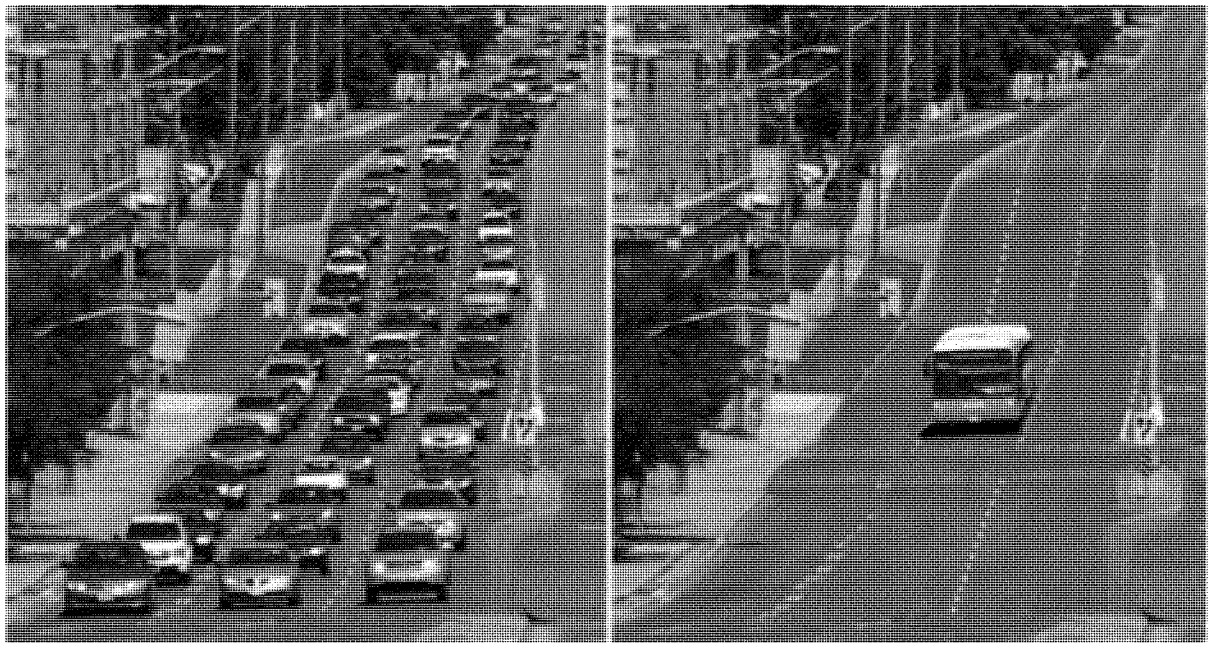

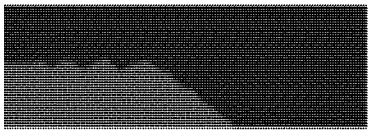

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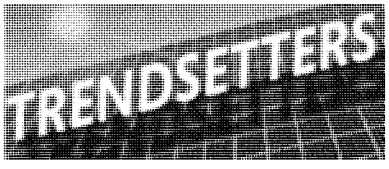
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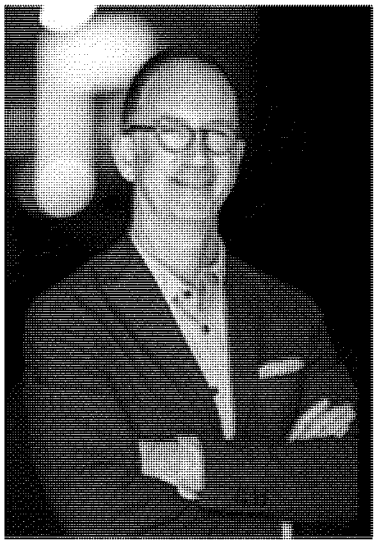

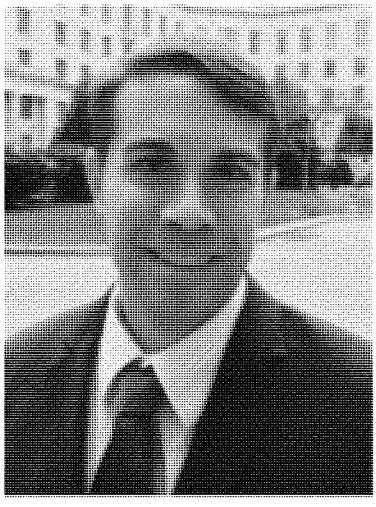

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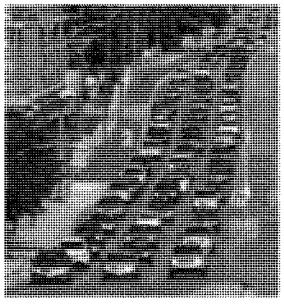

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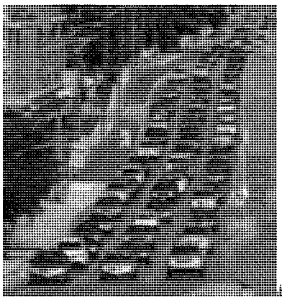

Air & Radiation Law News

for December 22, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Alters Gas Well Completion Rules In Advance of Jan. 1 Compliance Deadline

The Environmental Protection Agency has finalized clarifying amendments to its new source performance standards for the oil and natural gas sector, less than two weeks before a key compliance deadline for the first federal air standards...

Air Pollution

Virginia to Set VOC Limits on Plastic, Metal Coating

Virginia's Department of Environmental Quality is poised to propose limits on the amount of volatile organic compounds that may be emitted by plastic and metal coating shops in highly developed Northern Virginia. The proposal aims to...

Climate Regulation

99 House Members Ask President To Withdraw EPA's Clean Power Plan

Ninety-nine members of the House pressed President Barack Obama in a Dec. 19 letter to withdraw an Environmental Protection Agency rule that would set the first carbon dioxide emissions standards for existing power plants....

Coal Mining

OSM Rescinds 2008 Stream Buffer Rule; Protection Debate to Continue in 2015

The Office of Surface Mining Reclamation and Enforcement will rescind a 2008 stream buffer zone rule that was vacated by a federal court earlier this year, but the debate over how close mining waste can be dumped to streams isn't over yet....

Energy

EBay Latest Tech Company to Leave Conservative Lobbying Group ALEC

EBay has become the latest in a string of technology companies to leave the conservative American Legislative Exchange Council after pressure from climate change activists and other organizations, the company confirmed to Bloomberg BNA...

Energy Efficiency

IRS Looks at Deduction for Energy-Efficient Buildings

Only governmental entities may allocate a tax code Section 179D deduction to the designer of energy-efficient commercial building property, the IRS Office of Chief Counsel said in a chief counsel advice memorandum. The Internal Revenue...

Enforcement

PacifiCorp Agrees to Pay $2.5M to Settle Violations of Bird Act at Wyoming Facilities

PacifiCorp Energy will pay $2.5 million after pleading guilty to criminal violations of the Migratory Bird Treaty Act in connection with the deaths of protected birds, including golden eagles, at two of the

company's wind projects in...

Enforcement

Two Companies Sold 11,000 Motorcycles, ATVs in Violation of Air Act, EPA Board Rules

Two Texas-based companies face an approximate $1.3 million civil penalty for violating the federal Clean Air Act by importing and selling more than 11,000 motorcycles and all-terrain vehicles that either lacked Environmental Protection...

Environmental Reviews

CEQ Issues Final Guidance on Preparing Programmatic NEPA Reviews

The White House Council on Environmental Quality has issued final guidance on preparing programmatic reviews under the National Environmental Policy Act. ...

Environmental Reviews

Texas DOT Gets Approval to Assume Federal Authority for Environmental Reviews

The Texas Department of Transportation has become the second state agency in the U.S. to assume federal environmental review authority for transportation projects under a memorandum of understanding signed by the Federal Highway Administration....

Hazmat Transport

Canada, U.S. Officials Discuss Creating Consistent Rail Tank Car Standards

Canada's Federal Transport Minister Lisa Raitt said a bilateral meeting with U.S. Transportation Secretary Anthony Foxx centered on the importance of creating consistent cross-border standards for railway tank cars carrying oil...

Trade

Joint Commission Examines Causes, Costs Of Excess Capacity in Chinese Solar Sector

The causes and costs of Chinese excess capacity in solar panel manufacturing, as well as ways to manage these problems, were taken up at the 25th session of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in Chicago....

INTERVIEW

CARB Chairman Nichols Discusses Climate, Air Policies

Bloomberg BNA: What impacts do you see from the Republicans takeover of Congress on California's air quality and climate programs?...

BNA INSIGHTS

Environmental Due Diligence in a Competitive Mergers and Acquisition Market

Driven by low interest rates, large corporate cash reserves, and a steady and sustained rise in the stock market, the aggressive mergers and acquisitions market of 2014 appears poised to charge full steam ahead into the new year....

Latest News

Capito Hires Democrat On Air, GHG Issues, Irking Some Republicans

Sen.-elect Shelly Moore Capito (R-WV), who is slated to serve on both the energy and environment committees in the next Congress, has hired a long-time Democratic staffer to serve as her senior counsel on greenhouse gas (GHG) and other air quality issues, prompting ire among Republicans who worry the hire suggests Capito will not push back against the Obama administration's climate agenda.

Greenwire

CLIMATE:

White House NEPA guidance could trigger change at FERC

Hannah Northey, E&E reporter

Published: Friday, December 19, 2014

The Obama administration's release yesterday of new proposed guidance for how climate change should factor into federal environmental reviews could prompt changes at the Federal Energy Regulatory Commission, analysts say.

The proposed guidance could encourage FERC, which conducts reviews of gas pipelines, compressor stations and export terminals, to expand its scope of upstream and downstream effects of projects as was done with the Keystone XL pipeline, said Christi Tezak, managing director of research at ClearView Energy Partners LLC.

"If you look at the language that [the White House Council on Environmental Quality] used, talking about how central greenhouse gas emissions are to a [National Environmental Policy Act] review, we think that could encourage FERC to take a more Keystone-like approach to their reviews, to ask applicants to look upstream and downstream and address these issues in some fashion," Tezak said.

At issue is the new guidance CEQ proposed yesterday addressing how federal agencies should consider greenhouse gas emissions and the impacts of climate change when conducting reviews under NEPA. CEQ first released draft guidance in 2010 but never issued a final plan, a delay that frustrated some environmentalists (*E&ENews PM*, Dec. 18). The draft guidance will be available for public comment for 60 days.

CEQ yesterday also finalized its proposal to encourage federal agencies responsible for conducting environmental analyses under NEPA to undertake "programmatic" reviews where possible.

The guidance could result in slower permitting at FERC if the agency requires applicants to take a closer look at upstream and downstream effects, but it's not clear FERC would be quick to adopt programmatic environmental reviews, Tezak and other analysts at ClearView Energy Partners LLC said in a note yesterday. FERC, they said, currently evaluates energy infrastructure as industry-driven "doors" between resources and markets rather than as part of an agency-sponsored program. Programmatic reviews are frequently used for oil and gas leases administered by federal land managers, but FERC maintains individual projects don't fit that type of review, Tezak said.

But whether the commission decides to make any changes to its NEPA review is unclear given the agency's reluctance in the past (*Greenwire*, Nov. 17).

FERC Chairwoman Cheryl LaFleur has said the agency would consider any new guidance or rules that environmental regulators release while defending the commission's approach, but she has also reiterated that the agency is already assessing direct emissions in NEPA reviews. The commission also has said there's no reliable formula for measuring the local or global environmental impacts of cumulative emissions from any pipeline, compressor station or liquefied natural gas export terminal.

FERC spokeswoman Tamara Young-Allen said the commission is currently reviewing the guidance.

Tezak said that although she cannot speak for FERC, the White House guidance sets a clear direction forward.

"The way we look at this, it's the coach giving direction to the team, while FERC is an independent agency, three of the five commissioners could be inclined to try to follow the coach's advice," Tezak said. "The guidance seems to be clear, if you're not going to look at greenhouse gas emissions there better be

a really good reason."

ENERGY POLICY:

Interior announces valuation overhaul, new coal guidance

Manuel Quiñones, E&E reporter

Published: Friday, December 19, 2014

The Interior Department's Office of Natural Resources Revenue today announced new proposed rules meant to protect taxpayers during the leasing of federal coal to mining companies.

Environmental advocates and government watchdogs have for years been accusing Interior of mismanaging the coal leasing program. Critics have also cited a Reuters investigation accusing companies of using affiliates to take advantage of low royalties and sell the coal at higher overseas prices. The mining industry has denied the claims.

ONRR's draft rule, to be formally published in the *Federal Register* on Jan. 6, aims at changing what it calls outdated guidelines dealing with calculating royalty payments on sales to affiliates. The agency is touting the move as a way to cut red tape and clarify requirements.

"Coal produced on public lands is an important part of our domestic energy portfolio, but we have an obligation -- and we are fully committed -- to ensure that the American taxpayer receives a fair return for the production of domestic energy resources," Deputy Interior Secretary Mike Connor said in a statement.

The draft regulation also reforms the valuation of federal oil and gas, plus energy resources in Indian Country. Interior said current rules -- dating back to the late 1980s for coal and gas -- have not kept up with market changes.

Even with oil and gas included in Interior's actions, the coal rules have been more controversial. Beyond ONRR, the Bureau of Land Management today released updated guidance for field offices.

The new manuals and handbooks are meant to help BLM offices determine fair market value for federal coal and take exports into account. The agency has also worked on employee training and making more information available about lease sales.

Just last week, the left-leaning Center for American Progress called for the appointment of an independent presidential commission to conduct a "high-level" review (*Greenwire*, Dec. 9).

The report's author Nidhi Thakar said, "Today's announcement by the Department of the Interior is a step in the right direction to reforming an outdated coal program."

Earlier this year, a Government Accountability Office report said BLM had failed to ensure fair market value calculations for federal coal, in part because of inconsistent policies at different offices (*Greenwire*, Feb. 4).

A previous Interior Office of Inspector General report released last year said BLM may have lost more than $60 million from coal lease modifications. The agency and industry questioned the findings (*E&E Daily*, July 10, 2013).

"The initial steps we are taking are part of the larger effort to strengthen the management of coal

production on public lands by providing greater certainty and predictability to the industry and helping to protect American taxpayers," Connor said.

ENERGY EFFICIENCY:

'Happy' activities save resources -- study

Published: Friday, December 19, 2014

New research by a University of California, Berkeley, doctoral candidate shows a relationship between activities that make people happy and energy savings.

For his dissertation, Joseph Kantenbacher divided energy into three types: travel energy, like gasoline; household energy, like electricity; and embedded energy, which is the amount of energy that goes into manufacturing a particular object. He then calculated how much of each type of energy various activities use.

What he found was this: Activities that require the least amount of energy, like sleeping, socializing and hobbies, "are enriching personally," Kantenbacher said.

"So they make people happy to do them, but they also are relatively low consuming activities," he said.

On the other end of the spectrum was commuting, which uses a lot of energy and is one of the least happiness-inducing activities (Chris Mooney, *Washington Post*, Dec. 19). **-- AW**

DOE:

Lab late on tests for nuclear weapons

Kevin Bogardus, E&E reporter

Published: Friday, December 19, 2014

Los Alamos National Laboratory has been running late on several tests for the nation's nuclear weapons stockpile, according to the Department of Energy's inspector general.

In a report released today, DOE Inspector General Gregory Friedman said that the national lab ran into delays, sometimes lasting as long as years, when it came to testing nuclear weapons on their reliability and performance.

Los Alamos is tasked with running nonnuclear hydrodynamic tests, or hydrotests, on the weapons stockpile.

The lab was scheduled to do 19 tests from fiscal 2010 to 2013, with funding for the testing program running at $213 million during that time. But according to the IG, 12 of those tests were delayed from one to three years. Two tests have now been scheduled for fiscal 2015.

In addition, because of that lackluster performance, the watchdog said it's unclear whether the lab could meet its goal of 10 hydrotests per year by fiscal 2016.

The inspector general made several recommendations to speed up the testing process at Los Alamos, which DOE management agreed to implement.

RAIL:

Amtrak routes continue to yield dismal on-time records -- report

Sean Reilly, E&E reporter

Published: Friday, December 19, 2014

Trains along one Amtrak long-distance route failed to arrive on time at their final destinations even once in October as the passenger railroad continues to battle rampant tardiness across its national network, newly released figures show.

By one measure, on-time performance improved marginally in comparison with September, rising from about 50 percent to 52 percent across the 15 long-distance routes, according to Amtrak's latest monthly performance report. Some trains did markedly better; the California Zephyr, which runs daily between Chicago and San Francisco, punctually arrived at those "end point" destinations more than half the time in October, compared with about 12 percent in September. The Texas Eagle, running from Chicago to San Antonio, also achieved about a 50 percent punctuality rate, up from about 28 percent in September.

But on-time performance throughout the network was down sharply in comparison with October 2013. Worst performing was the Capitol Limited between Washington, D.C., and Chicago, which had a punctuality rate of zero in October, down from 3.3 percent in September and almost 70 percent a year earlier.

More recently, lines like the Capitol Limited have shown some slight improvement, but they are "not there yet," Amtrak President and CEO Joe Boardman said in a brief interview last week following a Senate hearing.

"It's gone from being seven hours late to two hours late, but it's still late," Boardman said. What Amtrak calls "all stations on-time performance" -- meaning the rate at which at a train arrived punctually at any station along its route -- stood at 40 percent in October, unchanged from September and down from about 47 percent in October 2013.

Long-distance train ridership in October dropped about 1 percent from a year earlier, in part because of the punctuality issues, the report says. Amtrak attributes much of the problem to interference from the freight railroads that own almost all of the track on the network; last week, the Supreme Court heard oral arguments on a lawsuit challenging Amtrak's ability to set performance standards affecting the freight rail industry (*Greenwire*, Dec. 8).

Last month, Amtrak nonetheless asked the Surface Transportation Board to investigate the Capitol Limited's "substandard performance." The complaint seeks damages and other relief if the probe finds that the two "host" railroads, CSX Transportation Inc. and Norfolk Southern Railway Co., have failed to provide Amtrak trains with legally required track preference. The board has given the two companies until Jan. 7 to respond, online filings indicate.

NUCLEAR WASTE:

Leak at N.M. site no threat -- report

Kevin Bogardus, E&E reporter

Published: Friday, December 19, 2014

A February radioactive leak at a Department of Energy facility in Carlsbad, N.M., has been deemed relatively harmless, according to a group of independent researchers.

The Carlsbad Environmental Monitoring and Research Center released a report yesterday on the Waste Isolation Pilot Plant's Feb. 14 leak, which has closed the facility down indefinitely. After monitoring the air, soil and water in and around the site, the researchers found that dangerous radiation should no longer be an issue.

"These concentrations of radiological contaminants in the air samples collected were deemed to be very small, localized, and well below any level of public-health or environmental concern," the group said in its report.

The report also noted that "no negative radiation-related health effects among local workers or the public should be expected."

The report comes after DOE's inspector general sent out a "management alert" earlier this year over WIPP's handling of nuclear waste (*Greenwire*, Oct. 1). The watchdog found several vulnerabilities in how the underground nuclear waste plant handles and packages radioactive material.

One of those problems was contractors adding organic kitty litter to waste stored in the drums, according to the IG.

DOE has also released a WIPP recovery plan this year. To resume operations at the site will cost roughly $242 million with the site reopening in early 2016, according to the department.

SWEDEN:

Nuclear fee hike aimed at covering decommissioning costs

Published: Friday, December 19, 2014

Sweden's environment ministry nearly doubled fees yesterday for nuclear power plants to offset decommissioning costs.

Sweden's state-owned utility Vattenfall, Germany's E.ON and Finnish utility Fortum will now pay 0.04 Swedish crowns ($0.01) per kilowatt-hour, up from 0.022 crowns. Last year, fees generated 2.5 billion Swedish crowns ($324.41 million) for the nuclear waste fund.

The ascension of a coalition of Social Democrats and the Green Party has increased pressure on transitioning Sweden away from nuclear power, but operators warn rising taxes and costs associated with new safety measures could lead to quicker shutdowns of older plants and potentially higher energy prices.

"Nuclear power must bear its own costs, and the government's decision to increase the nuclear waste fee makes this possible," said Climate and Environment Minister Asa Romson (Nerijus Adomaitis, Reuters, Dec. 19). **-- DTB**

KENYA:

Wind turbine project could be Africa's largest

Published: Friday, December 19, 2014

A new project could make Kenya home to one of Africa's largest wind energy sites.

Vestas Wind Systems, a Danish company, recently won a contract to supply 365 turbines for a 310-megawatt project in the country. The Lake Turkana Wind Power project could generate 15 to 20 percent of Kenya's electricity once completed in 2016.

The $800 million project is supported by loans from the African Development Bank and is expected to be Kenya's largest private investment in history.

Eighteen percent of Kenyans have access to electricity, and experts hope the project will connect more people to the grid (Nick Cunningham, *Christian Science Monitor*, Dec. 18). **-- MH**

CLIMATE:

Greenwire's Northey previews impact of Honorable confirmation on FERC's reliability discussions

Published: Friday, December 19, 2014

With the Federal Energy Regulatory Commission slated to hold a series of technical conferences on the Clean Power Plan early next year, how will the addition of Colette Honorable to the commission impact the reliability debate on the rule? On today's The Cutting Edge, *Greenwire* reporter Hannah Northey previews the dynamic year ahead for FERC. She also explains how Chris Smith's confirmation to the Department of Energy will influence the liquefied natural gas exports discussion.

Click here to watch E&ETV's The Cutting Edge.

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CLIMATEWIRE — Mon., December 22, 2014

READ FULL EDITION

1. TRANSPORTATION:

Commuting by bike begins to roll, lowering emissions and enriching cities

An unfinished billion-dollar urban planning project set to connect downtown Atlanta with green spaces, affordable housing, and trails for biking and walking may already be paying dividends.

2. SOCIETY:

Could climate change be the Grinch that steals Christmas?

The winter holidays are a time to gather together, celebrate, stuff ourselves with figgy pudding and otherwise forget all about the travails of the outside world. But much like a certain nasty green fellow who lives in the vicinity of Whoville, climate change doesn't show respect for holiday traditions.

TODAY'S STORIES

3.ENERGY EFFICIENCY:
Changing human behavior could go a long way in curbing building emissions, researchers say
4.SCIENCE:
Scientists discuss lessons learned during a 20-year fight with climate change deniers
5.CANADA:
Alberta punts on new climate regulations as Obama slams Keystone XL
6.ELECTRICITY:
Nuclear and fossil fuel power plant jobs drop, while renewable energy has gains
7.CARS:
Researchers look beyond tailpipes to check emissions of green vehicles
8.AGRICULTURE:
Climate change could slash world agricultural production 18% by 2050
9.WEATHER:
Unusually warm weather hits Anchorage in December
10.OCEANS:
Scientists predict historic coral bleaching event
11.TRANSPORTATION:
How making tiny bubbles could help shipping cool the Earth
E&ETV'S ONPOINT
12.CLIMATE:
Former EPA climate director Kruger previews road ahead for methane regulations

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ENERGYWIRE — Mon., December 22, 2014

READ FULL EDITION

1.FINANCE:
Oil prices are pushing easy money out of the shale patch
It was cheap, abundant debt that greased the wheels for the shale boom. But with oil prices veering off course, lenders are realizing this debt was riskier than they bargained for.

2.SECURITY:
China and U.S. grapple over red lines for cyberattacks
SHANGHAI -- Tucked away on a commercial street in the Pudong district of China's most populous city is a plain beige building with a dark history. There, a hacker using the alias "UglyGorilla" is said to have broken into U.S. computer systems, spying on energy networks and bagging corporate secrets in recent years.
TOP STORIES
3.ELECTRICITY:
EPA carbon plan may hang over 'do no harm' Texas session
4.REGULATION:
Electric utilities welcome EPA's call on coal ash as non-hazardous
5.UTILITIES:
In a male-dominated industry, Southern's COO champions women

ELECTRICITY

6.WORKFORCE:
Power generation loses 6K jobs as industry shifts

7.UTILITIES:
Fla. commission OKs fracking investment request

8.GRID:
Okla. regulators hear cost, safety arguments against $133M smart meter program

OIL AND GAS

9.OIL:
Rig count drops, but prices get a break

10.BUSINESS:
Oil slump jeopardizes value of BP's Rosneft stake

11.OIL:
Crash exposes holes in drilling insurance policies

E&ETV'S ONPOINT

12.CLIMATE:
Former EPA climate director Kruger previews road ahead for methane regulations

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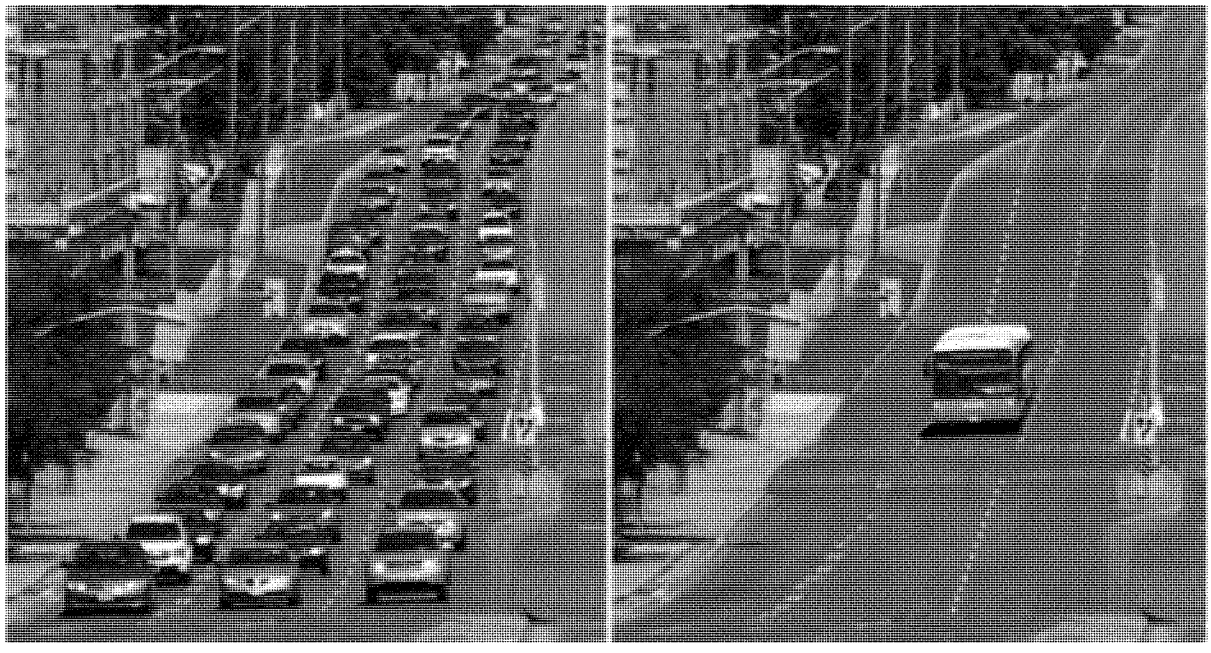

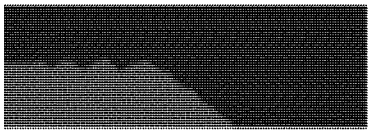

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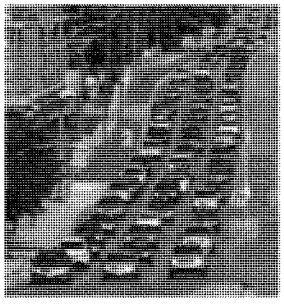

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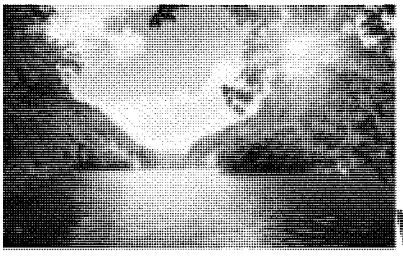
Sent: Mon 12/22/2014 3:26:48 PM
Subject: Water Law News for December 22, 2014



Water Law News

for December 22, 2014

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Coal Mining

OSM Rescinds 2008 Stream Buffer Rule;
Protection Debate to Continue in 2015

The Office of Surface Mining Reclamation and Enforcement will rescind a 2008 stream buffer zone rule that was vacated by a federal court earlier this year, but the debate over how close mining waste can be dumped to streams isn't over yet....

Energy

Interior 2015 Agenda Includes Regulations
For Offshore, Onshore Energy Development

The Interior Department in 2015 will issue a proposed rule on offshore oil and gas well standards and a proposed rule for stream protection from coal mining debris, according to the department's part of the Obama administration's...

Hydraulic Fracturing

New Brunswick Moves to Halt Hydraulic
Fracturing Until Studies by Oil, Gas Industry

The New Brunswick government introduced legislation Dec. 18 that would impose a moratorium on hydraulic fracturing in the province until the oil and gas industry meets conditions specified by the government....

Oil & Gas

Obama Plays Down Keystone Impacts
On U.S. Gasoline Prices, Jobs Created

President Barack Obama Dec. 19 downplayed the impact that building the Keystone XL pipeline would have on U.S. gasoline prices and jobs, in what analysts said were his most negative remarks on the oil sands project to date. ...

Oil & Gas

With Oil Prices Falling, Chevron Suspends
Exploratory Drilling Plan for Canadian Arctic

Chevron has suspended, at least temporarily, plans to drill for oil in the Arctic Beaufort Sea, citing conditions in the oil industry....

Water Infrastructure

New York City Mayor Announces Details Of $4.2 Billion Storm Resiliency Plan

A proposed amendment to a $4.1 billion New York City action plan under a Housing and Urban Development Department disaster recovery grant program sets a range of storm resiliency measures that include green infrastructure development and...

Water Pollution

Advocates Sue EPA for Not Regulating Stormwater From Urban, Suburban Areas

Environmental groups have asked the U.S. Court of Appeals for the Ninth Circuit to order the Environmental Protection Agency to comply with an 11-year-old ruling by the court to toughen regulations for urban and suburban stormwater runoff...

Latest News

Industry, GOP Eye Ash Bill To Resolve Enforcement Fears Over EPA Rule

Utility industry officials and Republican lawmakers are criticizing enforcement provisions in EPA's final coal ash disposal rule that they say constrain states' flexibility in implementing the rule and opens the door to citizen suits, and say the incoming GOP-led 114th Congress must approve legislation to block those provisions.

Agency Advisors Urge EPA To Strengthen Draft Fish Consumption Guide

EPA's children's health advisors are urging the agency to strengthen its draft fish consumption advice for pregnant women and children by adding several species to a "do not eat" list and offering more specific advice on health risks from consuming other species, backing advocates' claims that the draft fails to adequately limit mercury exposures.

News Briefs

OMB Completes Review Of Oil Spill Rule

The White House Office of Management & Budget (OMB) has completed its review of EPA's proposed revisions to regulations governing the authorization of oil spill response agents such as dispersants, following meetings earlier this year with industry, which has defended the use of chemical dispersants, and environmental groups, which have raised environmental and public health concerns about them.

Advocates' Suit Seeks Stricter EPA Stormwater Rules

Environmentalists are suing EPA claiming the agency has failed to meet the terms of a years-old court order that required the agency to strengthen its standards for curbing urban stormwater runoff, arguing that the unreasonable delay in tightening the rules is posing human health risks from water contaminated with polluted runoff.

Greenwire

WATER POLLUTION:

Greens sue EPA over failure to stem stormwater runoff

Annie Snider, E&E reporter

Published: Friday, December 19, 2014

Environmental groups sued U.S. EPA yesterday in hopes of forcing a crackdown on stormwater pollution, the latest move in a long-running battle over how to address one of the nation's most persistent water quality problems.

The lawsuit, filed in the 9th Circuit Court of Appeals by the Natural Resources Defense Council and the Environmental Defense Center, asks the court to set a deadline for EPA to finalize stormwater permit requirements for smaller suburbs and to decide whether to regulate polluted runoff from forest roads.

At issue are chemicals, oils and excess nutrients washed by storms into waterways. A 2013 EPA report estimated that 850,000 acres of lakes, reservoirs and ponds and 50,000 miles of rivers and streams are impaired by stormwater runoff (*E&ENews PM*, March 25, 2013).

But curbing stormwater runoff could require major -- and expensive -- design changes for old communities and new development. EPA has come under intense political pressure for previous efforts to clean up stormwater and has backpedaled on several, including plans to set a national standard for runoff (*Greenwire*, July 5, 2013).

So frustrated environmentalists opted to head back to court.

"Stormwater pollution remains a huge source of impairment of water quality around the country," said Larry Levine, a senior attorney for NRDC. "There has just been an intolerable delay in acting on it."

The 1987 Clean Water Act amendments require EPA to come up with a program for addressing stormwater from a wide range of sources. But environmentalists saw flaws in what EPA finally put out in 1999 and sued. They won on two major points in 2003.

First, the court found fault with EPA's stormwater permit requirements for communities of fewer than 100,000 people. The agency had created a general permit program that required communities to come up

with their own plans to curb stormwater, but the program failed to guarantee that those plans would be reviewed by state regulators or EPA. That flaw, the court ruled, meant the program didn't meet the legal requirement that pollution be stanched "to the maximum extent practicable."

The court also said the program didn't allow for adequate public participation, and sent the rule back to EPA to make repairs.

But the agency failed to act, and communities are still receiving permits under the program the court ruled to be flawed, Levine said.

"EPA's rules provided for the permittees to discharge simply by pledging to develop their own plans without any need for the state permitting authority or EPA to actually sign off and review the adequacy of those plans," he said. "That's not what a [National Pollutant Discharge Permit Elimination System] permit is supposed to be."

The second part of the 2003 ruling dealt with forest roads. EPA's 1999 plan for handling different sources of stormwater didn't address logging roads, mining roads, and roads for oil and gas drilling.

The court ruled that it was arbitrary for EPA to ignore this road category and sent the rule back to EPA to look at the evidence and make a decision. But the agency never did.

In the interim, the Environmental Defense Center brought a lawsuit over stormwater running off of just logging roads, arguing that such roads qualify as industrial point sources and should be regulated through the Clean Water Act permitting program.

The group won in the 9th Circuit, but the ruling sparked a backlash from Congress and states and was appealed to the Supreme Court. Just days before justices heard arguments, EPA swiftly finalized a rule that formally exempted logging roads from the National Pollutant Discharge Elimination System (NPDES), which the high court upheld (*Greenwire*, March 20, 2013).

But the agency left the door open for the possibility of regulating the roads through other means.

In the lawsuit filed yesterday, environmental groups are asking the court to order EPA to make a determination on whether all kinds of forest roads should be regulated, and -- if so -- to set a timeline for promulgating the rule. Regulation could come through a permitting program, or through a non-permitting program.

If EPA decides not to regulate the roads, green groups would then have something they could appeal.

In a statement, EPA said it continues to be concerned about stormwater discharges and named a number of ongoing efforts to deal with it, including efforts to strengthen municipal stormwater permits under its existing program for large- and medium-sized communities, and to promote green infrastructure to filter stormwater and release it more slowly into sewers and local waterways.

The statement alluded to the intense political pressure around the issue, which has included a strong interest from Senate Republicans set to take the reins at key committees next year.

"The Agency's goal is to build a broad nationwide constituency for better stormwater pollution control by educating communities and giving them an opportunity to develop strong programs before creating additional federal regulatory requirements," EPA said.

Click here for the lawsuit.

LOBBYING:

Venezuela hires top K Street firm as sanctions loom

Kevin Bogardus, E&E reporter

Published: Friday, December 19, 2014

Venezuela has signed up with K Street as the United States has set up new sanctions that have worried the country's oil and gas industry.

The Venezuelan government has hired Hogan Lovells, a top law and lobbying firm, according to records filed with the Justice Department. The firm, which is one of the influence sector's top earners, will advise the country on "bilateral relations" between it and the United States, which will include "legal analysis, counsel and strategy development, as well as policy advocacy" before U.S. government officials.

In 2009, the country terminated much of its lobbying representation in Washington, D.C., according to Justice documents.

The documents filed by Hogan Lovells make no mention of sanctions that were signed into law yesterday by President Obama. The law, known as the Venezuela Defense of Human Rights and Civil Society Act of 2014, was sponsored by Sens. Robert Menendez (D-N.J.), Marco Rubio (R-Fla.), Bill Nelson (D-Fla.), Mark Kirk (R-Ill.) and John McCain (R-Ariz.).

The law freezes assets, revokes visas and otherwise penalizes Venezuelan government officials who were involved in the violent crackdown on anti-government protesters earlier this year.

The law worries Venezuela's state oil and gas company. Petróleos de Venezuela SA hired Rasky Baerlein Strategic Communications to lobby on the legislation last month (*Greenwire*, Jan. 12, 2013).

NOAA:

As focus shifts to oceans, key staffers wade into new policies

Emily Yehle, E&E reporter

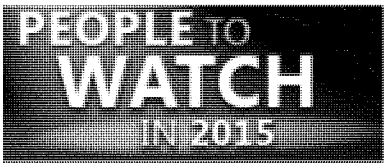
Published: Friday, December 19, 2014

Tenth in a series on energy and environment staffers worth watching in 2015.

For years, the National Oceanic and Atmospheric Administration saw its oceans and fisheries programs overshadowed by a troubled environmental satellite program that drew congressional attention -- and funding.

That's changing. With satellites on more solid footing, the agency is now at the center of a governmentwide focus on oceans and sustainable fisheries. Congress has also begun restoring funds to the National Marine Fisheries Service and the National Ocean Service, which saw their budgets drop as the cost of satellites rose.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

The resurgence of NOAA's "wet side" has coincided with the building of a leadership team that largely has been well-received by advocates and its rank and file.

The agency had numerous high-level vacancies less than two years ago (*Greenwire*, May 2, 2013). Since then, NOAA Administrator Kathy Sullivan -- whom the Senate confirmed in March -- has filled most of the top spots with a mix of longtime employees and respected outsiders.

Next year, they'll tackle goals that cut across all of NOAA's roles, from oceans and fisheries to satellites to weather forecasts.

Here's a look at a few employees at NOAA -- and one in its mother agency, the Commerce Department -- who are key to keeping it all on track:

Eileen Sobeck, assistant administrator for NMFS

Eileen Sobeck stepped into the assistant administrator spot at the beginning of this year, prompting enthusiasm from ocean advocates who say she has the experience and drive to steer NMFS as it tackles such thorny issues as climate change.

Sobeck first came to NOAA in 1979, working in the Office of the General Counsel until 1984. She then spent 25 years at the Justice Department in the Environment and Natural Resources Division, swooping in when agency regulations got tangled in legal disputes. The positions she held included chief of the wildlife and marine resources section.

Perhaps more importantly: an ocean sea slug bears her name.

Eileen Sobeck. Photos courtesy of NOAA.

Hallaxa hileenae is a rare purple mollusk found in the Pacific Ocean. In a recent interview with *Greenwire*, Sobeck -- whose first name is Hileen in Papua New Guinea pidgin -- explained that her brother-in-law is a marine biologist and invited Sobeck and her husband on the field work trip that resulted in the slug's

discovery.

Sobeck has traveled extensively, recently visiting Trinidad and Tobago for bird watching. As an avid diver, she has also explored coral reefs throughout the world -- experiences that she said helps her put her work in perspective.

"Sometimes you're sitting in your office in Washington, D.C., and thinking, 'Why are we doing this?'" Sobeck said. "These places and resources -- they're so cool and so important."

During Sobeck's first year at NMFS, the agency listed 20 species of coral under the Endangered Species Act, after years of public meetings and research. Now the agency will turn to "how we're going to deal with recovery and what kind of restrictions we will and won't need," Sobeck said.

NMFS will also look beyond overfishing to address other issues that threaten the nation's fisheries, she said. Among the questions: How should the agency deal with climate change, and its effect on fish populations? What scientific tools are needed for effective fisheries management?

Sobeck also plans to identify regions where proactive steps could help marine species. As an example, she pointed to the agency's work in reducing ship speeds and restricting certain fishing gear to protect northern right whales.

"We really want to try to step out of the crisis management mode," she said.

Holly Bamford, acting assistant secretary for conservation and management

Holly Bamford is known for getting things done.

After Superstorm Sandy, she was NOAA's "incident commander," overseeing the agency's response to everything from chemical spills to shoreline changes. Before that, she led the creation of NOAA's Marine Debris Program, which has so far removed almost 4,000 metric tons of debris from the ocean.

She has also published papers in more than 20 publications, overseen the creation of the new Office for Coastal Management and spent a year developing analytical methods to detect trace organic contaminants in water and air particles. When she's not at work, she hikes, bikes and plays soccer with her two young sons; she played basketball when she was younger.

Bamford's knack for both science and management may come from her unusual educational background. She earned a bachelor's degree in business and went on to earn a doctorate in organic environmental chemistry.

Holly Bamford.

Bamford's latest challenge is enhancing coastal resiliency in the face of climate change and severe weather. Little more than one month ago, she moved from the head of the National Ocean Service to NOAA's top official for conservation and management.

In an interview, Bamford emphasized the need to "look across barriers" in NOAA's line offices to accomplish agencywide goals. As an example, she highlighted the increased reach of forecasts of harmful algal blooms, thanks to a partnership between the National Ocean Service and the National Weather Service.

Ultimately, NOAA aims to make other ecological forecasts more widely available, Bamford said.

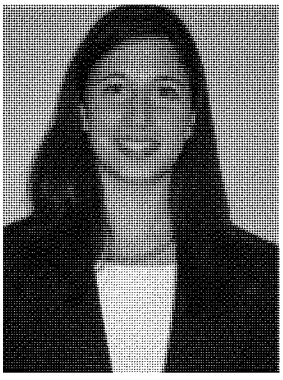
"We're seeing intense coastal storms, we're seeing increased flooding, we're seeing droughts," Bamford said. Her goal: Improve the information and services NOAA offers to help communities prepare and respond to such changes.

Teresa Christopher, senior adviser for Gulf restoration in Commerce

The Restore Council is officially made up of agency administrators and state governors. But behind the scenes is the staff performing the work -- and Teresa Christopher is at the top.

The federal-state panel will ultimately control how billions of dollars is spent on restoration projects, using Clean Water Act civil fines levied in the aftermath of the 2010 Gulf of Mexico oil spill. It will award the first $150 million to $180 million next year.

But when Congress created the panel in 2012, that money wasn't yet available and the panel existed just as words on paper. Christopher -- who then worked at the White House Council on Environmental Quality -- was called in to oversee the panel's establishment.



Teresa Christopher.

She pulled together a team of federal and state officials, set up the new federal agency and handed it off to an executive director in 2013.

But her influence didn't stop there. Today, she is the senior adviser on Gulf restoration to Commerce Secretary Penny Pritzker, who leads the Restore Council.

It's not the first time Christopher has taken on a politically thorny task: At CEQ, she helped develop the

National Ocean Policy.

Holding both a law degree (from Georgetown University Law Center) and a bachelor's in earth and ocean sciences (from Duke University) has helped her tackle such policymaking challenges, Christopher said in a recent interview.

"It's been an asset. It's allowed me to really sit down with both scientists and a lot of traditional lawyers and policymakers," she said. "I talk both languages."

A native of the Jersey Shore, she's also enthusiastic about the chance to tackle coastal and economic issues in the Gulf that hit close to home for her. The Restore Council, she said, is a unique chance to focus on helping one region, with the cooperation of all the "right players" -- and the money to back it up.

Christopher acknowledged the challenge of 11 entities -- five states and six agencies -- hashing out an agreement on how to spend funds. But she expressed confidence that the result could "serve as a template" for other regions.

The council's actions will be closely watched in the next year. The Restore Council recently unveiled the slate of 50 proposed projects that will compete for the first chunk of ecosystem funding, and environmental groups are keeping up the pressure, hoping that the money -- just a fraction of what is ultimately expected to flow to the council -- gets spent on the projects that would bring the biggest benefit to the entire Gulf region, rather than divvied up for political expediency (*E&ENews PM*, Dec. 9).

Renee Stone, NOAA chief of staff

Renee Stone is Sullivan's right-hand woman, playing a key role in managing the agency and implementing policy.

She has the experience. During her career, Stone has served as chief of staff at the National Park Service, senior adviser at the Department of Energy and deputy chief of staff at the Interior Department. She held the latter position during the 2010 Gulf spill.

In a 2009 interview with Rollins College -- where she got her undergraduate degree -- Stone described a turning point when she returned to England after getting her master's in history at the University of Oxford.

Renee Stone.

"Should I get a Ph.D. in history and live on the intellectual side of my life, or should I get a law degree and

work for environmental issues?" she wondered at the time, according to the article.

She chose policy and got her law degree from Stanford University, attributing the decision to her experience writing for the Florida Audubon Society.

Stephen Volz, assistant administrator of NOAA's Satellite and Information Service

Stephen Volz oversees one of NOAA's most expensive -- and scrutinized -- programs: weather satellites.

The former NASA official joined NOAA little more than a month ago, filling a position that had been vacant since July. He will be key as the agency endeavors to launch both polar and geostationary satellites in the coming years.

At NASA, Volz managed 17 orbiting satellites and 12 that were in various stages of development. He also worked on the Cosmic Background Explorer, a satellite that measured cosmic microwave background radiation and supported the Big Bang theory of the universe.

Stephen Volz.

That experience will go a long way toward assuaging Congress' concerns. In the past, some lawmakers -- fed up with cost overruns and schedule delays -- wanted NASA to take over all of NOAA's satellite construction. Past delays mean that one of NOAA's current polar satellites will reach the end of its life span before its replacement is launched in 2017.

Volz appears ready to prove that NOAA has gotten a handle on its multibillion-dollar satellite programs. In a recent interview with *Space News*, he said NOAA plans to report on the "full, expected polar satellite program" through 2028 in the president's fiscal 2016 budget request, which comes out early next year.

His office also plans to release a commercial space policy in January that will "define our principles at the NOAA level of how we interact with commercial entities," Volz told the publication.

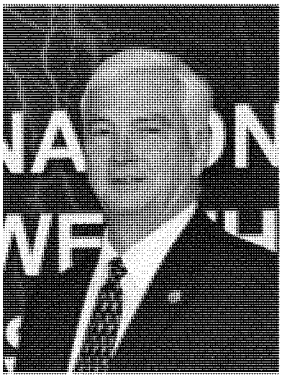
Volz earned his bachelor's in physics at the University of Virginia and his master's in physics at the University of Illinois, Urbana-Champaign. His doctorate in experimental condensed matter physics also came from Illinois.

Ed Johnson, NWS director of strategic planning and policy

Ed Johnson oversees the National Weather Service's planning process at a time when the agency is rethinking how it does business in the technological age.

Two studies in recent years -- one from the National Academy of Sciences and another from the National Academy of Public Administration -- have urged the agency to evolve. But that task is complicated by a union that says there are too many vacancies and by a budget restructuring in the wake of last year's financial mismanagement (*Greenwire*, March 20).

Johnson has been at NWS since 1983 and held his current position since 1999, and employees say he is influential. But he reports to a new boss: Louis Uccellini, who took over as NWS director last year.



Ed Johnson.

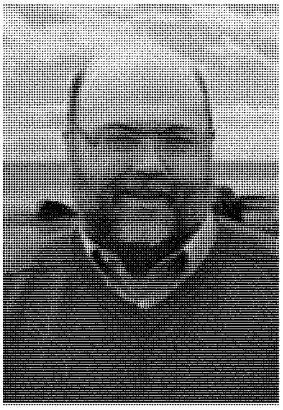
Before joining NOAA, Johnson was an assistant professor of civil engineering at the Georgia Institute of Technology. He earned a doctorate from the Massachusetts Institute of Technology's Department of Civil Engineering.

Jason Link, NMFS senior scientist for ecosystem management

Jason Link is NOAA's first-ever senior scientist for ecosystem management, signaling the agency's shift from managing specific fish populations to looking at entire regions of organisms.

One of his tasks: develop models to support ecosystem-based fisheries management plans. Such plans will become increasingly important as climate change causes fish populations to shift northward and affects the marine communities of regional fisheries.

As some fish stocks -- such as Gulf of Maine cod -- disappear from fisheries, NOAA is looking to ecosystem-based plans to help chart a way forward for sustainable fishing.



Jason Link.

Before he was named senior scientist in 2012, Link spent 12 years as a fisheries biologist for NMFS. At the Northeast Fisheries Science Center in Woods Hole, Mass., his work "revolved around the scientific underpinnings for ecosystem-based marine resource management," according to NOAA.

Link has a bachelor's in biology from Central Michigan University and a doctorate in biological sciences from Michigan Technological University.

WATER POLLUTION:

Mich. town looks for new supply as chemicals leach from DDT plant

Published: Friday, December 19, 2014

The toxic legacy of DDT is forcing one Michigan town to look for a new drinking water supply.

Para-chlorobenzene sulfonic acid (pCBSA), a byproduct of DDT, began contaminating the drinking water of St. Louis, Mich., 10 years ago. Tests determined that the chemical was leaching into the drinking water supply from an old DDT manufacturing plant that was buried underground near the Pine River in the 1980s.

Though former plant owner Velsicol Chemical Corp. built a slurry wall between the capped plant and the river, pCBSA has been detected in drinking water from the river since 2005. While pCBSA levels in drinking water are not dangerous, state regulators fear that more dangerous chemicals could also make their way from the old plant site into drinking water.

U.S. EPA has already proposed spending $23 million to clean the site again *Greenwire*, Dec 8). Meanwhile, the town is searching for a new drinking water supply, and some residents will not drink tap water.

Becki Childs, who lives a block away from the old plant, said she will wash her dishes in tap water but will not let her family, which includes three children, drink it.

"I mean sometimes in the past couple of weeks it's smelled funny," she said (Lindsey Smith, Michigan Radio, Dec. 17). **-- AW**

WASHINGTON:

State adds no new funds to panel studying oil train boom in Northwest

Published: Friday, December 19, 2014

The interstate agency protecting and planning for growth in the Columbia River Gorge will not get a budget bump after Washington Gov. Jay Inslee (D) failed to match Oregon Gov. John Kitzhaber's (D) proposed increase.

The Columbia River Gorge Commission planned to nearly double its five-employee workforce with Oregon's proposed funding increase as the national scenic area has become the Pacific Northwest's main artery for oil trains.

Inslee spokeswoman Jaime Smith said belts were tight in Washington state, however, after voters mandated smaller class sizes in schools.

"The governor is supportive of the commission's mission, but hard choices needed to be made for this budget with many agencies receiving reductions," said Jaime Smith, an Inslee spokeswoman. "He is asking his staff and agencies to continue working with the commission on its priorities."

Public concern has been mounting as 19 sometimes milelong trains a week move more than 1 million gallons of oil along Washington's side of the Columbia River to West Coast refineries.

Inslee's budget does include measures addressing oil train risks, including expanding inspections and oil spill planning, but the gorge commission hopes for more help in the future.

"I sincerely hope that our Northwest democracy is mature enough to have the difficult but needed public planning conversation about the future of the gorge," said Darren Nichols, the gorge commission's executive director, "and I hope that today's short-sighted news is not a decision we will regret for generations to come" (Rob Davis, Portland *Oregonian*, Dec. 18). **-- DTB**

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CLIMATEWIRE — Mon., December 22, 2014

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Commuting by bike begins to roll, lowering emissions and enriching cities

An unfinished billion-dollar urban planning project set to connect downtown Atlanta with green spaces, affordable housing, and trails for biking and walking may already be paying dividends.

2. SOCIETY:

Could climate change be the Grinch that steals Christmas?

The winter holidays are a time to gather together, celebrate, stuff ourselves with figgy pudding and otherwise forget all about the travails of the outside world. But much like a certain nasty green fellow who lives in the vicinity of Whoville, climate change doesn't show respect for holiday traditions.

TODAY'S STORIES

3. ENERGY EFFICIENCY:

Changing human behavior could go a long way in curbing building emissions, researchers say

4.SCIENCE:

Scientists discuss lessons learned during a 20-year fight with climate change deniers

5.CANADA:

Alberta punts on new climate regulations as Obama slams Keystone XL

6.ELECTRICITY:

Nuclear and fossil fuel power plant jobs drop, while renewable energy has gains

7.CARS:

Researchers look beyond tailpipes to check emissions of green vehicles

8.AGRICULTURE:

Climate change could slash world agricultural production 18% by 2050

9.WEATHER:

Unusually warm weather hits Anchorage in December

10.OCEANS:

Scientists predict historic coral bleaching event

11.TRANSPORTATION:

How making tiny bubbles could help shipping cool the Earth

E&ETV'S ONPOINT

12.CLIMATE:

Former EPA climate director Kruger previews road ahead for methane regulations

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Oil prices are pushing easy money out of the shale patch

It was cheap, abundant debt that greased the wheels for the shale boom. But with oil prices veering off course, lenders are realizing this debt was riskier than they bargained for.

2.SECURITY:

China and U.S. grapple over red lines for cyberattacks

SHANGHAI -- Tucked away on a commercial street in the Pudong district of China's most populous city is a plain beige building with a dark history. There, a hacker using the alias "UglyGorilla" is said to have broken into U.S. computer systems, spying on energy networks and bagging corporate secrets in recent years.

TOP STORIES

3.ELECTRICITY:

EPA carbon plan may hang over 'do no harm' Texas session

4.REGULATION:

Electric utilities welcome EPA's call on coal ash as non-hazardous

5.UTILITIES:

In a male-dominated industry, Southern's COO champions women

ELECTRICITY

6.WORKFORCE:
Power generation loses 6K jobs as industry shifts
7.UTILITIES:
Fla. commission OKs fracking investment request
8.GRID:
Okla. regulators hear cost, safety arguments against $133M smart meter program

OIL AND GAS

9.OIL:
Rig count drops, but prices get a break
10.BUSINESS:
Oil slump jeopardizes value of BP's Rosneft stake
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Crash exposes holes in drilling insurance policies

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Former EPA climate director Kruger previews road ahead for methane regulations

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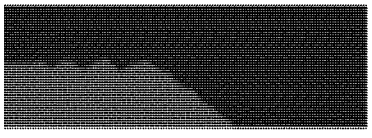

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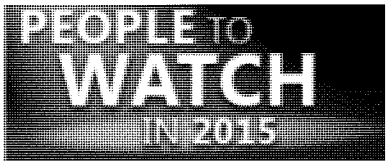
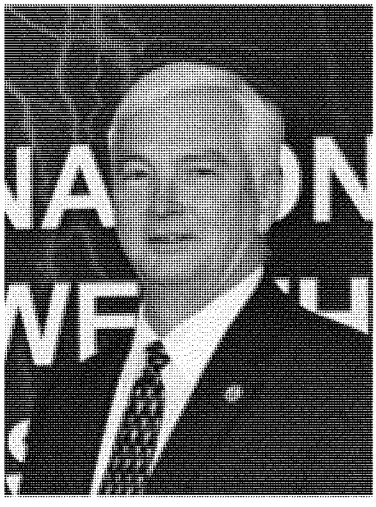

PEOPLE TO
WATCH
IN 2015



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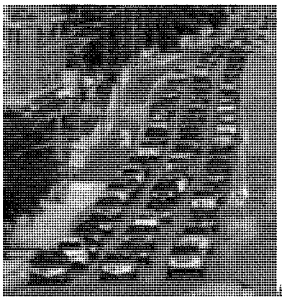


Air & Radiation Law News

for December 17, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Cost-Benefit Analysis of Mercury Rule Big Part of Supreme Court Consideration

Two former top regulators said cost-benefit analysis will be considered by the U.S. Supreme Court for the first time in years when it hears a challenge to the Environmental Protection Agency's mercury rule....

Air Pollution

EPA Seeking Comment on Proposal To Revise National Ozone Standards

The Environmental Protection Agency Dec. 17 will formally open the comment period on its proposal to set more stringent national ambient air quality standards for ozone....

Climate Change

New York State, City Fund Flood Protection System

State and city officials in New York have joined to commit $100 million for the study and design of an integrated flood protection system in a waterfront section of Brooklyn vulnerable to the impacts of climate change, Gov. Andrew M. Cuomo (D)...

Climate Regulation

EPA Power Plant Rule Violates Plain Text Of Clean Air Act, Murray Energy Says

An Environmental Protection Agency proposal to regulate carbon dioxide from existing power plants is illegal on its face and should be blocked, Murray Energy Corp. told a federal appellate court (In re Murray Energy Corp., D.C. Cir., No. 14-1112,...

Climate Regulation

EPA Proposed Ozone Standards Would Cut Into Clean Power Plan Benefits, Economist Says

The Environmental Protection Agency's proposal to set a more stringent national ozone standard would achieve public health benefits that the agency currently has attributed to its proposed carbon pollution limits on existing power...

Climate Regulation

House Panel Outlines 'Fundamental Flaws' With EPA's Plan on Power Plant Emissions

The Environmental Protection Agency's proposed carbon limits for existing power plants contains "fundamental flaws," and serious consideration should given to whether states should devote significant resources to meeting...

Coal Mining

OSM to Revise Coal Mine 'Blast Area' Definition

The Office of Surface Mining Reclamation and Enforcement will revise its definition of "blast area" in its rules related to blasting at coal mines and the resulting emissions from those operations. The Office of Surface Mining will...

Energy

Appeals Court Extends Time for FERC To Seek Supreme Court Review on Order 745

The Federal Energy Regulatory Commission's demand response compensation program will remain alive a little longer after a federal appeals court extended a stay of its ruling that would end the program (Elec. Power Supply Ass'n v....

Energy

Keystone Bill to Be 'First' for Consideration In Republican Senate, McConnell Says

Senate Minority Leader Mitch McConnell (R-Ky.) said Dec. 16 that legislation to approve the Keystone XL pipeline would be "the first item up" for consideration when Republicans take control of the Senate in 2015....

Hazmat Transport

Crude-by-Rail to Peak in 2015-2016, Report Says

The practice of transporting crude oil by rail will likely peak between 2015 and 2016, with rail remaining a staple transport method for crude oil through 2020, according to a recently released IHS Inc. study. Roughly 1.5 million barrels per...

Hazmat Transport

Latest Crude Oil Rail Transport Sweep By New York, FRA Finds More Safety Flaws

A joint state-federal inspection sweep of tracks and rail tanker cars used for crude oil transportation in New York has uncovered 100 safety defects, including eight that require immediate action, Gov. Andrew M. Cuomo (D) announced....

International Climate

UN's Clean Development Market Mechanism Future in Doubt, Largely Sidelined in Lima

The United Nations' Clean Development Mechanism, a plan to use market forces to curb greenhouse gas

emissions that once was hailed as among the most important and resilient parts of the UN process to confront climate change, is fighting...

International Issues

European Commission Plans Withdrawal Of EU Air, Waste Proposals for Review

The European Commission Dec. 16 said it will withdraw draft European Union legislation on air quality and waste to review them and re-propose legislative texts that are at least equally "ambitious."...

Natural Resources

White House Official Joins in Event to Boost Use of Antiquities Act, Other Land Protection

The head of the White House Council on Environmental Quality joined in an event Dec. 16 to promote conservation of public lands, including use of the Antiquities Act by President Obama to set areas off limits to development....

Pipeline Safety

Enbridge Inc. Reports 'Pinhole' Leak In Michigan Line; State Pledges Vigilance

A Michigan task force charged with looking at pipeline safety will monitor an Enbridge Inc. pipeline in Michigan's Upper Peninsula after a "pinhole leak" released a small amount of natural gas liquid into the atmosphere, two...

Radioactive Waste

Wyden Demands Plan to Address Leaks As Condition of Hanford Tanks Worsens

Sen. Ron Wyden (D-Ore.) demanded Dec. 16 the Energy Department provide a schedule and plan within 90 days for addressing leaking radioactive waste tanks at the Cold War-era Hanford nuclear weapons complex in Washington state based on a new...

Trade

Duties to Be Set by U.S. on Imports

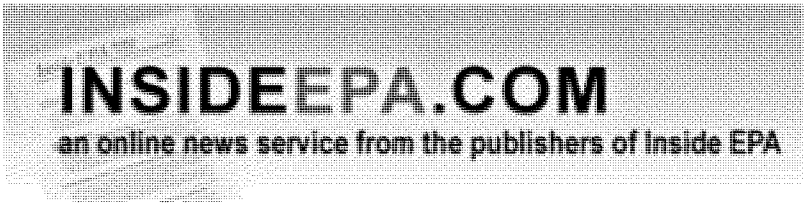
of China, Taiwan Solar Panel Assemblies

The Commerce Department will set duties on solar products from China and Taiwan that combined could exceed more than 200 percent, adding fuel to a renewable-energy clash between the U.S. and China....

Vehicle Fuels

Bipartisan Policy Center Considers Renewable Fuel Standard Reforms in Report

The Bipartisan Policy Center offered 40 recommendations to the Environmental Protection Agency and lawmakers for improving administration of the renewable fuel standard as part of a report....



Inside EPA **Clean Air Report**, 12/18/2014

http://insideepa.com/newsletters/clean-air-report

Latest News

EPA Cites Pending Methane Plan In Bid To Delay Oil, Gas Air Rule Lawsuit

EPA is citing its ongoing work on a methane emissions reduction strategy for the oil and natural gas industry as a reason why a federal appeals court should extend until Jan. 30 a stay on litigation over the agency's air rule for the sector, while EPA reviews options for curbing oil and gas methane with conventional pollutant controls.

News Briefs

GOP Announces Energy State Senators For Key Panels

Senate Republicans have announced their committee assignments for next year's 114th Congress that include several GOP senators from energy-producing states on both the energy and environment committees, giving them prominent positions to challenge EPA's policies affecting the energy sector including its power plant climate rules.

Greenwire

SUPREME COURT:

Industry's mercury challenge could undermine attack on EPA climate rule

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, December 16, 2014

If coal companies get their way when the Supreme Court reviews U.S. EPA's air standards for mercury and other hazardous emissions, they could undermine their primary legal challenge to another landmark pollution rule: President Obama's greenhouse gas limits for power plants.

The justices last month agreed to review the Utility Air Regulatory Group and National Mining Association's challenge to EPA's 2011 mercury and air toxics standards, or MATS.

A high profile environmental rule of Obama's first term, MATS will yield major health benefits by capping emissions of several toxins. But it carries a hefty price tag: $9.6 billion a year to implement.

EPA promulgated MATS under authority found in Section 112 of the Clean Air Act. That provision is also pivotal to the coal industry's early legal challenge to EPA's proposal to limit greenhouse gas emissions from existing power plants.

In a lawsuit that's drawn backing from most major industry groups, coal company Murray Energy Corp. and several states are asking a federal appeals court to block EPA from finalizing the greenhouse gas rule.

EPA issued the global warming rule under a rarely used part of the Clean Air Act, Section 111(d). In the lawsuit, the coal companies' primary charge is that the Section 111(d) prohibits EPA from issuing the standards because it is already regulating coal-fired power plants under Section 112.

"Three years ago, EPA promulgated a national emissions standard under Section 112 of the Clean Air Act for [power plants]," Murray wrote in a brief filed to the U.S. Court of Appeals for the District of Columbia Circuit this week.

"Under the express terms of the Clean Air Act, this action barred EPA from using Section 111(d) of the Act to mandate state-by-state standards for these same sources."

So, what happens to that argument if the Supreme Court sides with coal companies in their challenge to the mercury rule and throws it out?

"It is gone," said Thomas Lorenzen, a former Justice Department environmental lawyer now in private practice at Dorsey & Whitney. "It would defeat that as a basis for challenge right now."

To be sure, there are many ways the Supreme Court could rule in the mercury case. The justices limited their review to "whether [EPA] unreasonably refused to consider costs" when determining that it was "appropriate" to regulate the emissions.

The language refers to a requirement in the Clean Air Act that EPA determine it is "appropriate and necessary" to regulate the emissions before going forward with the regulations. The agency didn't consider cost at that early stage, and the challengers think they should have given the high cost of the compliance regulations by installing emissions control technologies (*E&ENews PM*, Nov. 25).

Amanda Leiter, an environmental law professor at American University's Washington College of Law, said there are several ways the justices may resolve the case without undermining the argument presented in the greenhouse gas case.

Notably, EPA may win and the court could uphold the MATS rule in its entirety. The justices could also side with the challengers and remand the case to EPA to make revisions considering cost. That would leave the MATS rule on the books and preserve the greenhouse gas case challenge.

Or, in a more nuanced ruling, the court could preserve power plants as a "source category" under Section 112 while siding with the challengers.

"EPA [then] continues to have an obligation to regulate mercury from power plants, it just has to rethink how to structure the regulation, considering costs," Leiter said. "Challengers would likely argue that even in this posture, power plants are still a 'source category' ... and that issue would have to be litigated."

Power plants account for a third of the country's greenhouse gas emissions, and EPA's proposed standards would cut carbon emissions by 30 percent by 2030 from 2005 levels and shift the country from coal-based power to renewables like wind and solar.

Importantly, the argument in the greenhouse gas case is not the coal industry's only contention, nor is it a clear winner. It stems from ambiguity created by two versions of Section 111(d) being passed into law -- one from the the Senate and another from the House.

Both versions seek to prohibit EPA for issuing duplicative regulations. The Senate version prevents EPA from regulating a *pollutant* already covered by Section 112.

The House version, however, bars EPA from using Section 111(d) to regulate a *source* already included in Section 112. The coal industry claims that version scuttles EPA's greenhouse gas standards right out of the gate because of the MATS regulations.

EPA counters that the glitch presents a prime example of a legislative ambiguity that the agency deserves deference from the court to resolve. The agency has also asked the D.C. Circuit to dismiss the lawsuit because the agency has yet to finalize the standards (*Greenwire*, Nov. 4).

But it appears clear that if EPA promulgates the standards as proposed, the coal industry will turn to the same argument regarding Section 112 when they file lawsuits challenging the final rules next year.

DOE:

Wyden calls for Hanford plan after watchdog finds leaky tanks

Kevin Bogardus, E&E reporter

Published: Tuesday, December 16, 2014

Sen. Ron Wyden (D-Ore.) is calling on the Department of Energy to come up with a plan to deal with deteriorating tanks at the country's largest nuclear waste site.

In a letter sent today to Energy Secretary Ernest Moniz, Wyden said the department has not been aggressive enough in addressing problems at the Hanford, Wash., waste site. The site, which once produced plutonium for nuclear weapons during the Cold War, has 177 storage tanks that store about 56 million gallons of nuclear waste.

"The tanks at Hanford -- both single shell (SST) and double shell (DST) -- are in deteriorating condition and the schedule for addressing the problem is slipping inexorably into the future," Wyden wrote in his letter to Moniz. "Although the Department of Energy (DOE) has expanded its programs to monitor leaks from the tanks, I am deeply concerned about what continues to be a policy of watch-and-wait."

Wyden wrote the letter to Moniz in response to a Government Accountability Office (GAO) report that studied the status of Hanford's waste storage tanks.

That report warns the department that it's unclear how long the aging tanks can safely store the waste on site and that DOE has not taken into account the tanks' worsening conditions. GAO made several recommendations to DOE to improve safety, such as updating its waste retrieval schedule and assessing other alternatives to create more space for waste.

The department agreed with those recommendations, but Wyden -- who has hounded DOE on Hanford and asked for the GAO report back in February 2013 -- wants more specific information.

"Agreeing to the GAO recommendations is one thing, implementing them is another. As such, I respectfully request that the Department provide me with a schedule and plan for the implementation of each of GAO's recommendations within 90 days of the date of this letter," Wyden wrote.

A DOE spokeswoman referred *Greenwire* to the department's comments included with the GAO report when asked about Wyden's letter.

In those comments, Mark Whitney, DOE's acting assistant secretary for environmental management, said the department has taken several steps to boost its monitoring program, create more tank space and cut down on the risk of leaks at Hanford.

Whitney said managing the site's waste is "one of DOE's highest priorities for Hanford."

Hanford has been plagued by problems, from running years behind schedule to going over budget.

Further, after an expert panel found a "causal link" between releases of chemical vapors from Hanford's tanks and workers' respiratory issues, Washington state Attorney General Bob Ferguson (D) announced last month that he would sue DOE and one of its contractors (*E&ENews PM*, Nov. 19).

Whistleblowers, too, have been axed after raising safety concerns about the site. The department's inspector general has been called into action but in at least one instance could not make a judgment on an employee's termination due to lack of cooperation from contractors (*Greenwire*, Nov. 20).

GRID:

Court keeps demand-response rule intact through Jan. 15

Hannah Northey, E&E reporter

Published: Tuesday, December 16, 2014

A federal appeals court yesterday ruled that a controversial demand-response program can stay intact through Jan. 15 while the Obama administration seeks a Supreme Court review.

The U.S. Court of Appeals for the District of Columbia Circuit granted the Federal Energy Regulatory Commission's request to extend the stay of a motion that would vacate Order 745, which directs demand-response providers such as factories or commercial buildings to receive full market prices when they curtail electricity use.

The Edison Electric Institute and other utilities had urged the court to reject FERC's request and immediately vacate the order, arguing FERC could easily put the rule back in place if it is successful at the Supreme Court (*Greenwire*, Dec. 15).

David Morenoff, FERC's general counsel, told the appeals court in a Dec. 8 filing that a stay of the mandate is warranted because the court already granted the commission a 90-day extension after presumably finding "substantial legal question and good cause."

D.C. Circuit judges vacated the rule in May, but the White House is asking the federal appeals court to keep Order 745 in place until its appeal plays out at the high court.

Supreme Court justices typically give petitions submitted by the solicitor general a close review, but the odds of the court taking up the case are low. The Supreme Court receives thousands of petitions every year and grants fewer than 100. The court will likely consider the demand-response petition next spring.

The D.C. Circuit ruled that FERC far overstepped its authority under the Federal Power Act in issuing the order -- a decision that was welcomed by EEI and the Electric Power Supply Association, groups that for years had argued the order went "too far" and trampled on states' exclusive authority to regulate retail markets.

TECHNOLOGY:

DOE awards $60M for methane detection, building climate projects

Katherine Ling, E&E reporter

Published: Tuesday, December 16, 2014

The Energy Department today announced $60 million for cutting-edge technology that will help detect, locate and measure methane emissions and provide personalized temperature regulation in buildings for improved energy efficiency.

DOE's Advanced Research Projects Agency-Energy (ARPA-E) is offering awards to 11 projects in each category -- Methane Observation Networks with Innovative Technology to Obtain Reductions (MONITOR) and Delivering Efficient Local Thermal Amenities (DELTA) -- in an amount ranging from about $1.5 million to $4.5 million. The final award amounts are under negotiations, ARPA-E said.

The selected winners are located across the country and include universities, startup companies and large corporations.

Bridger Photonics Inc. in Bozeman, Mont., is set to receive $1.5 million to develop a light-detection and ranging system (LiDAR) for "rapid and precise" methane measurements resulting in 3-D topographic information about potential leak locations. General Electric Co. in upstate New York could also receive

about $1.5 million to create an optical fiber system to detect methane through an infrared spectroscopic system.

Rebellion Photonics Inc. in Houston is planning to develop a lightweight, miniature and portable long wavelength infrared imaging spectrometer that would use "cloud" computing capabilities to stream results to mobile devices for $4.3 million in ARPA-E funding.

In the localized temperature regulation program, winners incorporated metal, fabric and software to improve the ability to manage climate in smaller sections of buildings.

The University of Maryland would use potentially $3.1 million in funding to create a textile that could "open pores" in the fabric to either contain or release infrared heat. Many of the other DELTA awardees listed by DOE would also develop different patterns in textiles and types of fabric that would more efficiently warm or cool a person in order to lower building-wide climate needs.

The University of Maryland is also set to receive $2.6 million for a different project that would develop a personalized vapor compression heat pump that could be moved around a floor and provide air conditioning as needed and would release heat at night.

Syracuse University could be awarded $3.2 million that would basically develop mini-refrigeration units using a micro-compressor in a micro vapor compression system. The project could save more than 15 percent of energy provided for heating and cooling, according to DOE's project description. A similar system has been considered to regulate soldiers' temperatures in hot environments.

Click here for the full list of project descriptions.

UTILITIES:

Another email links Calif. commissioner with PG&E scandal

Published: Tuesday, December 16, 2014

A judge-shopping scandal between the California Public Utilities Commission and Pacific Gas and Electric Co. continues this week with a newly released email.

In the message, which was ordered to be released by Judge Amy Yip-Kikugawa, Commissioner Mike Florio offered to help PG&E by writing a favorable opinion on a $1.3 billion gas rate if the company was unhappy with one from another commissioner.

According to the email from ousted PG&E Vice President Brian Cherry, Florio told Cherry he "wanted to be involved" in the gas rate decision.

"He even volunteered to do an alternate if we didn't like [Commissioner Carla Peterman]'s decision," according to the company email.

This is just the latest example of PG&E attempting to curry favor with commissioners in a scandal that began in September when the company fired Cherry and two other executives, releasing emails implicating two commissioners and high-ranking agency staff (*EnergyWire*, Nov. 20).

Those emails show the fired PG&E executives arranging with commissioners to get favorable judges to hear their gas rate case.

Florio has said he didn't know he was violating commission rules by communicating with the utilities and has apologized for his actions.

San Bruno attorney Britt Strottman called the emails "the tip of the iceberg" and said the city would continue to fight to release more messages (Jaxon Van Derbeken, *San Francisco Chronicle*, Dec. 15). -- **AW**

COAL:

Navajo Nation power plant divides tribe members

Published: Tuesday, December 16, 2014

The Four Corners coal-fired power plant is one of the oldest in the country and, because of its placement in the Navajo Nation, one of the most controversial.

Tribe members say the plant has made them sick and killed their livestock. It's also driven wildlife away and coated nearby trailer homes in a layer of black dust, residents say.

The plant, owned and operated by Arizona Public Service Co. on land leased from the Navajo tribe, is near another coal-fired plant, the San Juan Generating Station, which is just off the Navajo reservation in northwest New Mexico.

The sites are the two largest stationary emitters of nitrogen oxide, researchers at Los Alamos National Laboratory have found. Pending changes to federal air regulations could pose compliance problems for the facilities. Four Corners has long divided tribe members, some of whom want the 800 jobs and an estimated $40 million in taxes and royalties they bring in each year, and others who say the tribe should be investing in cleaner energy sources instead.

The plant's operator says it has taken steps to clean up the facility in recent years, including closing three of its five stacks and retrofitting the plant to cut nitrogen oxide emissions by at least 30 percent. Activists say that's not good enough to protect residents' health and are seeking a federal study on the emissions' health impacts.

"It's like drinking 15 ounces of Drano instead of 20," said Mike Eisenfeld, the New Mexico energy coordinator for the San Juan Citizens Alliance (John Glionna, *Los Angeles Times*, Dec. 15). -- **SP**

WYOMING:

Bill would OK teaching of human impact on climate

Published: Tuesday, December 16, 2014

Teaching that humans have contributed to global climate change could soon be allowed in Wyoming classrooms if a Sheridan Republican has his way in the Legislature.

Rep. John Patton (R) plans to sponsor legislation that would repeal a budget footnote passed last year that banned money from being spent on "next generation science standards" that include teaching about human contributions to global warming.

The footnote has paralyzed the Wyoming State Board of Education and local school districts with

confusion about whether they can adopt or discuss the standards without spending money on them.

Patton said he personally doesn't know how much humans have contributed to climate change but wants to give students the opportunity to study the issue.

"I want the standards so we could study and learn to see if we can find out and learn what contribution we are making and what contribution we can make to diminish the pollutant if it is in fact significant," he said (Laura Hancock, *Casper* [Wyo.] *Star-Tribune*, Dec. 15). **-- AW**

FRANCE:

Proposed diesel car ban in Paris draws criticism

Published: Tuesday, December 16, 2014

A proposal to ban diesel cars in Paris is creating an uproar from local drivers.

The plan, proposed by Mayor Anne Hidalgo, would remove diesel-powered cars from the center of the city by 2020. The Paris City Council will debate the proposal in February 2015.

Concentrations of diesel cars in France are some of the highest in Europe. Many people have criticized the mayor's plan, saying Hidalgo is trying to appeal to the elite residents residing in central Paris.

"What is the barman who lives on the far outskirts of Paris supposed to do when he needs to get to his work late at night?" said Daniel Quéro, president of the group 40 millions d'automobilistes, which represents car owners. "Ms. Hidalgo's proposal is that of a Champagne socialist who is far removed from concerns of everyday people."

In 2005, the European Commission found that roughly 40,000 people die per year in France due to air pollution. Last March, smog was so severe that the city offered free public transportation for three days to ease traffic congestion and to address public health concerns (Dan Bilefsky, *New York Times*, Dec. 15). **-- MH**

NUCLEAR:

Third Way's Freed says government support essential to commercializing advanced nuclear technology

Published: Tuesday, December 16, 2014

What role could advanced nuclear technology play as part of the solution to climate change? During today's OnPoint, Joshua Freed, director of Third Way's Clean Energy Program, discusses private-sector funding and progress on advanced nuclear and the role the federal government could play in helping to commercialize these technologies. He also discusses the potential for nuclear legislation during the 114th Congress.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Wed., December 17, 2014

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1.TRADE:

U.S. stiffens sanctions against China in alleged solar dumping case

The Obama administration yesterday further sharpened its knife in a solar trade fight with China that has bloodied participants on both sides of the Pacific but failed to eliminate what some have characterized as an unyielding attack by Chinese solar firms against fair trade.

2.FOSSIL FUELS:

China plans major slowdown of new coal-to-gas projects in bid to cut emissions

HONG KONG -- China will exclude additional coal-to-natural-gas projects from its coal industry's next five-year development plan, according to local media reports.

TODAY'S STORIES

3.CALIFORNIA:
Drought has left state 11T gallons drier, NASA finds
4.RENEWABLE ENERGY:
Minn. approves sprawling, $250M solar power complex
5.STATES:
Wash. Gov. Inslee proposes carbon fee to pay for transportation projects
6.FINANCE:
Baffled by how to invest in clean energy abroad? Here's a road map
7.REGULATION:
GOP lawmakers draft ways to attack EPA's Clean Power Plan
8.NEGOTIATIONS:
Is a 2-degree-Celsius cap enough?
9.WORKFORCE:
When temperatures rise, economic activities drop -- study
10.CALIFORNIA:
Native American tribe protecting forests sells carbon credits
11.AGRICULTURE:
Vietnam's rice and shrimp farms face climate risks

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ENERGYWIRE — Wed., December 17, 2014

READ FULL EDITION

1.GRID:

Computer models contest EPA Clean Power Plan's reliability impacts

U.S. EPA is relying on a complex computer model of the nation's energy networks and markets in declaring that its proposed Clean Power Plan will not lead to grid blackouts and unsupportable consumer costs.

TOP STORIES

2.TECHNOLOGY:
Obama's former campaign field director signs on with SolarCity

3.ELECTRICITY:
FERC capacity zone for downstate N.Y. is working -- grid operator

4.ALASKA:
Obama prohibits oil and gas development in Bristol Bay

ELECTRICITY

5.ELECTRICITY:
Texas grid operator sees potential reliability fallout from EPA plans

6.UTILITIES:
Georgia Power's nuclear expansion faces another 1-year delay

OIL AND GAS

7.FINANCE:
Ailing Canadian driller gets a whopping $8.3B buyout

8.EARTHQUAKES:
Uncertainty is a challenge in linking quakes with drilling activity

9.NATURAL GAS:
Northeast import project gets mixed assessment in rare DOT review

10.REGULATION:
Denton tries another approach to protect residents from drilling

11.COAL:
Pa. mine closures reflect tougher regulations, gas competition

12.COLORADO:
Regulators grapple with oil and gas enforcement

13.LOUISIANA:
State economist doesn't see crude prices stressing budget

14.SECURITY:
Islamic State group's oil revenues take a hit -- State Department

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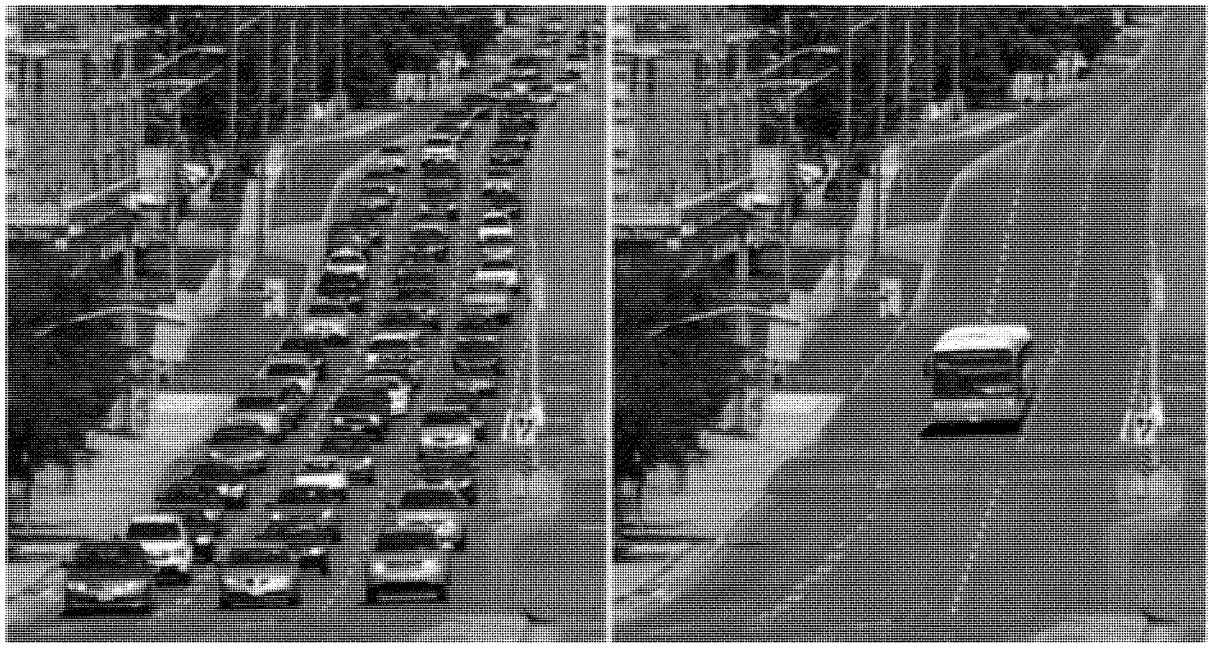

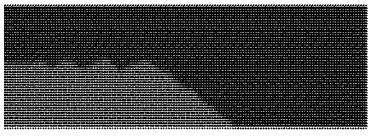

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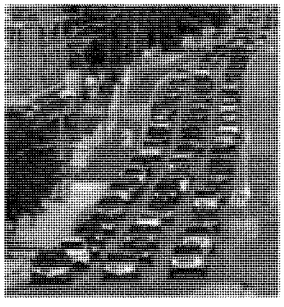

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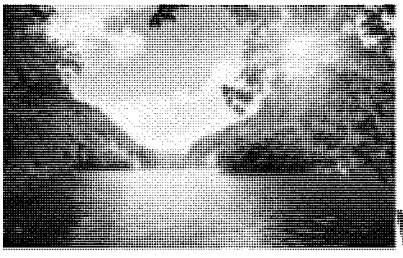
From: Turley, Jennifer
Sent: Wed 12/17/2014 4:00:50 PM
Subject: Water Law News for December 17, 2014



Water Law News

for December 17, 2014

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

Virginia Nutrient Trading Proposal Called Model for Chesapeake Bay States, Others

Virginia's proposed nutrient trading program could be a model for both restoring rural economies and helping finance major environmental restoration programs nationwide, the chiefs of the Environmental Protection Agency, the U.S....

Climate Change

New York State, City Fund Flood Protection System

State and city officials in New York have joined to commit $100 million for the study and design of an integrated flood protection system in a waterfront section of Brooklyn vulnerable to the impacts of climate change, Gov. Andrew M. Cuomo (D)...

Energy

Keystone Bill to Be 'First' for Consideration In Republican Senate, McConnell Says

Senate Minority Leader Mitch McConnell (R-Ky.) said Dec. 16 that legislation to approve the Keystone XL pipeline would be "the first item up" for consideration when Republicans take control of the Senate in 2015....

Gulf of Mexico

EPA Defends Its Role in Helping States Reduce Size of Gulf of Mexico Hypoxic Zone

The Environmental Protection Agency is providing technical advice to states on how to develop water quality criteria for nitrogen and phosphorus in addition to helping them develop long-term strategies for reducing these pollutants that...

Invasive Species

Invasive Snails More Prevalent in Great Lakes Than Previously Thought, Researchers Say

Faucet snails, an invasive species that carries parasites deadly to Great Lakes-area waterfowl, have been found in several new locations throughout the Great Lakes basin, researchers said. ...

Oil & Gas

President Withdraws Bristol Bay, Alaska,
From Consideration for Oil, Gas Exploration

President Obama announced Dec. 16 he was blocking the possibility of leasing parts of Bristol Bay, Alaska, for oil and gas exploration and production....

Water Infrastructure

North Carolina Agency Orders Owners
Of 'High-Hazard' Dams to Address Damage

The North Carolina Department of Environment and Natural Resources has ordered the owners of three "high-hazard" dams in the state to address serious structural problems....

Water Pollution

Coalition of Alabama Advocacy Groups Maps
Coal Ash Sites, Calls for Tough Federal Rules

A coalition of Alabama river advocacy groups released a map illustrating the location of coal ash storage sites relative to downstream drinking water intakes....

Water Pollution

Stormwater Permit Issued for New Mexico
By EPA to Help Restore Rio Grande

The Environmental Protection Agency has issued an Albuquerque, N.M.-area permit designed to protect the Rio Grande....

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Inside EPA **Risk Policy Report**, 12/16/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Says State, Not Federal, Rules Needed To Encourage Water Trading

EPA officials say the agency has no plans to update its 2003 guidance on water quality trading, and that any current weaknesses in trading programs can be addressed by stronger, clearer language in state-issued Clean Water Act (CWA) permits, actions that water quality trading advocates agree is necessary.

EPA Set To Release Planning Tool For State Water Quality Trading Programs

EPA is preparing an online tool that will act as a roadmap for states to develop water quality trading programs, promising that use of the tool could speed approval of state initiatives by federal regulators and that it could support frameworks for interstate trading, although it stops short of the federal trading guidance many stakeholders have sought.

EPA Weighs Farming CWA Permit Policy After 'Interpretive' Rule Scrapped

EPA Administrator Gina McCarthy says the agency is working with the Department of Agriculture (USDA) on next steps for a policy to clarify normal farming practices exempt from Clean Water Act (CWA) permits, after Congress forced the administration to withdraw its controversial interpretive rule aimed at clarifying the exemptions.

NMFS Reverses CWA Permits' 'Jeopardy' Finding, Corps Plans New Rules

The National Marine Fisheries Service (NMFS) has reversed its 2012 finding that a streamlined Clean Water Act (CWA) permitting program -- long criticized by environmentalists for inadequate oversight of permits -- could create "jeopardy" under the Endangered Species Act (ESA), but is highlighting planned new rules by the Army Corps of Engineers to ensure species protection.

Greenwire

FISHERIES:

Obama admin unveils ambitious plan to combat illegal fishing, seafood fraud

Emily Yehle, E&E reporter

Published: Tuesday, December 16, 2014

The United States is poised to tackle illegal fishing and seafood fraud on a broader scale than ever before, with the release today of a set of recommendations that calls for everything from "boat-to-plate" traceable fish to international enforcement.

Released by a presidential task force, the recommendations are the first step in what ocean advocates hope is a sustained effort to combat illegal, unreported and unregulated (IUU) fishing. While the United States strictly regulates its own fisheries, the rest of the world has a mixed track record -- and provides almost 90 percent of the seafood Americans eat.

Eileen Sobeck, assistant administrator for the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, said in an interview today that the recommendations take a "holistic look" at combatting IUU fishing, pulling together various agencies to tackle the problem.

"We are really excited at the elevated level of attention that this issue is getting and the broad range of recommendations," she said, later adding: "It's never really been looked at as one coherent area that needs attention."

As laid out in a *Federal Register* notice, the administration's aims are ambitious, including an 18-month deadline to establish the first phase of a program to track seafood from "point of harvest" to U.S. entry.

"The path laid out by President Obama's task force has created a historic opportunity to ensure that the seafood sold in the U.S. is safe, legally caught and honestly labeled," Beth Lowell, Oceana's senior campaign director, said in a statement. "The problems are real, but the solution is clear. Boat-to-plate traceability will forever change the way we think about our seafood."

Oceana has long pressured the administration to enforce traceability, releasing reports that show a large chunk of seafood products are mislabeled (*Greenwire*, Oct. 30). The task force's recommendations detail how that could be done -- first by developing what needs to be tracked (such as species and harvester), then by setting up a program for species most susceptible to fraud, and finally by expanding that program to all seafood.

The task force -- which is headed by the State Department and NOAA -- also makes recommendations in three other categories: international cooperation, enforcement, and local and private partnerships.

Several of those would need congressional action.

On the international front, the task force urges Congress to pass legislation to implement a 2009 global agreement that sets standards for port inspections, called the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PMSA). For enforcement, it highlights the need for "additional enforcement tools" through congressional legislation that would broaden authorities for inspecting and seizing seafood, as well as beef up criminal charges.

But some of the recommendations are about setting agency priorities. For example, the task force recommends that the State Department maintain IUU fishing as a "diplomatic priority," in line with Secretary John Kerry's efforts to raise the profile of ocean issues.

The task force also proposes that it create more reports, including one on a strategy for collecting and sharing fisheries-related information across the government. Another suggested report would look at best practices for data tracking, high seas inspection and surveillance measures, among others.

Environmental groups say the next step is "presidential leadership" to ensure the recommendations are carried out. Michele Kuruc, vice president of marine policy at the World Wildlife Fund (WWF), said in an email that Obama must "turn these recommendations into decisive policy."

"We need leadership from the highest levels of government to ensure Americans aren't consuming stolen seafood and that honest fishers are treated fairly," she said. "Our planet's oceans and the sustainable future of our fisheries depend on it."

Absent from the report are specific recommendations for NOAA's Office of Law Enforcement. A recent article in *The Baltimore Sun* highlighted the agency's decision to cut down on the number of criminal investigators in favor of beefing up its patrol officers. It linked that decrease to a decline in seafood fraud cases.

In the wake of criticism from fishermen and the Commerce Department inspector general, NOAA crafted a plan in 2012 to decrease its special agents from 114 to 73. That means that while NOAA's enforcement workforce was once 84 percent special agents and 16 percent "enforcement officers," it is amid a shift to flip that ratio to 39 and 61 percent, respectively.

The recommendations are open for public comment from Thursday to Jan. 20, with the task force asking for input on how to implement them.

FISH AND WILDLIFE SERVICE:

5 officials to pace government's second-busiest rulemaker in 2015

Corbin Hiar, E&E reporter

Published: Tuesday, December 16, 2014

Seventh in a series on energy and environment staffers worth watching in 2015.

Fish and Wildlife Service employees were likely drawn to the Interior Department agency by their love for the outdoors, but top FWS officials spend more time in offices and meeting rooms working on regulations than they do in wildlife refuges.

Aside from the Treasury Department's Internal Revenue Service, no federal subagency has more active rulemakings than FWS's 142, according to the biennial regulatory plan released last month by the White House. U.S. EPA has 129 regulations in the works (*Greenwire*, Nov. 24).

SPECIAL SERIES

In this series, E&E rounds up some of the key players on energy and environmental policy.

The FWS regulations include 12 deemed "significant," meaning the White House Office of Information and Regulatory Affairs has determined that the rules could have major impacts on the economy, the law or the government.

The service's rulemakings range from considering protection for central Florida's tiny Highlands tiger beetle to all government permitting and budget decisions in areas considered habitat for endangered species. Navigating the bureaucracy, legal requirements and interests of all stakeholders in proposed regulations requires the collective expertise of FWS's more than 8,700 employees.

But as the Obama administration heads into its final two years, interviews with interest group representatives as well as current and former FWS staffers suggest that Director Dan Ashe will rely heavily on five officials to carry out the service's agenda.

Robert Dreher, associate director

An experienced attorney but a FWS neophyte, Robert Dreher is the service's No. 2 official and will play a significant role in policymaking.

The newly created associate director position allows him to serve as "sort of a glorified troubleshooter," Dreher said in an interview.

In practice, that has meant coordinating with other agencies on high-profile issues like the potential listing of the greater sage grouse under the Endangered Species Act and combating wildlife trafficking, the latter of which took him to Ethiopia and Tanzania for two weeks early last month.

Dreher expects to work on the potential delisting of the grizzly bear as well as issues related to the gray wolf.

Associate Director Robert Dreher. Photos courtesy of U.S. Fish and Wildlife Service.

He's also involved in a proposal to establish a permitting process that would allow for the unintentional harm or killing of migratory birds. The goal, he said, is to give businesses clarity on compliance and legal responsibilities while also reducing the level of bird injuries and deaths.

He started at FWS this spring after spending a little more than a year as the acting assistant attorney general for the Department of Justice's Environment and Natural Resources Division (*Greenwire*, May 27).

Agency watchers are confident that Dreher, who turns 63 tomorrow, will excel in the position.

"He is one of the most talented guys the Interior Department has," said Donald Barry, who was Interior's assistant secretary for fish, wildlife and parks during the Clinton administration. Dreher is an "extremely smart lawyer" and a "savvy operator," he added. Barry is now the senior vice president of conservation programs at Defenders of Wildlife, a Washington, D.C.-based environmental group that Dreher represented as general counsel before joining the Obama administration.

A graduate of Yale Law School, Dreher also previously worked as deputy executive director of the former Environmental Law & Policy Institute at Georgetown University Law Center, an attorney at the law firm

Troutman Sanders LLP, and deputy general counsel at EPA. Early in his career, Dreher spent a decade as an attorney at the Sierra Club Legal Defense Fund, which later became Earthjustice.

Originally from New York's Finger Lakes region, he earned a master's degree in American civilization from Brown University and an undergraduate degree from Harvard College before becoming a lawyer.

Bob -- as most of his family, friends and colleagues refer to him -- is married to a hospice nurse, whom he met in law school. They have four children.

For fun, he plays guitar in a Takoma Park, Md.-based blues band, "Cooking With Gas."

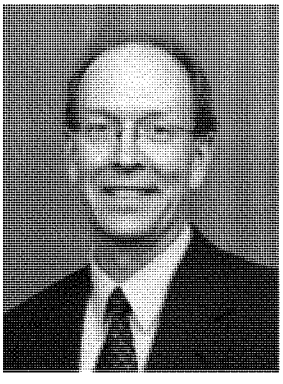
Gary Frazer, assistant director for endangered species

Of the 12 FWS rulemakings that the White House is most closely monitoring, Gary Frazer is the point man for four; only one other FWS official has as many.

One of those rules seeks to clarify regulations for "incidental takes" -- accidental killings of protected species.

Three other controversial proposals aim to revise aspects of the critical habitat designations, which place restrictions on federal actions, permitting and spending in areas deemed essential for the conservation of threatened or endangered species.

As a nonpolitical employee, Frazer worked his way up from field biologist to assistant director for endangered species, got pushed aside and then found his way back to that demanding job.



Assistant Director for Endangered Species Gary Frazer.

His first stint in charge of the endangered species program began in 1999 and ended badly. People who have followed Frazer's career -- which included a yearlong detail to the Senate Environment and Public Works Committee -- believe he was demoted in 2004 for attempting to enforce the Endangered Species Act during the George W. Bush administration, whose work on endangered species was skewered by scientists, environmentalists and the Interior inspector general (*Greenwire*, Jan. 15, 2009).

Then-Inspector General Earl Devaney slammed political interference in species decisions by Julie MacDonald, the former deputy assistant secretary for fish and wildlife and parks, in a scathing 2009 report to Congress (*Greenwire*, Dec. 16, 2008).

After waiting out Bush's second term as a FWS liaison to the U.S. Geological Survey, Frazer returned to the service's assistant director level in 2008, initially as head of the ecological services program. A year

later, he again became its top endangered species official.

Frazer's circuitous journey through the bureaucracy and personal style have earned him the grudging respect of some conservationists and suspicion from others.

His career trajectory "does show that he has some backbone about the species," said Noah Greenwald, who is the endangered species director at the Center for Biological Diveristy, a green group. He was one of the environmentalists who negotiated with Frazer to reach a landmark endangered species settlement that set a six-year schedule of species to be considered for federal protections (*E&ENews PM*, Sept. 9, 2011).

Despite those close interactions, however, Greenwald described him in an interview as "somewhat enigmatic," an impression shared by others.

Many wildlife advocates also lamented Frazer's role in controversial decisions like the move to delist the gray wolf (*Greenwire*, June 7, 2013).

His unpopular actions, coupled with his general inscrutability, are a cause of some concern among environmentalists, who questioned his commitment to protecting endangered species. He was, for instance, repeatedly described as "risk-averse."

But Defenders' Barry, who got to know Frazer when they were both working in Congress, dismissed those concerns.

"I have no doubt about Gary's personal conservation values," Barry said. "Once you've been sent into the dungeon for torture -- guess what -- you become very careful in what you say and how you say it."

Frazer couldn't be reached for an interview because he is on vacation, according to FWS spokesman Gavin Shire.

Frazer was born and brought up in a small farming community in southeastern Iowa. He earned a bachelor's degree in fisheries and wildlife biology from Iowa State University in 1977 and a master's in forestry with a wildlife specialty from Purdue University in 1981.

Frazer and his wife have two children and live in Herndon, Va.

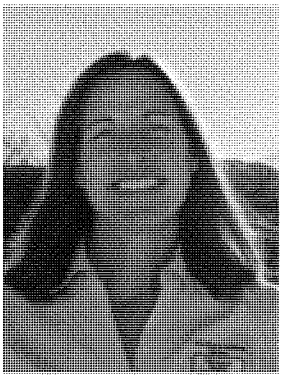
Wendi Weber, director for the Northeast Region

Wendi Weber is an enthusiastic regulator who, some conservationists suggest, has what it takes to eventually become the director of the service.

"She is both smart on the substance and smart on the politics of what it takes to be a leader in the Fish and Wildlife Service," environmentalist Tim Male said in an interview. He is a Takoma Park, Md., council member and former conservation policy vice president at Defenders of Wildlife (*E&E Daily*, Nov. 18, 2011).

"Wendi seems to be extremely well-respected by her staff," added Stuart Gruskin, chief conservation officer at the Nature Conservancy (TNC). He has worked with Weber both at TNC and as an executive deputy commissioner of the New York State Department of Environmental Conservation.

"Apart from being substantively smart and focused on the work, I think she is also a great leader within the organization," Gruskin said. "Those [skills] will serve her well in whatever she does."



Northeast Regional Director Wendi Weber.

While Weber hasn't had to address high-profile sage grouse or wolf issues, she's won plaudits for her efforts to restore the threatened bog turtle and New England cottontail rabbit, a candidate for Endangered Species Act protection.

"I love that challenge of trying to solve the difficult problem," Weber said in an interview. "There's probably some real stinkers that you can't, but I haven't come across anything yet that I haven't been able to get to a better place."

Weber will need to employ those stakeholder management skills to continue combating white-nose syndrome, a deadly fungal disease that has killed nearly 7 million bats, and restoring the endangered Atlantic salmon -- two of the top issues she plans to address in 2015.

Her other priorities include encouraging young people and urban dwellers to experience wildlife refuges, restoring marshes, improving aquatic ecosystems and protecting large landscapes that are resilient to climate change.

In many ways, Weber is a natural fit for FWS, which she refers to as her "dream agency."

Born in Rochester, N.Y., Weber "grew up a dirty, muddy girl who got to play outside," she said. "I didn't have a good TV or video games, that's for sure."

Although she initially studied medicine at the University of Rhode Island, a zoology professor "brought me to see sea turtles during my college years, and from there, my whole life changed -- it was just amazing!" she said. "They are just like these prehistoric, majestic creatures. They lay their eggs under the moonlight. How could you not be like, I'm definitely becoming a biologist?"

Weber furthered her zoology studies on Georgia's barrier islands and in the Caribbean. Her first job after college was collecting data on sturgeon and other fish for the Georgia Department of Natural Resources. After picking up a master's degree in fisheries at the University of Georgia and a short stint at the Florida Department of Fisheries, she got the call from FWS in 1998.

With Weber's experience on sturgeon issues in mind, FWS "brought me in to work with the law enforcement and make cases on illegal caviar," she explained. She then did stints with the endangered species program on the West Coast, in the Midwest and finally in the Northeast. Weber was promoted to regional director in 2011.

An avid runner, the 44-year-old Weber and her husband are raising their two teenaged boys much like she was brought up: in the woods and water.

"They have gadgets. There's no getting away from that," she said. "But we do go outside," she added, often to go hiking or camping.

Noreen Walsh, director for the Mountain-Prairie Region

In charge of FWS activities from the North Dakota oil patch to the southern Nevada desert, Noreen Walsh has managed some of the most contentious endangered species listing decisions in recent memory. While those outcomes have disappointed many, she has kept good personal ties with advocates on both sides of the issues -- so far.

Take the wolverine, for example. Many environmentalists raised concerns about the role Walsh played in the decision last summer to not protect under the Endangered Species Act the fewer than 300 wolverines remaining in the United States. That went against the recommendations of agency scientists.

Citing documents obtained by the *Los Angeles Times*, green groups have alleged that she caved under political pressure from the states (*E&ENews PM*, July 31).

Environmentalists have since filed a series of lawsuits attempting to overturn the service's ruling (*Greenwire*, Oct. 21).

But even conservationists who felt burned on the wolverine decision have come around on Walsh.

Regional Director Noreen Walsh.

"Before I started working with her a little more closely recently, I was frustrated with her and this region about the decision they made around the wolverine listing," said Megan Yuller, senior conservation biologist at Rocky Mountain Wild, a Denver-based environmental group. Since then, she added, "I've been pretty impressed with her with the work that I've done with her."

On the other hand, the recent decision to list the Gunnison sage grouse as threatened upset many local government officials. But they, too, are fans of Walsh.

"Noreen Walsh is an incredibly bright, articulate and hardworking woman," Paula Swenson, a Gunnison County, Colo., commissioner, told *Greenwire* recently.

"I believe that she has the hardest position currently in the Fish and Wildlife Service. Not only does she have the Gunnison sage grouse, she's got multitudes of others coming down the pike," Swenson said, referring to other Western species that are candidates for protection under the Endangered Species Act. "Honestly, I wouldn't want to be in her shoes."

FWS and Walsh are already facing lawsuits from both the state of Colorado and environmentalists over their Gunnison sage grouse decision (*E&ENews PM*, Dec. 11).

And Congress appears poised to further complicate the situation with a rider to the fiscal 2015 appropriations bill that would ban the Fish and Wildlife Service from proposing or finalizing Endangered Species Act listings for any sage grouse species during that period (*E&E Daily*, Dec. 10).

But Walsh, whom FWS didn't make available for an interview, has worked her way out of similarly tricky spots in the past, according to Swenson. As the Gunnison sage grouse listing was nearing completion, all of the work Walsh had done to get local officials on board "fell apart" because her staff had discounted the efforts they had already made to protect the rare birds, the county official said.

"Noreen made a point to meet with me -- and we met in Buena Vista, so we both had to drive halfway -- and we spent an entire morning hashing through what could and what we could not do to bring the negotiations back to the table," Swenson said. "To me, that's going above and beyond the call of duty."

Walsh was promoted to regional director in December 2012 after working for four years in the Mountain-Prairie Region. In her 24 years at FWS, she has served in three other regions, as well as in the headquarters office. The first five years of career at FWS were spent as a research biologist in Fairbanks, Alaska, investigating biological issues on the Arctic National Wildlife Refuge.

Before joining FWS, Walsh earned a bachelor's degree in fisheries and wildlife biology from Michigan State University and a master's in wildlife biology from Colorado State University. She and her husband reside in the Denver area with their two daughters, and enjoy hiking and camping.

William Woody, chief of law enforcement

When poachers and traffickers evade FWS regulations, it's William Woody's job to bring them to justice.

Increasingly, that responsibility is leading him -- and the nearly 500 law enforcement officials he leads -- to look overseas.

The service's expanding global focus was set in motion last year by President Obama, who signed an executive order to combat the illegal wildlife trade that has devastated African elephant and rhino populations (*Greenwire*, July 1, 2013).

So far, FWS has placed one officer in Thailand -- a major market and transit point for the wildlife trade -- and is selecting agents to send to Peru, Botswana and Tanzania. The service will also deploy an agent to Beijing if the Chinese government approves the posting.

FWS Law Enforcement Chief William Woody.

That's a major change from how FWS has operated in the past, when the service was more "case-driven," Woody said in a recent phone interview.

At the time, he was driving through Kansas' Flint Hill region, home to the densest, most intact tallgrass prairie in North America. "We'd go over to South Africa, work for a little bit, and then come back," Woody, 58, said of the old days.

But the problem with that approach is "you don't really establish good long-term contacts" that are needed to uncover and take down the "kingpins" of the illegal wildlife trade, he said.

It's no longer good enough to stop a shipment of elephant tusks and photograph them, Woody explained. "You want to get to the people who are actually doing the smuggling of the ivory."

The enforcement division -- with its long-term focus and forensic lab -- is proving itself capable of breaking up complex trafficking networks, Woody said.

He pointed to "Operation Crash," a multiagency effort to crack down on wildlife smuggling that takes its name from a herd of rhinos. The three-year-long effort has already resulted in the indictments of two South African brothers accused of recruiting American hunters to illegally kill African rhinos, whose horns they then sold on the black market (*E&ENews PM*, Oct. 23).

"There's no end in sight" for that operation, Woody said.

The biggest problem for the enforcement program, according to a former FWS official, is a lack of money. "Woody has been like the guy in the gap trying to hold things together because their funding is grossly inadequate, given their responsibilities," said Barry of Defenders of Wildlife, whose wife is a former colleague of Woody's. "Congress has basically denied them the resources they need to get the job done."

Woody plans to train and hire some 20 new federal wildlife enforcement agents in the coming months -- the first new class since 2011, but he acknowledged that the budget situation is "tough."

Before taking his current post in 2011, Woody was the director of Bureau of Land Management's Office of Law Enforcement and Security, where he oversaw the efforts of about 270 rangers and special agents on more than 245 million acres of BLM-managed public lands. Prior to that, he worked at the Utah Division of Wildlife Resources for 15 years, a decade of which he spent leading the state agency's law enforcement unit.

Woody graduated from the FBI's National Academy, a prestigious invitation-only leadership development program for law enforcement commanders and executives. He earned his undergraduate degree at Utah State University.

Protecting wildlife runs in Woody's family. His younger sister, Carol Ann Woody, is a fisheries and aquatic ecology scientist for the Center for Science in Public Participation, a Bozeman, Mont.-based nonprofit that provides technical assistance to anti-mining groups. The Woody siblings' father worked for FWS while they were growing up on a ranch outside of Albuquerque, N.M.

Now living near the Chesapeake Bay with his wife, the FWS enforcement chief has five children. His family enjoys hunting, fishing, hiking and backpacking together.

MISSISSIPPI RIVER:

Greens, local officials urge EPA to nix levee extension

Annie Snider, E&E reporter

Published: Tuesday, December 16, 2014

Environmental groups and a slate of local officials are asking President Obama today to have U.S. EPA Administrator Gina McCarthy prepare her veto pen as a contentious 60-year-old levee project nears approval.

Southeast Missouri farmers and communities -- and their elected officials in Washington, D.C. -- have for decades been trying to close a quarter-mile gap in the massive Mississippi River levee in order to protect valuable farmland and homes from the floods that come every few years. Proponents argue that extending the 60-foot-high levee would be an economic boon, not only protecting current crops but also allowing more diverse ones to be grown in the rich floodplain.

But the levee would cut off the last remaining connection in the state between the Mississippi River and its backwater floodplain, an ecologically rich area where fish and wildlife take refuge from the river's mighty flows.

About 90 environmental groups are sending a letter to Obama today asking that he have EPA use its power to veto the Clean Water Act 404 dredge-and-fill permit the Army Corps of Engineers would need in order to build the project.

The groups point out that EPA's regional office has itself said that the agency would "cause the greatest loss of wetlands function in EPA Region 7's history."

By some estimates, nearly 55,000 acres of wetlands would be drained. The Fish and Wildlife Service has said that the project "would cause substantial, irretrievable losses of nationally significant fish and wildlife resources, and greatly diminish rare and unique habitats found in southeast Missouri."

The Army Corps of Engineers has proposed various iterations of the project over the years and even began construction before a federal judge ruled in 2007 that the agency had erred in its environmental analysis and forced it to restore the site.

But the corps, prodded by lawmakers, took another stab at reconfiguring the project and put out a new draft environmental impact statement last summer for a $165 million engineering effort (*Greenwire*, July 22, 2013). Now, the agency is finishing up work on a final EIS that environmentalists argue will be no better than previous ones.

"The levee is the same levee that they had looked at in 2007," said Melissa Samet, senior water resources counsel for the National Wildlife Federation, one of the groups sending the letter. "Even though they are updating and redoing evaluations, they are still horrible. At this point, it's time to just stop it."

While EPA's veto authority is premised on wetlands impacts, the project has also drawn an outcry from upstream communities concerned that the project would increase their flood risk.

The gap in the levee exists because it is meant to serve as an outflow for the New Madrid floodway. During high flows on the Mississippi River, the corps can blast a hole in the levee upstream and allow floodwaters to spread out in the river's natural floodplain. Landowners were paid to allow this to happen -- by 1942, the corps had purchased flood easements on 106,858 acres within the floodway at an average price of $17 an acre, according to a corps fact sheet.

But the floodway has only been used twice -- once in 1937 and again in 2011 -- both times amid intense political pressure from floodway landowners trying to prevent it.

Under the corps' 1928 operations plan, the agency was to "activate" the floodway when water levels reached 55 feet just upstream at Cairo, Ill. But in 1937, the corps waited until the river was a few feet higher than that.

Over the years, the operations plan was rewritten to raise the "trigger" to 61.5 feet. But in 2011 the corps waited until just beyond that -- 61.72 feet -- to blow the levee. By that time, flood waters had already overtopped the levees near the community of Olive Branch, and the town of Cairo was in immediate danger. When the floodway was activated, water levels at Cairo fell swiftly, dropping 2.7 feet in 48 hours (*Greenwire*, Dec. 20, 2011).

Political leaders in nearby communities worry that building the new levee would only increase the political pressure not to use the floodway.

"The St. Johns Bayou-New Madrid Floodway project will put our communities at even greater risk of catastrophic flooding by creating more obstacles and opposition to the Floodway's use," two dozen local mayors, council members, state legislators and other local leaders from Illinois, Missouri and Kentucky wrote in their own letter to Obama today. "We are at a loss to understand how the Corps of Engineers could determine that this is in the national interest. We certainly know that it is not in the interest of our communities."

Last month, the corps sent its working draft of a final environmental impact statement to an external review panel, project manager Danny Ward said. That review is scheduled to be completed in late March. After that, the corps will make any necessary changes and put out a final EIS for public comment, he said.

WATER POLLUTION:

Admin officials, McAuliffe trumpet Va.'s trading program

Annie Snider, E&E reporter

Published: Tuesday, December 16, 2014

As Chesapeake Bay states undertake a major effort to stanch the flow of nutrient pollution into the long-ailing estuary, Obama administration officials and Virginia Gov. Terry McAuliffe (D) today touted the possibilities offered by market-based trading programs.

U.S. EPA Administrator Gina McCarthy, Agriculture Secretary Tom Vilsack and acting White House Council on Environmental Quality Chairman Mike Boots met with McAuliffe this morning in Fairfax, Va., to highlight Virginia's nutrient trading program.

The basic concept has been batted around for years: Allow people to implement practices to reduce nutrient discharges more than they are required to -- for instance, a farmer planting cover crops or riparian buffers -- and then sell credits for those reductions to others who can use them to reach permit limits.

Under Virginia's program, point sources like wastewater treatment plants or factories can purchase credits either from other facilities that are discharging fewer nutrients than their permits allow, or from

farmers or landowners that have undertaken nutrient-reducing management techniques (*Greenwire*, Oct. 8, 2012).

"Virginia's nutrient trading program is a strong example of how to create economic opportunity and new income for rural America while protecting and improving local waterways and the Chesapeake Bay," McCarthy said in a statement. "The program is a win for the environment and our economy and we encourage states to look at Virginia as a model and a resource as they adopt similar programs."

But while interest in water quality trading programs is high, progress on the ground has been slow. There are a number of nascent efforts across the country, but more ambitious programs are still grappling with how to verify that practices actually result in the promised reductions in a way that farmers, regulators and environmental groups can all be comfortable with (*Greenwire*, March 10).

The political terrain is treacherous. A segment of the environmental community is staunchly opposed to trading, arguing it is ripe for abuse and could create pollution hot spots. The agricultural community, meanwhile, tends to worry about farming getting driven off the landscape during conversations about raising the bar for water quality.

In Virginia, most of the trades so far have been between point sources. The state's stormwater requirements have recently created a market for trades from nonpoint sources, but because the offsets need to be permanent, most have come from converting productive farmland to forests, said Allan Brockenbrough, who manages water quality permit programs for Virginia's Department of Environmental Quality.

While in many parts of the country productive agriculture may be able to produce nutrient credits by implementing nutrient-stanching management practices, Brockenbrough said the story is complicated in the Chesapeake Bay because of the landmark cleanup effort underway that sets pollution diets, or Total Maximum Daily Loads (TMDLs), for segments of the 64,000-square-mile watershed.

"There are base-line practices that a farmer would have to put into place to meet base line under the TMDL before you could take additional actions to generate credits," Brockenbrough said. "So you end up needing a tremendous amount of land in traditional [Best Management Practices] to generate credits that a point source could use."

EPA and the Department of Agriculture have agreed to work together to encourage nutrient trading and help managers grapple with kinks like this. The two agencies are building a library of information on the efforts and creating a road map tool set to be released early next year. They also plan to sponsor a conference in early 2015 where stakeholders can share experiences, the agencies said in a statement.

WATER POLLUTION:

Drug-resistant 'super bacteria' found at site of Olympic events -- scientists

Published: Tuesday, December 16, 2014

Scientists said yesterday that they have detected a drug-resistant "super bacteria" in the waters near Rio de Janeiro, where Olympic sailing events will be held in 2016.

Researchers at the Instituto Oswaldo Cruz, considered Brazil's most respected health research center, said they have found bacteria that produce an enzyme called KPC, which makes them resistant to most forms of treatment. The bacteria are normally found in hospitals.

"The illnesses caused by these microorganisms are the same as those caused by common bacteria, but they require stronger antibiotics and, sometimes, can require hospitalization," said the study's coordinator, Ana Paula D'Alincourt Carvalho Assef. "Since the super bacteria are resistant to the most modern medications, doctors need to rely on drugs that are rarely used because they are toxic to the organism."

The scientists said there are no confirmed cases of illnesses from the contaminated water, but it could pose health risks to swimmers. Sailing and windsurfing events are scheduled for the area during the summer Olympic Games (Jenny Barchfield, Associated Press, Dec. 15). **-- SP**

THAILAND:

Government not cleaning up polluted creek -- watchdog group

Published: Tuesday, December 16, 2014

Two years after a court ordered the government to clean up a polluted creek, residents in a small village in western Thailand are still suffering from lead poisoning, said the Human Rights Watch today.

In January 2013, 15 years after a Lead Concentrates mine closed in Klity Creek in the Kanchanaburi province, the Supreme Administrative Court ruled that the government must pay $125,000 in compensation for the pollution and clean up the site.

Nearly two years later, residents still have health problems and continue to ask the government to clean up the creek, said the organization.

"If the [Pollution Control Department] can defy an order from the Supreme Administrative Court without facing severe consequences, it spreads the word that government agencies can do what they want," said Phil Robertson, HRW's deputy director for Asia.

Thailand's Pollution Control Department said the agency is conducting research on the site to figure out the most efficient cleanup method (Thin Lei Win, Reuters, Dec. 16). **-- MH**

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CLIMATEWIRE — Wed., December 17, 2014

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1. TRADE:

U.S. stiffens sanctions against China in alleged solar dumping case

The Obama administration yesterday further sharpened its knife in a solar trade fight with China that has bloodied participants on both sides of the Pacific but failed to eliminate what some have characterized as an unyielding attack by Chinese solar firms against fair trade.

2. FOSSIL FUELS:

China plans major slowdown of new coal-to-gas projects in bid to cut emissions

HONG KONG -- China will exclude additional coal-to-natural-gas projects from its coal industry's next five-year development plan, according to local media reports.

TODAY'S STORIES

3.CALIFORNIA:
Drought has left state 11T gallons drier, NASA finds
4.RENEWABLE ENERGY:
Minn. approves sprawling, $250M solar power complex
5.STATES:
Wash. Gov. Inslee proposes carbon fee to pay for transportation projects
6.FINANCE:
Baffled by how to invest in clean energy abroad? Here's a road map
7.REGULATION:
GOP lawmakers draft ways to attack EPA's Clean Power Plan
8.NEGOTIATIONS:
Is a 2-degree-Celsius cap enough?
9.WORKFORCE:
When temperatures rise, economic activities drop -- study
10.CALIFORNIA:
Native American tribe protecting forests sells carbon credits
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Vietnam's rice and shrimp farms face climate risks

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ENERGYWIRE — Wed., December 17, 2014

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1.GRID:
Computer models contest EPA Clean Power Plan's reliability impacts

U.S. EPA is relying on a complex computer model of the nation's energy networks and markets in declaring that its proposed Clean Power Plan will not lead to grid blackouts and unsupportable consumer costs.

TOP STORIES

2.TECHNOLOGY:
Obama's former campaign field director signs on with SolarCity
3.ELECTRICITY:
FERC capacity zone for downstate N.Y. is working -- grid operator
4.ALASKA:
Obama prohibits oil and gas development in Bristol Bay

ELECTRICITY

5.ELECTRICITY:
Texas grid operator sees potential reliability fallout from EPA plans
6.UTILITIES:
Georgia Power's nuclear expansion faces another 1-year delay

OIL AND GAS

7.FINANCE:
Ailing Canadian driller gets a whopping $8.3B buyout
8.EARTHQUAKES:
Uncertainty is a challenge in linking quakes with drilling activity
9.NATURAL GAS:
Northeast import project gets mixed assessment in rare DOT review
10.REGULATION:
Denton tries another approach to protect residents from drilling
11.COAL:
Pa. mine closures reflect tougher regulations, gas competition
12.COLORADO:
Regulators grapple with oil and gas enforcement
13.LOUISIANA:
State economist doesn't see crude prices stressing budget
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Islamic State group's oil revenues take a hit -- State Department

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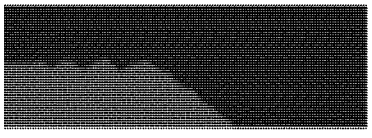

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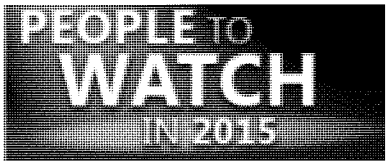
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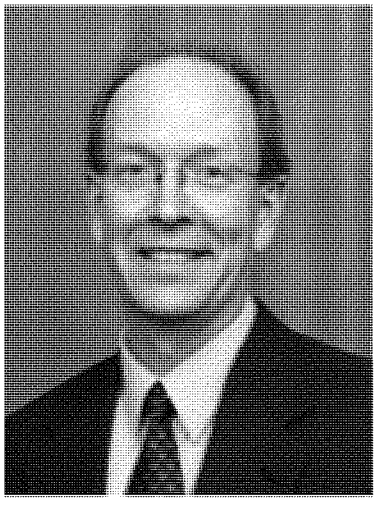

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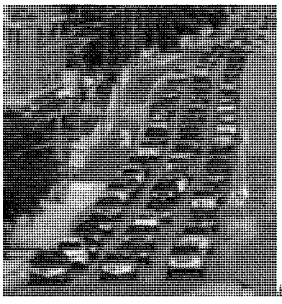

Air & Radiation Law News

for December 16, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Says It Has Met Legal Obligations To Set Standards for Certain Air Toxics

The Environmental Protection Agency has met its Clean Air Act obligations to set emissions standards for industries that emit mercury and certain other emissions of hazardous air pollutants, according to the agency....

Biotechnology

Approval of New Monsanto GMO Crops Likely After USDA Environmental Statement

Final approval of Monsanto's new genetically modified strains of cotton and soybean appears likely after the Department of Agriculture released its final environmental impact statement on the crops Dec. 12 (79 Fed. Reg. 73,890)....

Climate Policy

White House Issues Guide to Help Health Care Sector Brace for Storms

The Obama administration Dec. 15 issued a best practices guide to help health care providers prepare for more frequent storms, floods and other impacts of climate change....

Congress

Republican Leadership Names New Members To Senate Energy, Environment Committees

Senate Republicans have named new members to the committees on Energy and Natural Resources and Environment and on Public Works in the 114th Congress, according to a list of committee assignments released Dec. 15 by Republican leadership....

Congress

Votes on Energy, Environmental Nominees Expected

The Senate advanced a number of energy and environmental nominations through a key procedural hurdle Dec. 13, setting up final confirmation votes sometime this week. Among those nominations are those of John Cruden, nominated to head the...

Energy

NRC Estimates for Post-Fukushima Changes Are Unreliable, GAO Report to Congress Says

The Nuclear Regulatory Commission needs to improve its cost-benefit analysis for imposing post-Fukushima changes, the Government Accountability Office said in a new report to lawmakers....

Energy

U.S. Should Approve Keystone XL Pipeline, Canadian Energy Minister Tells DOE Chief

Canadian Minister of Natural Resources Greg Rickford seized the opportunity at a Dec. 15 meeting with his U.S. and Mexican counterparts to press the Obama administration to approve the TransCanada Corp. Keystone XL oil pipeline that would...

International Climate

Despite Overtime, Delegates Leave Lima Without Draft Version of 2015 Climate Pact

Negotiations on the draft version of the 2015 global climate text were suspended without an agreement Dec. 13 as the Lima climate talks concluded, pushing back debate to the next round of UN talks in February....

International Climate

IEA Says Climate Pledges Won't Halt Global Growth in Coal Demand to 2019

Countries' recent pledges to fight climate change by cutting their economies' carbon dioxide emissions are unlikely to dent global growth in coal demand in the medium term, the head of the International Energy Agency said....

International Climate

Lima Climate Talks End With Agreement, But Major Work Left to Forge 2015 Pact

Climate negotiators from around the world meeting overtime in Lima, Peru, agreed to a deal in the early hours of Dec. 14 that keeps hopes alive—if barely—for a significant global agreement to address climate change a year from...

International Climate

Often Touted as Tangible Sign of Progress, Forest Policies Sidelined at Lima Talks

While global efforts to stem deforestation and its contribution to climate change have been among the most tangible signs of progress in past United Nations climate talks, forest protection policies largely were pushed to the sidelines during...

International Climate

U.S.-Favored Review of National Pledges Suffered Setback at Lima Climate Talks

The deal that finally emerged from two weeks of climate talks in Lima, Peru, may have been just enough to keep hopes of a 2015 global accord alive, but it also may have come at the cost of progress made five years ago at the Copenhagen summit....

Inside EPA **Risk Policy Report**, 12/16/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

Citing States' Fears, Manufacturers Renew Call For EPA To Withdraw ESPS

Manufacturing groups are reiterating their calls for EPA to withdraw its proposed existing source performance standards (ESPS) to cut greenhouse gas (GHG) emissions from the power sector, saying their concerns are validated by the fact that half of the states also believe the rule is unlawful, according to manufacturers' analysis of state comments.

EPA Renewal Of Air Toxics 'Completion' Finding Likely To Trigger Lawsuit

EPA is renewing its finding that it has met a Clean Air Act mandate to regulate air toxics from sources representing 90 percent of emissions of seven hazardous air pollutants (HAPs) in response to a judicial mandate to issue the proposal, but environmentalists are likely to sue over the rule as they say EPA has fallen short of the 90 percent goal.

CHPAC Cites New Health Data To Renew Call For Tighter EPA Lead NAAQS

EPA's Children's Health Protection Advisory Committee (CHPAC) is citing new data on risks to children from lead exposures below previously assessed levels in their renewed call for the agency to tighten its lead national ambient air quality standard (NAAQS), and warning that existing monitoring currently fails to capture all exposures.

News Briefs

Senate Plans Votes On Environment, Energy Nominees

The Senate plans to vote this week on three long-pending environment and energy nominees including the new head of the Department of Justice's (DOJ) environment division, but high-profile nominees for

EPA positions are not among the list of slated votes and will likely be considered again by the GOP-led 114th Congress next year.

Greenwire

EPA:

Critics shocked -- shocked -- when special interests sway regs

Robin Bravender, E&E reporter

Published: Monday, December 15, 2014

When news reports showed an interest group's fingerprints on a U.S. EPA air rule, lawmakers and other critics of the administration went into a tizzy.

The ensuing scandal spurred a congressional watchdog to launch an investigation, pressing EPA to fork over its communications about the rule with outside parties. He demanded to know, "How did it happen, and how do we restore EPA's credibility and independence?"

But the speaker wasn't Louisiana Republican Sen. David Vitter during his recent campaign to skewer the Obama administration for "colluding" with the Natural Resources Defense Council on climate policy. It was 2004, and the watchdog was California Democratic Rep. Henry Waxman.

President Obama's critics have seized on recent reports about environmentalists swaying EPA's climate plans as proof that the administration has improperly schemed with greens to set environmental policy. But the practice of borrowing outsiders' policies -- and the scathing rhetoric that is unleashed when it's uncovered by opposition -- are nothing new.

"Thus has it ever been," said Scott Segal, an industry lobbyist at Bracewell & Giuliani.

Instances of rulemakers and legislators lifting ideas or language from interest groups have become commonplace. Before the NRDC controversy, the George W. Bush administration used an industry group's language in a mercury rule. It's become common practice for state lawmakers to lift legislative language from the American Legislative Exchange Council. And a recent *New York Times* investigation revealed behind-the-scenes coordination between attorneys general and corporations to combat federal regulations.

Yet these events never fail to spark outrage of groups on the other side of the issue or cries from lawmakers who oppose the administration.

In the latest uproar over outsiders' impact, conservatives are attempting to undermine EPA's proposal to slash greenhouse gas emissions from power plants by alleging that the Obama administration was doing the bidding of NRDC. A July *New York Times* article painted NRDC attorneys as the architects of "the novel idea at the heart of Mr. Obama's climate-change rule."

Vitter and other Republicans went on the attack. "It appears that NRDC's unprecedented access to high-level EPA officials allowed it to influence EPA policy decisions and achieve its own private agenda," lawmakers wrote to EPA and NRDC in September as they demanded documents about NRDC's involvement in crafting the rule.

"The fact that an ideological and partisan group drafted a rule that places a tremendous cost on everyday Americans through increased electricity prices is harmful and outrageous," they added.

And the saga continues. Vitter's office continues to release documents he says show a "beyond cozy" relationship between the green group and the Obama administration. Meanwhile, NRDC is blasting Vitter's inquiries as an "illegitimate fishing expedition"; EPA insists that NRDC was one of many groups that weighed into the rule and didn't have an outsized impact (*Greenwire*, Dec. 11).

A page from the Bush playbook?

If it all sounds familiar, it's because this drama has unfolded before on Capitol Hill.

In 2004, the George W. Bush administration proposed a rule to clamp down on mercury from power plants. It contained passages -- including one stating that EPA's rule didn't have to regulate other hazardous toxins, like lead and arsenic -- that were almost identical to a memo submitted to the agency by Latham & Watkins, a law firm representing power plants, according to a *Washington Post* report.

Then-EPA air chief Jeff Holmstead and his top legal adviser at the time, Bill Wehrum, had worked for Latham & Watkins before they were hired at the agency.

Holmstead, now an industry attorney at Bracewell & Giuliani, told the *Post* at the time, "That's not typically the way we do things, borrowing language from other people. ... But it came to us through the interagency process."

That 2004 story also quoted Bob Perciasepe, who was the Obama EPA's deputy chief until earlier this year. "The regulations are supposed to be drafted by the staff -- the people in the science program and regulatory branches," he said. "I think it would be inappropriate" for EPA to lift heavily from an industry memo, "unless it was from a government contractor."

Like Vitter and his GOP allies are now, lawmakers loudly proclaimed their outrage.

"The Bush administration continues to let industry write the rules on pollution, and this is just one more example of how they abuse the public trust," Sen. James Jeffords (I-Vt.) -- then the ranking member of the Senate Environment and Public Works Committee -- told the paper at the time.

"We are deeply concerned that EPA's rulemaking process has been improperly influenced by industry at the potential cost of the health of future generations of children," Waxman -- then the highest-ranking Democrat on the House Government Reform Committee -- and Rep. Tom Allen (D-Maine), said in a letter to EPA. "Congress and the American people need to know how industry lobbyists came to write a significant portion of an EPA formal rulemaking proposal."

Industry and environmental representatives argue that the NRDC and Latham & Watkins examples aren't entirely the same.

"The Latham language was not actually in the proposed mercury rule. It appeared in the preamble as part of the description of an alternative basis for regulating mercury that was neither proposed nor adopted by the administration," said Segal of Bracewell & Giuliani. "By contrast, the NRDC approach proffered a legal theory that is the exact basis upon which the Obama administration has proceeded."

Daniel Weiss, senior vice president for campaigns at the League of Conservation Voters, said NRDC and other environmental groups "provide conceptual ideas for the agency" and "conduct analyses to make a factual case for the proposal."

He added, "This is very different from taking language written by utilities' lawyers and inserting it into a regulatory the proposal. The first is advocacy, while the second is a special favor for polluting interests."

Cut-and-paste lawmaking

Beyond federal rules, there are a plethora of recent examples of legislation that has borrowed heavily -- or outright copied -- from others.

State lawmakers have consistently found themselves in hot water for pushing legislation with language from the American Legislative Exchange Council's "model" bills. The conservative group has pushed state-level efforts to condemn EPA rules and to repeal state-level renewable energy standards in places like North Carolina and Kansas (*Greenwire*, April 4, 2011; *E&ENews PM*, July 31, 2013).

Liberal groups and environmentalists have denounced ALEC's efforts to advance its agenda by encouraging the copying and pasting of legislative text. But liberals are now fighting back with their own version of the group. The State Innovation Exchange -- founded by a Democratic strategist -- aims to prepare its own library of "model policy" for Democrats to use, Bloomberg reported last week.

To some, this style of borrowing ideas liberally makes perfect sense.

"I believe that we make the best public policy when both sides present their best case and then the legislator or the elected official is allowed to choose what is most persuasive in light of their own experiences, and their political beliefs," Segal said. "Events move too quickly to not have everybody working on presenting the best information."

Rena Steinzor, president of the liberal advocacy group Center for Progressive Reform, said the practice is "corrosive no matter who does it."

She said the instances of interest groups influencing laws and regulations are "all very similar, and I think they all have the effect of making government look bad, which is very unfortunate."

That goes for the NRDC example, as well, she said, although she added that it hasn't been made clear exactly how NRDC influenced the Obama administration's climate rule. "I didn't think they did any good for EPA and its reputation," Steinzor said.

COAL:

Fuel use 'unsustainable' in current form -- IEA chief

Manuel Quiñones, E&E reporter

Published: Monday, December 15, 2014

The head of the International Energy Agency called coal's continued global growth "unsustainable" without the faster deployment of technologies to lower greenhouse gas emissions.

Maria van der Hoeven, IEA's executive director, was reacting to the group's latest global coal-use outlook, which said global demand for the fuel would continue rising, surpassing 9 billion tons by 2019.

"We have heard many pledges and policies aimed at mitigating climate change, but over the next five years they will mostly fail to arrest the growth in coal demand," van der Hoeven said in a statement this morning.

"Although the contribution that coal makes to energy security and access to energy is undeniable, I must emphasize once again that coal use in its current form is simply unsustainable," she said. "For this to change, we need to radically accelerate deployment of carbon capture and sequestration."

Of the new coal-fired power plants being built, mostly in the developing world, IEA leaders say too many of them are using decades-old technology. "Regrettably," van der Hoeven said, "they will be burning coal inefficiently for many years to come."

Statements by van der Hoeven play into an ongoing policy debate in the United States and many developed countries over what will better encourage high-efficiency, low-emission power plants.

The Obama administration has moved to mandate carbon capture for new plants and cut international funding for projects that don't have the emissions-trapping technology.

But pro-coal lawmakers have said requiring CCS, which is not yet widely available commercially, will push energy producers away from coal in the United States.

Internationally, those lawmakers have also added riders to recent spending bills to free up more U.S. dollars for overseas coal-fired power plant projects (*E&E Daily*, Dec. 10). They say it will promote newer technologies.

Even though coal use around the world continues to increase, the latest IEA report revises down its growth predictions from 2.3 percent annually in its 2013 forecast to 2.1 percent annually.

The study predicts that demand for coal in the United States will continue to decrease by about 1.7 percent annually through 2019 to levels not seen since the 1980s. The report, however, also predicts 250 gigawatts of coal power plant capacity to remain by the end of the decade.

The report says trends in the United States will make more coal available for export. But IEA says it doesn't expect significant increases because of difficulties in building new export terminals, particularly from the Pacific Northwest.

Low prices and a production glut are also hurting exporters. Still, the report expects eventual increases in U.S. coal exports for power plant and steel production.

Despite reports and questions about the future of Chinese demand, IEA's forecast doesn't expect coal consumption to peak there until at least the next decade (*ClimateWire*, Dec. 15). China will remain the world's coal production and use behemoth.

Much like other forecasts, however, IEA says Chinese coal imports will continue slowing and peak at around 2017. India will then become the largest importer of power plant coal by 2019.

CLIMATE:

Domestic politics loomed large for U.S. officials in Lima

Jean Chemnick, E&E reporter

Published: Monday, December 15, 2014

LIMA, Peru -- U.S. officials fought hard in the U.N. climate talks that ended here yesterday for a deal that would play well with the American public.

The key theme for the Americans: All countries -- developed and developing -- are sharing the burden of cutting emissions of heat-trapping gases. The U.S. delegation insisted it wouldn't accept a deal that reserves binding emission-reduction responsibilities for countries that were developed nations in 1992 -- when the convention governing the U.N. negotiations was adopted.

The firewall between historically wealthy and poor countries permeated the discussions here and was the reason that what was touted as a "table-setter" Conference of the Parties to the U.N. climate convention (COP) dragged on through more than 30 hours into overtime, ending early yesterday morning with a fourth draft text that was panned by most as weak (*ClimateWire*, Dec. 15).

The importance of a deal to the Obama administration was shown by Secretary of State John Kerry's rare appearance at the COP on Thursday, at which he pledged his personal commitment to help deliver an agreement on emissions next December in Paris (*E&ENews PM*, Dec. 11).

And the final hours of negotiations saw U.S. Special Envoy for Climate Change Todd Stern and his team reaching out to the poor countries that still had major reservations about the text.

Division of responsibility is certain to be a recurring theme in the run up to next year's Paris talks. But Stern told reporters immediately after the end of the COP that the Lima decision borrowed from last month's U.S.-China joint agreement to resolve the dispute.

The world's largest developed and developing emitters each released a post-2020 emissions commitment last month, and the two took very different tacks. The United States, for example, pledged a 26 to 28 percent cut compared with 2005 levels by 2025, while China pledged to stop growing its emissions no later than 2030.

But the gap didn't stem from a hard-and-fast standard dictating the relative responsibilities of developed and developing countries, but from the fact that the bilateral agreement was bottom up. Each country determined its own commitment.

"I think the way we were able to deal with that issue between the U.S. and China in that joint announcement a few weeks ago actually ended up coming in quite handy here," said Stern, who has offered the bottom-up approach as a way out of the deadlock over developing and developed nations' commitments.

What's not acceptable to the United States "either as a matter of substance or politics," he said, is "the idea that you would shape the form and content of the new agreement based on who was in what boat in 1992."

It was a point Kerry underscored during his marquee speech here Thursday. Some advocates here had hoped the secretary of State's visit would bring a shift in the U.S. posture on the firewall issue, but instead he reinforced it.

Kerry stealthily referenced the role major industrialized emitters should play in reducing emissions, saying that it wouldn't be enough "if China or India came down to zero emissions, if either was the only country to act."

He noted elsewhere in the speech that more than half the world's emissions now are generated by developing countries and said "it is imperative that they act, too."

Stern said yesterday that Americans must have confidence that other nations are acting on emissions if they are to support domestic policies to curb greenhouse gases.

"I think the foundation of action for climate is at the national level," he said. "But international agreements are critical to goad and push countries into action, to give countries the confidence to know that if they act their partners, their competitors are also acting."

Challenge for all developed nations

Political opponents of Obama administration emissions rules often point to less restrictive policies in other countries when making the case for why they should be relaxed.

Congressional Republicans and industry advocates refer to China's burgeoning emissions when attacking U.S. domestic climate policies like U.S. EPA's power plant rules. The U.S.-China agreement, which was heralded by the administration as a climate change breakthrough, drew complaints from GOP lawmakers who said it saddled the United States with firm reductions while letting China off the hook (*E&E Daily*, Nov. 13).

Sen. James Inhofe (R-Okla.) the presumptive chairman of the Environment and Public Works Committee, wrote in an op-ed published in *USA Today* on Nov. 13 that the agreement would bind the United States while allowing Chinese emissions to grow unfettered.

"President Obama's agreement binds the U.S. to immediate action, which he will pursue through regulations and mandates," Inhofe wrote, adding that China will continue to "lure manufacturing and agriculture jobs away from our shores with promises of cheap labor and abundant electricity."

Stern, White House senior counselor John Podesta and others have worked overtime since the agreement was released to play up the significance of China's commitment. In order to achieve a carbon peak and ramp up non-carbon energy to 20 percent by 2030, China will have to build as much new renewable energy capacity as it has coal-fired generation now, they say.

Dirk Forrister, president and CEO of the International Emissions Trading Association, said it was crucial that the United States demonstrate that major developing emitters are acting on climate change in order to remove the "political excuse for inaction."

"A big part of the reason for the division in the United States [on climate action] is the idea that somebody's getting off lighter. It looks unfair," said Forrister, who headed the White House Climate Change Task Force in the late 1990s.

But those concerns are not limited to the United States, he said.

"Everybody is going to have that challenge when they go back home, is how do you describe why your chosen path is fair for you compared with what everyone else is doing," he said. "You need to be able to compare apples to apples, and if you go in and it's a whole cornucopia of different fruits and vegetables, it's going to be hard to sustain political momentum in a lot of places."

To allow for an "apples to apples" comparison of carbon commitments, U.S. negotiators tried to attach language into the Lima text calling for detailed disclosures from countries to be released well in advance of Paris. Doing so would encourage countries be more ambitious, Stern argued, and nations that lagged might feel pressure to increase their offerings.

The State Department also proposed an assessment process in which countries would take questions on their pledges -- an exercise similar to the one the United States participated in last week to defend its

Copenhagen pledge to reduce emissions by 17 percent from 2005 levels by 2020. That "multilateral assessment" exercise was limited to developed countries, however, whereas the United States and other developed countries wanted a wider range of participants to undergo assessments for their post-2020 pledges.

But developing countries pointed to the principle of differentiation. Large developing nations saw the assessment process as an infringement on national sovereignty, while poorer countries were concerned it would be too costly and technically burdensome for them. So the requirement was pared back in the final text.

The final text does include a requirement that countries provide "quantifiable information on the reference point" when submitting their pledges early next year, to allow them to be evaluated.

Pledges would include the scope of the reduction commitment, greenhouse gases covered and other details. Stern said this information would allow civil society to vet national commitments and added that the UNFCCC might still step up its evaluation of them at a future date.

'Institutionalized peer pressure'

Nongovernmental groups are already weighing how to evaluate national commitments.

The Washington, D.C.-based Center for Climate and Energy Solutions (C2ES) convened a dialogue with senior negotiators from a group of countries this year ranging from the United States to China to France. Its task was to find ways to achieve some of the benefits of a "top-down" emissions agreement -- notably more ambitious reduction commitments and broader participation -- out of the bottom-up process the United Nations is currently pursuing where countries set their own commitments.

The group's report in October proposed that the U.N. institute rules to ensure national emission pledges are transparent and quantifiable.

For example, the United Nations would impose a common time frame to ensure that countries were putting forward comparable reduction targets. The ad hoc group also suggested ways the Paris agreement could hold countries accountable for implementing the commitments they make, including through requiring progress reports.

"What we're going for here is institutionalized peer pressure," said Elliot Diringer, C2ES's executive vice president.

Lou Leonard of the World Wildlife Fund said that the final agreement must find a way to see whether the patchwork of nationally determined commitments leads to sufficient reductions overall, and to boost their stringency if they don't do enough to avoid catastrophic warming.

Without some form of science-based analysis, he said, the U.N. process could be "the equivalent of going out to dinner with a lot of your friends, and you all put down money and it doesn't add up."

Either the nations would walk out on their bill -- failing to keep warming to less than 2 degrees Celsius more than pre-industrial levels -- or it will leave a few countries to make up the difference, he said.

Adaptation assistance

Finance was another flashpoint in Lima, with the United States and other developed countries insisting that they would not include climate aid in their post-2020 commitments.

Poor countries have insisted that compensation for loss and damage suffered as a result of warming must be a central element of these commitments. But that was a bright line for the United States, which said again and again that it had never promised to make finance part of its national post-2020 commitments. The final text implied that those commitments would pertain to mitigation, though that is likely to be an ongoing fight.

Diringer said developing countries saw the national commitments as the best way to ensure their needs are met.

"If it's important to you that Paris deliver on adaptation and finance, and the nationally determined commitments are the only train leaving the station, you want to be on that train," he said.

But Congress' control of the budget process makes it very difficult for the United States to pledge financial assistance years in advance, especially when Republicans control Capitol Hill.

Congress voted last week to bar the State Department from financing the Green Climate Fund for the rest of fiscal 2015 -- a provision that has little real impact as no funding was requested this year. But it does show a level of opposition to climate aid that is likely to intensify after Republicans take control of the Senate next month.

Phil Barnett, staff director to outgoing House Energy and Commerce Committee ranking member Henry Waxman (D-Calif.), said COP participants appear to be aware that congressional support for international climate programs is limited.

Barnett was one of a handful of congressional aides from both parties who attended the COP. In 2009, he accompanied his boss to the summit in Copenhagen immediately after the House passed a cap-and-trade bill Waxman sponsored, and he said interest in Congress has dimmed considerably.

"In Copenhagen, it looked like Congress was going to act," he said. "Now Congress is not going to be a constructive force."

TRANSPORTATION:

House bill would tap corporate overseas earnings for highway fund

Sean Reilly, E&E reporter

Published: Monday, December 15, 2014

Newly introduced legislation by Rep. John Delaney (D-Md.) would tap U.S. multinational corporations' earnings held overseas to help pay for a six-year highway and transit bill.

The measure, H.R. 5857, would impose a mandatory 8.75 percent "repatriation" tax on such earnings, compared with the current 35 percent threshold for corporate income, according to a news release.

In all, the plan would raise between $150 billion and $175 billion over six years, according to an estimate from Delaney's office. Of that sum, up to $125 billion would go to the Highway Trust Fund, the main federal conduit for money for road, bridge and public transportation projects. The proceeds would also finance a $50 billion infrastructure fund that could be used by state and local governments to leverage $750 billion for other projects in such areas as transportation, water and energy, the release said.

The 8.75 percent tax rate is the same at that proposed earlier this year by outgoing House Ways and Means Chairman Dave Camp (R-Mich.) as part of a broader tax overhaul package. That package went nowhere, as did a separate repatriation plan by the Obama administration also geared to injecting more money into the trust fund.

As fuel tax receipts lag, the fund has required repeated bailouts of general Treasury revenue to meet congressionally imposed spending demands, the most recent approved this summer and running through May 2015. With the fund again at risk of running out of money after that, however, the subject could get a fresh look in the 114th Congress that takes office next month.

"We think that there's a real possibility for a deal to get done around this framework," Delaney spokesman Will McDonald said this morning.

Delaney unveiled this bill now to "start the conversation," McDonald said, and plans to reintroduce it next year. In the meantime, the legislation has been referred to two House committees: Ways and Means and Transportation and Infrastructure.

SOLAR:

Tribe sues Interior to stop array on BLM land in Calif.

Scott Streater, E&E reporter

Published: Monday, December 15, 2014

A Native American tribal group is suing the Obama administration to stop an already approved commercial-scale solar power project in the Southern California desert, claiming that the project is illegal, in part because federal regulators failed to consult with the tribes or take a "hard look" at the project's true environmental impacts.

The Colorado River Indian Tribes (CRIT) -- a federally recognized Indian tribe -- filed the lawsuit this month in the U.S. District Court for the Central District of California. The complaint asks the court to throw out the Bureau of Land Management's approval in August of the Blythe Solar Power Project, proposed to be built on 4,100 acres of federal land in Riverside County.

The legal complaint claims that BLM's approval of the 485-megawatt photovoltaic solar plant violates the National Historic Preservation Act because the agency "conducted no government-to-government consultation with CRIT prior to approval of the project."

The 20-page complaint also says BLM allowed the Juno Beach, Fla.-based project developer, NextEra Energy Resources Inc., to begin some pre-construction "ground-disturbing activities before any cultural resource monitoring or treatment plans were in place."

What's more, it says, BLM's environmental impact statement that is the basis of the record of decision approving the project was not sufficient enough "to protect the fragile desert ecosystem and cultural resources found at the project site."

"The Environmental Impact Statement prepared for the project failed to take the requisite 'hard look' at its impacts. And the project itself is plainly inconsistent with the land use designations adopted by the United States" under the Federal Lands Policy and Management Act, the complaint says.

The CRIT lawsuit names as defendants Interior Secretary Sally Jewell and BLM Director Neil Kornze, as

well as BLM California State Office Director Jim Kenna and two other agency officials in the state office.

The Interior Department does not comment publicly on ongoing litigation. BLM later issued a statement saying that it did consult with CRIT "and held meetings with individual Tribal members and Tribal Council members, as well as conducting site visits."

The project BLM approved in August represented the second go-around for Blythe. BLM and the California Energy Commission in October 2010 approved the original and much larger Blythe project layout, which at the time was a 1,000 MW solar thermal power plant that would have been the world's largest.

That project, however, was abandoned when the original project proponent, Solar Trust of America LLC, declared bankruptcy in April 2012. NextEra Energy Resources Inc. purchased the rights to the Blythe project later that year, and BLM announced last year that it was reviving its review of a modified version of the Blythe project.

The approved record of decision authorizes NextEra to modify the project to use photovoltaic technology, shrinking the project's footprint by more than 2,500 acres but also reducing the total electricity output by more than half -- to 485 MW from the original 1,000 MW.

But, echoing BLM's statement, the record of decision also noted that "BLM conducted government-to-government consultation with 15 federally recognized tribal governments in accordance with several authorities including, but not limited to" the National Historic Preservation Act.

When NextEra modified the original Blythe project last year, "BLM re-initiated consultation" with the tribes, according to the record of decision, which was signed by Janice Schneider, Interior's assistant secretary for lands and minerals management.

"Individual government-to-government meetings with Indian tribes provided a separate forum for tribes to share information and concerns openly and candidly, apart from other consulting parties and about other issues," the document states.

In addition to the tribal consultation process required by the National Historic Preservation Act, "BLM held individual meetings with interested tribes and made other efforts (including site visits and individual meetings with tribal members and tribal council members) as part of the government-to-government consultation process," the record of decision says.

As a result of the work with tribes, the record of decision states that "many cultural resources in the area are avoided by the Modified Project, and unavoidable impacts are substantially mitigated."

The Colorado River Indian Tribes consists of four distinct tribes -- the Mohave, Chemehuevi, Hopi and Navajo -- with about 4,000 active members.

CRIT is represented in the lawsuit by attorneys with the San Francisco-based law firm Shute Mihaly & Weinberger, which specializes in natural resource and environmental law.

An attorney with the law firm that is working with the tribes on the case could not be reached for comment by publication time.

But CRIT's legal complaint states that the Blythe project site "is located within the ancestral homelands of the members" of the tribal group, "whose reservation begins just a few miles northeast of the site."

CRIT's roughly 300,000-acre reservation was established by Congress in 1865. Since 2009, the Obama

administration "has approved or is still actively considering 10 utility-scale solar energy projects within 50 miles of the CRIT reservation," according to the complaint.

"The religion and culture of CRIT's members are strongly connected to the physical environment of the area, including the ancient trails, petroglyphs, grindstones, hammerstones, and other cultural resources known to exist there," the complaint says. "The removal or destruction of these artifacts and the development of the Project as planned will cause CRIT, its government, and its members irreparable harm."

GRID:

Industry pushes court to end federal demand-response program

Hannah Northey, E&E reporter

Published: Monday, December 15, 2014

Industry groups are asking a federal appeals court to vacate the government's high-profile, demand-response program now instead of waiting to see whether the Supreme Court will review the case.

The Edison Electric Institute and other utility groups urged the U.S. Court of Appeals for the District of Columbia Circuit on Friday to reject FERC's request to keep in place Order 745, which directs demand-response providers such as factories or commercial buildings to receive full market prices when they curtail electricity use.

D.C. Circuit judges vacated the rule in May, but the White House is asking the federal appeals court to keep Order 745 in place until its appeal plays out at the high court (*Greenwire*, Dec. 8).

Supreme Court justices typically give petitions submitted by the solicitor general a close review, but the odds of the court taking up the case are low. The Supreme Court receives thousands of petitions every year and grants fewer than 100. The court will likely consider the demand response petition next spring.

The D.C. Circuit ruled FERC far overstepped its authority under the Federal Power Act in issuing the order -- a decision that was welcomed among EEI and the Electric Power Supply Association, groups that for years had argued the order went "too far" and trampled on states' exclusive authority to regulate retail markets.

Supporters of the rule, on the other hand, argued FERC's hands shouldn't be tied to incentivize demand response on a rapidly changing electric grid (*Greenwire*, May 27).

The appeals court initially granted FERC a stay through tomorrow to file a request for a Supreme Court review, but the agency is now asking for an additional month while it finishes its Supreme Court petition.

David Morenoff, FERC's general counsel, told the court in a Dec. 8 filing that a stay of the mandate is warranted because the court already granted the commission a 90-day extension after presumably finding "substantial legal question and good cause."

Still, EEI, the American Public Power Association, National Rural Electric Cooperative Association and Old Dominion Electric Cooperative maintain FERC hasn't made a case for a longer extension, nor has the commission identified any "harm -- much less irreparable harm -- that would result from denying its request."

They argued that FERC could easily put the rule back in place if it is successful at the Supreme Court.

In the "very unlikely event" the Supreme Court takes up the case and "ultimately reverses" the D.C. Circuit ruling, they wrote, "the commission can always decide then to reinstate Order 745. In the meantime, the distortions caused by the Commission's improper compensation scheme and jurisdictional violations should not be allowed to stand."

Reporter Jeremy Jacobs contributed.

NUCLEAR POWER:

PSEG population predictions for proposed reactors don't add up

Published: Monday, December 15, 2014

Plans by PSEG Nuclear LLC for more reactors in its Salem/Hope Creek, Del., nuclear complex do not take into account Delaware growth projections for the area.

Southern New Castle County has been undergoing a renewed building boom in recent years. While PSEG's submissions to the Nuclear Regulatory Commission predicted that 61,000 residents will live within the 10-mile evacuation zone around the new reactors by the year 2081, state projections show the area will reach that number in less than a decade.

According to a PSEG-commissioned study, it would take 50 to 90 minutes for half the population of the 10-mile radius evacuation zone to flee if there were 45,000 residents of the area. To evacuate all residents would take up to six hours, according to the study.

By 2025, Delaware's population inside the evacuation zone is anticipated to be more than 68,000.

Asked about the discrepancy, NRC officials said they did not have an explanation but would ask the company. A PSEG spokesman said he was unable to comment.

PSEG has been contemplating using nuclear power to meet a predicted 3,500-megawatt shortfall in New Jersey's minimum electricity base load by 2028. The company has asked the NRC to approve its reactor before making a final decision.

Residents in the 10-mile evacuation zone are not pleased with the miscalculation.

"The report blatantly overlooks the potential impact to a region that is critical to the security and well being of the country," said David Magyar, who recently moved to a neighborhood less than six miles from the plant. "It overlooks the consequences of aggregating as many as five reactors in one location" (Jeff Montgomery, Wilmington [Del.] *News Journal*, Dec. 13). **-- AW**

ECUADOR:

Accident at power plant site kills 13

Published: Monday, December 15, 2014

An accident at a power plant construction site in Ecuador killed 13 workers, officials said yesterday.

The accident at the Coca Codo Sinclair hydroelectric power plant was due to the collapse of a pressure well, according to officials. The victims were 10 Ecuadorians and three Chinese workers. A dozen other workers suffered injuries.

Sinohydro Corp., a Chinese firm, is building the $2 billion 1,500-megawatt power plant.

Environmentalists have criticized the plant for being built at the edge of the Amazon rainforest (Associated Press, Dec. 14). **-- MH**

REGULATION:

Regulatory Assistance Project's Colburn says states should take nontraditional approach to Clean Power Plan compliance

Published: Monday, December 15, 2014

How should states be preparing for U.S. EPA's final Clean Power Plan rule? During today's OnPoint, Ken Colburn, a senior associate at the Regulatory Assistance Project and the former director of the Air Resources Division of the New Hampshire Department of Environmental Services, explains why he believes a nontraditional approach to compliance is needed and talks about the steps state regulators and public utility commissioners should be taking to prepare for potential reliability challenges resulting from the rule.

Click here to watch today's OnPoint.

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Senate leader plans bill to force state pension funds to divest from coal

OAKLAND, Calif. -- The head of California's Senate plans to introduce legislation to require the state's public pension funds to get rid of their investments in coal equities.

2.SCIENCE:

Greenland's contribution to sea-level rise may be much larger than expected, studies warn

Two new studies are offering new warnings about the Greenland ice sheet and its future contribution to rising sea levels that could wreak havoc on coastal areas.

TODAY'S STORIES

3.FORESTS:

Researchers find that as CO2 grows, trees don't

4.RENEWABLE ENERGY:

Solar prices fall, but researchers find puzzling price variations

5.EMISSIONS:

Wide state variations in methane leaks found from similar oil and gas fields

6.AGRICULTURE:

Organic growers begin to close the gap with conventional farming

7.POLICY:

Obama admin urges hospitals to prepare for climate change

8.WEATHER:

Kansans see tornado, rain and snow in one day

9.SEAFOOD:

Herpes virus threatens habitats, multibillion-dollar oyster industry

10.SPECIES:

Soft coral from South Fla. region may endure climate change -- study

11.ADAPTATION:

Flood-prone areas are becoming fish farms in Bangladesh

E&ETV'S ONPOINT

12.NUCLEAR:

Third Way's Freed says government support essential to commercializing advanced nuclear technology

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Can S.C.'s groundbreaking net metering policy spread in the Southeast?

A recent agreement on a key solar policy has again made conservative South Carolina the talk of the energy world, both clean energy and utility advocates say.

2.NEWSMAKER:

Oil's information guru on how Big Data can make you a better driller

NEW YORK CITY -- Glumness is in rich supply in the U.S. oil business today, just like the crude whose glut has stomped oil prices to their lowest mark in more than five years. Allen Gilmer won't be having any. To the contrary: For him, business looks dandy.

TOP STORIES

3.LAW:

Supreme Court sides with driller in dispute over class-action rules

4.OIL:

As U.S. drillers scramble to maximize profit, analysts wonder where crude price will land

5.MARCELLUS SHALE:

Sustainable Shale center's drilling guidelines are fatally flawed, group says

OIL AND GAS

6.TRANSPORT:

N.Y. inspectors find new faults in crude-by-rail safety

7.RESEARCH:

DOE looks to demystify underground energy activity

8.ADVOCACY:

NRDC expands drilling focus beyond water to air quality

9.CALIFORNIA:

Enviros battle industry over drilling referendum language

10.PIPELINES:

Price slump, competition sink Bakken-to-Cushing line

11.HYDRAULIC FRACTURING:

Md. regulations could end de-facto drilling ban

12.REFINING:

Valero angles for tax break in Texas

13.OVERSIGHT:

Ore. seeks crude-by-rail boost for tiny interstate agency

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14.SECURITY:

Congressional report draws cyber lessons from used cars

E&ETV'S ONPOINT

15.NUCLEAR:

Third Way's Freed says government support essential to commercializing advanced nuclear technology

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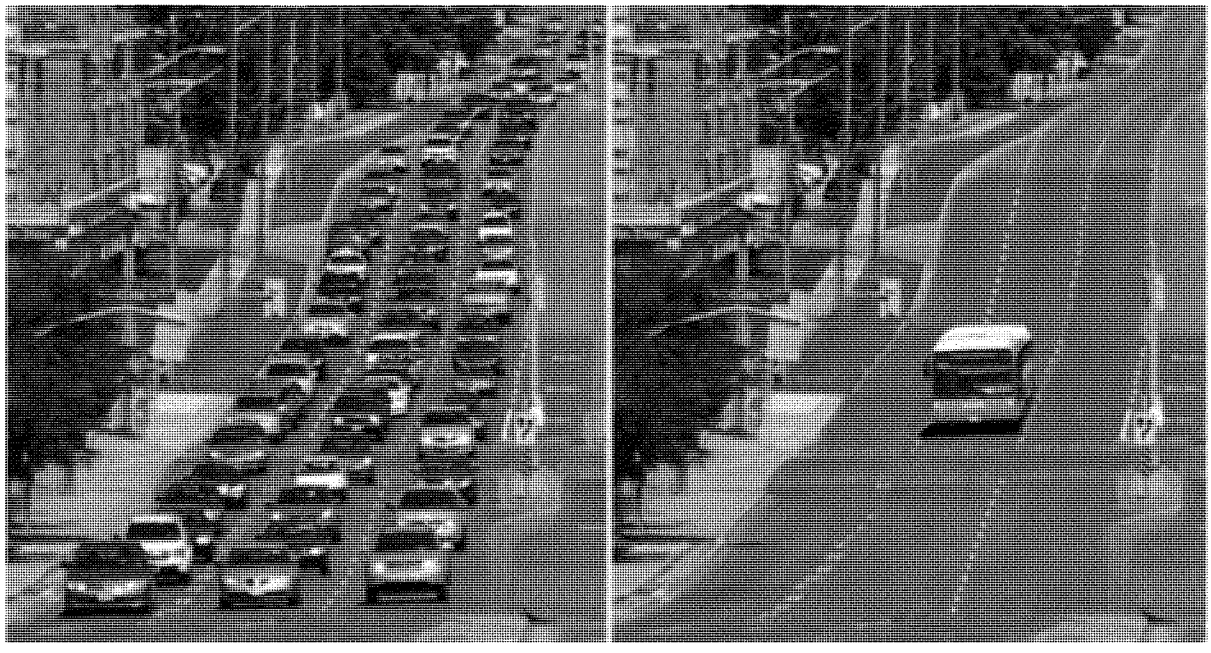

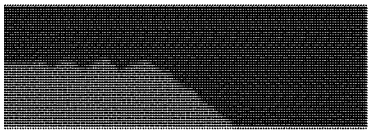

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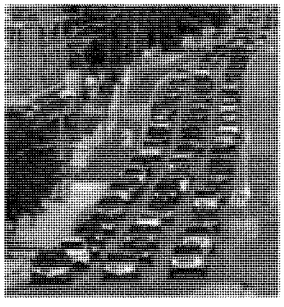

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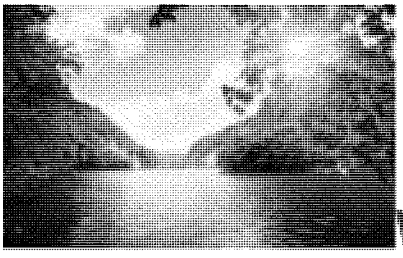

Water Law News

for December 16, 2014

Bloomberg BNA **Daily Environment Report™**

Drinking Water

Denial of Review in *Pomona* Dashes Hopes
For Revisiting Expert Admissibility Standards

The U.S. Supreme Court declined review Dec. 15 in Pomona v. SQM North America Corp., dashing hopes that the top court might use the Ninth Circuit environmental contamination case to broadly revisit Daubert and the standards for admitting expert...

Energy

U.S. Should Approve Keystone XL Pipeline,
Canadian Energy Minister Tells DOE Chief

Canadian Minister of Natural Resources Greg Rickford seized the opportunity at a Dec. 15 meeting with his U.S. and Mexican counterparts to press the Obama administration to approve the TransCanada Corp. Keystone XL oil pipeline that would...

Enforcement

Settlement Reached With Property Owner
On Contaminated Fill by New York Reservoir

An upstate New York property owner has agreed to clean up an illegal landfill that discharged contaminants into a New York City reservoir and pay $245,000 in fines, state Attorney General Eric T. Schneiderman and city Environmental Protection...

Hydraulic Fracturing

Court Denies Request for Stay in Fort Collins Case

The Colorado Court of Appeals has denied a request for a stay of a lower court ruling striking down the city of Fort Collins's five-year moratorium on fracking. (Colorado Oil & Gas Ass'n v. Fort Collins, Colo. Ct. App., No. 14-CA-1991,...

Mining

Alpha Settles Conductivity Lawsuit Alleging
Excessive Runoff From West Virginia Mines

Under a settlement reached with three environmental advocacy groups, Alpha Natural Resources will remediate conductivity pollution in streams near strip-mines run by subsidiaries (Ohio Valley Envtl. Coal. v. Elk Run Coal S.D.W. Va, No....

Oil & Gas

Encana to Halt Drilling at Colorado Well Site Following Residents' Complaints About Noise

Encana Oil and Gas USA said it will halt operations at a well pad in Erie, Colo., near a residential development where homeowners have complained about noise. ...

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Inside EPA **Risk Policy Report**, 12/16/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

Industry Eyes Permit Changes After EPA Withdraws Stormwater 'Flow' Guide

Regulated entities are watching state and federal regulators' actions on recent stormwater permits in the wake of a new EPA memo withdrawing its controversial 2010 guidance on using runoff "flow" as a surrogate for pollutants in discharge limits, saying the revised guide could open the door to a wider variety of permit conditions if authorities choose to pursue them.

Stakeholders Back EPA FY15 Bill's Rider Scrapping CWA 'Interpretive' Rule

Agriculture industry officials and some environmentalists are generally backing an omnibus fiscal year 2015 funding bill rider that would force the administration to scrap an interpretive rule clarifying agricultural practices that are exempt from Clean Water Act (CWA) permits, given broad criticism of the rule for its alleged legal flaws.

News Briefs

Senate Plans Votes On Environment, Energy Nominees

The Senate plans to vote this week on three long-pending environment and energy nominees including the new head of the Department of Justice's (DOJ) environment division, but high-profile nominees for EPA positions are not among the list of slated votes and will likely be considered again by the GOP-led 114th Congress next year.

Greenwire

OCEANS:

Virgin scraps deep-sea dives

Published: Monday, December 15, 2014

Safety concerns have scrapped billionaire Richard Branson's deep-sea exploration project.

When it was unveiled in 2011, the Virgin Oceanic project planned to visit the deepest points in all five oceans via a 18-foot submarine called DeepFlight Challenger. Prospective "aquanauts" could pay up to $500,000 to join a dive.

But Deepflight, the company that built the sub, said its vessel could only safely complete one of the missions. Virgin Oceanic has confirmed the project was shelved.

"We are now widening the focus of the project and looking for new technology to help us explore the ocean and democratize access at reduced cost and increased safety," said Branson, who planned to pilot the second dive into the Atlantic Ocean's Puerto Rico trench, in an online statement.

The cancellation follows the October explosion of the Virgin Galactic spaceship, part of Branson's plans for commercial space flights. The rocket's test pilot was killed, and another person was injured (Madison Burke, *Atlanta Journal-Constitution*, Dec. 14). **-- DTB**

WATER POLLUTION:

Supreme Court won't review expert testimony in Calif. perchlorate case

Jeremy P. Jacobs, E&E reporter

Published: Monday, December 15, 2014

The Supreme Court today declined an international chemical maker's plea that a lower court should have excluded expert testimony that its product caused water contamination in Southern California.

SQM North America Corp. had asked the justices to throw out testimony linking its fertilizer to perchlorate water contamination in Pomona, Calif.

Perchlorate, which is both naturally occurring and man-made, was frequently used in rocket fuel and other explosives.

It has carcinogenic properties and was often found at Superfund hazardous waste cleanup sites in the 1980s. A decade later, new technologies detected it in drinking water supplies at low levels.

California in 2007 set a drinking water standard for the chemical. In order to comply, Pomona brought a lawsuit against SQM North America Corp. seeking money to clean its water.

The city's case rested on an expert who used so-called stable isotope analysis to conclude that the perchlorate contamination in Pomona came from fertilizer SQM North American distributed to the area more than 60 years ago. That system of analysis measures the relative weight of atoms to determine its origin.

SQM North America contends that the method is flawed and the testimony should have been excluded. The analysis, the company said in court documents, lacks "well-established hallmarks of scientific validity."

"Chief among the problems," the company wrote, "is the fact that no other scientists have ever actually used the procedure to verify that the results it produces are dependable."

A federal district court sided with the company, excluding the testimony. But the San Francisco-based 9th U.S. Circuit Court of Appeals reversed that decision and remanded the case.

Today's action from the Supreme Court means the trial will go forward with the testimony.

SALMON:

Legal battle mounts as Wash. rule stalls new housing in Skagit Basin

Published: Monday, December 15, 2014

Richard and Marnie Fox face an uphill legal battle to build their retirement home in the Skagit River Basin north of Seattle.

Skagit County won't issue the couple a building permit because it violates the 2001 Instream Flow Rule, restricting groundwater usage to ensure there is enough water left in the Skagit River for spawning salmon.

Among some 450 homeowners denied access, the Foxes will ask a Snohomish County Superior Court tomorrow for access, but the Washington Department of Ecology and the Swinomish Tribe have intervened in opposition, marking the latest battle over water uses in the watershed.

While the region routinely floods, state and federal research indicate that during the drier parts of the year, groundwater constitutes 40 to 90 percent of the more than 2,000 Skagit River tributaries. Flow rates also dipped below the ideal range in late summer 2013.

"This is the critical timing problem that we face," said John Rose, a state hydrogeologist. "We have these periods where the primary amount of inflow into our rivers is groundwater. It happens when we're having the biggest drawdown due to human use, and then right immediately afterward, when we're at the lowest levels, is when you have the fish runs."

Larry Wasserman, environmental policy director for the Swinomish Tribe, said the matter should be settled, citing a 2013 Washington Supreme Court decision upholding the rule.

"At some point, you reach a point where any additional impact is too much," Wasserman said. "And if we say, 'Well, just these 400 or 500 landowners' [which would include the Foxes], what happens to the next landowner that comes along and makes the same argument, and the next one after that? The issue is we have an inadequate amount of water right now."

But Zachary Barbornias of Just Water Alliance, who joined with Washington Realtors, the Washington State Farm Bureau and others to petition for a repeal of the rule, questioned the science as the fight goes on.

"We support all of the habitat restoration that goes on and millions that are spent. We, as taxpayers, pay for that," he said. "But Ecology at the same time should be setting aside water for people. That's the bottom line" (Oregon Public Radio, Dec. 15). **-- DTB**

OFFSHORE DRILLING:

White House reviewing rule to reduce blowout threats

Phil Taylor, E&E reporter

Published: Monday, December 15, 2014

The White House has begun reviewing a new Interior Department rule aimed at enhancing the reliability of blowout preventers -- devices that are supposed to prevent the uncontrolled escape of oil from offshore rigs.

The Bureau of Safety and Environmental Enforcement sent its proposed rule to the Office of Information and Regulatory Affairs last Thursday. It is tentatively set to be unveiled to the public next February.

Blowout preventers serve as a final line of defense against a blowout by clamping down on the drill pipe that carries crude.

The device failed in the case of BP PLC's Macondo well in April 2010, resulting in the escape of nearly 5 million barrels of crude into the Gulf of Mexico over the course of nearly three months -- the nation's largest oil spill.

Even before the Macondo well failed, the blowout preventer's gauges gave uncertain pressure test data, confusing engineers on the surface. And once the pipe blew, the preventer's shears could not slice through the jagged pipe left in the rupture's wake.

A report by the National Academy of Engineering in December 2011 found that blowout preventer systems such as those used at Macondo "are neither designed nor tested to operate in the dynamic conditions that occurred during the accident" and should be "redesigned, rigorously tested, and maintained to operate reliably."

BSEE's new rule will "upgrade regulations related to the design, manufacture, and repair of blowout preventers (BOPs) in response to numerous recommendations," the agency said.

But it will also address well design and control, "safe drilling margins," casing, cementing, subsea containment and the ability to monitor wells in real time.

BSEE has been pursuing the rule since as far back as spring 2012, when then-BSEE Director James Watson and Interior Secretary Ken Salazar held a forum with industry and other stakeholders to discuss ways to enhance blowout preventer reliability. Recommendations from that forum will be reflected in the upcoming rule.

Former Interior Deputy Secretary David Hayes in May 2012 said the agency expected to release a proposed blowout preventer rule later that year (*Greenwire*, May 22, 2012).

Delays in the rule's rollout drew criticism last April from Elizabeth Birnbaum, who led the Minerals Management Service in the several months leading up to the Deepwater Horizon disaster, and Jacqueline Savitz of the environmental group Oceana.

"We would never have imagined so little action would be taken to prevent something like this from happening again," the two wrote in a *New York Times* op-ed.

BSEE Director Brian Salerno later that month wrote on an agency blog that new rules had been put in place to strengthen requirements for blowout preventer maintenance and testing.

He said the forthcoming rule would be "comprehensive" by addressing "the myriad systems and processes involved in well control operations."

"Our intention with this proposed rule is to account for all aspects of well control operations, of which BOPs are only one component, to help avoid future multiple system failures that resulted in the loss of well control and explosion aboard the Deepwater Horizon," he wrote April 23.

The proposed rule is being deemed by the administration as "economically significant," which means it could cost the economy more than $100 million annually to implement or "adversely affect in a material way" the economy or a sector, among other potential impacts.

WATER POLLUTION:

EPA reporting rule contradicts agency arguments in lawsuit -- farm groups

Tiffany Stecker, E&E reporter

Published: Monday, December 15, 2014

U.S. EPA's recent proposal to update reporting requirements for water pollution permits contradicts the agency's defense in a lawsuit to challenge EPA's release of private information on concentrated animal feeding operations (CAFOs), agriculture groups suing the agency say.

On Dec. 1, EPA revised and extended the comment period for a 2013 proposed rule that would require electronic instead of paper reporting for National Pollutant Discharge Elimination System (NPDES) permits, which are mandatory for CAFOs and other entities that release pollutants in water.

In the revisions, EPA proposes to mask all information that might identify a CAFO facility -- including redaction of names, phone numbers and the location of a facility -- in the electronic permit reports.

In a letter to U.S. District Judge for Minnesota Ann Montgomery, attorneys for the American Farm Bureau Federation and the National Pork Producers Council say EPA's language in the proposal runs counter to its arguments in a high-profile case surrounding the agency's release of private information to environmental groups through public records requests (*Greenwire*, July 8, 2013).

"They should strive to have a consistent policy position across the board," said Michael Formica, chief environmental counsel for the National Pork Producers Council.

The letter says the proposed electronic reporting rule "stands in sharp contrast to its contention in this

case that 'there is no substantial privacy interest under Exemption 6 for information that is freely available to the public or where an individual has no reasonable expectation of privacy.'" Exemption 6 refers to the provision that prevents the release of private information under the Freedom of Information Act.

EPA and the environmental groups involved in the case argue that the farms whose addresses, names, GPS coordinates and other data were released already had that information posted online, and therefore cannot claim that the information is private.

Tarah Heinzen, an attorney with the nonprofit Environmental Integrity Project, an intervenor in the case, said that EPA's rule is not final and that the agency is collecting comments from industry and environmental groups alike.

"EPA's willingness to consider industry comments regarding their claims about CAFO privacy concerns raised by electronic reporting is a separate issue from the scope of FOIA exemption 6," she wrote in an email.

Formica responded that the reasoning in the proposed rule is different from the position EPA has espoused in the case.

The U.S. District Court for the District of Minnesota will hear oral arguments in the case Wednesday.

INFRASTRUCTURE:

Bypassing mudslide risk, Calif. dam removal creates new river

Published: Monday, December 15, 2014

Long-awaited rains last week allowed the Carmel River to fill its new channel for the first time, bypassing the San Clemente Dam in the largest diversion project ever attempted in California.

The $83 million dam removal south of the San Francisco Bay Area might come as a surprise amid the prolonged drought, but it has already been more than 20 years since the California Department of Water Resources' Division of Safety of Dams declared the 106-foot-tall structure built atop a fault line a seismic hazard. After 94 years, the San Clemente Reservoir behind the dam is 95 percent full of mud.

The river's new path, dug over the past three years, allows the mud behind the dam to dry out, reducing the threat of a mudslide that could smother 1,500 homes and numerous businesses and destroy the downstream ecosystem if the buildup were dislodged.

The project also involves the restoration of the river ecosystem, creating 5,400 acres of continuous regional parkland around the dam.

Dam owner California American Water will increase rates by $2.50 a month to cover its $49 million portion of the project, while the California Coastal Conservancy, the National Marine Fisheries Service, the Nature Conservancy and other conservationists will pay the rest.

The unprecedented removal technique is expected to serve as a model in California, which has 1,400 dams in need of repair or no longer needed.

"We are playing Mother Nature a little bit," said Bill McGowan, the project manager for Granite Construction. "We're moving the river around and essentially building a new river. It's uncharted waters. We're doing something that's never been done before" (Peter Fimrite, *San Francisco Chronicle*, Dec. 15). --

DTB

DRINKING WATER:

Shrinking supply creates headache for Utah

Published: Monday, December 15, 2014

Groundwater rights and soaring demand for fresh water in Utah are creating a dilemma for officials in one of the nation's driest states.

Only two of the 15 major watershed areas have been researched and verified to use, and officials said the tedious process of analyzing the other watershed areas could take years to complete.

Another problem hampering officials is the intricate water rights laws. The laws that describe water rights and uses of water are decades old and have proved to be complicated for officials looking to extract the vital resource.

"Water is the most precious resource we have," said Chris York, an adjudication specialist with the Utah Division of Water Rights. "To have any doubt over how it is being used or where it is being used -- I can't think of anything more critical to the future of our state" (Amy Joi O'Donoghue, Salt Lake City *Deseret News*, Dec. 15). **-- MH**

ECUADOR:

Accident at power plant site kills 13

Published: Monday, December 15, 2014

An accident at a power plant construction site in Ecuador killed 13 workers, officials said yesterday.

The accident at the Coca Codo Sinclair hydroelectric power plant was due to the collapse of a pressure well, according to officials. The victims were 10 Ecuadorians and three Chinese workers. A dozen other workers suffered injuries.

Sinohydro Corp., a Chinese firm, is building the $2 billion 1,500-megawatt power plant.

Environmentalists have criticized the plant for being built at the edge of the Amazon rainforest (Associated Press, Dec. 14). **– MH**

EUROPEAN UNION:

Bloc warns island countries to step up policing of illegal fishing

Published: Monday, December 15, 2014

The European Commission has warned four Pacific and Caribbean countries to escalate their fight against illegal fishing or face a ban on European fish imports.

The Solomon Islands, Tuvalu, the Federation of Saint Christopher and Nevis, and Saint Vincent and the Grenadines were given six months to make changes.

The European Union is the world's largest fish importer. Since 2010, the body has been taking action against countries that do not impose penalties to dissuade illegal fishing or police their waters for unlicensed fishing vessels (Julia Fioretti, Reuters, Dec. 12). **-- AW**

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1.CALIFORNIA:

Senate leader plans bill to force state pension funds to divest from coal

OAKLAND, Calif. -- The head of California's Senate plans to introduce legislation to require the state's public pension funds to get rid of their investments in coal equities.

2.SCIENCE:

Greenland's contribution to sea-level rise may be much larger than expected, studies warn

Two new studies are offering new warnings about the Greenland ice sheet and its future contribution to rising sea levels that could wreak havoc on coastal areas.

TODAY'S STORIES

3.FORESTS:

Researchers find that as CO2 grows, trees don't

4.RENEWABLE ENERGY:

Solar prices fall, but researchers find puzzling price variations

5.EMISSIONS:

Wide state variations in methane leaks found from similar oil and gas fields

6.AGRICULTURE:

Organic growers begin to close the gap with conventional farming

7.POLICY:

Obama admin urges hospitals to prepare for climate change

8.WEATHER:

Kansans see tornado, rain and snow in one day

9.SEAFOOD:

Herpes virus threatens habitats, multibillion-dollar oyster industry

10.SPECIES:

Soft coral from South Fla. region may endure climate change -- study

11.ADAPTATION:

Flood-prone areas are becoming fish farms in Bangladesh

E&ETV'S ONPOINT

12.NUCLEAR:

Third Way's Freed says government support essential to commercializing advanced nuclear technology

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Can S.C.'s groundbreaking net metering policy spread in the Southeast?
A recent agreement on a key solar policy has again made conservative South Carolina the talk of the energy world, both clean energy and utility advocates say.

2.NEWSMAKER:
Oil's information guru on how Big Data can make you a better driller
NEW YORK CITY -- Glumness is in rich supply in the U.S. oil business today, just like the crude whose glut has stomped oil prices to their lowest mark in more than five years. Allen Gilmer won't be having any. To the contrary: For him, business looks dandy.

TOP STORIES

3.LAW:
Supreme Court sides with driller in dispute over class-action rules

4.OIL:
As U.S. drillers scramble to maximize profit, analysts wonder where crude price will land

5.MARCELLUS SHALE:
Sustainable Shale center's drilling guidelines are fatally flawed, group says

OIL AND GAS

6.TRANSPORT:
N.Y. inspectors find new faults in crude-by-rail safety

7.RESEARCH:
DOE looks to demystify underground energy activity

8.ADVOCACY:
NRDC expands drilling focus beyond water to air quality

9.CALIFORNIA:
Enviros battle industry over drilling referendum language

10.PIPELINES:
Price slump, competition sink Bakken-to-Cushing line

11.HYDRAULIC FRACTURING:
Md. regulations could end de-facto drilling ban

12.REFINING:
Valero angles for tax break in Texas

13.OVERSIGHT:
Ore. seeks crude-by-rail boost for tiny interstate agency

ELECTRICITY

14.SECURITY:
Congressional report draws cyber lessons from used cars

E&ETV'S ONPOINT

15.NUCLEAR:
Third Way's Freed says government support essential to commercializing advanced nuclear technology

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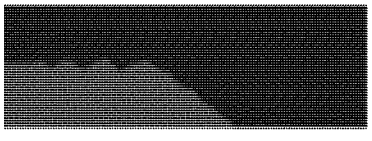

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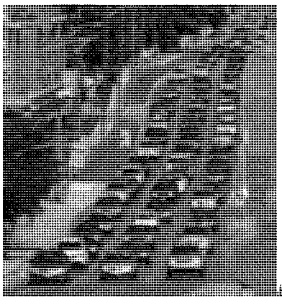

Air & Radiation Law News

for December 12, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Chicago Proposes Caps on Petcoke, Denies Variance From Petcoke Storage Rules

Chicago Mayor Rahm Emanuel took another swipe at energy and distribution companies stockpiling petroleum coke, introducing an ordinance that would cap the amount of "pocket" stored within the city limits....

Air Pollution

States, Industry Argue for Vacating EPA's Cross-State Emissions Rule

Industry groups and state and local government agencies have identified several deficiencies that they argue support the full or partial vacatur of the Environmental Protection Agency's cross-state emissions rule for power plants...

Budget

$1.1 Trillion Omnibus In Jeopardy As Republicans, Democrats Withhold Support

Plans by House and Senate leaders to persuade Congress to pass a $1.1 trillion omnibus spending package (H.R. 83) remain in flux, leading them to consider moving another short-term continuing resolution to prevent any lapse in federal government...

Climate Regulation

Ontario Draft Regulation Pushes Low-Carbon Fuels in Cement, Lime, Iron, Steel Industries

Ontario has published a second draft of its proposed regulation to encourage the cement, lime, and iron and steel sectors to replace coal with low-carbon alternative fuels....

Climate Regulation

States Need More Time to Meet Standards For Carbon Dioxide, Six Democrats Say

Proposed carbon dioxide emissions guidelines for existing power plants do not provide states with adequate time to invest in new infrastructure to support expanded gas-fired generation while ensuring grid reliability, six Democratic...

Emissions Trading

Green Groups Request Formal Review of Free Carbon Allowances for EU ETS Participants

Five environmental organizations led by Greenpeace requested that the European Commission, the European Union's executive arm, review a decision to grant free emission allowances from 2015–2019 to most industrial participants...

Energy

Cautious House Republicans Plan to Move Slowly on Crude Oil Export Ban

Republicans on the House Energy and Commerce Committee struck a cautious tone during a Dec. 11

hearing on lifting the ban on crude oil exports and said more hearings on the nearly 40-year-old prohibition were planned in 2015....

Energy

China Offers Billions in Subsidies
As Electric Vehicles Run on Gasoline

China's ambitious plan to lower pollution by adopting 5 million electric cars is running into a problem—a lack of charging stations....

Energy

ECJ Backs Restrictions on Electricity Charge
Exemptions for Energy-Intensive Industries

The European Union antitrust authority scored an important victory in its drive to prevent EU countries from granting energy-intensive industries discounts on high-cost electricity—triggered by the move to renewable energy—when...

Energy

EU Begins Work to Cap Crop-Based
Biofuels Use in Transportation Sector

European Union legislation to cap the use of crop-based biofuels for the transportation sector has entered a critical phase as EU member states and the European Parliament began work to bridge differences on a limitation threshold for the...

Energy

IRS Sets Process on Gasification Project Credits

The Internal Revenue Service has established a third phase of the Section 48B program for qualifying coal gasification projects to reallocate investment credits available after conclusion of Phase 1. In Dec. 11 guidance (Notice 2014-81),...

Energy

Mexico Reveals Fiscal Terms for Auction
Of Shallow-Water Oil, Gas Blocks in July

The much-awaited financial terms for Mexico's first oil and gas auction were announced Dec. 11, as energy officials laid out the details on the shallow water blocks that will be auctioned off in July 2015....

Energy

Senate Panel Approves FERC Nominee, But Time Slipping for Senate Confirmation

The Senate Energy and Natural Resources Committee approved the nomination of Colette Honorable to the Federal Energy Regulatory Commission Dec. 11, but whether the Senate will have time to confirm her in the final hours before adjournment...

Enforcement

EPA Self-Disclosure Policy Will Get Update in 2015, Enforcement Chief Says

The Environmental Protection Agency's enforcement office will offer in 2015 a proposal to update its environmental audit and self-disclosure policy, a senior EPA official told Bloomberg BNA....

Fuel Efficiency

EU Provisionally Agrees to Design Changes That Help Heavy-Goods Trucks Save Fuel

New aerodynamic and more fuel-efficient trucks will be allowed on European Union roads from the early 2020s under an amendment to a 1996 EU directive provisionally agreed to Dec. 10 by the European Parliament and Council of the EU....

International Climate

Kerry at UN Climate Talks Defends U.S. Role, Calls for 'Giant' Steps From 'Every Nation'

Secretary of State John Kerry told international climate negotiators in Peru Dec. 11 that the danger from climate change is on par with global threats from terrorism and nuclear proliferation, and he challenged developing nations to do their...

International Climate

Lima Delegates Find Agreement on Six Broad Topics as Climate Talks Near End

Six main topics to be reflected in next year's global agreement emerged Dec. 11 as a rare area of consensus on the next to last day of the United Nations climate change conference in Lima....

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Latest News

EPA Plan For Oil Well GHG Reporting May Aid Industry Opposition To Rules

EPA's plan to expand its greenhouse gas (GHG) reporting program to include hydraulically fractured oil wells may help boost industry's opposition to direct regulation of the sector's emissions of the GHG methane, an industry source says, because it shows that the agency currently lacks crucial data on the wells' emissions to inform a rule.

Democrats Make Defending Obama Veto Of GHG Rule Curbs A 2015 Priority

Senate and House Democrats leading a task force on climate change say their immediate priority in next year's Congress is shoring up a public defense of EPA's greenhouse gas (GHG) rules to ensure enough votes to sustain a presidential veto of expected Republican legislation to undercut the regulations.

News Briefs

EPA Tells Lawmakers It Can Fix RFS Without Legislation

EPA air chief Janet McCabe told a House oversight committee hearing Dec. 10 that the agency hopes to address the multiple challenges facing the renewable fuel standard (RFS) program when its sets annual biofuel blending standards next year that support the program's climate change and energy security goals.

Greenwire

APPROPRIATIONS:

Spending bill advances by thin margin in House as Boehner threatens to extend session until Christmas

Nick Juliano and Daniel Bush, E&E reporters

Published: Thursday, December 11, 2014

The House today barely advanced a massive spending bill in a tough vote that signals potential trouble ahead for the $1 trillion measure meant to prevent a government shutdown at midnight.

Speaker John Boehner (R-Ohio) earlier today expressed confidence that the spending bill would pass this afternoon, but House Republicans struggled to secure passage of the procedural rule necessary to advance the legislation.

"It's a good bill," Boehner said at his weekly press briefing, just before the rule vote. "I expect this bill will receive bipartisan support and pass."

The rule barely passed, 214-212, as all Democrats and 16 Republicans voted against it.

Some Democrats are expected to vote for the underlying bill, which would fund most of the government for the rest of the year, with a temporary extension in funding for the Department of Homeland Security, but more conservatives are likely to oppose it. The result remains unclear.

While the tight rule vote spelled potential trouble for the spending bill, it may receive a boost from a White House decree issued less than an hour later. A statement of administration policy expressed disappointment with some of the controversial language in the bill -- without singling out any environmental provisions -- but did not threaten to veto the bill.

"The Administration urges the Congress to enact comprehensive full-year appropriations legislation for all Government functions free of provisions that have no place in annual appropriations bills," the statement said.

The 16 Republicans who voted against advancing it included recently sworn-in Rep. Dave Brat (Va.), who dramatically unseated then-Majority Leader Eric Cantor in a GOP primary this summer, along with many other members who make a habit of bucking their party's leadership.

A vote on the underlying spending bill, dubbed the CRomnibus, is scheduled for later this afternoon. It remains to be seen when the Senate would be able to vote on it -- if it manages to pass the House -- and at least a short-term continuing resolution may be necessary to prevent a shutdown. If the CRomnibus fails, GOP leaders are expected to pass a longer-term CR that would keep the government funded into the new year, when Republicans will have a majority on both sides of the Capitol.

In addition to expected defections from conservatives, who are upset the bill does not defund President Obama's recent immigration actions, the bill has drawn fire from liberal Democrats such as Sen. Elizabeth Warren (Mass.) who object to policy riders increasing the amount of money individuals can donate to political party committees and relaxing banking regulations from the Dodd-Frank law.

Meanwhile, Boehner warned that lawmakers will not be heading home to their districts this afternoon, as had initially been the plan, if the spending bill does not pass.

"If we don't finish today, we'll be here till Christmas," Boehner told reporters at a briefing today.

CLIMATE:

2 former White House hopefuls make passionate pitches for emissions deal

Jean Chemnick, E&E reporter

Published: Thursday, December 11, 2014

LIMA, Peru -- The paths of two former Democratic presidential nominees will cross today at U.N. climate talks here with each pressing for an ambitious new global warming deal at next year's negotiations in Paris.

Former Vice President Al Gore and Secretary of State John Kerry have both made climate change a signature issue in their careers, but each has approached it from different directions.

Kerry will address the U.N. talks this afternoon as his nation's top diplomat, charged with assuring the world about President Obama's domestic climate agenda and that the United States is committed to a successful greenhouse gas agreement next year. Diplomats and activists alike have expressed high hopes that Kerry's attendance -- the first by a secretary of State at a U.N. climate meeting since Hillary Clinton visited Copenhagen, Denmark, in 2009 -- will resolve conflicts over how industrialized countries will support poor, climate-vulnerable nations going forward (*ClimateWire*, Dec. 11).

Gore, meanwhile, has become better known as a climate crusader than as a U.S. politician.

"He doesn't have a country hat anymore," said Jennifer Morgan of the World Resources Institute. "He's almost become a global citizen."

No longer a representative of any government, Gore has sometimes criticized Obama for being too slow to act on climate change and demanded that he do more. In a 2011 *Rolling Stone* interview, he blasted Obama for having "failed to use the bully pulpit to make the case for bold action on climate change" and for surrendering on efforts to pass a cap-and-trade bill for curbing U.S. emissions.

His role as a climate change statesman has endeared him to participants here. Panned in his 2000 presidential campaign for being "boring," Gore has been greeted as a rock star here. Hundreds attended his hourlong PowerPoint presentation yesterday in one of the conference's largest halls, surging forward at the end for photos or to say a word to the former vice president before he was spirited away to his next engagement.

Gore used his talk to make the case that last month's U.S.-China agreement on post-2020 emissions reductions -- brokered by Kerry -- was a genuine turning point in world efforts to contain climate change that delegates could trust and build on.

"I know both these men," he said, standing before a two-story-high projected picture of Obama and Chinese President Xi Jinping shaking hands. "I see this as one of the greatest sources of optimism I've seen in the last 40 years on the climate crisis."

He touted U.S. EPA's greenhouse gas draft rules for new and existing power plants in bolder terms than administration officials usually use at home.

The new-plant proposal, which is due to be final next month, has "already effectively halted the construction of new coal plants in the United States," Gore boasted. "All of those that were proposed, most have been canceled, most of the others are now at risk."

Advocates who are gathered in Lima this week say the diplomat and the communicator each have a hand in driving climate action.

"Vice President Gore is obviously an iconic figure in this movement," said Alden Meyer, director of strategy and policy for the Union of Concerned Scientists.

Kerry, meanwhile, has a vital role as a U.S. official, Meyer said. "He is not in the same kind of advocacy and encouragement role that Vice President Gore is in," he said.

But Kerry is no less passionate about climate change, having unsuccessfully sponsored cap-and-trade legislation in the Senate in 2010 and made climate change a flagship issue of his time at the State Department.

His appearance here today shows his commitment to the process, Meyer said, though participants should not expect him to restate the U.S. position in the talks.

WRI's Morgan said Kerry is unlikely to engage in the talks themselves. He will be in Lima only a short time and is not expected to hold many meetings.

Kerry will "reassure other countries that it is different this time, that the U.S. is implementing domestically and shifting its approach to this issue."

Gore's schedule yesterday included a meeting with more than 20 environment ministers and negotiators to discuss the importance of a long-term emissions reductions goal, his spokeswoman Betsy McManus said. Today, he's convening about 300 advocates to "encourage a strong, ambitious agreement," she said.

Ken Berlin, president and CEO of the Climate Reality Project, said Gore's role complements Kerry's. Gore, who is still chairman of the organization's board, is now free to be an independent voice for progress toward an agreement, he said.

"He deals with world leaders all the time, and in the sense he does it without the constraint of being a government official," said Berlin, who himself worked for Obama's EPA transition team. "So you can really think about and develop the policies that you think are best and push those policies."

Different roles

Dirk Forrister, president and CEO of the International Emissions Trading Association, said he remembers Gore's PowerPoint presentation on warming from his time at the helm of the White House Climate Change Task Force in the late 1990s.

At that time, the presentation -- which would be made famous in Gore's Academy Award-winning documentary, "An Inconvenient Truth," in 2006 -- was done with overhead slides and charts on an easel.

"One of my colleagues used to have to stand on the chair to raise the emissions thing up high to show emissions [rising]," he said. "He wasn't a real tall staff colleague."

Even in those days, Gore could speak fluently and passionately about climate change, Forrister said,

though he has grown more confident in front of a camera since leaving office. One of his greatest roles now is as a communicator, hosting annual daylong media events through the Climate Reality Project, which Gore founded, and running communications training sessions all over the globe.

"Some of that communication can be inspiring to leaders, and some of it, I think, they may not know what to do with," Forrister said. "Because it does amplify the seriousness of the issue, the magnitude of the challenge. But it does reinforce the need to act."

Gore's presentation yesterday featured water flooding into Manhattan's Ground Zero site as the result of Superstorm Sandy in 2012. Other pictures showed devastation and carnage from storms, floods and other occurrences taken from nearly every region represented by the more than 190 countries attending the summit.

Forrister also remembers Kerry from his years on the Senate Foreign Relations Committee he would eventually chair. The White House task force had to keep him informed since the run-up to the Kyoto Protocol.

"He's had a deep history in this from the Foreign Relations aspect, in understanding the role of America in the world," Forrister said. It is a role Kerry has always seen as stretching beyond security issues to environmental and economic ones, he said.

And while Kerry may not become involved in negotiation details today, he will encourage negotiators to move beyond squabbles over petty details.

"Because sometimes in the negotiations, you can feel like it's a scuffle on the playground, and this is a grown-up," he said. "Nobody doubts the seriousness of John Kerry."

Paul Bledsoe, a fellow at the German Marshall Fund, said Kerry deserved credit for pragmatism. In spearheading the U.S.-China agreement last month, Kerry showed that bilateral engagement on climate change can help breathe new life into the U.N. negotiations rather than undermine them, as some climate advocates have warned, he said. Kerry has raised the issue in all his meetings with foreign counterparts since becoming secretary of State.

"Reigniting those bilateral negotiations as soon as he became secretary and recognizing them as the centerpiece to an effective global deal -- and that was sort of his vision -- was absolutely accurate," he said.

No GOP lawmakers

The presence of these two Democratic climate change titans throws into sharp relief the absence of interest in the issue from U.S. Republicans.

There are some GOP congressional staffers at the conference, but no lawmakers.

Even Sen. James Inhofe (R-Okla.) declined to send a video blasting the summit as a futile attempt to solve something that is not a problem, as he has done in past years. His staff said the presumptive chairman of the Senate Environment and Public Works Committee next year was too busy.

The starkness of the division between U.S. Republicans and Democrats on this issue is not the international norm, especially when it comes to the science of man-made warming.

With a few exceptions -- Canada and Australia -- most countries have less stark internal disagreements on how and whether to enact climate policies.

Bledsoe said that could mean the U.S. commitments in these talks depend on how the political winds blow in the next election.

"We need to be honest about the polarization over climate change in order to begin to address it," he said. "Pretending they don't exist doesn't help."

CLIMATE:

Nuclear giant Exelon shrugs off 'doomsday' warnings about EPA rule

Hannah Northey, E&E reporter

Published: Thursday, December 11, 2014

U.S. EPA isn't alone in rejecting doomsday predictions about the effects its Clean Power Plan will have on the nation's energy sector and sprawling electric grid.

Exelon Corp., the nation's largest nuclear operator, also doesn't think the sky is falling.

"Some of our colleagues in the industry have argued that the regulation of carbon pollution is illegal, that EPA is moving too quickly, and that Americans must confront a choice between protecting the environment ... and affordable and reliable electricity," Kathleen Barrón, Exelon's senior vice president of federal regulatory affairs, told U.S. EPA chief Gina McCarthy in public comments filed last week. "The industry data developed over the last six months demonstrates that their doomsday predictions are simply not correct."

Instead, Exelon said EPA was "well within" its legal authority to issue the proposal, which would require existing plants to reduce carbon dioxide emissions 30 percent from 2005 levels by 2030. The Clean Power Plan was "legally and scientifically required," Barrón said in Exelon's comments.

The Chicago, Ill.-based utility has aligned with other major U.S. companies within the Clean Energy Group -- a coalition of electric utilities and electric generating companies that includes National Grid, Nextera Energy, PG&E Corp. and Calpine Corp. -- in defending the rule while calling for nuclear plants to receive more credit.

But Exelon -- and the nuclear industry as a whole -- is far from fully satisfied with the EPA proposal.

David Brown, Exelon's senior vice president, government affairs and public policy, said during an interview this week that the EPA rule, as it stands, doesn't do enough to support nuclear energy. Brown's sentiment reflects earlier comments from the Nuclear Energy Institute (*Greenwire*, Dec. 1).

"Renewables get full credit; we get 6 percent credit," he said. "We think ideally they would treat all nonemitting sources the same."

Exelon has also joined the Edison Electric Institute, large environmental organizations, think tanks and major academic institutions in calling for some states to qualify for a "safe harbor" -- and essentially comply with EPA's rule -- if they implement a "Smart System Dispatch" program by 2020.

That program would allow grid operators to dispatch cleaner power sources such as nuclear, solar, wind, gas and hydropower before fossil-fired generation.

"This point of agreement across the stakeholder spectrum is an important opportunity for EPA to bridge the divisions regarding this rule and ensure on-time, affordable implementation of carbon pollution reductions," Barrón wrote. "It could also be considered through a Notice of Data Availability without jeopardizing the June 2015 target date for the final rule if EPA preferred to seek additional public comment on this specific option."

For now, Exelon's major focus is on four of its plants in Illinois that could be shuttered, units that Brown said continue to face challenges from a surge of cheap wind, a dearth of transmission and other market factors. The closure of those plants and others, he said, will affect the country's ability to lower emissions.

"Just do the math: You can't get there without nuclear," Brown said. "We're hopeful that there will be some changes."

'Federal lever'

Despite the industry's concerns with the EPA proposal, top Obama administration officials have repeatedly insisted that nuclear power plays a central role in the president's climate plan.

Pete Lyons, the Energy Department's assistant secretary at the Office of Nuclear Energy, today reiterated his concerns about the effect the early retirement of plants could have on national emissions levels.

But finding the mechanism to help those floundering plants on the federal level appears to be perplexing administration officials.

Lyons told a House Science, Space and Technology subcommittee this morning that closure of nuclear plants represents a "significant blow" to zero-carbon electricity generation and the loss of baseload electricity supply and diversity.

"Adverse economic conditions contributed to the early closure of four reactors in 2013 and are a factor in the imminent retirement of the Vermont Yankee plant," Lyons said. "Complex market factors, falling alternative generation costs and lower electricity demand forecasts have made operating nuclear power in plants uneconomical in some parts of the country."

But Lyons told the Subcommittee on Energy that DOE hasn't identified a "federal lever" that could be used to protect plants in jeopardy -- mainly smaller, single-unit sites -- and said solutions are likely to be found on the state level. Lyons pointed to processes underway within Exelon's bases of Illinois and New York, and PJM Interconnection's review of market mechanisms to support nuclear's baseload nature.

"We've been discussing if there's a direct federal action, and we haven't found one yet," he said.

But when pressed on the point following the hearing, Lyons expanded on what role the EPA rule and a price on carbon could play in the nuclear industry.

"The price of carbon has been debated for years. It sounds good when you say it fast, but when you look at how it would be implemented ... it certainly is a potential lever, but it would be a major challenge," Lyons said.

Lyons said he's certainly aware that the nuclear industry has raised concerns within the more than 1.2 million public comments about the proposal, which is still in draft form. Ultimately, he said, the rule could also serve to support nuclear, even the singular small units threatened with early closure.

"[The EPA rule] is set up to reduce overall carbon emissions, so in that sense, yes, it's very much a lever," Lyons said. "And I think the president has tried many times to move toward a value on carbon."

CONGRESS:

Hill staffers gird for 2015 policy fights

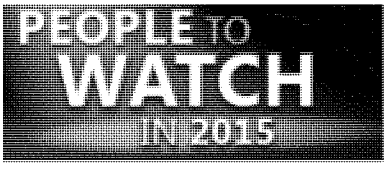
Nick Juliano and Daniel Bush, E&E reporters

Published: Thursday, December 11, 2014

Fifth in a series on energy and environment staffers worth watching in 2015.

Republican victories in the midterms will mean more action next year in Congress, with energy and environmental policymaking near the top of the new majority's priority list.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

Incoming Senate Majority Leader Mitch McConnell (R-Ky.) promises to restore "regular order" when he takes the helm next year, meaning a return to the kinds of sometimes-contentious amendment debates that fell out of favor over the last few years. And with Republicans on both sides of the Capitol planning to work closely together crafting bills they can send to the White House, deals will have to be struck with Democrats on items that would be able to earn the president's signature and achieve the 60 votes necessary for passage in the Senate.

Top issues up for consideration include the Keystone XL pipeline; U.S. EPA rules affecting power plants, farmers, mining companies, and the oil and gas industry; exports of liquefied natural gas and crude oil; tax incentives for energy companies and conservation; and reauthorization of the highway bill.

Lawmakers will be busy trying to cut deals and advance bills in those and other areas. Here are some of the House and Senate aides who will be helping them along the way.

Senate

Neil Chatterjee, senior policy adviser, Senate Republican leader Mitch McConnell

A native of Lexington, Ky., Chatterjee knows what makes his boss's constituents tick, and he has developed a rich network of connections on Capitol Hill and across town in more than a decade in Washington, D.C.

Chatterjee has worked for McConnell since 2009, first as a staff assistant and now as a policy adviser whose portfolio includes energy, environment, agriculture and natural resources issues. He has aided McConnell's efforts to beat back what the leader sees as an overreaching federal government waging a "war on coal" with tough regulations from U.S. EPA and other agencies.

McConnell earlier this year unsuccessfully sought a vote on a Congressional Review Act resolution to block EPA's still-unfinalized new source performance standard limiting greenhouse gas emissions from existing power plants. He also sought amendments targeting the rules during consideration of an energy efficiency bill, when the Appropriations Committee was set to mark up its annual spending bill and at numerous other opportunities. Chatterjee's advice will be sought throughout the year as McConnell resumes those efforts.

Neil Chatterjee. Photo courtesy of the University of Cincinnati College of Law.

"One of the things that sets Neil apart from the pack is his depth of knowledge on the policy as well as his incredible strategic insight," said Rebecca Rosen, a former Senate aide and adviser to Mitt Romney's presidential campaign who is now vice president of policy and government affairs at Devon Energy, an oil and gas drilling company. "His ability to anticipate how people will act and how complex situations will play out is absolutely amazing."

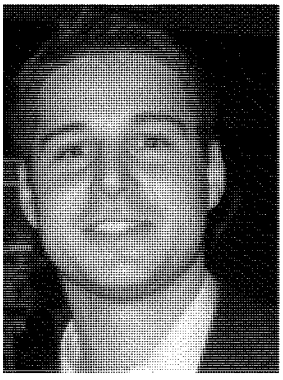
Before joining McConnell's office, Chatterjee spent more than two years as a lobbyist for the National Rural Electric Cooperative Association, prior to which he worked on Capitol Hill for the House Republican Policy Conference, then-Rep. Deborah Pryce (R-Ohio), and the Ways and Means Committee stretching back to 2003, according to the congressional staff database LegiStorm. He graduated from St. Lawrence University and received a law degree from the University of Cincinnati College of Law.

Alex McDonough, senior policy adviser, Senate Democratic leader Harry Reid

McDonough has been Reid's senior adviser on energy, environment, public lands and natural resources issues for the past two years. A Las Vegas native, he has been working in Reid's office since 2006 in a variety of roles, with a portfolio that includes aiding Reid's efforts to block nuclear waste disposal at Yucca Mountain and helping to pass water infrastructure legislation.

Chris Miller, who was Reid's senior adviser on these issues from 2005 through 2012, said McDonough has done a great job in the role, citing his legal background and ability to get along well with others.

"He's smart; he's politically astute; he's very thorough; he knows the issues," Miller said.



Alex McDonough.

McDonough graduated from the University of Michigan with a bachelor's degree in political science and Russian studies and received his law degree from the American University Washington College of Law, according to LegiStorm.

Before he came to work for Reid, McDonough was working for the University of Maryland's IRIS Center on a U.S. Agency for International Development project in Central Asia, according to a biography posted by the Alliance to Save Energy.

Karen Billups, Republican staff director, Energy and Natural Resources Committee

Starting next year, energy policy in the Senate will revolve around Sen. Lisa Murkowski (R-Alaska), the incoming chairwoman of the Energy and Natural Resources Committee.

Murkowski, the panel's current ranking member and a longtime energy industry ally, is expected to keep her committee staff in place once she takes over the ENR gavel from Sen. Mary Landrieu (D-La.), who lost her seat in a runoff last weekend.

Leading the way will be Billups, the ENR Committee's Republican staff director and a seasoned energy policy hand who has worked on the panel since 2003. Expect Billups to play an important role on Murkowski's team as the senator pushes to end the ban on crude oil exports, boost offshore oil development and burnish her energy credentials ahead of her re-election battle in 2016.

Prior to joining the ENR Committee, Billups did a stint as a lobbyist and attorney for Entergy Corp. Billups also worked on ENR for Murkowski's father, former Sen. Frank Murkowski (R-Alaska), in the late 1990s. Before that, Billups served as a counsel for the House Energy and Commerce Committee and the Department of Energy.

Bettina Poirier, Democratic staff director, Environment and Public Works Committee

Sen. James Inhofe (R-Okla.), a vocal climate change skeptic, will replace Sen. Barbara Boxer (D-Calif.) as chairman of the Senate Environment and Public Works Committee in January, setting the stage for a high-profile clash on climate and environmental policy. While Inhofe hasn't announced his new staff, Boxer will rely on her longtime energy adviser Poirier to help her play defense on green issues in the 114th Congress.

Poirier will be looking for ways to fend off Republican attacks on the proposed power plant rule and other EPA regulations. Inhofe said recently that curbing EPA regulations would be a "top priority" when he takes over in January (*E&ENews PM*, Dec. 2). The committee's early focus in 2015 will also be on reauthorizing a highway spending bill that expires in May.

Bettina Poirier. Photo courtesy of DC EcoWomen.

Poirier joined Boxer's office in 2001 and became the EPW Committee's Democratic staff director and chief counsel in 2006, after taking a two-year hiatus to work for retiring Rep. John Dingell (D-Mich.) on the House Energy and Commerce Committee. Prior to working for Boxer, Poirier, a New York City native, spent nine years as an Agriculture Department attorney.

This could be Poirier and Boxer's last years working together in the Senate. Boxer is up for re-election in 2016 but is rumored to be considering retirement instead of running for a fifth term.

House

Maryam Brown, policy adviser, House Speaker John Boehner

While plenty of people on Capitol Hill have experience working for the oil industry as lobbyists, far fewer have worked in a hands-on capacity beyond K Street. Not Brown, who went to work as a maintenance engineer for Amoco Oil Co. after graduating from Louisiana State University in 1996.

Now Brown advises Boehner on energy issues ranging from the KXL pipeline to EPA rules. She and Chatterjee are expected to work closely together in the coming year as Republicans work to craft a unified policy agenda on both sides of the Capitol.

"Maryam has already played an essential role determining the 2014 agenda; newly elected Republican senators ran on bipartisan legislation that she helped get through the House," said Chris Prandoni, director of energy and environment policy for Americans for Tax Reform. "Expect Maryam to build on that momentum now that she has willing and able partners in the Senate."

Maryam Brown. Photo courtesy of Linkedin.

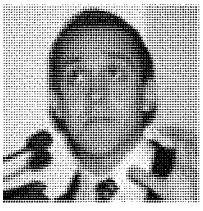
After a bit more than a year at Amoco, Brown returned to LSU, where she had received a bachelor's degree in mechanical engineering, to obtain her law degree, according to her LinkedIn profile. She came to Washington, D.C., in 2004 as counsel to the House Energy and Commerce Committee and has held a variety of jobs on and off Capitol Hill since then, including as a manager of public policy for ConocoPhillips Co. and as chief counsel to E&C's Energy and Power Subcommittee, the position she held before joining Boehner's office in December 2012.

Mike Darner, executive director, Congressional Progressive Caucus

While Republicans are ascendant after claiming majorities on both sides of the Capitol, the last few election cycles have also left a leaner Democratic Party more heavily influenced by its liberal members.

To that end, the Progressive Caucus is expected to keep pushing Democrats to be aggressive in opposing Republican policies they see as damaging to the environment and putting forward aggressive proposals to fight climate change and achieve other long-standing goals. Darner will be a key player in those efforts.

"Mike Darner is the kind of staffer every congressional office wishes for: incredible work ethic, unwavering principles, constant innovation, and unlimited legislative and floor savvy," said Michael Shank, a former Democratic congressional aide who is now an adjunct professor at George Mason University. "With Darner at the helm, the caucus is poised, more than ever before, to make an unprecedented footprint in the D.C. political space."



Mike Darner. Photo courtesy of Linkedin.

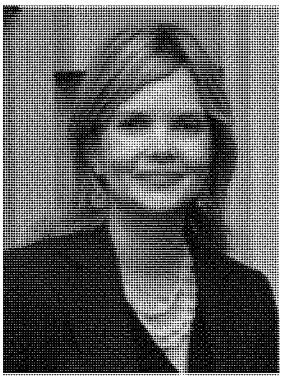
Darner has been executive director at the CPC since February. Before that, he spent six years in the office of Rep. John Conyers (D-Mich.), first as a legislative counsel and then as legislative director. Before that, he was a staff attorney at the Center for Competitive Politics and held several legal internships at the House Judiciary Committee, American Civil Liberties Union, Center for American Progress and Freedom Forum, according to his LinkedIn profile.

Darner graduated from Miami University with a bachelor's degree in political science and received his law degree from the Catholic University of America Columbus School of Law.

Meghan Conklin, Democratic staff director, Natural Resources Committee

A seasoned environmental policy hand, Conklin has years of experience on and off Capitol Hill. Now she'll serve as the Democratic staff director to Rep. Raúl Grijalva (D-Ariz.), the incoming ranking member on the House Natural Resources Committee and co-chairman of the Congressional Progressive Caucus.

Conklin's portfolio will include public lands, water and forestry issues. She'll work closely with Grijalva as he seeks to find areas of compromise with the panel's incoming Chairman Rob Bishop (R-Utah). Grijalva announced Conklin's appointment Tuesday, praising her "experience, expertise and dedication" to environmental issues (*Greenwire*, Dec. 9).



Meghan Conklin. Photo courtesy of Meghan Conklin.

"Few people in Washington match her understanding of the legislative process, knowledge of the executive branch and deep commitment to protecting our environment," Grijalva said.

Conklin currently serves as a senior aide on the Senate Energy and Natural Resources Committee. Prior to that, Conklin was chief of staff to the Fish and Wildlife Service from 2010 to 2012 and an associate deputy secretary at Interior in 2009.

Before joining the Interior Department, the San Diego native worked on the House Natural Resources Committee from 2004 to 2009.

Sarah Schenning, legislative director to Rep. Chris Van Hollen (D-Md.)

Schenning became a key climate adviser to Van Hollen this month when the Maryland lawmaker replaced retiring Rep. Henry Waxman (D-Calif.) as the co-chairman of the Bicameral Task Force on Climate Change. The task force, which is co-chaired by Sen. Sheldon Whitehouse (D-R.I.), was created in 2013 to counter Republican attacks on the Obama administration's climate change plan.

Schenning also serves as Van Hollen's point person for the House Renewable Energy and Energy Efficiency Caucus, and coordinates his work on Chesapeake Bay water issues. The University of Maryland graduate joined Van Hollen's office in 2006. Her wide-ranging portfolio also includes transportation and labor issues.

NOMINATIONS:

Panel approves FERC nominee -- but full Senate vote in doubt

Daniel Bush, E&E reporter

Published: Thursday, December 11, 2014

The Senate Energy and Natural Resources Committee today approved President Obama's nominee to the Federal Energy Regulatory Commission, but with time running out in the lame-duck session, it remains unclear if the nomination will be confirmed by year's end.

At a brief meeting on Capitol Hill this morning, the committee voted unanimously to send Colette Honorable's nomination for FERC to the Senate floor. The panel had planned to approve the nominee

yesterday but was forced to postpone its vote after failing to attain a quorum (*E&E Daily*, Dec. 11).

"I'm thrilled that we were able to get Colette Honorable through" the committee, Sen. Mary Landrieu (D-La.), ENR's outgoing chairwoman, said after the vote. "We are very hopeful to get her [confirmed] in the next day or two."

Honorable has bipartisan support, making her confirmation a virtual lock if it moves to a full Senate vote, but the upper chamber -- as of now -- is not scheduled to hold any more votes on Obama administration nominees in the final days of the lame-duck session.

"Anything can happen; there's still some daylight in this Congress," said Sen. Lisa Murkowski (R-Alaska), the Energy panel's incoming chairwoman. But "right now, we're not doing any more nominations."

Murkowski said a final decision on the nomination would come down to Senate Majority Leader Harry Reid (D-Nev.) and Minority Leader Mitch McConnell (R-Ky.).

After the vote, industry and environmental groups called on the Senate to move quickly to confirm Honorable before the end of the year.

"We hope the full Senate will move forward quickly with her confirmation so FERC can return to a full slate of commissioners," said John Moore, a senior attorney for the Natural Resources Defense Council.

Mike Duncan, president and CEO of the American Coalition for Clean Coal Electricity, also endorsed Honorable.

"Colette Honorable has a solid record and is adept at engaging with groups across the spectrum to create meaningful, working relationships to foster commonsense solutions to complex energy issues," he said in a statement. "Such collaboration will be invaluable at FERC."

If Honorable isn't confirmed this month, the White House will have to renominate her next year. But Murkowski said Honorable is unlikely to face more opposition once the Senate flips to GOP control.

"I don't see that it would be any more difficult," Murkowski said. "In terms of her credentials and her qualifications, I think she's proved herself."

Reporter Hannah Northey contributed.

MANUFACTURING:

Spending bill offers support for Obama's innovation institutes

Katherine Ling, E&E reporter

Published: Thursday, December 11, 2014

Congressional appropriators offer tempered support for President Obama's network of manufacturing innovation institutes in the $1 trillion spending bill aimed at keeping the government open through the rest of fiscal 2015.

Set for House action today, the appropriations bill includes language from House-passed H.R. 2996, which would provide $300 million over a decade for the Commerce Department to create a network of manufacturing innovation institutes.

The spending bill has placeholder language stating it will "include" H.R. 2996 without offering details.

Bipartisan lawmakers welcomed the measure as a boost for U.S. advanced manufacturing, but it is not the $1 billion endowment Obama requested to support at least 15 institutes. The president said he would like to ultimately set up 45 institutes over the next decade to help push the U.S. to world leadership in advanced manufacturing areas like clean energy.

The House bill would require Commerce to create a national manufacturing strategy and office to oversee a series of public-private partnerships for centers focused on commercializing innovative technologies, training a workforce, and engaging with small and medium-sized manufacturing companies.

The centers would be chosen through a competitive peer-review process, and funding would be matched by the partnerships.

H.R. 2996 also would provide $10 million for regional innovation program grants for science park infrastructure under Commerce's Economic Development Assistance office, but the new compromise spending bill adjusts this down to $5 million.

In a nod to budget hawks, the House bill doesn't include new spending. The new innovation network would get money from the Energy Department's advanced manufacturing program in the Energy Efficiency and Renewable Energy Office -- no more than $250 million through fiscal 2024 -- and a maximum $5 million per year for the next decade from the Industrial Technology Services program managed by the National Institute of Standards and Technology.

The Senate Commerce, Science and Transportation Committee cleared a companion manufacturing bill to the House version, S. 1468, in April (*E&E Daily*, April 10).

Still, the budget for such institutes may be tight as the new spending bill cuts NIST's Industrial Technology Services budget to $138 million -- including $130 million for the popular Hollings Manufacturing Extension Partnerships -- slightly below current spending and more than $20 million below the White House request.

Also under the spending bill, DOE's advanced manufacturing program's Clean Energy Manufacturing Initiative would receive $56 million for four new institutes that were previously considered a separate program from the manufacturing innovation institutes, $79 million for next-generation manufacturing research and development projects, and $4.2 million for improvements in the steel industry.

The White House has already established three National Network for Manufacturing Innovation (NNMI) institutes this past year, investing about $70 million in each project gathered from various agencies and with matching private funds: one for next-generation semiconductors, one for advanced lightweight and modern metals, and one for digital manufacturing and design. They follow an initial pilot institute focused on 3-D printing that was successfully created in 2012.

Obama announced in his 2014 State of the Union address that he would create nine institutes under current budget authority.

DOE announced an open solicitation for partnership applications for a fifth institute in February 2014 that will focus on advanced fiber-reinforced polymer composites that was previously scheduled to be announced this fall.

The department also recently requested stakeholder input for another clean energy manufacturing institute that would be focused on advanced materials manufacturing; advanced sensing, control and platforms for manufacturing; high-efficiency modular chemical processes; or high-value roll-to-roll

manufacturing.

A White House advisory council on advanced manufacturing made up of industry and academia recently released a second report of recommendations to expand manufacturing in October.

This second report lauds the institutes as an important step to rebuild U.S. manufacturing capabilities, as well as identifying manufacturing technology areas where the U.S. could establish a strategic advantage.

It also recommends actions to ensure that advanced manufacturing research addresses questions along the pipeline of technology maturity and takes advantage of federal organizations to improve information flow to manufacturers.

COAL:

Spending bill includes $10M for laid-off miners

Manuel Quiñones, E&E reporter

Published: Thursday, December 11, 2014

Deep in the $1 trillion spending bill to keep the government running is a provision aimed at helping miners whose jobs were lost in the market downturn.

The legislation would provide $10 million to the Department of Commerce's Economic Development Administration to help fund assistance programs, according to a summary of the spending bill.

Other arms of the Obama administration have also been helping coal communities, reeling from thousands of mining layoffs, the product of sluggish market conditions, competition from cheap natural gas and increased environmental regulation.

The Department of Labor is providing grants for education and retraining. The Appalachian Regional Commission is also backing local initiatives, like Shaping Our Appalachian Region (SOAR) in Kentucky, to promote economic diversification and growth.

The White House has in recent weeks confirmed an effort within the Domestic Policy Council to coordinate help for communities affected by the national shift from coal to less-expensive natural gas.

Many lawmakers and miner advocates, however, think more action is necessary. Reps. David McKinley (R-W.Va.) and Peter Welch (D-Vt.) are pushing legislation to create programs to specifically assist laid-off coal miners and their families (*E&ENews PM*, Sept. 19).

CLIMATE:

'Skeptics' a misnomer for deniers -- Bill Nye, scientists

Published: Thursday, December 11, 2014

Spurred by a *New York Times* description of Sen. James Inhofe (R), Bill Nye and 47 other scientists are asking the media to replace the term "climate skeptics" with "climate deniers."

In a letter for the *Skeptical Inquirer*, the scientists argued the term "denier" more accurately reflects the severity and scientific evidence of climate change. They say the term "skeptic" gives deniers "undeserved credibility."

The request follows a *Times* article published last month that described Inhofe as a "prominent skeptic of climate change."

"Inhofe's belief that global warming is 'the greatest hoax ever perpetrated on the American people' is an extraordinary claim indeed," the letter says. "He has never been able to provide evidence of this vast alleged conspiracy. That alone should disqualify him from using the title 'skeptic.'"

In addition to Nye, scientists David Morrison, Ann Druyan and Harold Kroto, as well as several university professors, signed the letter (Aileen Graef, United Press International, Dec. 11). **-- AW**

WIND:

DOE updates resource maps to reflect advances in turbine technology

Ariel Wittenberg, E&E reporter

Published: Thursday, December 11, 2014

The Department of Energy has drawn new maps of the country's wind power capacity to keep up with advances in turbine technology.

Updated maps released today show how taller wind turbines with higher nacelles and longer blades can harness significant amounts of wind power in areas where shorter turbines would be still.

Wind resource maps are meant to demonstrate an area's wind energy capacity factor by highlighting areas of the country where wind speeds would allow a wind farm to produce at least 35 percent of the electricity it could potentially produce if it were running continuously at full power.

Previous maps have depicted areas with a wind energy capacity of at least 35 percent for wind turbines whose hubs and nacelles are at heights of 80 to 100 meters (262 to 328 feet). The new maps now include taller turbines with hub heights up to 140 meters.

DOE has been working with the wind industry to produce taller wind turbines with longer blades because wind speeds are often greater at higher altitudes, thus increasing energy production potential. The agency estimates that deploying turbines with hub heights up to 140 meters would help access 237,000 square miles of the United States with 1,800 gigawatts in wind power resource potential.

The new maps depict that change, rating wind potential in shades of blue, with darker hues indicating more wind.

A map showing wind potential at 110 meters leaves much of the Southeast -- from Alabama to Florida and Virginia -- white. By comparison, the new map of wind potential at 140 meters colors much of the same area in a cerulean shade.

The maps do not include areas protected by law such as national parks.

UTILITIES:

FERC OKs massive Duke Energy power plant buyback deal

Published: Thursday, December 11, 2014

Duke Energy Progress plans to buy back ownership from 32 towns that bought expensive shares in power plants more than 30 years ago.

The $1.2 billion deal, approved by the Federal Energy Regulatory Commission on Tuesday, is expected to save around 270,000 customers in the towns on power bills, which have been an average of $240 to $600 more a year than those of Duke's customers.

The high electricity bills have made it difficult to attract industry and business. Many companies settled in areas with Duke service, which saved thousands of dollars in electricity costs each year.

The deal will retire 70 percent of the $2 billion debt the towns had after investing $3.6 billion into the power plants in 1982. Their combined 2013 debt was more than $260 million.

The deal gives the company ownership of the Harris nuclear plant, the Brunswick nuclear plant and two coal-burning plants. Duke Progress is owned by Duke Energy Corp., based out of Charlotte, N.C. (John Murawski, Raleigh *News & Observer*, Dec. 9). **-- MH**

NUCLEAR POWER:

Workers may have been exposed to radiation at Mich. plant

Published: Thursday, December 11, 2014

Workers at the Palisades Nuclear Plant in Covert, Mich., may have been exposed to low levels of radiation, according to a new report released by the Nuclear Regulatory Commission.

The incident occurred when workers were replacing control rod drive housings earlier this year, and the report concluded the event showed "low to moderate safety significance."

If the findings stand, the commission would downgrade the plant's safety status and increase regulatory oversight, said NRC spokeswoman Viktoria Mitlyng.

The NRC provided photos of the workers during the event and said the required protective vests were not properly worn.

"We took multiple actions during the course of the work to ensure that radiation exposure would be kept as low as possible and that workers' exposure would be accurately measured and assessed," said Lindsay Rose, spokeswoman for Entergy Corp., which runs the plant (Andrew Lersten, St. Joseph [Mich.] *Herald-Palladium*, Dec. 10). **-- MH**

REGULATION:

Clean air agencies group's Becker urges more flexibility for states on Clean Air Act rules

Published: Thursday, December 11, 2014

Do states and local air agencies have enough flexibility to implement tighter air standards than what the federal government requires? During today's OnPoint, William Becker, executive director of the National Association of Clean Air Agencies, discusses the results of a new survey by his organization on state flexibility on Clean Air Act regulations. He also previews steps his group is taking to help states prepare for Clean Power Plan compliance and comments on the American Legislative Exchange Council's efforts to influence the future of the plan through model laws and regulations.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Fri., December 12, 2014

READ FULL EDITION

1.STATES:

Can a state fill a budget gap with a price on carbon? Wash. may soon know

On Wednesday, Washington Gov. Jay Inslee will unveil a new plan to lower his state's greenhouse gas emissions. And while the Democrat hasn't tipped his hand on whether he'll push for a cap-and-trade system or a carbon tax, Inslee and his administration have dropped several hints about how they'll likely frame the carbon pricing plan as a way to help solve the state's budget deficit.

2.REGULATION:

Lawyers gird for fight against EPA's Clean Power Plan based on states' rights

One thing is certain: There will be no shortage of legal arguments from states and industries against U.S. EPA's Clean Power Plan to curb greenhouse gas emissions from utilities.

TODAY'S STORIES

3.NEGOTIATIONS:
Slow business of removing 'roadblocks' from a potentially different climate treaty continues with China's help

4.ISLANDS:
Interior official says discussing resettlement for Pacific islanders threatened by rising seas is 'premature'

5.SPECIES:
Warming waters 'reshuffling' species along the West Coast

6.CALIFORNIA:
Storms could make dent in state drought as climate debate continues

7.FINANCE:
Texas, Wash. deals highlight growing investor interest in wind power

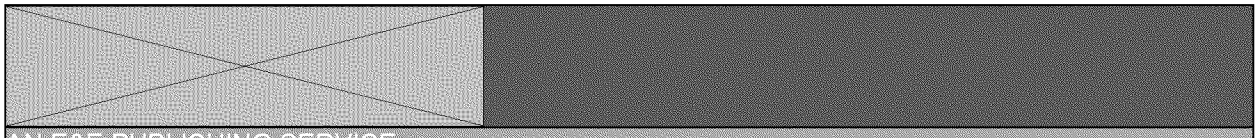
8.INVESTMENT:
First-ever 'green' bond database aims to boost transparency

9.POLICY:
States with most robust solar power programs are ones that did their homework -- study

10.DROUGHT:
Calif. gardens begin shift to more drought-resistant plants

11.DROUGHT:
Climate change won't dry out Southern Calif. but could invite powerful storms

12.ADAPTATION:
Migration, low funding strip Pacific nations of climate planners
13.NATIONS:
Japan burns more coal, faces policy pressure



AN E&E PUBLISHING SERVICE

ENERGYWIRE — Fri., December 12, 2014

READ FULL EDITION

1.POLICY:
Mich. goes face to face with pivotal energy issues in 2015

U.S. EPA's Clean Power Plan already has prompted legislators and regulators across the nation to take a closer look at a laundry list of energy issues in their states. Perhaps nowhere is the debate as robust as Michigan, which faced pivotal policy decisions even before the Obama administration proposed a landmark rule on June 2 to slash carbon dioxide from power plants by almost a third.

TOP STORIES

2.CLIMATE:
Clean Power Plan needs robust environmental justice component -- advocates
3.TRANSPORT:
Crude by rail 'is here to stay' -- report
4.GRID:
'Latent' cyberthreats bring new challenges to bulk power system -- security official

OIL AND GAS

5.ECONOMY:
Houston braces for layoffs, slower growth due to crude price slide
6.FINANCE:
Few drillers report methane leaks to investors
7.PEOPLE:
Pa. governor-elect appoints primary opponent to key post
8.GAS EXPORTS:
First wave of floating LNG projects serves as test for nascent industry
9.OIL:
Asian traders expanding operations in Texas in hope of loosening crude-export restrictions
10.OIL SANDS:
Alberta agencies, government rewriting rules on tailings pond cleanup
11.GAS EXPORTS:
LNG company plans to build $4B liquefaction complex in southwestern La.

ELECTRICITY

12.PEOPLE:
Xcel appoints replacement for retiring Upper Midwest leader
13.UTILITIES:

Md. public agencies raise concerns, call for rejection of Exelon-Pepco merger

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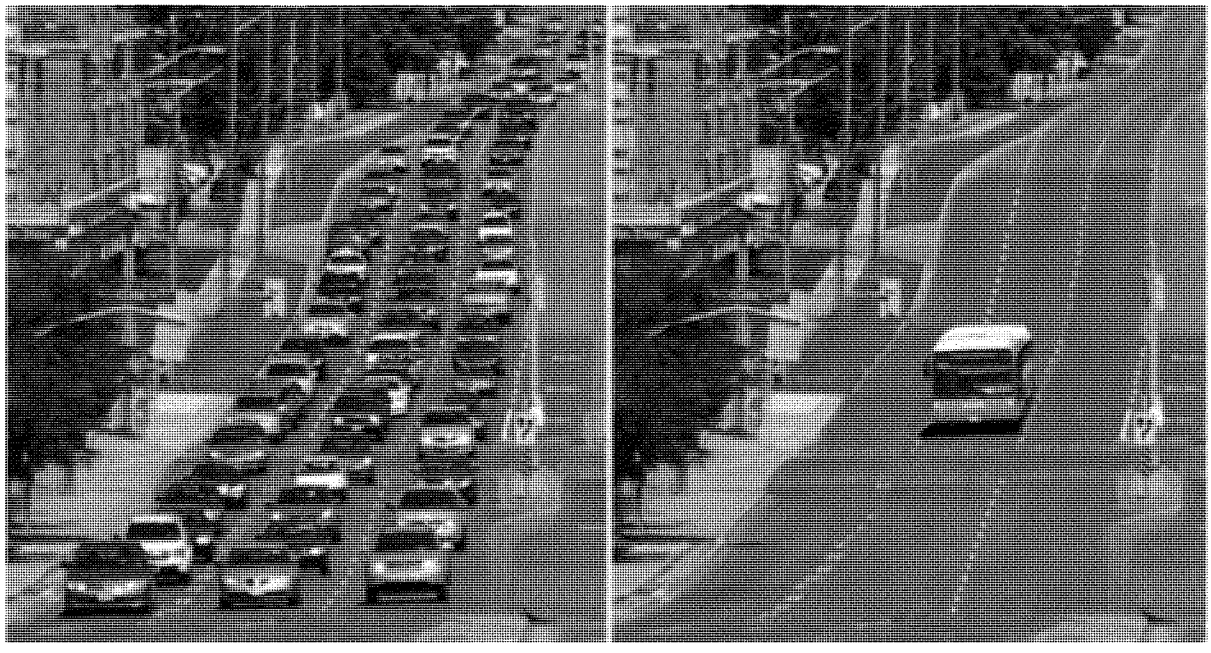

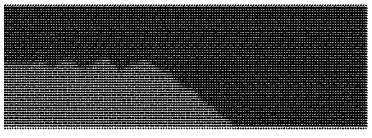

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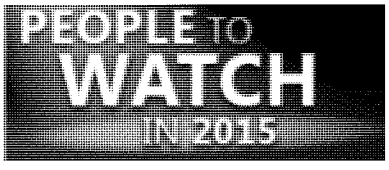
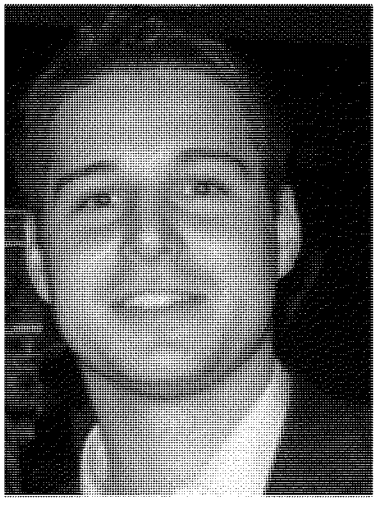
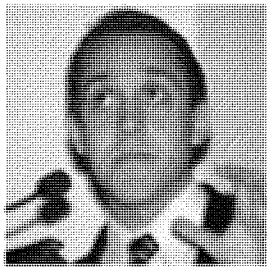
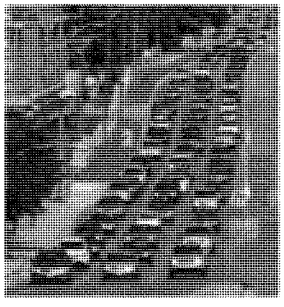
Greenwire


PEOPLE TO
WATCH
IN 2015







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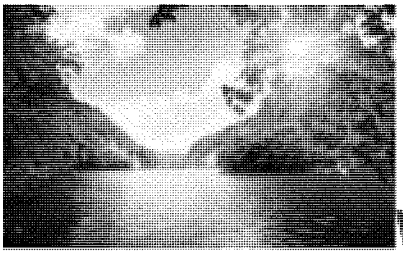
From: Turley, Jennifer
Sent: Fri 12/12/2014 3:22:34 PM
Subject: Water Law News for December 12, 2014



Water Law News

for December 12, 2014

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

Bay Spending Accountability Act Clears
House; Next Stop Is President's Desk

The House unanimously approved legislation (S. 1000) Dec. 10 that would require an annual Office of Management and Budget audit of federal and state spending on Chesapeake Bay restoration efforts....

Chesapeake Bay

Virginia Governor to Chair Chesapeake Bay Council

Virginia Gov. Terry McAuliffe (D) was appointed chairman of the Chesapeake Executive Council, effective Jan. 1, 2015. McAuliffe will replace Maryland Gov. Martin O'Malley (D), who did not seek re-election after two terms. "I am...

Drilling

Colorado Investigating Noise Exceedances
At Encana Drilling Site Near Homes in Erie

Drilling by Encana Corp. near a residential development in Erie, Colo., has exceeded state noise standards, according to the company and personnel with the Colorado Oil and Gas Conservation Commission. ...

Drinking Water

EPA Must Develop Health Advisory, Tests
For Microcystin Under Bill Passed by Senate

The Environmental Protection Agency would be required to develop a non-enforceable drinking water health advisory and standardize testing procedures for the toxin microcystin under a bill passed unanimously by the Senate Dec. 11....

Energy

Mexico Reveals Fiscal Terms for Auction
Of Shallow-Water Oil, Gas Blocks in July

The much-awaited financial terms for Mexico's first oil and gas auction were announced Dec. 11, as energy officials laid out the details on the shallow water blocks that will be auctioned off in July 2015....

Hydraulic Fracturing

Chemical, Oil, Gas Companies Join Forum To Spur Development of Greener Chemicals

The American Chemical Society is working with several chemical manufacturers and oil and gas exploration companies to spur the development of hydraulic fracturing chemicals that would be more sustainable than those for which they substitute....

Hydraulic Fracturing

Many Oil, Gas Drillers Lag in Disclosing Environmental Risks, Coalition's Report Says

While a handful of shale drillers including BHP Billiton Ltd. are providing better information to investors on the risks posed by hydraulic fracturing, industrywide efforts still fall short....

Mining

Groups Threaten to Sue Hobet Mining For Alleged Water Violations in West Virginia

If a subsidiary of Patriot Coal doesn't resolve "multiple ongoing" water quality violations at a West Virginia mountaintop mining operation it owns within 60 days, three environmental advocacy groups intend to sue the company....

Oil Spills

BP Appeals Federal Ruling on Spill That May Spell $18 Billion in Fines

BP Plc challenged a federal judge's ruling that the company's exploration unit acted with gross negligence in causing the 2010 Gulf of Mexico oil spill, a decision that exposed the U.K.-based energy company to as much as $18 billion...

Oil Spills

Economic Damage Liability Limit Raised For Oil Spills From Offshore Facilities

The federal limit on liability for economic damages caused by oil spills from offshore facilities and associated pipelines will rise to $133.65 million per incident from $75 million, the Interior Department said in a notice released Dec....

Water Pollution

Congress Extends Small-Vessel Permit Ban By Three Years Under Coast Guard Measure

Vessels shorter than 79 feet used for commercial fishing and transporting passengers, researchers, freight and offshore supplies will not be required to obtain Clean Water Act discharge permits for another three years under a bill reauthorizing...

Water Resources

Commission Rejects Extending Duration Of Permit Approvals in Susquehanna Basin

The five-year duration of approvals for consumptive use of water by natural gas development projects in the Susquehanna River Basin will remain unchanged under final regulations approved by the Susquehanna River Basin Commission (SRBC)....

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Inside EPA **Weekly Report**, 12/12/2014

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Latest News

EAB Favors EPA's Power Over 'Satellite' Sewers, But Doubts Procedure

Judges on EPA's Environmental Appeals Board (EAB) appear ready to uphold EPA's authority to require Clean Water Act (CWA) permits for municipalities' satellite sanitary sewer collection systems, but the board is signaling that it will remand on procedural grounds the contested permit, which would delay any appeal on the merits.

Plaintiffs Seek Rehearing In 11th Circuit Over Camp Lejeune Tort Claims

Former residents of North Carolina's Marine Corps Base Camp Lejeune are asking a federal appellate court to reconsider the court's rejection of a new state law that aimed to allow the former residents to seek toxic tort damages from the federal government over decades of past contaminated groundwater exposures at the base.

McCarthy Touts Innovative Funding To Preserve Drinking Water Protection

EPA Administrator Gina McCarthy is emphasizing the need for increased collaboration with states and private sector investors to ensure adequate supplies of safe drinking water, calling on utilities and governments to continue to seek innovative funding sources for growing infrastructure needs.

Greenwire

APPROPRIATIONS:

Spending bill advances by thin margin in House as Boehner threatens to extend session until Christmas

Nick Juliano and Daniel Bush, E&E reporters

Published: Thursday, December 11, 2014

The House today barely advanced a massive spending bill in a tough vote that signals potential trouble ahead for the $1 trillion measure meant to prevent a government shutdown at midnight.

Speaker John Boehner (R-Ohio) earlier today expressed confidence that the spending bill would pass this afternoon, but House Republicans struggled to secure passage of the procedural rule necessary to advance the legislation.

"It's a good bill," Boehner said at his weekly press briefing, just before the rule vote. "I expect this bill will receive bipartisan support and pass."

The rule barely passed, 214-212, as all Democrats and 16 Republicans voted against it.

Some Democrats are expected to vote for the underlying bill, which would fund most of the government for the rest of the year, with a temporary extension in funding for the Department of Homeland Security, but more conservatives are likely to oppose it. The result remains unclear.

While the tight rule vote spelled potential trouble for the spending bill, it may receive a boost from a White House decree issued less than an hour later. A statement of administration policy expressed disappointment with some of the controversial language in the bill -- without singling out any environmental provisions -- but did not threaten to veto the bill.

"The Administration urges the Congress to enact comprehensive full-year appropriations legislation for all Government functions free of provisions that have no place in annual appropriations bills," the statement said.

The 16 Republicans who voted against advancing it included recently sworn-in Rep. Dave Brat (Va.), who dramatically unseated then-Majority Leader Eric Cantor in a GOP primary this summer, along with many other members who make a habit of bucking their party's leadership.

A vote on the underlying spending bill, dubbed the CRomnibus, is scheduled for later this afternoon. It remains to be seen when the Senate would be able to vote on it -- if it manages to pass the House -- and at least a short-term continuing resolution may be necessary to prevent a shutdown. If the CRomnibus fails, GOP leaders are expected to pass a longer-term CR that would keep the government funded into the new year, when Republicans will have a majority on both sides of the Capitol.

In addition to expected defections from conservatives, who are upset the bill does not defund President Obama's recent immigration actions, the bill has drawn fire from liberal Democrats such as Sen. Elizabeth Warren (Mass.) who object to policy riders increasing the amount of money individuals can donate to political party committees and relaxing banking regulations from the Dodd-Frank law.

Meanwhile, Boehner warned that lawmakers will not be heading home to their districts this afternoon, as had initially been the plan, if the spending bill does not pass.

"If we don't finish today, we'll be here till Christmas," Boehner told reporters at a briefing today.

CONGRESS:

Hill staffers gird for 2015 policy fights

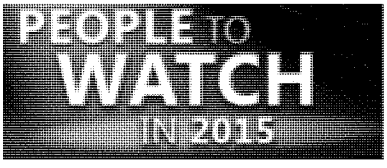
Nick Juliano and Daniel Bush, E&E reporters

Published: Thursday, December 11, 2014

Fifth in a series on energy and environment staffers worth watching in 2015.

Republican victories in the midterms will mean more action next year in Congress, with energy and environmental policymaking near the top of the new majority's priority list.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

Incoming Senate Majority Leader Mitch McConnell (R-Ky.) promises to restore "regular order" when he takes the helm next year, meaning a return to the kinds of sometimes-contentious amendment debates that fell out of favor over the last few years. And with Republicans on both sides of the Capitol planning to work closely together crafting bills they can send to the White House, deals will have to be struck with Democrats on items that would be able to earn the president's signature and achieve the 60 votes necessary for passage in the Senate.

Top issues up for consideration include the Keystone XL pipeline; U.S. EPA rules affecting power plants, farmers, mining companies, and the oil and gas industry; exports of liquefied natural gas and crude oil; tax incentives for energy companies and conservation; and reauthorization of the highway bill.

Lawmakers will be busy trying to cut deals and advance bills in those and other areas. Here are some of the House and Senate aides who will be helping them along the way.

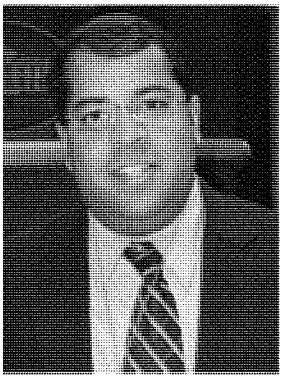
Senate

Neil Chatterjee, senior policy adviser, Senate Republican leader Mitch McConnell

A native of Lexington, Ky., Chatterjee knows what makes his boss's constituents tick, and he has developed a rich network of connections on Capitol Hill and across town in more than a decade in Washington, D.C.

Chatterjee has worked for McConnell since 2009, first as a staff assistant and now as a policy adviser whose portfolio includes energy, environment, agriculture and natural resources issues. He has aided McConnell's efforts to beat back what the leader sees as an overreaching federal government waging a "war on coal" with tough regulations from U.S. EPA and other agencies.

McConnell earlier this year unsuccessfully sought a vote on a Congressional Review Act resolution to block EPA's still-unfinalized new source performance standard limiting greenhouse gas emissions from existing power plants. He also sought amendments targeting the rules during consideration of an energy efficiency bill, when the Appropriations Committee was set to mark up its annual spending bill and at numerous other opportunities. Chatterjee's advice will be sought throughout the year as McConnell resumes those efforts.



Neil Chatterjee. Photo courtesy of the University of Cincinnati College of Law.

"One of the things that sets Neil apart from the pack is his depth of knowledge on the policy as well as his incredible strategic insight," said Rebecca Rosen, a former Senate aide and adviser to Mitt Romney's presidential campaign who is now vice president of policy and government affairs at Devon Energy, an oil and gas drilling company. "His ability to anticipate how people will act and how complex situations will play out is absolutely amazing."

Before joining McConnell's office, Chatterjee spent more than two years as a lobbyist for the National Rural Electric Cooperative Association, prior to which he worked on Capitol Hill for the House Republican Policy Conference, then-Rep. Deborah Pryce (R-Ohio), and the Ways and Means Committee stretching back to 2003, according to the congressional staff database LegiStorm. He graduated from St. Lawrence University and received a law degree from the University of Cincinnati College of Law.

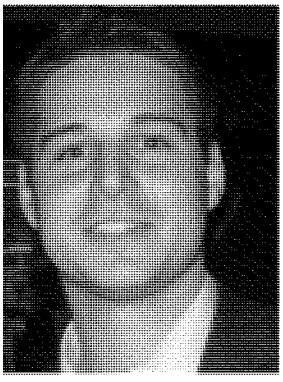
Alex McDonough, senior policy adviser, Senate Democratic leader Harry Reid

McDonough has been Reid's senior adviser on energy, environment, public lands and natural resources

issues for the past two years. A Las Vegas native, he has been working in Reid's office since 2006 in a variety of roles, with a portfolio that includes aiding Reid's efforts to block nuclear waste disposal at Yucca Mountain and helping to pass water infrastructure legislation.

Chris Miller, who was Reid's senior adviser on these issues from 2005 through 2012, said McDonough has done a great job in the role, citing his legal background and ability to get along well with others.

"He's smart; he's politically astute; he's very thorough; he knows the issues," Miller said.



Alex McDonough.

McDonough graduated from the University of Michigan with a bachelor's degree in political science and Russian studies and received his law degree from the American University Washington College of Law, according to LegiStorm.

Before he came to work for Reid, McDonough was working for the University of Maryland's IRIS Center on a U.S. Agency for International Development project in Central Asia, according to a biography posted by the Alliance to Save Energy.

Karen Billups, Republican staff director, Energy and Natural Resources Committee

Starting next year, energy policy in the Senate will revolve around Sen. Lisa Murkowski (R-Alaska), the incoming chairwoman of the Energy and Natural Resources Committee.

Murkowski, the panel's current ranking member and a longtime energy industry ally, is expected to keep her committee staff in place once she takes over the ENR gavel from Sen. Mary Landrieu (D-La.), who lost her seat in a runoff last weekend.

Leading the way will be Billups, the ENR Committee's Republican staff director and a seasoned energy policy hand who has worked on the panel since 2003. Expect Billups to play an important role on Murkowski's team as the senator pushes to end the ban on crude oil exports, boost offshore oil development and burnish her energy credentials ahead of her re-election battle in 2016.

Prior to joining the ENR Committee, Billups did a stint as a lobbyist and attorney for Entergy Corp. Billups also worked on ENR for Murkowski's father, former Sen. Frank Murkowski (R-Alaska), in the late 1990s. Before that, Billups served as a counsel for the House Energy and Commerce Committee and the Department of Energy.

Bettina Poirier, Democratic staff director, Environment and Public Works Committee

Sen. James Inhofe (R-Okla.), a vocal climate change skeptic, will replace Sen. Barbara Boxer (D-Calif.) as chairman of the Senate Environment and Public Works Committee in January, setting the stage for a high-profile clash on climate and environmental policy. While Inhofe hasn't announced his new staff, Boxer will rely on her longtime energy adviser Poirier to help her play defense on green issues in the 114th Congress.

Poirier will be looking for ways to fend off Republican attacks on the proposed power plant rule and other EPA regulations. Inhofe said recently that curbing EPA regulations would be a "top priority" when he takes over in January (*E&ENews PM*, Dec. 2). The committee's early focus in 2015 will also be on reauthorizing a highway spending bill that expires in May.

Bettina Poirier. Photo courtesy of DC EcoWomen.

Poirier joined Boxer's office in 2001 and became the EPW Committee's Democratic staff director and chief counsel in 2006, after taking a two-year hiatus to work for retiring Rep. John Dingell (D-Mich.) on the House Energy and Commerce Committee. Prior to working for Boxer, Poirier, a New York City native, spent nine years as an Agriculture Department attorney.

This could be Poirier and Boxer's last years working together in the Senate. Boxer is up for re-election in 2016 but is rumored to be considering retirement instead of running for a fifth term.

House

Maryam Brown, policy adviser, House Speaker John Boehner

While plenty of people on Capitol Hill have experience working for the oil industry as lobbyists, far fewer have worked in a hands-on capacity beyond K Street. Not Brown, who went to work as a maintenance engineer for Amoco Oil Co. after graduating from Louisiana State University in 1996.

Now Brown advises Boehner on energy issues ranging from the KXL pipeline to EPA rules. She and Chatterjee are expected to work closely together in the coming year as Republicans work to craft a unified policy agenda on both sides of the Capitol.

"Maryam has already played an essential role determining the 2014 agenda; newly elected Republican senators ran on bipartisan legislation that she helped get through the House," said Chris Prandoni, director of energy and environment policy for Americans for Tax Reform. "Expect Maryam to build on that momentum now that she has willing and able partners in the Senate."

Maryam Brown. Photo courtesy of Linkedin.

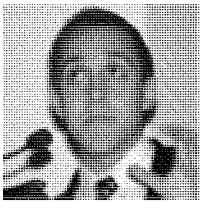
After a bit more than a year at Amoco, Brown returned to LSU, where she had received a bachelor's degree in mechanical engineering, to obtain her law degree, according to her LinkedIn profile. She came to Washington, D.C., in 2004 as counsel to the House Energy and Commerce Committee and has held a variety of jobs on and off Capitol Hill since then, including as a manager of public policy for ConocoPhillips Co. and as chief counsel to E&C's Energy and Power Subcommittee, the position she held before joining Boehner's office in December 2012.

Mike Darner, executive director, Congressional Progressive Caucus

While Republicans are ascendant after claiming majorities on both sides of the Capitol, the last few election cycles have also left a leaner Democratic Party more heavily influenced by its liberal members.

To that end, the Progressive Caucus is expected to keep pushing Democrats to be aggressive in opposing Republican policies they see as damaging to the environment and putting forward aggressive proposals to fight climate change and achieve other long-standing goals. Darner will be a key player in those efforts.

"Mike Darner is the kind of staffer every congressional office wishes for: incredible work ethic, unwavering principles, constant innovation, and unlimited legislative and floor savvy," said Michael Shank, a former Democratic congressional aide who is now an adjunct professor at George Mason University. "With Darner at the helm, the caucus is poised, more than ever before, to make an unprecedented footprint in the D.C. political space."



Mike Darner. Photo courtesy of Linkedin.

Darner has been executive director at the CPC since February. Before that, he spent six years in the office of Rep. John Conyers (D-Mich.), first as a legislative counsel and then as legislative director. Before that, he was a staff attorney at the Center for Competitive Politics and held several legal internships at the House Judiciary Committee, American Civil Liberties Union, Center for American Progress and Freedom Forum, according to his LinkedIn profile.

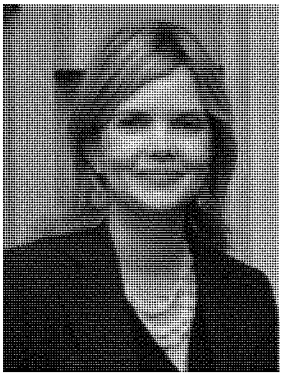
Darner graduated from Miami University with a bachelor's degree in political science and received his law

degree from the Catholic University of America Columbus School of Law.

Meghan Conklin, Democratic staff director, Natural Resources Committee

A seasoned environmental policy hand, Conklin has years of experience on and off Capitol Hill. Now she'll serve as the Democratic staff director to Rep. Raúl Grijalva (D-Ariz.), the incoming ranking member on the House Natural Resources Committee and co-chairman of the Congressional Progressive Caucus.

Conklin's portfolio will include public lands, water and forestry issues. She'll work closely with Grijalva as he seeks to find areas of compromise with the panel's incoming Chairman Rob Bishop (R-Utah). Grijalva announced Conklin's appointment Tuesday, praising her "experience, expertise and dedication" to environmental issues (*Greenwire*, Dec. 9).



Meghan Conklin. Photo courtesy of Meghan Conklin.

"Few people in Washington match her understanding of the legislative process, knowledge of the executive branch and deep commitment to protecting our environment," Grijalva said.

Conklin currently serves as a senior aide on the Senate Energy and Natural Resources Committee. Prior to that, Conklin was chief of staff to the Fish and Wildlife Service from 2010 to 2012 and an associate deputy secretary at Interior in 2009.

Before joining the Interior Department, the San Diego native worked on the House Natural Resources Committee from 2004 to 2009.

Sarah Schenning, legislative director to Rep. Chris Van Hollen (D-Md.)

Schenning became a key climate adviser to Van Hollen this month when the Maryland lawmaker replaced retiring Rep. Henry Waxman (D-Calif.) as the co-chairman of the Bicameral Task Force on Climate Change. The task force, which is co-chaired by Sen. Sheldon Whitehouse (D-R.I.), was created in 2013 to counter Republican attacks on the Obama administration's climate change plan.

Schenning also serves as Van Hollen's point person for the House Renewable Energy and Energy Efficiency Caucus, and coordinates his work on Chesapeake Bay water issues. The University of Maryland graduate joined Van Hollen's office in 2006. Her wide-ranging portfolio also includes transportation and labor issues.

WATER POLICY:

Colo. takes first steps to address expected shortage

Jennifer Yachnin, E&E reporter

Published: Thursday, December 11, 2014

DENVER -- Colorado Gov. John Hickenlooper (D) yesterday unveiled the first draft of a new state plan that could herald $20 billion in water projects as the Centennial State looks to balance increasing population growth with an expected water shortage in coming decades.

In a news conference at the state Capitol here, Hickenlooper praised the draft plan for striking a balance among competing interests in the state, as well as along its natural geographical divide between the Western Slope and the Front Range.

"This first draft strikes a good balance between so many different interests, and yet upholds our water values, our core values," Hickenlooper said.

The Colorado Water Conservation Board is expected to continue to revise the 400-odd-page document -- which emphasizes water conservation efforts and striking balances between the state's agricultural industry and booming municipalities -- with a final version slated for release in December 2015. The 15-member board is appointed by the governor and confirmed by the state Senate.

"This draft is just a draft. We have a year of hard work ahead of us to go," Hickenlooper said. But the plan is also intended to remain a living document, according to the governor's office, to allow the state to be able to respond to environmental and population changes.

"There are long histories of discord around water," Hickenlooper later added. "If you discuss the issues long enough and you really listen to the other side, no one is going to get everything they want, but you get an end product that you feel pretty comfortable with, and I think that's our goal here."

Although the draft plan does not endorse specific projects, the document argues that several "no and low regret" options should be pursued, including setting a statewide water conservation goal, increasing the reuse of water used in agriculture and increasing storage at reservoirs.

"If these are not implemented in the next 15 years, then the impacts will be severe," states the report, which aims to address an anticipated water shortfall of as much as 500,000 acre-feet by 2050. "The water supply gap will be greater than ... envisioned, and the solutions will dry up more agriculture and cause further harm to the environment."

The report leaves open the possibility of new transmountain diversions -- infrastructure to bring water from the state's Western Slope to the more populated Front Range -- but also proposes that conservation and reuse strategies should be a priority in the state, suggesting related solutions could be "incentivized and deserve special attention" in the final plan.

Hickenlooper also emphasized the need for environmental protections, pointing to the state's interest in recreational activities, such as its ski industry and recreational fishing.

Colorado Water Conservation Board Director James Eklund said no decisions had been made on how to fund any potential new infrastructure but pointed to recent ballot initiatives in both Texas and California in which voters approved billions of dollars in new loan funds or bonds to address water supply projects, flood protection and environmental goals.

"Both of those initiatives were voted 2-to-1 in favor by the residents. That was, I think, partly because they had water plans. ... We need to do the same thing in Colorado. This plan is a platform to have that

discussion," Eklund said.

Early reviews are mixed

While the draft plan largely earned praise from those in attendance at the governor's event yesterday as a good first step, Conservation Colorado Water Advocate Theresa Conley expressed concern that the plan lacks specifics.

"It's a draft, and we need to see more. While it lays out these values, we really need a road map on how we're going to get there and how we're going to protect those rivers," Conley said.

Protect the Flows Co-Director Craig Mackey, whose group is a coalition of businesses interested in protecting the Colorado River Basin, echoed that sentiment.

"In terms of our natural resources, in terms of healthy rivers, in terms of protecting watersheds and in stream flows, we do have to see a lot more detail in the plan," said Mackey, who also endorsed plans to recycle or reuse water over costlier options such as new water diversions.

But Gary Wockner, director of the Save the Poudre Coalition in Fort Collins, which works to preserve the Cache la Poudre River, criticized the draft plan, arguing that the process failed to include input from grass-roots advocacy organizations and criticizing its inclusion of new reservoirs, dams and diversions as options.

Wockner also questioned the report's inclusion of proposals to streamline the state's role in the approval of new water projects, which include shortening the time to conduct environmental reviews and reducing "regulatory burdens" on new proposals.

"We're going to continue to push very hard that this plan does not endorse any projects," Wockner said. "If the governor really wants water relatively soon, he should go to the easiest, fastest, cheapest ways to get it, which is always water conservation and efficiency, recycling, water reuse and then finding ways to work with farmers."

The full plan can be viewed at coloradowaterplan.com.

OCEANS:

Fish likely to migrate quickly due to warming waters -- study

Emily Yehle, E&E reporter

Published: Thursday, December 11, 2014

The world's oceans could face a shuffling of fish communities as the climate warms and they move with the changing water temperatures, if a recent study is any indication.

The study -- published in the journal *Progress in Oceanography* -- is the first to predict how certain fish species will migrate over the next three decades. Though scientists know warming waters are causing some marine species to move to new habitats, the study provides a peek at how drastic the shift could be on the West Coast.

Researchers looked at 28 species of pelagic fish, or those that live neither on the ocean bottom nor near

the shore. They predicted that many species will shift north by as much as 30 kilometers, or almost 19 miles, per decade, invading the Gulf of Alaska and the Bering Sea.

"As the climate warms, the species will follow the conditions they're adapted to," said Richard Brodeur, a senior scientist with the National Marine Fisheries Service who was an author of the study. "We're going to see more interactions between species, and there will be winners and losers that we cannot foresee."

The study predicts that by 2050, fish communities may already have changed significantly as greenhouse gases drive rising temperature.

Warm-water species such as thresher sharks, club mackerel and sardines could move northward into the Gulf of Alaska, for example, with some simultaneously disappearing off Oregon and California. Cold-water species, such as salmon and capelin, may find themselves particularly affected, since they have a narrower temperature range that makes them more "sensitive" to warming waters.

The shift could mean "novel and exotic interactions" between species that have not previously co-existed, as well as alter the abundance of some species and leave predators such as sea lions with prey that is beyond their usual foraging area. Fishermen may find they have to travel farther to catch target fish species -- or find a new fish to catch altogether.

The study used global climate models to project the distribution of the fish, which are commonly collected in research surveys, according to NMFS, an agency within the National Oceanic and Atmospheric Administration.

The study's picture isn't perfect. For example, the model did not account for fishing effects and focused on species that are well-represented in fish surveys.

"Nothing is certain," Brodeur said, "but we think we have a picture of the most likely changes."

GREAT LAKES:

Water levels emerge from slump -- at least for now

Published: Thursday, December 11, 2014

A decade of low water levels in the Great Lakes has finally ended with two unusually wet years in a row.

In September, all the lakes were simultaneously above average water levels for the first time since the late 1990s, when the slump began. That's not expected to change over the next six months.

But scientists say they are unsure how long the recovery will last, especially because the upswing has been so sudden -- water levels in Lakes Huron and Michigan hit all-time lows as recently as January 2013.

Climate change, which could bring more severe storms and drought, has also added uncertainty about the future of water levels in the Great Lakes, which can be affected by both heavy rains and evaporation (John Flesher, Associated Press, Dec. 10). **-- AW**

OCEANS:

Study finds 270,000 tons of plastic floating in seas

Published: Thursday, December 11, 2014

Enough plastic to fill almost 40,000 garbage trucks is floating in the world's oceans, according to a new study.

Broken up into more than 5 trillion pieces, the 270,000 tons of plastic could potentially contain toxic chemicals that will harm fish that eat it.

Scientists dragged a fine mesh net at the sea surface to gather data for the study, then used computer models to calculate estimates for other parts of the ocean they did not survey, according to the study published in the scientific journal *PLOS ONE* yesterday.

Three-quarters of the plastic in the ocean is separated into bits larger than 8 inches, according to the researchers, who measured only plastic floating at the surface, not on the ocean floor.

The study's lead author, Marcus Eriksen, works for the 5 Gyres Institute, which aims to reduce plastic in oceans.

The study estimates there are 35,540 tons of plastic bits smaller than one-fifth of an inch. That calculation is similar to one from another Spanish study that used different methodology (Audrey McAvoy, Associated Press, Dec. 11). **-- AW**

OIL AND GAS:

Enbridge settles for $6.8M in Mich. spill class-action suit

Published: Thursday, December 11, 2014

Enbridge Inc. has agreed to pay abutters of a 2010 Michigan oil spill $6.8 million to settle a class-action lawsuit.

Under the settlement, residents and landowners of properties within 1,000 feet of the Kalamazoo River will receive $2.2 million, and those living within 200 feet will split a $250,000 payment. Those living further away will receive several hundred dollars each, depending on their proximity.

Five plaintiffs seeking damages filed the lawsuit three years ago. A federal judge must still approve the settlement, which also includes $50,000 for a well-testing program and a $1.5 million general claims fund to reimburse property owners for spill-related expenses.

The 2010 spill occurred when a pipeline leaked more than 800,000 gallons of crude into the Kalamazoo River and Talmadge Creek (AP/*Fuel Fix*, Dec. 10). **-- AW**

OIL AND GAS:

La. levee authority, industry spar in court over wetland restoration

Published: Thursday, December 11, 2014

Louisiana's east bank levee authority urged a U.S. District Court judge to allow it to circumvent a law prohibiting the authority from suing dozens of oil companies.

Last year, the authority filed a suit against 86 oil, gas and pipeline companies to force them to restore coastal wetlands they damaged.

That didn't sit well with Gov. Bobby Jindal (R), who convinced the Legislature in May to outlaw such suits.

Yesterday, the levee authority and oil companies fought it out in front of U.S. District Judge Nannette Jolivette Brown, who did not immediately rule on the authority's request for her to ignore the new law.

The oil and gas companies argued that the law has the power to block the suit, while the authority contends that the law does not apply to the authority and violates multiple provisions of the Louisiana state Constitution.

That argument won before Judge Janice Clark in a separate lawsuit this October when the Louisiana Oil and Gas Association sued the authority. Clark found then that the law did not apply to the authority because it incorrectly listed the regional authority as a local agency. She also found that it violated the state Constitution because it resulted from an improperly advertised local bill and because the Constitution requires the Legislature to write laws that protect public lands, including coastline (Mark Schleifstein, *New Orleans Times-Picayune*, Dec. 10). **– AW**

OIL AND GAS:

Ecuadoreans petition Canadian Supreme Court to force Chevron payments

Published: Thursday, December 11, 2014

The Supreme Court of Canada will hear a request from Ecuadorean villagers to sue Chevron Corp. for $9.5 billion over environmental crimes committed in South America.

The indigenous people of the Lago Agrio region, who were awarded damages in Ecuadorean court for oil pollution damages, are accusing Chevron, which no longer has any assets in Ecuador, of hiding behind jurisdictional barriers in refusing to pay.

With actions also in Brazil and Argentina, Canada could provide the Ecuadoreans' best chance for success after the Ontario Court of Appeal last year ruled that Ontario was an "appropriate jurisdiction" for the case.

The oil giant argues that the case is a violation of the "corporate veil" classifying subsidiaries as separate entities from their corporate parents. It says the case undermines "a bedrock principle of Canadian corporate law," and that allowing it to proceed "would create widespread uncertainty and concern in the Canadian capital markets," noting that the parent company has no assets in Ontario.

Steve Donziger, the controversial New York-based lawyer for the Ecuadoreans, said the case "has implications for human rights victims all over Canada and around the world who might want to avail themselves of the Canadian courts over human rights issues."

The Ecuadoreans have also filed suits in Brazil and Argentina and are appealing a U.S. judge's decision siding with Chevron's countersuit that argued the Ecuadorean judgment was obtained fraudulently via corruption.

Donziger himself is facing charges of corruption in the United States. In declining to comment on the case yesterday in Ottawa, he referred to his appellate brief accusing Chevron of mischaracterized evidence in order to demonize him and the Ecuadorean judicial system (Shawn McCarthy, Toronto *Globe and Mail*, Dec. 11). **-- DTB**

COAL:

Greens threaten lawsuit over water pollution near W.Va. mine

Manuel Quiñones, E&E reporter

Published: Thursday, December 11, 2014

Several environmental groups are threatening to sue mining company Patriot Coal Corp. over allegations of Clean Water Act violations from its Hobet mining complex in Boone County, W.Va.

The groups -- including the Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy and Sierra Club -- say the St. Louis-based company's mining operations are elevating the level of conductivity in nearby waterways.

Conductivity measures water's ability to carry an electric charge. U.S. EPA considers conductivity a barometer of water quality and has recommended limits for waterways near Appalachian mines.

West Virginia doesn't have a numeric standard for conductivity, and state officials have rejected it as a measure of environmental health.

Environmental groups, however, say elevated conductivity violates state narrative standards under the Clean Water Act, requiring protection of waterways.

U.S. District Court Judge Robert Chambers for the Southern District of West Virginia agreed with groups in October concerning an Alpha Natural Resources Inc. mine (*Greenwire*, Oct. 28). The company has said it will fight the ruling.

Appalachian Mountain Advocates recently won a public records complaint against the West Virginia Department of Environmental Protection over mine industry compliance records.

COAL ASH:

More data needed to prioritize N.C. pond cleanup -- regulators

Published: Thursday, December 11, 2014

Conducting more tests is the next step in North Carolina's effort to either cap or move its 32 coal ash ponds by 2029.

Environmental regulators told a legislative commission yesterday that they do not know which ponds are contributing to groundwater contamination and which pose the greatest threat.

This past summer, state law labeled four coal ash ponds to be excavated as soon as possible and designated 10 more that should be ranked according to whether they should be excavated or capped in place.

All of the 14 plant sites have groundwater contamination, but the severity of the contamination is not yet known, the Department of Environment and Natural Resources said yesterday. According to the agency, it does not yet have enough information to understand how far coal ash contaminants may have spread into groundwater and it is "impossible to prioritize" excavation and capping without more data.

"We don't have the faintest idea what's going on underneath these coal ash ponds," Division of Water Resources Director Tom Reeder told the state Environmental Review Commission (Craig Jarvis, *Charlotte Observer*, Dec. 10). **-- AW**

INFRASTRUCTURE:

Dramatic spending shortfall has Army Corps looking beyond Congress

Published: Thursday, December 11, 2014

The Army Corps of Engineers' commander general said yesterday that the country can no longer rely on Congress to repair its failing infrastructure.

Lt. Gen. Thomas Bostick said the corps would need $23.5 billion to finish all its authorized projects, but only has an annual budget about $1.5 billion. The total also doesn't include maintenance for levees, dams, ports and harbors that have exceeded their design life.

"It is going to take you decades to finish the work, and then you are going to have new projects here and there," Bostick said, speaking during the Society of American Military Engineers' conference. "The reality is Congress cannot do this alone. The federal government cannot do this. And the message to local towns and communities and business is we cannot rely on the federal government to solve this fiscal challenge."

Bostick said the corps is looking for alternative funding avenues, including public-private partnerships, as the American Society of Civil Engineers gives America's overall infrastructure a D+ grade.

"I wouldn't be concerned at this point from a safety perspective. But there are projects, individual projects, that are at high risk," Bostick said.

Hurricane Katrina galvanized support for infrastructure spending, but Bostick said investing in the future remains difficult.

"The nation will invest in times of crisis, but the question is: Can you set priorities when there is not a crisis but one is looming so we can make the right decisions?" (Heather Hollingsworth, Associated Press, Dec. 10). **-- DTB**

MARYLAND:

New governor, attorney general differ on environmental laws

Published: Thursday, December 11, 2014

Environmental issues could cause a clash between Maryland's new governor and attorney general.

Gov.-elect Larry Hogan (R) and Attorney General-elect Brian Frosh (D) differ sharply in their views on cleaning up the Chesapeake Bay and enforcing environmental regulations.

Hogan plans to downgrade stormwater fees, known as the "rain tax," and reverse pollution regulations for chicken farms. Frosh supported the stormwater fees and helped craft many of the more recent environmental laws as a state legislator.

During recent interviews, both men downplayed their disagreements and said they hoped to find common ground. Frosh has called enforcing environmental laws "a high priority" (Timothy B. Wheeler, Baltimore *Sun*, Dec. 10). **-- MH**

BANGLADESH:

Swath of mangroves blackened by tanker spill

Published: Thursday, December 11, 2014

Officials in Bangladesh are calling an oil spill in the Sundarbans mangrove region a "catastrophe," after a tanker carrying 75,000 gallons of oil partly sank Tuesday after a collision with another vessel in the UNESCO-listed World Heritage site.

Amir Hossain, chief forest official for the 3,900-square-mile region straddling Bangladesh and India, said the number of gallons spilled remains unknown but the 37-mile-long slick poses a grave threat to recently established sanctuaries for endangered Irrawaddy and Ganges dolphins.

"The oil spill has already blackened the shoreline, threatening trees, plankton, vast populations of small fishes and dolphins," he said, adding no major cleanup is yet underway.

Government ships are en route to remove the wrecked vessel, but Rubayat Mansur, Bangladesh head of the New York-based Wildlife Conservation Society, sharply criticized the government response to protect a region home to hundreds of Bengal tigers and other rare species.

"There are no coordinated efforts to tackle the disaster. The air has become toxic, and we got news from fishermen they've seen dead fishes," he said (AFP/London *Guardian*, Dec. 11). **-- DTB**

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CLIMATEWIRE — Fri., December 12, 2014

READ FULL EDITION

1. STATES:

Can a state fill a budget gap with a price on carbon? Wash. may soon know

On Wednesday, Washington Gov. Jay Inslee will unveil a new plan to lower his state's greenhouse gas emissions. And while the Democrat hasn't tipped his hand on whether he'll push for a cap-and-trade system or a carbon tax, Inslee and his administration have dropped several hints about how they'll likely frame the carbon pricing plan as a way to help solve the state's budget deficit.

2. REGULATION:

Lawyers gird for fight against EPA's Clean Power Plan based on states' rights

One thing is certain: There will be no shortage of legal arguments from states and industries against U.S. EPA's Clean Power Plan to curb greenhouse gas emissions from utilities.

TODAY'S STORIES

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Slow business of removing 'roadblocks' from a potentially different climate treaty continues with China's help

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Interior official says discussing resettlement for Pacific islanders threatened by rising seas is 'premature'

5. SPECIES:
Warming waters 'reshuffling' species along the West Coast

6. CALIFORNIA:
Storms could make dent in state drought as climate debate continues

7. FINANCE:
Texas, Wash. deals highlight growing investor interest in wind power

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First-ever 'green' bond database aims to boost transparency

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States with most robust solar power programs are ones that did their homework -- study

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Calif. gardens begin shift to more drought-resistant plants

11. DROUGHT:
Climate change won't dry out Southern Calif. but could invite powerful storms

12. ADAPTATION:
Migration, low funding strip Pacific nations of climate planners

13. NATIONS:
Japan burns more coal, faces policy pressure

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ENERGYWIRE — Fri., December 12, 2014

READ FULL EDITION

1. POLICY:

Mich. goes face to face with pivotal energy issues in 2015

U.S. EPA's Clean Power Plan already has prompted legislators and regulators across the nation to take a closer look at a laundry list of energy issues in their states. Perhaps nowhere is the debate as robust as Michigan, which faced pivotal policy decisions even before the Obama administration proposed a landmark rule on June 2 to slash carbon dioxide from power plants by almost a third.

TOP STORIES

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Clean Power Plan needs robust environmental justice component -- advocates
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Crude by rail 'is here to stay' -- report
4.GRID:
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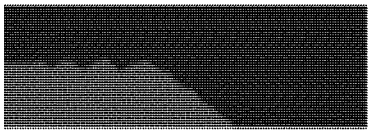

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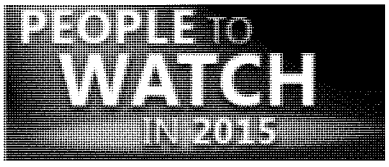
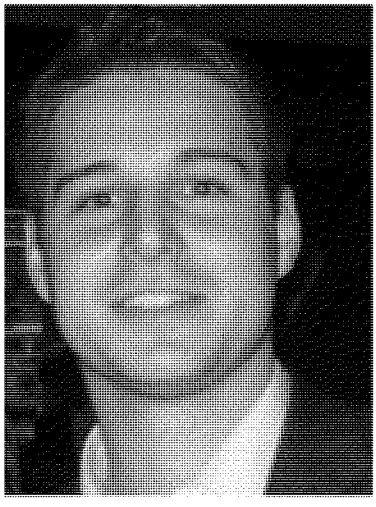
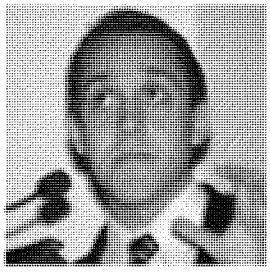

PEOPLE TO
WATCH
IN 2015





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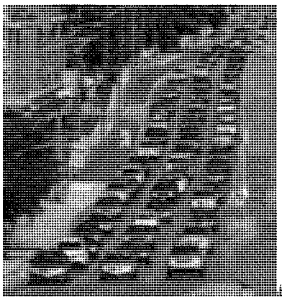
Sent: Thur 12/11/2014 4:15:02 PM
Subject: Air & Radiation Law News for December 11, 2014



Air & Radiation Law News

for December 11, 2014

Bloomberg BNA Daily Environment Report™

Budget

N.Y. Comptroller Urges Reconsideration
Of Environmental Agency's Funding Levels

State funding for the Department of Environmental Conservation (DEC) has barely kept pace with inflation over the past 10 years, while the agency's responsibilities have grown, New York State Comptroller Thomas P. DiNapoli (D) said...

Budget

Omnibus Bill Would Increase Interior Funds
But Not for Decision on Greater Sage Grouse

Regulatory decisions on sage grouse under the Endangered Species Act will be blocked until at least Oct. 1 if the omnibus continuing appropriations bill for fiscal year 2015 appropriations (H.R. 83) becomes law as expected....

Budget

Omnibus Spending Bill Includes Funding For Yucca Mountain, Other Energy Projects

The Yucca Mountain waste repository and other energy projects opposed by the Obama administration would receive funding in omnibus spending legislation (H.R. 83) that is expected to be voted on Dec. 11, Jennifer Hing, a spokeswoman for the...

Budget

Spending Bill Would Increase PHMSA Funds, Set January Deadline for Final Tank Car Rule

The Pipeline and Hazardous Materials Safety Administration would see a $9.1 million increase in congressional funding for fiscal year 2015 if the omnibus spending package (H.R. 83) released by congressional leaders Dec. 9 passes Congress....

Coal Mining

Administration Should Convene Task Force To Update Coal Lease Program, Report Says

The Obama administration should develop a presidential task force to offer recommendations for updating and improving the nation's coal leasing program, the Center for American Progress said in a Dec. 9 report....

Congress

Keystone, Ozone, Grid Reliability Bills Will Pass Congress Early Next Year, Olson Says

Early in the next Congress, lawmakers will pass bills to limit the Environmental Protection Agency's ability to revise the national ozone standard, waive environmental regulations if a power plant is ordered to operate during an emergency...

Energy

Energy Department Finalizes Loan Program Opposed by Nuclear Critics, Taxpayer Groups

The Energy Department announced Dec. 10 it had finalized a $12.5 billion loan guarantee program for nuclear energy projects opposed by nuclear opponents and taxpayer watch dog groups. ...

Energy

FERC Grants Lawmakers' Request to Hold Technical Conferences on Power Plant Rule

At the urging of several lawmakers, the Federal Energy Regulatory Commission has announced plans to conduct a series of technical conferences on the Environmental Protection Agency's clean power plan....

Energy

Xcel Energy Solar Program Rejected by Colorado PUC

The Colorado Public Utilities Commission Dec. 10 rejected a program by Xcel Energy to create a premium solar program. The Solar*Connect program did not provide a level playing field and would subsidize utility profits, the Colorado Solar...

International Climate

At Lima Climate Talks, Oil Companies Reject Goal of Global Fossil Fuel Phaseout by 2050

The draft text under negotiation at the Lima climate change conference includes a goal of phasing out fossil fuel use globally by 2050, a sharp contrast to oil company research presented Dec. 10....

International Climate

Climate Change 'Performance' Ranking Puts Denmark at Top, U.S. and China Far Down

Denmark is the most environmentally responsible industrialized country in its actions to confront climate change, according to the 2015 Climate Change Performance Index from GermanWatch, while the U.S. ranked 44th, just ahead of China....

International Climate

Countries, Environmental Groups at Odds Over Green Fund's Role in $100B Pledge

More than 190 nations at international climate talks in Lima, Peru, continued Dec. 10 to work on overcoming a serious rift over the aid richer nations are to give to developing nations under a 2015 global climate deal....

International Climate

Delegates in Lima Work on Defining 'Differentiation' in 2015 Climate Pact

At the Lima climate talks Dec. 9, delegates at the Durban Platform for Enhanced Action (ADP) negotiating track grappled with determining how countries in various stages of economic development will be divided and how their responsibilities...

International Climate

Draft Text for Climate Change Pact Grows, But Agreement on Language Remains Elusive

Negotiators at the United Nations-sponsored climate talks were hoping to leave the Peruvian capital with progress on a workable first draft of a new global pact to address climate change, scheduled to be finalized a year from now....

International Climate

U.S. Defends Emissions-Reduction Pledge; Kerry Slated to Address Lima Negotiations

U.S. climate negotiator Todd Stern defended his nation's pledge to cut greenhouse gas emissions up to 28 percent by 2025, saying Dec. 10 the target is a significant improvement over U.S. commitments offered at the 2009 Copenhagen climate...

Oil & Gas

Industrial Commission Sets Safety Standards For Crude Oil Produced in North Dakota

The North Dakota Industrial Commission has approved new safety standards for crude oil produced in the state, requiring producers to separate light hydrocarbons from the crude to make it less volatile during shipment....

Pipeline Safety

Canada Proposes C$1 Billion Minimum
Spills Liability for Oil Pipeline Operators

The Canadian government has introduced proposed legislation to set major oil pipeline operators' minimum liability for spills at C$1 billion ($870 million), with unlimited liability if the operator is found to be at fault or negligent....

Vehicle Fuels

Oversight Committee Seeks Deadline for
EPA to Issue 2014 Renewable Fuels Rule

A senior Environmental Protection Agency official could not say when the overdue renewable fuel standard for 2014 will be finalized despite being repeatedly pressed for a target by members of Congress Dec. 10....

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http://insideepa.com/newsletters/inside-epa

Latest News

Several States, Utilities Renew Bid For D.C. Circuit To Scrap EPA's CSAPR

Several states and utilities opposed to EPA's reinstated Cross-State Air Pollution Rule (CSAPR) are renewing their bid for a federal appeals court to vacate the emissions trading rule entirely, saying the agency's approach of imposing federal air plans on states to ensure compliance with the rule is unlawful and therefore dooms CSAPR.

EPA's FY15 Staffing Reductions Could Create Hurdle For Agency's Agenda

EPA faces a fiscal year 2015 staffing reduction under compromise appropriations legislation that will cut the agency's employee levels to their lowest since 1989, which could create a hurdle for EPA fully implementing its air, water, climate, and other programs despite the agency suffering only a $60 million budget cut in the FY15 bill.

EPA Critics Lay Groundwork For Bid To Stay ESPS Pending Court Review

State and industry critics of EPA's greenhouse gas (GHG) rule for existing power plants are laying the groundwork for a legal challenge to delay implementing the rule pending judicial review on the merits, arguing that if the measure is finalized in its current form, it would harm them enough to meet the legal standards required for courts to grant a stay.

News Briefs

Suit Aims To Block Use Of EPA Mobile Source Air Model

Pro-ethanol groups and two corn-growing states are suing EPA in a bid to block use of the agency's latest car and truck emissions computer model, known as the Motor Vehicle Emissions Simulator (MOVES) 2014, claiming that the model inaccurately predicts higher air pollution as a result of ethanol use in vehicles.

Greenwire

APPROPRIATIONS:

Winners and losers in Congress' big spending deal

Nick Juliano, E&E reporter

Published: Wednesday, December 10, 2014

Correction appended.

The 1,600-page, $1 trillion spending bill released last night -- less than 52 hours before the government is supposed to shut down -- contains a little something for everyone.

While the bill largely spares President Obama's energy and environmental agenda, it makes slight cuts to U.S. EPA's budget, and Republicans secured some new policy riders targeting lower-profile regulations.

Here's a look at some of the people and policies that fared best and worst in the CRomnibus -- which both chambers of Congress are expected to pass later this week.

Winners

Obama's domestic climate agenda

While environmentalists have plenty not to like about this bill, they can at least rest easy that Democrats managed once again to beat back the most aggressive efforts to hamstring EPA's efforts to regulate greenhouse gas emissions from new or existing power plants. Policy riders preventing EPA from implementing those rules were among the more than 100 provisions Democrats said Republicans had insisted on putting into the bill.

"I don't necessarily know if I want to call it good news, but ... if you look at the end result, just by the sheer

volume of what they tried to get in, there's a positive aspect of this," said Franz Matzner, associate director of government affairs for the Natural Resources Defense Council.

The reprieve may only be temporary, as Republicans will have even more leverage to extract concessions through appropriations bills when they are in the Senate majority next year. Still, they will need at least six Democrats to attain the 60 votes necessary to avoid a filibuster on appropriations bills and appear to be short of that tally when it comes to most major environmental rules (*Greenwire*, Nov. 5).

Renewable energy

The Department of Energy was one of the few agencies to see a funding boost this year, with its Office of Energy Efficiency and Renewable Energy, which supports a variety of clean-technology research, growing to $1.93 billion, a $25 million boost compared with last year.

DOE's loan guarantee program, which is looking for new fossil, renewable and nuclear projects to fund, receives $17 million in the CRomnibus. That's down from the $20 million Congress provided last year, but the difference will be made up through a higher anticipated collection of fees. Earlier this summer the program managed to stave off attempts from some House Republicans to eliminate it.

Cape Wind, the years-in-the-works offshore wind farm on which developers hope to begin construction soon, also was spared from an earlier House-passed policy rider that would have blocked DOE from finalizing a $150 million loan guarantee that was conditionally offered earlier this year. But DOE does have to provide quarterly reports on the status of the project and its risk from litigation. Cape Wind continues to face legal challenges in state and federal court largely organized by the Alliance to Protect Nantucket Sound, an opposition group. None of more than two dozen previous lawsuits has succeeded in sinking the project.

Republican leadership

While the bill's behind-closed-doors origin and the number of policy riders affecting issues from campaign finance reform to marijuana legalization have generated grumbling from both the left and the right, it appears on the road to passage, averting a government shutdown when the current continuing resolution expires tomorrow.

That would be an early win for newly ascendant Republicans, who will be setting a more unified agenda on both sides of the Capitol next year and have pledged to govern in a more bipartisan manner. It remains to be seen how long a list of environmental riders they attach to future funding bills and whether they go so far as to provoke a backlash from the public. But embattled Senate Republicans up for re-election in blue states like New Hampshire and Illinois in 2016 may help temper those ambitions, along with the need to secure at least some votes from Senate Democrats.

National parks

The National Park Service was also a big winner in the budget.

The usually sleepy bureau of the Interior Department was thrust into the national spotlight last year, when a government shutdown led to the closure of all 59 national parks and popular Washington, D.C., attractions like the National World War II Memorial.

With that politically disastrous experience in mind and the 2016 centennial of NPS around the corner, lawmakers gave the service a budget boost in fiscal 2015 of more than $53 million -- the entire amount requested by the Obama administration. That will bring its budget to more than $2.614 billion.

Nuclear fusion

An international effort to develop commercial nuclear fusion is also breathing a sigh of relief today as the bill continues to provide funding for the project after the Senate Energy and Water Development Appropriations Subcommittee had pushed to withdraw from the troubled effort earlier this year.

The spending measure would fund the project at $150 million -- even with the White House request but $75 million below the House version of the spending bill and $50 million less than in fiscal 2014.

The United States, China, Russia, India, South Korea, Japan and the European Union are all part of the effort known as the International Thermonuclear Experimental Reactor (ITER), which is being built in the south of France to create a magnetic fusion experiment that will produce 500 megawatts of fusion power for 500 seconds with the end goal of creating an almost endless source of power. But the program has met considerable delays, and the U.S. portion of the expected spending has jumped to almost $4 billion from the original anticipated costs of $1.1 billion of the $20 billion price tag, which some stakeholders say could double before it is finished (*E&E Daily*, July 8).

Other programs in the fusion research budget in the Office of Science would increase $318 million, an almost 20 percent increase from the administration's request and an $11 million increase from fiscal 2014 spending.

Losers

Sage grouse

One of the biggest concessions Republicans secured in the CRomnibus was a provision blocking the Fish and Wildlife Service from finalizing Endangered Species Act listing rules for four species of sage grouse, which wildlife advocates have been fighting to protect. The bird's habitat often coincides with ranching, mining or oil and gas developments that industries worry would be hampered by listing the species as endangered.

By securing the rider in this year's appropriations bill, Republican critics of FWS have effectively ensured it will be a part of future spending measures. Such language is extremely difficult to remove once it is added because appropriators tend to use the previous year's bill as a base line when they begin drafting new legislation every spring.

"Obviously, it's our goal to have this delisted," said Sen. John Barrasso (R-Wyo.).

Forested counties

In a blow to Western regions that rely on federal funds to compensate for reduced timber harvests, the spending bill zeros out the Secure Rural Schools account meant to cover those costs (*E&E Daily*, Dec. 10).

Sen. Ron Wyden (D-Ore.) last night blasted the proposal, which adds to a string of recent bad news for his policy proposals, after measures important to Oregon were left out of a public lands package expected to be enacted as part of a larger defense bill and House Republicans agreed to extend temporary tax credits he supports only until the end of this year, rather than through 2015 as he had sought.

Rep. Greg Walden (R-Ore.) reiterated this morning that he had a commitment from House leadership to pass SRS legislation in the first three months of next year. He said details were still being crafted but emphasized that it would not add to the budget deficit and would include provisions to aid the forestry industry. He predicted Wyden would be a constructive partner in those efforts.

"I think he's fully committed to making sure our counties both have the jobs in the forest industry that's needed, the tools that manage the forests and the funding for basic services, so I look forward to continuing to work with him," Walden told *Greenwire* this morning.

Obama's international climate agenda

While the bill does not stop EPA from regulating greenhouse gas emissions, it does take aim at administration efforts to reach an international emissions agreement. While the administration is not expected to request funding for its commitment to the international Green Climate Fund until next year, the bill report specifically bars contributions to the fund this year, while allowing money to be transferred for other off-budget purposes as long as the committee is notified.

The bill also carries over an existing policy rider that blocks the U.S. Export-Import Bank from limiting its support for overseas coal-fired power plants. In their report, appropriators say the provision is meant to "increase affordable electricity." But environmental groups say it also would lead to higher greenhouse gas emissions in the developing world that undercut the broader goals of international climate talks.

Efficient light bulbs

As has been the case since 2011, the spending bill again prevents DOE from enforcing energy efficiency rules for light bulbs that were enacted as part of the 2007 energy bill.

Because manufacturers had largely been complying with the rule even in the absence of enforcement, Democrats were willing to let the rider go into effect when it was first sought. But there was a stronger effort this year to eliminate it because it has now prevented DOE from working on updated efficiency rules, which it was supposed to begin crafting earlier this year.

"They can get in and they're hard to get out," the NRDC's Matzner said. "They're kind of like cockroaches that way."

Reporters Katherine Ling and Corbin Hiar contributed.

Correction: *An earlier version of this story misstated the spending bill's effect on DOE's loan guarantee program. It also incorrectly said the spending bill would decrease Interior's budget; it would slightly increase Interior's budget.*

GRID:

FERC sets regional conferences on climate rule's reliability impacts

Hannah Northey, E&E reporter

Published: Wednesday, December 10, 2014

Federal grid overseers today announced they will hold four technical conferences to delve into implementation and reliability concerns tied to U.S. EPA's proposal to cut carbon emissions -- a move that was quickly celebrated as a win by Republican lawmakers and regulators.

The Federal Energy Regulatory Commission said it will convene the first meeting, the national overview technical conference, at its Washington, D.C., headquarters starting Feb. 19 to examine whether state regulators have the right tools to detect reliability or market issues and strategies for complying with EPA

rules while coordinating with the markets that FERC oversees.

Staff-led regional conferences will then be scheduled in D.C., St. Louis and Denver.

FERC has been facing increasing pressure on Capitol Hill and from industry groups to weigh in on states' implementation of EPA's proposed Clean Power Plan under Section 111(d) of the Clean Air Act. That push gained steam following the release of a high-profile report in November that questioned whether the nation's power system could successfully shoulder such fast-paced changes under EPA's timetable (*EnergyWire*, Nov. 5).

House and Senate Republicans earlier this month called on FERC to publicly meet with EPA, the Energy Department, state regulators and power companies to discuss grid reliability concerns and explain what they say is a failure to coordinate implementation of EPA's proposal to cut carbon emissions (*Greenwire*, Nov. 25).

In the past month, two Republican members of FERC -- Tony Clark and Philip Moeller -- have said the commission should have a more formal advisory role as the EPA proposal takes shape.

FERC Chairwoman Cheryl LaFleur said in a statement that the commission "clearly has a role to play" in ensuring that the nation's energy markets and infrastructure adapt to support states' compliance with the EPA proposal and said the conferences will provide an opportunity for regulators to hear from a wide range of stakeholders.

Clark issued a separate statement thanking LaFleur and welcoming the increased dialogue. Clark said FERC is uniquely situated to vet issues that arise as the Clean Power Plan is implemented, should the rule survive legal challenges.

"It is not difficult to envision scenarios in which a patchwork-quilt of implementation plans, if improperly crafted, either conflict with one another or with the Federal Power Act itself in ways that harm electric reliability and distort prices," Clark said. "FERC is uniquely situated to vet these issues so that such scenarios are avoided."

EPA also welcomed the commission's announcement.

Liz Purchia, a spokeswoman for EPA, said the agency devoted significant attention to ensuring the rule didn't interfere with the nation's reliable and affordable supplies of power and has reached out "from day one" to the public, stakeholders and federal partners including FERC.

Purchia also defended EPA's track record on safeguarding the grid.

"In the agency's 40-year history, emissions from power plants have decreased dramatically, improving public health protection for all Americans, while the economy has grown," she said. "During this time, there have been no instances in which Clean Air Act standards have caused the lights to go out."

Despite warming to FERC's announcement, a top Senate Republican slated to lead the Energy and Natural Resources Committee next year said today's announcement didn't make up for what she sees as EPA's lack of coordination.

"A national conference, followed by three regional technical conferences, is no substitute for EPA's failure to engage FERC and DOE in a formal, documented process to address the impact on electric reliability of EPA's series of major rulemakings in recent years," Sen. Lisa Murkowski of Alaska said in a statement. "I remain hopeful however that the conferences will be useful to develop a better public record on these crucial questions, and I will remain as vigilant on this issue as I have been since 2011."

EPA:

Bipartisan fury rains on air chief over RFS retreat

Robin Bravender, E&E reporter

Published: Wednesday, December 10, 2014

House lawmakers had little sympathy for U.S. EPA's air chief today as she defended the agency's punting on its renewable fuel standard.

Janet McCabe, the acting administrator of EPA's air office, was criticized from both sides of the aisle today by a House Oversight and Government Reform subcommittee that oversees energy policy.

Republicans and Democrats alike chided McCabe for her office's decision last month to punt the already-delayed rule mandating the amount of renewable fuel required in petroleum-based gasoline and diesel (*Greenwire*, Nov. 21).

California Rep. Jackie Speier, the subcommittee's top Democrat, berated McCabe for failing to set a date for the final rule and threatened congressional action to repeal the RFS if EPA can't commit to a deadline.

EPA said it plans to finalize its 2014 standards -- which were due in 2013 -- next year, along with the 2015 and 2016 standards.

Pressed today for a timeline for the 2015 rollout, McCabe said, "I can't give you a date certain." She added, "We will move as expeditiously as we can."

Speier wasn't satisfied. "Why don't you give us a date?" she asked. "You could have a goal that your employees can work toward. To just have this kind of ephemeral, 'We'll have it done sometime in 2015,' doesn't give the industry any confidence moving forward."

McCabe started to defend the agency's actions, saying, "We are working on the steps that we'll need to take, the time that that timeline will take ... ."

But Speier cut her off.

"That's gibberish, Ms. McCabe. I'm sorry," the California Democrat said. "Just be clear: What is your goal?"

When the air chief again declined to offer a schedule, Speier said, "Maybe then, members of Congress should introduce a bill to repeal it unless you have a rule out by a date certain. Will that be enough to encourage the actual issuing of that rule? I don't think we're asking for a lot here."

Republicans similarly attacked EPA's refusal to commit to a time frame for the standard.

"We've heard for a year, 'It's coming,'" said subcommittee Chairman James Lankford (R-Okla.), who favors a full repeal of the RFS. "'It's coming' is not enough."

McCabe said EPA's move last month to further delay the 2014 standard was in part due to the significant number of diverging comments, "particularly about how volumes should be set in light of lower gasoline

consumption, and whether and on what basis the statutory volumes for renewable fuels should be lowered." Most notably, she added, "commenters expressed concerns regarding the ability of the proposed approach to provide continued progress toward achieving the volumes of renewable fuel targeted by the statute."

She added that EPA recognizes the delay has "exacerbated uncertainty" in the market but said the goal to issue three years' worth of RFS standards next year would help to get back to a more predicable schedule.

Lankford, who will be heading to the Senate in January, assured the air boss that the RFS is a big issue and lawmakers intend to keep up pressure on the agency.

"We're not going to let go of this," he told her.

FEDERAL WORKFORCE:

Spending bill includes raise for agency employees

Robin Bravender, E&E reporter

Published: Wednesday, December 10, 2014

Government employees would get another 1 percent pay bump in fiscal 2015 if the sweeping spending bill unveiled late last night is enacted.

It would mark the second straight year workers would see their salaries increase after a three-year pay freeze that ended in 2014 when most federal employees got a 1 percent raise (*Greenwire*, Jan. 2).

Vincent Morris, a spokesman for Senate Appropriations Chairwoman Barbara Mikulski (D-Md.), confirmed today that a 1 percent pay boost would go into effect as part of the omnibus spending package unveiled last night by Mikulski and House Appropriations Chairman Hal Rogers (R-Ky.). Lawmakers are working to approve a spending bill before 11:59 p.m. tomorrow to avert a government shutdown.

Earlier this year, President Obama asked for government workers to get the 1 percent increase as part of his fiscal 2015 budget request.

J. David Cox, president of the American Federation of Government Employees, earlier this year called that proposal "pitiful," arguing that workers deserve a bigger pay boost, "not a token increase that will be more than eaten up by rising living costs, including higher retirement and health care costs" (*E&ENews PM*, Feb. 24).

AFGE urged Obama instead to demand a 4 percent pay raise for government employees (*E&ENews PM*, Feb. 25).

But administration officials said it was the best they could do, given the fiscal pressures.

"We believed that our federal employees were something that deserved an increase. The 1 percent increase is what we felt we were able to do in the context of the budget constraints," then-White House Office of Management and Budget Director Sylvia Mathews Burwell said in March (*E&ENews PM*, March 4).

YUCCA MOUNTAIN:

Spending bill provides no new money for repository

Hannah Northey, E&E reporter

Published: Wednesday, December 10, 2014

Noticeably absent from the $1 trillion spending measure released by congressional appropriators last night is new funding for the beleaguered Yucca Mountain nuclear waste repository in Nevada.

The appropriations bill includes about $5 million in carryover funds for Yucca Mountain -- down from $13 million last year, Jennifer Hing, a spokeswoman for House Appropriations Chairman Hal Rogers (R-Ky.), said in an email.

A spokesman for Senate Majority Leader Harry Reid (D-Nev.), the project's most outspoken foe on Capitol Hill, pointed out that none of the funds are new. Kristen Orthman took issue with House appropriators' assertion that the bill included "a continuation of prior year funding for Yucca Mountain to maintain its viability for future use" and for nuclear regulators to release a safety report on the repository.

Asked about Yucca funding in the spending bill, Orthman said in an email, "There is none in there."

Reid's office pushed back earlier this year when House appropriators said the 2014 omnibus appropriations bill contained money for the abandoned repository program, a project the Obama administration says is "unworkable."

In January -- reflecting House Republicans' desire to see the project proceed -- Hing said the omnibus continued $13 million in Yucca funding, and that taxpayers -- after spending billions of dollars on the program -- deserved to know whether it was capable of storing spent nuclear fuel (*Greenwire*, Jan. 14).

Reid's frustration with the appropriations language stems from a larger fight in Congress over Yucca Mountain, which is about 100 miles northwest of Las Vegas.

Some have questioned whether the project could move forward after Reid leaves his perch as Senate leader.

For now, the focus is on a series of studies probing the safety of the Nevada site. The Nuclear Regulatory Commission last year ordered its staff to complete safety reports on Yucca after a federal appeals court ruled the agency had to use its limited funds -- $11.1 million of unobligated funds and $2.5 million of obligated, unexpended funds -- to continue a licensing process.

The NRC in October released the third of five volumes of a Yucca safety report that found the repository would be "safe" for humans and the environment once closed. The agency said it expects to publish additional volumes touching on safety before closure, programmatic requirements and license specifications by January.

Separately, the fiscal 2015 spending bill also contains language that touches on a 2011 NRC managerial scuffle when Gregory Jaczko, a former Reid aide, was leading the agency.

Specifically, the language requires the NRC chair to notify commission colleagues and lawmakers within a day of assuming "emergency powers" under Section 3 of the Reorganization Plan of 1980.

House Republicans tore into Jaczko in 2011 for using the rarely used status, allowing for the transfer of

certain commission decisionmaking powers to himself, after the United States received tsunami warnings in the wake of a March 11, 2011, earthquake that crippled Japanese nuclear reactors (*Greenwire*, April 29, 2011).

EPA:

Vitter alleges new NRDC emails point to 'collusion'

Robin Bravender, E&E reporter

Published: Wednesday, December 10, 2014

Sen. David Vitter released a trove of new documents today that he says show "collusion" between U.S. EPA and environmentalists on setting climate policies.

The Louisiana Republican's office released a series of emails today that include an environmentalist giving a top EPA official advice about a major climate rule, confirmations of meetings between EPA and employees at the Natural Resources Defense Council, and evidence of frequent communication between EPA and NRDC staff.

It's Vitter's latest attempt to show that the Obama administration's EPA is too cozy with the environmental group.

Vitter's office alleges the correspondence released today demonstrates "a plan to control implementation of the carbon rule even after President Obama has left office."

The email he's referring to was sent in June 2013 from David Hawkins, director of NRDC's climate programs and former EPA air chief during the Carter administration. Hawkins wrote to Joe Goffman, the top attorney in EPA's air office, describing how EPA could propose or adopt federal plans for implementing rules to curb greenhouse gases from power plants during the time when states are allowed to submit their own implementation plans.

That, Vitter said, demonstrates "a coordinated plan to undermine the states' input in developing and implementing the devastating carbon rule. This new evidence shows the NRDC suggesting to the EPA that they could manipulate deadlines and court precedents in order to force through a 'one-size-fits-all' federal plan, and cut out the states."

EPA spokeswoman Liz Purchia said today, "There should be no question that EPA values states' role in implementing the Clean Air Act. The proposal itself and EPA's actions in reaching out to states clearly demonstrate the priority the agency places on receiving and responding to states' input."

NRDC spokesman Ed Chen called Vitter's statement "untrue." He added, "What these emails demonstrate is that NRDC urged the EPA do its job under the Clean Air Act. Nothing more. Nothing less."

Several emails Vitter released show confirmations of meetings between Goffman and other EPA officials with NRDC employees, including Hawkins; David Doniger, the policy director of NRDC's climate and clean air program; and Dan Lashof, who held Doniger's position before moving to California in March to work for billionaire environmentalist Tom Steyer's advocacy group. Another email shows Goffman responding to Doniger's requests to speak on the phone while Goffman was on vacation.

Vitter has previously accused NRDC of playing an outsized role in shaping EPA's power plant proposal (*Greenwire*, Oct. 14).

"We know from similar email discoveries that EPA took direction from NRDC in developing the rule, but now we also know EPA efforts at a full federal takeover are seriously being discussed with the one organization having the most influence at EPA," the Louisiana Republican said today.

Purchia said the draft climate was "developed through an extensive public outreach process -- one that engaged tens of thousands of people across the country. EPA consulted with states, power companies, local communities, environmental groups, associations, labor groups, tribes and many more."

She added, "To imply that one group had any undue influence on the proposal's development is completely false."

CLIMATE:

Senate Dems call on EPA to strengthen power plant rule

Daniel Bush, E&E reporter

Published: Wednesday, December 10, 2014

A group of Senate Democrats today called on U.S. EPA to strengthen its proposed power plant rule to achieve a greater reduction in carbon emissions.

In a letter to the agency, the group said the rule is "the single most significant step this country has ever taken to tackle greenhouse gas emissions."

But they insisted that an even more ambitious carbon reduction target would help the United States avoid the worst impacts of climate change.

"For the [rule] to be a success, it must achieve the level of emissions reductions that the science calls for to avoid the most dangerous impacts of climate change," it said.

The letter was signed by Democratic Sens. Jeff Merkley of Oregon, Brian Schatz of Hawaii, Ben Cardin of Maryland, Barbara Boxer and Dianne Feinstein of California, Ed Markey and Elizabeth Warren of Massachusetts, Cory Booker of New Jersey, Ron Wyden of Oregon, and Sheldon Whitehouse of Rhode Island, who is the co-chairman of the Bicameral Climate Task Force. Vermont's independent Sen. Bernie Sanders also signed on.

Under EPA's current proposal, the rule would cut carbon emissions 30 percent by 2030 from 2005 levels. The rule was proposed in June and drew thousands of responses during EPA's comment period, which ended earlier this month.

Click here to read the letter.

ADVOCACY:

Gore visits talks; activists stage street demonstrations

Lisa Friedman and Jean Chemnick, E&E reporters

Published: Wednesday, December 10, 2014

LIMA, Peru -- As former Vice President Al Gore dropped in to U.N. climate talks here, thousands of environmental activists took to the streets hoisting papier-mâché ears of corn and burning offerings to "Pachamama," or Mother Earth, in what organizers believe was Latin America's largest-ever climate protest.

Marching in the vibrant colors of Quechua clothing, crowds of indigenous workers demanding water access linked arms with American groups demanding 100 percent renewable energy or declaring that markets are not the way to save the forests.

"Somos campesinos" -- we are workers -- said Rosa Cachi, 48, who traveled with 20 other women from their home in Puno, a city on the shore of Lake Titicaca.

"We work in the fields, and we see how climate change is affecting us," she said, describing once-rare hailstorms that now routinely ruin crop yields. Using coco leaves to cool her temples under the hot Lima sun, Cachi said she and other workers are paying attention to U.N. climate talks across town and hope to see major polluting countries take responsibility.

"We want the big countries to reduce pollution like the United States, China and Japan," she said.

The march was modeled on protests that attracted some 300,000 people in New York in September during a U.N. climate change summit. U.S. environmental groups announced they will gather in front of the U.N. later today to show solidarity with the Peruvian "Marcho Mundial en Defensa de la Madre Tierra."

Meanwhile, back in the thick of the talks toward a new 2015 treaty, top Chinese negotiator Xie Zhenhua hosted Gore in the Chinese pavilion to discuss how rapid urbanization could affect Chinese emissions.

Xie said again that China sees the stress its rapid industrialization has placed on its fragile environment. Severe smog in its burgeoning cities is compromising public health, he said, while the city also works to respond to the global warming challenge.

"Actively combating climate change is not something imposed by others, but something that we take the initiative [on], and we want to do it well," he said through a translator.

Xie reiterated that China would present new details early next year about its November pledge to cap heat-trapping emissions no later than 2030. New announcements could be unveiled even later this month, he added.

Some in the United States have questioned the ambition of China's pledge to peak emissions, noting that the country has not said how high they will be when they stop climbing. But Xie said his nation would continue to industrialize after 2030, and having a hard-and-fast cap on emissions will mean all that new growth must be fueled by energy efficiency and renewable power.

He added that some Chinese cities are on track to stop growing their emissions long before 2030, though the country as a whole might need a longer time horizon.

The "China Day" event was also the first of four addresses Gore will make during his two-day visit to Lima. He is set to address the plenary early this afternoon.

"Here in Lima, we are at a fork in the road," he told the room. The events of the next few days either could lead to a successful outcome at next year's conference in Paris, or it will lead to failure, he said. But he said that past struggles ranging from women's suffrage to civil rights all seemed to be intractable problems until they finally ended with a "yes" solution.

"Now we see as we face the climate crisis, the last 'no' will yield to a 'yes' in Paris, and the way forward is being made here in Lima," he said.

EMISSIONS:

Lima talks rack up largest carbon footprint

Published: Wednesday, December 10, 2014

The ongoing U.N. climate talks in Peru are already breaking records, with this year's negotiations having the largest carbon footprint of any U.N. climate meeting to date.

The 11 football fields of temporary structures built for the 13-day negotiations are the major contributor to the 50,000 metric tons of carbon dioxide created by the negotiations.

The talks are also the first to offset their emissions, neutralizing the pollution generated by Peru's efforts to protect forest reserves.

Though the newly constructed talk venue was originally supposed to be tied into Peru's grid, which uses hydropower for more than 50 percent of its generation, connecting the facility didn't work. Now, the talks are being powered exclusively by diesel generators (AP/London *Guardian*, Dec. 10). **-- AW**

NUCLEAR:

DOE rolls out last loan guarantee funds for advanced reactors, fuel

Katherine Ling, E&E reporter

Published: Wednesday, December 10, 2014

Advanced nuclear energy projects can now apply for $12.5 billion in loan guarantee support from the federal government, the Energy Department announced today.

The latest solicitation means DOE has opened up the remaining $40 billion in loan guarantee authority to what the agency calls an "all of the above" portfolio, including $4 billion for renewable energy and energy efficiency, $16 billion for advanced vehicle technology manufacturing and $8 billion for clean fossil energy projects.

The fossil solicitation announced last December kicked off DOE's yearlong effort to revive the loan guarantee program and refurbish its image that was tarnished after several recipients went bankrupt three years ago, including the solar firm Solyndra LLC, providing fodder for Republican criticism.

DOE's campaign to improve the perception of the loan guarantee program received a boost recently when the agency reported it was now making money and could earn up to $5 billion in profit from the current portfolio of more than 30 projects (*Greenwire*, Nov. 13).

"With $40 billion of loan guarantee authority available to advance our all-of-the-above energy strategy, the department's Loan Programs Office has an opportunity to replicate its past successes, supporting innovative clean energy technologies that bring the U.S. closer to a low-carbon future," Energy Secretary Ernest Moniz said in a statement. "This solicitation will help the U.S. build the next generation of safe and

secure nuclear energy projects by providing the critical financing needed for innovations that have not been widely deployed at commercial scale in this country."

Peter Davidson, the executive director of DOE's Loan Programs Office, is discussing the new solicitation, as well as an $8.3 billion loan guarantee for the Vogtle nuclear plant in Georgia granted earlier this year, with stakeholders at the Nuclear Power International Conference in Orlando, Fla., today.

Davidson also will highlight the four key technologies DOE is particularly interested in for this solicitation: advanced nuclear reactors, small modular reactors of 300 megawatts or less, uprates and upgrades at existing facilities, and front-end nuclear projects including uranium conversion or enrichment and nuclear fuel fabrication.

The program will remain under close scrutiny. The DOE funding section of the compromise $1 trillion spending bill announced yesterday by Senate and House appropriators included language that, while acknowledging some improvement, criticized the agency for not adequately addressing ongoing oversight issues with the program identified by a Government Accountability Office report and inspector general report earlier this year (*Greenwire*, May 21).

"In particular, the speed at which the loan program is finalizing the actions taken to address the deficiencies in the program's administration is unsatisfactory," the bill said. "Concerns persist about the continued lack of comprehensive policies for oversight and monitoring risk of existing loan guarantees."

The spending bill directs DOE to submit a plan within 60 days of the bill's enactment that outlines how the program will comply with "credit review, compliance and reporting functions" mainly found in the Risk Management Division in the Loan Programs Office.

DOE also must submit a report in a month after the bill's enactment -- with quarterly updates through fiscal 2016 -- that provides a review on the litigation risks associated with a $150 million conditional loan guarantee commitment for the offshore wind project at Cape Wind (*Greenwire*, July 1). Several members of Congress wanted to block the backup authority for the project entirely.

ELECTRIC VEHICLES:

Number of plug-ins rises -- especially in Calif.

Anne C. Mulkern, E&E reporter

Published: Wednesday, December 10, 2014

About half of all plug-in electric vehicles in the country are in California, the Energy Information Administration said today.

Five of every 1,000 registered vehicles in the Golden State are plug-ins, EIA said. California, in general, is home to early adopters as well as people who care about protecting the environment, analysts have said. In addition, the cars often can go farther on a charge in temperate weather, because there's less need to run air conditioning or heat.

California has both incentives and rules aimed at growing the number of zero-emission vehicles, which include plug-ins and hydrogen fuel-cell vehicles. Gov. Jerry Brown (D) has said he wants 1.5 million zero-emission vehicles on state roads by 2025.

The state Legislature in September passed a bill aimed at putting 1 million zero-emission vehicles on

California roads by 2023, a marker toward the larger goal. S.B. 1275, dubbed the Charge Ahead California Initiative, puts in place levers to expand adoption of zero-emission vehicles.

The bill requires the state Air Resources Board (ARB) to develop a plan to meet the goal. It also orders new paths to help lower-income residents qualify for loans and kick-starts a pilot program for car-sharing that would use zero-emission vehicles. It suggested an income cap for popular state rebates available to zero-emission vehicle buyers in order to stretch funding that previously had run out (*Greenwire*, Sept. 22).

The Golden State currently offers rebates of up to $2,500 for EVs that run only on a charge, and $1,500 for plug-in hybrid electric vehicles, which can also run on gasoline. Zero-emission vehicles also earn a sticker allowing them to travel in carpool lanes with a single occupant, an enticement that ARB has said is more appealing than money to many drivers.

The state also has a rule requiring automakers that sell in California to make an increasing number of zero-emission vehicles. By 2025, about 15 percent of all new light-duty vehicles sold in the state must be either electric or fuel-cell-powered.

Nine states have agreed to follow California's zero-emission vehicle mandate, EIA said: Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Rhode Island and Vermont. These 10 states represent close to one-quarter of the U.S. light-duty vehicle market.

Right now, however, plug-ins are a tiny fraction of the cars in the United States, EIA said. Sales of plug-ins in the United States are on the rise but so far this year represent just 0.7 percent of new vehicle sales. That's up from 0.6 percent in 2013 and 0.4 percent in 2012.

There were a total 70,000 electric vehicles and 104,000 plug-in hybrid electric vehicles in the country last year, compared with around 226 million total registered vehicles in the United States.

Other state incentives for electric vehicles include:

- Washington exempts EV purchases from the state's 6.5 percent sales and use tax. The incentive doesn't apply to plug-in hybrid purchases, however.

- Georgia offers a zero-emission vehicle tax credit of one-fifth the cost of the car up to $5,000.

- Maryland offers a tax credit of $125 for each kilowatt-hour of battery capacity of an EV, up to $3,000. Many EVs have a battery capacity sufficient to obtain the full credit, EIA said. Plug-in hybrids have a lower capacity and therefore secure a lower credit. Buying a plug-in Toyota Prius generally means a credit of $550, according to state estimates.

- Washington, D.C., has a tax credit of half the incremental cost of an EV, up to $19,000. It also exempts EVs from its excise tax, which varies from 6 percent to 8 percent, depending on vehicle weight.

TRANSPORTATION:

States struggle to regulate Uber, Lyft

Published: Wednesday, December 10, 2014

Ride-sharing companies like Uber and Lyft are pushing to ease state regulations on background checks

for drivers even as they have come under fire internationally.

In Colorado, Uber successfully persuaded lawmakers to ease background checks for drivers. In Illinois, the company skirted a bill passed by the Legislature but vetoed by Gov. Pat Quinn (D) that would have strengthened background check requirements. A similar bill was thwarted in California.

While states have struggled to regulate Uber at home, in India, New Delhi has banned the company due to questions about its background checks for drivers. There, an Uber driver was accused of raping a customer. Had Uber had more stringent background checks, city authorities said, the company would have known the driver had previously been accused of raping a female passenger in 2011 (Mike Isaac, *New York Times*, Dec. 9).

In Michigan, Uber and Lyft are supporting a bill before the Legislature that would require background checks for drivers and personal vehicles. The bill is adamantly opposed by taxi drivers who say it excuses the company from other regulations and costs relating to insurance (Paul Egan, *Detroit Free Press*, Dec. 10). **-- AW**

AIR POLLUTION:

Feds mulling 'orange cloud' regulation

Manuel Quiñones, E&E reporter

Published: Wednesday, December 10, 2014

The Interior Department's Office of Surface Mining, Reclamation and Enforcement is mulling new guidelines to limit nitrogen oxide pollution from strip mine blasting.

Action at OSMRE stems from a rulemaking petition this year from the environmental group WildEarth Guardians, which has for years been fighting Western coal mining operations. The group says the pollution is showing up in the form of orange clouds.

But OSMRE's actions, which have yet to be announced publicly, may involve more than just air pollution concerns, said spokesman Chris Holmes.

"In the near future, OSMRE will announce some modifications to the blasting rule, and this modification will go beyond just the release of nitrogen oxide gases," he said. "These modifications will better standardize the obligations to protect the public and property when blasting occurs."

Mining companies, states and lobbying groups expressed objections to the new blasting regulations during a recent public comment period, calling them unnecessary and potentially beyond the agency's legal authority (*Greenwire*, Sept. 30).

While OSMRE doesn't necessarily regulate air pollution, the Surface Mining Control and Reclamation Act, which OSMRE enforces, gives the agency power to mitigate the effects of strip mining.

SMCRA also gives groups leeway in submitting rulemaking petitions. The agency can either reject or move forward with the petitions.

OSMRE Director Joseph Pizarchik this year rejected another WildEarth Guardians petition calling on the agency to strengthen National Environmental Policy Act reviews of mining operations (*Greenwire*, July 3). The group is pursuing the issue through federal litigation.

AUSTRALIA:

Tesla charges into new market with Sydney showroom, charging network

Published: Wednesday, December 10, 2014

Tesla has started selling its fully electric cars in Australia and has plans to create a charging network on the continent.

Elon Musk's company opened its first showroom in north Sydney today, and stores are set to open in Melbourne next year.

The company, which will first sell just the Model S four-door sedan, also set up two charging stations for the cars -- one at the Star casino at Darling Harbour and another at its Sydney showroom.

The stations can half-charge a car in 20 minutes and recharge the entire battery in an hour.

The Model S itself will cost around 117,000 Australian dollars ($97,000) for a standard model, and owners will have to pay up to an additional AU$3,000 to install charging stations in their homes (Michael Safi, London *Guardian*, Dec. 9). **-- AW**

BELGIUM:

Wind power storage island could break ground next year

Published: Wednesday, December 10, 2014

Construction on a wind energy storage facility off the coast of Belgium could get underway early next year, providing a much-needed alternative for the European nation that is struggling to transition away from nuclear energy.

A consortium led by GDF Suez's Electrabel and Belgian dredging firm DEME wants to build a ring-shaped island 3 miles offshore in the North Sea to solve the problem of consistent power generation.

The island would be drained of water during windy periods. During low wind times, floodgates would be opened to return sea water into the island, spinning turbines generating electricity.

"We are currently in talks with other authorities and hope to give the go-ahead for the project in early 2015," a government spokeswoman said.

Planning to transition from nuclear power, Belgium must replace 5,860 megawatts of atomic electricity (Robert-Jan Bartunek, Reuters, Dec. 10). **-- DTB**

ENERGY POLICY:

NEI's Fertel pitches nuclear for final power plant rule, urges states to move toward clean energy standards

Published: Wednesday, December 10, 2014

Will U.S. EPA include more specificity and opportunities for nuclear power in its final rule for regulating emissions from existing power plants? During today's OnPoint, Marv Fertel, president and CEO of the Nuclear Energy Institute, discusses the future of nuclear energy as part of the Clean Power Plan and talks about market conditions that are affecting the viability of nuclear in the United States. Fertel also explains why he believes both the House and Senate will pass energy legislation during the 114th Congress.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Thu., December 11, 2014

READ FULL EDITION

1.NATIONS:

China spawns homegrown climate activists who hurry to 'get involved'

BEIJING -- Growing up in a family of bankers, Wang Tianju thought he would follow in his family's footsteps and work in finance, until he watched a movie in 2013. A scene in the global warming documentary "Chasing Ice" in which a huge ice mass falls into the sea changed his career planning. "I was thinking to myself, how can I be so selfish, just thinking about making money? If we don't do something, those things will be all gone," he said. So after Wang graduated from college last year in the United Kingdom, he returned to China and joined a local environmental organization. Now, Wang is a program officer at the Greenovation Hub in Beijing. He is one of many Chinese who are devoting their time and talent to a fight against climate change.

2.NEGOTIATIONS:

Small nations worry that U.S. domestic politics may snarl U.S. climate pledge

LIMA, Peru -- Secretary of State John Kerry arrives at U.N. climate change negotiations today amid heightened expectations that he will be able to spur slow-going action here toward a new international accord.

TODAY'S STORIES

3.FINANCE:

More investors flock to climate-safe equities

4.RESEARCH:

New material cools buildings by reflecting heat into the 'cold darkness of space'

5.RESOURCES:

U.S. agriculture, forestry sectors could make substantial cuts in greenhouse gases -- report

6.ELECTRICITY:

Latin America has huge renewable energy potential but lacks policy and technology

7.TRANSPORTATION:

New fueling station on Calif.'s 'hydrogen highway' aims to serve more fuel-cell cars

8.POLITICS:

State Dept. official stresses need for Arctic climate agenda amid GOP opposition

9.RELIGION:

Catholic bishops make joint statement on climate action

10.SOLAR:

Thoreau's Walden Pond will have solar array, EV charging stations

11.WEATHER:

Japanese forecasters say El Niño is here

12.WEATHER:

As 'weather bomb' blasts Britain, thousands get blackouts

E&ETV'S ONPOINT

13.REGULATION:

Clean air agencies group's Becker urges more flexibility for states on Clean Air Act rules

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., December 11, 2014

READ FULL EDITION

1.TECHNOLOGY:

For Russia's young entrepreneurs, sanctions are just another obstacle

The Bravo eGo is the rarest of things -- an electric car made in Russia -- and it is raised on a dais at a big technology conference in Moscow. The company's young founder, Konstantin Artemev, opens the gull-wing door and lets a guest climb in.

Making an electric car in Russia would seem an exercise in Dostoevskian suffering, especially as Western sanctions take hold and the economy teeters on recession. But as he discusses the car's features, Artemev, 28, is possessed of the kind of unshakable confidence usually found in Silicon Valley entrepreneurs. One look around the cavernous hall shows he is not alone.

TOP STORIES

2.CLIMATE:

FERC wades into reliability fight over EPA's Clean Power Plan

3.TRANSPORT:

Appropriators add time pressure to crude-by-rail rule

4.OIL AND GAS:

CBO 'counterintuitively' sees benefits for consumers from U.S. exports

ELECTRICITY

5.ELECTRICITY:

World's largest solar company invests in U.S.'s largest residential market

6.ELECTRIC VEHICLES:

NRG adds more fast-charging stations in Atlanta as Ga. market continues to grow

7.TRANSMISSION:

Developer files for Vt. approval of Quebec-to-New England power cable

8.PIPELINES:

2008 blast in eastern Turkey signaled new chapter in cyberwar

OIL AND GAS

9.WORKFORCE:

Labor initiative leads to $4.5M payout for Marcellus personnel

10.PEOPLE:

Ex-BP financial guru appointed to InterOil board

11.PEOPLE:

Coca-Cola executive elected to Chevron board

12.MARKETS:
Contract drillers face 20% price cuts as oil and gas companies look for cheaper services

13.OIL:
Phillips 66 moves on plans to build unit to split condensate for export

14.BUSINESS:
Texas company to help China build 3 coal gasification plants

E&ETV'S ONPOINT

15.REGULATION:
Clean air agencies group's Becker urges more flexibility for states on Clean Air Act rules

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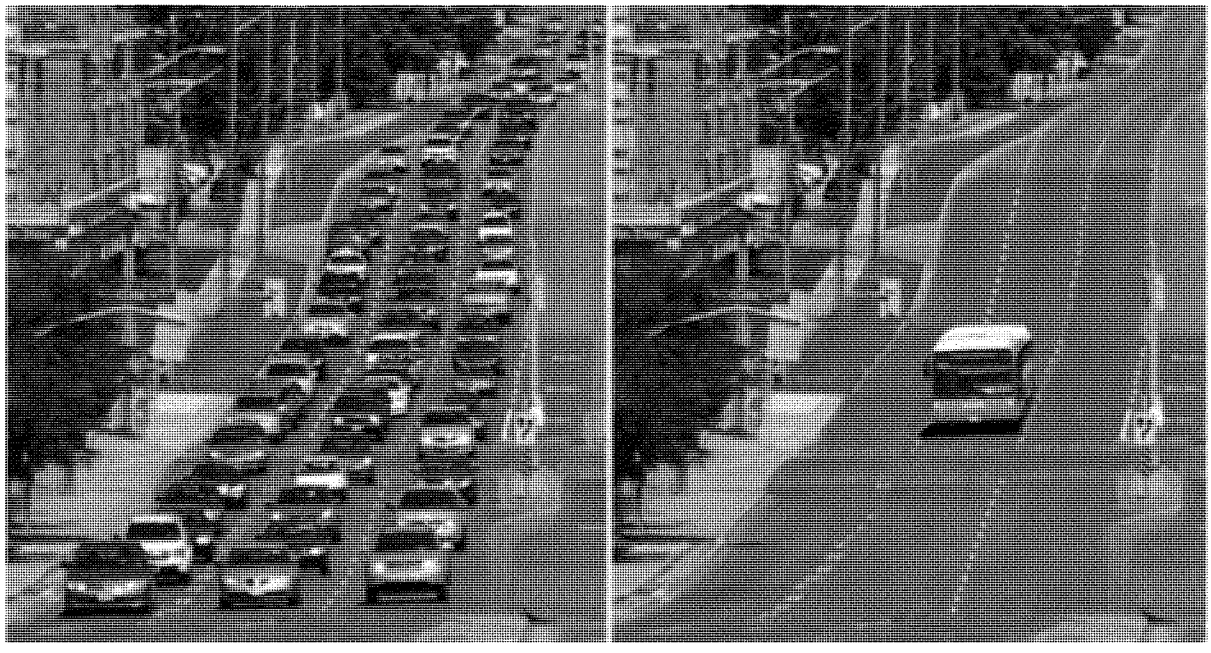

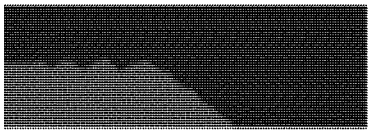

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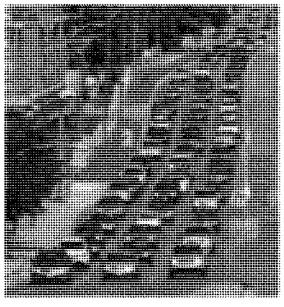

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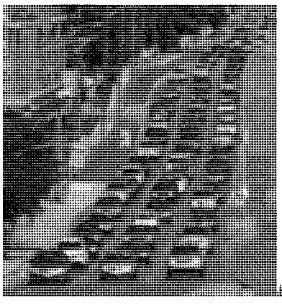
From: Turley, Jennifer
Sent: Wed 12/10/2014 4:36:15 PM
Subject: Air & Radiation Law News for December 10, 2014



Air & Radiation Law News

for December 10, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Libby Asbestos Exposures, Health Risks Greatly Reduced By Cleanups, EPA Says

A human health risk assessment study released by the Environmental Protection Agency concluded that EPA cleanups in Libby, Mont., have significantly reduced the amount of airborne asbestos concentrations, restoring them to levels that...

Budget

House, Senate Prepare to Take Up Omnibus After Leaders Finish Negotiations on Riders

A roughly $1 trillion omnibus spending package is headed to the floors of both the House and Senate by week's end after leaders in both chambers wrapped up lengthy negotiations over a host of policy additions to the must-pass legislation....

Climate Change

Investors Ask Oil and Gas Companies About Business Plans for Climate Change

A global group of pension funds, asset managers and institutional investors that represents trillions of dollars in assets is asking oil and gas companies to explain how they will remain sustainable and profitable in the future amid stricter...

Climate Regulation

California Air Board Developing Proposal To Regulate Methane at Oil, Gas Facilities

The California Air Resources Board is planning to release in early March draft language for a statewide measure to reduce methane from oil and natural gas production, processing and storage, the agency said Dec. 9....

Climate Regulation

Canada to Limit Use of Hydrofluorocarbons, Aligning with Similar Steps in United States

Canada said it will develop regulations to control the manufacture, import and use of hydrofluorocarbons, rules meant to align with measures in the United States....

Climate Regulation

Letter From 11 Senators Urges EPA to Set Stricter Carbon Standards for Power Plants

Eleven senators urged the Environmental Protection Agency to set more stringent carbon dioxide emissions guidelines for existing power plants in a Dec. 9 letter to the agency....

Climate Science

Few Pneumatic Controls Emit 96 Percent of Methane

Only 20 percent of pneumatic controllers at natural gas wells account for 96 percent of natural gas and methane emissions, according to a Dec. 9 study by the Environmental Defense Fund and University of Texas. Researchers measured methane...

Energy

Barton to Introduce Measure to Repeal 40-Year-Old Ban on Crude Oil Exports

The 40-year-old federal ban on crude oil exports would be repealed under legislation introduced Dec. 9 by Rep. Joe Barton (R-Texas)....

Energy Efficiency

DOE Secretary Moniz Vows Big Push For New Efficiency Standards in Final Years

The Energy Department plans to accelerate the number of new energy efficiency and conservation standards during President Obama's final two years in office, Energy Secretary Ernest Moniz said Dec. 9....

Energy Efficiency

Passage of Senate Energy Efficiency Bill In Question After Vitter Raises Objection

A slimmed-down version of an energy efficiency bill that appeared to be on the fast track for Senate passage this week hit a bump after the bill's author said a Republican senator raised an objection over an unrelated matter....

Energy

FERC to Seek Appeal on Demand Response, Granted Extension to Jan. 15 by Chief Justice

Chief Justice John Roberts Jr. has granted a 30-day extension to Jan. 15 so that the Solicitor General can file for a hearing before the Supreme Court to overturn a lower court ruling invalidating a major Federal Energy Regulatory Commission...

EPA

EPA Nominees Will Have Harder Time Getting Through Senate Next Year, Senators Say

High profile nominees to positions within the Environmental Protection Agency will have a harder time getting confirmed by the Senate next year, Sens. James Inhofe (R-Okla.) and Barbara Boxer (D-Calif.) told Bloomberg BNA Dec. 9....

International Climate

Delegates Urged to Aim for 'Transformation' At High-Level Phase of Lima Climate Talks

The high-level segment of the Lima climate change conference got under way Dec. 9 with United Nations Secretary-General Ban Ki-moon calling for "transformation," not "tinkering" as delegates from nearly 200 nations work...

International Climate

Kerry Headed to UN Climate Talks in Peru To Press for Progress Toward 2015 Accord

Secretary of State John Kerry will arrive in Lima later this week to prod developed and developing nations to make significant headway toward a global climate deal to be sealed in Paris in late 2015, the State Department confirmed Dec. 9....

International Climate

UN Secretary Ban Ki-moon Says Window Of Opportunity Closing on Climate Change

United Nations Secretary-General Ban Ki-moon stepped up his call for all nations rich and poor alike to fight climate change, seeking to break a dispute over which should move first to rein in fossil-fuel pollution....

International Issues

U.S., Mexico Need to Address Sewage, Report Says

The U.S. and Mexican governments need to address sewage disposal, wastewater treatment and irrigation practices, including excessive withdrawals of water in national and binational waters, as part of a joint effort to restore the ecosystems...

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an online news service from the publishers of Inside EPA

Inside EPA **Environmental Policy Alert**, 12/10/2014

http://insideepa.com/newsletters/environmental-policy-report

Latest News

Omnibus FY15 Bill Cuts EPA's Budget But Avoids GHG, Water Rule Riders

House and Senate lawmakers have unveiled their compromise fiscal year 2015 appropriations legislation that would cut EPA's budget $60 million from its $8.2 billion enacted level but lacks any riders to block the agency's contested greenhouse gas (GHG) rules for power plants or its rule to define Clean Water Act (CWA) jurisdiction.

EPA Fights Claim Of 'Tier 3' Test Blocking New Ethanol Blends From Sale

EPA is fighting ethanol producers' claim that its Tier 3 fuel and vehicle rule's policy for establishing new test fuels that determine vehicles' compliance with EPA regulations prevents higher ethanol blends being brought to market, saying the success of such fuels depends instead on automakers building vehicles that can handle the blends.

EPA Grants Advocates' Petition To Scrap 'Affirmative Defense' In Air Rules

EPA is granting environmentalists' petition asking the agency to scrap from several air toxics rules a provision that gives industries an affirmative defense against Clean Air Act (CAA) penalties for some emissions limit violations, following a unanimous appellate court ruling that said the affirmative defense policy was unlawfully broad.

EAB Dismisses Challenge To Second SDWA Permit Issued For CCS Project

EPA's Environmental Appeals Board (EAB) has dismissed a landowner's challenge to the agency's second ever approval of a carbon capture and sequestration (CCS) project under its new CCS permitting rule, after EPA and the CCS developer successfully argued that the suit was filed outside of the 30-day window for an EAB challenge.

Energy Sector Appears Split On Reach Of EPA's Planned Methane Controls

Energy industry groups appear to be split on how EPA should regulate methane, the potent greenhouse gas (GHG) from drilling and other operations, with an official from Shell urging EPA to adopt a very narrow approach to direct regulation of the gas if the agency insists on new rules while a key trade group says it will only agree to indirect rules that would primarily target volatile organic compounds (VOCs), an

ozone precursor.

News Briefs

EPA Urged To Reconsider Resins MACT Emission Limit

Paper product maker Georgia-Pacific is urging EPA to reconsider its maximum achievable control technology (MACT) air toxics rule for amino and phenolic resins production facilities, faulting an emission limit that the agency included in the final version of the rule that was not in the proposed version of the MACT standard.

Greenwire

AIR POLLUTION:

Industry, state regulators wary as EPA offers to help with ozone rules

Robin Bravender, E&E reporter

Published: Tuesday, December 9, 2014

The Obama administration is working to calm fears that pollution produced by wildfires or drifting from overseas will make it difficult -- if not impossible -- to comply with stricter national ozone standards.

But industries and some state regulators aren't convinced.

"The devil's going to be in the details," said Dan Johnson, executive director of the Western States Air Resources Council, a coalition that represents air regulators in Western states.

So-called background ozone has been a particular concern across the West, where high elevations and pollution drifting from Asia or being released by wildfires, methane leaks and lightning make some areas vulnerable to frequently exceeding the federal standard (*Greenwire*, Nov. 17).

In light of states' and industries' fears about the new ozone standard U.S. EPA proposed last month, the agency has released several documents about what states can do to address background ozone.

The agency issued a memo assuring states that they aren't responsible for slashing emissions they can't control. In a separate document, EPA said that the average background ozone levels across the United States fall below the proposed standard.

"[O]n most days and at most U.S. locations, the background influence on observed ozone is expected to be much lower" than the range of EPA's proposed standard, the agency said.

That was welcome news to proponents of the draft ozone rules.

"It basically shows this is not a real problem," said Frank O'Donnell, president of the environmental advocacy group Clean Air Watch. "It refutes the overblown claims by business opponents of a tougher standard."

But critics of stricter rules haven't been appeased.

"I think it accentuates the concern," said Howard Feldman, director of regulatory and scientific affairs at the American Petroleum Institute, regarding EPA's efforts to address the issue. He added that the agency is "trying to jump through hoops with these memos" because officials realize it will be a major concern.

For EPA's attainment calculations, spikes in ozone concentrations are more significant than averages.

Jeff Holmstead, an industry lobbyist who was EPA air chief during the George W. Bush administration, said of the agency's ozone memos: "The way they describe it is completely misleading."

He added, "It doesn't matter what the average is over time."

Complicated compliance formula

EPA has a complex formula to determine whether areas comply with the limits.

Locations are considered to be violating the rules when the three-year average of the fourth-highest annual maximum daily value exceeds the standard, meaning an area could exceed the standard four times a year for three years before it's considered in violation.

Saying that average ozone concentrations are much lower than EPA's limits, Johnson said, is like a driver caught speeding telling a policeman, "Yeah, but I averaged 30 miles per hour."

EPA has acknowledged that spikes in background ozone could mean trouble for some regions of the country.

"[W]hile the majority of modeled ozone exceedances have domestic manmade emissions as their primary cause, there can be relatively infrequent situations in which ozone levels approach or exceed" EPA's proposed standards "in large part due to background sources," EPA wrote.

Some air regulators are anxious about how background ozone levels will affect them as they try to implement the tougher rules.

"Fundamentally, the way that the [Clean Air] Act is written, we fear that we're going to be required -- subject to sanctions and penalties ... to do things that ultimately won't have much of an impact to human health," Johnson said.

Industry representatives say difficulties reducing background ozone levels could pose serious problems for businesses in those areas. Stationary source facilities (like power plants and refineries) that have already made significant pollution reductions could be forced to ratchet them down even further, said Feldman of API. And in areas in the West that are seeing a boom in oil and gas production, the new standards "could limit our ability to expand in those types of locations."

If and when locations exceed EPA's limits due to background ozone concentrations, the agency says it has tools that can help.

"Under the Clean Air Act, states are not responsible for reducing emissions that are not in their control," EPA said in a document accompanying its draft rule. "Existing and upcoming EPA regulations and guidance will assist states in ensuring background ozone does not create unnecessary control obligations as they continue their work to improve air quality (*Greenwire*, Dec. 1).

EPA has pointed to its ability to exclude "exceptional events" like wildfires, ozone from the stratosphere or

events caused by humans that aren't likely to recur. EPA is allowed to exclude those data points if states can prove they were beyond their control.

Getting those exclusions hasn't been easy for states in the past, regulators say.

"It's been a difficult process," said Bill Becker, executive director of the National Association of Clean Air Agencies, a group that represents air regulators from across the country. "There have been delays, and it's been a high hurdle."

Johnson said he's concerned "that we're going to spend so much time trying to exclude sources of ozone that are completely out of our control," that regulators will have less time to deal with those sources whose emissions they can curb.

Revisions on the way -- EPA

EPA has said it plans to propose revisions to the exceptional events rule -- with a proposal due out in mid-2015 -- in a bid to make the process simpler for states to use.

The agency has also said it's working to better understand potential international sources of ozone and can treat some areas without emissions sources that greatly affect air quality as "rural transport areas," which would be subject to less stringent requirements.

Although some locations may have a tougher time implementing the stricter standards, the Clean Air Act directs EPA to set national limits to protect public health -- regardless of the costs.

"The ozone standard is a national standard," Becker said. "So it would be inappropriate for the national standard to be weakened as a result of these background levels occurring in a few areas of the country. The solution should be to use tools that have been used and maybe could be used in the implementation of the Clean Air Act."

EPA has said "they are very willing to use tools that they currently use to address any problems that the states have with regard to treating background levels during implementation," Becker added. "We can only take them at their word."

FEDERAL AGENCIES:

Already bad morale gets worse -- survey

Robin Bravender, E&E reporter

Published: Tuesday, December 9, 2014

Morale at federal environmental and energy agencies has hit a new low.

Employee satisfaction and commitment at U.S. EPA, the Interior Department and the Energy Department is the worst it's been since a nonprofit started tracking it 11 years ago, according to a report released today by the Partnership for Public Service.

The agencies' miasma mirrors a broader trend across the federal workforce, where overall satisfaction and commitment fell to 56.9 points out of 100 in 2014 -- the lowest number since the nonprofit started its annual "Best Places to Work" survey in 2003.

And this year's score marks the fourth straight year it has dropped as the workforce has been hit by budget cuts, pay freezes, a government shutdown and a barrage of criticism from some lawmakers and proponents of smaller government. Workers' satisfaction had reached a high of 65 points in 2010.

"It's really a little distressing that by 2014 we've reached a new low," said John Palguta, the partnership's vice president for policy, which advocates for improving government jobs.

Still, he added, "I can't say anybody was shocked," given that furloughs and the government shutdown were still fresh in workers' minds when surveys were conducted last spring.

Workers also faced declining budgets, rising workloads and anti-government campaigning during the midterm elections, Palguta said.

EPA, DOE below average

Morale scores for EPA and DOE were below the government average this year.

EPA ranked 16th in best places to work among 19 large agencies, with a score of 56.7 points -- down nearly 3 points from last year, when it ranked as the 10th best large agency. EPA's score has fallen about 12 points since reaching a high of 68.8 in 2010.

EPA's scores dipped this year in nearly every category assessed by the group, including employees' opinions about fairness, senior leaders, strategic management and support for diversity within the agency.

One bright spot for EPA: Employees said they were more satisfied with their pay this year; the agency's pay satisfaction scores saw a 7-point boost. Government workers received a 1 percent pay raise in this year, ending a three-year salary freeze for most employees (*Greenwire*, Jan. 2).

DOE came in at 21st place out of 25 midsize agencies. The department's score was 53.8 points, down more than 4 points since last year. It received a high score of 67 in 2005.

DOE scores dropped in every category surveyed, with the biggest drop -- nearly 6 points -- in the category measuring the level of respect employees have for their senior leaders.

Interior's score in 2014 was 57.9 percent -- slightly above the federal average, but one point below its tally last year. The department's rank -- 12th among 19 large agencies -- has stayed steady since 2013. Morale has been dropping each year since the department received a high score of 65.4 points in 2010.

The department saw an uptick in scores for several categories: the effective leadership of supervisors, pay, training and development, work-life balance, and performance-based awards and advancement.

Public criticisms of energy and environmental agencies' policies likely haven't helped sagging morale.

"If you're in an agency like Interior or EPA or Energy, they don't live in a vacuum," Palguta said. "They listen to the rhetoric, they hear complaints from folks that they have to oversee because they're carrying out the laws passed by Congress, and I think it has a bit of an impact." At the same time, he said, those employees are seeing budgets cut and workloads increasing.

The annual survey includes the views of more than 400,000 executive branch employees at 389 federal agencies and their subcomponents. The survey uses factors including employees' satisfaction with their jobs, satisfaction with their organization and whether they'd recommend their organization as a good

place to work to determine agencies' scores.

The data come in large part from the Office of Personnel Management's annual employee viewpoint survey. OPM released its own findings in October, also showing that morale is still hurting across the government (*Greenwire*, Oct. 24).

FERC, NRC get high marks

Two energy agencies -- the Federal Energy Regulatory Commission and Nuclear Regulatory Commission -- fared much better in the rankings.

FERC ranked fifth among midsize agencies with a score of 73.3 percent; the NRC ranked just below it at No. 6, receiving a score of 72.9 percent.

Among large agencies (those with 15,000 employees or more), NASA ranked No. 1. The Federal Deposit Insurance Corporation was the highest-rated midsize agency (those with 1,000 to 14,999 employees). The favorite among small agencies was the Surface Transportation Board, the report found.

Several energy and environmental agency subcomponents also received high marks from employees.

FERC's Office of the General Counsel was the highest-rated agency subcomponent in the government, with a score of 88.8 points. The Justice Department's Environment and Natural Resources Division ranked No. 3 with a score of 83.6. And EPA's Office of the General Counsel came in ninth with a score of 77.4.

EPA's Kansas City-based Region 7 office was the agency's top-rated regional office; the Region 10 office based in Seattle came in last among the 10 regional offices.

KEYSTONE XL:

Obama outlines pipeline's pros and cons in 'Colbert Report' appearance

Manuel Quiñones, E&E reporter

Published: Tuesday, December 9, 2014

President Obama last night listed some benefits and potential pitfalls of approving the Keystone XL oil pipeline from Canada during an appearing on the popular comedy show "The Colbert Report."

Host Stephen Colbert asked the president what reporters have been wondering for years: whether he would sign legislation to approve KXL. Colbert asked, "You're going to sign that, right?"

Obama, avoiding a direct answer to the question, as he has before, cited the ongoing State Department review and litigation in Nebraska.

When the audience booed, apparently at the prospect of approving KXL, Obama said, "Obviously, these young people weren't polled." Surveys show strong support for KXL nationally.

He added, "I'm gonna make sure that if we look at this objectively, we gotta make sure that it's not adding to the problem of carbon and climate change."

Boosters point to the State Department's environmental review, which says Canadian oil sands production would continue with or without the pipeline. Critics say otherwise.

"Essentially, this Canadian oil passing through the United States to be sold on the world market; it's not going to push down gas prices here in the United States," said the president. "It's good for Canada."

Even though Obama said construction would create thousands of jobs, with fewer during the rest of the pipeline's life, KXL supporters accuse him of downplaying its benefits.

Colbert, in jest, suggested the president allow construction of the pipeline to Mexico and put up a jobs sign as a way to attract migrant workers to Canada.

"That sounds like a ridiculous idea," Obama responded. "But that's why you are where you are, and I am where I am."

Beyond the Nebraska Supreme Court's pending decision on KXL's approval there, pipeline supporters and critics are heading to a South Dakota Public Utilities Commission hearing on renewing the project's passing in that state.

WIND:

Mich. appeals court knocks down towns' turbine ban

Published: Tuesday, December 9, 2014

Three Michigan townships called a special joint meeting set for Thursday night to consider how to continue their two-year blockade of a proposed 39-turbine project after the Michigan Court of Appeals upheld a lower-court ruling invalidating their restrictive ordinances.

The three-judge panel ruled that Clinton County's zoning ordinance passed in 2011 trumped Dallas, Essex and Bengal townships' police-power ordinances restricting height, setback, noise or other elements of the wind farm. The judges said the townships could have passed zoning ordinances but chose not to.

Forest Hill Energy lawyer Jon Bylsma was "very pleased" the court found the case was "not something local townships that rejected the opportunity to zone can now jump in on and try to prevent."

Townships attorney Bill Fahey said Thursday's meeting will likely center on whether to appeal the ruling before the 42-day deadline, pass other local ordinances or drop their opposition.

"We are all disappointed with the ruling," said Ken Wieber, a Clinton County farmer. "We would encourage the townships to pursue whatever legal avenues are left to protect the health of their citizens, especially considering recent rulings from Wisconsin."

Wieber was referencing the Oct. 14 unanimous declaration of the Green Bay-based Brown County Board of Health that a Duke Energy Renewables wind farm was "a human health hazard for all people (residents, workers, visitors and sensitive passersby) who are exposed to infrasound/low-frequency noise and other emissions potentially harmful to human health" (Steven Reed, *Lansing State Journal*, Dec. 8). -- **DTB**

e and diesel exceeds cuts made from fuel efficiency standards and other policies to combat climate change, data show.

That's because, even as the Obama administration policies have cut 475 million tons of carbon pollution between 2008 and 2013, according to the Department of Energy, exports of gasoline and diesel**POLITICS:**

Kerry's scheduled visit seen as boost for lagging talks

Lisa Friedman, E&E reporter

Published: Tuesday, December 9, 2014

LIMA, Peru -- Sluggish negotiations toward a new global climate change agreement were kicked up a notch this morning as word spread that Secretary of State John Kerry will attend the talks.

Kerry's Thursday arrival, first reported by the *New York Times*, was confirmed to *Greenwire* by a U.S. official and other people in direct discussions with the State Department about the visit.

As U.N. Secretary General Ban Ki-moon addressed heads of state and ministers from nearly 200 countries with what he called a "message of hope and urgency," observers here said the unusual arrival of America's secretary of State at a U.N. Conference of the Parties (COP) could be a game-changer.

"We have not seen a U.S. secretary of State at a COP since Copenhagen, and before that not since Kyoto," said former U.N. climate chief Yvo de Boer, who led the 2009 talks in the Danish capital.

As diplomats try to craft a new agreement they hope will be signed in Paris this time next year, de Boer said Kerry's arrival would be particularly significant on the heels of the recent joint climate announcement between the United States and China. Under that deal, Chinese President Xi Jinping promised to peak the Asian economic giant's emissions by 2030, while President Obama vowed to cut America's carbon levels 26 to 28 percent from 2005 levels by 2025.

"Kerry's being here would show a willingness of his commitment to stand behind that target, to explain that commitment and defend it to others," de Boer said.

The talks will enter their final stretch soon, and are scheduled to end Friday. Diplomats hope to by then have the draft elements of a text that will be refined over the next year and finalized in Paris. Meanwhile, they also are trying to nail down what types of pledges countries should make. Developing countries hope those targets, due in June, also will include the amount of money wealthy countries will deliver -- while wealthy countries want the targets to focus only on carbon-cutting pledges.

"Obviously, there are some pretty big issues still on the table," said Alden Meyer, director of policy and strategy at the Union of Concerned Scientists. Kerry's visit is likely to be "very helpful," he said.

"I think he can help broker some compromise on these issues," he said.

As U.N. leaders, a handful of heads of state and ministers addressed one another demanding a greater sense of urgency, tidbits of hope emerged.

The Green Climate Fund, a new international mechanism to help poor countries develop clean energy and adapt to weather-related crises, reached the $10 billion mark with a €50 million ($62 million) pledge from Belgium. The money is considered the bare minimum the fund needed as an initial capitalization to show developing countries that wealthy nations are serious about climate aid.

De Boer noted that many people believed countries would hold back money as a bargaining chip for Paris, and called the early contributions "encouraging." The United States has pledged $3 billion over four years.

Still, many leaders said countries are still not showing enough urgency -- or money.

Ian Fry, chief climate change negotiator for the tiny island of Tuvalu, said the negotiations "keep me up at night."

Countries like his will survive only if the international community comes together on an agreement that includes compensation for loss and damage linked to global warming and for adaptation, he said.

"I ask you to stop and think for a moment if you were faced with the threat of the disappearance of your nation, what you would do?" he said. Fry called the $10 billion in the Green Climate Fund -- if countries actually provide it -- a "drop in the ocean" compared to what's needed.

Reporter Jean Chemnick contributed.

WHITE HOUSE:

U.S. defends near-term warming plan

Jean Chemnick, E&E reporter

Published: Tuesday, December 9, 2014

LIMA, Peru -- The United States yesterday took a turn in the hot seat as a senior White House official sought to explain to the international community how the U.S. will meet its 2020 greenhouse gas reduction targets.

Rick Duke, the White House's deputy director for climate policy, gave a slideshow presentation and question-and-answer session to participants at the United Nations climate summit, walking them through the possibilities and limitations of President Obama's authority to address emissions without help from Congress.

The U.S. is one of 17 developed countries that agreed to have their 2020 commitments scrutinized under the Copenhagen Accord five years ago in order to provide transparency about whether countries are meeting their targets.

The U.S. has pledged to reduce its emissions by 17 percent below 2005 levels by 2020, a promise it says it can keep. When the president rolled out that commitment five years ago in the Danish capital, he hoped Congress would enact legislation to help meet it, but efforts to pass a cap-and-trade bill soon faltered, and his administration is now striving to set up a handful of high-profile regulations -- especially for the power sector -- and a host of other national, subnational and private-sector actions.

Duke fielded questions from countries eager to kick the tires on the president's Climate Action Plan and to test whether there might be room for the world's largest historical emitter to do more. Strategies to contain methane leakage and U.S. EPA's Clean Power Plan were both discussed, according to participants. Press was not allowed into the hall during the event.

China, which in November joined the U.S. in releasing a pair of post-2020 emissions-reduction targets to much fanfare, noted that five years ago the Obama administration indicated a 30 percent reduction in

emissions might be possible for 2025. The U.S.-China agreement committed the U.S. to slash its emissions between 26 percent and 28 percent by 2025.

Was the U.S. backsliding, a reporter asked U.S. Special Envoy for Climate Change Todd Stern earlier in the day.

In addition to the 2020 pledge, Stern said, the U.S. included a footnote in its submission in Copenhagen saying its reductions would be consistent with then-pending legislation -- a bill by Rep. Henry Waxman (D-Calif.) and then-Rep. Ed Markey (D-Mass.) that sought a 30 percent reduction by 2025.

"That was never our pledge," he said.

Stern added that the consequence of Congress' not passing the Waxman-Markey legislation was more U.S. carbon reductions rather than less. That's because the bill would have allowed for a hefty share of international carbon offsets, and the administration acting under its existing legal authorities did not provide that option to industry.

"So all the reductions we're making on the road to that same 17 percent are based on the actions we are taking inside the United States to reduce our emissions at home," he said. "In point of fact, we're not doing less, we're doing more."

The feedback from delegates after the U.S. presentation yesterday ranged from the mundane to the philosophical.

"It was hard to read," said Andreas Fischlin of the Swiss delegation. "Way too much text, way too small."

But Fischlin, who co-facilitates the structured expert dialogue of the United Nations Framework Convention on Climate Change, said the Obama administration is making "good efforts" to reduce emissions. He said there was serious concern about what a newly united Republican congressional majority could do to those policies.

"A lot of us wonder what will happen to these measures, which I say have been bravely brought out of the limited possibilities," he said. "I think the Obama government has done a wonderful job in trying to advance in a direction in which the U.S. should have gone a long time ago, if I may be undiplomatic for once.

"The problem is, can this be sustained?" he asked.

Alfredo Lopez de Romana, a Peruvian delegate, said he stopped attending U.S. presentations when Obama made it clear he wouldn't pursue a binding treaty on emissions in Paris next year. The Senate would have been highly unlikely to ratify one even before Republicans secured the majority last month, and the administration has instead sought a "bottom up" process based on country pledges released months ahead of the Paris talks to encourage ambition. The result would be an agreement based on national policies.

But de Romana said public opinion could change rapidly as the seriousness of the climate threat sinks in, and that will make a more ambitious treaty possible.

"We're facing an attack the equivalent of an attack by the Martians, and we're still squabbling here about who gets a little bit bigger portion of the emissions pie," he said. "It is as ridiculous as that."

He pointed to a quote by the late South African President Nelson Mandela that is displayed in the courtyard of the Pentagonito, or little Pentagon -- the Peruvian Army headquarters housing the

conference.

"It always seems impossible until it's done."

Dula Shanko Lebeta, an Ethiopian delegate and the deputy director of the National Meteorological Agency of Ethiopia, said he emerged from the presentation worried the U.S. wouldn't be able to deliver on its pledge to contribute up to $3 billion over four years to the Green Climate Fund, a mechanism that allows wealthy countries to help poor ones cope with warming and reduce their own emissions. The U.S. pledge will depend on appropriations the State Department receives from a Republican-controlled Congress that does not prioritize either climate action or most foreign aid programs.

But he said climate financing would be "very important" to securing a climate change deal next year, and the U.S. must put up more than it has currently pledged.

"Without finance, nothing is going to be done," he said. Asked whether he was concerned the Republican congressional takeover would have an effect on Obama's ability to make good on his pledge, Lebeta said, "We feel that. Because we don't know how they are going to do for the future."

But the White House promoted last month's funding pledge with a high-profile rollout that attracted considerable media attention, and Jake Schmidt, director of the Natural Resources Defense Council's international program, said Obama would be unlikely to surrender it at the first sign of congressional pushback (*Greenwire*, Nov. 14).

"The president plays a role in the budget process," he noted. "The reality is, the U.S. contribution to the Green Climate Fund is a rounding error in the United States budget. There is money floating around to do it, and which priorities are fought over matter in the end game."

Yesterday's presentation and reports the administration made to the U.N. over the past few years to demonstrate progress toward its Copenhagen pledges also shed some light on its domestic policy plans.

In a biennial report unveiled in March, the Obama administration promised the international community that the U.S. would reduce emissions of methane by between 25 million and 90 million metric tons of CO2 equivalent.

The higher end of that spectrum could only mean regulation for the oil and gas sector -- the largest industrial emitters of the potent greenhouse gas, Schmidt said.

"You can't get that level of cuts by asking the industry to do the right thing," he said.

U.S. EPA will announce in the next two weeks whether it will promulgate regulations under the Clean Air Act to combat petroleum-sector methane, which would be completed before Obama leaves office. Industry has said direct regulation of methane is not needed.

The U.S. has now satisfied its requirement to brief the UNFCCC on how it will reach its 2020 target, but it still owes the international community more details on its 2025 pledge by the end of March. A report released yesterday by the analysis group Carbon Action Tracker showed that most of those emissions will have to come from new policies, though EPA's Clean Power Plan and any methane rules would continue to play a role.

Paul Bledsoe, a senior fellow at the German Marshall Fund, said the administration should emphasize that a hefty share of the U.S. 2025 goal will depend on the next administration. Otherwise, it runs the risk of having U.S. credibility sustain a major hit if the next president doesn't deliver on Obama's pledges -- a scenario that played out when President George W. Bush did not support U.S. entry to the Kyoto

Protocol.

"We have to be clear-eyed about what it's going to take to achieve them, and what it's going to take is to confront the political divide over climate change in the United States," he said.

OIL AND GAS:

Fuel exports outpace domestic emissions reductions

Published: Tuesday, December 9, 2014

Increasing carbon pollution from growing exports of U.S. gasolin to other nations released about 1 billion tons of carbon pollution elsewhere.

As a result, even though carbon dioxide emissions are falling in the United States, they're rising in the rest of the world -- in countries like Panama, which has seen imports of diesel and gasoline from the United States quadruple since 2008. Panama uses the fuel in cars and trucks that aren't subject to regular maintenance and inspections and produces more emissions than would be permitted in vehicles used in the United States.

Analysts say the changes are the end result of a policy paradox -- expanding domestic oil and gas production, while ramping up vehicle efficiency standards. The White House says exporting fuel doesn't increase emissions because it replaces fuel that would come from somewhere else, but others dispute that, arguing it lowers prices and encourages consumption.

"It's a false image," said Onel Masardule of the Indigenous People's Biocultural Climate Change Assessment Initiative. "In reality, the U.S is still contaminating" (Dina Cappiello, AP/*Denver Post*, Dec. 9). -- **SP**

SOLAR:

Foreign panel makers argue they don't compete with U.S. companies

Published: Tuesday, December 9, 2014

Foreign solar panel producers told the U.S. International Trade Commission yesterday their products do not compete with items made in the United States.

The agency is evaluating a complaint by the U.S. branch of SolarWorld AG, a German company, that Chinese solar producers avoided customs duties in 2012 by using solar cells from Taiwan.

"Chinese and Taiwanese imports have taken over the U.S. market at precisely the time when U.S. producers should have recovered and thrived. Instead, the U.S. industry is again fighting for its survival," SolarWorld attorney Tim Brightbill said.

Polly Shaw, the vice president of government affairs at SunEdison, which is based in the United States, said the company used imported solar cells because American firms could not supply the same technology.

As a result, Shaw said, "U.S. solar products are not interchangeable with the solar products we import."

The Department of Commerce is expected to rule on the case later this month, and the International Trade Commission is due to weigh in by Jan. 29 (Krista Hughes, Reuters, Dec. 8). **-- SP**

MOTOR VEHICLES:

White House, DOT roll out tire efficiency plans

Robin Bravender, E&E reporter

Published: Tuesday, December 9, 2014

The Obama administration today announced plans to give consumers more information about tires' fuel efficiency in the coming years.

The Department of Transportation will aim to finalize a rule by 2017 that sets up a new consumer information program "to help consumers make informed decisions about replacement tire purchases," the White House said today as it announced a series of plans to combat climate change and reduce domestic oil consumption.

"Making smart consumer choices when purchasing tires and maintaining tires properly can cut fuel use and save money at the pump, reducing the carbon pollution that causes climate change," the White House said.

It added, "If 10 million drivers kept their tires properly inflated, they could save nearly $500 million and 1.6 million metric tons of carbon dioxide pollution a year. And if just 10 percent of consumers buying aftermarket tires bought tires that were 10 percent more efficient, the annual savings would be more than $200 million and 690,000 metric tons of carbon dioxide pollution."

The program will focus on replacement tires because, while new cars and trucks are often equipped with fuel-efficient tires with low rolling resistance, consumers often replace their original tires with tires with higher rolling resistance, according to the White House.

INFRASTRUCTURE:

Huge boost in highway, transit spending needed -- study

Sean Reilly, E&E reporter

Published: Tuesday, December 9, 2014

More than $60 billion in added yearly spending across all levels of government is needed to fix roads, bridges and transit systems, as well as to meet growing travel needs, a new overview finds.

That figure represents about a 60 percent increase over the estimated $100 billion in current expenditures, according to the report released this morning by the American Association of State Highway and Transportation Officials (AASHTO).

Keeping the nation's highway and bridge network in shape to meet demand will take $120 billion in annual capital spending over six years, compared with about $83 billion today, the report concludes.

By one measure of ridership growth, public transit systems need $43 billion per year in capital spending --

more than double the existing figure of about $17 billion -- to keep up and improve performance. In return, the report predicts a substantial payoff. Every billion dollars spent on public transportation adds $3.7 billion in broader economic output; over time, better highway conditions can yield billions of dollars in savings for drivers, according to other research cited in the findings.

The report is an update of a similar overview released in 2009. As was true for its predecessor, the new report comes as members of Congress strive to pass a long-term highway and transit funding bill. "We hope this report will help decision-makers better understand what's at stake in deciding on a long-term, sustainable stream of revenue to support transportation infrastructure," AASHTO Executive Director Bud Wright said in a statement.

But while the report calls for hefty added investment across government, lawmakers are struggling to keep spending from the Highway Trust Fund -- the main conduit for federal surface transportation dollars -- at existing benchmarks. A short-term fix approved this summer expires at the end of May. If Congress fails to approve at least another stop-gap extension, sharp cutbacks could arrive just as the busy summer construction season gets underway.

Although advocates of more public works spending regularly describe the condition of the nation's infrastructure as bad and getting worse, the report also singles out some significant long-term gains in road and bridge quality. From 2000 to 2010, the percentage of "vehicle miles traveled" on highways rated in good condition rose by about one-fifth, while the number of bridges deemed "structurally deficient" has fallen by 43 percent over the last two decades.

In the latter case, the report credits state efforts and money provided by the 2009 federal stimulus law for the improvement. It notes, however, that more than 63,000 bridges are still rated structurally deficient, meaning the superstructure or some other major piece is considered in poor shape. Despite better road quality overall, barely half of all vehicles miles traveled were on highways judged to be in good condition as of 2010, according to federal data.

The study's forecast for needed highway and bridge spending assumes 1 percent growth in annual vehicle miles traveled. Its estimate for required transit spending is based on expected growth of 2.4 percent per year in passenger miles traveled. Noted, however, are limits on available data. The $83 billion figure for current highway and bridge spending, for example, is actually based on a Federal Highway Administration number from 2010.

More broadly, the report says its figures for the backlog of highway investment needs are incomplete. Both AASHTO and the highway administration recognize that existing modeling procedures "do not take account of the very long-term needs for reconstruction or replacement of infrastructure," the report says.

BUSINESS:

Portland, Ore., sues Uber for operating in city

Published: Tuesday, December 9, 2014

The city of Portland, Ore., is suing private ride-sharing company Uber Technologies Inc. for illegally operating within city limits, despite warnings from city officials and protests from citizens.

The city sued yesterday, asking a judge to halt the company's operations.

"Taxi cab companies follow rules on public health and safety," said Mayor Charlie Hales. "So do hotels and restaurants and construction companies and scores of other service providers. Because everyone agrees: Good regulations make for a safer community. Uber disagrees, so we're seeking a court

injunction."

The company has been operating in suburbs and announced its intentions to start operating within the city limits Friday.

Since the announcement, law enforcement officials have been running sting operations and citing drivers.

The issue the city has with Uber regards regulation. Cabs operating in the city must pass annual vehicle tests and are subject to fare caps (Conor Dougherty, *New York Times*, Dec. 8). **-- MH**

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CLIMATEWIRE — Wed., December 10, 2014

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1.NEGOTIATIONS:

Led by U.S. and China, world diplomats teeter on the edge of a new climate regime

LIMA, Peru -- A funny thing happened on the way to a 2015 climate deal: The wall dividing developed and developing countries crumbled.

2.POLICY:

Regulators ask state lawmakers for leeway to comply with EPA's Clean Power Plan

As conservative state legislators rally against U.S. EPA's Clean Power Plan, the head of a group representing air agencies tasked with writing plans for cutting greenhouse gas emissions is imploring them not to tie their states' hands with laws that restrict options for complying with the draft rule.

TODAY'S STORIES

3.SCIENCE:

Researchers probe warming U.S. seacoast for methane emissions

4.RESEARCH:

Scientists harness carbon 'soccer ball' to improve carbon scrubber

5.FORESTS:

Indigenous leader calls U.N. forest negotiations stalemate 'irresponsible'

6.NATIONS:

Australia does an about-face, pledges $200M to the Green Climate Fund

7.EMISSIONS:

Canadian prime minister says it would be 'crazy' to regulate oil industry

8.FINANCE:

Investors still have trouble understanding 'green bonds,' but variety grows

9.RENEWABLE ENERGY:

U.S. solar panel sales continue to surge in 3rd quarter

10.WEATHER:

Heat waves will become 'commonplace' for Europe in coming decades -- study

11.EMISSIONS:

Philippines pledges to cut its carbon emissions

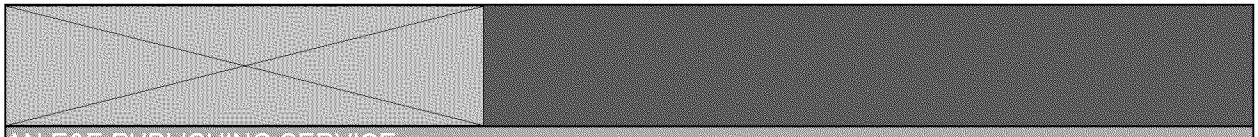
12.NEGOTIATIONS:

Australia and Canada favor fossil fuel jobs over climate action

E&ETV'S ONPOINT

13.ENERGY POLICY:

NEI's Fertel pitches nuclear for final power plant rule, urges states to move toward clean energy standards



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ENERGYWIRE — Wed., December 10, 2014

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1.GAS EXPORTS:

Oil price pressure spreads into global LNG market

A setback for Canada's leading liquefied natural gas project reflects the ripples that continue to spread from OPEC's decision to maintain crude production levels in the face of a global supply glut, as the links between oil and natural gas carry new uncertainties into world methane markets.

TOP STORIES

2.SAFETY:
OSHA issues hazard alert for fracking and drilling

3.RENEWABLES:
New maps, data 'reinvigorate the discussion' on wind potential in the Southeast

4.OIL:
Falling crude prices a 'clear and present danger' for Nigeria

ELECTRICITY

5.ELECTRICITY:
Entergy plans to buy Ark. gas plant to feed growing Southern demand

6.POLICY:
On heels of oil and gas reform, Mexico aims to modernize its grid

7.NATURAL GAS:
'Access Northeast' inks deal to expand pipeline network into New England

8.TRANSMISSION:
National Grid joins bid to build 300-mile power line in Maine

9.WIND:
Property values aren't significantly affected by nearby turbines -- preliminary study

10.UTILITIES:
Distributed generation, energy efficiency could cost traditional energy providers $48B report

OIL AND GAS

11.MARKETS:
Exxon Mobil sees a growth in global middle class boosting energy demand

12.TEXAS:
Regulator considers more urban well inspections

13.NORTH DAKOTA:
Regulators order conditioning for all Bakken crude

14.PENNSYLVANIA:

Energy company slams 'rights of nature' legal strategy

15.NATURAL GAS:

Russia's plan to build pipeline to Turkey faces similar hurdles as failed Eastern European project

16.PIPELINES:

Canadian government introduces liability law for spills

E&ETV'S ONPOINT

17.ENERGY POLICY:

NEI's Fertel pitches nuclear for final power plant rule, urges states to move toward clean energy standards

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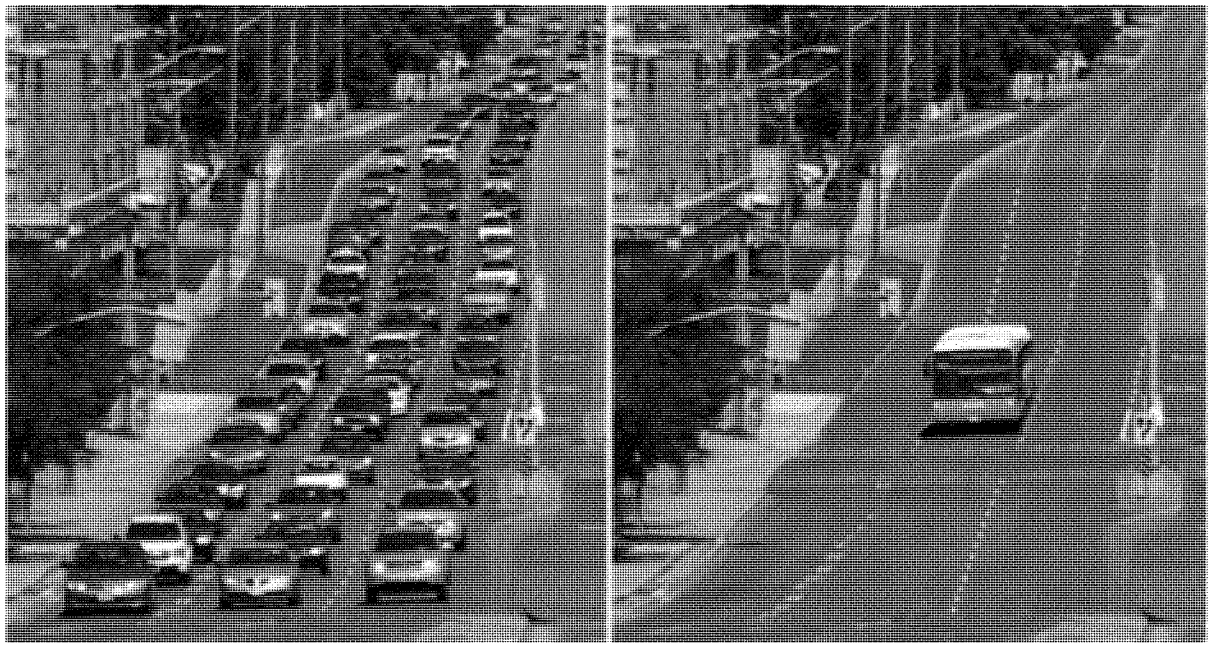

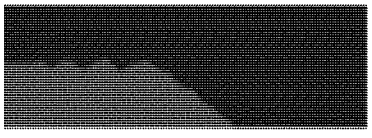

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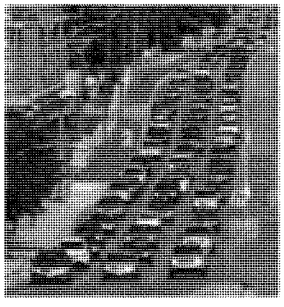

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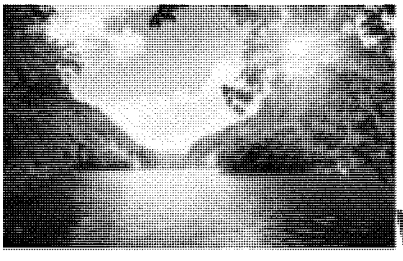

Water Law News

for December 10, 2014

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

Maryland's Republican Gov.-Elect Vows
To 'Fight' O'Malley's Farm Phosphorus Rule

Maryland Gov.–Elect Larry Hogan (R) has made it clear that he doesn't support a pending state regulation that would strictly limit phosphorus fertilization on farms....

Drinking Water

Infrastructure Investments, Protection
Of Source Water Needed, McCarthy Says

As the U.S. celebrates the 40th anniversary of the Safe Drinking Water Act, it must continue to invest in infrastructure, build partnerships and protect source water to ensure that water remains safe, the head of the Environmental Protection...

Great Lakes

Bill Reauthorizing Program to Restore
Great Lakes Clears House on Voice Vote

Legislation reauthorizing the Environmental Protection Agency program designed to restore the water quality of the Great Lakes was approved Dec. 9 on a voice vote....

International Issues

U.S., Mexico Need to Address Sewage, Report Says

The U.S. and Mexican governments need to address sewage disposal, wastewater treatment and irrigation practices, including excessive withdrawals of water in national and binational waters, as part of a joint effort to restore the ecosystems...

Stormwater

Virginia Grants $21.5 Million for Stormwater Efforts

Virginia Gov. Terry McAuliffe (D) announced Dec. 9 that the state has awarded $21.5 million in grants to localities for stormwater pollution-reduction efforts. The grants will help 25 localities with 64 projects targeting phosphorus pollution,...

Water Resources

House Passes California Drought Relief Bill Despite Opposition, Dim Prospects in Senate

The House passed the California Emergency Drought Relief Act of 2014 (H.R. 5781) Dec. 9 on a 230-182 vote....

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Latest News

Omnibus FY15 Bill Cuts EPA's Budget But Avoids GHG, Water Rule Riders

House and Senate lawmakers have unveiled their compromise fiscal year 2015 appropriations legislation that would cut EPA's budget $60 million from its $8.2 billion enacted level but lacks any riders to block the agency's contested greenhouse gas (GHG) rules for power plants or its rule to define Clean Water Act (CWA) jurisdiction.

News Briefs

Mining Company Again Appeals EPA's CWA Permit Veto

The Mingo Logan Coal Company has again appealed a court ruling that backed EPA's Clean Water Act (CWA) authority to veto the company's mining disposal sites already authorized in Army Corps of Engineers permits, despite an earlier appellate decision that upheld the agency's power to block already-permitted mine sites.

Judge Orders EPA To Halt All Pebble Mine Veto Activity

A federal judge has ordered EPA to completely halt its review of the proposed preemptive Clean Water Act section 404(c) veto of the planned Pebble Mine in Alaska, saying a preliminary injunction the judge recently issued against the veto bars the agency from advancing the action in any way, despite EPA's claim that it should only be prevented from taking final action on the proposal and can continue some work.

Greenwire

APPROPRIATIONS:

Bid to block grouse listing in, effort to block water rule out of CRomnibus -- source

Nick Juliano, E&E reporter

Published: Tuesday, December 9, 2014

The spending bill congressional negotiators hope to release later today will include language that would block -- at least temporarily -- an endangered species listing decision on the sage grouse but wouldn't block the Obama administration's "Waters of the United States" rule, a source familiar with the discussions told *Greenwire*.

An open question is how the spending bill will fund the Secure Rural Schools (SRS) and payments in lieu of taxes (PILT) programs. The source expected SRS funding to be included -- calming fears of some Western state lawmakers that it would be nixed in the final measure -- but had not seen the deal's full text and couldn't say for sure.

The spending bill is expected to be released later today. Congress has until Thursday to pass new spending legislation to avoid a government shutdown.

Appropriations Committee negotiators signed off on their contributions to the bill earlier this week and kicked the process up to House and Senate leadership from both parties, who continued to hash out last-minute details today.

On the environmental front, Republicans signaled early on they were willing to hold off on big-ticket items like U.S. EPA's greenhouse gas rules until they attained the majority next year but said they were trying to achieve smaller concessions.

Exact language of the sage grouse provision remains unclear. Sources yesterday were discussing a possible one-year delay in the Fish and Wildlife Service's decision whether to list the bird under the Endangered Species Act, although some Republicans have previously pushed for a longer delay (*E&E Daily*, Dec. 9).

Sources tracking the bill feared the SRS provision, which is typically funded at about $330 million a year, wouldn't make it into the final measure, dealing a harsh blow to forested counties in Oregon, Montana and Idaho that rely on those funds to account for reduced revenues from federal timber harvests. PILT, which provides a similar infusion for counties with large swaths of federally managed land, had been expected to make it into the package.

Sen. Ron Wyden (D-Ore.), a strong SRS defender, said earlier today that he was worried about House Republican pushback to the SRS funding but noted that it had support from Senate negotiators.

The informed source said SRS funding likely was included but did not know at what level.

Out are efforts from some Republicans to block a controversial water rule from the Obama administration. The proposal, aimed at clarifying what streams and wetlands are subject to federal regulation under the

Clean Water Act, has drawn an outcry from industry groups and the agricultural community.

Since early yesterday, rumors have been swirling of language similar to a provision that appeared in the House's energy and water development appropriations bill that could be read as simply reinforcing exemptions for agricultural operations and ditch maintenance, but that environmentalists feared could open the door to much broader exemptions and confusion.

Reporters Annie Snider and Phil Taylor contributed.

FEDERAL AGENCIES:

Already bad morale gets worse -- survey

Robin Bravender, E&E reporter

Published: Tuesday, December 9, 2014

Morale at federal environmental and energy agencies has hit a new low.

Employee satisfaction and commitment at U.S. EPA, the Interior Department and the Energy Department is the worst it's been since a nonprofit started tracking it 11 years ago, according to a report released today by the Partnership for Public Service.

The agencies' miasma mirrors a broader trend across the federal workforce, where overall satisfaction and commitment fell to 56.9 points out of 100 in 2014 -- the lowest number since the nonprofit started its annual "Best Places to Work" survey in 2003.

And this year's score marks the fourth straight year it has dropped as the workforce has been hit by budget cuts, pay freezes, a government shutdown and a barrage of criticism from some lawmakers and proponents of smaller government. Workers' satisfaction had reached a high of 65 points in 2010.

"It's really a little distressing that by 2014 we've reached a new low," said John Palguta, the partnership's vice president for policy, which advocates for improving government jobs.

Still, he added, "I can't say anybody was shocked," given that furloughs and the government shutdown were still fresh in workers' minds when surveys were conducted last spring.

Workers also faced declining budgets, rising workloads and anti-government campaigning during the midterm elections, Palguta said.

EPA, DOE below average

Morale scores for EPA and DOE were below the government average this year.

EPA ranked 16th in best places to work among 19 large agencies, with a score of 56.7 points -- down nearly 3 points from last year, when it ranked as the 10th best large agency. EPA's score has fallen about 12 points since reaching a high of 68.8 in 2010.

EPA's scores dipped this year in nearly every category assessed by the group, including employees' opinions about fairness, senior leaders, strategic management and support for diversity within the agency.

One bright spot for EPA: Employees said they were more satisfied with their pay this year; the agency's pay satisfaction scores saw a 7-point boost. Government workers received a 1 percent pay raise in this year, ending a three-year salary freeze for most employees (*Greenwire*, Jan. 2).

DOE came in at 21st place out of 25 midsize agencies. The department's score was 53.8 points, down more than 4 points since last year. It received a high score of 67 in 2005.

DOE scores dropped in every category surveyed, with the biggest drop -- nearly 6 points -- in the category measuring the level of respect employees have for their senior leaders.

Interior's score in 2014 was 57.9 percent -- slightly above the federal average, but one point below its tally last year. The department's rank -- 12th among 19 large agencies -- has stayed steady since 2013. Morale has been dropping each year since the department received a high score of 65.4 points in 2010.

The department saw an uptick in scores for several categories: the effective leadership of supervisors, pay, training and development, work-life balance, and performance-based awards and advancement.

Public criticisms of energy and environmental agencies' policies likely haven't helped sagging morale.

"If you're in an agency like Interior or EPA or Energy, they don't live in a vacuum," Palguta said. "They listen to the rhetoric, they hear complaints from folks that they have to oversee because they're carrying out the laws passed by Congress, and I think it has a bit of an impact." At the same time, he said, those employees are seeing budgets cut and workloads increasing.

The annual survey includes the views of more than 400,000 executive branch employees at 389 federal agencies and their subcomponents. The survey uses factors including employees' satisfaction with their jobs, satisfaction with their organization and whether they'd recommend their organization as a good place to work to determine agencies' scores.

The data come in large part from the Office of Personnel Management's annual employee viewpoint survey. OPM released its own findings in October, also showing that morale is still hurting across the government (*Greenwire*, Oct. 24).

FERC, NRC get high marks

Two energy agencies -- the Federal Energy Regulatory Commission and Nuclear Regulatory Commission -- fared much better in the rankings.

FERC ranked fifth among midsize agencies with a score of 73.3 percent; the NRC ranked just below it at No. 6, receiving a score of 72.9 percent.

Among large agencies (those with 15,000 employees or more), NASA ranked No. 1. The Federal Deposit Insurance Corporation was the highest-rated midsize agency (those with 1,000 to 14,999 employees). The favorite among small agencies was the Surface Transportation Board, the report found.

Several energy and environmental agency subcomponents also received high marks from employees.

FERC's Office of the General Counsel was the highest-rated agency subcomponent in the government, with a score of 88.8 points. The Justice Department's Environment and Natural Resources Division ranked No. 3 with a score of 83.6. And EPA's Office of the General Counsel came in ninth with a score of 77.4.

EPA's Kansas City-based Region 7 office was the agency's top-rated regional office; the Region 10 office based in Seattle came in last among the 10 regional offices.

KEYSTONE XL:

Obama outlines pipeline's pros and cons in 'Colbert Report' appearance

Manuel Quiñones, E&E reporter

Published: Tuesday, December 9, 2014

President Obama last night listed some benefits and potential pitfalls of approving the Keystone XL oil pipeline from Canada during an appearing on the popular comedy show "The Colbert Report."

Host Stephen Colbert asked the president what reporters have been wondering for years: whether he would sign legislation to approve KXL. Colbert asked, "You're going to sign that, right?"

Obama, avoiding a direct answer to the question, as he has before, cited the ongoing State Department review and litigation in Nebraska.

When the audience booed, apparently at the prospect of approving KXL, Obama said, "Obviously, these young people weren't polled." Surveys show strong support for KXL nationally.

He added, "I'm gonna make sure that if we look at this objectively, we gotta make sure that it's not adding to the problem of carbon and climate change."

Boosters point to the State Department's environmental review, which says Canadian oil sands production would continue with or without the pipeline. Critics say otherwise.

"Essentially, this Canadian oil passing through the United States to be sold on the world market; it's not going to push down gas prices here in the United States," said the president. "It's good for Canada."

Even though Obama said construction would create thousands of jobs, with fewer during the rest of the pipeline's life, KXL supporters accuse him of downplaying its benefits.

Colbert, in jest, suggested the president allow construction of the pipeline to Mexico and put up a jobs sign as a way to attract migrant workers to Canada.

"That sounds like a ridiculous idea," Obama responded. "But that's why you are where you are, and I am where I am."

Beyond the Nebraska Supreme Court's pending decision on KXL's approval there, pipeline supporters and critics are heading to a South Dakota Public Utilities Commission hearing on renewing the project's passing in that state.

BRISTOL BAY:

Judge bars all EPA activity on Alaska's Pebble mine

Manuel Quiñones, E&E reporter

Published: Tuesday, December 9, 2014

A federal judge last week clarified his preliminary injunction against U.S. EPA's efforts to limit a large copper and gold mine in the Bristol Bay region of southwestern Alaska.

U.S. District Court Judge Russel Holland issued the injunction late last month but last week clarified it to mean EPA is barred from any activity to advance its work on the Pebble project.

In recent court documents, EPA said it interpreted the injunction as prohibiting the agency from acting on its proposal to limit Pebble's development.

"EPA does not interpret the order as otherwise impacting essentially internal Agency work on this issue, including work related to public comment review or internal deliberations," EPA wrote. "Similarly, EPA does not interpret the Court's order as precluding the Agency from continuing to communicate with outside parties."

But Holland said his injunction meant that EPA "must stop all work connected" to Clean Water Act Section 404 action on Pebble and that EPA "may not engage in any activities" related to the process.

EPA was originally hoping to announce whether to move forward with its proposed determination by February. But the agency is likely to miss that benchmark.

Holland is accepting filings on the case until March and plans to schedule oral arguments.

At issue is whether EPA violated the Federal Advisory Committee Act by working with outside groups and experts, particularly what Pebble calls an "Anti-Mine Assessment Team" (*Greenwire*, Nov. 25).

EPA has stood by its work on Pebble, touting peer review of its studies and communication with a wide range of interest groups. In a recent filing, EPA said the company was not the only stakeholder.

"Whatever interests it may have in this matter simply do not outweigh the public interest in permitting the orderly progress of a major agency decision-making process about which thousands of other individuals and groups care deeply," EPA wrote.

Pebble has two other lawsuits against EPA, one dealing with Freedom of Information Act requests and the other on whether the agency can move to limit the mine prior to the permitting process.

WHITE HOUSE:

Administration unleashes new data sets on ecosystems, water

Ariel Wittenberg, E&E reporter

Published: Tuesday, December 9, 2014

The White House today released new data sets on water and ecosystems in the hopes that the private sector will be able to use the information to respond to the impact of climate change.

Interior Secretary Sally Jewell announced the newly available data troves at a conference in Arlington,

Va., of nonprofit organizations, academia and the private sector called ACES -- short for A Community on Ecosystem Services.

"The administration is saying these are times of constrained resources, so the president is calling on innovators to leverage the data in ways that can make the nation's communities more resilient to climate change," Jewell said.

The information released today is part of the White House Climate Data Initiative launched in March and includes information about stream flow, soil, land cover and biodiversity. It also includes tools to overlay the different data sets on maps to help researchers visualize ecosystems.

Previously, the administration has published data sets on sea-level rise, flood risk and agriculture.

Jewell said the data would aid conservation efforts by depicting the changes affecting different ecosystems so that environmentalists can identify what steps to take.

"We can look at how big a wildlife refuge or a park needs to be to support bird migrations," she said.

Jewell noted how the U.S. Geological Survey was able to monitor the impact of Superstorm Sandy to discover the importance of "naturally resilient ecosystems" like marshes in absorbing the force of the storms and said she hoped the data will help scientists and communities be better prepared before future catastrophic events.

She also said some of the data sets would help confirm and quantify anecdotal evidence of climate and ecosystem changes. For example, she described skiing on the same mountains in Washington state since the age of 9 and noticing how snowpack changed over time.

"We didn't really know until these tools the exact impact of that change," she said.

The release of climate data is meant to enable a new wave of smart conservation that has its roots in Theodore Roosevelt's presidency, she said. While previous conservation efforts have protected specific "special places," Jewell said the data will allow conservation to "move beyond the old way of random acts of kindness and give us a strategic focus."

"We can't protect the ecosystem in Yellowstone if we don't look beyond Yellowstone" National Park, she said.

For example, she said the ongoing debate about whether to list the sage grouse as an endangered species is not just about protecting a specific bird but "about the greater ecosystem that defines the American West."

CHESAPEAKE BAY:

Rising stream temperatures add to estuary woes -- USGS

Annie Snider, E&E reporter

Published: Tuesday, December 9, 2014

Streams in the Chesapeake Bay watershed are warming as air temperatures rise, a trend that poses an additional threat to the already debilitated estuary, federal researchers say in a new study.

The U.S. Geological Survey found air temperatures rose 1.1 degrees Celsius, or 1.98 degrees Fahrenheit, between 1960 and 2010, driving up water temperatures by 1.4 C, or 2.52 F, according to the study, published in the journal *Climate Change*.

"Although this may not seem like much, even small increases in water temperatures can have an effect on water quality, affecting the animals that rely on the bay's streams, as well as the estuary itself," Karen Rice, a USGS hydrologist and lead author of the new study, said in a statement.

In waters overwhelmed by nutrient pollution, warmer temperatures drive the growth of algae blooms. When those blooms decompose, they suck up dissolved oxygen, smothering or driving away aquatic life. This year's bay dead zone was larger than a cubic mile (*Greenwire*, Aug. 26).

U.S. EPA is currently leading the bay states in a landmark -- and controversial -- watershed cleanup plan that aims to put the long-ailing bay on the path to recovery by 2025.

For the current study, USGS researchers looked at 51 years of data from 85 air temperature sites and 129 stream temperature sites throughout the 64,000-square-mile watershed. At many of the sites, they found increases in both water temperature and stream flow, indicating that more water flowing does not outweigh the increase in temperature.

NOAA:

Agency names 10 members to marine protected areas advisory board

Emily Yehle, E&E reporter

Published: Tuesday, December 9, 2014

The National Oceanic and Atmospheric Administration recently appointed 10 new members to a committee tasked with advising federal officials on how to strengthen marine protected areas.

The Marine Protected Areas Federal Advisory Committee comprises 20 members who come from backgrounds including academia, government, advocacy and industry. It was created through a 2000 executive order that established a national system of marine protected areas.

As the Obama administration places more emphasis on marine conservation, the advisory group provides a vehicle for public input on the nation's marine protected area programs.

NOAA today announced the new members, who represent groups ranging from recreational fishermen to conservationists. They are:

- Brian Baird, former assistant secretary for ocean and coastal policy, California Resources Agency, Novato, Calif. (state agencies).
- Rick Bellavance, charter boat captain, Rhode Island.
- Mark Carr, professor of ecology at University of California, Santa Cruz.
- Martha Honey, director of the Center for Responsible Travel, Washington, D.C.

- Stephanie Madsen, executive director of the At-Sea Processors Association (APA), Juneau, Alaska.
- Samantha Murray, Pacific program director for the Ocean Conservancy, Portland, Ore.
- Ryan Orgera, legislative representative, Coastal States Organization, Washington, D.C.
- Pete Stauffer, senior ocean program manager, Surfrider Foundation, Portland, Ore.
- Trisha Watson, principal, Honua Consulting, Honolulu, Hawaii.
- Margaret Williams, managing director of the Arctic Field Program, World Wildlife Fund, Anchorage, Alaska.

CHESAPEAKE BAY:

Enviros respond to incoming Md. governor's attacks on phosphorus regs

Tiffany Stecker, E&E reporter

Published: Tuesday, December 9, 2014

Two nonprofits released a study on phosphorus pollution in the Chesapeake Bay ahead of schedule yesterday, following Maryland Gov.-elect Larry Hogan's (R) comments that he would fight to repeal a contentious phosphorus regulation.

Hogan said yesterday at the Maryland Farm Bureau's annual convention that repealing the state's Phosphorus Management Tool would be his "first fight" once he is sworn into office Jan. 21, and that there was no scientific basis for the regulation. This irked environmental and consumer groups, which say the regulation is imperative to clean up the Chesapeake Bay (*E&ENews PM*, Dec. 8).

The Maryland Department of Agriculture proposed the regulation last week, with outgoing Gov. Martin O'Malley (D) eager to see it take effect before the GOP switchover next year.

"It's truly a shame that Governor-elect Hogan is indicating so early that he is willing to jeopardize the restoration of the Chesapeake Bay by rejecting pollution controls out of hand rather than working with scientists to improve them," said Rena Steinzor, president of the Center for Progressive Reform and a professor at the University of Maryland, in a statement.

High levels of phosphorus in the water can promote algae blooms that kill aquatic life and harm humans.

The Center for Progressive Reform and the Environmental Integrity Project released an interactive map and report showing the high phosphorus concentrations around concentrated animal feeding operations on Maryland's Eastern Shore, which are mostly chicken farms. According to the report, which relied on planning documents submitted by the operators, 61 of the 62 farms had soils with excessive levels of phosphorus.

"For the first time it shows exactly where the hot spots are," said Anne Havemann, a policy analyst with the Center for Progressive Reform, who created the interactive map based on EIP's report. The graphic

was created to show the level of saturation in the soils due to the overapplication of poultry manure, which is rich in phosphorus.

The report found that three-quarters of the phosphorus applied on the farms was at levels above what is needed for plant growth, and that phosphorus concentrations had increased by about 10 percent between the beginning and the end of the 2012 growing season.

"What we don't want anyone to get away with is pretending this isn't an issue or a problem," said Eric Schaeffer, executive director of the Environmental Integrity Project. Schaeffer acknowledged that many poultry farmers operate on razor-thin margins, which is why the costs should be absorbed by large companies, he said.

The tool, an upgrade to an existing index for measuring phosphorus concentrations in dirt, would prohibit farmers with high-phosphorus soils from spreading poultry manure on their land. A recent study estimated that the proposed regulation would cost farmers at least $22 million per year.

Hogan has spoken out against the tool several times, as has the host of the event where he appeared yesterday, the Maryland Farm Bureau.

The Farm Bureau, still busy with its annual convention this week, was unable to comment on the recent report immediately. In the past, Farm Bureau President Chuck Fry has said economic analyses have failed to account for the value per pound of phosphorus reduced, making them unreliable for assessing the economic feasibility of the tool (*E&ENews PM*, Dec. 1).

WATER POLLUTION:

Calif. program aims to curb contamination from old mines

Published: Tuesday, December 9, 2014

Conservationists are concerned that abandoned mines in the Sierra Nevada could contaminate California's primary water supply.

To combat the risk, the Sierra Nevada Conservancy is piloting a program that would use wood chips from forest thinning projects to stabilize soil at hydraulic mine sites and keep toxins from entering watersheds that feed the Yoruba River.

More than 60 percent of the state's supply comes from forests in the Sierra Nevada, where roughly 23,000 abandoned mines are located, according to the Sierra Nevada Conservancy.

Conservancy assistant executive Joan Keegan estimated that 3,000 of those mines contain chemical hazards.

The pilot project to protect the water supply is being funded by a water bond passed by voters in November. The conservancy is looking for other funding to expand the program if it succeeds (Ed Joyce, Capital Public Radio, Dec. 8). **-- AW**

WATER POLLUTION:

Exxon Mobil cleans up oily sheen left by vessel on Ill. river

Published: Tuesday, December 9, 2014

Exxon Mobil Corp. reported yesterday that a petroleum leak from an unknown vessel caused an oily sheen on Illinois' Des Plaines River.

Workers from Exxon Mobil's Joliet refinery were working to clean up the petroleum release, according to a report from the Illinois Emergency Management Agency.

An estimated 238,600 barrels of petroleum passes through the Joliet refinery in Channahon, Ill., each day (Koustav Samanta, Reuters, Dec. 9). **-- MH**

SOUTH CAROLINA:

Regulators OK gold mine

Published: Tuesday, December 9, 2014

A Canadian mining corporation can get to work on the largest gold-digging operation in the eastern United States after South Carolina regulators yesterday rejected a Sierra Club appeal of the project.

The South Carolina Department of Health and Environmental Control board said a thorough review of Romarco Minerals Inc.'s proposal indicated no adverse effects on the environment from eight industrial-scale mining pits near the North Carolina border (*Greenwire*, Nov. 21).

The construction will be a significant expansion of the closed Haile Gold Mine, filling or destroying 120 acres of wetlands and miles of creeks and affecting in some way up to 1,100 acres of wetlands.

"We are pleased with the decision and continue to believe all questions and concerns raised over the past four years have been fully addressed," Romarco CEO Diane Garrett said in a statement on Romarco's website.

Romarco agreed to a $60 million bond covering long-term cleanup costs, reduced from $80 million by regulators after additional information outlined substantially less "earthwork" and revised water treatment costs.

The Sierra Club, which could still appeal the decision to the state mining board, says a more realistic number would be more than $100 million if Romarco walks away from the site, as other mining companies have done in South Carolina.

"The Sierra Club has heard nothing but support for avoiding mistakes of the past from other gold mines and with facilities like Pinewood ... for adequate financial security to protect the environment," Sierra Club attorney Bob Guild said yesterday (Sammy Fretwell, Columbia [S.C.] *State*, Dec. 8). **-- DTB**

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Led by U.S. and China, world diplomats teeter on the edge of a new climate regime

LIMA, Peru -- A funny thing happened on the way to a 2015 climate deal: The wall dividing developed and developing countries crumbled.

2.POLICY:

Regulators ask state lawmakers for leeway to comply with EPA's Clean Power Plan

As conservative state legislators rally against U.S. EPA's Clean Power Plan, the head of a group representing air agencies tasked with writing plans for cutting greenhouse gas emissions is imploring them not to tie their states' hands with laws that restrict options for complying with the draft rule.

TODAY'S STORIES

3.SCIENCE:
Researchers probe warming U.S. seacoast for methane emissions

4.RESEARCH:
Scientists harness carbon 'soccer ball' to improve carbon scrubber

5.FORESTS:
Indigenous leader calls U.N. forest negotiations stalemate 'irresponsible'

6.NATIONS:
Australia does an about-face, pledges $200M to the Green Climate Fund

7.EMISSIONS:
Canadian prime minister says it would be 'crazy' to regulate oil industry

8.FINANCE:
Investors still have trouble understanding 'green bonds,' but variety grows

9.RENEWABLE ENERGY:
U.S. solar panel sales continue to surge in 3rd quarter

10.WEATHER:
Heat waves will become 'commonplace' for Europe in coming decades -- study

11.EMISSIONS:
Philippines pledges to cut its carbon emissions

12.NEGOTIATIONS:
Australia and Canada favor fossil fuel jobs over climate action

E&ETV'S ONPOINT

13.ENERGY POLICY:
NEI's Fertel pitches nuclear for final power plant rule, urges states to move toward clean energy standards

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1.GAS EXPORTS:

Oil price pressure spreads into global LNG market

A setback for Canada's leading liquefied natural gas project reflects the ripples that continue to spread from OPEC's decision to maintain crude production levels in the face of a global supply glut, as the links between oil and natural gas carry new uncertainties into world methane markets.

TOP STORIES

2.SAFETY:
OSHA issues hazard alert for fracking and drilling

3.RENEWABLES:
New maps, data 'reinvigorate the discussion' on wind potential in the Southeast

4.OIL:
Falling crude prices a 'clear and present danger' for Nigeria

ELECTRICITY

5.ELECTRICITY:
Entergy plans to buy Ark. gas plant to feed growing Southern demand

6.POLICY:
On heels of oil and gas reform, Mexico aims to modernize its grid

7.NATURAL GAS:
'Access Northeast' inks deal to expand pipeline network into New England

8.TRANSMISSION:
National Grid joins bid to build 300-mile power line in Maine

9.WIND:
Property values aren't significantly affected by nearby turbines -- preliminary study

10.UTILITIES:
Distributed generation, energy efficiency could cost traditional energy providers $48B report

OIL AND GAS

11.MARKETS:
Exxon Mobil sees a growth in global middle class boosting energy demand

12.TEXAS:
Regulator considers more urban well inspections

13.NORTH DAKOTA:
Regulators order conditioning for all Bakken crude

14.PENNSYLVANIA:
Energy company slams 'rights of nature' legal strategy

15.NATURAL GAS:
Russia's plan to build pipeline to Turkey faces similar hurdles as failed Eastern European project

16.PIPELINES:
Canadian government introduces liability law for spills

E&ETV'S ONPOINT

17.ENERGY POLICY:
NEI's Fertel pitches nuclear for final power plant rule, urges states to move toward clean energy standards

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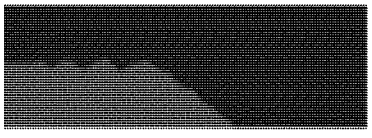

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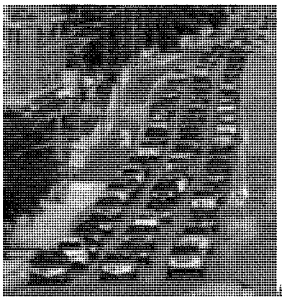


Air & Radiation Law News

for December 8, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Revises Proposal on Aluminum Plant Emissions

The Environmental Protection Agency is revising its proposed national standards for emissions of hazardous air pollutants from aluminum production facilities. The agency Dec. 8 is scheduled to publish a pair of supplemental proposals...

Biotechnology

Judges Weigh Whether to Combine Lawsuits On GMO Corn, Where to Hear Combined Case

A panel of seven federal judges heard oral arguments Dec. 4 on whether more than 175 lawsuits against Syngenta over the marketing of its genetically modified corn should be combined into one case and, if so, where that combined case should be...

Climate Regulation

Clean Air Act No 'Silver Bullet' on Climate, But Power Plant Rules Help, Perciasepe Says

The Clean Air Act is not the long-term, "silver bullet" solution to addressing climate change, although regulatory actions such as the Environmental Protection Agency's proposed carbon pollution limits on power plants...

Climate Regulation

FERC Nominee Calls EPA Power Plan 'Flawed, Unattainable' for Her Home State

The president's latest nominee to the Federal Energy Regulatory Commission could pose some problems for the Obama administration, given her concerns with the administration's signature initiative to reduce carbon emissions...

Climate Regulation

Harvard Law Professor, Obama Mentor Calls EPA Power Plant Rule 'Overreach'

Harvard University law professor Laurence Tribe, a mentor to President Barack Obama, said the administration's carbon rule for power plants is "a remarkable example of executive overreach" that raises "serious constitutional...

Emissions Trading

RGGI Carbon Dioxide Allowances Sell For Record $5.21 Each in Latest Auction

Carbon dioxide allowances sold for a record high of $5.21 each in the latest auction by the Regional Greenhouse Gas Initiative, RGGI announced Dec. 5....

Energy

API's Gerard Sees Eventual Approval Of Keystone XL With Republican Takeover

The head of the oil industry's top lobbying group said Dec. 5 that he believes the Keystone XL oil pipeline will be approved next year, possibly in a legislative compromise with the White House....

International Climate

Difficulty of Averting Effects of Warming Drives Nations to Talk More About Adaptation

From the rising seas in the Seychelles to the melting glaciers of Switzerland and Peru, governments are learning to cope with damaging changes to the climate that threaten food and water supplies and even the very survival of the most low-lying...

International Climate

India Says Pollution Levels Need to Rise Further to Encourage Economic Growth

India said its pollution levels will need to increase in the years ahead to support its economic development and it won't discuss limiting greenhouse gas emissions at United Nations climate talks that began this week....

International Climate

Lima Climate Talks Turn to What Each Nation Would Offer in International Pact

Delegates at the international climate talks in Lima, Peru, Dec. 5 focused on the nation-by-nation climate action pledges due by the end of next year, with the main battle lines drawn between those who think countries should make only emissions-reduction...

International Climate

Stronger Latin America Emissions Controls, Cleaner Fuels Needed to Cut Black Carbon

Persuading Latin American nations to enact more stringent controls on black carbon, a potent greenhouse gas and air pollutant emitted largely from diesel engines, would cut premature deaths linked to air pollution and also aid in the global...

International Climate

UN Report Says Climate Change Adaptation Costs Could Be Much Higher Than Thought

Efforts to adapt to climate change in the developing world could cost several times previous estimates, regardless of how successful negotiations are to reduce emissions, the United Nations said Dec. 5 at the Lima climate change conference....

Regulatory Policy

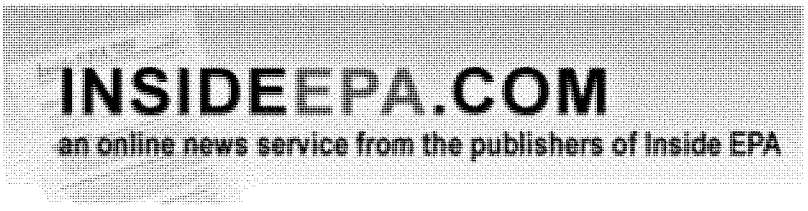
Administrative Conference of U.S. Finalizes
Guidance on Retrospective Review, Petitions

A federal advisory committee has finalized two recommendations to improve the retrospective review process and hold agencies more accountable for responding to public petitions....

Vehicle Fuels

Oversight, Energy Panels Plan Hearings
On Renewable Fuel Standard, Crude Exports

A House Oversight and Government Reform subcommittee has scheduled a Dec. 10 hearing on the Environmental Protection Agency's management of the renewable fuel standard. ...



Latest News

EPA Children's Health Panel Could Bolster Calls For Stricter Ozone NAAQS

EPA's children's health advisors are considering reiterating their long-standing push for the agency to tighten its existing 75 parts per billion (ppb) ozone air standard down to 60 ppb to adequately protect children rather than the 65-70 ppb range EPA is proposing, which could boost environmentalists' calls for a limit at 60 ppb or stricter.

Greenwire

CLIMATE:

Obama's FERC pick seen as ally for EPA rule proposal's critics

Hannah Northey, E&E reporter

Published: Friday, December 5, 2014

Grid operators and energy companies concerned about U.S. EPA's Clean Power Plan may get a rare Democratically on the Federal Energy Regulatory Commission in Arkansas regulator Colette Honorable.

Honorable -- whose nomination has drawn robust bipartisan support -- told the Senate Energy and Natural Resources Committee yesterday that she sympathizes with grid operators' concerns with EPA's climate proposal, highlighting issues Honorable has raised in her home state of Arkansas, which burns coal for half its electricity.

So far, the only FERC commissioners who've expressed deep reservations about the EPA proposal have been Republicans.

Honorable first raised reliability concerns with EPA Administrator Gina McCarthy in November, as grid overseers and Republican FERC Commissioners Tony Clark and Philip Moeller called for FERC to play an expanded advising role in the EPA rulemaking (*EnergyWire*, Dec. 5).

In her role as chairwoman of the Arkansas Public Service Commission, Honorable told EPA the proposed rule would assign her state "one of the most stringent goals in the country for reducing the rate of carbon emissions from its generating units" -- a heavy burden for a small state dependent on coal.

"The 2030 Arkansas goal, which is the sixth most stringent in the United States, is technically flawed and is unattainable under the contemplated timeframe," Honorable and J. Ryan Benefield, interim director at the Arkansas Department of Environmental Quality, wrote to EPA.

Arkansas draws 7 percent of its electricity from renewable sources and has one of the nation's most efficient coal-fired generators, Southwestern Electric Power Co.'s John W. Turk Coal Plant, according to the U.S. Energy Information Administration.

Honorable and Benefield urged EPA to change the proposal to avoid "unreasonable and inequitable results that may include disruptions to electrical service and significant cost impacts in Arkansas and in neighboring states." Under the proposal, Arkansas would need to cut about 37 percent of its carbon emissions between 2016 and 2020, a goal the state officials deem "unworkable."

They also raised concerns with EPA's effort to have states work together to meet emission goals and offered three recommended tweaks for the proposal to ensure states with unique circumstances can comply.

"While EPA correctly observes in the proposed rule that states have the option to coordinate with other states, no state can force such cooperation on an unwilling neighbor, and thus no state should be held responsible to require emissions reductions that reasonably depend on interstate coordination," they wrote.

As Republican FERC commissioners have raised concerns about EPA's proposal, FERC Chairwoman Cheryl LaFleur has made broader comments touching on the commission's role as a grid overseer and the need for infrastructure (*EnergyWire*, Nov. 10).

EPA has proactively been addressing concerns raised with the proposal and reiterating its willingness to consider a range of options and even possibly make changes.

Asked about Honorable's concerns, EPA spokeswoman Liz Purchia said that the agency appreciates the time Arkansas regulators took to review the proposal and that the comments will be reviewed closely. She added that coal would continue to be a critical energy source for the "foreseeable future."

Purchia said states have a variety of ways to lower their carbon footprint and there's no "one-size-fits-all solution."

EPA determined states' goals by looking at their current energy portfolios and carbon emissions, she said.

"We looked at information such as how power is generated and moves around the electricity system, emissions information and information about energy efficiency programs in a state," she said. "Our proposal provides flexibility in determining how to meet its pollution reduction goals and does not mandate the retirement of any coal plants."

Purchia also said any "small, short-term change" in electricity prices would be within "normal fluctuations the power sector already deals with" and forecast savings if states tap into efficiency.

"If states are smart about taking advantage of efficiency opportunities, we predict that when the effects of this plan are in place in 2030, average electricity bills will be 8 percent cheaper," she said.

Let LaFleur set pace -- Honorable

Honorable's concerns about the EPA rule proposal were welcomed yesterday at her Senate confirmation hearing by Sen. Lisa Murkowski of Alaska, the top Republican on the Energy and Natural Resources Committee.

Slated to take the gavel next year, Murkowski joined House Republicans last month in calling on FERC to meet with EPA, the Energy Department, state regulators and power companies to discuss grid reliability issues and explain what the Republicans say is a failure to coordinate on the carbon-cutting proposal.

"If you're confirmed, I'm counting on you to champion FERC's role as the federal agency responsible for electric reliability. We need the FERC to stand up in interagency dialogues and guard against federal regulations that will make our electricity less secure and more expensive," Murkowski told Honorable.

Honorable pointed out the years of work as a state regulator coordinating with federal and state agencies and expressed openness to discussing reliability concerns with various stakeholders.

But she stopped short of calling for a formal role for FERC in the EPA rulemaking -- as Republican commissioners have done. She said she didn't want to get ahead of LaFleur.

"Senator, certainly the chairman of FERC would set the course," Honorable said. "If the chairman chose to move forward with a technical conference, I would wholeheartedly support that."

CLIMATE:

Industry might accept some new curbs on emissions -- API

Jean Chemnick, E&E reporter

Published: Friday, December 5, 2014

The petroleum industry might accept U.S. EPA rules to reduce methane depending on how the agency goes about it, industry advocates said yesterday.

American Petroleum Institute regulatory chief Howard Feldman told reporters at a press lunch that while no new Clean Air Act rules are necessary to keep industry methane leakage on a downward trajectory, API's members might not oppose some broadening of EPA's current controls on volatile organic compounds (VOCs) from oil and natural gas systems.

"Depending on how it's done, it might be something that would be acceptable to industry," he said.

Those regulations would target smog-forming emissions by requiring the capture of natural gas -- the major component of which is methane. EPA targeted VOCs when regulating new natural gas hydraulic fracturing operations in a rule finalized in 2012 that takes full effect next year. API did not ultimately oppose those new source performance standards for gas wellheads, and EPA consistently touts them as a greenhouse gas win because they reduced methane by an estimated 90 percent at the sources covered.

The agency should hold off, however, on adding to its VOC regulatory regime until the current rule phases in completely, he said. And if EPA does promulgate new rules, they should be only for parts of the natural gas supply chain that are the most emissions-intensive rather than the comprehensive set of rulemakings environmentalists have pushed for.

"In some cases, you may be spending a lot of money and get no benefit," Feldman said.

He named pneumatic devices as a prime opportunity for new curbs if EPA chooses to move forward with them. These pumps vary substantially in the amount of methane they release while working to move gas. So-called high-bleed models leak as much as 157,581 standard cubic feet per day, while low-bleed models release 10 percent of that and no-bleed models produce near-zero leakage.

EPA's greenhouse gas inventory showed that on- and offshore oil and gas production pneumatic device emissions totaled 18 million metric tons of carbon dioxide equivalent in 2012.

But while API signaled that some new constraints on emissions might be appropriate, its leaders promised to push back hard if EPA announces plans this month to give environmentalists their preferred option: a suite of new methane-specific rules written under Sections 111(b) and (d) of the Clean Air Act, the same provisions EPA is currently using to regulate power plant carbon dioxide.

"API is opposed to a 111(d) rulemaking for methane," Feldman said. "Simple declarative sentence. We are opposed to that."

That approach would assign regulatory requirements not only for segments of the supply chain that Feldman says offer inexpensive emissions-reduction opportunities, but for areas that would be less efficient to regulate.

Besides pneumatic devices, EPA has asked for input on possible regulations or other measures to address methane from new and existing oil wells, existing gas production operations, leaky production and transportation infrastructure, compressor stations, and liquid unloading -- the devices that keep oil and gas flowing from the wellhead. A decision on whether to regulate is due by Dec. 21.

Environmentalists say their approach would be cost-effective and yield 10 times the environmental results that would be possible if EPA uses its ozone authorities to target more VOCs.

By tailoring rules to control methane, EPA can cover a broader swath of the oil and gas supply chain, they say. VOC rules, by contrast, would have an effect only in ozone nonattainment areas -- and most oil and gas development is not located in nonattainment areas. Regulating methane directly would allow EPA to reduce methane leakage from oil and gas transmission, which produces fewer VOCs.

Reductions would be cheap and use conventional technology, greens say.

"We're basically talking about going in and plugging the leaks and intentional venting," said Clean Air Task Force Advocacy Director Conrad Schneider in a recent interview. He pointed to a recent study that showed EPA could cut methane in half in five years for the cost of only 1 percent of the sector's annual sales revenue (*Greenwire*, Nov. 20).

He dismissed Feldman's suggestion that EPA could ramp up controls on VOCs from pneumatic devices, noting that such rules already exist for new but not existing devices. To reach older, leakier pneumatics, new methane restrictions would be required, he said. Industry's preferred option "ignores the rest of the system from well pad to the city gate," said Schneider. "It's about that simple."

But Feldman disputed the study, arguing that it relied on out-of-date and inconsistently applied data about industry emissions across the sector.

AIR POLLUTION:

Emission violations lead to arrest of recycling plant manager

Published: Friday, December 5, 2014

Henry Kijanka, the plant manager at an aluminum dross recycling plant on Detroit's west side, was arrested on charges of contempt of court Nov. 24 after an investigation by the Michigan Attorney General's Office found HD Industries, which operates the plant, had disregarded emissions standards at the plant and failed to file an operating permit with the state.

The process of recycling aluminum dross, a byproduct of aluminum production, extracts residual aluminum remains. The industrial process also produces emissions of hydrogen chloride, which combines with water vapor in the atmosphere to produce hydrochloric acid.

Following dozens of complaints from the surrounding area, investigations into the emissions were conducted, and the state Attorney General's Office found "absolutely no control of hydrogen chloride emissions." The plant, operating without a state permit, was emitting 47 pounds of hydrogen chloride per hour. The last permit the plant received, issued in 2013, allowed for no more than 0.5 pound per hour.

The Michigan Department of Environmental Quality cited HD Industries for violations against the Clean Air Act in 2013, and the state Attorney General's Office filed a complaint against the company. This year, a judge told the company to submit a new operating permit application and agree to emissions testing or shut down within 60 days.

The company was found in contempt of court Aug. 5 and ordered to pay a $240,000 fine for Clean Air Act violations. While officials attempted to serve Kijanka with the contempt order, the company was operating intermittently.

Following his arrest, Kijanka was released within two days after paying part of his $7,500 contempt penalty. He also agreed to halt operations at the plant. The charge is considered a civil matter, and the

case is pending (Jim Lynch, *Detroit News*, Dec. 5). -- **MH**

EPA:

Former No. 2 leaving agency for Md. county job

Robin Bravender, E&E reporter

Published: Friday, December 5, 2014

One of U.S. EPA chief Gina McCarthy's top aides will soon be leaving her post for an executive gig in Montgomery County, Md.

Lisa Feldt, EPA associate deputy administrator, who did a stint as McCarthy's acting deputy this year, has been picked to lead Montgomery County's Department of Environmental Protection.

PEOPLE

She was picked for the job by Montgomery County Executive Ike Leggett, who called Feldt "an outstanding administrator and leader who can carry our array of innovative and progressive environmental programs and services to an even higher level while providing the impetus for new programs."

Feldt, an engineer by training who has spent much of her career as a staffer at EPA and the Department of Energy, was picked to fill in as EPA's acting deputy in August when Bob Perciasepe stepped down. She stayed on the job through October, when former EPA Region 4 deputy Stan Meiburg became McCarthy's acting lieutenant (*Greenwire*, Aug. 14).

"Lisa Feldt is incredibly smart, loyal, and a true advocate for the agency," McCarthy said today in a statement. "I am thankful for her service and the great work she did at EPA to protect public health and the environment. We are sad to see her go, but incredibly happy for her new opportunity ahead." Feldt's last day at EPA is Dec. 12.

In the Montgomery County job, Feldt will oversee a staff of 170 people and an annual budget of about $130 million. She will replace Bob Hoyt, who led the DEP from late 2007 until his retirement earlier this year.

Feldt started her career at EPA in 1984 as an environmental engineer in the agency's Superfund office and also worked in the Office of Radiation Programs. She spent about a decade at the Energy Department in various jobs overseeing the cleanup of nuclear facilities. When former EPA Deputy Administrator Alvin Alm was appointed head of DOE's environmental management program, he selected Feldt as his chief of staff.

She left DOE in 2000 to start her own consulting firm but came back to EPA in 2009 when she was asked to be the No. 2 official in the Office of Solid Waste and Emergency Response. She was promoted to EPA's leadership in 2013.

REGULATIONS:

Data reveal which agencies get cursed at the most

Published: Friday, December 5, 2014

The Internet has democratized public comment periods for new government regulations but also allowed federal agencies to track the displeased reactions people have to proposed rules.

Aggregated from online database Regulations.gov, an analysis of the two most common four-letter curse words used in comments submitted since the beginning of President Obama's second term produced some expected -- and some surprising -- results.

Expectedly, running away with first place was the Internal Revenue Service -- as one commenter put it, "let them eat shit and fucking die" -- but the Fish and Wildlife Service rode a wave of wolf-related vitriol to the runner-up slot. Both sides chimed in with more than a few expletives regarding the controversial proposal to remove the gray wolf from the endangered species list.

"The fact that you encourage trophy hunting and needless killing makes you all complete jerks and assholes," one person wrote. "Fuck you and all you stand for."

Taking a contrary position, another individual submitted more than 30 similar comments, which were counted only once due to the repetition of one key line: "We farmers are shit on once again."

Inspiring the analysis were tweeted examples of submitted comments to U.S. EPA. The agency came in third with its share of bipartisan love, including, "The EPA don't give a fuck about Americans."

The Forest Service came in eighth on the list of most sworn-at agencies, while the National Oceanic and Atmospheric Administration came in 10th, the Nuclear Regulatory Commission came in 14th, and the Bureau of Ocean Energy Management earned a ranking of 15th. The National Park Service ranked 17th, and the Bureau of Land Management was the 20th-most-sworn at agency (Philip Bump, *Washington Post*, Dec. 5). **-- DTB**

TRANSPORTATION:

After new round of funding, Uber value rises to $40B

Published: Friday, December 5, 2014

Private driving company Uber has been valued at more than $40 billion after closing a $1.2 billion round of financing yesterday.

The rapidly growing company allows customers to summon a driver with a smartphone app. Despite a recent round of criticism that the company could be spying on its patrons, investors are hoping to strike it rich in what could be a huge initial public offering.

Uber Chief Executive Travis Kalanick has big plans for the company, hoping it will eventually replace the need for patrons to own cars.

"Millions of people may decide that they no longer need to own a car because using Uber will be cheaper than owning one," he said (Isaac/de la Merced, *New York Times*, Dec. 4). **-- AW**

INDIA:

PM clear-cuts environmental regs, as promised

Published: Friday, December 5, 2014

Sworn in this year, Indian Prime Minister Narendra Modi is already speedily fulfilling his campaign promise to open his country's economic floodgates by clearing away environmental regulation that industry has decried for years.

A high-level committee report tasked with rewriting India's environmental laws said the current system "served only the purpose of a venal administration."

Prakash Javadekar, Modi's new environment minister, has made speedy approvals of industrial, mining and power projects a priority. The newly appointed National Board for Wildlife worked through 140 pending projects in two days in August.

New regulations also eliminated ministry inspections of mining projects that are less than 247 acres and allowed small mines a one-time exception to expand without holding a public hearing. Forest projects also no longer must seek approval of local tribal village councils.

Industry has long blamed stunted economic growth on India's current regulatory system, which even some environmentalists admit is convoluted, often requiring clearance from up to seven agencies.

Many environmental groups, however, are worried the new government's "concept of utmost good faith," which relies on business owners to voluntarily disclose their pollution figures and monitor their own compliance, imperils India's environmental health.

"If you're building something like a brewery or a dam, faith is the last thing you want to think about," said Leo Saldanha, coordinator of the Bangalore-based Environment Support Group. "Do you have 'utmost good faith' in enforcing income tax, or corporate tax law? No. This is a territory on which the government wants to be weak -- because they want growth" (Barry/Thirani Bagri, *New York Times*, Dec. 4). **-- DTB**

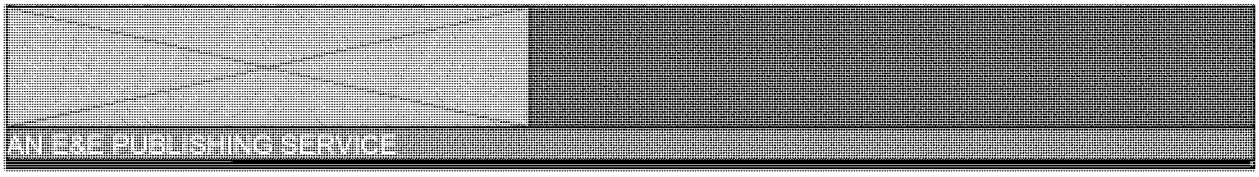
NEGOTIATIONS:

ClimateWire's Friedman previews Lima talk outcomes, road to Paris treaty

Published: Friday, December 5, 2014

As international climate negotiators convene in Lima, Peru, to advance the discussion toward the next climate treaty, what role will the United States play in creating a draft of the final deal? On today's The Cutting Edge, *ClimateWire* deputy editor Lisa Friedman previews the Lima meeting and explains why Green Climate Fund financing could make or break a final treaty deal in Paris next year.

Click here to watch E&ETV's The Cutting Edge.



CLIMATEWIRE — Mon., December 8, 2014

READ FULL EDITION

1.TRADE:

As U.S. use of solar explodes, a new round opens in China dumping case

The latest volley in the red-hot trade war between U.S.-based solar manufacturers and their Chinese competitors takes place today in Washington, where the International Trade Commission will hear testimony from petitioners, defendants and third parties seeking a path to fair and open trade in a global solar market.

2.BUSINESS:

Craft breweries find ways to cut CO2 without losing their heads

Carbonation is part of the delicate process of brewing a balanced beer, but startup companies riding the popular explosion of craft brewing are working on a carbon problem that is taking some of the fizz out of their profits.

TODAY'S STORIES

3.NEGOTIATIONS:

Lima talks get down to serious business amid signs of uncertainty

4.RESOURCES:

Latin American nations pledge to restore more than 39M forest acres

5.POLICY:

Former Obama advisers seek to open and globalize the measures for the social costs of carbon

6.ADAPTATION:

Model shows warming poses life-or-death 'tipping points' for species

7.RELIGION:

Church of England will prod Shell, BP to cut emissions, invest in renewables

8.RENEWABLE ENERGY:

Wind turbine power in Ore. could equal 9 coal plants in 15 years

9.FINANCE:

Australia won't contribute to Green Climate Fund -- foreign minister

10.WEATHER:

El Niño likelihood raised from 58% to 65%

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ENERGYWIRE — Mon., December 8, 2014

READ FULL EDITION

1.ELECTRICITY:

Ark. political shift could provide opening for its utilities

For Entergy Corp., the potential of what it calls the Gulf South is a core talking point these days. An industrial boom is underway, and the New Orleans-based electric company touts expected utility growth along with regulatory support in Louisiana, Texas and Mississippi. But the tone shifts when Arkansas, the fourth state in the company's regulated electric portfolio, comes up.

TOP STORIES

2.ECONOMY:

U.S. energy sector is a loser with lower oil prices, but there are plenty of winners

3.REGULATION:
After Denton frack ban, the wrangling over drilling rules goes on
4.MARKETS:
Oil field service industry braces for very different 2015, driven by falling crude
ELECTRICITY
5.ELECTRICITY:
La. PSC spot goes to incumbent in tight race focused on ethics, solar
6.UTILITIES:
UIL Holdings pulls out of bid for takeover of Philadelphia Gas Works
OIL AND GAS
7.SAFETY:
New drilling rules might help, OSHA chief says, but won't happen
8.POLICY:
Western sanctions have undermined Russian shale, Arctic development -- scholar
9.PEOPLE:
Halliburton appoints integration team for Baker Hughes buyout
10.EAGLE FORD:
Texas field tallies its billionth barrel
11.OHIO:
IG report finds possible conflict of interest in inspector evaluating his father's oil business
12.OIL:
Dropping fuel prices a $29B boon for shipping companies

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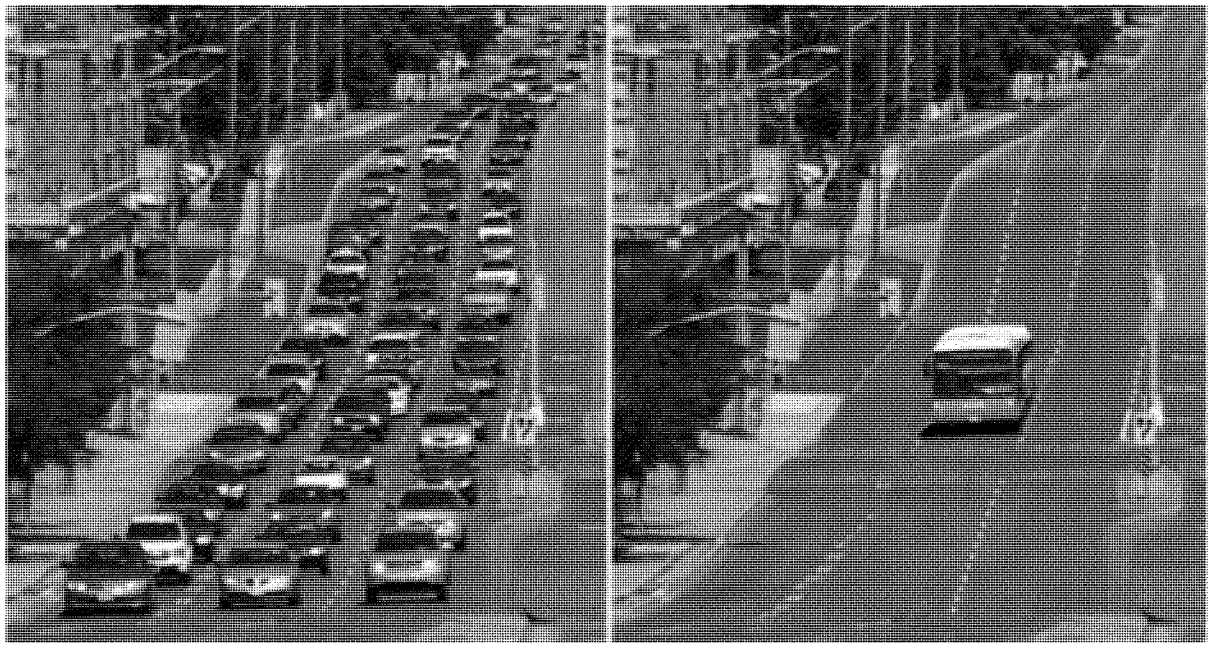

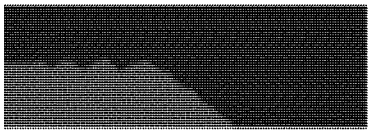

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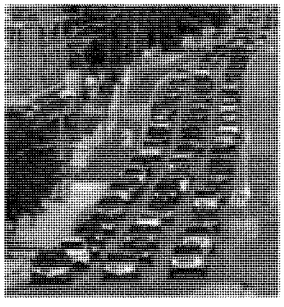

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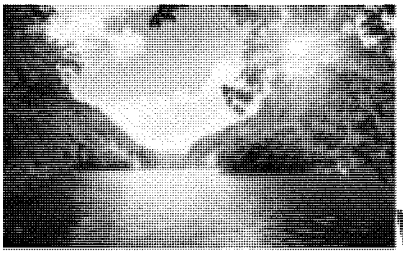
From: Turley, Jennifer
Sent: Mon 12/8/2014 4:05:29 PM
Subject: Water Law News for December 8, 2014



Water Law News

for December 8, 2014

Bloomberg BNA **Daily Environment Report™**

Drinking Water

EPA Should Demonstrate Health Benefits
Of State Revolving Fund, OIG Report Says

The Environmental Protection Agency should demonstrate the public health benefits of projects funded by the drinking water state revolving fund, the agency's Office of Inspector General said in a report issued Dec. 5....

Hydraulic Fracturing

Class Action in Ohio Seeks to Block
Hydraulic Fracturing in Cleveland Suburb

Broadview Heights residents have filed a first-in-Ohio class action lawsuit against the state, the governor and two hydraulic fracturing concerns, asserting local self-governance rights to ban fracking (Mothers Against Drilling in Our...

Hydraulic Fracturing

Lawsuit Against Fracking Ban in Denton
To Challenge Local Control Tradition in Texas

Less than 24 hours after voters in Denton, Texas, approved a ban on hydraulic fracturing, a statewide oil and gas industry group filed a lawsuit saying the ban is inconsistent with state law and violates its constitution....

Hydraulic Fracturing

Report Summarizes Studies on Some Risks
Posed by Oil, Gas to Reproductive Health

A review of the research on chemicals associated with unconventional oil and gas development, including hydraulic fracturing, has concluded that the potential risks to human reproductive health are numerous and merit more study....

Oil Spills

Oil Spill in Nature Reserve Among 'Gravest'
Environmental Accidents in Israel's History

Israel suffered one of the worst environmental accidents in its history when millions of liters of crude oil spilled from a cross-country pipeline Dec. 4 into one of its most important southern nature reserves....

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Latest News

Judges Conflicted On Setting Precedent In Suit Over CWA Petition To EPA

Appellate judges at oral arguments appeared conflicted on setting a broad precedent in advocates' suit aiming to force a substantive response from EPA to their petition seeking Clean Water Act (CWA) standards for the Mississippi River Basin, fearing a ruling could either give EPA too much or too little leeway on addressing petitions.

EPA Faces Budget Cuts, Policy Restrictions In FY15 Spending Omnibus Bill

EPA is facing potential budget cuts and restrictions blocking it from implementing major climate and water rules in the pending fiscal year 2015 spending omnibus bill slated for release next week, sources say, prompting Democrats and environmentalists to fight for striking any policy-related riders from the must-pass funding legislation.

EPA Seeks Input On Fears Of NPDES E-Reporting Rule's Adverse Impacts

EPA is seeking additional comment on its proposed electronic reporting rule for National Pollutant Discharge Elimination System (NPDES) permits in order to address concerns raised by states and permittees that the rule could curb the delegated authority of state programs and overburden permitted facilities.

News Briefs

EPA To Streamline Drinking Water SRF Reporting

EPA has agreed to integrate two systems it uses to track state projects receiving grants from its Drinking Water State Revolving Fund (DWSRF) to demonstrate their public health benefits, after an audit found the agency's data was incomplete.

Greenwire

EPA:

Former No. 2 leaving agency for Md. county job

Robin Bravender, E&E reporter

Published: Friday, December 5, 2014

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PEOPLE

She was picked for the job by Montgomery County Executive Ike Leggett, who called Feldt "an outstanding administrator and leader who can carry our array of innovative and progressive environmental programs and services to an even higher level while providing the impetus for new programs."

Feldt, an engineer by training who has spent much of her career as a staffer at EPA and the Department of Energy, was picked to fill in as EPA's acting deputy in August when Bob Perciasepe stepped down. She stayed on the job through October, when former EPA Region 4 deputy Stan Meiburg became McCarthy's acting lieutenant (*Greenwire*, Aug. 14).

"Lisa Feldt is incredibly smart, loyal, and a true advocate for the agency," McCarthy said today in a statement. "I am thankful for her service and the great work she did at EPA to protect public health and the environment. We are sad to see her go, but incredibly happy for her new opportunity ahead." Feldt's last day at EPA is Dec. 12.

In the Montgomery County job, Feldt will oversee a staff of 170 people and an annual budget of about $130 million. She will replace Bob Hoyt, who led the DEP from late 2007 until his retirement earlier this year.

Feldt started her career at EPA in 1984 as an environmental engineer in the agency's Superfund office and also worked in the Office of Radiation Programs. She spent about a decade at the Energy Department in various jobs overseeing the cleanup of nuclear facilities. When former EPA Deputy Administrator Alvin Alm was appointed head of DOE's environmental management program, he selected Feldt as his chief of staff.

She left DOE in 2000 to start her own consulting firm but came back to EPA in 2009 when she was asked to be the No. 2 official in the Office of Solid Waste and Emergency Response. She was promoted to EPA's leadership in 2013.

REGULATIONS:

Data reveal which agencies get cursed at the most

Published: Friday, December 5, 2014

The Internet has democratized public comment periods for new government regulations but also allowed federal agencies to track the displeased reactions people have to proposed rules.

Aggregated from online database Regulations.gov, an analysis of the two most common four-letter curse words used in comments submitted since the beginning of President Obama's second term produced some expected -- and some surprising -- results.

Expectedly, running away with first place was the Internal Revenue Service -- as one commenter put it, "let them eat shit and fucking die" -- but the Fish and Wildlife Service rode a wave of wolf-related vitriol to the runner-up slot. Both sides chimed in with more than a few expletives regarding the controversial proposal to remove the gray wolf from the endangered species list.

"The fact that you encourage trophy hunting and needless killing makes you all complete jerks and assholes," one person wrote. "Fuck you and all you stand for."

Taking a contrary position, another individual submitted more than 30 similar comments, which were counted only once due to the repetition of one key line: "We farmers are shit on once again."

Inspiring the analysis were tweeted examples of submitted comments to U.S. EPA. The agency came in third with its share of bipartisan love, including, "The EPA don't give a fuck about Americans."

The Forest Service came in eighth on the list of most sworn-at agencies, while the National Oceanic and Atmospheric Administration came in 10th, the Nuclear Regulatory Commission came in 14th, and the Bureau of Ocean Energy Management earned a ranking of 15th. The National Park Service ranked 17th, and the Bureau of Land Management was the 20th-most-sworn at agency (Philip Bump, *Washington Post*, Dec. 5). **– DTB**

KEYSTONE XL:

API may deploy ads to push White House on pipeline

Manuel Quiñones, E&E reporter

Published: Friday, December 5, 2014

The American Petroleum Institute is mulling a new ad campaign to push the Obama administration to approve the Keystone XL oil pipeline's trans-boundary crossing from Canada, the group said today.

During a conference call this morning, CEO Jack Gerard said API wants to remind President Obama that "six years is too long," referring to the length of the administration's review.

"We're prepared to spend significant resources to make sure the message is loud and clear," said Gerard, not revealing concrete spending or strategy plans for the ad campaign.

Last month, the Senate came one vote short of the 60 necessary to pass legislation approving the KXL pipeline. Gerard said next year boosters hope to have 63 or 64 Senate backers.

Asked whether a future ad campaign would target on-the-fence lawmakers, perhaps to secure a veto-proof majority in the upper chamber, Gerard said he didn't see the issue going that far.

"I think they're going to find a way to resolve it with a strong bipartisan vote," Gerard said, predicting that Congress could approve KXL's trans-boundary crossing by including it in a package of bipartisan bills or must-pass legislation.

For now, the State Department, which is reviewing TransCanada Corp.'s application, is waiting on the

results of pending litigation in Nebraska. The company is also in the process of renewing permits in South Dakota.

Environmental advocates have long touted Obama as the ultimate decisionmaker on KXL. They see him standing with them against congressional efforts.

But just in case, environmentalists and landowners have also been mulling their own pressure efforts. The group Bold Nebraska, for example, is sending anti-KXL pens to the White House.

The pens include a postcard from the sender and the message, "President Obama, this machine stops pipelines." In other words, Obama can use a pen to prevent KXL's trans-boundary crossing.

"We're going to spend the weeks ahead making Keystone XL even more toxic than the tar sands," said Jamie Henn, spokesman for climate advocacy nonprofit 350.org. "The pipeline is the perfect symbol of Congress' climate denial agenda."

Yesterday, potential presidential candidate and New Jersey Gov. Chris Christie (R) pressed for approval of the pipeline during a trade mission to Canada.

Christie said in Calgary that "limiting the ability of increased production from the Canadian oil sands to get to market, it stunts production. It risks stunting growth, as well."

TransCanada often points to the State Department's environmental review of KXL, which says companies would likely continue mining Canadian oil sands with or without the pipeline.

But Christie, in his specific comments, was echoing pipeline opponents, who say that stopping the project can help their goal of also blocking Canadian oil sands production.

Environmentalists and analysts are also questioning KXL's staying power amid low crude oil prices. Terry Connelly, dean emeritus of Golden Gate University's Ageno School of Business, wrote in a *Huffington Post* op-ed that, in one scenario, low prices could make KXL uneconomical.

In another scenario, Connelly wrote, cheap transport from KXL could help sustain Canadian oil sands amid low oil prices. But that would play into environmentalist arguments and question the State Department review.

But Gerard said, "The demand for the product will only continue to increase longer term," particularly regarding global markets. "Globally, the demand is only going to go up." He called the low price a "temporary phenomenon."

WATER POLLUTION:

Regs not needed for Gulf of Mexico 'dead zone' -- EPA

Published: Friday, December 5, 2014

U.S. EPA argued to the 5th U.S. Circuit Court of Appeals in New Orleans yesterday in a bid to throw out an order requiring it to decide whether it needs to develop regulations to prevent a flow of pollutants from the Mississippi River.

The pollutants are the cause of a low-oxygen "dead zone" that develops off the coast of Louisiana each spring.

The agency told a panel of three appellate judges that it is responsible for setting water quality rules, and judicial interference isn't necessary.

The agency had appealed U.S. District Judge Jay Zainey's 2013 ruling that EPA must make a "necessity determination" on whether it should set tighter rules for water pollutants in the Mississippi River, such as by limiting the flow of nitrogen and phosphorous that can be discharged from farms, sewage treatment plants and other sources.

Attorneys for EPA argued it should continue to work with states to reduce the discharges rather than put new rules in place using the Clean Water Act (Jennifer Larino, New Orleans *Times-Picayune*, Dec. 4). -- **SP**

OFFSHORE DRILLING:

Injured workers sue operators of platform that exploded

Published: Friday, December 5, 2014

Two workers injured in an explosion at an oil platform in the Gulf of Mexico have sued two companies linked to the site.

The injured workers, Colte Cahanin, 21, and 19-year-old Seth Cormier, were cleaning a heater treater unit that separated oil from other liquids at the Fieldwood Energy LLC platform 12 miles off the Louisiana coast.

The oil platform exploded Nov. 20, killing another worker, Jerrel Hancock.

The three men worked for Turnkey Cleaning Services Gulf of Mexico. In separate lawsuits, Cahanin and Cormier sued Fieldwood Energy, which owned the oil platform, and Island Operating Co., which was contracted to perform work at the site. The suit was filed in U.S. District Court in the Southern District of Texas. The men allege the firms' negligence contributed to their injuries.

The companies declined to comment on the suits.

The workers said the companies failed to ensure flammable materials were removed before they were sent to clean the heater treater unit.

"These defendants failed to properly ensure the heater treater was cleared -- and in essence turned over a disaster waiting to happen to the Turnkey Cleaning employees," the lawsuit said (Jennifer Dlouhy, *Fuel Fix*, Dec. 4). -- **SP**

DRINKING WATER:

EPA faulted for failure to assess loan program's health impacts

Annie Snider, E&E reporter

Published: Friday, December 5, 2014

U.S. EPA spent more than $11 billion on low-interest loans and other efforts to help communities upgrade drinking water infrastructure in the last four years, but the agency can't say for sure that money has improved public health, according to a report released today by the EPA inspector general.

At issue: States that have received Drinking Water State Revolving Funds have failed to consistently send EPA information required under the grants' terms, the report says.

And although EPA does annual reviews of the state programs, the report says, those assessments don't consistently address projects' outcomes.

"As a result, the EPA is unable to demonstrate the public health results of this large agency expenditure," the report says. "The EPA is also missing an opportunity to capture and disseminate potential best practices of state programs and projects."

That's not to say the projects don't have an impact. Data analysis by the IG found that nearly 94 percent of water systems that received DWSRF funds between 2009 and 2013 were in compliance with public health-focused laws and regulations. But the data were missing key information.

"The complexities of drinking water infrastructure improvements make it difficult for the EPA to confidently attribute completed DWSRF projects to improvement in public health," the IG wrote.

The IG recommends that the Office of Water enforce state reporting requirements and make sure the data are complete in its annual reviews.

The report also suggests the office use that data in compliance-monitoring programs to capture public health benefits of the drinking water investments that account for about 10 percent of the agency's budget.

Finally, the IG recommends periodic program evaluations to make sure that overall goals are being achieved and that best practices and challenges are shared among regions and states.

The Office of Water agreed with the recommendations and set deadlines for their implementation.

Click here for the report.

COAL ASH:

Groups accuse Duke of new pollution dumps

Manuel Quiñones, E&E reporter

Published: Friday, December 5, 2014

Environmental groups yesterday said Duke Energy Corp. is dumping dangerous chemicals from a coal ash pond associated with its retired Buck power plant, polluting the Yadkin River in North Carolina.

The groups Waterkeeper Alliance and Yadkin Riverkeeper say they discovered an orange-colored leak blow the Yadkin's normal water line. They say it's not visible during normal water levels.

The groups -- being represented by the Southern Environmental Law Center in a federal lawsuit against Duke over pollution concerns at the site -- say testing revealed elevated levels of arsenic, cadmium, lead, manganese, selenium and others.

"This new evidence confirms the extent and magnitude of the coal ash pollution leaking into the Yadkin River," said SELC attorney John Suttles in a statement.

Duke, responsible for a large coal ash pollution release into the Dan River earlier this year, said it had surveyed all its sites and is working with regulators on closure of ponds.

"Seeps occur at low flows and contain low levels of constituents, so the Yadkin River would continue to be well protected and would not be influenced by these types of flows," said the company in a statement.

"The orange color is often caused by iron bacteria, a naturally occurring and non-harmful bacteria that occur commonly in this area because of iron-rich soils," it added.

A spokeswoman for the North Carolina Department of Environment and Natural Resourced said inspectors would check whether the seeps are legal.

The White House Office of Management and Budget has for weeks been meeting with environmental, utility and ash recycling advocates in advance of a U.S. EPA final rule on ash disposal (*Greenwire*, Dec. 3). The agency must, by court order, sign it by Dec. 19.

WATER POLLUTION:

Oil spills in Corpus Christi Ship Channel

Published: Friday, December 5, 2014

An oil spill occurred in the Corpus Christi Ship Channel in Texas early yesterday.

The Refinery Terminal Fire Co. responded to the spill, deploying oil booms into the water to contain it, according to a report from the news website Kristv.com.

The report did not say what caused the spill or who was responsible (Jose/Samanta, Reuters, Dec. 4). **-- AW**

DRINKING WATER:

Los Angeles County turns to runoff to boost supplies

Published: Friday, December 5, 2014

Los Angeles County has been using stormwater runoff to supplement its drinking water supply.

On Tuesday, for example, heavy rains in the region helped the County Department of Public Works capture 174 acre-feet of runoff (or 56 million gallons) from the San Gabriel and Santa Monica mountains watershed in 14 reservoirs.

The water is returned to the local aquifer with a "spreader" comprised of a pattern of rocks and gravel.

Still, officials lament that they lose most stormwater runoff: An estimated 10 billion gallons is flushed into the ocean during each average-sized storm (Steve Scauzillo, *San Gabriel Valley Tribune*, Dec. 3). **-- AW**

INDIA:

PM clear-cuts environmental regs, as promised

Published: Friday, December 5, 2014

Sworn in this year, Indian Prime Minister Narendra Modi is already speedily fulfilling his campaign promise to open his country's economic floodgates by clearing away environmental regulation that industry has decried for years.

A high-level committee report tasked with rewriting India's environmental laws said the current system "served only the purpose of a venal administration."

Prakash Javadekar, Modi's new environment minister, has made speedy approvals of industrial, mining and power projects a priority. The newly appointed National Board for Wildlife worked through 140 pending projects in two days in August.

New regulations also eliminated ministry inspections of mining projects that are less than 247 acres and allowed small mines a one-time exception to expand without holding a public hearing. Forest projects also no longer must seek approval of local tribal village councils.

Industry has long blamed stunted economic growth on India's current regulatory system, which even some environmentalists admit is convoluted, often requiring clearance from up to seven agencies.

Many environmental groups, however, are worried the new government's "concept of utmost good faith," which relies on business owners to voluntarily disclose their pollution figures and monitor their own compliance, imperils India's environmental health.

"If you're building something like a brewery or a dam, faith is the last thing you want to think about," said Leo Saldanha, coordinator of the Bangalore-based Environment Support Group. "Do you have 'utmost good faith' in enforcing income tax, or corporate tax law? No. This is a territory on which the government wants to be weak -- because they want growth" (Barry/Thirani Bagri, *New York Times*, Dec. 4). **-- DTB**

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CLIMATEWIRE — Mon., December 8, 2014

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1. TRADE:

As U.S. use of solar explodes, a new round opens in China dumping case

The latest volley in the red-hot trade war between U.S.-based solar manufacturers and their Chinese competitors takes place today in Washington, where the International Trade Commission will hear testimony from petitioners, defendants and third parties seeking a path to fair and open trade in a global solar market.

2. BUSINESS:

Craft breweries find ways to cut CO2 without losing their heads

Carbonation is part of the delicate process of brewing a balanced beer, but startup companies riding the popular explosion of craft brewing are working on a carbon problem that is taking some of the fizz out of their profits.

TODAY'S STORIES

3.NEGOTIATIONS:
Lima talks get down to serious business amid signs of uncertainty

4.RESOURCES:
Latin American nations pledge to restore more than 39M forest acres

5.POLICY:
Former Obama advisers seek to open and globalize the measures for the social costs of carbon

6.ADAPTATION:
Model shows warming poses life-or-death 'tipping points' for species

7.RELIGION:
Church of England will prod Shell, BP to cut emissions, invest in renewables

8.RENEWABLE ENERGY:
Wind turbine power in Ore. could equal 9 coal plants in 15 years

9.FINANCE:
Australia won't contribute to Green Climate Fund -- foreign minister

10.WEATHER:
El Niño likelihood raised from 58% to 65%

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Mon., December 8, 2014

READ FULL EDITION

1.ELECTRICITY:
Ark. political shift could provide opening for its utilities

For Entergy Corp., the potential of what it calls the Gulf South is a core talking point these days. An industrial boom is underway, and the New Orleans-based electric company touts expected utility growth along with regulatory support in Louisiana, Texas and Mississippi. But the tone shifts when Arkansas, the fourth state in the company's regulated electric portfolio, comes up.

TOP STORIES

2.ECONOMY:
U.S. energy sector is a loser with lower oil prices, but there are plenty of winners

3.REGULATION:
After Denton frack ban, the wrangling over drilling rules goes on

4.MARKETS:
Oil field service industry braces for very different 2015, driven by falling crude

ELECTRICITY

5.ELECTRICITY:
La. PSC spot goes to incumbent in tight race focused on ethics, solar

6.UTILITIES:
UIL Holdings pulls out of bid for takeover of Philadelphia Gas Works

OIL AND GAS

7.SAFETY:

New drilling rules might help, OSHA chief says, but won't happen

8.POLICY:

Western sanctions have undermined Russian shale, Arctic development -- scholar

9.PEOPLE:

Halliburton appoints integration team for Baker Hughes buyout

10.EAGLE FORD:

Texas field tallies its billionth barrel

11.OHIO:

IG report finds possible conflict of interest in inspector evaluating his father's oil business

12.OIL:

Dropping fuel prices a $29B boon for shipping companies

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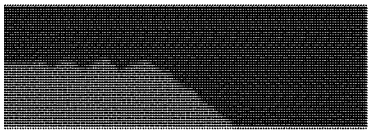

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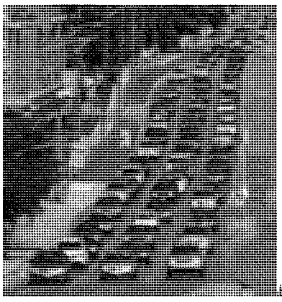


Air & Radiation Law News

for December 5, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Appeals Court Upholds Dismissal of Lawsuit Over EPA Failure to Revise Ozone Regulations

The Environmental Protection Agency doesn't have a clear nondiscretionary duty under the Clean Air Act to promulgate revised regulations governing the implementation of prevention of significant deterioration program for ozone,...

Air Pollution

Company Granted Time to Review Ferroalloy Data

The Environmental Protection Agency again is extending the comment period on its supplemental proposed revisions to air toxics emissions standards for ferroalloy facilities, a move that will give one company extra time to analyze new data....

Budget

President Undermined Party on EPA Appropriations, House Democrat Says

President Barack Obama's proposals to reduce funding for the Environmental Protection Agency hurt his party's negotiating power in the ongoing appropriations process, a senior House Democrat told Bloomberg BNA....

Climate Change

Concept Backing Carbon Capture Projects Not Yet Supported by Real-World Economics

Scientists know of only two credible ways to prevent temperatures from rising to dangerous levels: Stop burning fossil fuels or capture and bury the carbon dioxide byproduct before it gets into the atmosphere....

Climate Change

Gradual Carbon Squeeze to Overcome Climate Change Deadlock, Brazil Says

An international climate agreement next year should encourage developing nations to gradually take on tighter carbon-reduction targets after 2020, helping overcome barriers to previous emission deals, according to Brazil....

Climate Change

Lima Discussions Dominated by Question Of How to Pay for Climate Change Mitigation

Talks on finance took center stage Dec. 4 at the Lima climate change conference, with debate heating up over the language that should be used to refer to financial obligations in the text of next year's international agreement to address...

Emissions Trading

China Issues Draft Guidelines on Greenhouse Gas Emissions Calculation for 10 Industries

China's National Development and Reform Commission released draft guidelines for measuring, reporting and verifying greenhouse gas emissions within 10 major industries as the country prepares to launch a

national emissions trading...

Emissions Trading

Millions of Allowances Sold During First California-Quebec Auction at $12.10 Each

California and the Canadian province of Quebec, which together run North America's biggest carbon market, sold greenhouse gas allowances for $12.10 each in their first joint auction Nov. 25....

Energy

Canada LNG Cleaner Answer to Growing Energy Demand, B.C. Minister Says

Liquefied natural gas remains the "best answer" to meet growing global energy demand as major importers such as China seek less-polluting fuels, British Columbia's environment minister Mary Polak said....

Energy Efficiency

Senators Seek Lame-Duck Vote For 'Mini' Energy Efficiency Bill

The authors of a long-stalled energy efficiency bill have introduced a scaled down "mini-package" of bills that have previously passed the House, hoping that it will be moved by unanimous consent during the remaining weeks of Congress,...

Energy

FERC Nominee Colette Honorable Pledges To Be 'Fair,' Draws Broad Bipartisan Support

Colette D. Honorable, the president's latest nominee to the Federal Energy Regulatory Commission, received strong bipartisan support in a Senate hearing Dec. 4....

Energy

Petronas Defers Decision on LNG Project In Canada, Wants $32 Billion Cost Lower

Petroliam Nasional Bhd. deferred a decision to build a liquefied natural gas terminal in Canada in the latest global investment setback from plunging oil prices....

Energy

Senate Confirms Two Energy Department Nominees, Begins Work on Backlog

The Senate voted Dec. 4 to confirm two long-stalled Energy Department nominees, with the chamber preparing to work through a backlog of pending agency nominations before Republicans take over next year. ...

Energy

Senate Unlikely to Alter House Tax Bill Extending Wind Credits, Energy Incentives

The Senate is unlikely to alter a House-passed tax bill that would only extend the wind production tax credit and other expired energy incentives through Dec. 31, leaving their fate beyond 2014 in the hands of a Republican-controlled Congress....

General Policy

National Australia Bank Plans First Green Bond by Aussie Lender

National Australia Bank Ltd. plans to become the first of the country's lenders to sell bonds to fund more environmentally sound projects....

International Climate

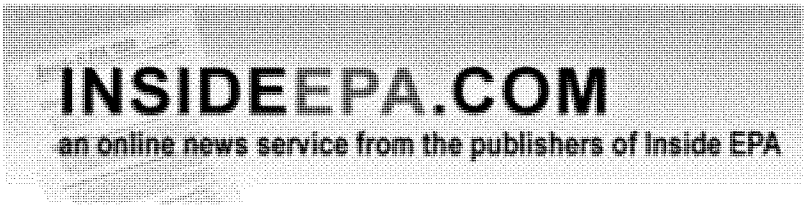
China Broadens Commitment to Reduce Carbon Emissions, Urges Speed-Up in Aid

China offered new details on its commitment to rein in greenhouse gases and called on rich nations to speed up delivery of the $100 billion in annual climate-related aid they've promised by 2020....

Sustainability

Former CEQ Official to Head New York Office

Nilda Mesa, a former official of the White House Council on Environmental Quality and the Environmental Protection Agency, has been named director of a newly created New York City Office of Sustainability. The appointment, announced Dec....



Inside EPA **Weekly Report**, 12/05/2014

http://insideepa.com/newsletters/inside-epa

Latest News

API Outlines Tentative Support For Limited EPA Methane Plan For Industry

American Petroleum Institute (API) officials are suggesting they could support a limited expansion of EPA air rules to cut natural gas drilling emissions through controls on volatile organic compounds (VOCs) in the administration's upcoming methane reduction plan, but are warning against imposing any controls on methane emissions.

Final Fuel Classification Briefs Reiterate Challenges, Defense Of EPA Rule

EPA, industry and environmental groups have filed their final briefs in litigation that challenges the agency's rule defining when commercial secondary materials can be burned as fuel rather than solid waste, reiterating arguments made in earlier filings in the consolidated case where both industry and environmentalists are opposing parts of the rule and defending other sections of it.

Democrats Tout Short-Lived GHGs Bill As Marker For 2015 Climate Debate

Senate Democrats are touting bipartisan legislation to curb short-lived climate pollutants (SLCPs) as a route for achieving bipartisan consensus on limited actions to address climate change, in an apparent effort to keep climate legislation alive despite expected hostility to new climate initiatives from next year's Republican Congress.

ECOS' 'Broad' ESPS Comments Underscore States' Split On Climate Change

The Environmental Council of the States (ECOS), representing many state environmental agencies, is offering self-described broad non-controversial comments on EPA's proposed greenhouse gas (GHG) rule for existing power plants, underscoring a long-running split among ECOS' state members on the need for climate change policies.

Greenwire

EPA:

McCarthy's aides plow ahead on regs, gird for combat on Hill

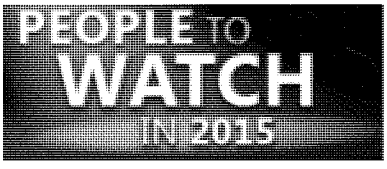
Robin Bravender, E&E reporter

Published: Thursday, December 4, 2014

Third in a series on energy and environment staffers worth watching in 2015.

U.S. EPA's officials will spend much of the next year trying to wrap up big-ticket rules and defend their work against critics, including newly empowered Senate Republicans.

SPECIAL SERIES



In this series, E&E rounds up some of the key players on energy and environmental policy.

Among major rules slated for 2015 release is a regulation to cut greenhouse gases from power plants, a tougher national standard for ozone and a contentious clean water rule, all of which have already sparked storms of criticism. Meanwhile, EPA will continue its public relations battle against industry groups and GOP lawmakers and can expect to be the target of additional hearings and investigations with Republicans holding Senate committee gavels.

While EPA Administrator Gina McCarthy will continue to be the public face of EPA's efforts -- and can expect to spend plenty of time testifying on Capitol Hill -- her top staffers will be toiling behind the scenes to try to make EPA's new policies legally bulletproof, conducting public outreach campaigns and running the day-to-day operations for the agency's more than 15,000 employees.

Here's a look at some of McCarthy's key aides:

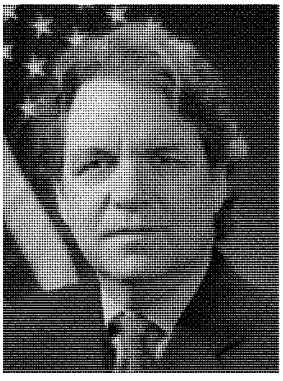
Joe Goffman, associate assistant administrator and senior counsel in the air office

The lead attorney in EPA's air office, Goffman has been one of the chief architects of the Obama administration's air regulations since he joined the agency in 2009. He and other key air officials are preparing to finalize in 2015 some of the major air policies they've been working on for years.

That includes the pending rules to slash greenhouse gas emissions from power plants. "The Clean Power

Plan will take up a lot of my time," Goffman said in a recent interview. He'll also be involved in the administration's strategy to cut methane emissions from the oil and gas sector.

Goffman's job entails plenty of face time with White House officials as the administration coordinates its regulatory plans. And after the GOP takeover of the Senate, he said, "I expect that we will perhaps have even more opportunities to share our thinking on a lot of these actions."



Joe Goffman. Photo courtesy of EPA.

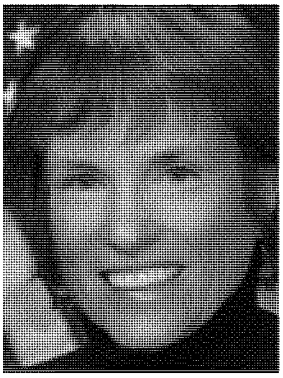
The former Senate aide describes himself as a gym rat who's "fairly fanatical" about music. He's a Philadelphia native who roots for the NFL's Eagles and all the other Philadelphia sports teams. There are some "healthy rivalries" inside EPA when it comes to sports, he said (McCarthy is a devoted fan of the New England Patriots and the Boston Red Sox). Goffman has three children; the youngest is a freshman in college. He's also got two cats: Sagwa (named for a Siamese cat that starred in a PBS Kids cartoon series) and Sappho (named after the Greek poet).

Lisa Feldt, associate deputy administrator

Feldt stepped up this year to serve briefly as EPA's No. 2 and returned to her post when McCarthy hired a new acting deputy, Stan Meiburg.

She's part of McCarthy's inner circle and is now working closely with Meiburg in his role as the agency's chief operating officer. Feldt has been tapped to lead the Montgomery County, Md., Department of Environmental Protection next year, but she's played a crucial role in getting Meiburg up to speed as the deputy's office prepares for a busy year of overseeing the next round of employee buyouts and managing a host of budget and personnel issues. She'll continue to be a key player in setting local environmental policies from her new post.

Feldt is an agency veteran who first joined EPA as an entry-level engineer during the Reagan administration. She spent about a decade at the Department of Energy working on nuclear cleanup projects and started her own consulting firm in 2000. Feldt returned to EPA in 2009 when she was asked to be the No. 2 official in the Office of Solid Waste and Emergency Response and was promoted to the agency's leadership team in 2013.



Lisa Feldt. Photo courtesy of EPA.

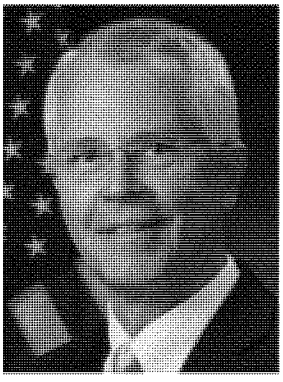
She has engineering degrees from George Washington University and Union College. During her early years working in the Superfund program, she shared an office with former EPA chief Lisa Jackson. Feldt lives in a waterfront house in Annapolis with her husband, Al, a former EPA and DOE employee.

Ken Kopocis, deputy assistant administrator in the water office

Kopocis is the de facto head of EPA's water shop, although his nomination to formally take on the job has been stalled since 2011. The GOP Senate takeover "does not bode well" for his confirmation, he said in a recent interview. Meanwhile, he said, "I'm going to try to emphasize trying to get the work of the agency done here in the Office of Water."

That'll include working to finalize EPA's controversial proposal to clarify the jurisdiction of the Clean Water Act, which EPA has said is on track to be completed next spring. Kopocis will also be working on an upcoming EPA rule to set wastewater discharge guidelines for steam electric plants. The agency is under a consent decree to finalize its rule by Sept. 30, 2015.

Kopocis joined EPA's water office in 2011 after more than two decades on Capitol Hill. He spent much of his time on Capitol Hill as counsel for the House Transportation and Infrastructure Committee, with a brief stint as deputy staff director for infrastructure at the Senate Environment and Public Works Committee.



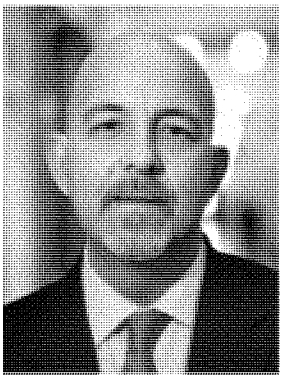
Ken Kopocis. Photo courtesy of EPA.

He's a Nebraska native who now lives in Alexandria, Va. He has two children and three granddaughters who all live in Virginia and whom he gets to see regularly. He used to play golf on occasion but hasn't found himself with much spare time lately. "The job tends to keep me pretty busy," he said.

Brian Bond, associate administrator of public engagement and environmental education

Bond, a former White House staffer, heads up EPA's outreach and education office, which will be central to EPA's efforts to communicate with stakeholders and the public about its policies and programs.

The office manages environmental education grant programs and efforts to increase public awareness about environmental issues. It also maintains EPA's relationships with a range of public and private organizations.



Brian Bond. Photo courtesy of the White House.

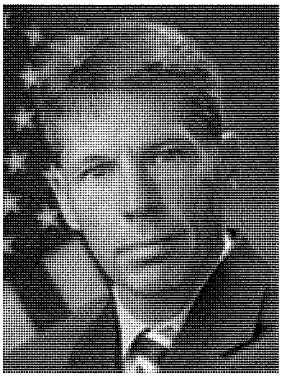
Prior to joining EPA, Bond was deputy director of the White House Office of Public Engagement. He has also held jobs as national constituency director for President Obama's 2008 campaign, executive director of the Democratic National Committee's Gay and Lesbian Leadership Council, executive director of the Gay and Lesbian Victory Fund, and executive director of the Missouri Democratic Party.

He's a Missouri native who graduated from Missouri State University with a degree in public administration.

Matthew Fritz, deputy chief of staff for operations

McCarthy recruited Fritz, who was her chief of staff when she led the Connecticut Department of Environmental Protection, to join her at EPA. He arrived at the agency's headquarters in 2013, and he's since been helping to manage the day-to-day operations.

He's the logistics person for McCarthy's travel and scheduling and helps to manage the team surrounding the administrator. He's picked up some additional duties since the other deputy chief of staff, Arvin Ganesan, left his spot earlier this year. Fritz has been pitching in on issues like the clean water rule and other policy issues that comprised Ganesan's portfolio.



Matthew Fritz. Photo courtesy of EPA.

Before arriving at EPA, Fritz worked as outdoor recreation bureau chief at the Connecticut DEP and in the office of the state's former Republican Gov. Jodi Rell as a special assistant for policy.

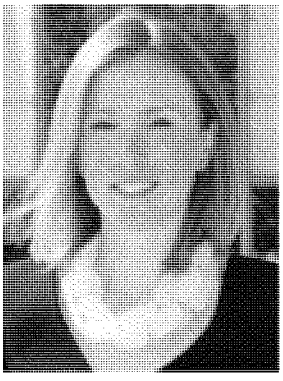
He hails from Wallingford, Conn. His parents still live in the house he grew up in, and his mother, Mary, is a Democratic member of the state Legislature. He's competed in 19 marathons and runs almost every day. He and his family moved to Washington, D.C., when McCarthy asked him to work at EPA.

"It was really a personal decision to come down and work for Gina as a friend, more than anything else," Fritz said. It was a tough decision because he has three young children (ages 13, 10 and 8), he said, but "I decided to do this for her, and for the work that she does."

Liz Purchia, press secretary

As EPA's point of contact for a flurry of press inquiries that flood into the agency, Purchia might field a hundred media requests on any given day. She deals directly with reporters on any hot-button issues relating to McCarthy or the agency, including climate change policy and EPA personnel issues.

She travels regularly with the administrator, helps to orchestrate EPA's media events and works with other communications staffers to shape the agency's messaging. Next year, she's expecting to see even more scrutiny into EPA's activities with plenty of focus on EPA's climate regulations.



Liz Purchia. Photo courtesy of Liz Purchia.

Purchia joined the EPA press shop in March after a stint in Boston at the Solomon McCown & Co. public relations firm. She did communications for Obama's inaugural committee and was press secretary in Iowa during the 2012 re-election campaign.

For the first three years of the Obama administration, she worked at the Department of Agriculture, where she was deputy press secretary for Agriculture Secretary Tom Vilsack and Deputy Secretary Kathleen Merrigan. She also worked on the administration's first inaugural committee and as a field organizer for Obama's 2008 campaign.

Purchia is from Winchester, Mass., outside Boston. She graduated from Hamilton College in Clinton, N.Y., with a bachelor's degree in world politics and a minor in studio art. She still occasionally dabbles in painting, plays soccer and got engaged on a recent trip to Ireland to a USDA employee.

ENERGY EFFICIENCY:

Slimmed-down Shaheen-Portman bill returns for end-of-year push

Nick Juliano, E&E reporter

Published: Thursday, December 4, 2014

Sens. Jeanne Shaheen (D-N.H.) and Rob Portman (R-Ohio) yesterday introduced a scaled-down version of their energy efficiency bill in a form that mirrors already-passed House legislation for one last attempt to push it across the finish line before the end of this year.

Shaheen said she hopes the Senate takes up the measure before it adjourns this year. It includes some pieces from the larger Shaheen-Portman bill that failed to advance over the summer amid partisan procedural squabbling over amendments.

"Energy efficiency is the cheapest, fastest way to address our country's energy needs and has strong, bipartisan support," Shaheen said in a statement. "The bill we introduced yesterday includes important provisions from our more comprehensive legislation that will save consumers money and lower pollution, and I hope we can pass it before we adjourn this year."

The bill, S. 2971, would create a "Tenant Star" program to encourage efficiency upgrades in buildings, direct federal agencies to reduce data centers' energy use, adjust standards for grid-connected water heaters and establish efficiency benchmarking standards for buildings. It mirrors the provisions in H.R. 2126, from Reps. David McKinley (R-W.Va.) and Peter Welch (D-Vt.), a bill that passed the House on a 375-36 vote earlier this year (*E&E Daily*, March 6).

Portman has previously said the larger bill will return in the next Congress, when Republicans will have a majority. After winning her re-election bid in November, Shaheen likely will return as a lead sponsor of the legislation.

ADVOCACY:

New boss, same focus for climate activist group 350.org

Manuel Quiñones, E&E reporter

Published: Thursday, December 4, 2014

The new chairman of the small but influential climate advocacy nonprofit 350.org is promising to keep fighting the proposed Keystone XL oil pipeline while expanding his activist group.

KC Golden is replacing -- at least temporarily -- 350.org founder Bill McKibben, who announced this week he would become a senior adviser, working on ideas and strategy rather than traveling and doing more time-consuming duties (*E&ENews PM*, Dec. 3).

Golden, senior policy adviser for the Seattle-based nonprofit Climate Solutions, said people have warned him of the difficulty of trying to fill McKibben's shoes.

"I don't want anybody to think this is about replacing Bill. That would be daunting, and nobody is going to do that," Golden said in an interview. "Bill is still Bill. Bill still fills Bill's shoes.

Incoming 350.org board chairman KC Golden is a well-known climate activist. Photo courtesy of Climate Solutions.

"I will look more like a conventional chair. I'm going to shoulder a little bit more of the load."

McKibben wrote in a blog post: "The constant travel of the last 7 years has helped a little, I hope, to build this movement, but I'm ready for a bit more order in my life."

He added, "Don't worry -- I'll still be there when the time comes to go to jail, or to march in the streets, or to celebrate the next big win on divestment. But I'd like to see more of my wife."

Golden, who will also keep working for Climate Solutions, said the changes also mean that people will hear more from 350.org's growing list of staffers, including Executive Director May Boeve.

While he predicted that his leadership wouldn't amount to a "giant change," Golden said he was looking forward to "help out the organization some more and help it grow into the next stages."

Golden's resume includes being a climate and clean energy special assistant to former Seattle Mayor Paul Schell and Washington state Department of Community, Trade and Economic Development assistant director focusing on energy issues.

Between 1989 and 1994, Golden, graduate of the University of California, Berkeley, and Harvard University's Kennedy School of Government, was executive director of a group called the Northwest Energy Coalition.

350.org has indeed been growing. Founded by McKibben in 2007, the group now employs more than 70 staffers. And while growth is important, Golden said it was more about growing the climate movement than one group's standing.

"I think one of the things we pride ourselves on and one of the things I've always been impressed with," Golden said of the group, "is we're pretty nimble."

Golden, recipient of a prestigious Heinz Award for public policy, kept any concrete plans close to the vest,

instead praising 350.org's track record.

"It's doing such fantastic work building a grass-roots movement, and that will continue to be the bread and butter," he said.

Golden also suggested the possibility of new or expanded campaigns. He said opposition for KXL remains "vitally important." But perhaps he'll bring an increased focus to coal export issues, a key Golden focus at Climate Solutions.

McKibben said of Golden: "[H]e's a remarkable organizer from Seattle, and his big-picture thinking on what we really need to do to win this fight has been a guiding light for the climate movement for years."

ENERGY POLICY:

Ayotte wants GOP Congress to do more than just block Obama's rules

Nick Juliano, E&E reporter

Published: Thursday, December 4, 2014

Sen. Kelly Ayotte says two years spent blocking Obama administration environmental rules without advancing alternative approaches to problems like air pollution would represent an abdication of lawmakers' duty and miss an opportunity to establish long-term policies that could have wide buy-in.

Ayotte, a moderate Republican who is up for re-election in 2016 in traditionally blue New Hampshire, outlined her approach today in a speech hosted by Republican groups that tend to be more welcoming of environmental regulation. She noted her support for U.S. EPA rules limiting cross-state air pollution and mercury emissions, due to the problems her home state encounters from air pollution drifting over from Midwestern power plants.

While Ayotte did not delve into the impacts of climate change or specifically address EPA's efforts to limit greenhouse gas emissions from power plants, she said she wants Congress to do more than simply try to block the administration's environmental proposals, and she repeatedly touted the value of "market-based" approaches to dealing with a variety of environmental issues.

"Count me in as someone who, as we look at these regulations, I would prefer, rather than us always be in a battle ... that we actually work together and come up with longer-term solutions," she said in the speech, which was hosted by the Conservation Leadership Council, Concord 51 and Citizens for Responsible Energy Solutions.

In a brief interview after the speech, Ayotte said she was not contemplating a new climate bill such as the cap-and-trade legislation that died in 2010, before she was elected. But she urged a broader approach than simply trying to block what EPA has proposed.

"I think that as we look at the proposed carbon rules that the administration is coming up with, I just hope that we can as a Congress say, are we just going to say that's what we're looking at?" she said. "Or are we really going to look at an alternative" that brings both businesses and environmental groups to the table?

Incoming Majority Leader Mitch McConnell (R-Ky.), whose home-state coal plants contribute some of the pollution that wafts to New Hampshire, has pledged to use any available means to block what he terms

EPA's "war on coal." That approach likely will include appropriations riders and disapproval resolutions, among other means.

The coming battles over environmental rules will highlight fault lines among Republicans who face different home-state incentives, like Ayotte and McConnell do. Furthermore, the party has to defend several seats in states more friendly to Democrats, including Illinois, Wisconsin and Pennsylvania, along with Ayotte's seat in New Hampshire.

In many ways, the next session will be the flip side of what outgoing Majority Leader Harry Reid (D-Nev.) faced in the last two years in fights over environmental rules and oil and gas industry desires like the Keystone XL pipeline. Those issues split embattled Democratic moderates like Sens. Mark Pryor (Ark.), Mark Begich (Alaska) and Kay Hagan (N.C.), all of whom lost last month. Sen. Mary Landrieu (La.) is far behind in the polls ahead of Saturday's runoff.

An early item of business next year, Ayotte suggested, likely will be the energy efficiency bill co-sponsored by Sens. Rob Portman (R-Ohio) and Jeanne Shaheen (D-N.H.). The bill failed to advance earlier this year amid procedural disagreements stemming from Reid's refusal to grant GOP demands for amendment votes on KXL, EPA's climate rules and liquefied natural gas exports.

With McConnell pledging a return to "regular order" next year, the bill stands a better chance of advancing, and it likely would serve as a vehicle for a wide-ranging energy policy debate as members put forward various amendments, Ayotte said.

"This is one I would put top on the list of what can we get done in the coming Congress," she said.

OIL AND GAS:

Forest Service finalizes plan to limit drilling on Colo. grassland

Phil Taylor, E&E reporter

Published: Thursday, December 4, 2014

The Forest Service this week finalized a plan to keep roughly 100,000 acres in Colorado's eastern plains open to oil and gas leasing, but to forbid companies from drilling them from atop federal lands.

The Pawnee National Grassland's final environmental impact statement and draft record of decision is likely to please oil and gas companies that in October said they could access the minerals by drilling horizontally from surrounding private lands.

But it upset one environmental group that warned it would further industrialize the grassland and contribute to climate change.

Grassland Supervisor Glenn Casamassa said the draft decision, which is still subject to objections from the public, would reduce the industry's footprint in the oil-rich region while ensuring taxpayer-owned minerals are not wasted.

"Today's announcement protects the Pawnee's unique shortgrass prairie ecosystem and recreation opportunities, while still supporting the economic recovery of oil and gas resources from Colorado's Niobrara Shale reserves," Casamassa said Tuesday in a statement.

The 193,000-acre Pawnee, which consists of scattered federal lands among a larger patchwork of private

and state lands, is an internationally known birding area whose cottonwood bottoms offer scenic respite for nearby Fort Collins residents. Its resident birds include the lark bunting, Colorado's state bird; mountain plover; burrowing owl; and other birds of prey.

But it's also located amid one of the nation's most booming oil plays in Weld County, which boasts 21,600 active oil and gas wells, the most in the state, many of them tapping oil from the Niobrara Shale. Oil production soared in Colorado in 2013, rising more than 30 percent from the previous year to 176,500 barrels a day, the highest level in decades, according to the Colorado Oil and Gas Conservation Commission.

Currently, the roughly 100,000 acres of unleased federal minerals are available to leasing under various stipulations, including timing limitations, controlled surface use and no surface occupancy.

The new plan would keep nearly all of those acres available, but only by drilling from surrounding lands.

Counterintuitively, keeping the acres available to leasing will actually create fewer impacts than if they were taken off the table, the Forest Service said. That's because companies currently must drill around the federal minerals, requiring redundant surface infrastructure.

The "no leasing" alternative would result in up to 60 percent more surface disturbance on adjacent private and state lands, the agency said. It would also result in the loss of roughly 412 million barrels of oil and 815,000 cubic feet of gas.

Oil and gas officials have warned that federal minerals will be drained -- at taxpayers' expense -- by drilling in adjacent nonfederal leases.

The Forest Service plan would ban leasing at Pawnee Buttes and Crow Valley Campground areas, about 2,980 acres.

The agency said it needed to update its 1997 oil and gas plan for the grassland due to advances in drilling technology, which allows wells to be drilled miles horizontally from surrounding well pads.

The Western Energy Alliance, an oil and gas trade group based in Denver, in October said it could support a ban on surface disturbance at Pawnee, as long as there was some flexibility for waivers.

"The Forest Service has proposed a sensible approach," Kathleen Sgamma, the group's vice president of government and public affairs, said at the time.

But the environmental group WildEarth Guardians has warned that the Forest Service plan would "despoil this fragile grassland," threatening wildlife like prairie dogs, swift foxes, burrowing owls and mountain plover.

Jeremy Nichols, the group's Climate and Energy Program director, this week said the agency had rejected its calls to impose tougher stipulations to safeguard air, water and wildlife.

"The surface of the Pawnee National Grassland won't have rigs on it, but that is little consolation for the region's clean air, water quality and wildlife, which of course aren't constrained by the political boundaries of the grassland," he said in an email.

Nichols said the Forest Service was also doing a poor job evaluating how leasing would impact climate change, particularly when oil mined from the grasslands is burned in cars or other facilities. WildEarth asked the agency to quantify carbon dioxide costs using the social cost of carbon protocol, but the agency said such an analysis would be "misleading," Nichols said.

In his draft decision, Casamassa wrote that greenhouse gas emissions "are a consequence of oil and gas production, and developing these leases will increase GHGs and their social cost."

But he said the increase in emissions is "negligible" compared with regional emissions from the oil and gas sector, and "inconsequential" in the context of global emissions. He said also that any marginal decrease in emissions by banning leasing "will result in greater risk of other environmental impacts because it increases surface disturbance, wells and well pads on adjacent lands."

Nichols said WildEarth plans to file an objection to the plan. The deadline for objections is Jan. 20.

TRANSPORTATION:

Obama praises Chinese infrastructure, urges fix for U.S. project financing

Sean Reilly, E&E reporter

Published: Thursday, December 4, 2014

The federal government needs a new long-term approach to financing transportation projects, President Obama suggested yesterday as he drew an unflattering comparison between the condition of U.S. and Chinese infrastructure.

"It's probably a good time for us to redesign and think through how do --- what is a sustainable way for us on a regular basis to make the investments we need," Obama told members of the Business Roundtable, according to a transcript released by the White House.

That "may be something that we can introduce into the tax reform agenda," Obama added. "It may end up being too complicated and we got to do something separate, but we've got to figure this out. We are falling behind."

Obama was responding to a question from a participant in the meeting with the round table, a group of chief executive officers of large American companies. However, the president acknowledged that before coming up with a long-term fix, his administration and Congress must agree on a fresh patch for the Highway Trust Fund, the chief federal conduit for road and transit financing.

Courtesy of an almost $11 billion bailout approved by lawmakers in July, the fund is expected to remain solvent through the end of May but will need another infusion of cash after that. Obama said he would "engage" with Republican congressional leaders "to see what they think they can get done to make sure that we're not running out of money."

Following another question, Obama said he does not take competition with China lightly but is confident that the United States makes better cars.

"On the other hand, the one thing I will say is that if they need to build some stuff, they can build it," he said. "And over time, that wears away our advantage competitively."

The president reflected on his visit to China last month for the Asia-Pacific Economic Cooperation Summit.

"It's embarrassing -- you drive down the roads, and you look at what they're able to do," he said. "The place that we stayed at for the APEC Summit was this lavish conference center, and it probably put most of the conference centers here to shame. They built it in a year."

RENEWABLE ENERGY:

Wind supporters cite global warming benefits in push for longer PTC

Nick Juliano, E&E reporter

Published: Thursday, December 4, 2014

In trying to persuade lawmakers to extend a key renewable energy tax credit beyond the end of this year, supporters are arguing the additional wind power it would spur could put a significant dent in greenhouse gas emissions and is a key piece of the broader strategy to fight global warming.

Environment America today released a report, "More Wind, Less Warming," making the case for expanding the credit. Among other findings, the report says additional wind installations would help replace coal-fired power and reduce emissions. For example, supplying 30 percent of U.S. electricity from wind by 2030 would reduce power plant carbon dioxide emissions more than 40 percent compared with 2005, a level that would help states exceed targets from EPA's Clean Power Plan.

American Wind Energy Association President Tom Kiernan, who appeared at a press event this morning unveiling the report, called wind energy the "single largest source" of U.S. CO2 reductions over the last several years. Wind currently supplies about 4 percent of U.S. electricity.

In something of an ironic twist, the argument mirrors what conservative groups have been saying as they seek to eliminate the credit. Organizations linked to the Koch brothers' political network, such as Americans for Prosperity and the American Energy Alliance, earlier this year started painting the production tax credit as a central component of "the president's climate plan" in an effort to foment opposition among Republicans wary of EPA regulations and other aspects of the plan. Critics also have argued that wind's emissions benefit is overstated because wind is intermittent and has to be backed up by natural gas or coal power.

Anna Aurilio, director of Environment America's Washington, D.C., office, said supporters should not shy away from touting the benefits of wind as a tool to reduce emissions while also creating jobs and not straining water resources in the Midwest.

"That seems wacky" to oppose the credit on grounds that it is part of the climate plan, she said today.

Sens. Ed Markey (D-Mass.) and Tom Udall (D-N.M.) also appeared at the event. Both said they want to see the PTC extended beyond the end of this year, as would be the case under a bill that passed the House last night. But such an outcome seems almost impossible before the end of the year; a spokeswoman for Sen. Ron Wyden (D-Ore.), who had been fighting the House bill, last night said there appeared to be no paths to an alternative bill (*E&E Daily*, Dec. 4).

Kiernan said he expected very little activity would be spurred by the brief extension because too little time remains for wind developers to start building projects or make "safe harbor" investments before the end of the year, when the credit would expire again. He questioned the Joint Committee on Taxation's estimate that the credit renewal would cost about $6.4 billion over the next decade, a figure it reduced from about $9.6 billion after discovering a computational error yesterday. The lower figure is still far too high, Kiernan said.

The extension "might create a very small increase in new activity," he acknowledged, but nowhere near what the joint committee anticipates. He said he was aware of no new projects that would be expected to claim the credit; a full analysis will be included in AWEA's annual report next year.

The House-passed "tax extenders" bill came after the collapse of negotiations around a larger bill that would have included a plan to phase out the PTC through 2017. It remains to be seen whether that approach can be revived in the new Congress. Kiernan said it was "along the lines of something that could work for the industry."

TRANSPORTATION:

Supreme Court to hear arguments about Amtrak's status, power to craft regs

Jeremy P. Jacobs, E&E reporter

Published: Thursday, December 4, 2014

The Supreme Court on Monday will wade into the tricky issue of whether Amtrak is a private or public entity in a case that hinges on whether Congress granted it too much leverage in negotiating regulations that govern its performance.

In *Department of Transportation v. Association of American Railroads*, the government wants the justices to overturn a federal appeals court ruling that found Amtrak is exerting too much influence over the promulgation of agency metrics for on-time performance.

The case concerns the 2008 Passenger Rail Investment and Improvement Act, Congress' most recent effort to improve Amtrak's passenger service, which continues to struggle with punctuality.

It directed the Federal Railroad Administration and Amtrak to "jointly" promulgate new metrics and standards for measuring performance.

In March 2009, the agency released a draft proposal that was quickly criticized by freight rail companies. They claimed the standards presented "unrealistic" performance measures for a variety of issues, including on-time performance. They also said they unfairly benefited Amtrak, which uses freight rail tracks for most of its operations.

Despite those criticisms, the rules were finalized in May 2010.

The Association of American Railroads sued, and after the group lost in district court, the U.S. Court of Appeals for the District of Columbia Circuit vacated the standards in July 2013.

In a unanimous ruling from the three-judge panel, conservative Judge Janice Rogers Brown wrote that the law granted Amtrak, which is supposed to be run as a for-profit entity, too much power to shape regulations that affect its own industry.

She drew a comparison to the auto industry.

"Imagine a scenario in which Congress has given to General Motors the power to coauthor, alongside the Department of Transportation, regulations that will govern all automobile manufacturers," Brown, a George W. Bush appointee, wrote. "And, if the two should happen to disagree on what form those

regulations will take, then neither will have the ultimate say. Instead, an unspecified arbitrator will make the call. Constitutional? The Department of Transportation seems to think so" (*Greenwire*, July 2, 2013).

Lurking in the background of the case are two issues, one practical and one legal.

First, Amtrak's on-time performance has continued to decline in recent years, and it is now pointing to the ruling as a contributing factor.

Since they largely use the same tracks, Amtrak and freight operators compete for limited capacity -- a tension that has existed since Congress created Amtrak in 1970 (*Greenwire*, Oct. 31).

Second, the case squarely focuses on the "non-delegation" legal doctrine, which deals with whether Congress can give private entities a role in drafting regulations.

The Obama administration, in asking the high court to review the case, rooted its argument in the court's precedents on the issue.

"This Court has repeatedly sustained the constitutionality of Acts of Congress under which certain provisions could not take effect without the approval of private entities," Solicitor General Donald Verrilli wrote.

Several interest groups have lined up in support of the freight companies, however. They include the U.S. Chamber of Commerce and libertarian Cato Institute, which have filed amicus briefs on the association's behalf.

ENERGY MARKETS:

U.S. oil reserves hit 1975 levels, gas reserves set record -- EIA

Jenny Mandel, E&E reporter

Published: Thursday, December 4, 2014

New U.S. oil and gas resources and a rebound in natural gas prices last year combined to push the nation's proved oil and gas reserves to new highs in 2013, the Energy Information Administration announced today.

Proved gas reserves went up 9.7 percent to reach a record 354 trillion cubic feet (tcf) at the end of 2013, EIA said in a new report, while proved crude oil and lease condensate reserves rose 9.3 percent to 36.5 billion barrels.

Extensions of existing reserves in the Marcellus Shale formation were a major driver of the higher natural gas numbers last year, with Pennsylvania leading the way with a 37 percent increase, adding 13.5 tcf in proved reserves, and West Virginia following closely behind with a 56 percent gain that added 8.3 tcf.

Texas, Wyoming, North Dakota, Arkansas, Ohio and Colorado also saw strong reserve growth, EIA said.

Alaska, Louisiana, Utah, Alabama and offshore reserves in the Gulf of Mexico showed the largest drops in gas reserves, with Alaska leading the list as oil field declines led to reductions in associated natural gas production.

The changing price of natural gas played a major role in changing reserve estimates, since proved reserves by definition are those judged to be recoverable in future years "under existing economic and operating conditions."

Natural gas prices have ridden a roller coaster over the past three years, falling from an average $4.15 per million Btu (MMbtu) in 2011 to $2.75 per MMbtu in 2012, and then returning to $3.66 per MMBtu in 2013, according to EIA. The 2013 gains in natural gas reserves more than offset a 7 percent decline reported in the previous year.

Oil rises for 5th year

EIA said proved oil and lease condensate reserves went up for the fifth year in a row last year, adding 3.1 billion barrels to reach a total of 36.5 billion barrels.

The growth was led by increases in North Dakota from the Bakken and Three Forks formations, which added 1.9 billion barrels. Texas had the second-largest increase with 0.9 billion new barrels showing up on the books.

Nationwide, the increase amounted to a 9 percent boost over 2012 numbers and was paired with declining imports, as crude oil intake fell by nearly 10 percent last year.

The figures on proved oil reserves could decline next year if falling oil prices knock some production out of estimates of what is economically recoverable.

Click here for EIA's report.

COAL:

Cliffs sells W.Va. assets

Published: Thursday, December 4, 2014

In an agreement yesterday, Cliffs Natural Resources Inc. sold its Logan County Coal assets in West Virginia to Colorado Coal II LLC for $175 million.

Cliffs is reportedly looking to downgrade coal operations and shift to more iron-ore products. Cliffs is the United States' largest iron-ore miner.

The company said it is also pursuing the sale of its other U.S. coal assets, including the Oak Grove mine in Alabama and Pinnacle mine in West Virginia.

"This transaction is another important step in executing our strategy to transform Cliffs into a stronger, pure-play U.S. iron ore supplier," said Lourenco Goncalves, CEO of Cliffs.

Cliffs has recently reported losses. This year, shares have fallen 69 percent (Chelsey Dulaney, *Wall Street Journal*, Dec. 3). -- **MH**

NUCLEAR WASTE:

Army seeks to leave radioactive waste at Ind. test site

Published: Thursday, December 4, 2014

The Army is hoping to terminate its Nuclear Regulatory Commission license at the Jefferson Proving Ground in Indiana in a move that would leave almost 162,040 pounds of depleted uranium projectiles and unexploded artillery shells at the firing range there.

A 2,080-acre hot zone at the site was used to test weapons from World War II through 1995. In the 1980s and '90s, uranium munitions were tested there for use to penetrate armored vehicles in Operation Desert Shield.

The Army's decommissioning plan says removing munitions from the ground would be too costly. Instead, it will fence the area with padlocked gates and post signs warning visitors, "Caution, radioactive material."

That's not enough for members of the Jefferson Proving Ground Heritage Partnership, who are concerned that if the Army is allowed to leave the munitions in the ground, they could be carried off by future flooding.

"The Army never thought much about the future," said Mike Moore, a member of the partnership. "They just wanted to test the ammunition. ... No thought was given that you've ruined this land forever" (Charlie White, Louisville *Courier-Journal*, Dec. 3). **-- AW**

INDIA:

Court ruling boots old cars from New Delhi streets

Published: Thursday, December 4, 2014

Vehicles 15 years old and older can no longer drive on the streets of New Delhi, according to an Indian court ruling that aims to clean the city's air.

Banning older vehicles or restricting their use has become a global trend recently as cities battle air pollution.

New Delhi transport officials estimate that the ruling there will affect almost one-third of the 8.4 million vehicles that traverse the city's streets.

In May, the World Health Organization found that New Delhi had the world's dirtiest air in a study of 1,600 cities. It also found that vehicular emissions are the cause of three-quarters of air pollution in India's capital. India rejected the report (Tommy Wilkes, Reuters, Dec. 4). **-- AW**

TAX POLICY:

Pew's Cuttino discusses outlook for clean energy incentives, state action on renewables policy

Published: Thursday, December 4, 2014

As Washington lawmakers consider extending clean energy tax incentives, how are states faring on their renewables policies? During today's OnPoint, Phyllis Cuttino, director of the Pew Clean Energy Program,

discusses a new series of policy briefs analyzing state clean energy economies. Cuttino also weighs in on the heated congressional debate over the production tax credit.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Fri., December 5, 2014

READ FULL EDITION

1.NEGOTIATIONS:

Filipino climate diplomat, famed for his fasting and stirring speeches, is missing from this year's talks

As he prepared for another round of annual U.N. climate change negotiations a few weeks ago, the Philippines' lead negotiator, Naderev "Yeb" Saño, was upbeat about the prospects for the global talks. But Saño has been a no-show this first week of talks in Lima, sparking confusion and outrage among his many followers.

2.STATES:

For regulators, focus on Clean Power Plan quietly shifts from venting to compliance

As the dust settles in the wake of U.S. EPA's comment deadline for its Clean Power Plan, state authorities who spent the last six months detailing technical questions and contentions with the draft rule are increasingly turning their attention toward the specifics of potential compliance pathways.

TODAY'S STORIES

3.STATES:
Will politics scuttle regional efforts to meet EPA CO2 targets?

4.POLICY:
Uncommon in EPA rulemaking, 'severability' could be both a strength and weakness for its CO2 rule

5.DROUGHT:
Calif.'s drought may be worst in 1,200 years -- study

6.AGRICULTURE:
Drought strikes over a third of U.S. winter wheat, 28% of cattle

7.ELECTRICITY:
Major changes in power consumers' buying habits could require a remodeled grid -- study

8.RESEARCH:
Warming ocean waters near Antarctica could help add to sea-level rise -- study

9.EDUCATION:
White House launches initiative to create 'climate-smart citizenry'

10.STATES:
Political denial derailed Neb. climate study bill in 2013

11.DROUGHT:
Report links deforestation to São Paulo's drought

12.NATIONS:
Recent Japanese GHG emissions were worst ever recorded

13.NEGOTIATIONS:
Ecuadorean activists are stopped, harassed on way to climate summit

E&ETV'S THE CUTTING EDGE

14.NEGOTIATIONS:
ClimateWire's Friedman previews Lima talk outcomes, road to Paris treaty

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Fri., December 5, 2014

READ FULL EDITION

1.CLIMATE:

FERC's Clark wants formal agency role in EPA's Clean Power Plan

The Federal Energy Regulatory Commission should have a "formal role" in the implementation of U.S. EPA's Clean Power Plan, says Commissioner Tony Clark. As proposed by EPA in June, FERC would play no part in ensuring that efforts to compel steep cuts in carbon dioxide emissions from power plants do not adversely affect the grid or electricity supply.

TOP STORIES

2.ELECTRICITY:

Climate warming spells harsher future threats for coastal power grids -- study

3.CALIFORNIA:

Enviros file dual challenges to offshore drilling permits

4.SAFETY:

Oil price slump challenges workplace improvements

ELECTRICITY

5.UTILITIES:

Lessons beyond solar for NextEra in Hawaii deal

OIL AND GAS

6.SAFETY:

Energy industries report declining injury rates

7.NEW MEXICO:

Western energy group joins fight against drilling ban

8.TEXAS:

Environmental groups seek to join legal battle over Denton frack ban

9.OHIO:

Enviros file class action seeking to protect self-governance

10.EDUCATION:

Texas law school opens oil and gas institute

11.PEOPLE:

Devon Energy gets a new CEO

12.NORTH DAKOTA:

Gov. projects increases in oil prices in budget, despite global trend downward

13.PIPELINES:

Ontario, Quebec won't consider climate change in deciding on support for Energy East project

14.OIL:

Kurdish-Iraqi deal to add more surplus to saturated world market

E&ETV'S THE CUTTING EDGE

15.NEGOTIATIONS:

***ClimateWire*'s Friedman previews Lima talk outcomes, road to Paris treaty**

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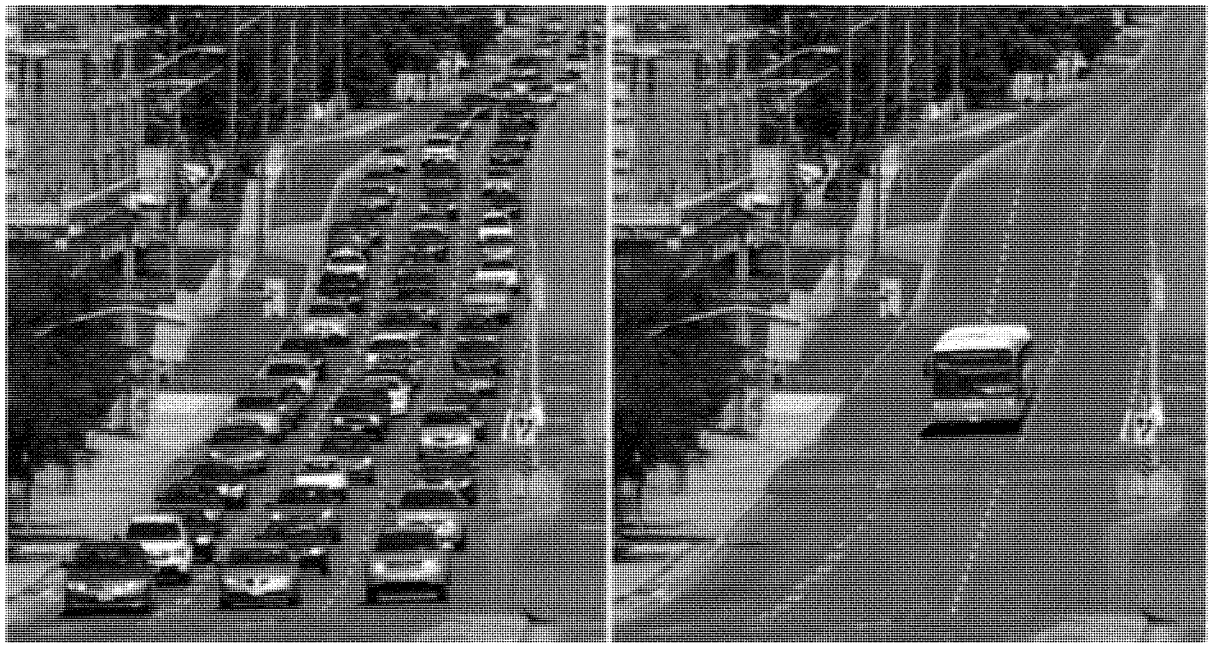

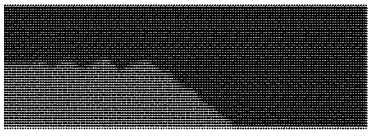

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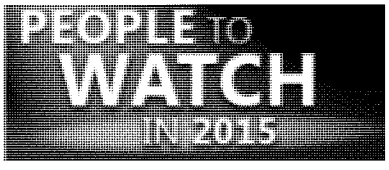
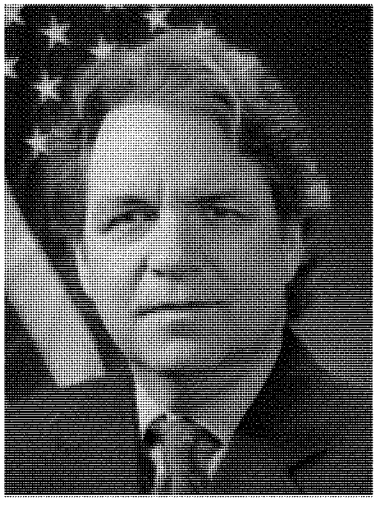
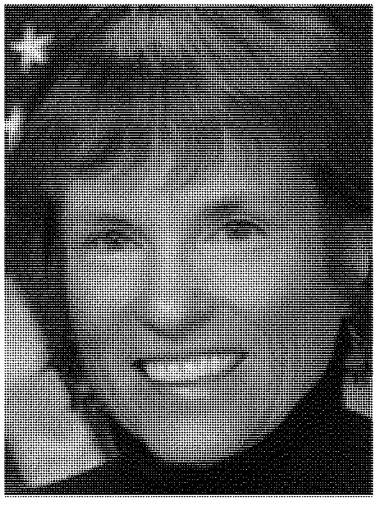
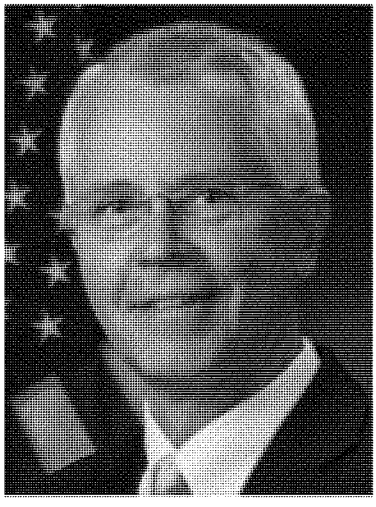
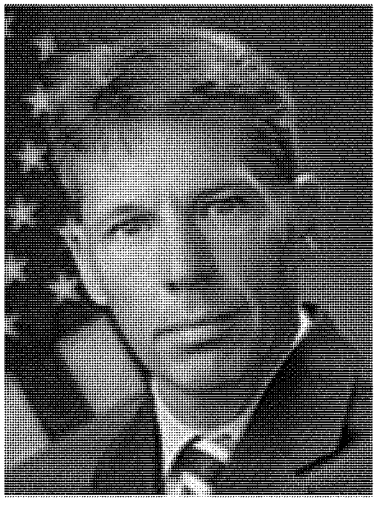
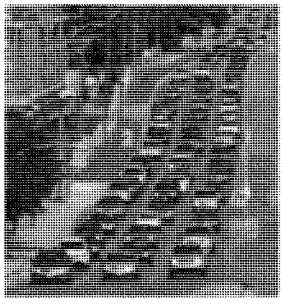

PEOPLE TO
WATCH
IN 2015











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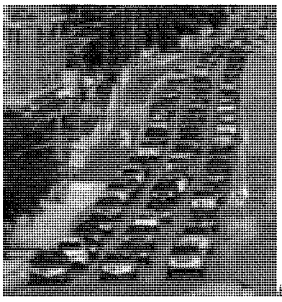

Air & Radiation Law News

for November 24, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Eight Nitrogen Air Plans Incomplete, EPA Says

Seven states and the District of Columbia have failed to submit adequate plans for implementing the 2010 health-based national ambient air quality standard for nitrogen dioxide, the Environmental Protection Agency has determined. The...

Air Pollution

EPA Moves to Extend Deadlines for State Compliance With Cross-State Air Rule

The Environmental Protection Agency is revising compliance deadlines included in the cross-state air pollution rule, an action the agency said is necessary for compliance with the regulation to begin in "an orderly manner" Jan....

Air Pollution

EPA Proposes Limits on Hazardous Pollution Emissions From Brick, Ceramics Kilns

The Environmental Protection Agency issued a proposed rule that would establish limits on emissions of hazardous air pollutants from brick and ceramics kilns, which is the agency's second try at regulating air toxics emitted from those...

Energy

Keystone XL Foes Use Narrow Win In U.S. Senate to Prepare for 2015

Environmental foes of the Keystone XL pipeline are using their narrow victory in the U.S. Senate last week to raise funds for the next showdown on the project....

Enforcement

European Union Prosecutors Say Bloc Nations Fail to Effectively Fight Environmental Crime

European Union member states are failing to effectively prosecute environmental crime, leaving the way open for organized crime groups to reap substantial profits from activities such as the export of illegal waste and trade in endangered...

Environmental Reviews

Proposed Rule Would Allow Real Estate Acquisition Prior to NEPA Review for Projects

The Federal Highway Administration has issued proposed rules that would implement early real estate acquisition procedures for highway projects under the Moving Ahead for Progress in the 21st Century Act (MAP-21). ...

Hazmat Transport

Hazmat Shipper Sues PHMSA Over Emergency Order

National Distribution Services Inc. petitioned a federal appeals court Nov. 20 to overturn a Transportation Department office's decision to uphold a restriction of the company's involvement in hazardous materials shipping (Nat'l...

International Climate

Carbon Markets Must Be Key Part Of Paris Deal, Emissions Trading Group Says

Any final climate agreement reached in Paris in 2015 must include a key role for carbon markets and carbon pricing policies, said David Hone, a board director of the International Emissions Trading Association....

International Climate

China Will Need to Build 1,000 Nuclear Plants to Meet Emissions Reduction Target

China, which does nothing in small doses, will need about 1,000 nuclear reactors, 500,000 wind turbines or 50,000 solar farms as it takes up the fight against climate change....

Natural Gas

Interior, Colorado Reach Agreement To Cancel 17 Gas Leases on Roan Plateau

Seventeen natural gas leases will be canceled in a settlement agreement between the Interior Department, Colorado, conservation groups and energy companies designed to protect environmentally sensitive areas atop the Roan Plateau (Colorado...

Radioactive Waste

Murray Asks If NRC Has Enough Funding To Complete Yucca Mountain Consideration

Sen. Patty Murray (D-Wash.) asked the chair of the Nuclear Regulatory Commission if the agency has sufficient funding to complete its safety evaluation report on the proposed repository for permanent disposal of high-level radioactive...

Renewable Energy

California Desert Solar Project Could Disturb Resources, BLM Says in Rejecting Application

The U.S. Bureau of Land Management rejected Nov. 20 an application to build a 200-megawatt photovoltaic facility in the Mojave Desert, finding the proposed project could disturb important natural and cultural resources....

Taxes

States Impose Fees on Hybrid, Electric Vehicles to Shore Up Highway Funding

With states facing stagnant gasoline tax collections and mounting pressure to improve their transportation infrastructures, many are considering special fees on hybrid and electric vehicles as a source of revenue for highway construction...

Vehicle Fuels

EPA Won't Finalize Renewable Fuel Standard in 2014, Cites Lengthy Delays

The Environmental Protection Agency announced Nov. 21 that it won't issue a final renewable fuel standard for 2014 by the end of the year....

CORRECTION

An article in the Nov. 21 report about Maryland's climate change response inaccurately described the state's greenhouse gas emissions reduction goal. The Greenhouse Gas Reduction Act of 2009 calls for emissions reductions of 25...

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Latest News

EPA Delays CSAPR's Deadlines, Revises Utilities' Emissions Allowances

EPA is delaying the implementation deadlines for its Cross-State Air Pollution Rule (CSAPR) and revising some of the rule's emissions allowances that utilities can use to comply with the air trading program, following a federal appeals court order that reinstated the rule over objections from state and power

sector opponents of CSAPR.

EPA Delays Final 2014 RFS Until Next Year As Refiners Eye Deadline Suit

EPA is delaying its final 2014 renewable fuel standard (RFS) until at least next year as it continues to weigh competing arguments over whether to lower or raise the program's fuel production targets, spurring refiners to threaten EPA with a suit to force a deadline for issuing the rule and resolve lingering RFS compliance uncertainty.

Fearing Jobs Impacts, Unions Seek Eased Existing Power Plant GHG Rule

Citing significant adverse jobs impacts, a group of eight labor unions is urging EPA to scale back its proposed greenhouse gas (GHG) rule for existing power plants, providing Republican and industry critics of the measure a key source of support from within the Democratic constituency.

News Briefs

House Approves Bills To Restrict EPA's Authority

House lawmakers have approved legislation that critics say will restrict EPA's authority on seeking input from its science advisors and in deciding when to issue guidance for implementing its ambient air standards, though the bills are unlikely to proceed in the lame duck Democratic Senate and have prompted White House veto threats.

Greenwire

BIOFUELS:

Stakeholders baffled, angry as Obama admin punts 2014 RFS

Amanda Peterka, E&E reporter

Published: Friday, November 21, 2014

The Obama administration today stepped away from a contentious rule that aimed to slash 2014 targets for ethanol and advanced biofuels.

U.S. EPA conceded in an announcement it couldn't complete the rule during a 90-day review at the Office of Management and Budget and that a final rule wouldn't be ready this year. The agency will likely withdraw the rule from OMB.

The proposed rule setting the 2014 volume mandates for renewable fuels was unveiled by EPA last November. It called for a 16 percent cut to the total biofuels mandate compared with the level set by Congress when it passed the renewable fuel standard into law in 2007 (*E&ENews PM*, Nov. 15, 2013).

The proposal sparked a firestorm in rural America, where ethanol has spurred economic growth, and from the advanced biofuels industry, which has counted on RFS commitments to lure investors. Oil industry groups also objected to the rule, arguing that it didn't go far enough to fix the so-called "blend wall" -- the limit to the amount of ethanol that can be used in today's infrastructure.

"The proposed rule, issued in November 2013, generated a significant number of comments, particularly on the proposal's ability to ensure continued progress toward achieving the law's renewable fuel targets," EPA said today. "Due to the delay in finalizing the standards for 2014, and given the ongoing consideration of the issues presented by the commenters, the agency intends to take action on the 2014 standards rule in 2015."

EPA said that its goal is to address the 2014, 2015 and 2016 mandates next year so the administration can catch up with the statutory deadlines set by Congress. By law, EPA was supposed to have finalized this year's RFS mandates by Nov. 30 of last year.

Earlier this year, EPA extended its compliance period for 2013 to until 30 days after the 2014 rule is finalized. The agency said today that it would make adjustments on its electronic biofuels tracking system to ensure that refiners can continue to use credits for ethanol obtained in 2012 to show compliance with the 2013 year.

Today's announcement surprised biofuel and oil stakeholders. Climate and energy campaigner Lukas Ross of Friends of the Earth, a vocal critic of the ethanol mandate, said the decision "stumped" biofuel watchers.

"Today's announcement confirms that the renewable fuel standard system is in absolute chaos," he said.

Petroleum industry groups used the EPA announcement to renew calls to Congress to repeal the standard. The American Petroleum Institute decried the agency's action as "government at its worst" and said it is time for "consumers, not the federal government" to choose the fuel that goes into gas tanks.

"The rule is already a year overdue and the administration has no intention of finalizing this year's requirements before the year ends," API CEO Jack Gerard said in a statement. "It is unacceptable to expect refiners to provide the fuels Americans need with so much regulatory uncertainty."

In light of the delays, the American Fuel & Petrochemical Manufacturers today notified EPA that it intends to sue over its failure to promulgate the annual standards this year.

Ethanol producers and corn growers, on the other hand, said that the further delay in the standard was unwelcome news, but they largely commended EPA for punting on what they view as a flawed proposal.

"Today's announcement is a clear acknowledgement that the EPA's proposed rule was flawed from the beginning. There was no way the methodology in the proposed rule would ever work, as it went against the very purpose and policy goals of the RFS," said Tom Buis, CEO of ethanol trade group Growth Energy. "The EPA wisely decided not to finalize the rule so they could fix the flawed methodology."

Greenwire's Peterka discusses EPA's action on the 2014 RFS. Click here to watch the episode.

Advanced biofuels producers, which said that the RFS has made it more difficult to obtain capital to build expensive biorefineries, also called EPA's action "the right thing to do" but urged the agency to move quickly on shaping a new policy.

Advanced Biofuels Association President Michael McAdams said his organization is "hopeful that this resets the bar to allow EPA to release 2015 numbers as quickly as possible."

Among the various biofuel sectors, the National Biodiesel Board, which represents producers of advanced biofuels made from soybean oil, used cooking grease and animal fats, issued the statement most critical of the administration.

The biodiesel industry has severely slowed production this year due to the RFS proposal and the expiration of its $1-a-gallon tax credit at the end of last year.

"This administration says over and over that it supports biodiesel, yet its actions with these repeated delays are undermining the industry," said Anne Steckel, NBB's vice president of federal affairs. "Biodiesel producers have laid off workers and idled production. Some have shut down altogether. We know that fuels policy is complex, but there is absolutely no reason that the biodiesel volume hasn't been announced."

EPA Administrator Gina McCarthy earlier this week acknowledged the delays in the rule but said she didn't believe the uncertainty over the rule had affected the renewable fuels industry and affirmed that the administration would continue to support biofuels.

"While I would have preferred to have this rule done earlier, it hasn't slowed down that industry that I can see, and we'll continue to have a commitment to moving renewable fuels out and getting that rule done," she said.

SOLAR:

BLM rejects variance for large Calif. project to protect desert habitat

Scott Streater, E&E reporter

Published: Friday, November 21, 2014

The Bureau of Land Management has rejected a Spanish company's application for a variance that would allow it to build a commercial-scale solar power plant in the Southern California desert, concluding the project would negatively affect an undisturbed desert valley in ways that could not be properly mitigated.

At issue is Iberdrola Renewables LLC's 200-megawatt Silurian Valley photovoltaic solar project, proposed to be built on more than 1,600 acres of BLM land in San Bernardino County near Death Valley National Park, about 10 miles north of Baker.

An Iberdrola Renewables' subsidiary had applied for a right of way to build in an area outside the boundaries of California's two solar energy zones (SEZs) that were established in the Western Solar Energy Plan finalized in 2012 as suitable for industrial-scale solar development. The Silurian Valley project site, however, is in a variance area identified in the Western Solar Energy Plan as potentially suitable for utility scale solar development but requiring more information and analysis before BLM can move forward with a lengthy environmental impact statement to analyze the project.

BLM State Office Director Jim Kenna late yesterday decided that the project site was not suitable for commercial-scale solar development after the initial review and analysis of the Iberdrola Renewables' project "indicated that the impacts to the Silurian Valley, a largely undisturbed valley that supports wildlife, an important piece of the Old Spanish National Historic Trail, and recreational and scenic values," were too great, the agency said in a statement, and "likely could not be mitigated."

The Silurian Valley project is the first variance application to reach the decision stage.

"Based on information collected through the variance evaluation process, the BLM has determined that the Silurian Valley solar project was not in the public interest because of its potential impacts to important biological, cultural, recreational and scenic values," Kenna said in a statement. "This decision was made based on a rigorous review of the specific set of facts related to a particular place and a particular project."

Iberdrola Renewables has 30 days to file an administrative appeal with the Interior Board of Land Appeals, said Dana Wilson, a BLM spokeswoman in Sacramento, Calif.

Iberdrola released a statement indicating it is considering an appeal but has not made a final decision yet on what to do next.

"The BLM, in taking this pre-decisional action, has clearly not taken into account the vast amount of site-specific information that we have submitted over multiple years of prudent development," the company's statement read. "It is unfortunate that the Variance process is enabling unsubstantiated discretion in advance of a proper National Environmental Policy Act review that should be based on clear and predictable requirements."

But Kenna's decision was greeted with enthusiasm by conservation groups who said it demonstrates that the Obama administration is serious about properly siting large-scale projects to avoid natural resource conflicts, despite the administration's stated goal of using federal lands to increase green energy production.

"We're very pleased," said Kim Delfino, the California program director for Defenders of Wildlife in Sacramento. "We're really happy that BLM adhered to the criteria they laid out for projects that could move forward in these variance areas.

"I think it really shows the fact that the BLM has put together a good system and that they are applying it with integrity," she added. "Certainly for the environmental community it builds confidence in the process."

The Obama administration since 2009 has approved 52 solar, wind and geothermal power plants on federal land, including 18 in California alone. If all are built, they will have the capacity to produce up to 14,000 MW of electricity -- enough to power 4.8 million homes and businesses.

President Obama's Climate Action Plan unveiled last year challenges the Interior Department to approve an additional 10,000 MW of renewable energy on federal lands by 2020.

While the Silurian Valley project would have helped Interior move closer to that goal, the valley is not the proper site for a commercial-scale solar power plant, Delfino and others said.

"The Silurian Valley is encircled by and connects together remarkable conservation lands critical for wildlife and cultural resources," said David Lamfrom, associate director of the National Parks Conservation Association's California desert program in Barstow, Calif.

"The valley is at the doorstep to Death Valley National Park, retains a pristine segment of the Old Spanish National Historic Trail and connects to Mojave National Preserve," Lamfrom added. "The Silurian Valley is a well-traveled area; both by national park visitors as well as iconic desert species, including desert kit foxes, burrowing owls, bighorn sheep and golden eagles."

Lamfrom said BLM's decision to deny the variance request "is a powerful step forward for the BLM and its stated landscape-level approach to conservation and guided energy development."

NUCLEAR POWER:

Calif. orders utilities to give ratepayers $1.45B for shuttered plant

Anne C. Mulkern, E&E reporter

Published: Friday, November 21, 2014

Utilities in Southern California must give ratepayers $1.45 billion in refunds and credits tied to the early shutdown of a failed nuclear plant, the state's regulator said yesterday.

Southern California Edison Co. (SCE) and San Diego Gas & Electric Co. (SDG&E) must cut the amount they collect in rates for retired assets at the San Onofre Nuclear Generating Station, the California Public Utilities Commission (CPUC) ruled.

The plant owners also must stop collecting money for replacement steam generators installed in 2010 and 2011 at San Onofre. They must return all generator replacement costs collected after Jan. 31, 2012, when they stopped running. On that date, a leak was found in a generator tube carrying radioactive water.

The net values the utilities will forgo for the generators are $597 million for SCE and $160.4 million for SDG&E, the CPUC ruling said.

"The CPUC determined today that the settlement is reasonable in light of the whole record, consistent with law and in the public interest," CPUC Commissioner Mike Florio said yesterday.

The ruling brought to a conclusion a lengthy battle between consumer groups and the utilities over costs at the San Diego County plant, also known as SONGS.

An investigation blamed the leak on a faulty computer program and poor steam quality that triggered vibrations, causing heavy tube wear in Unit 3, as well as some damage in Unit 2.

Environmental groups faulted the utility for skipping the in-depth scrutiny of a license amendment when it installed the generators. SCE went through the Nuclear Regulatory Commission's 50.59 process for replacing units similar to older models.

The NRC's inspector general last month said the oversight agency had failed to identify red flags when it evaluated and eventually approved the equipment swap under the abbreviated process (*Greenwire*, Oct. 8).

The California settlement "resolves all issues regarding the Public Utilities Commission investigation of San Onofre in a fair and reasonable manner," Pedro Pizarro, SCE's president, said yesterday. "This agreement has broad support from leading consumer, environmental and labor organizations and delivers substantial benefits to our customers."

Ratepayers of SCE and SDG&E will still pay about $3.3 billion in costs over 10 years for the plant, including expenses for replacement power purchased after it was shuttered. SONGS had provided electricity to 1.4 million homes in the densely populated Southern California region.

Shareholders of the utilities will still net a 3 percent return on some of their investment. That's lower than the utility's previously authorized 7.87 percent rate of return.

The CPUC in September 2013 had denied SCE's request to collect the money it had spent through that point buying additional power on the market. The regulator said the utility needed to wait for resolution of the other issues related to the nuclear plant.

Rate drop, then increase

SCE informed ratepayers of the refunds and credits at the same time that it said next year it will start collecting money for the replacement power.

"What we're trying to do is help our customers understand that while the San Onofre settlement will result in a reduction in their rates in January, very soon after that, there will be a rate increase associated with the higher costs to purchase power," said SCE spokeswoman Maureen Brown.

"These rates will reflect higher costs we've already incurred to buy power, as well as purchase power costs we forecast in 2015," she added.

Brown could not say how much SCE was seeking for the replacement power. Brown also could not say whether rates would go up as a result of replacement power costs more than they would drop from the settlement.

There's an additional proceeding affecting rates, Brown said. SCE is applying to the CPUC for approval to access the decommissioning trust for San Onofre, which has about $4 billion.

"Our request for access to the decommissioning trust funds was filed more than year ago, and we've been incurring decommissioning costs since June 2013, when we announced the retirement of San Onofre," Brown said.

If regulators allow that request, customers could see their rates fall as a result. She could not say by how much.

The company also still is seeking money from generator maker Mitsubishi Heavy Industries Ltd. (MHI). SCE in arbitration is asking for $4 billion. If the money is collected, ratepayers would receive half of it after deducting litigation costs, the CPUC said.

SCE in fall 2013 via newspaper ads had lobbied to have ratepayers help pay costs tied to San Onofre. Those included the company's at-the-time approved profit on the plant, the cost of replacement power after it closed, the cost of the steam generators that failed, deferred taxes, construction work in progress and nuclear fuel.

The Utility Reform Network, or TURN, said that by the time the case came to a CPUC decision, SCE and SDG&E were seeking to continue to collect in rates a combined $4.7 billion.

Mindy Spatt, spokeswoman for TURN, called the settlement "a good deal for customers." She said the consumer group tried to get the best deal it could without going to court. But ultimately, SCE was able to collect some of its costs and gain on investment.

"While we weren't able to get it completely disallowed, we were able to get a slashed rate of return," Spatt said. "Our goal here is that customers would not pay for Edison's mistakes."

The CPUC also told the utilities to use shareholder monies and work with the University of California or UC-affiliated entities to look at how to reduce greenhouse gas emissions at existing and future California power plants. San Onofre had supplied power free of carbon emissions.

GRID:

Senate bill offers lifeline for FERC's demand-response effort

Hannah Northey, E&E reporter

Published: Friday, November 21, 2014

Democratic Sen. Martin Heinrich of New Mexico offered legislation yesterday aimed at saving a federal demand-response program left in disarray by a federal appeals court decision.

The Senate Energy and Natural Resources Committee member introduced S. 2947, which would authorize the Federal Energy Regulatory Commission to ensure demand response -- the practice in which consumers voluntarily reduce their power consumption -- is compensated on equal footing with power generation.

The bill would reverse a U.S. Court of Appeals for the District of Columbia Circuit's 2-1 ruling in September that vacated Order 745, a FERC rule that required grid operators to pay customers and demand-response providers the market value of unused electricity.

The court found FERC exceeded its authority in directing that demand-response providers such as factories or commercial buildings receive full market prices when they curtail electricity use. Demand-response programs are retail market actions, and those are the province of state regulators, not FERC, the judges ruled (*EnergyWire*, Sept. 18).

Heinrich in a statement said there are six multi-state grid operators in the East, Midwest and California that ensure reliability while keeping costs low, and the Federal Power Act, which governs those entities, is outdated. Heinrich also said his bill would help modernize the grid and thwart climate change.

"The law was written for a different era when there were no regional power grids and few interstate sales of electricity," he said. "Though the law gave FERC clear authority over matters affecting wholesale power rates, there is some question whether Congress intended a reduction in power use to be considered on equal footing with the generation of power, even though both clearly affect the rates consumers pay for power."

Specifically, the bill would let FERC to prescribe "just, reasonable, and not unduly discriminatory or preferential terms, conditions and compensation" for demand response in the wholesale markets.

FERC is considering asking the Supreme Court to intervene in the federal appeals court's decision, while some grid operators are mulling ways to handle demand response within their regions (*Greenwire*, Sept. 23).

ENERGY MARKETS:

FERC enforcement chief seeks legislative fix for CFTC turf war

Hannah Northey, E&E reporter

Published: Friday, November 21, 2014

A legislative fix is needed to ensure the Federal Energy Regulatory Commission has the necessary authority to police energy markets, FERC's acting director of enforcement told a Senate subcommittee today.

Larry Gasteiger told members of a Senate Homeland Security and Governmental Affairs subpanel at a hearing that the courts have deprived FERC of its authority to bring actions against parties that game the power markets, pointing to FERC's unsuccessful attempt in 2011 to impose a $30 million fine against former hedge fund manager Brian Hunter.

"A legislative fix to eliminate uncertainty on this matter could ensure that FERC has the full authority needed to police manipulation of wholesale physical natural gas and electric markets," Gasteiger told the Permanent Subcommittee on Investigations in prepared remarks.

Hunter was charged with gaming the natural gas futures prices on the New York Mercantile Exchange in 2006, according to papers filed in a federal district court in New York. In the papers, Hunter neither confirms nor denies wrongdoing.

FERC in April announced it would fine Hunter $30 million in civil penalties, but a federal appeals court in March 2013 ruled that the Commodity Futures Trading Commission -- not FERC -- had the power to assess fines for manipulating gas futures markets and backed Hunter's argument that Congress mandated CFTC to police futures trading (*E&ENews PM*, Oct. 8).

Gasteiger today said FERC needs the authority to clearly oversee the markets that fall within its jurisdiction, and he pointed to the differing opinions surrounding the Hunter case.

"Although the commission reads the Hunter decision as narrow in scope, some market participants interpret the decision more broadly to cover not only manipulation in the futures market, but also many additional transactions and products, including those squarely within FERC's jurisdictional markets," Gasteiger said.

Although the CFTC and FERC reached an agreement in January to cooperate in policing the markets --

and comply with the 2010 Dodd-Frank financial reform law -- and the two agencies have ramped up information sharing, the turf war stemming from the Hunter case continues to draw the ire of certain Democratic senators.

In October, Sens. Dianne Feinstein of California, Maria Cantwell of Washington and Carl Levin of Michigan in a letter to CFTC Chairman Timothy Massad accused the CFTC of undermining FERC's oversight by issuing a smaller fine against Hunter following the court's ruling.

They criticized the CFTC's $750,000 fine against Hunter and said it was FERC that Congress meant to vest with greater authority to police the markets following the Western energy crisis. They accused the CFTC of "subverting congressional intent."

Gasteiger also told the Senate subpanel that FERC hasn't discerned any pattern of reliability failures stemming from bank owners or plant operators. The agency, to date, has collected about $902 million in civil penalties and disgorgement, he said.

ELECTION 2014:

Voters in battleground states back action on climate -- poll

Daniel Bush, E&E reporter

Published: Friday, November 21, 2014

Democratic and Republican voters in key midterm races support action on climate change and the Obama administration's proposed power plant rule, a new Sierra Club poll shows.

In five battleground Senate races and the Pennsylvania governor's contest, voters from both parties agreed more with Democratic candidates on climate change, energy and environmental issues, according to the survey, which was released today.

The poll of 500 voters from each state was conducted Nov. 6-10 and had an overall 4.4-point margin of error. Besides Pennsylvania, the survey looked at the Senate races in Iowa, New Hampshire, North Carolina, Colorado and Michigan.

In New Hampshire, Pennsylvania and Michigan, voters favored the winning Democrats' views on green issues over their GOP rivals' views by 17 to 27 percentage points, the poll found.

The same was true in the states carried by Republicans, where the losing Democratic candidates' positions on climate and energy had an advantage of 12 to 19 percentage points among voters.

The survey also found that more than 60 percent of voters in all six states support the proposed power plant rule, and a majority want Congress to take action on climate change.

Sierra Club Executive Director Michael Brune said the results represent a "road map for action" in the next Congress -- and a warning to Republican leaders in both chambers who oppose President Obama's climate change agenda.

Incoming Senate Majority Leader Mitch McConnell (R-Ky.) and House Speaker John Boehner (R-Ohio) have promised to make dismantling U.S. EPA regulations a top priority next year, when the GOP will retake control of the Senate and have an expanded majority in the House.

"McConnell's priorities are the opposite of the voting public's," Brune said this morning on a call with reporters. "Voters in the 2014 midterm election did not vote for dirty air, dirty water or climate denial."

COAL:

Questions raised over authenticity of claims in N.C. Beyond Coal campaign

Published: Friday, November 21, 2014

Correction appended.

A North Carolina anti-coal campaign has declined to release information to back up its claims that 80 companies in the state's western region endorsed it, raising red flags for nonprofit management experts.

North Carolina's Beyond Coal campaign said in October that 80 western North Carolina companies backed its effort to shut down Duke Energy's Lake Julian coal-fired power plant. The campaign, which is a project of the Asheville, N.C.-based Western North Carolina Alliance and the Sierra Club, hasn't released promised documentation of the business support that was included in an October letter to Duke Energy's chief executive.

When contacted, three of the 19 business owners said they did not authorize the use of their names on the letter to Duke Energy. Another business owner said he wanted his name removed, and another store listed on the letter was not in business at the time it was sent.

A Sierra Club spokesman said the claim that it exaggerated support for the coal campaign was without merit.

"The Sierra Club stands by our organizers, and we are not responding to any further inquiries on this issue you have cultivated from nothing," spokesman Adam Beitman said (Mike Cronin, Asheville [N.C.] *Citizen-Times*, Nov. 20). **-- SP**

Correction: *An earlier version of this story was incorrect in the number of business owners that did not authorize the use of their names on the letter. It is three out of 19 business owners.*

AIR POLLUTION:

Public health groups sue EPA over state compliance on lead standards

Jeremy P. Jacobs, E&E reporter

Published: Friday, November 21, 2014

Public health groups sued U.S. EPA yesterday for failing to take action to bring six states and Puerto Rico into compliance with air standards for lead.

The lawsuit, brought by the Center for Biological Diversity and Center for Environmental Health, alleges that EPA has not taken action on implementation plans for areas that fail to meet its standards for the potent neurotoxin.

EPA revised its national ambient air quality standard for lead in 2008, lowering allowable levels by 90 percent.

The lawsuit alleges that under the Clean Air Act, EPA had three years from issuing the standard to ensure that areas in nonattainment with the new standards have submitted adequate implementation plans to bring them into compliance.

"There's no safe level of lead in our air, because lead's highly toxic to wildlife and people -- especially children," Jonathan Evans of the Center for Biological Diversity said in a statement. "The EPA must take decisive action to force polluting facilities to reduce or eliminate the lead pollution contaminating our communities and our environment."

For two areas of nonattainment -- Pottawattamie, Iowa, and Arecibo, Puerto Rico -- implementation plans were not submitted, the lawsuit states.

In five others, EPA has failed to approve or disapprove the state-submitted plan. These areas are Tampa, Fla.; Cleveland; Delta, Ohio; Eagan, Minn.; and Frisco, Texas. The agency also hasn't acted on an infrastructure implementation plan for lead submitted by North Carolina.

For most of the areas noted, EPA's deadline to act was the end of 2013 or the beginning of this year.

Since leaded auto gasoline was phased out in 1995, the primary sources of lead emissions are lead smelters, waste incinerators, utilities and lead-acid battery makers.

"Children and families living near polluting facilities must be protected from airborne lead-poisoning threats," said Caroline Cox, research director for the Center for Environmental Health. "Clearly, we can't rely on industry to clean up its act without oversight. EPA must act now to enforce the law and end this serious health threat to children."

The lawsuit was filed in the U.S. District Court for the Northern District of California, the group said.

COAL:

Momentum shifts in Ky. landowners' case

Manuel Quiñones, E&E reporter

Published: Friday, November 21, 2014

A group of Kentucky landowners are facing increasing headwinds in their effort to stop strip mining within their property without their consent.

Earlier this year, U.S. District Court Judge Amul Thapar ordered Premier Elkhorn Coal Co. to stop mining on a Pike County, Ky., tract because not all of its owners had provided consent.

The federal Office of Surface Mining, Reclamation and Enforcement followed up with a cessation order, finding deficiencies with the way state regulators allowed the company to proceed with mining.

The agency said the permitting process concluded "without notice to other surface owners as interested and potentially affected parties and without an opportunity to object to the permitting decision."

But the 6th U.S. Circuit Court of Appeals has since scrapped Thapar's order. It did so on procedural grounds, without weighting the merits of the case. And OSMRE is moving forward with trying to terminate its own cessation order.

The agency argues that a revised permit satisfies both state law and the Surface Mining Control and Reclamation Act. In other words, not all landowners need to give their consent to strip mining.

Attorneys for M.L. Johnson Family Properties LLC, the holdout landowners, said regulators are misapplying the SMCRA, which they see as having conflicting provisions on the debate.

"As a result of the companies' illegal mining activities, the Johnson family has suffered damage and will continue to do so," the lawyers wrote late last month in a notice of intent to sue OSMRE again.

For now, the dispute is within the Interior Department's appeals system. But whatever the decision, the issue is likely to head back to the courts.

MINING:

Blankenship pleads not guilty in deadly blast case

Published: Friday, November 21, 2014

Don Blankenship, the former chief executive of Massey Energy Co., pleaded not guilty yesterday to a federal indictment that alleges he concealed safety violations prior to a 2010 coal mine blast that killed 29 miners in West Virginia.

Due to the media attention, federal Judge Irene Berger imposed a gag order yesterday and said she needed to find an impartial jury for the case. At a bond hearing later in the day, Berger restricted Blankenship's travel to southern West Virginia, a nearby Kentucky county and Washington, D.C. Berger also sealed the documents in the case, including the 43-page indictment.

Following the indictment, Blankenship vowed to fight the charges (*Greenwire*, Nov. 14). According to Blankenship, the blast was caused by an inundation of natural gas into the mine and could not have been predicted by the company.

Federal investigators said the company didn't properly maintain water sprays or have proper ventilation in the mine. The investigators said a spark caused a methane gas fireball that destroyed 2 miles of underground tunnels and was fueled by coal dust the company did not properly clean up.

Blankenship is being charged with conspiring to violate mine safety laws and securities fraud for allegedly lying to investigators. If convicted, Blankenship could face up to 31 years in prison. The trial is set for Jan. 26 (Kris Maher, *Wall Street Journal*, Nov. 20). **-- MH**

GRID:

Power generators ready for winter, but gas challenges could arise -- NERC

Hannah Northey, E&E reporter

Published: Friday, November 21, 2014

Grid overseers today said the nation's power system is "robust" heading into the winter season but warned there's a slight risk shortages of coal and gas could trigger constraints and pinch generator availability if severe winter weather returns.

The North American Electric Reliability Corp. released its annual winter reliability assessment, which found generators are ready to meet the nation's demand for power under normal winter conditions.

But NERC also raised concerns, mainly in New England, that the construction of new gas pipelines hasn't kept pace with the country's shift toward gas amid a wave of coal plant retirements and that there could be coal delivery constraints in various parts of the country.

As for gas, NERC said almost 5 gigawatts of new gas-fired generation has been constructed since last year, but 252 miles of new pipelines have been built in 2012 -- the lowest pipeline addition since 1997. "From a natural gas availability perspective, similar conditions as last year can be expected," NERC said. "For New England, this includes the potential for natural gas interruption to gas-fired generators and a reliance on backup fuel (generally oil) to meet peak demand."

More than half of the new pipeline projects that came into service in 2012 and 2013 were in the Northeast, but most of the capacity was added outside of New England, a constrained area, NERC said. Announcements for new pipeline capacity through 2016 will bolster gas supplies in the Northeast but won't alleviate the constraints that New England will face, NERC added.

John Moura, NERC's director of reliability assessment, told reporters on a call today that New England is at the forefront of NERC's concerns for this winter. But Moura also said significant progress has been made in the region, including a winter reliability program that incentivizes new capacity and enhanced information sharing across the electric and gas sectors.

"Those are all good things, but we still have some concerns on more long-term issues on pipeline capacity," Moura said.

NERC noted that coal deliveries could also be hampered by extreme weather, namely if coal stock piles freeze.

"In some Assessment Areas, several generators are replenishing coal stock piles drawn down during the previous winter; however, the amount of coal inventory -- as well as coal delivery -- during winter months is still a potential concern for some generators," NERC said. "Low coal stocks may restrict coal unit availability during the winter period."

But Moura said the challenges would be limited to only a few plants, mainly in the Midwest.

CALIFORNIA:

Regulator hits PG&E with $10.85M fine for gas blast

Anne C. Mulkern, E&E reporter

Published: Friday, November 21, 2014

The California utility regulator yesterday fined Pacific Gas and Electric Co. $10.85 million for failings connected to a natural gas line explosion, in the latest problem to hit the troubled company.

The California Public Utilities Commission penalized PG&E for a March 3 blast in an unoccupied home in Carmel-by-the-Sea.

The CPUC said PG&E failed "to take the necessary steps to make safe the area in Carmel-by-the-Sea where planned work was underway" and neglected "to adequately equip the construction crew with the tools necessary to stop the uncontrolled flow of natural gas, leading to the explosion of an unoccupied home."

The regulator's Safety and Enforcement Division said PG&E violated both a state rule and a federal regulation requiring it to repair any existing or potential hazard, and to maintain equipment to ensure the safety of workers and the public.

PG&E has 10 calendar days to pay or contest the CPUC's citation, which must be paid with shareholder funds.

"The safety of our customers, employees and the communities we serve is always our top priority, and we are pleased that the CPUC allowed us to get back to the important natural gas safety work in Carmel," PG&E spokesman Donald Cutler said in an email. "We have just received the Citation and notification of the formal case and are reviewing them. We have made significant enhancements to our protocols to address public concerns and CPUC recommendations."

The penalty came on the same day the CPUC fined PG&E $1.05 million for violating a state rule that bars private communications on issues before the agency. It was related to a then-PG&E executive sending emails to the then-chief of staff of CPUC, President Michael Peevey, seeking help getting a judge of the utility's choice in a rate case (*E&ENews PM*, Nov. 20).

That rate case tangentially is connected to a CPUC case evaluating whether to impose a $1.4 billion fine against PG&E for a deadly 2010 natural gas pipeline explosion in San Bruno, Calif., a San Francisco suburb. The penalty, if assessed, would be the largest tied to pipeline safety in state or federal history.

The cases are connected because some of the money from increased rates would fund safety improvements.

Separately, the CPUC approved yesterday opening a case looking at penalties against PG&E in connection with recordkeeping for its natural gas distribution service and facilities.

"The case will review and determine whether PG&E's recordkeeping practices for its gas distribution system have been unsafe and in violation of the law," the CPUC said in a statement. "Gas safety record keeping refers to, but is not limited to, PG&E's acquisition, maintenance, organization, safekeeping, and efficient retrieval of data that the CPUC finds is necessary and appropriate for PG&E to make good and safe gas engineering decisions, and thus to promote safety."

In approving the opening of the case, CPUC commissioners reviewed six PG&E natural gas distribution system incidents presented by the agency's safety division as evidence of PG&E's unsafe operations. The six included the Carmel-by-the-Sea explosion.

NATURAL GAS:

Businesses, school evacuate after Wyo. propane explosion

Published: Friday, November 21, 2014

Several businesses and a school were evacuated in Jackson, Wyo., yesterday after multiple explosions at a propane dealer.

Police say the explosions occurred just before 1 p.m. MST at an AmeriGas facility about 2 miles from downtown Jackson. Witnesses said that a large propane delivery truck was involved in the explosion.

Scott Edwards said he was working at the front desk at a nearby gym when the driver of the propane truck ran in and yelled for everyone to leave the building. Outside, Edwards saw a cloud of propane he said was heavy enough to obscure the parking lot.

Edwards said the impending explosion sucked oxygen from the building, creating a dead calm before erupting in a loud "Ka-bam!" Edwards said he and others escaped the ensuing fire by breaking a window with a chair.

"I started picking people up and chucking them out the window," Edwards said.

Authorities say they are still investigating the cause of the accident (Associated Press, Nov. 20). **-- SP**

RENEWABLE ENERGY:

Wal-Mart responds to critics with solar power announcement

Manuel Quiñones, E&E reporter

Published: Friday, November 21, 2014

Wal-Mart Stores Inc., the world's largest retailer, yesterday announced a significant expansion of its renewable energy production efforts.

The company, also known by its public relations name Wal-Mart, promised to install up to 400 new solar power projects at facilities around the country.

Wal-Mart yesterday said it tapped SolarCity Corp. and SunEdison Inc. for the projects. It said the new installations could provide between 10 and 30 percent of a facility's power needs.

The announcement came as prominent environmental groups, including the Sierra Club and 350.org, were chastising Wal-Mart for using too much coal and not enough renewables (*E&ENews PM*, Nov. 20).

The green groups pointed to a report from the Institute for Local Self-Reliance that said Wal-Mart's clean energy efforts were barely making a dent in its greenhouse gas emissions.

"After growing calls from leading environmental groups for Wal-Mart to commit to the sustainability promises it made nine years ago, the company's announcement to install more solar is an indication that it recognizes that it must do more," Institute researcher Stacy Mitchell said in response.

But she added, "We've heard similar promises from Wal-Mart before, though, and this is still quite small relative to the company's size and the progress other retailers have made in moving to clean power."

Environmentalists said Wal-Mart's solar power production is small compared to companies like Ikea, which has installed panels at most of its U.S. stores.

But Pam Kohn, head of Wal-Mart's realty holdings, said in a statement, "We are pleased to announce this expansion on the heels of the Solar Energy Industries Association's commercial solar report, which recognizes Walmart as having the most installed solar capacity in the U.S."

Wal-Mart said it has already installed roughly 260 solar power projects in the United States, with the capacity to produce more power compared with the next-largest business.

Even though critics said 40 percent of Wal-Mart's power comes from coal -- too much, in their estimation -- the company has talked about becoming 100 percent dependent on renewables (*ClimateWire*, April 18, 2013). The total is now closer to 14 percent in the United States and 24 percent globally.

"The question now is," said Mitchell, "whether deeper commitments from Wal-Mart to change the most destructive aspects of its business model will follow."

TRANSIT:

Development at metro stops no slam dunk -- GAO

Sean Reilly, E&E reporter

Published: Friday, November 21, 2014

In the 15 years since a Metrorail transit station opened in Washington, D.C.'s once-sketchy Columbia Heights neighborhood, daily ridership has tripled and a wave of new construction has followed.

No boom is in sight, however, around four other stations that later opened along the same line in suburban Maryland's Prince George's County. Not only has there been little or no development, but ridership at three of the four stations has actually dropped over the last decade.

Those contrasting vignettes -- contained in a Government Accountability Office survey released this week -- bracket the debate over the potential of big-ticket public transportation projects to spur growth and revive moribund neighborhoods. For advocates, the concept of "transit-oriented development" has become a major selling point. Detractors view it as a chimera that serves to obscure the reality that most Americans still prefer to drive.

The GAO, which studied a half-dozen federally funded projects around the nation, found "a wide range in the amount of transit-oriented development" that followed their openings, according to its report. In Baltimore, for example, little development has occurred around most of the city's 33 light-rail stations over the last two decades, despite a significant service upgrade in 2006. The exception -- Pennsylvania Station near downtown --- also handles Amtrak and commuter rail passengers.

In Charlotte, N.C., where trains started running on a light-rail system in 2007, one neighborhood along the route has accounted for about 20 percent of all developments permitted in the city from 2010 until 2016. Other stations, located in a more suburban, car-centric part of town, have been less successful in attracting new development, local officials told the GAO.

And in Houston, an eight-station light-rail expansion added last year has so far sparked little change and is unlikely to do so anytime soon because of deed restrictions on nearby properties.

In general, the forces affecting transit-related development include real estate demand, the amount of available land and the public transportation system's ability to "efficiently [connect] people to established job and activity centers," the report said. Among the factors getting in the way: the social stigma that

afflicts transit in some areas, zoning hurdles and high construction costs. One D.C.-area developer told the GAO that transit agencies' design specifications for parking garages could double the normal cost per space.

The report does not seek to explain the development disparities along the D.C.-area Metrorail Green Line but says that Prince George's County recently repackaged its strategy to promote more growth near its Metro stations.

The broader subject is drawing the attention of the Federal Transit Administration, which has budgeted almost $20 million in 2015 for state and local planning grants to pursue planning for transit-oriented development. The agency, part of the U.S. Transportation Department, is the main conduit for federal funding for public transportation, apportioning about $19 billion in the last decade for rail, ferry and bus rapid transit projects.

Economic development and land use are two of a half-dozen factors that FTA employees have to consider when evaluating applications for capital investment grants. Others include congestion relief, environmental benefits and cost-effectiveness. The law currently requires the agency to give "comparable, but not necessarily equal" weight to each of the six criteria, according to the report. In the case of the Houston project, for instance, the FTA rated it as "medium-low" for land use, citing such factors as poor pedestrian access and a lack of zoning mechanisms.

The project scored higher for potential environmental benefits and other areas; the transit administration agreed to provide $450 million of the $756 million cost, according to the agency's website.

The report, which made no recommendations, was requested by Sen. Robert Menendez (D-N.J.), the outgoing chairman of the Senate Banking, Housing and Urban Affairs Subcommittee on Housing, Transportation and Community Development. A spokeswoman could not be reached for comment.

AIR POLLUTION:

EPA rejects bid to scuttle permit for Calif. gas-fired power plant

Amanda Peterka, E&E reporter

Published: Friday, November 21, 2014

U.S. EPA has denied environmentalists' bid to shoot down the operating permit for an Antioch, Calif., gas-fired power plant.

Wild Equity Institute argued in a petition last year that the plant's emissions would harm three endangered species in the Antioch Dunes National Wildlife Refuge.

In a response published today in the *Federal Register*, EPA affirmed the permit for the Gateway Generating Station, maintaining that it complied with both the Endangered Species and Clean Air acts.

Wild Equity Institute "has failed to demonstrate that any ESA-related requirements are applicable requirements" under the Clean Air Act, EPA wrote.

Pacific Gas & Electric operates the Gateway Generating Station, a 530-megawatt natural-gas-fired power plant located about a mile from the refuge and its three listed species -- Lange's metalmark butterfly, Contra Costa wallflower and Antioch Dunes evening primrose.

The potential impact of plant emissions on the species has been the subject of a long-running dispute between environmentalists and federal agencies. Environmentalists are especially concerned about the brightly colored butterfly, which is found only in the desert Antioch Dunes in Contra Costa County. There are only a few dozen left in the world.

In the early 2000s, before Gateway's construction, EPA said it formally consulted with the Fish and Wildlife Service over whether issuance of the Gateway permit would harm any of the listed species living in the nearby refuge. The two agencies concluded the plant would not pose any harm.

But a few years later, environmentalists challenged a court settlement between EPA and PG&E to set emission limitations for the plant through a construction permit meant to prevent degradation of air quality. They argued that nitrogen emissions from the plant would transform the chemical makeup of Antioch's dunes and contribute to the growth of weeds that crowd out the butterfly's host plant. The court ruled for EPA and allowed for the permit to be issued.

After the plant's construction, the Bay Area Air Quality Management District last year issued its first operating permit. The most recent petition from Wild Equity Institute challenged EPA's approval of that permit and argued that, in approving the permit, EPA had illegally failed to obtain authorization to harm endangered species.

In its response, EPA said it did not have an "obligation" under the Clean Air Act to take into account endangered species when issuing general operating permits.

"While the EPA may have specific obligations under the [Endangered Species Act] in certain circumstances, the ESA itself is not a part of the [Clean Air Act]," EPA Administrator Gina McCarthy wrote in an order dated Oct. 15. "Since the ESA is not an applicable requirement of the CAA, it is not possible for the petitioner to demonstrate that the permit is not in compliance with the CAA on the basis of a claim alleging noncompliance with the ESA."

The agency also said that it had adequately complied with the Endangered Species Act and that it was not required to reinstate consultations with Fish and Wildlife about the butterfly and nitrogen deposition when it approved the operating permit. It noted that the permit was a continuation of the terms agreed to in the consent decree for the facility's preconstruction permit.

"In sum, the petitioner's claims concerning the EPA's failure to comply with the ESA ... are without merit," McCarthy wrote.

Environmentalists have also threatened legal action against EPA over the power plant's effects on the Lange's metalmark butterfly (*E&ENews PM*, July 24, 2013).

REGULATION:

Greenwire's Peterka discusses EPA's action on 2014 RFS

Published: Friday, November 21, 2014

The Obama administration this morning issued a notice to pull back from its controversial 2014 renewable fuel standard proposal. On today's The Cutting Edge, *Greenwire* reporter Amanda Peterka, discusses the details of the announcement and reaction from the oil and biofuels industries. She also explains how the move by EPA will affect future renewable fuel targets.

Click here to watch today's The Cutting Edge.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Mon., November 24, 2014

READ FULL EDITION

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Extreme heat events may be 'locked in' because of past emissions -- World Bank chief

A dangerous amount of global warming has already been baked into the Earth's atmosphere, according to a sweeping new scientific assessment released by the World Bank that warns the world's most vulnerable countries are certain to suffer even if world leaders manage to broker a new international climate change agreement in 2015.

2.FOSSIL FUELS:

While the college divestment campaign struggles, cities and pension funds see some benefits

Economic bubbles, inflated by overvalued assets and dicey purchasing, are difficult to predict but easy to autopsy. When it comes to the fallout from financial bubbles, the dot-com bubble of the late 1990s lost roughly half its value from 2000 to 2001 after it popped, and the aftershocks from the real estate bubble that helped precipitate the financial meltdown of 2007 and 2008 are still being absorbed worldwide. Today, the possibility of a bursting "carbon bubble" has the underpinnings of perhaps even more financial turmoil than either of those predecessors.

TODAY'S STORIES

3.RESEARCH:
A fast-warming Arctic can be deadly for species and difficult for humans

4.NEGOTIATIONS:
Did the U.S.-China climate deal break up a powerful bloc of developing nations?

5.EMISSIONS:
Montreal Protocol talks reach impasse over super-warming gases

6.EMISSIONS:
World Bank signs onto 5-year, $60M cookstove partnership

7.CARBON TRADING:
Forest carbon markets gained volume in 2013 -- report

8.OCEANS:
Water salinity could have significant effect on sea levels

9.FOSSIL FUELS:
Former BP CEO says energy companies face 'existential' climate threat

10.CHINA:
Nation faces hefty price tag to meet climate pledge

11.FINANCE:
Global investment in climate change declines again in 2013

12.AGRICULTURE:
As world temperatures have climbed, so has wine quality in Japan's north

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13.OIL AND GAS:
Certification system rates social and environmental responsibility of production sites

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Mon., November 24, 2014

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Newest Ill. clean coal project searches for a way to sell its energy

When soaring costs led the George W. Bush administration to scuttle the original FutureGen project in 2008, the decision dealt a setback not only to efforts to advance "clean coal" technology but also to the small southeastern Illinois community chosen to host the project.

TOP STORIES

2.RENEWABLES:

Facebook, GM push utilities, regulators to green up policies

3.MARCELLUS SHALE:

Energy program develops a global reputation as it builds a local workforce

4.HYDRAULIC FRACTURING:

Ill. judge denies injunction on frack rules, but lets lawsuit continue

ELECTRICITY

5.POWER MARKETS:

Senators press FERC on results of New England capacity auction

6.CLIMATE:

NRG aims to slash emissions 90% by 2050

OIL AND GAS

7.OFFSHORE DRILLING:

Handful of long-term projects will start production before year's end

8.REGULATION:

Fractures emerge as Colo. task force drills down on energy proposals

9.PEOPLE:

Exxon Mobil chemical chief to retire

10.BAKKEN:

New tribal leader pushes for pipeline to reduce flaring

11.BUSINESS:

Exxon Mobil drops to No. 4 in world oil rankings

12.OIL:

Federal tool tracks imports with an eye on easing ban

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13.OIL AND GAS:

Certification system rates social and environmental responsibility of production sites

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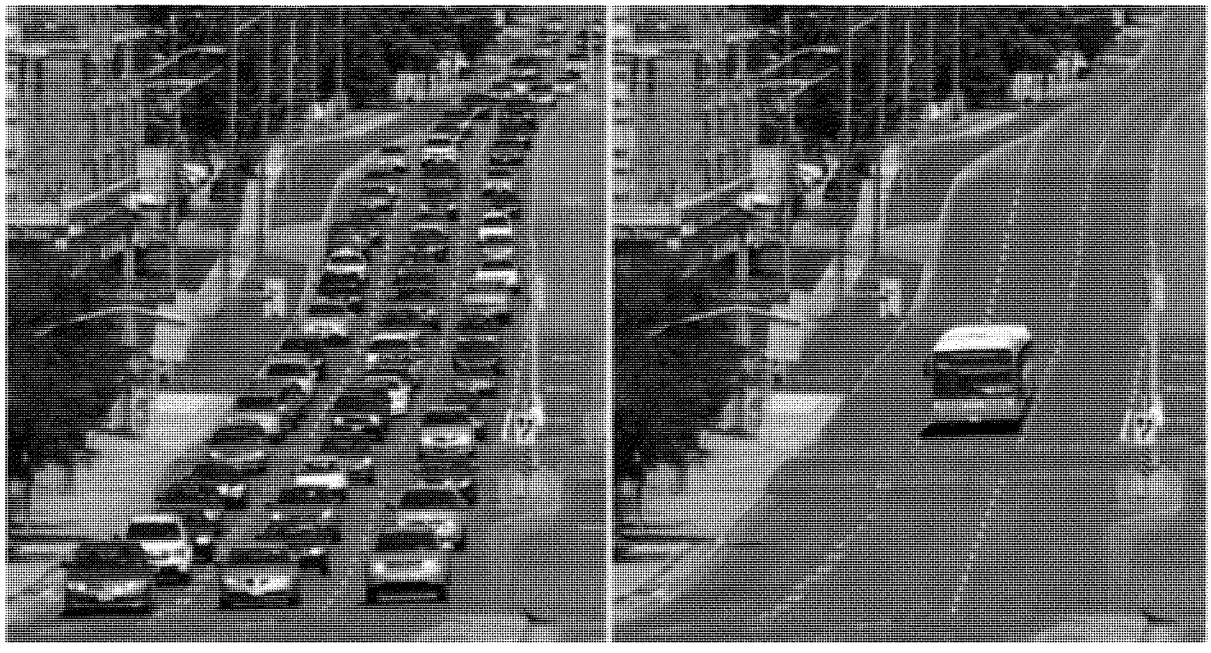

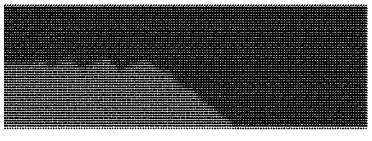

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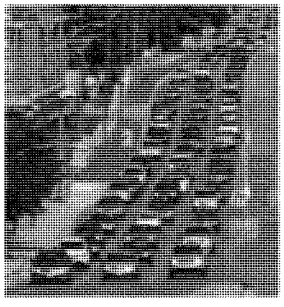

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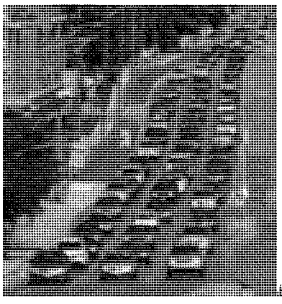


Air & Radiation Law News

for November 20, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Appeals Panel Weighs Challenge to PVC Rule As EPA Reviews Limit Based on Faulty Data

A panel of federal appeals court judges appeared skeptical of several industry challenges to the Environmental Protection Agency's 2012 air toxics rule for polyvinyl chloride facilities but gave close consideration to how an emissions...

Air Pollution

Beijing Smog Returns After Days of APEC Blue

Smog in Beijing jumped to hazardous levels, dashing hopes the capital would hold on to pollution-free skies that marked the recent summit of world leaders. The fog blanketing the capital was a stark contrast to the clean air, dubbed APEC Blue,...

Air Pollution

U.K. Must Show How It Can Quickly Meet European Union Clean Air Rules, Court Decides

The U.K. must show how it can meet clean air rules, the top European Union court said in a Nov. 19 judgment that may force British authorities to speed efforts to reduce dangerous pollutants in London and other cities ClientEarth v. Secretary...

Climate Policy

McCarthy Touts Benefits of Power Plant Rule For Economy as Well as Health, Environment

EPA Administrator Gina McCarthy defended the economics of the proposed rule to limit greenhouse gases from power plants and praised the leadership of President Barack Obama as she spoke Nov. 19 to a friendly audience at a meeting organized...

Climate Policy

Whitehouse Sees Carbon Fee Bill Boosting Climate Discussion with Republicans

Carbon fee legislation introduced Nov. 19 will establish the baseline for productive bipartisan discussions on climate change in the next Congress, Sen. Sheldon Whitehouse (D-R.I.) said....

Climate Regulation

EPA's Updated Biomass Accounting Framework More Robust, Industry Says

The Environmental Protection Agency updated the methodology it will use to evaluate the net greenhouse gas impact of facilities that burn biomass....

Climate Regulation

Most Back Limits on Power Plant Emissions

A majority of Americans support tougher pollution limits on coal-burning power plants even if it means paying more for electricity. The survey of 1,275 adults backs the Environmental Protection Agency's proposed carbon emissions limits...

Emissions Trading

Climate Action Reserve Launches First Mexican Forest Offset Project

The Climate Action Reserve announced Nov. 19 the launch of a forest carbon offset project in Mexico designed to improve the management of over 12,000 acres of forest land in Oaxaca, conserve important native species and economically benefit...

Emissions Trading

First California-Quebec Joint Carbon Emissions Sale Scrubbed After Errors

California and the Canadian province of Quebec, which run North America's biggest carbon market, cut short their first joint sale of greenhouse gas allowances, citing "technical difficulties."...

Energy Efficiency

Portman Sees Stalled Energy Efficiency Measure Coming Back in January

Sen. Rob Portman (R-Ohio) told Bloomberg BNA Nov. 19 that a bipartisan energy efficiency package could return to the Senate floor in January and said he's discussed bringing the measure back up with leadership in both parties. ...

Energy

TransCanada Committed to Keystone XL But Will Expand Into Rail, CEO Girling Says

The failed Senate vote Nov. 18 on the Keystone XL oil sands pipeline actually represents "a positive sign" because it showed the number of lawmakers supporting the project is steadily growing, TransCanada Corp. Chief Executive Officer...

International Climate

Greenhouse Gas Emissions Must Be Cut 15 Percent by 2030, Half by 2050, UN Says

Global greenhouse gas emissions will need to be cut by 15 percent or more by 2030 and by half by 2050

to keep the increase in global temperatures below 2 degrees Celsius (3.6 degrees Fahrenheit), according to a report released Nov. 19 by the United...

Pipelines

Environmentalists Claim TransCanada Uses 'Dirty Tricks' in PR Battle Over Oil Sands

Canadian environmental groups accused TransCanada Corp. of using questionable tactics in seeking public and regulatory support for its proposal to pipe more than a million barrels of oil per day nearly 3,000 miles from the Alberta oil sands...

Regulatory Policy

House Passes Bill Barring EPA Regulations Unless Underlying Research Made Public

The House Nov. 19 passed by a vote of 237 to 190 the Secret Science Reform Act, a bill to bar the Environmental Protection Agency from moving ahead with rules unless it makes public all scientific and technical information it used to develop them....

Transportation

GAO Sees Little Federal, State Duplication In Environmental Reviews for Road Projects

Among the 18 states that must meet state- and federal-level environmental review requirements for highway projects, there is little duplication of effort in meeting those requirements, the Government Accountability Office said in a report....

Inside EPA **Weekly Report**, 11/21/2014

http://insideepa.com/newsletters/inside-epa

Latest News

EPA Backs Biomass As GHG Control But Faces New Scientific Test

EPA is proposing a series of steps to encourage use of biomass energy as a means of reducing greenhouse gases (GHGs) though the agency is advancing its policy measures before winning approval for a revised draft framework for estimating biomass GHG emissions from its science advisors, who strongly criticized an earlier draft methodology.

EPA Backs Biomass As ESPS Compliance Option, Waives GHG Permit Mandate

EPA is planning to allow states to rely on biomass obtained from sustainable practices to be used for compliance with its existing source performance standards (ESPS) proposal to cut greenhouse gas (GHG) emissions from the power sector, according to a just-issued memo.

Industry Win On Constitutional Limits To ESA Could Cut EPA's Authority

A new federal district court decision finding the Commerce Clause limits the reach of the Endangered Species Act (ESA) could significantly restrict EPA's powers to regulate air and water discharges if it survives appeal, but sources say it could take Supreme Court intervention to preserve the decision as circuit courts have generally upheld the ESA against constitutional challenges.

Greenwire

YUCCA MOUNTAIN:

Murray breaks silence, urges NRC to review repository

Hannah Northey, E&E reporter

Published: Wednesday, November 19, 2014

Democratic Sen. Patty Murray of Washington is calling for the completion of a stalled review of the abandoned Yucca Mountain, Nev., nuclear waste project in what some industry sources say shows the waning power of the project's fiercest foe, outgoing Senate Majority Leader Harry Reid (D-Nev.).

With the nation's largest nuclear waste site, Hanford, in her home state, Murray yesterday sent a letter to Nuclear Regulatory Commission Chairwoman Allison Macfarlane praising the NRC for resuming its safety review of Yucca, a project the White House has deemed unworkable and Reid has vowed to kill.

Rejecting the political guesswork, Sean Coit, a spokesman for Murray, said her inquiry didn't signify any change in Reid's position.

In her letter, Murray peppered Macfarlane with questions about the regulatory process moving forward, and whether the NRC had enough funds and authority to complete safety reviews, consider widespread comments on the site and update an environmental impact statement.

For the past three decades, she said, independent studies have found Yucca Mountain to be the "nation's best option" for storing high-level waste, and Congress and previous administrations have voted for, funded and supported pursuing the option.

"With countless work hours to date spent by the NRC on the licensing application and billions of dollars spent at the Hanford Nuclear Reservation and at nuclear waste sites across the country in efforts to treat and package nuclear waste that would be sent to Yucca Mountain, it is imperative ... [the] licensing application is thoroughly considered by the NRC," Murray wrote.

The NRC's release of the third volume of a safety report for Yucca Mountain in October, which found the repository would be "safe" for humans and the environment once closed, represented a "significant step forward" for the project and reaffirms the Nevada site is "the right solution for the United States," Murray wrote (*E&ENews PM*, Oct. 16).

The commission ordered its staff last year to complete the safety reports after the U.S. Court of Appeals for the District of Columbia Circuit ordered the agency to "promptly" continue a licensing process using remaining project funds, including $11.1 million of unobligated funds and $2.5 million of obligated, unexpended funds. The NRC said it's expecting to publish three additional volumes touching on safety before closure, programmatic requirements and license specifications by January 2015.

Murray asked whether the NRC would move forward with reviewing Yucca Mountain even if the Energy Department pulled its application.

The senator has been quiet about the project since she blasted former Energy Secretary Steven Chu in 2010 for stepping away from Yucca Mountain, accusing DOE of providing no scientific basis for doing so.

Murray also said then that the national decision for where to store hot waste should be based on "science and the moral responsibility" and that the government cannot "unilaterally take one site out of the equation."

Her break comes as Reid prepares to leave the top perch in the Senate. Reid is the best-known critic of the site and has called dumping waste there a "failed policy," noting that the government pulled its support for the repository five years ago.

Reid has also said he will do "everything within his power" to ensure the project is never resurrected and "doesn't receive another dime."

PUBLIC LANDS:

Drillers got $380M in royalty breaks from 2006 to 2013 -- report

Phil Taylor, E&E reporter

Published: Wednesday, November 19, 2014

This story was updated at 2:15 p.m. EST.

Drilling companies received $380 million in royalty breaks over the past several years for natural gas extracted from federal onshore tracts, according to a new report by Taxpayers for Common Sense.

The royalty-free natural gas totaled 666 billion cubic feet (bcf) from 2006 to 2013, enough to supply all the homes in New York state for an entire year, the report says.

The report is among the first to tally the amount of publicly owned gas that is exempted from federal royalties because it is either used by drilling companies at the well site or allowed to be vented or flared into the atmosphere.

Royalties are paid once oil and gas is sold on the market.

The report arrives as the Bureau of Land Management seeks to update 34-year-old rules aiming to reduce the waste of natural gas and define when companies must pay royalties.

"This is just a waste of resources and money," said Ryan Alexander, the watchdog group's president. "Federal taxpayers have been subsidizing oil and gas companies for a long time, in many different ways. The industry doesn't need it, and we can't afford it."

But Kathleen Sgamma, vice president of government and public affairs for the Western Energy Alliance, said the report misses the "bigger picture" that total onshore oil and gas revenue over that same time period equaled roughly $20 billion.

Requiring companies to capture and sell gas in places where it is uneconomical or to pay for gas used to operate a drill site could force companies to scale back oil drilling plans, thereby causing a much greater loss to taxpayers. Companies must capture, sell and pay royalties on gas from oil wells eventually, but BLM gives them exemptions when government permitting delays hamper infrastructure like pipelines, she said.

"The taxpayer benefits from those oil wells dwarf by orders of magnitude the royalties that TCS claims are missing to the taxpayer," she said.

The report urges Congress to amend the Mineral Leasing Act to require royalties on gas used at the drill site. It also calls on BLM to tighten rules for waste.

Of the 666 bcf of royalty-free natural gas, more than 80 percent is known as "beneficial use," which means it was used by companies on-site to help produce more oil or gas by fueling drilling rigs or compressing gas or to fire steam generators, among other uses.

The rest of the gas was deemed "unavoidably lost" and was vented or flared to the atmosphere. According to the watchdog group, BLM allows unavoidably lost gas to be released royalty-free in cases of emergencies and for certain well evaluations and production tests.

The data were based on oil and gas operations reports that companies submit to Interior's Office of Natural Resources Revenue. ONRR provided the taxpayer group with aggregate data for gas that was beneficially used, vented and flared by state and year.

The data show that beneficial use and unavoidably lost gas -- i.e., royalty free -- represent an increasing percentage of the total gas sold on public lands, rising from 2.1 percent in 2006 to 3.5 percent in 2013.

While the total amount of gas sold from public lands dropped by 26 percent during the study time frame, the total amount that was beneficially used by companies or unavoidably lost actually rose by 23 percent.

More than 32 bcf of natural gas was deemed unavoidably lost and vented during that time frame, half of which came from New Mexico and more than 40 percent of which came from Montana, according to TCS. Vented gas contains high levels of methane, a potent greenhouse gas.

"ONRR data show that the existing rules have cost taxpayers significant revenue and contributed to the

release of environmentally damaging methane into the atmosphere," the report says.

Recommendations for Congress, BLM

The report urges Congress to amend the Mineral Leasing Act to remove language that allows the royalty-free consumption of gas by drilling companies on federal lands.

"Almost 70 years later, there is no justification for granting oil and gas companies free access to public gas for use as fuel on well sites," the report said.

According to the report, BLM tried in 1974 to charge royalties for gas used for beneficial purposes, but the proposal was struck down by a U.S. district court in California, which cited an amendment to the MLA in 1946 stating that royalties shall be charged on gas "removed or sold from the lease."

Sgamma said it's in taxpayers' interest to ensure that oil and gas resources can be economically developed. Limited royalty relief will ensure much larger returns over the long haul, she said.

"Ultimately, the taxpayer benefits much more from the current situation, where market forces ensure a return to both the companies and the taxpayer that is greater than if returns were constrained with too much government interference in the market," she said. "For an organization that is devoted to reducing government waste, TCS seems to be suggesting government spend more money chasing a very small return, rather than letting inherent market mechanisms take care of the issue."

Alexander countered that the market incentive to develop oil and gas is much greater than the disincentive of having to pay for the small amount of gas companies use at well sites.

The report found BLM is "on firm ground" to require royalties on gas that it deems wasted, intentionally or otherwise.

Existing rules do not provide an incentive for companies to install the infrastructure necessary to capture and market gas rather than vent and flare it, the report says.

Sgamma said that's wrong. "Because there's a built-in financial incentive to capture as much product as possible, producers' and taxpayers' interests are closely aligned," she said.

But there is also no incentives in current rules for companies to flare gas rather than vent it, which is more harmful to the climate, the report says.

A *Greenwire* analysis of BLM data this month found that industry requests for royalty-free venting sand flaring have soared more than threefold over the past three years (*Greenwire*, Nov. 4).

Many of those requests are being submitted in New Mexico and North Dakota, oil-rich regions that currently lack infrastructure to capture and market associated gas. BLM allows gas to be vented or flared when it believes there is no economical way of selling it.

The TCS report argues that it "is not in taxpayer's interest" for oil and gas to be developed where there is not infrastructure to capture well gas.

While BLM wants to clamp down on the amount of gas vented or flared, agency officials say they are not allowed to impose regulatory constraints that would make drilling uneconomical.

As it updates its rules, BLM should also set "a reasonable limit for fugitive emissions with the use of

existing technologies above which excess emissions are considered wasted gas," the TCS report said.

While the report doesn't focus on those technologies, Alexander said there are "a number of existing technologies recognized as capable of cutting emissions," including those recommended by U.S. EPA's Natural Gas STAR Program. She added that Colorado's new methane rules make specific technology requirements.

"BLM certainly could ask operators to use the best available technology, and right now it doesn't," Alexander said.

GEOTHERMAL:

Leasing woes stall industry development, even in hotbeds

Dylan Brown, E&E reporter

Published: Wednesday, November 19, 2014

Hot water bubbling up everywhere, Nevada became the Wild West of a geothermal energy boom when the long-stagnant industry ushered in the new millennium with a technological renaissance and a public lands leasing boom.

Two-thirds of the million acres of U.S. public lands approved for geothermal development between 2007 and 2013 were located within the Silver State's borders. Roughly half the 680 geothermal leases the Bureau of Land Management managed in 2013 are in Nevada, and the state's former program leader, Lorenzo Trimble, was recently promoted to oversee agency leasing nationally.

The Nevada Legislature last year also opened the door to further geothermal development by forcing the state's largest energy company to transition hundreds of megawatts of coal-generated power to other sources (*Greenwire*, June 4, 2013).

With no need to rely on intermittent factors like sun or wind, geothermal is part of the Obama administration's "all of the above" energy plan and generates hometown pride for Republicans from Western states, where the vast majority of its potential lies.

But despite the bipartisan potential, geothermal leasing has declined in Nevada and nationwide in recent years, with Silver State sales bookending the demise of the energy source's leasing glory years.

In 2008, one sale of 35 Nevada parcels banked BLM a record $28.2 million in total revenue. Fast-forward to 2013, when BLM made only $42,870 all year on nine Nevada parcels.

What happened? For industry and BLM, it goes back to the age-old question of the chicken or the egg.

The geothermal industry blames the chicken -- years of regulation between exploration and power production -- for dissuading interest.

According to Department of Energy statistics, adhering to the National Environmental Policy Act -- which requires agencies to weigh environmental concerns in their planning and decisionmaking by preparing detailed assessments of project impacts and alternatives -- takes a minimum of five to seven years for geothermal projects, compared with three to five years for oil and gas and less than two years for wind and solar projects.

But BLM points to the egg -- a lack of bids at recent geothermal lease auctions.

Steam rises out of the ground near Steamboat Springs, Nev. Photo courtesy of the Department of Energy.

"Geothermal leasing interest is driven by industry," a BLM spokesman said. "The decrease in geothermal leasing is not a result of any action(s) by the BLM."

In a vicious cycle, an industry already battling stiff competition sees regulatory hurdles as too expensive and time-consuming to clear, leading to fewer bids and to taxpayers' footing the bill for costly feasibility analyses conducted by federal agencies.

Bidless auctions complete the cycle by failing to boost federal investment already dwarfed by money pumped into wind and solar projects.

The chicken-versus-egg leasing problem, Geothermal Energy Association President Karl Gawell recently told the *Los Angeles Times*, has kept the power source the "stepchild" of renewable energy.

Boiling point

Like fossil fuel development, geothermal follows geology.

Geothermal surveyors use basically the same rigs and equipment as mining and oil companies to drill "slim holes," usually around 8 inches in diameter, sometimes 10,000 feet below the surface.

As in the oil industry, geothermal wells are flow tested. But instead of roughly 4,000 gallons a day, a good geothermal find will yield 4,000 gallons a minute.

What's ideally flowing to the surface is superheated water reaching temperatures above the boiling point of 212 degrees Fahrenheit but kept in liquid form by crushing subsurface pressure.

The water is then either converted to steam through a process called flashing or used to heat a liquid with a lower boiling point to turn turbines and produce electricity.

Regardless of the method used, what's brought up is then pumped back down to the "hot spot" via an injection well to continue the cycle.

Geothermal Energy Association Vice President Doug Glaspey said the hard part is finding a hot spot big enough to support electricity production.

Low-temperature pockets usable for direct heating exist more broadly, but hot spots capable of generating electricity are usually found in seismically active areas. In the United States, that's the West.

Companies "go in, they study it, they spend money, they drill, they do seismic, and let's say they successfully drill a well," said Glaspey, who is also president of Boise, Idaho-based U.S. Geothermal Inc. "But Mother Nature, being who she is, has sent the geothermal reservoir off into a direction that they hadn't anticipated or known about."

The unpredictability creates two problems: The best spot might not be on leased land, and it usually takes half a dozen holes to find.

"It's something that virtually every developer in geothermal space has run into at one time or another," Glaspey said.

If the ideal location crops up in a neighboring parcel, a company must go back through the competitive leasing process and outbid other companies to claim the rights.

All the while, NEPA looms large over the process, working its way down the chain of command to local district offices, which examine resource management plans to investigate potential impacts to the land and wildlife.

Even if the nominating company successfully outbids everyone at auction, Glaspey said, each drilling attempt requires similar NEPA approval.

Wells in the oil and gas industry often come up dry, but Glaspey said the added delay hits geothermal harder than others because companies are operating under power purchasing agreements with utilities.

"We're selling electricity, which has a relatively narrow [profit] margin compared to oil and gas. So the economics is completely different," Glaspey said. "You can't put it in a pipeline or tanker truck and move it off-site and sell it instantly as a commodity."

Already vulnerable to falling energy prices thanks to the domestic natural gas boom and the recession, Gawell said, companies unable to fulfill agreements within typical two-year time frames can face hefty fines.

"We've seen projects that have had power purchasing agreements that have had to cancel them because BLM permitting time had taken too long," he said. "One clear way to dissuade investors is to have long permitting times and to put a tremendous amount of uncertainty into a process that is already complicated enough."

Gawell said Nevada is one of the few states that have figured out how to expedite the process, refined by repetition.

Fading demand

The nation's first commercial geothermal power plant, at the Geysers in California, in 1960 kicked off two decades of industry growth. But by 1987, the Geysers had run out of steam due to overpumping, and geothermal development was tapering off nationally.

Although its electrical output was still dwarfed by California's, Nevada was the center of geothermal's recent resurgence.

In the new century, speculators fueled a leasing surge, nominating parcels near promising geologic formations or with visible hot springs, then bidding against other companies at auction.

When a backlog of pending lease applications piled up, geothermal carved out its corner of the 2005 Energy Policy Act, which ramped up domestic energy production across the board.

The 2005 law expanded competitive geothermal leasing on public lands, formerly limited to areas with known resources. It ordered a 90 percent reduction in a backlog of 194 applications and stipulated that BLM auction off requested parcels at least once every two years, a requirement the Interior Department clarified in rule changes made in 2007.

In 2008, a BLM programmatic environmental impact statement declared that the backlog had been trimmed to just 34 pending applications. Aimed at making more consistent, timely decisions to cut costs, it forecast a bright future for the industry with an estimated 47 percent of America's 530 million acres of geothermal potential on public land in 12 Western states. Excluding tribal lands, national parks, wilderness areas and other protected space, 192 million acres of BLM and Forest Service land was deemed "open" to geothermal leasing.

Defying the forecast, however, geothermal industry activity has fallen off from 818 leases in 2011 to 680 last year as companies relinquish or fail to renew agreements. Nevada lost nearly a fifth of its geothermal leases during the same period, dropping from 511 parcels to 412.

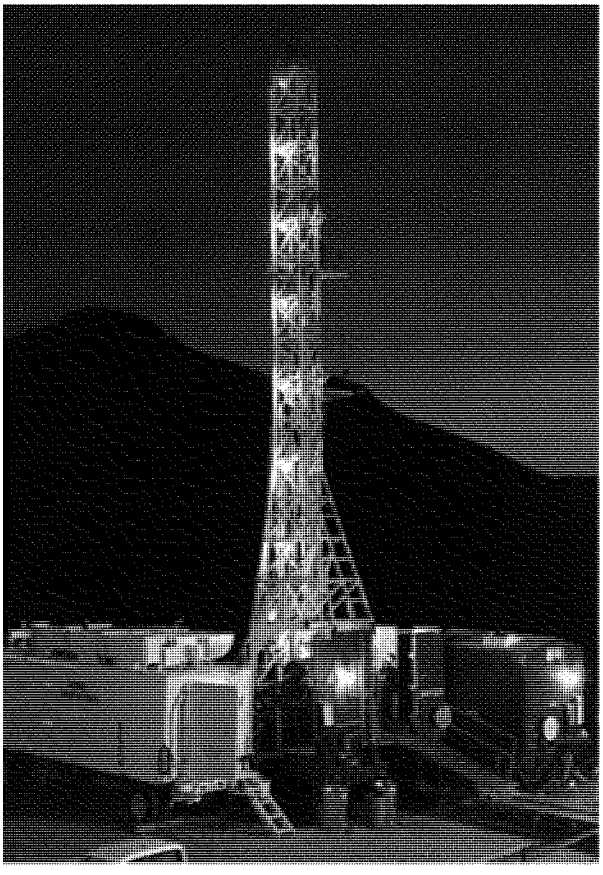
The trend line doesn't seem to be improving this year, with only a pair of BLM sales: one each in Nevada and California.

The industry chalks this up to burdensome regulation, but BLM is quick to point out that geothermal demand isn't in the same ballpark as oil and gas, at around only 1 or 2 percent of all federal leases.

NEPA analysis for oil and gas has run into the same tangle of issues, but that industry hasn't declined similarly.

In Nevada, for instance, all energy development comes up against issues like greater sage grouse management (*Greenwire*, Oct. 21). Oil and gas leasing in Nevada, however, fell off only 2 percent from 2012 to 2013, compared with geothermal's 20 percent slide.

It's not a matter of overstretched employees, either.



A geothermal drilling rig at night. Photo courtesy of the Department of Energy.

"Retaining staff is an issue for the BLM, however there are no known instances where limited resources have affected the time it takes for the geothermal lease parcel review process," the agency said in a statement.

Still, BLM said in the statement, it "is always trying to streamline the geothermal process," referencing regular meetings with stakeholders, new Web pages to help navigate the process and instruction memorandums. According to BLM, several district offices now have "geothermal and fluid mineral leasing NEPA documents to streamline the lease parcel review process," and others "are in the process of revising Resource Management Plans."

But with leasing declining, BLM lacks an incentive to investigate areas with geothermal potential if nominated lands fail to garner even the $2-per-acre minimum bid at auction. Geothermal leasing has made the federal government $76 million since 2007, but that amount pales in comparison with what the more competitive oil and gas process yields annually.

In its statement, BLM acknowledged current internal efforts to "improve the geothermal process" but said the agency "is required to conduct business according to the laws," which necessitate environmental considerations.

Changing the laws would require an act of Congress, so the geothermal industry -- long lacking the powerful lobby of oil and gas or even the increasing Capitol Hill clout of wind and solar -- looked north.

Breaking the cycle

Idaho has the only capitol building in the country heated geothermally, but the geothermal industry remains in its infancy in the state.

Big potential brought Glaspey's U.S. Geothermal Inc. to the table to help write bills from the Gem State's two Republican congressmen, Reps. Raúl Labrador and Mike Simpson.

The two lawmakers have distinct legislation and styles, but streamlining geothermal leasing isn't part of their bitter rivalry, stoked earlier this year when Simpson sharply criticized Labrador's unsuccessful run for House speaker.

"Geothermal energy has tremendous potential to boost domestic production," Labrador said in a statement. "In Idaho alone, geothermal could produce enough power for a half-million homes."

Simpson's H.R. 2004 takes a more traditional, bipartisan approach -- something for which Labrador used to criticize Simpson, labeling him "an old-school legislator that went to Washington, D.C., to compromise." The bill dates back to 2010; its latest incarnation is co-sponsored by Rep. Peter DeFazio (D-Ore.) and serves as a companion to S. 363, put forward by Sen. Ron Wyden (D-Ore.), which the Senate has already passed.

The measure would amend the Geothermal Steam Act of 1970 to solve the problem of geothermal reserves that cross lease boundaries. It would allow a leaseholder to noncompetitively lease an adjoining parcel no bigger than 1 square mile for fair-market value.

BLM acknowledged concerns about undermining free-market forces promoting more leasing -- if you want it, pay for it -- but said there are instances "in which non-competitive leases may be appropriate."

But it raised concerns about the bill's deadlines of 270 days to promulgate regulations and 180 days to determine fair market value, saying that's not enough time.

Labrador's H.R. 1363 is more controversial.

The bill, co-sponsored by Rep. Mark Amodei (R-Nev.), would grant "categorical exemptions" from NEPA similar to those allowed for oil and gas drilling under Section 390 of the 2005 Energy Policy Act.

"It is just kind of funny to see a mining company do things that a renewable energy company can't do," Glaspey said.

In order to allow companies to pinpoint a resource with minimal impact, exploratory wells no larger than 8 inches in diameter, no deeper than 2,500 feet, disturbing less than 5 acres of leased land and completed within 45 days would be allowed if a notice of intent were filed 30 days earlier and NEPA evaluation had been previously conducted.

Democrats and BLM have taken issue with granting exceptions to NEPA. In a statement, BLM stressed that extraordinary circumstances can preclude even a legislatively established categorical exclusion.

Labrador rejects claims that his bill is another Republican attempt to work around the landmark environmental law.

"Oil and gas already has this exemption," he said. "Common sense demands that the geothermal industry operate under the same rules."

Both bills await a full House vote after passing the House Natural Resources Committee, which the Geothermal Energy Association took as a positive sign that the bills could slide through during the lame-duck session this month.

Global competition

The small streamlining fixes are vital, Gawell said, if the United States wants to remain the world's largest geothermal producer.

Instead of speeding toward BLM projections of 12,200 megawatts by 2025, geothermal still supplies less than 1 percent of the United States' power. Meanwhile, Indonesia is aiming to dethrone the United States with one thrust of proposed projects.

"Whether they reach that in a few years is a good question, but they are doing what's needed; they're adjusting their laws to help make this happen," Gawell said.

Indonesia isn't alone. An industry report indicated that 530 MW came online around the world last year, the largest increase since 1997 at more than 4 percent growth.

The percentage of the world's energy derived from geothermal sources is expected to grow as more than 700 projects are under development in 76 countries.

The industry is unlikely to eclipse wind and solar, but it's optimistic about its future in the United States. A 2006 report predicted that geothermal could eventually generate 10 percent of America's power.

"The U.S. industry is always viewed as the best," Gawell said, "but it's tough competing in a global market when your home industry is being stalled."

OIL AND GAS:

RFS, ozone regs top refiners' priority list for 2015 -- trade group

Nick Juliano, E&E reporter

Published: Wednesday, November 19, 2014

Once Republicans take control of Congress next year, refiners will resume a push to reform the renewable fuel standard and limit U.S. EPA regulations on ground-level ozone, a leading industry official said today.

American Fuel and Petrochemical Manufacturers President Charlie Drevna hosted a breakfast for reporters this morning during which he outlined the trade association's priorities in ongoing debates over potential crude oil exports, renewable fuels and environmental regulations.

The long-standing push for RFS reform from AFPM and other oil industry groups was on "hiatus ... given the elections," Drevna said, but likely will ramp back up next year. Stakeholders on all sides of the debate are going to be keeping a close eye on EPA and Congress next year (*E&E Daily*, Nov. 6).

Drevna said he was encouraged by EPA's proposal last year that recognized a "blend wall" limiting biofuels below 10 percent of total fuel supply but noted there were continued questions around advanced biofuels and other details.

While the new GOP majority in the Senate empowers AFPM's natural allies on many issues, the group has "never maintained that who holds the gavel would have that big of an impact on the RFS issue," Drevna said. Lawmakers' approach to the RFS and broader biofuels policy is generally driven by geographic considerations as much as ideological ones, but Drevna said he would not shy from a reform push, despite the looming 2016 presidential caucus in biofuel-rich Iowa.

"We're not going to wait. We're going to keep pounding it," he said. "We're not going to let it lie dormant, that's for sure, because if you let it lie dormant it's out of sight, out of mind."

The second most closely watched issue is impending EPA ozone regulations; the agency has until Dec. 1 to decide whether to lower the current air quality standard from its 75 parts per billion level. Drevna said he expected the standard to fall, although not all the way to 60 ppb, where environmental groups have called for it to be set. Still, he noted that many parts of the country were not complying with the current standard and said stricter limits would create pain for all manner of heavy industry.

"These ozone regulations that are about to come up -- oh, my Lord. ... This is the one that's going to impact everybody," Drevna said. "I think Congress should play some role in this."

Drevna also listed reform to security standards for chemical facilities and an update to the Toxic Substances Control Act as top priorities.

Regarding the emerging debate over whether to lift the ban on crude exports, Drevna said he did not expect legislation to move through Congress in the near future. Incoming Senate Energy and Natural Resources Chairwoman Lisa Murkowski (R-Alaska) is a leading export champion and is expected to highlight the issue frequently with committee hearings and other activities, but even she has said legislation is not imminent.

A more immediate focus is exports of condensate, a type of lightly processed crude that oil companies are planning to export in greater quantities after two companies sought and received clearance to do so from the Commerce Department earlier this year.

Drevna said AFPM was not opposed to condensate exports in principle, but he said Commerce needed to offer a more rigorous definition of a condensate to prevent fraud in the marketplace. He warned against a repeat of a recent scandal in which companies were selling fake renewable identification numbers (RINs) to comply with the RFS.

"We had enough of fraudulent RINs," he said. "Let's not have fraudulent condensates."

TAX POLICY:

Business, enviro groups call for extension of renewable energy incentives

Nick Juliano, E&E reporter

Published: Wednesday, November 19, 2014

Hundreds of environmental groups and clean energy firms are urging Congress to renew the production tax credit and other incentives that expired at the end of last year.

The letter sent today by the Business Council for Sustainable Energy and more than 450 other organizations comes amid continuing debate on Capitol Hill over how to handle the several dozen lapsed tax breaks collectively known as "extenders."

Although an extenders package typically has been a relatively routine order of business toward the end of congressional sessions, House Republicans have resisted calls to extend all 50 or so of the tax breaks and instead are pushing for just a few to be made permanent, such as the research and development tax credit. Senate Democrats said all of the breaks should be extended through the end of next year so as not to disrupt a variety of industries ahead of more difficult tax reform discussions.

The PTC, which primarily benefits wind energy, has become a focal point of the debate because it has the highest price tag of the various energy-related tax breaks; an extension through next year would cost about $13 billion over a decade, according to the Joint Committee on Taxation. Several conservative groups, many with ties to billionaire industrialists Charles and David Koch, have mounted an aggressive campaign to encourage Republicans to strip the PTC from the extenders package, although GOP leaders don't seem to be itching for that fight at this point (*E&E Daily*, Nov. 12).

The business council and the other clean energy proponents said the Senate extenders bill should be passed as is. In addition to the PTC, it also provides incentives for biofuels production, other alternative fuels, home weatherization and additional efficiency upgrades.

"Businesses and investors need stable, predictable federal tax policy to create jobs, invest capital, and deploy pollution-reducing energy technologies," the groups write. "Allowing the lapsed clean energy tax provisions to languish undermines investor confidence and jeopardizes continued economic and environmental benefits."

CLIMATE:

Whitehouse aims to 'start conversation' on carbon price with new bill

Jean Chemnick and Sean Reilly, E&E reporters

Published: Wednesday, November 19, 2014

The carbon fee bill Sen. Sheldon Whitehouse plans to unveil this afternoon will "start a conversation" that could lead to bipartisan cooperation, he said today at a Washington, D.C., forum.

The Rhode Island Democrat and vocal advocate for action on climate change said he and co-sponsor Sen. Brian Schatz (D-Hawaii) plan to reintroduce it in the next Congress, when they hope it will see "fruitful" action.

The new Senate Republican majority then will have a political interest in embracing, rather than rejecting, a market-based approach to limiting carbon, he said.

"The Republicans need to look responsible; they've got lots of members for whom denial is simply not a valid strategy [for those] who are up for election" in 2016, Whitehouse said at a transportation forum this morning at the National Building Museum. "The evidence is only mounting that they are way out of line, and the American public is moving more and more away from that position."

He added, "It's a presidential electorate; they have to field a presidential candidate who will appeal to that electorate."

The measure Whitehouse and Schatz are preparing to release would levy a $42-per-metric-ton fee on emissions from a wide variety of sources beginning in 2015 -- a price point that tracks roughly with the administration's social cost of carbon estimate. That fee would increase by 2 percent plus the rate of inflation every year.

A memo from Whitehouse's office said the bill would generate revenues in excess of $2 trillion over 10 years. It would go into an "American Opportunity Fund" and be distributed to shore up Social Security benefits, offset tax cuts elsewhere in the code or to pay out dividends to citizens.

"This is not an excuse to make big government bigger," Whitehouse said.

Environmentalists applauded Whitehouse's effort.

Rachel Cleetus, senior climate economist at the Union of Concerned Scientists, proposed that the fund's revenue go to upgrading aging infrastructure, shoring up climate change adaptation efforts and cutting taxes.

"The American people are already bearing the high costs of climate change," she said. "Congress has an imperative to lead on reducing emissions so those costs don't continue to grow."

But free-market think tanks and economists have warned that no conservative will ever support a carbon levy that does not return all revenue to the public in tax cuts elsewhere. They have also said that language pre-empting U.S. EPA regulation would be vital to gaining their support, and Whitehouse said during his Senate floor rollout of the bill this afternoon that he would be "open to a discussion."

AIR POLLUTION:

Judges vexed by industry challenge to EPA standards for polyvinyl chloride

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, November 19, 2014

Federal judges struggled today with a complicated challenge to U.S. EPA's air emissions standards for polyvinyl chloride manufacturing facilities, questioning the merits of both the agency's and industry challengers' arguments.

EPA finalized the standards for the country's 17 PVC manufacturing facilities in April 2012. The limits call for curtailing the release of many hazardous air pollutants and carcinogens like dioxin in the making of the country's third most commonly produced type of plastic.

The rules seek to cut emissions from various parts of the manufacturing process, including vents, equipment leaks and process wastewater, which contains hazardous chemicals that volatilize when exposed to air.

EPA ran into a problem, however, for some of those limits, including the wastewater standards for both area and major sources, because data submitted by one facility turned out to be inaccurate.

The agency therefore granted reconsideration of those regulations and expects to finalize the revised rule in April 2016 -- a full year after the compliance date for the original suite of regulations.

The Vinyl Institute and several PVC producers challenged various aspects of the rules at the U.S. Court of Appeals for the District of Columbia Circuit.

Their chief argument is that EPA did not conduct a notice and comment period for the revised rule.

Douglas Behr of Keller and Heckman LLP, representing the industry, said the case presented an issue of "fundamental fairness."

But that line of argument gained little traction with Judge Judith Rogers, a Democratic appointee. She pointed out that industry will be able to raise concerns about the reconsidered rule before it is finalized.

EPA, she said, will "put out a revised rule ... and you'll have an opportunity to comment."

More broadly, what the challengers and EPA wanted the court to do with the various moving parts of the litigation appeared to vex the three-judge panel. In addition to differences between the various emissions limits for major or area sources, the case was complicated by a motion filed late yesterday that asked the court not to consider the wastewater standards for area sources because EPA and industry were engaging in settlement talks.

EPA, moreover, has staked out a complicated position in the case. It claims that most of the issues presented by the challengers do not fall under the court's jurisdiction because the industry didn't raise them in the original public comment period.

But if the court were to rule on those questions, Justice Department attorney Angeline Purdy said the agency would accept staying the rule until the agency completes reconsideration because of the "unique situation" presented in the case.

That didn't seem to satisfy Judge Brett Kavanaugh, who said he was "trying to figure out what the agency is doing."

It's "kind of a mess, it seems to me," Kavanaugh, a Republican appointee, said.

Judge Cornelia Pillard, a Democratic appointee, told Purdy that she was "not sure what you want us to do."

And despite both EPA and the industry challengers seeming to want a stay for several of the limits, the court struggled with whether it has authority to do so.

Rogers said that under the Clean Air Act, a court can only grant a three-month stay, which wouldn't satisfy either parties' requests. Behr, representing the industry, argued an indefinite stay could be granted under the Administrative Procedure Act.

But the judges also had problems with that argument. Kavanaugh, who appeared sympathetic to the industry's argument that it would have to comply with a standard based on faulty data while EPA finishes the reconsidered rule, noted that industry has not said how much of a burden compliance will place on it. The standard for such a stay, he said, is "irreparable injury," and nowhere during the course of the case has industry said how much compliance will cost.

Environmental groups have long pushed EPA to promulgate the PVC standards, noting particularly high levels of toxic air emissions in Louisiana near six PVC plants. The agency issued limits in 2002, but they were vacated by the D.C. Circuit in 2004 after environmentalists challenged them. Before that, the previous standards were set in 1976.

EPA said the new standards would result in reductions of 238 tons of total air toxics and 21 tons of hydrogen chloride emissions at major sources (*E&ENews PM*, Feb. 14).

In the case today, environmental groups strongly opposed a stay of any of the regulations.

"What this could lead to," said attorney Emma Cheuse of Earthjustice, "is indefinite delay of protective standards."

A ruling in *Mexichem Specialty Resins v. EPA* is expected by next summer.

GRID:

Hackers target energy facilities in 79 attacks in 2014

Published: Wednesday, November 19, 2014

The number of cyberattacks against energy companies is down, but industry members and government officials remain worried about the threat hackers pose to the U.S. grid.

The Computer Emergency Readiness Team, a division of the Department of Homeland Security, reported investigations into 79 hacking incidents in fiscal 2014, down from 145 the previous year.

No computer virus has shut down any portion of the grid thus far, but a survey by ThreatTrack Security found hackers had breached security at 37 percent of energy companies.

"Our grid is definitely vulnerable," said David Kennedy, CEO of TrustedSec. "The energy industry is pretty far behind most other industries when it comes to security best practices and maintaining systems."

Navy Adm. Mike Rogers, director of the National Security Administration, told a power grid security conference in October that grid security was a chief concern for the agency. Homeland Security and the FBI are now hosting classified meetings with utilities in 12 American cities on the issue.

But some in the industry point to more conventional threats to the grid, like the destruction caused by snipers to power transformers last year in Silicon Valley and the perpetual threat of storms.

"There's all this doom and gloom about how fragile the grid is. But what do we have to fear in terms of power disruption? It's not a terrorist attack," said David Whitehead, a research executive at Schweitzer Engineering Laboratories. "It's Mother Nature" (Jose Pagliery, CNN/KPAX, Nov. 18). **-- DTB**

UTILITIES:

Idaho preps for solar boom amid changing energy climate

Published: Wednesday, November 19, 2014

Idaho's largest utility has signed 16 renewable energy contracts, totaling 461 solar megawatts, marking a change for the energy landscape in a state that already has the nation's lowest energy prices.

The plans would increase Idaho Power Co.'s "green" power capacity to 1,253 MW, covering almost 40

percent of last year's peak load demand. And that total doesn't take into consideration the utility's 1,700 MW of hydroelectric power.

"If we had 461 megawatts of solar under contract in 2013, we would have ranked No. 1 [nationwide] for cumulative solar capacity per capita," said Idaho Power spokesman Brad Bowlin.

The expansion was mandated under the federal Public Utility Regulatory Policies Act, which required Idaho Power to pay developers the same rate it would cost the utility to build a new natural gas plant as a way to help boost renewables.

The utility was sharply criticized in recent years for halting wind and solar projects mandated under the law, seeking to increase rates and strip power credits for rooftop solar generation, and trimming programs encouraging customers to limit electricity use.

But after 100 years in business, Bowlin said, the company is working to innovate, echoing recent national appeals from the industry's Edison Electric Institute and conservation heavyweight the Natural Resources Defense Council in calling on utilities to evolve to meet modern energy demands.

"In all that time, we've been able to continually provide fair-priced, reliable and environmentally sound electrical service," Bowlin said (Rocky Barker, *Idaho Statesman*, Nov. 19). **-- DTB**

MINING:

BHP Billiton bets big on copper, energy

Published: Wednesday, November 19, 2014

The world's largest mining company is moving its money from iron and coal to copper and petroleum based on its belief in burgeoning Asian incomes.

BHP Billiton Ltd. predicts that a growing middle class across Asia -- particularly in China -- will propel skyrocketing demand for consumer goods like air conditioners that require lots of copper to build and plenty of energy to run.

With declines in construction decreasing demand for iron and coal, long BHP's go-to resources, the mining giant expects global demand for copper to significantly outstrip supply by 2018.

"Copper demand is going to continue to grow for a really long time," said Mike Henry, BHP's marketing president. "Our confidence in that transition [to a consumer-driven economy in China] is as strong as it has ever been."

Central to Anglo-Australian company's plan is Olympic Dam, one of the world's largest copper deposits beneath the red sand of South Australia, where it is researching techniques to accelerate the notoriously difficult copper mining process.

It's a problem that should only bolster investor confidence in BHP's big bet on copper.

"If they are correct and copper is facing an extended period of deficit, then expansion [of existing copper operations] would be a no-brainer," said AMP Capital portfolio manager Andy Gardner (Rhiannon Hoyle, *Wall Street Journal*, Nov. 18). **-- DTB**

GREEN BUILDING:

Miami project aims to capture wind to cool shoppers

Published: Wednesday, November 19, 2014

The builders of the new Brickell City Centre in Miami are hoping a new architecture element will be able to capture nature and cool shoppers in an outdoor retail space without using any electricity.

Dubbed a "climate ribbon," the wobbling elevated trellis made of steel, glass and fabric is meant to capture winds blowing off Miami's Biscayne Bay and transfer them onto shoppers at the Brickell City Centre.

Construction of the center, owned by Swire Properties Inc., began in 2013, and the first phase is expected to be completed in 2015. In addition to an open-air retail space, the 5.4 million-square-foot area includes two residential towers, a hotel, office space and entertainment space.

The ribbon was designed by Hugh Dutton, a Parisian architect who grew up in Jamaica and was inspired by the way sails capture trade winds there.

"I grew up understanding cool breezes as a way of making life livable in the tropics," he said (Robyn Friedman, *Wall Street Journal*, Nov. 18). **-- AW**

AIRLINES:

Fuel efficiency stagnated last year -- report

Sean Reilly, E&E reporter

Published: Wednesday, November 19, 2014

After years of improvement, the U.S. airline industry showed no gain in overall fuel efficiency last year, the International Council on Clean Transportation reported today.

Although some airlines, such as Frontier, continued to make strides in reducing fuel consumption, others -- most notably American -- showed little improvement or actually slipped in comparison with 2012, thus pulling down the score for the industry as a whole, the council's analysis found. Between 2000 and 2010, by contrast, yearly fuel efficiency gains averaged 2.8 percent, falling to 1.3 percent through 2012, according to the group's figures.

Of the 13 carriers whose domestic operations are covered in the report, Alaska Airlines remained the most fuel-efficient last year, followed by Spirit Airlines, as was true in the council's previous 2012 rankings (*E&ENews PM*, April 30). However, Frontier Airlines displaced Southwest from the No. 3 spot. Delta rose one rung to No. 8, US Airways was unchanged at No. 10 and American Airlines was again at the bottom.

All 13 were profitable last year. While fuel expenses typically account for about a third of airline operating costs, the latest findings are evidence that international policies are needed to address airline emissions and their impact on climate, according to the report's authors.

"Conventional wisdom says that fuel prices alone will be enough to drive airline efficiency, but that's not what the data tell us," Dan Rutherford, the council's aviation program director, said in a news release.

The stated purpose of the Washington, D.C.-based nonprofit is to provide unbiased research and analysis to environmental regulators. Its report draws on airlines' "fuel-burn" and operations data to create what it calls an apples-to-apples comparison regardless of individual carriers' size and network structure. By its estimate, for example, American burned 27 percent more fuel last year than the three most efficient airlines to provide the same level of transportation service.

In a phone interview, Rutherford attributed the industry's stagnant performance to several factors, including a 60 percent drop in deliveries of new, more fuel-efficient aircraft from a 2001 peak, and airlines' diminishing ability to make gains by packing more passengers into individual planes.

In its report, the council also questions airlines' ability to meet a goal of "carbon-neutral" growth from 2020, especially if fuel prices stay steady or fall.

But a top executive at Airlines for America, a trade group, voiced confidence the target will be met through government partnerships in advancing the use of sustainable alternative fuels and other developments.

Of more than $12.4 billion invested last year by U.S. carriers in capital expenses, the bulk went to buy new aircraft that are at least 15 percent more fuel-efficient than the planes they replace, Nancy Young, the group's vice president for environmental affairs, said in a statement.

Over the years, efficiency improvements have reduced airline carbon dioxide emissions equal to the amounts emitted by millions of cars each year, Young said.

Airline CO2 emissions account for about 3 percent of the U.S. total but are on track to triple globally by 2050 under "business-as-usual scenarios," the council's report concluded. Among possible steps cited that could affect that forecast: U.S. EPA has said it will proceed with an "endangerment" finding that could lead to the kind of efficiency standard already in effect for cars and trucks, while the International Civil Aviation Organization is working on an efficiency yardstick for new aircraft.

To date, however, the policies needed to curb airlines' emissions growth "remain elusive," according to the report.

EUROPEAN UNION:

U.K. government must address air pollution -- court

Published: Wednesday, November 19, 2014

The European Court of Justice has ordered the United Kingdom to act urgently to improve the air quality there.

The case, brought by the small environmental group Client Earth, could have broad implications across Europe, allowing people to sue governments that do not meet their pollution deadlines.

The British government has long delayed its compliance with E.U. air pollution laws, often asking for time extensions. For example, the United Kingdom says it is unlikely to meet its legal limits for nitrogen dioxide gas until after 2030. The 2030 deadline is already a 20-year extension on the original one set by Europe.

Now, environmentalists project the British government will have to restrict the use of diesel cars in city centers in order to meet its pollution goals.

"This ruling will save lives by forcing the government to finally take this issue seriously," said Alan Andrews, a lawyer with Client Earth. "They will now have to come up with an urgent plan to rid our towns and cities of cancer-causing diesel fumes" (John Vidal, London *Guardian*, Nov. 19). **-- AW**

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CLIMATEWIRE — Thu., November 20, 2014

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1.TRANSPORTATION:

Is electrolysis the pathway to reach totally carbon-free hydrogen fuel?

As plug-in electric vehicle sales continue to putt along, automakers are increasingly pinning their hopes on hydrogen fuel cells as the clean vehicle technology of the future. And using excess energy from renewable energy resources such as solar and wind to split water into oxygen and hydrogen -- a process called electrolysis -- could be the best solution for creating large supplies of sustainable hydrogen fuel.

2.POLICY:

World on dangerous emissions path, U.N. report warns

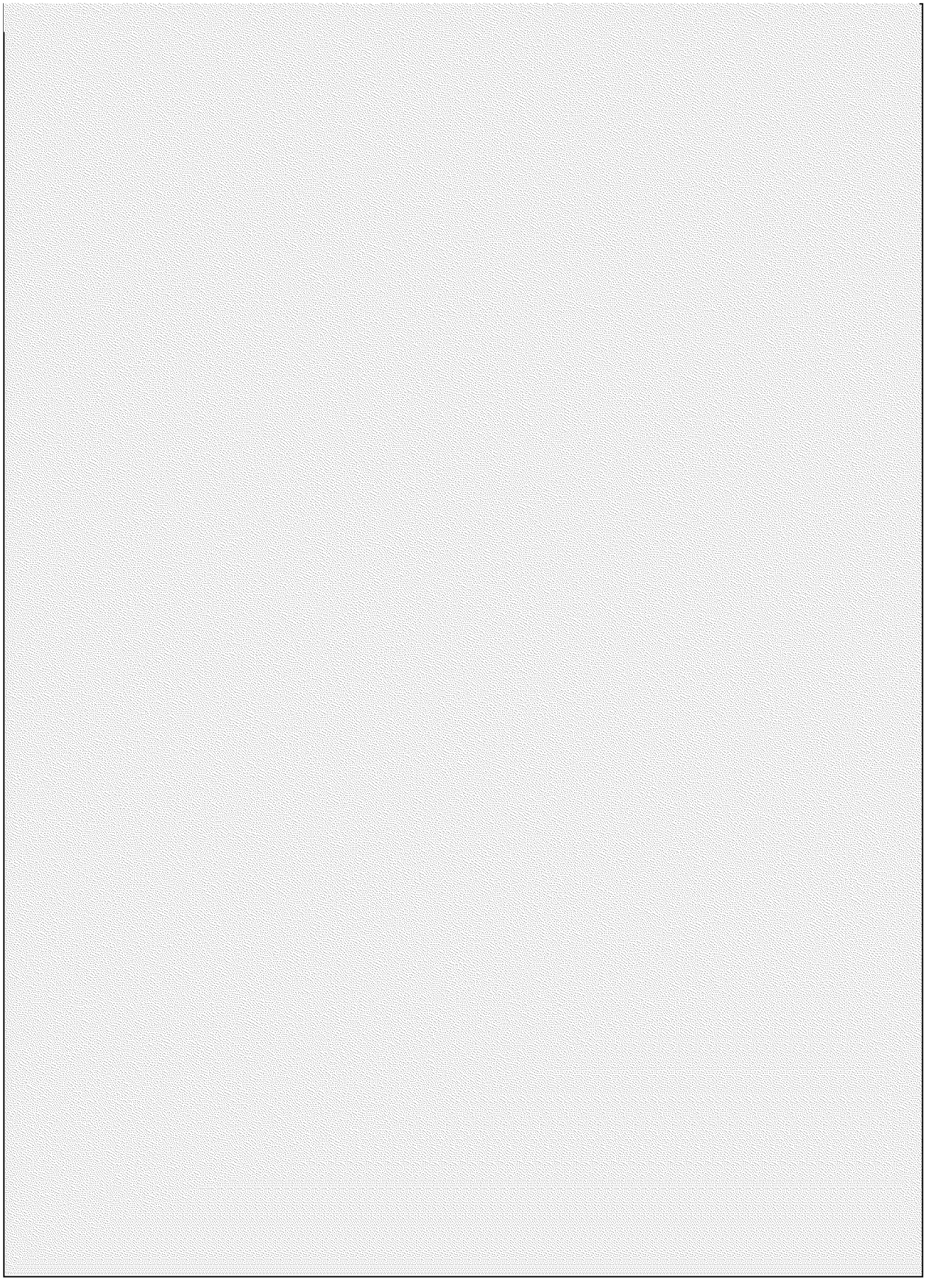
The world will not keep temperatures below dangerous thresholds despite U.S. EPA's efforts to clean up coal-fired power plants and recent pledges from the United States and China to curb carbon emissions, states a U.N.report released yesterday.

TODAY'S STORIES

3.FORESTS:
EPA gives thumbs-up to wood-burning energy, getting cheers from forest industry
4.SCIENCE:
Climate models are wrong about carbon release from soil microbes -- study
5.CARBON TRADING:
West Coast of U.S. and Canada move closer to common policies on reducing CO2
6.RISK:
Congressional lawmakers seek more private flood insurance
7.REGULATION:
Natural gas industry, a big winner under EPA's power plant rule, says it's neutral
8.PUBLIC OPINION:
Majority of Americans back federal action to limit power-sector carbon -- poll
9.EMISSIONS:
Small volcanic eruptions may have contributed to pause in global warming
10.OCEANS:
Fluctuating crab, shrimp and fish populations point to dramatically warming Gulf of Maine
11.FLOODS:
Torrential rains kill 3 in Albania
12.SPECIES:
Seabird bodies crop up in Northern Calif., hinting at warming ocean temps
13.AGRICULTURE:
Floating farms help Bangladeshi farmers weather floods

E&ETV'S ONPOINT

14.EMISSIONS:
Coalition for Green Capital's Hundt says green banks can help states comply with EPA power plant rule



AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., November 20, 2014

READ FULL EDITION

1.UTILITIES:
Calif. regulator -- PG&E email will 'follow me to my grave'

SAN FRANCISCO -- A top California utility regulator in hot water for agreeing to help influence an agency rulemaking on natural gas rates blamed an overly cozy relationship with a utility executive.

TOP STORIES

2.ELECTRICITY:
CEOs see promise in wires as they eye spending priorities

3.OFFSHORE DRILLING:
U.S. industry's demand for leasing details has Mexico 'working against the clock'

4.LAW:
Enviro lawyers assert 'rights of nature' in Pa. wastewater suit

OIL AND GAS

5.ARCTIC:
Drillers drop $60M on Alaska's North Slope, Beaufort leases

6.METHANE HYDRATES:
U.S., Japan aim to tap resource in Alaska's North Slope

7.HYDRAULIC FRACTURING:
Pa. lawmaker expands frack-waste probe to Ohio, W.Va.

8.OFFSHORE DRILLING:
Industry touts wealth of oil held back from development

9.NATURAL GAS:
Baltic nations look to LNG pipeline to ease Russian dependence

10.OIL:
Iraqis reclaim refinery, eye return to production

11.WYOMING:
Oil commission plan would increase space between homes, drill sites

ELECTRICITY

12.SECURITY:
National Counterterrorism Center could be a model for cyber defense -- experts

13.PEOPLE:
APPA appoints new director

14.GRID:
Ind. agency balks at $1.9B Duke improvement plan

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15.EMISSIONS:
Coalition for Green Capital's Hundt says green banks can help states comply with EPA power plant rule

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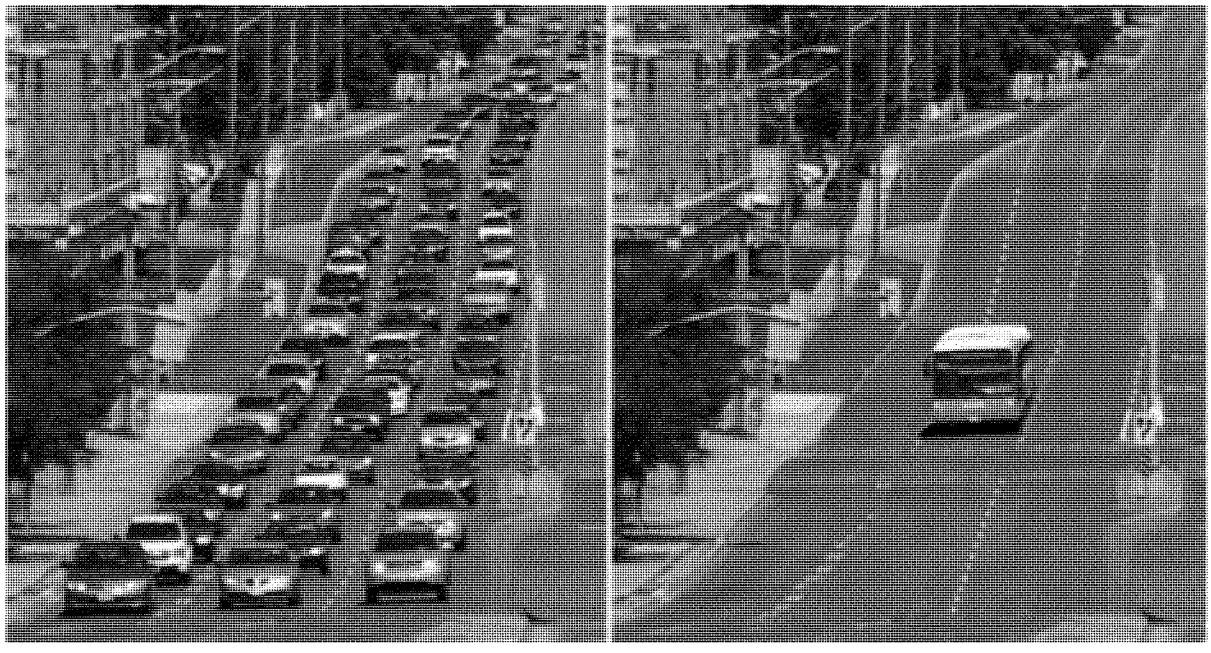

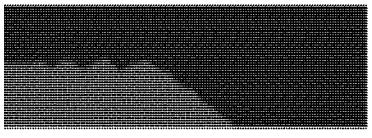

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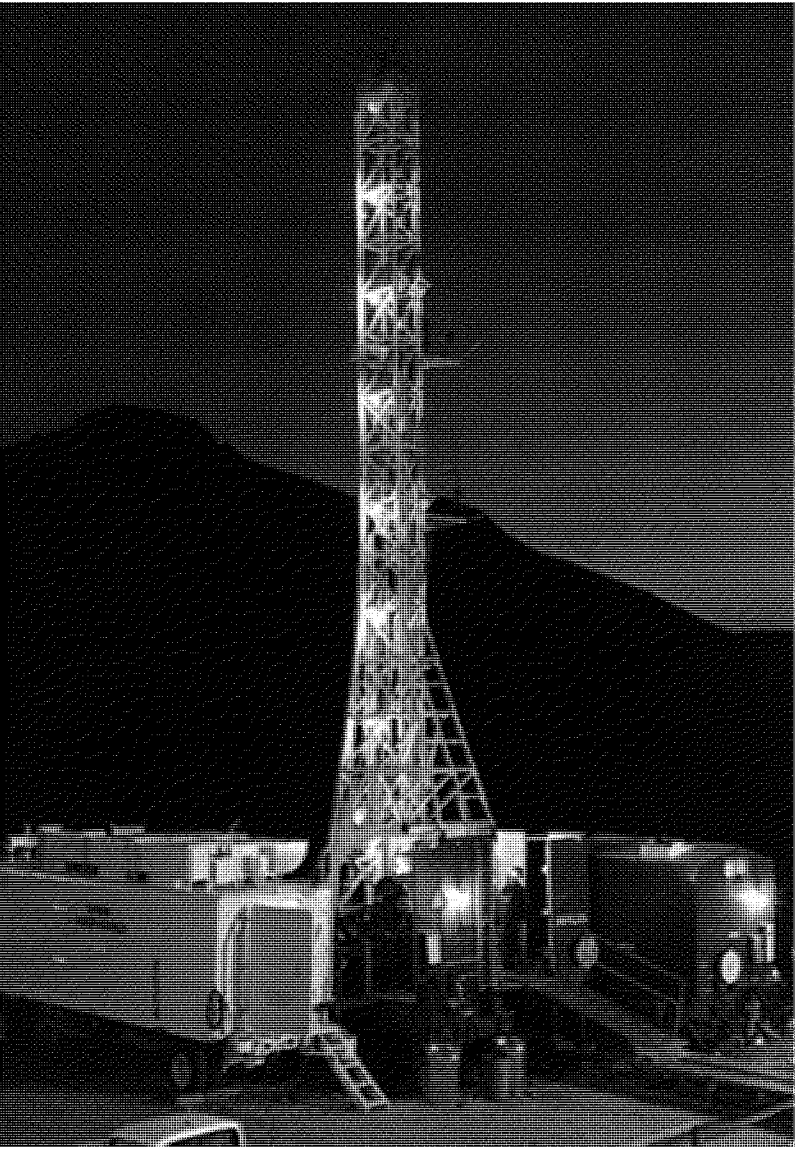

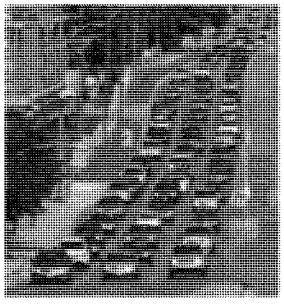

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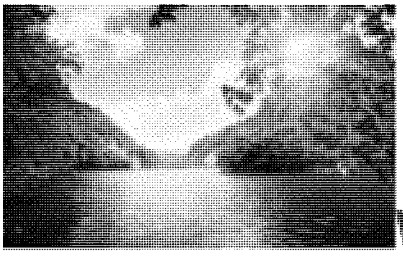
From: Turley, Jennifer
Sent: Thur 11/20/2014 3:29:06 PM
Subject: Water Law News for November 20, 2014



Water Law News

for November 20, 2014

Bloomberg BNA **Daily Environment Report™**

Drinking Water

Congress Should Provide Adequate Funds To Address Algal Blooms, House Panel Told

With harmful algal blooms becoming a growing threat to the safety of drinking water, as seen recently in Toledo, Ohio, the state revolving loan fund should be financed at a higher level, a water district official told a House panel Nov. 19....

Drinking Water

San Diego City Council Links Potable Reuse Program to Clean Water Act Waiver Request

The San Diego City Council has unanimously approved a measure that expands the municipal potable reuse program and authorizes the application for a fourth waiver from Clean Water Act (CWA) wastewater treatment standards. ...

Energy

TransCanada Committed to Keystone XL But Will Expand Into Rail, CEO Girling Says

The failed Senate vote Nov. 18 on the Keystone XL oil sands pipeline actually represents "a positive sign" because it showed the number of lawmakers supporting the project is steadily growing, TransCanada Corp. Chief Executive Officer...

Enforcement

White House Completes Review of EPA Notice On Pollutant Discharge Electronic Reporting

The White House completed its review Nov. 18 of a supplemental notice that would clarify and offer potential modifications to the Environmental Protection Agency's National Pollutant Discharge Elimination System program electronic...

Hydraulic Fracturing

Rules Approved by N.C. Commission For Oil, Gas Drilling Called Inadequate

Rules covering oil and gas exploration activities in North Carolina that were recently approved by the state Mining and Energy Commission fail to provide adequate protection, according to environmental groups....

Pipelines

Environmentalists Claim TransCanada Uses 'Dirty Tricks' in PR Battle Over Oil Sands

Canadian environmental groups accused TransCanada Corp. of using questionable tactics in seeking public and regulatory support for its proposal to pipe more than a million barrels of oil per day nearly 3,000 miles from the Alberta oil sands...

Water Infrastructure

EPA Providing Utilities $600,000 for Climate Risks

The Environmental Protection Agency is providing up to a total of $600,000 to help drinking water, wastewater and stormwater utilities in more than 20 communities prepare for potential impacts of climate change. The communities will receive...

Water Pollution

Environmentalists Urge California to Bar Oil, Gas Wastewater Discharges to Unlined Pits

California regulators should prohibit the discharge of oil and gas wastewater into unlined pits and should increase oversight of the hundreds of open-air ponds to prevent tainting groundwater supplies and protect health, the environmental...

Water Pollution

EPA, Corps to Update Economic Analysis Of Proposed Waters of the U.S. Rule

The Environmental Protection Agency and the U.S. Army Corps of Engineers will update the economic analysis underlying the proposed waters of the U.S. rule in response to comments and new information it has received, an agency official said...

Water Pollution

EPA Extends Comment Period for Proposal On Pretreatment Standards for Dental Sector

The Environmental Protection Agency decided to give the public an additional 60 days to comment on the proposed pretreatment standards to regulate the dental sector, an agency official said Nov. 19....

Water Pollution

Federal Appeals Court Hears Farm Group, EPA Arguments on Chesapeake Bay TMDL

If farm groups prevail in their lawsuit challenging the water quality cleanup plan for the Chesapeake Bay established by the Environmental Protection Agency in 2010, "the Bay won't recover," Jon A. Mueller of the Chesapeake...

Water Pollution

Many Green Infrastructure Practices Not Jurisdictional Under Waters of U.S., EPA Says

Green infrastructure practices such as rain gardens and bioswales in uplands won't fall within the Clean Water Act's jurisdiction under the final waters of the U.S. rule, an Environmental Protection Agency water official clarified...

Water Pollution

Maryland Leaning Toward Denying Exelon Water Permit for Conowingo Dam Relicensing

Maryland's environmental agency is leaning against approving a water quality certification necessary for relicensing the Conowingo Dam, it said....

Water Pollution

Virginia Identifies Water Bodies as Priorities for 2015

Virginia's Department of Environmental Quality is seeking public input and comments on its 2015 priority areas for water quality improvement efforts. DEQ identified 20 water bodies subject to total maximum daily load programs as 2015...

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Latest News

Agencies Weigh Options For CWA Farm Waiver In Wake Of Limited Benefits

EPA, the U.S. Department of Agriculture (USDA) and the Army Corps of Engineers are still weighing options for exempting farm conservation practices from CWA dredge-and-fill permitting, a top EPA official says, adding that a controversial interpretive rule creating the exemptions does not appear to have had the intended benefits.

Industry Suit Aims To Expand High Court Review Of CWA 'Jurisdiction' Orders

Industry is seeking Supreme Court review of a case that could expand the high court's landmark ruling requiring pre-enforcement review of some agency actions to include determinations that waterbodies are "jurisdictional" and subject to Clean Water Act (CWA) regulation -- an effort to reverse a series of lower court rulings that rejected the argument.

POTWs, Dentists Urge EPA To Extend Amalgam Rule Comment Deadline

Groups representing wastewater utilities and dentists are urging EPA to extend the public comment period for recently proposed regulations limiting mercury in dental office discharges, saying the proposed rule is based on outdated surveys and that more time is needed to evaluate its potential impacts.

News Briefs

NPDES E-Reporting Rule Notice Clears OMB

The White House Office of Management & Budget (OMB) has completed its review of a supplemental notice for EPA's proposal to require facilities to electronically report most water discharge data, clearing the way for the agency to seek additional comment on a proposal that states have criticized as burdensome and overly broad.

Greenwire

GEOTHERMAL:

Leasing woes stall industry development, even in hotbeds

Dylan Brown, E&E reporter

Published: Wednesday, November 19, 2014

Hot water bubbling up everywhere, Nevada became the Wild West of a geothermal energy boom when the long-stagnant industry ushered in the new millennium with a technological renaissance and a public lands leasing boom.

Two-thirds of the million acres of U.S. public lands approved for geothermal development between 2007 and 2013 were located within the Silver State's borders. Roughly half the 680 geothermal leases the Bureau of Land Management managed in 2013 are in Nevada, and the state's former program leader, Lorenzo Trimble, was recently promoted to oversee agency leasing nationally.

The Nevada Legislature last year also opened the door to further geothermal development by forcing the state's largest energy company to transition hundreds of megawatts of coal-generated power to other sources (*Greenwire*, June 4, 2013).

With no need to rely on intermittent factors like sun or wind, geothermal is part of the Obama administration's "all of the above" energy plan and generates hometown pride for Republicans from Western states, where the vast majority of its potential lies.

But despite the bipartisan potential, geothermal leasing has declined in Nevada and nationwide in recent years, with Silver State sales bookending the demise of the energy source's leasing glory years.

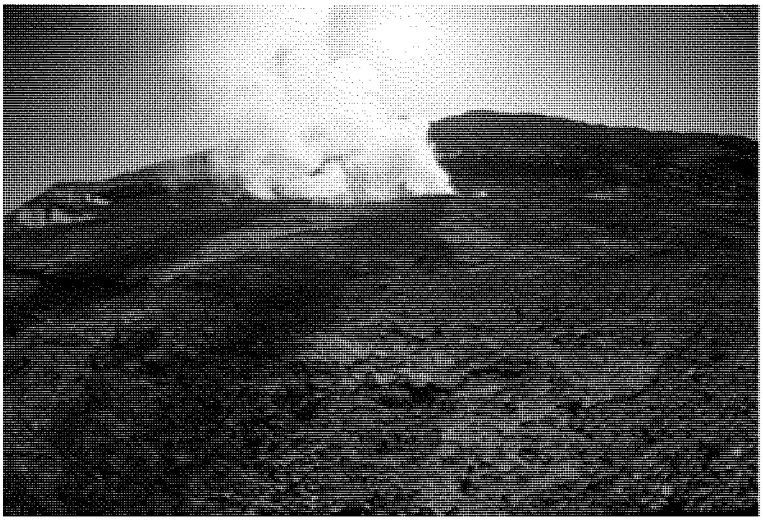
In 2008, one sale of 35 Nevada parcels banked BLM a record $28.2 million in total revenue. Fast-forward to 2013, when BLM made only $42,870 all year on nine Nevada parcels.

What happened? For industry and BLM, it goes back to the age-old question of the chicken or the egg.

The geothermal industry blames the chicken -- years of regulation between exploration and power production -- for dissuading interest.

According to Department of Energy statistics, adhering to the National Environmental Policy Act -- which requires agencies to weigh environmental concerns in their planning and decisionmaking by preparing detailed assessments of project impacts and alternatives -- takes a minimum of five to seven years for geothermal projects, compared with three to five years for oil and gas and less than two years for wind and solar projects.

But BLM points to the egg -- a lack of bids at recent geothermal lease auctions.



Steam rises out of the ground near Steamboat Springs, Nev. Photo courtesy of the Department of Energy.

"Geothermal leasing interest is driven by industry," a BLM spokesman said. "The decrease in geothermal leasing is not a result of any action(s) by the BLM."

In a vicious cycle, an industry already battling stiff competition sees regulatory hurdles as too expensive and time-consuming to clear, leading to fewer bids and to taxpayers' footing the bill for costly feasibility analyses conducted by federal agencies.

Bidless auctions complete the cycle by failing to boost federal investment already dwarfed by money pumped into wind and solar projects.

The chicken-versus-egg leasing problem, Geothermal Energy Association President Karl Gawell recently told the *Los Angeles Times*, has kept the power source the "stepchild" of renewable energy.

Boiling point

Like fossil fuel development, geothermal follows geology.

Geothermal surveyors use basically the same rigs and equipment as mining and oil companies to drill "slim holes," usually around 8 inches in diameter, sometimes 10,000 feet below the surface.

As in the oil industry, geothermal wells are flow tested. But instead of roughly 4,000 gallons a day, a good geothermal find will yield 4,000 gallons a minute.

What's ideally flowing to the surface is superheated water reaching temperatures above the boiling point of 212 degrees Fahrenheit but kept in liquid form by crushing subsurface pressure.

The water is then either converted to steam through a process called flashing or used to heat a liquid with a lower boiling point to turn turbines and produce electricity.

Regardless of the method used, what's brought up is then pumped back down to the "hot spot" via an injection well to continue the cycle.

Geothermal Energy Association Vice President Doug Glaspey said the hard part is finding a hot spot big

enough to support electricity production.

Low-temperature pockets usable for direct heating exist more broadly, but hot spots capable of generating electricity are usually found in seismically active areas. In the United States, that's the West.

Companies "go in, they study it, they spend money, they drill, they do seismic, and let's say they successfully drill a well," said Glaspey, who is also president of Boise, Idaho-based U.S. Geothermal Inc. "But Mother Nature, being who she is, has sent the geothermal reservoir off into a direction that they hadn't anticipated or known about."

The unpredictability creates two problems: The best spot might not be on leased land, and it usually takes half a dozen holes to find.

"It's something that virtually every developer in geothermal space has run into at one time or another," Glaspey said.

If the ideal location crops up in a neighboring parcel, a company must go back through the competitive leasing process and outbid other companies to claim the rights.

All the while, NEPA looms large over the process, working its way down the chain of command to local district offices, which examine resource management plans to investigate potential impacts to the land and wildlife.

Even if the nominating company successfully outbids everyone at auction, Glaspey said, each drilling attempt requires similar NEPA approval.

Wells in the oil and gas industry often come up dry, but Glaspey said the added delay hits geothermal harder than others because companies are operating under power purchasing agreements with utilities.

"We're selling electricity, which has a relatively narrow [profit] margin compared to oil and gas. So the economics is completely different," Glaspey said. "You can't put it in a pipeline or tanker truck and move it off-site and sell it instantly as a commodity."

Already vulnerable to falling energy prices thanks to the domestic natural gas boom and the recession, Gawell said, companies unable to fulfill agreements within typical two-year time frames can face hefty fines.

"We've seen projects that have had power purchasing agreements that have had to cancel them because BLM permitting time had taken too long," he said. "One clear way to dissuade investors is to have long permitting times and to put a tremendous amount of uncertainty into a process that is already complicated enough."

Gawell said Nevada is one of the few states that have figured out how to expedite the process, refined by repetition.

Fading demand

The nation's first commercial geothermal power plant, at the Geysers in California, in 1960 kicked off two decades of industry growth. But by 1987, the Geysers had run out of steam due to overpumping, and geothermal development was tapering off nationally.

Although its electrical output was still dwarfed by California's, Nevada was the center of geothermal's recent resurgence.

In the new century, speculators fueled a leasing surge, nominating parcels near promising geologic formations or with visible hot springs, then bidding against other companies at auction.

When a backlog of pending lease applications piled up, geothermal carved out its corner of the 2005 Energy Policy Act, which ramped up domestic energy production across the board.

The 2005 law expanded competitive geothermal leasing on public lands, formerly limited to areas with known resources. It ordered a 90 percent reduction in a backlog of 194 applications and stipulated that BLM auction off requested parcels at least once every two years, a requirement the Interior Department clarified in rule changes made in 2007.

In 2008, a BLM programmatic environmental impact statement declared that the backlog had been trimmed to just 34 pending applications. Aimed at making more consistent, timely decisions to cut costs, it forecast a bright future for the industry with an estimated 47 percent of America's 530 million acres of geothermal potential on public land in 12 Western states. Excluding tribal lands, national parks, wilderness areas and other protected space, 192 million acres of BLM and Forest Service land was deemed "open" to geothermal leasing.

Defying the forecast, however, geothermal industry activity has fallen off from 818 leases in 2011 to 680 last year as companies relinquish or fail to renew agreements. Nevada lost nearly a fifth of its geothermal leases during the same period, dropping from 511 parcels to 412.

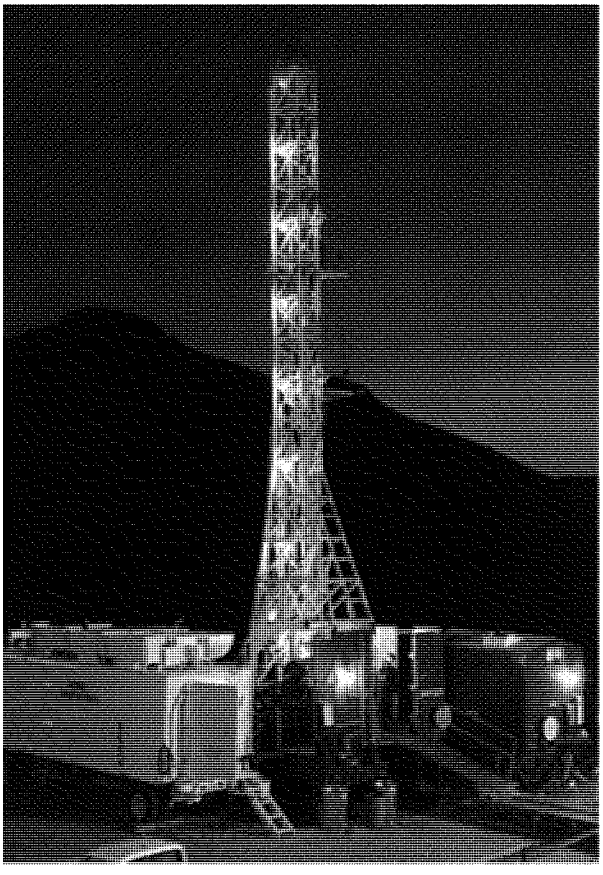
The trend line doesn't seem to be improving this year, with only a pair of BLM sales: one each in Nevada and California.

The industry chalks this up to burdensome regulation, but BLM is quick to point out that geothermal demand isn't in the same ballpark as oil and gas, at around only 1 or 2 percent of all federal leases.

NEPA analysis for oil and gas has run into the same tangle of issues, but that industry hasn't declined similarly.

In Nevada, for instance, all energy development comes up against issues like greater sage grouse management (*Greenwire*, Oct. 21). Oil and gas leasing in Nevada, however, fell off only 2 percent from 2012 to 2013, compared with geothermal's 20 percent slide.

It's not a matter of overstretched employees, either.



A geothermal drilling rig at night. Photo courtesy of the Department of Energy.

"Retaining staff is an issue for the BLM, however there are no known instances where limited resources have affected the time it takes for the geothermal lease parcel review process," the agency said in a statement.

Still, BLM said in the statement, it "is always trying to streamline the geothermal process," referencing regular meetings with stakeholders, new Web pages to help navigate the process and instruction memorandums. According to BLM, several district offices now have "geothermal and fluid mineral leasing NEPA documents to streamline the lease parcel review process," and others "are in the process of revising Resource Management Plans."

But with leasing declining, BLM lacks an incentive to investigate areas with geothermal potential if nominated lands fail to garner even the $2-per-acre minimum bid at auction. Geothermal leasing has made the federal government $76 million since 2007, but that amount pales in comparison with what the more competitive oil and gas process yields annually.

In its statement, BLM acknowledged current internal efforts to "improve the geothermal process" but said the agency "is required to conduct business according to the laws," which necessitate environmental considerations.

Changing the laws would require an act of Congress, so the geothermal industry -- long lacking the powerful lobby of oil and gas or even the increasing Capitol Hill clout of wind and solar -- looked north.

Breaking the cycle

Idaho has the only capitol building in the country heated geothermally, but the geothermal industry remains in its infancy in the state.

Big potential brought Glaspey's U.S. Geothermal Inc. to the table to help write bills from the Gem State's two Republican congressmen, Reps. Raúl Labrador and Mike Simpson.

The two lawmakers have distinct legislation and styles, but streamlining geothermal leasing isn't part of their bitter rivalry, stoked earlier this year when Simpson sharply criticized Labrador's unsuccessful run for House speaker.

"Geothermal energy has tremendous potential to boost domestic production," Labrador said in a statement. "In Idaho alone, geothermal could produce enough power for a half-million homes."

Simpson's H.R. 2004 takes a more traditional, bipartisan approach -- something for which Labrador used to criticize Simpson, labeling him "an old-school legislator that went to Washington, D.C., to compromise." The bill dates back to 2010; its latest incarnation is co-sponsored by Rep. Peter DeFazio (D-Ore.) and serves as a companion to S. 363, put forward by Sen. Ron Wyden (D-Ore.), which the Senate has already passed.

The measure would amend the Geothermal Steam Act of 1970 to solve the problem of geothermal reserves that cross lease boundaries. It would allow a leaseholder to noncompetitively lease an adjoining parcel no bigger than 1 square mile for fair-market value.

BLM acknowledged concerns about undermining free-market forces promoting more leasing -- if you want it, pay for it -- but said there are instances "in which non-competitive leases may be appropriate."

But it raised concerns about the bill's deadlines of 270 days to promulgate regulations and 180 days to determine fair market value, saying that's not enough time.

Labrador's H.R. 1363 is more controversial.

The bill, co-sponsored by Rep. Mark Amodei (R-Nev.), would grant "categorical exemptions" from NEPA similar to those allowed for oil and gas drilling under Section 390 of the 2005 Energy Policy Act.

"It is just kind of funny to see a mining company do things that a renewable energy company can't do," Glaspey said.

In order to allow companies to pinpoint a resource with minimal impact, exploratory wells no larger than 8 inches in diameter, no deeper than 2,500 feet, disturbing less than 5 acres of leased land and completed within 45 days would be allowed if a notice of intent were filed 30 days earlier and NEPA evaluation had been previously conducted.

Democrats and BLM have taken issue with granting exceptions to NEPA. In a statement, BLM stressed that extraordinary circumstances can preclude even a legislatively established categorical exclusion.

Labrador rejects claims that his bill is another Republican attempt to work around the landmark environmental law.

"Oil and gas already has this exemption," he said. "Common sense demands that the geothermal industry operate under the same rules."

Both bills await a full House vote after passing the House Natural Resources Committee, which the Geothermal Energy Association took as a positive sign that the bills could slide through during the lame-duck session this month.

Global competition

The small streamlining fixes are vital, Gawell said, if the United States wants to remain the world's largest geothermal producer.

Instead of speeding toward BLM projections of 12,200 megawatts by 2025, geothermal still supplies less than 1 percent of the United States' power. Meanwhile, Indonesia is aiming to dethrone the United States with one thrust of proposed projects.

"Whether they reach that in a few years is a good question, but they are doing what's needed; they're adjusting their laws to help make this happen," Gawell said.

Indonesia isn't alone. An industry report indicated that 530 MW came online around the world last year, the largest increase since 1997 at more than 4 percent growth.

The percentage of the world's energy derived from geothermal sources is expected to grow as more than 700 projects are under development in 76 countries.

The industry is unlikely to eclipse wind and solar, but it's optimistic about its future in the United States. A 2006 report predicted that geothermal could eventually generate 10 percent of America's power.

"The U.S. industry is always viewed as the best," Gawell said, "but it's tough competing in a global market when your home industry is being stalled."

KEYSTONE XL:

Reid calls for open amendment process next year

Manuel Quiñones, E&E reporter

Published: Wednesday, November 19, 2014

Senate Majority Leader Harry Reid called today for an open debate and amendment process next year when the chamber -- which will then be led by Republicans -- again takes up legislation to approve the Keystone XL oil pipeline.

The Nevada Democrat has for years worked to limit amendments on legislation and prevent votes on controversial issues, particularly Republican efforts aimed at weakening President Obama's agenda.

But after Democrats lost their coveted Senate majority in midterms this month, Reid has started promising to allow more debate on amendments and bills.

He is also pressing Republicans to follow through on their demands for what is widely called "regular order," including on KXL.

"At some point, they must practice what they preach," Reid said during a floor speech. "Maybe that will be the case come January."

Even though Republican Leader Mitch McConnell (R-Ky.) will be setting the Senate agenda during the next Congress, Reid will still have the power to hamstring the chamber's workings as minority leader.

And many Democrats skeptical of KXL may indeed want to use an open amendment process to weaken any legislation to force the president's hand on the debate.

"I would hope we can have an open amendment process and have a debate on that legislation, that the Republican leader for months on record has wholeheartedly endorsed," Reid said.

The Democratic leader highlighted many Republicans' voting last night to block debate on legislation to report the federal government's collection of data for natural security surveillance purposes.

"Yesterday, a bill that was bipartisan in nature was blocked from even having a hearing here on the Senate floor," Reid said, suggesting that the GOP was backtracking on its promise. "That's really wrong."

But McConnell spokesman Don Stewart called the statement "interesting" and said Reid has worked to limit the free flow of amendments more than the five previous Senate leaders combined.

OCEANS:

Japan breeds coral to buoy economic zone

Published: Wednesday, November 19, 2014

Japan has been experimenting in coral regeneration in an effort to maintain a large exclusive economic zone.

The Okinotori Islands, located 1,100 miles south of Tokyo, have long been a point of conflict for China and Japan. The islands, which contain only a weather-monitoring station, expand Japan's exclusive economic zone by 160,000 square miles that are well stocked with fish and have the potential for oil and gas drilling.

Now the reef there is eroding and could affect Japan's claim to the ocean territory. To stem the tide, Japan's Fisheries Agency has engaged in a $19 million effort to breed Okinotori coral in a lab to spur development. So far, the agency has bred 100,000 coral plants, 20 percent of which survived after being returned to Okinotori (Yuriko Nagano, *New York Times*, Nov. 18). **-- AW**

OCEANS:

Bailing out flood-prone homeowners requires massive costs -- study

Published: Wednesday, November 19, 2014

A study by a Virginia environmental group has found flood damage is having an impact in the low-lying city of Norfolk.

"Repetitive loss" properties are on the rise, increasing from 200 in 2002 to 900 today, an increase of 450 percent. Property owners who face threats from rising seas linked to climate change have limited recourse to protect their investments, with hundreds stuck on government lists to elevate or sell their homes.

In Norfolk, Virginia Beach, Chesapeake, Hampton and Portsmouth, the environmental group Wetlands Watch found nearly 3,000 properties awaiting funding. It costs between $75,000 and $250,000 to raise a home off the ground to protect it from tides or to buy it so the homeowner can move elsewhere.

That would mean a price tag of more than $430 million to protect only the homes that have already been damaged, the study said. And that figure only counts damaged homes that are covered by flood insurance, meaning the true total would be far higher.

"If in five cities, it's in the neighborhood of $430 million, what is it nationally?" said Skip Stiles, Wetlands Watch's executive director. "Are we talking Iraq War-scale here?"

The aid program has disbursed cash so slowly, Stiles said, that it's on pace to take more than a century to help homeowners in those areas (Lori Montgomery, *Washington Post*, Nov. 18). **-- SP**

MINING:

Feds charge 5 execs in Alaska pollution incident

Published: Wednesday, November 19, 2014

A mining company owned by a corporation registered overseas and its five top officials were indicted yesterday on charges of violating the U.S. Clean Water Act.

In 2010 and 2011, the indictment alleges, polluted mine wastewater from the Platinum Creek Mine flowed into the Salmon River, located in southwest Alaska.

The Platinum Creek Mine was operated by XS Platinum Inc. until 2012. That company is owned by a corporation registered in the Bailiwick of Jersey in the Channel Islands off the coast of Normandy, France.

According to the indictment, XS Platinum officials knew about the pollution and hid it from the federal government. Company officials also made various promises to the Alaska Department of Environmental Conservation and U.S. EPA that they would adapt anti-pollution measures. Those measures were never incorporated into company practices, the indictment says.

Bruce Butcher and Mark Balfour of Sydney, Australia; James Slade of Canada; and Robert Pate and James Staeheli of Washington state were charged with conspiracy and knowingly violating the Clean Water Act (Lisa Demer, *Alaska Dispatch News*, Nov. 18). **-- AW**

DRINKING WATER:

San Diego OKs plan to recycle wastewater

Published: Wednesday, November 19, 2014

With a relentless drought still ongoing in California, the San Diego City Council approved a plan yesterday to reuse wastewater for drinking water.

The $2.5 billion plan aims to treat and recycle 15 million gallons of sewage by 2023 and 83 million gallons a day by 2035.

While turning sewage into drinking water is not common in the United States as a whole, it is a practice that has been adapted by other California municipalities.

The Orange County District has been reusing wastewater since 2008 and voted in October to expand the program. The Santa Clara Valley Water District, which serves 1.8 million people, decided in September to construct facilities that could recycle wastewater.

San Diego Mayor Kevin Faulconer (R) said he supports the plan, which also has the backing of business groups and environmental activists.

"The drought puts a finer point on why this is so necessary," Faulconer said. "Droughts are unfortunately a way of life in California, so we have to be prepared. This helps us to control our own destiny" (Elliot Spagat, AP/*Houston Chronicle*, Nov. 18). **-- AW**

WATER POLLUTION:

Enviros sue Army for dumping explosive chemicals

Published: Wednesday, November 19, 2014

The Clean Water Network, a nonprofit environmental group, is suing the Army and its contractor BAE Systems Ordnance Systems Inc. over the dumping of explosive chemicals into the Holston River near Kingsport, Tenn.

In the lawsuit, filed Monday, the group asks a federal judge to order the Army and BAE Systems to stop discharging the Research Department explosive chemicals into the river and to enforce financial penalties and sanctions.

A permit from the Tennessee Department of Environment and Conservation allows the Holston Army Ammunition Plant to release a limited amount of RDX into the river. The authorized 12.2 pounds per day keeps the RDX levels in local drinking water at or below U.S. EPA's limit of 2 parts per billion. RDX is a possible human carcinogen, according to EPA.

But the state environmental department signed an agreement with BAE and the Army in August to address continued RDX violations and mentions the potential for penalties. The agreement said the department "may seek a court order" to impose them. The department had previously told BAE to reduce the amount of RDX it was releasing into the river in 2007 and gave the company five years to comply, according to the lawsuit. The company, however, was dumping more of the chemical into the river at the end of the period, the suit said.

The lawsuit said the agreement fails to enforce the order that would require BAE and the Army to comply with the law (Travis Loller, AP/*Knoxville News Sentinel*, Nov. 18). **-- MH**

COLORADO:

Officials to release water circulation plan

Published: Wednesday, November 19, 2014

State water officials today are expected to release a proposal for how to redistribute Colorado's water supply in the face of a rapidly growing population.

Colorado currently distributes its water by piping it from west of the Rocky Mountains to Denver. That practice has already strained the relationship between the agricultural west portion of the state and Denver.

The tension is only expected to worsen by 2050, when the number of Colorado residents is expected to double to 10 million. That spike could leave the state short 163 gallons of water annually.

Last year, Gov. John Hickenlooper (D) ordered state water officials to propose a water plan to cope with the population increases (Dan Frosch, *Wall Street Journal*, Nov. 19). **-- AW**

NORWAY:

Company plans to dump mine waste into fjord

Published: Wednesday, November 19, 2014

The Norwegian government may OK a mining company's plan to dump millions of tons of waste into a fjord that conservationists say is important for cod and salmon spawning.

If approved, Nordic Mining ASA would be allowed to dump 6 million metric tons (6.6 million tons) of mine waste a year for 50 years into the FØrde Fjord.

The company plans to mine about 250 million metric tons (2.75 million tons) of minerals from the EngebØ mountain. Yearly waste would include 1,200 metric tons (1,300 tons) of sulphuric acid, 1,000 metric tons (1,100 tons) of sodium, 1,000 metric tons (1,100 tons) of phosphoric acid, 360 metric tons (400 tons) of carbonic acid and 90 metric tons (100 tons) of acrylamide, as well as other acids, solvents and heavy metals, including copper, nickel, lead, zinc and mercury. The project would create an estimated 170 jobs.

"This is pollution on a grand scale," said Callum Roberts, marine conservation biologist at the University of York. "There will be a huge downstream impact in the fjord and beyond. The pollution will get into the food chain and be moved out of the fjord. It can only be economics driving this. There is absolutely no ecological excuse."

The company has disputed concerns from conservationists and said dumping in the fjord is safer than alternatives.

"We have long experience of deep sea tailings in Norway," said Ivar Fossum, Nordic's chief executive. "There are temporary effects, but it is more sustainable putting the tailings at sea than on land. The sea fauna would return within five to 10 years. I am not a marine biologist, but, based on the studies we have done, the marine biologists are wrong" (John Vidal, London *Guardian*, Nov. 19). **-- MH**

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CLIMATEWIRE — Thu., November 20, 2014

READ FULL EDITION

1.TRANSPORTATION:

Is electrolysis the pathway to reach totally carbon-free hydrogen fuel?

As plug-in electric vehicle sales continue to putt along, automakers are increasingly pinning their hopes on hydrogen fuel cells as the clean vehicle technology of the future. And using excess energy from renewable energy resources such as solar and wind to split water into oxygen and hydrogen -- a process called electrolysis -- could be the best solution for creating large supplies of sustainable hydrogen fuel.

2.POLICY:

World on dangerous emissions path, U.N. report warns

The world will not keep temperatures below dangerous thresholds despite U.S. EPA's efforts to clean up coal-fired power plants and recent pledges from the United States and China to curb carbon emissions, states a U.N.report released yesterday.

TODAY'S STORIES

3.FORESTS:

EPA gives thumbs-up to wood-burning energy, getting cheers from forest industry

4.SCIENCE:

Climate models are wrong about carbon release from soil microbes -- study

5.CARBON TRADING:

West Coast of U.S. and Canada move closer to common policies on reducing CO2

6.RISK:

Congressional lawmakers seek more private flood insurance

7.REGULATION:

Natural gas industry, a big winner under EPA's power plant rule, says it's neutral

8.PUBLIC OPINION:

Majority of Americans back federal action to limit power-sector carbon -- poll

9.EMISSIONS:

Small volcanic eruptions may have contributed to pause in global warming

10.OCEANS:

Fluctuating crab, shrimp and fish populations point to dramatically warming Gulf of Maine

11.FLOODS:

Torrential rains kill 3 in Albania

12.SPECIES:

Seabird bodies crop up in Northern Calif., hinting at warming ocean temps

13.AGRICULTURE:

Floating farms help Bangladeshi farmers weather floods

E&ETV'S ONPOINT

14.EMISSIONS:

Coalition for Green Capital's Hundt says green banks can help states comply with EPA power plant rule

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ENERGYWIRE — Thu., November 20, 2014

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SAN FRANCISCO -- A top California utility regulator in hot water for agreeing to help influence an agency rulemaking

Calif. regulator -- PG&E email will 'follow me to my grave'
on natural gas rates blamed an overly cozy relationship with a utility executive.

TOP STORIES

2.ELECTRICITY:
CEOs see promise in wires as they eye spending priorities

3.OFFSHORE DRILLING:
U.S. industry's demand for leasing details has Mexico 'working against the clock'

4.LAW:
Enviro lawyers assert 'rights of nature' in Pa. wastewater suit

OIL AND GAS

5.ARCTIC:
Drillers drop $60M on Alaska's North Slope, Beaufort leases

6.METHANE HYDRATES:
U.S., Japan aim to tap resource in Alaska's North Slope

7.HYDRAULIC FRACTURING:
Pa. lawmaker expands frack-waste probe to Ohio, W.Va.

8.OFFSHORE DRILLING:
Industry touts wealth of oil held back from development

9.NATURAL GAS:
Baltic nations look to LNG pipeline to ease Russian dependence

10.OIL:
Iraqis reclaim refinery, eye return to production

11.WYOMING:
Oil commission plan would increase space between homes, drill sites

ELECTRICITY

12.SECURITY:
National Counterterrorism Center could be a model for cyber defense -- experts

13.PEOPLE:
APPA appoints new director

14.GRID:
Ind. agency balks at $1.9B Duke improvement plan

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15.EMISSIONS:
Coalition for Green Capital's Hundt says green banks can help states comply with EPA power plant rule

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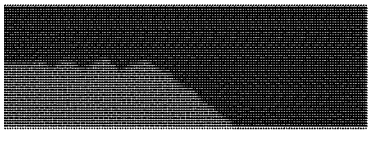

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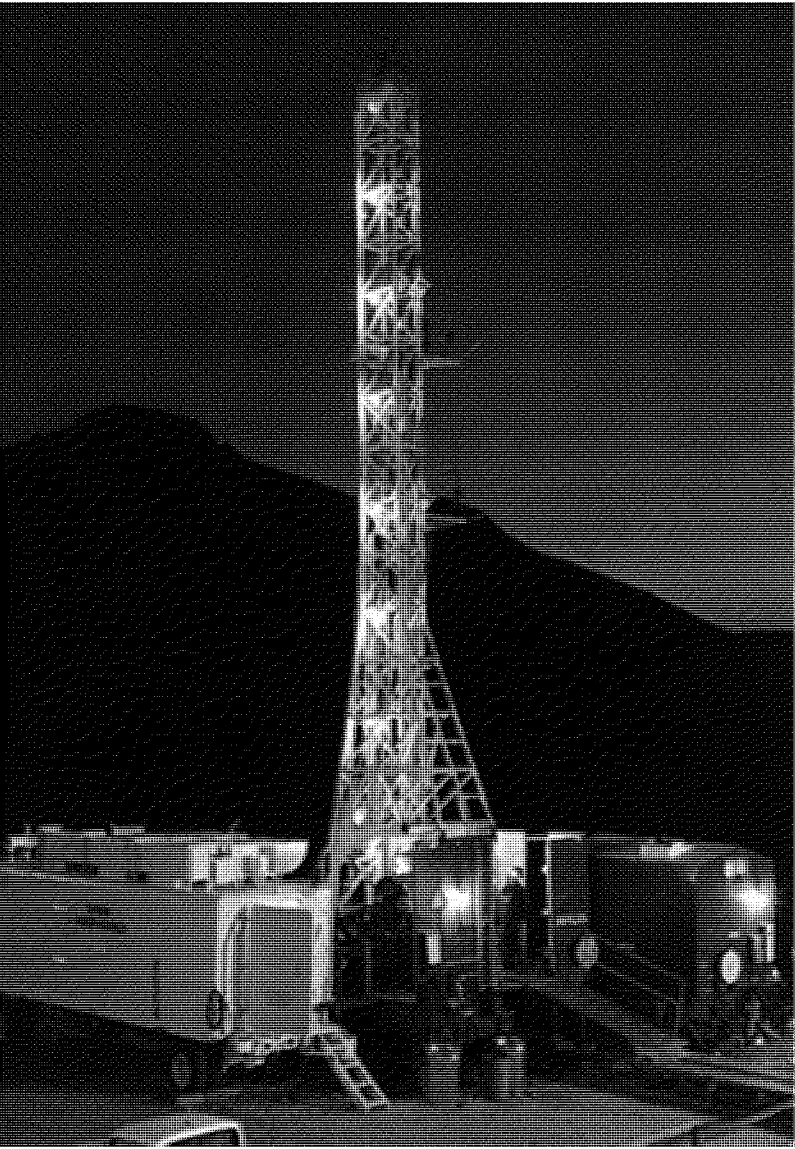

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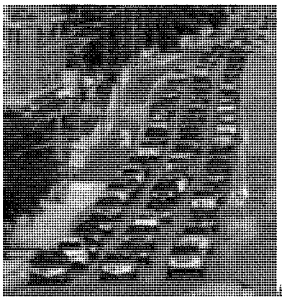


Air & Radiation Law News

for November 19, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Revises Power Plant Startup, Shutdown Process

A regulation establishing an alternative method for power plant compliance with mercury and air toxics standards during startup and shutdown operations will go into effect Nov. 19. The Environmental Protection Agency is scheduled to publish...

Air Pollution

EPA Seeks Removal of Cement Kiln Defense

The Environmental Protection Agency is proposing to remove a provision from federal air toxics standards that shielded cement kiln operators from civil penalties for emissions violations that occur during equipment malfunctions. The...

Climate Policy

Meeting 2050 California Emissions Goal Requires Focus on Transport, Nichols Says

California's path to achieving its goal of reducing greenhouse gas emissions by 80 percent by 2050 requires reducing transportation sector carbon emissions as much as possible, California Air Resources Board Chairman Mary D. Nichols...

Climate Regulation

Regional Platforms Are Resources for States To Comply With EPA Carbon Power Plant Rule

States are discussing multistate options to comply with the Environmental Protection Agency's new power plant carbon dioxide emissions proposed rule, utility regulators were told. ...

Congress

Democratic Steering Committee Backs Eshoo for Top Spot on House Energy Panel

The House Democratic Steering and Policy Committee Nov. 18 backed Rep. Anna Eshoo (Calif.) to be ranking member on the House Energy and Commerce Committee in a closer-than-expected vote....

Congress

House Passes First of Three EPA Bills; Measures Likely to Die in Current Session

The House Nov. 18 approved the EPA Science Board Reform Act, which would require more transparency for a panel that advises the Environmental Protection Agency on regulatory processes....

Corporate Responsibility

Rejection of Conflict Minerals Rule Will Be Reconsidered by D.C. Circuit Panel

The U.S. Court of Appeals for the District of Columbia Circuit agreed Nov. 18 to reconsider its decision that the Securities and Exchange Commission's conflict minerals rule violates the First Amendment (Nat'l Ass'n of Mfrs....

Energy

China Could Set Annual Caps From 2016 On Regional Coal Consumption, Officials Say

China is expected to set binding targets on coal consumption for state-level municipalities, provinces and autonomous regions as early as 2016 as a way to fight air pollution, reduce water consumption and slow the growth of carbon dioxide...

Energy

Landrieu Comes Up Short on Keystone, But Republicans Plan Passage Next Year

The long-shot gamble by Sen. Mary Landrieu (D-La.) to convince her Democratic colleagues to approve the Keystone XL oil pipeline came up short by one vote, but Republicans said they intend to pass it as soon as they take over the Senate in January....

Energy

Obama Administration, Utilities Team Up To Boost Sales of Plug-In Electric Vehicles

The White House Nov. 18 announced commitments made by more than 70 electric utilities to purchase plug-in electric vehicles....

International Climate

Climate Change Negotiators Head to Talks In Lima Bolstered by U.S.-China Agreement

International climate negotiators arrive in Lima, Peru, Dec. 1 with recently pledged action from the U.S. and China providing new optimism in talks that are to conclude with the first truly global climate deal in Paris at the end of 2015. ...

Regulatory Policy

Portman, Crapo Introduce Legislation To Curb Excessive Unfunded Mandates

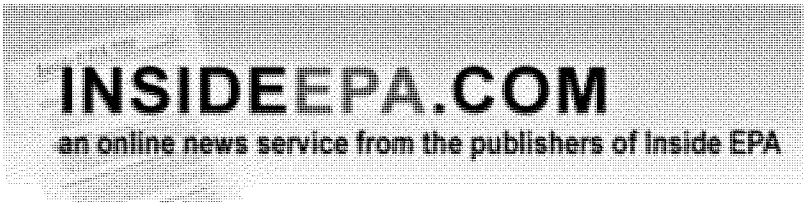
Two senators introduced legislation in the dwindling days of the 113th Congress to overhaul the Unfunded Mandates Reform Act (UMRA) of 1995, setting the stage for debate over regulation next year

when Republicans will control both chambers....

Renewable Energy

MOU Signed to Increase U.S. Clean Energy Exports

Up to $1 billion would be available to finance the sale of U.S. clean energy exports to India under a memorandum of understanding signed Nov. 18 between the U.S. Export-Import Bank and the Indian Renewable Energy Development Agency. The MOU,...



Inside EPA **Clean Air Report**, 11/20/2014

http://insideepa.com/newsletters/clean-air-report

Latest News

OMB Queries Health Impacts, Uncertainties In Data For EPA's Ozone NAAQS

White House officials are raising broad questions about scientific data on health impacts of ozone pollution and uncertainties in ozone science as part of their review of EPA's pending revisions to its ozone air standard, as advocates and industry groups spar over whether data show a need to strengthen or retain the existing ozone limit.

D.C. Circuit Poised To Hear Suit Challenging EPA's PVC Air Toxics Rule

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral arguments Nov. 19 in consolidated litigation challenging EPA's air toxics rule for the polyvinyl chloride (PVC) production industry, with environmentalists largely backing EPA against the PVC sector's claim that the regulation is unnecessarily stringent.

White House Task Force Urges Administration To Finalize NEPA GHG Guide

A White House task force of state and local officials, which was co-chaired by the Council on Environmental Quality (CEQ), is putting new pressure on the administration to finalize long-delayed guidance outlining how agencies should assess greenhouse gas (GHG) emissions from, and climate change impacts on, projects during National Environmental Policy Act (NEPA) reviews -- a request that

CEQ appeared to reject just over three months ago.

News Briefs

EPA Proposes To End Cement MACT 'Affirmative Defense'

EPA is proposing to scrap from its cement sector maximum achievable control technology (MACT) air toxics rule an affirmative defense for facilities to avoid liability for emissions limit violations during malfunctions, and says it will instead use Clean Air Act (CAA) enforcement discretion to determine whether to sue over future violations.

Greenwire

PEOPLE:

Retiring 'rocket scientist' lawmaker to be CEO of largest scientific group

Katherine Ling, E&E reporter

Published: Tuesday, November 18, 2014

The "rocket scientist" congressman from New Jersey will be the next leader of the American Association for the Advancement of Science (AAAS), the world's largest general scientific organization announced today.

Rep. Rush Holt (D-N.J.), a nuclear physicist, will be the group's CEO and the executive publisher of *Science* magazine and its family of journals, started by Thomas Edison in 1880 and a leading source of groundbreaking research, with a readership of more than 1 million.

PEOPLE

Holt's first focus as CEO will be oversight of AAAS's transformation initiative to provide leadership in science communication and the new journal *Science Advances*, AAAS said.

Holt is set to retire this year after 16 years as the representative of New Jersey's 12th District, which includes Princeton and Trenton. He unsuccessfully ran in 2013 to replace the late Sen. Frank Lautenberg (D) in a special election, losing the Democratic nomination to now-Sen. Cory Booker (D). Holt's campaign bumper stickers read, "My Congressman Is a Rocket Scientist."

A leading voice on the need to combat climate change and decrease the nation's dependence on fossil fuels, Holt is the ranking member of the House Natural Resources Subcommittee on Energy and Mineral Resources. He also serves on the Education and the Workforce Committee and is co-chairman of the Research and Development Caucus, as well as caucuses related to children's environmental health, renewable energy, sustainable development, and Alzheimer's and diabetes disease research.

Holt will succeed Alan Leshner, who had previously announced that he would be stepping down as AAAS

CEO. During his tenure, Leshner established the AAAS Center for Public Engagement with Science and Technology and "consistently focused at the intersection of science and society -- from climate change and the teaching of evolution, to the importance of federal funding for basic research," AAAS said.

Leshner welcomed the announcement of Holt as his replacement. "Rush Holt is an ideal choice to lead AAAS and *Science* into the future," Leshner said in a statement. "His expertise, experience, and commitment to science, and to public service are sure to greatly enhance the association's impact in all domains."

Known for being a five-time champion on the game show "Jeopardy!" Holt also previously served as the assistant director of the Princeton Plasma Physics Laboratory, the largest research facility of Princeton University, and has a patent on an improved solar-pond technology for harnessing energy from sunlight.

When he announced his retirement last February, Holt said there was no "hidden motive" for his decision. "For a variety of reasons, personal and professional, all of them positive and optimistic, the end of this year seems to me to be the right time to step aside and ask the voters to select the next representative," he said (*E&ENews PM*, Feb. 18).

Holt has said the dwindling number of scientists in Congress is a concern. "Until we reach that golden age where all Americans know how to think like scientists, know how to think comfortably about science, we will need some trained scientists and engineers in congress," Holt said in an interview with MSNBC in March.

AIR POLLUTION:

EPA proposal would strike key legal defense for cement industry

Amanda Peterka, E&E reporter

Published: Tuesday, November 18, 2014

U.S. EPA is proposing to eliminate the portland cement industry's legal shield for air violations that occur during plant malfunctions.

The change was spurred by an April ruling by the U.S. Court of Appeals for the District of Columbia that vacated the affirmative defense provision while upholding the rest of EPA's cement standards, according to a pre-publication version of the rule.

"In light of this decision, the affirmative defense provisions are null and void," EPA said.

Set to be published tomorrow in the *Federal Register*, the rule would also make technical corrections to EPA's 2013 standards for the control of hazardous air pollutants from the new and existing portland cement manufacturing industry.

The April court ruling has started to shake up a host of Clean Air Act rules. Since the ruling, EPA has proposed the elimination of the legal defense from both its own hazardous air pollutants standards and from the plans that states have written to comply with National Ambient Air Quality Standards.

Environmentalists have long characterized the defense as a loophole that allows industry to spew pollutants into the air regardless of permit limits and have cheered the recent string of proposals from EPA. Industry, however, has warned that eliminating the defense would lead to more enforcement actions for emissions that are unavoidable and unforeseeable (*Greenwire*, Oct. 16).

In its proposed rule for the cement industry, EPA said it would determine an appropriate response to hazardous pollutants released during malfunction events based in part on "good faith efforts" taken by the operator of the facility to minimize emissions.

The agency also said it would consider whether emissions were indeed "not reasonably preventable" or whether they were caused by "poor maintenance or careless operation."

EPA also noted that industry sources are free to raise whatever defenses they want against an enforcement action in court and that a federal district court would determine what sanction, if any, is appropriate.

UTILITIES:

Fla. regulator to lead NARUC, plans focus on climate rules

Debra Kahn, E&E reporter

Published: Tuesday, November 18, 2014

SAN FRANCISCO -- The National Association of Regulatory Utility Commissioners elected a Florida utility regulator as its president yesterday at the group's annual meeting here.

Florida Public Service Commissioner Lisa Edgar said she plans to spend her year at the NARUC helm focusing on consumer interests, nuclear power and states' implementation of U.S. EPA's proposed Clean Power Plan for carbon emissions.

PEOPLE

"We're going to focus on the many changes that are occurring in all of the utility industries," Edgar said in an interview. "We're going to be exchanging ideas between states, be focused on states' rights and coordination with federal agencies on all of the issues, and we're going to be very, very focused on consumers and the public interest, which is at the center of everything we do."

Edgar -- who is in her third four-year term on the Florida PSC -- will replace Arkansas Public Service Commission Chairwoman Colette Honorable, who has been nominated by President Obama to a seat on the Federal Energy Regulatory Commission (*E&E Daily*, Sept. 11).

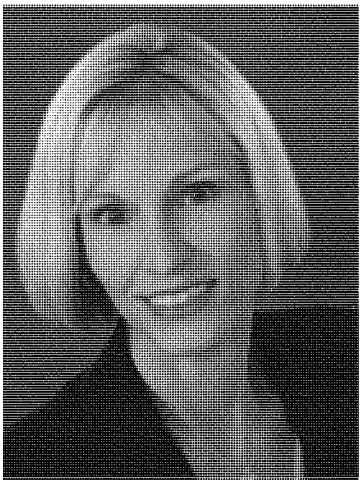
The states' work on EPA's proposed rule for regulating carbon emissions under Section 111(d) of the Clean Air Act will likely dominate Edgar's year at the NARUC helm.

"All of our states are very focused on analyzing, and many are commenting on EPA 111(d) rules right now, but this next year will be the next step in the process, and NARUC will continue to educate and advocate for our member states on this issue," she said. "I do believe we will continue to advocate that states have flexibility on the EPA 111(d) rule and on other federal mandates so that individual states and regions can meet their needs as is best for their citizens."

Edgar also emphasized the role of nuclear power in states' energy mixes.

"One of the things that we will look at is the ongoing role for nuclear and the whole fuel portfolio," she said. "It certainly plays an important part for 111(d) compliance for many states, but the role of nuclear is

something that we continue to look at. As you know, NARUC has been very involved and supportive of nuclear being a part of the fuel portfolio of the country."



Incoming NARUC President Lisa Edgar. Photo courtesy NARUC.

Edgar also cited distributed generation as one of the industry changes that she will monitor. The rise of distributed solar power has been a hot topic in Florida, where utilities have been slow to embrace it instead of large-scale solar installations (*EnergyWire*, Sept. 22).

Some Florida utilities have also been hostile to EPA's emissions proposal, with Duke Energy Florida calling it "unreasonably burdensome" and costly (*EnergyWire*, Sept. 25).

Along with distributed generation, Edgar listed reliability, affordability, cyber- and physical security, and the need to invest in infrastructure while keeping rates stable for consumers.

NARUC members yesterday also elected Montana Public Service Commissioner Travis Kavulla as first vice president and Pennsylvania Public Utility Commission Chairman Robert Powelson as second vice president.

Kavulla is replacing Susan Ackerman, the chairwoman of Oregon's Public Utility Commission, who stepped down from her NARUC position earlier this fall due to illness.

Kavulla, who will be NARUC's president in a year, has been critical of EPA's power plan but has also worked to bring states together, serving as head of a working group to expand a new Western energy imbalance market, which began earlier this month and is aimed at allowing grid operators to manage electricity in smaller units in order to fill unused transmission capacity more efficiently (*EnergyWire*, June 30).

WIND:

Company sues Interior to block release of bird death data to press

Published: Tuesday, November 18, 2014

Hoping to block the release of information about bird kills from wind turbines, a Portland, Ore., energy company is suing the Interior Department.

PacifiCorp, which operates at least 13 wind energy facilities across three states, is trying to stop the Obama administration from releasing data about birds found dead at its facilities. The Associated Press requested the information from the Interior Department in March 2013 under the Freedom of Information Act.

AP had asked for the information as part of an investigation into bird and eagle deaths at wind farms.

PacifiCorp said it is seeking an injunction because it considers bird-kill information to be confidential.

The wind industry has previously stated that more birds are killed by poisoning and collisions with cars, buildings and electrical wires than are killed by turbines (AP/London *Guardian*, Nov. 17). **-- AW**

SOLAR:

NRG ramps up activity despite dim Ivanpah performance

Published: Tuesday, November 18, 2014

The largest solar plant in the world is not producing as much energy as previously predicted.

The Ivanpah Solar Electric Generating System, which opened in February and spans 5 square miles of federally owned desert in California, is producing roughly half its expected 2014 output.

That's in part because the sun hasn't been shining as much as expected on the plant, which is owned by NRG Energy Inc.

The solar technology used at Ivanpah is not the traditional blueish gray photovoltaic panels people are used to seeing. Instead, the plant relies on solar thermal technology, which involves roughly 350,000 computer-controlled mirrors concentrating sunlight on boilers atop 459-foot towers (AP/Portland *Oregonian*, Nov. 17).

But NRG isn't giving up on the Golden State just yet. Today, the company is expected to announce two new offices in California and the hiring of 100 new employees to fill them.

The move is part of NRG's effort to expand its rooftop residential solar business (Nichola Groom, Reuters, Nov. 18). **-- AW**

MINING:

Industry could spark platinum demand with fuel cells

Published: Tuesday, November 18, 2014

Anglo American Platinum Ltd. is hoping to expand the platinum market by using the mineral to produce electricity in isolated areas.

Platinum, commonly used in jewelry, is an economical catalyst for fuel cells because it reacts with hydrogen.

Anglo American and Canada's Ballard Power Systems Inc. are testing a fuel cell system that uses platinum in Naledi Trust, a village 124 miles south of Johannesburg, South Africa.

The 15-kilowatt fuel cell system costs $200,000 to install and will be tested for a year (Andre Janse van Vuuren, Bloomberg, Nov. 18). **-- AW**

RAIL:

Amtrak seeks train delay probe

Sean Reilly, E&E reporter

Published: Tuesday, November 18, 2014

Amtrak yesterday asked federal rail regulators to investigate the reasons for rampant delays on its Capitol Limited route between Chicago and Washington, D.C.

The line, which runs on tracks owned by CSX Transportation Inc. and Norfolk Southern Railway Co., has lately had the worst punctuality record in Amtrak's troubled long-distance network.

If the Surface Transportation Board finds that the delays stem from the two freight railroads' failure to give legally required preference to passenger trains using their tracks, Amtrak seeks whatever damages the board deems "reasonable and appropriate," according to the complaint filed yesterday with the agency.

In a more strongly worded news release issued later, Amtrak blamed "freight train interference" from Norfolk Southern and CSX for reducing the Capitol Limited's on-time performance between its final destinations to 2.7 percent for the three-month period from July to September. Last month, Amtrak had to provide bus service for six days along the route between Toledo, Ohio, and Chicago "to better accommodate passengers" when trains were often eight to 10 hours late, the release said.

In an email, CSX spokeswoman Melanie Cost disputed Amtrak's assertions and said the company remains committed to providing "safe and on-time service" for the 150 Amtrak and commuter trains that ply its network each day. "Right now, the entire U.S. transportation industry is experiencing significant growth and the service challenges that, and regional weather, create," Cost said.

Norfolk Southern representatives did not respond to a request for comment. In a letter last month, however, the company's chief executive officer, C.W. Moorman, blamed the delays on "unanticipated and sustained volume growth" that has also affected freight traffic.

Among other steps to improve passenger service, Norfolk Southern is hiring more employees, adding locomotives and rerouting traffic to relieve congestion, Moorman said in the letter, written in response to a query from Daniel Elliott, the Surface Transportation Board's chairman.

The board is mainly charged with overseeing the freight railroad industry. Amtrak is pursuing the complaint under a provision in the 2008 Passenger Rail Investment and Improvement Act requiring the agency to launch an investigation at the railroad's request when on-time performance on a particular long-distance route falls below 80 percent for two straight quarters.

From April through June, the Capitol Limited punctually arrived at its final destination on about 34 percent of trips, even under a yardstick that allows a train to be up to a half-hour tardy and still be counted as on time. Under a separate measure that rates how often trains arrived on time at all stations along a route, the Capitol Limited's trains hit that mark only 28 percent of the time from April through June and 20

percent from July through September, the complaint says.

Yesterday's filing marks the second time Amtrak has sought board action on alleged freight train interference. In a 2012 complaint, Amtrak accused Canadian National Railway Co. of shunting passenger trains onto sidings in violation of their preference rights. Canadian National has denied wrongdoing and recently asked the board to dismiss an amended version of the complaint in light of last year's ruling by the U.S. Court of Appeals for the District of Columbia Circuit striking down a related provision in the 2008 law (*Greenwire*, Oct. 31).

The Supreme Court is set to hear oral arguments Dec. 8 on the Department of Transportation's appeal of that decision. A Surface Transportation Board spokesman could not be reached for comment this morning on whether the agency would act on Canadian National's dismissal motion before the high court issues a final ruling, which probably won't come before next year.

In yesterday's release, Amtrak touted other steps officials are taking to improve on-time performance, including twice testifying at board hearings this year and recently creating a three-member panel to address track congestion in the Chicago area (*Greenwire*, Oct. 28). The panel's members include Linda Morgan, a former Surface Transportation Board chairwoman who is now an attorney in private practice and part of the Amtrak legal team that filed yesterday's complaint.

SOUTH KOREA:

Officials aim to open nuclear waste storage site

Published: Tuesday, November 18, 2014

Following years of delay, South Korea may soon open a storage facility for low- and medium-level radioactive waste.

Located in Gyeongju, the facility is meant to store contaminated clothing and tools, but skeptical neighbors have delayed the facility's opening for years.

The 2011 Fukushima Daiichi crisis in Japan, as well as a South Korean scandal in 2012 concerning the supply of reactor parts with fake security certificates, has eroded public trust in nuclear power.

Officials hope to open the Gyeongju storage facility in the next month if they can persuade the surrounding community.

"As experts, we consider it safe, but we cannot push our view by overruling opponents, so we are evaluating the case thoroughly," Nuclear Safety and Security Commission Chairman and Chief Regulatory Officer Lee Un-chul said (Meeyoung Cho, Reuters, Nov. 18). **-- AW**

EUROPEAN UNION:

Bloc mulls efficiency standards for large TVs

Published: Tuesday, November 18, 2014

In an effort to achieve energy efficiency, the European Union is looking to restrict the amount of energy large televisions and computer monitors can use.

The proposed cap by the European Commission would cut energy bills by about €8 billion ($10 billion) annually. The new standards could come into effect in June 2016. Current methodology measures only internal components for energy efficiency.

"We are very happy that this revision is at last being discussed and expect that the final decision will now be taken very quickly," said Stephane Arditi, the European Environmental Bureau's products manager. "We particularly welcome the fact that it will be more demanding for bigger screens to reach the energy efficiency level and the highest classes on energy labels."

Similar regulations on vacuum cleaners, as well as kettles, toasters and hair dryers, have drawn criticism in recent months.

Televisions consume up to 10 percent of household electricity, and officials estimate that number has risen in the last decade due to larger screens, Internet connectivity and more hours of TV watched. According to the European Union, an estimated 60 million to 62 million televisions and 16 million to 17 million computer monitors were sold in 2011 in the bloc (Arthur Neslen, London *Guardian*, Nov. 18). **-- MH**

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CLIMATEWIRE — Wed., November 19, 2014

READ FULL EDITION

1.TRANSPORTATION:

One source of Calif.'s fuel of the future will be sewage

FOUNTAIN VALLEY, Calif. -- The contents of your toilet could soon be powering your car and helping to cut down greenhouse gas emissions. In this suburb of Los Angeles, FuelCell Energy Inc. is operating the world's first "tri-generation" plant that converts sewage into electrical power for an industrial facility and renewable hydrogen for transportation fuel.

2.POLITICS:

Latest Keystone XL bill fails, but both sides gird for next battle

By one vote, the U.S. Senate failed to pass a bill last night approving the Keystone XL pipeline, delaying once again the moment when President Obama definitively weighs in on the contentious TransCanada project.

TODAY'S STORIES

3.NATIONS:

What are Canada's remaining options to export oil?

4.ENERGY:

State regulators, electric power and gas industry officials voice concerns about a rapid shift to natural gas

5.CALIFORNIA:

Push underway for L.A. to tax itself again for a 'car light' future

6.RESEARCH:

Scientists build tiny battery with much higher energy density

7.SCIENCE:

North American region's polar bears declined by 25% in past 10 years

8.FORESTS:

Efforts to save forests could doom other carbon-rich landscapes -- study

9.REGULATION:

Consumer group urges states to look for less expensive carbon cuts than EPA suggests

10.COAL:

Despite warnings, India invests heavily in coal energy and mining

11.CHINA:
To meet new climate targets, nation's coal use must fall after 2020 -- think tank
12.DROUGHT:
São Paulo's residents claim city is rationing water as reservoirs recede
13.WIND:
Ikea buys second wind farm in U.S.

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ENERGYWIRE — Wed., November 19, 2014

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1.TECHNOLOGY:
New York City tries to cram in some energy storage

NEW YORK -- The startup Urban Electric Power exists behind a steel door on a scary-looking block in Harlem. Get buzzed in and one sees a single L-shaped room with dingy brick walls and chemists at their benches. The CEO is in a little concrete bunker on the right. That CEO, Raymond Johnson, 58, left the fresh air of Boulder, Colo., this summer to head Urban Electric Power because he liked the challenge. The challenge is to mass-produce an extremely cheap, dense, nontoxic battery that could help a big building save money and maybe survive an emergency.

TOP STORIES

2.ELECTRICITY:
Natural gas has 'won,' but will consumers?
3.NUCLEAR:
NRC chief stresses need for strict vendor oversight with new reactors
4.HYDRAULIC FRACTURING:
Ill. judge weighs request for injunction to halt fracking rules
5.CLIMATE:
PG&E CEO presses EPA to harmonize carbon rule with Calif. cap-and-trade program

ELECTRICITY

6.SECURITY:
NRC, FERC to share cyber practices with other agencies

OIL AND GAS

7.GAS EXPORTS:
EPA raises environmental justice, emissions concerns with Corpus Christi LNG project
8.NATURAL GAS:
Sierra Club challenges Alaska LNG export project
9.PEOPLE:
2 energy attorneys join Houston firm

10.PEOPLE:
Icahn's former right-hand man joins Williams board
11.MONTANA:
Gov.'s budget includes $45M for oil patch infrastructure
12.PIPELINES:
Eagle Ford line now moving gas to Mexico
13.PIPELINE:
Talisman may unload Marcellus Shale lines
14.PRODUCTION:
Drillers plan to pump more despite price drop

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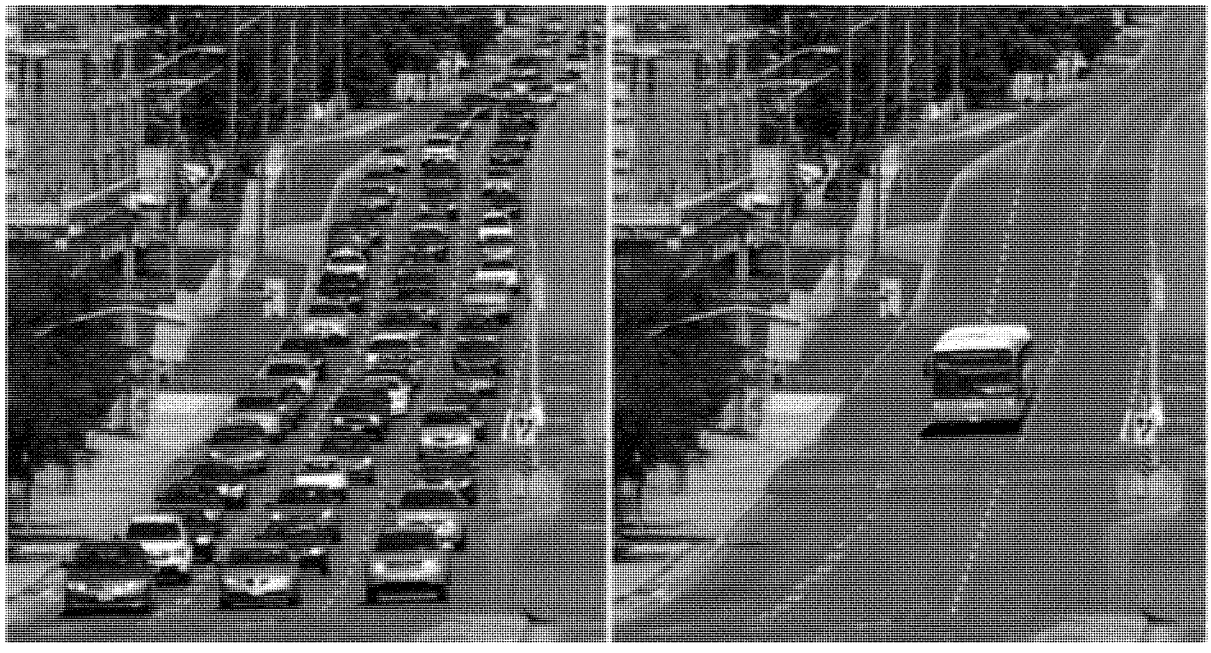

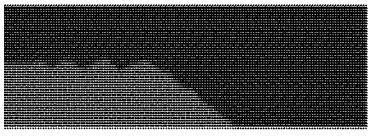

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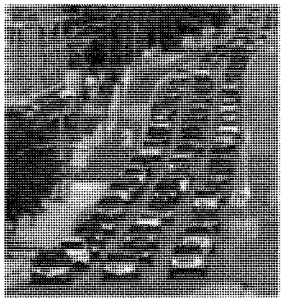

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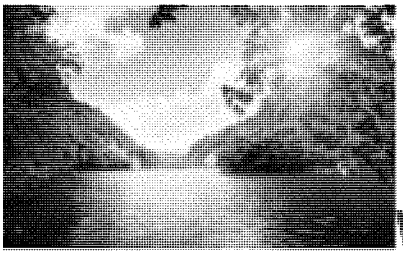
From: Turley, Jennifer
Sent: Wed 11/19/2014 3:47:25 PM
Subject: Water Law News for November 19, 2014



Water Law News

for November 19, 2014

Bloomberg BNA Daily Environment Report™

Drinking Water

Coal Ash Reuse, Groundwater Contamination Linked in Wisconsin Advocacy Group's Report

Elevated levels of hazardous chemicals in groundwater in parts of Wisconsin are probably linked to reuse of coal ash from power plants in the state, according to a report from the environmental advocacy group Clean Wisconsin. ...

Energy

Landrieu Comes Up Short on Keystone, But Republicans Plan Passage Next Year

The long-shot gamble by Sen. Mary Landrieu (D-La.) to convince her Democratic colleagues to approve the Keystone XL oil pipeline came up short by one vote, but Republicans said they intend to pass it as soon as they take over the Senate in January....

Hydraulic Fracturing

Forest Service Allows Drilling in Parts Of George Washington National Forest

Drilling and hydraulic fracturing for natural gas will be allowed in parts of the George Washington National Forest but still will be banned in most areas of the forest, the U.S. Forest Service announced Nov. 18....

Invasive Species

Army Corps to Evaluate Barrier Plan To Keep Asian Carp From Great Lakes

The Army Corps of Engineers is seeking comment on a plan to prevent Asian carp from entering Lake Michigan through the Chicago waterway system by installing controls at the Brandon Road Lock and Dam near Joliet, Ill. ...

Water Pollution

EPA Opposes Request to Transfer Lawsuit Challenging Cooling Water Intake Rule

The Environmental Protection Agency has joined industry groups in opposing a request by Riverkeeper to transfer a lawsuit challenging the cooling water intake rule from the U.S. Court of Appeals for the Fourth Circuit to the Second Circuit...

Water Pollution

Species Consultation Seen as Less Onerous For States With Existing Cooling Water Rules

Mid-Atlantic states won't find it as burdensome as other states to consult with the U.S. Fish and Wildlife Service or the NOAA Fisheries on whether discharge permits for cooling water intakes comply with the Endangered Species Act, a representative...

Water Resources

Watershed Conservation Investment Called 'Positive' for 25 Percent of Cities

One-fourth of cities would see a "positive return on investment" if spending was directed at conserving and protecting vital watershed sources, the Nature Conservancy said Nov. 18....

Water Trading

Attorneys Say Determining Trading Baseline For Water From Nonpoint Sources Is Difficult

The "fair share" of pollution reduction required of nonpoint sources must be determined in order to set a baseline that farmers can use to participate in water quality trading markets, a task that is both difficult and crucial, a panel...

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Latest News

EPA Advisors Struggling Over Lead Service Line Replacement Requirements

An EPA advisory panel is generally in favor of requiring drinking water utilities to replace all portions of lead service lines to reduce lead in levels in drinking water, but the group is struggling to develop recommendations on how the agency should address that in forthcoming revisions to the lead and copper rule.

Utilities Developing Implementing Guidance For EPA Ammonia Criteria

A group representing publicly owned treatment works (POTWs) is developing guidance for wastewater utilities faced with meeting EPA's strict 2013 aquatic life water quality criteria for ammonia, especially lagoon-based systems that may find it harder to meet discharge limits than systems that use more advanced technology.

Greenwire

KEYSTONE XL:

Landrieu comes up short in last-ditch push for pipeline approval

Nick Juliano, E&E reporter

Published: November 18, 2014 at 6:28 PM

The Senate today voted down legislation that would have approved the Keystone XL pipeline, dealing a potentially devastating blow to Sen. Mary Landrieu's (D-La.) ability to demonstrate her clout ahead of a runoff election that appears to be slipping from her grasp.

The 59-41 vote in favor of the pipeline was one short of what Landrieu needed to overcome procedural hurdles and send the bill to President Obama. While the bill's failure is bad news for Landrieu, it does save the president from having to decide whether to veto it.

Vetoing the bill -- a scenario the White House hinted at but never explicitly promised -- would have further enraged newly ascendant congressional Republicans, who already are fighting the president over immigration policy in a battle that could lead to a government shutdown (*E&E Daily*, Nov. 17).

Landrieu is facing a Dec. 6 runoff against Rep. Bill Cassidy (R), who last week introduced and secured passage of an identical KXL bill in the House. As soon as Congress returned from its election recess last Wednesday, Landrieu took to the floor and secured an agreement setting up today's vote. She then began recruiting fellow Democrats to get the bill, S. 2280, the 60 votes it would need.

Four Democrats needed to join the 11 already co-sponsoring the bill and the entire 45-member GOP caucus to push it over the finish line. Democratic Sens. Bob Casey (Pa.), Tom Carper (Del.) and Michael Bennet (Colo.) declared their support last week, but the whip count remained stuck at 59 since Friday.

As of this morning, Senate Majority Whip Richard Durbin (D-Ill.) was the only holdout, and he refused to say how he would vote earlier in the day. Durbin cast a decisive vote against it this evening.

PROPERTY RIGHTS:

High-stakes suit pits ranchers against water-sampling greens

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, November 18, 2014

Correction appended.

LINCOLN COUNTY, Wyo. -- As the dusty pickup rolled up the red clay dirt road, Jonathan Ratner sensed trouble.

The navy Ford F150 stopped near Ratner, an environmentalist who considers it his duty to protect public lands from grazing livestock.

"You trespassed back there," driver Joseph Jones yelled. In the passenger seat was Jones' 82-year-old father, Bruce.

At issue was a dirt road that crosses part of the Jones family ranch.

Ratner, standing braced near the passenger door, stayed calm. There's a public easement over that road, he answered, part of a network maintained by the federal government.

There was tense silence. Storm clouds gathered. Rain started falling.

After several minutes, the elder Jones asked Ratner what he was doing, though it was clear he was familiar with the environmentalist's efforts to force regulators to crack down on grazing.

"You're trying to put me out of business," the elder Jones accused. "You're after me. Why don't you just take me out and shoot me!"

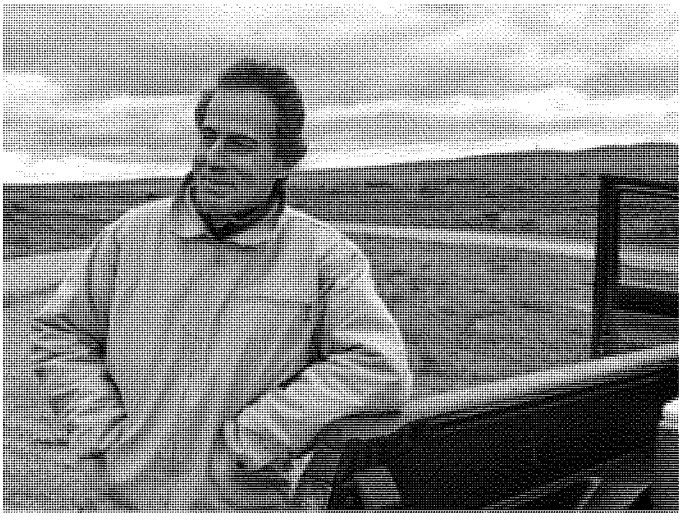
The exchange stretched on for more than 30 minutes, during most of which little was said. Hostility abated slowly. Ratner and the ranchers carefully probed each other's motives like boxers trying to land jabs, each side seemingly trying to catch the other saying something they'd regret. Before parting ways, they drilled down to an irreconcilable disagreement on the right of ranchers to graze on public lands and its environmental impacts.

The animosity of the episode, however, has also made its way into court. Joseph Jones and a dozen other ranchers have filed a lawsuit against Ratner and the Western Watersheds Project.

Western Watersheds, an Idaho nonprofit focused on ending grazing on public lands, punches above its weight. Despite a skeletal staff, its lawsuits have helped overturn federal regulations that peeled environmental protections away from millions of acres.

Ratner's latest effort is robust water sampling he says proves ranchers are letting their cows spend too much time near streams. The animals are fouling the water with bacteria at levels that far exceed federal limits. The group wants to force the state and U.S. EPA to list the streams as impaired under the Clean Water Act, a move that could spur restrictions on grazing permits.

Such a development would threaten ranching, a powerful political force in Wyoming. In June, 14 ranchers filed a complex lawsuit against Ratner that has the potential to put Western Watersheds out of business.



Jonathan Ratner of the Western Watersheds Project is facing a complex lawsuit from ranchers who claim he trespassed to collect water samples. Photo by Jeremy P. Jacobs.

The ranchers allege that the group submitted water samples to the state that show Ratner has been trespassing. In one instance, a rancher saw Ratner on the contested road. But mostly they claim that based on documents showing where the water was drawn, Ratner *must* have crossed a private road to get there.

Ranchers claim that the case is about trespass and private property rights, which Jones said are being "trampled on, incrementally, little bit by little bit." But it's also a high-stakes gambit by Karen Budd-Falen, the attorney representing the ranchers and a hero of the Sagebrush Rebellion, the movement that since the 1970s has pushed for major changes to federal land control.

Western Watersheds Executive Director Travis Bruner refers to Budd-Falen as his group's "nemesis."

There's never been a case quite like the Western Watersheds lawsuit, which was filed in state court in Wyoming. The case is in its early stages, but it has quickly grabbed the attention of environmentalists who collect water samples nationwide.

A ruling for the ranchers could deter environmental groups from Clean Water Act oversight for fear of costly litigation.

"If successful," said Jen Pelz, the director of WildEarth Guardians' Wild Rivers Program, "this suit could lead to citizen watchdog groups all over the country fighting frivolous litigation instead of channeling their resources toward protecting and restoring clean and healthy waterways throughout the West."

Group says state ignores data

Ratner, 51, a former Forest Service employee, is tall, with blond hair and a pronounced nose. For more than a decade, he has undertaken nearly every project he can to try to force regulators to do more to shield public lands from grazing.

It's a job that fits an eccentric and obsessive personality. Ratner spends more than 100 nights per year in a tent. He's a vegetarian, practices transcendental meditation and drives very fast on dirt roads in his silver Toyota Tacoma pickup. He also counts cows as he flies over public grazing allotments in a motorized hang glider.

Ratner has been sampling and testing streams on public lands for more than a decade in 250 square miles of southwestern Wyoming. He estimates he has taken more than 1,000 samples, all in an attempt to persuade the state to add the streams to the list of impaired waters it sends to EPA.

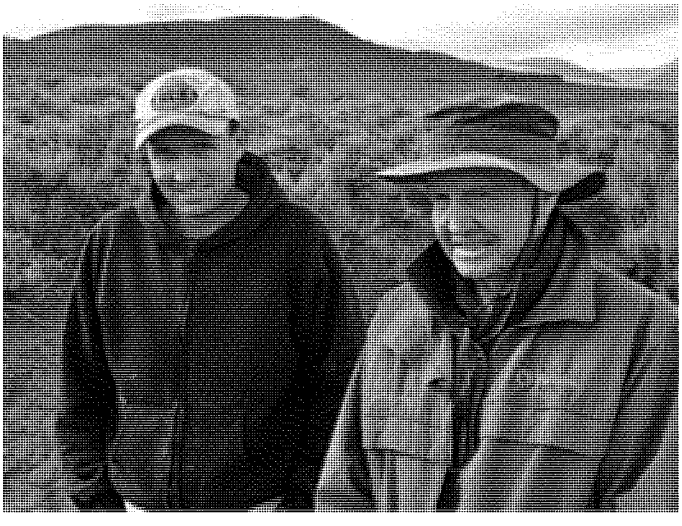
Under Section 303(d) of the Clean Water Act, the state would then have to take action to clean up the streams, including developing a total maximum daily load (TMDL) of pollution for them. That could -- in years -- force the federal Bureau of Land Management and state regulators to do something to keep cows from the streams.

Ratner leads a short hike along Dutch George Creek here to make his point about grazing. You can't walk more than two steps along the narrow stream without having to avoid a cow pie. There's also a dead calf in the water.

Some of his samples, Ratner said, reveal levels of *E. coli*, a bacterium found in animal wastes, that are more than 20 times higher than the state water standard. The Wyoming Department of Environmental Quality, or DEQ, has been reluctant to accept Ratner's data, he said, but in the 2012 listing cycle, it did add some of the streams because of his samples.

DEQ was supposed to have issued a proposed list by last April, but it has yet to do so.

Western Watersheds, the only environmental group that submits it own data to DEQ, and Ratner have received multiple letters from the agency telling him his samples don't meet various criteria. A Sept. 2 letter from DEQ says that "it has come to our attention" the group "is involved in various disputes with private and public entities regarding the collection of water quality data."



Joseph Jones, left, is one of more than a dozen ranchers who have filed a trespass lawsuit against Western Watersheds Project. He learned to raise cattle from his father, Bruce, right. Photo by Jeremy P. Jacobs.

Ratner says the agency is stalling and hoping he'll go away.

"The whole issue is my data holding them up," he said, "because they are desperately trying to find a way to ignore it."

That mindset has led to accusations that DEQ is colluding with the ranchers in the lawsuit to undermine Ratner's water program.

"Basically, what happened is DEQ got our information, gave it to the ranchers and said, 'Look what's coming.'" said Bruner, Western Watersheds' executive director. "That's what we think."

DEQ denies the group's allegations.

David Waterstreet, manager of the agency's watershed protection program, said all samples are open, public records the ranchers could have easily obtained on their own.

He also said the agency is not waiting for the resolution of the lawsuit to proceed with the impaired-stream proposal.

"We will be going out with the public notice as soon as we finish our administrative process," he said.

But he added that the agency won't consider Ratner's data if a court finds he trespassed.

"We are not going to be using data that is collected in trespass," he said. "We would not utilize that in decisionmaking."

All about trespass

The ranchers' lawsuit paints Ratner as a menace.

At least a dozen times dating back to 2006, their lawsuit alleges, Ratner resorted to "falsehoods and trickery" to trespass. In some instances, he "attempted to sneak onto" the land of the dozen ranchers.

But in only two instances did anyone claim to have seen Ratner trespass.

Both occurred in 2013 on the tract owned by Frank Ranches of Lander. In one instance, Gary Frank's son-in-law called the sheriff, who, according to the police report, let Ratner off the hook after he showed a document from BLM demonstrating an easement over that land.

"According to my viewing, Mr. Ratner was not trespassing," the report says, adding that Ratner would not be cited.

Beyond the episode with Frank Ranches, in only three instances is Ratner alleged to have taken water on private land.

Most of the claims in the lawsuit are derived from plotting the locations of Ratner's samples on a map and trying to deduce how he would have gotten there.

"We started going through that and discovered that there was no way that some of this water data could have been collected without trespassing on private property," Budd-Falen said. "This seemed to be a pattern by Jonathan and other members of Western Watersheds Project."

Budd-Falen, the ranchers' attorney, took issue with the group trying to cast the case as something larger than it is, including part of some sort of conspiracy to put it out of business.

She also criticized it for invoking other defenses, including the "public necessity" doctrine, which, Western Watersheds says in court documents, allows it to trespass "to further an important federal or state policy designed to protect human health and welfare and the environment."

"Western Watersheds is trying to make it into this bigger public-interest kind of deal," she said. "But there is nothing in the law that says there is a public-interest exception to private property. They are trying to turn it into all sorts of things that this case is not."

'They don't care about us'

Joseph Jones, Bruce's 40-year-old son and another plaintiff in the case, expressed frustration with Ratner and Western Watersheds that goes beyond trespassing.

"The issue with me is that there is no interest in public grazing," Jones said. "Their goal is to get us off. That's their goal."

Jones said the group is more focused on scoring legal victories than on addressing the environmental issues.

"If they had a real concern about the groundwater, we could sit down at a table and we could figure it out," he said.

Jones extols the ranching lifestyle that he learned from his father and that he is now teaching his own five children in regular work trips on the range.

One of the contested sites in the lawsuit. Ahead, the dirt road crosses Jones family property. The family claims Ratner used the road to reach water sampling locations. Photo by Jeremy P. Jacobs.

To him, Western Watersheds is a threat to his way of life as well as to his family's business.

"I've looked at their history, and I've had enough friends wrecked because of what they have done and putting it in certain courts," he said. "How long do you let that happen?"

After the confrontation with Ratner -- which ended amicably -- Jones said he regretted the way he approached Ratner. He said he wished he hadn't "gotten so heated." In general, he said, he avoids confrontations.

"But what do you do?" he asked.

His father interjected about the environmentalists: "They don't care about us."

Jones added, "Or they don't really even care about this ground."

Complicated lawsuit

Ratner is determined to demonstrate he didn't trespass.

"I hope to show you the absurdity of this situation," he said as he drove to a spot where he allegedly trespassed.

Cruising along a roughly 20-foot-wide, smooth red clay road that is maintained by BLM, Ratner abruptly stopped.

The road ahead curves and crosses a corner of a rectangular parcel owned by the Jones family, Ratner said. The road is in a sea of public land, he said.

After about 200 feet, the road is no longer on Jones land, he said. It's back on the public tract.

There's no way to know where the public lands end and Jones' land begins, he noted. There's no sign, no line.

That strip is the subject of one of the claims in the lawsuit. But Ratner claims he has never crossed it. This is the first time, he said, he's been on this road.

Ratner has drawn samples from Dutch George Creek. The large number of cow pies on its banks, he says, shows how cows are polluting the stream. Photo by Jeremy P. Jacobs.

To get the water sample at issue in the case, he said, he took a different route.

Ratner and Western Watersheds deny every allegation in the ranchers' complaint. In most, they contend, there's an easement on the road that grants the public access to cross private property.

And in the others, Ratner said, he never was on those roads.

The complexity of the litigation, which is in its early stages and could drag on for months, if not years,

stands to put a major financial strain on Western Watersheds.

The group claims that was probably the idea behind it in the first place.

Justin Pidot, a former environmental attorney at the Justice Department who is now a professor at the University of Denver Sturm College of Law, is representing the group pro bono. He said part of the difficulty of the case is the lack of specifics in the ranchers' complaint, particularly the fact that for most of them, no one saw Ratner.

He also said that in most instances, even if there weren't easements, there is a general legal presumption in favor of a public right of way over the types of roads at issue.

SLAPP suit?

The case, Pidot said, bears similarities to a type of litigation that was popular in the 1980s, dubbed strategic lawsuits against public participation -- best known as SLAPP suits.

The idea in such cases is that it scares the defendant and buries him or her in legal fees. The typical SLAPP case is defamation, in which a celebrity files a lawsuit against an individual or even a publication, forcing it to engage in a lengthy and costly legal fight.

"The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so," wrote University of Denver Sturm College of Law professor George Pring, who defined the term, in 1989. "SLAPPs send a clear message: that there is a 'price' for speaking out politically. The price is a multimillion-dollar lawsuit and expenses, lost resources, and emotional stress such litigation brings."

Recognizing the meritless nature of such litigation, 28 states and the District of Columbia have passed some form of anti-SLAPP law. They typically allow a defendant to make a motion to identify the suit as meritless early and get it dismissed. No such law exists in Wyoming.

Pidot said the ranchers' case would qualify as a SLAPP suit, adding that Western Watersheds will soon seek to dismiss the case.

"The threat of such a lawsuit alone could well chill the willingness of environmental nonprofits and their volunteers to engage in the important work of monitoring public lands," he said. "I suspect that is precisely the purpose behind the lawsuit. Even if all the plaintiffs' allegations are true, the idea that individuals driving on roads maintained by the government cause actual damage to the underlying landowner is ludicrous."

If the lawsuit was intended to send Ratner the message to back off, he has certainly received it. Whether he'll heed it, however, is a different matter. The lawsuit, he said, is just part of the uphill struggle he has endured for decades trying to take on the livestock industry and seemingly endless bureaucracies at the Wyoming DEQ and BLM.

"Oh, my God," he said. "Here is how I characterize what I do. Let's say you are standing here and you had someone with a fire hose filled with a slurry of bullshit -- literally bullshit -- opening that thing up on you. That's how it feels every day."

Correction: *An earlier version of this story misidentified the court where the lawsuit was filed.*

FOREST SERVICE:

Agency backtracks on frack ban in Va. forest, is roundly praised

Phil Taylor, E&E reporter

Published: Tuesday, November 18, 2014

After years of controversy over whether the George Washington National Forest would become the nation's first to ban hydraulic fracturing, the Obama administration appears to have found a politically safe middle ground.

The Forest Service today scrapped plans to ban fracking in one of the East Coast's largest and most popular national forests, drawing praise from the oil and gas industry as well as environmentalists and community leaders who have fought drilling in a forest that supplies water to 2.7 million downstream users, including in Washington, D.C.

But the final land and resource management plan for the 1.1-million-acre forest along the Virginia-West Virginia border does forbid future oil and gas leasing on all but 10,000 acres, or 1 percent of the forest, greatly curtailing the scope of potential development envisioned in a 2011 draft plan that proposed more than 711,000 acres be available to leasing.

That 2011 plan would have banned horizontal drilling and, by extension, most hydraulic fracturing, a technique that uses pressurized water and chemicals to tap the gas-rich Marcellus Shale stretching from New York to West Virginia and underlying roughly half the George Washington.

The frack ban would have been largely symbolic, given that the forest has never been a major supplier of natural gas and had received only scant interest from industry to lease and develop it (*Greenwire*, Oct. 24, 2013).

Yet it represented a poignant front in the nationwide debate over how to balance industrial-scale fracking with outdoor recreation, aquatic wildlife and downstream water users. The forest is the largest federal landholding in the Chesapeake Bay watershed and sees about 1 million hikers, campers, hunters, anglers and wildlife watchers annually.

A top Forest Service official in July 2011 promised skeptical House Republicans that the proposed drilling ban was catered to the requests of local governments and shouldn't be seen as a precedent for hydraulic fracturing on national forests (*E&ENews PM*, July 8, 2011).

Yet the agency was clearly concerned about the message it was sending.

"From a policy perspective, the Forest Service allows fracking on forest lands throughout the country," Robert Bonnie, the Agriculture Department's undersecretary for natural resources and environment, told the Associated Press this week. "We didn't want to make a policy decision or change policy related to fracking. This decision is about where it's appropriate to do oil and gas leasing."

The decision to allow horizontal drilling on the 10,200 acres of federal lands that are currently under lease -- as well as on the 167,200 acres of private mineral leases that represent about 16 percent of the forest -- drew widespread praise.

"While we would have liked to see a complete ban there, we are nonetheless very pleased that the Forest Service has gone beyond its original proposal and set the vast majority off limits to all oil and gas development," said Amy Mall, senior fracking policy analyst at the Natural Resources Defense Council.

The Virginia counties of Shenandoah, Augusta, Botetourt, Rockbridge and Rockingham and the cities of Staunton, Lynchburg and Harrisonburg had all supported the agency's draft horizontal drilling ban.

Local sentiment had leaned against drilling, particularly after a private company in 2010 had proposed new fracking in Rockingham.

"Thankfully, [the Forest Service] listened," said Nancy Sorrells, a board member for the Augusta County Service Authority, the local water provider, and a former county supervisor. "We need to thank them profusely."

The lower falls of the Saint Mary's River tumble through the 10,000-acre Saint Mary's Wilderness in the George Washington National Forest. The river is a prized trout fishery but must be treated with limestone to protect it from acid rain. Photo by Phil Taylor.

But Bruce Baizel, energy program director at Earthworks, said the plan flouts the wishes of local water utilities, counties and Virginia Gov. Terry McAuliffe (D), and hampers the Obama administration's shift to cleaner energy sources.

"The president can protect the climate and public health, or he can continue to promote fracking," Baizel said. "He cannot do both."

Federal agencies had been split on the issue. The Army Corps of Engineers, operator of the Washington Aqueduct, which supplies forest-fed water from the Potomac River to D.C. and Arlington County and Falls Church, Va., had supported the ban, along with U.S. EPA and the National Park Service.

But the Bureau of Land Management, which is in charge of leasing Forest Service lands with the agency's consent, opposed it.

Michael Ward, executive director of the Virginia Petroleum Council, an affiliate of the American Petroleum Institute in D.C., had also opposed the frack ban, but he praised the agency's final decision.

"The success of domestic natural gas production depends on our ability to produce energy from shale through hydraulic fracturing, and the industry is committed to ensuring that it will continue to be employed in a safe and responsible manner," Ward said in a statement. "Horizontal drilling and hydraulic fracturing is helping to unlock the tremendous economic and job creation benefits that Virginians, and all Americans, need and want."

Roughly 1,800 wells in southwest Virginia have been hydraulically fracked since the 1950s, API said, citing data from the Virginia Department of Mines, Minerals and Energy.

Operations that use hydraulic fracturing and horizontal drilling support more than 18,000 jobs in Virginia, but those jobs are expected to more than double by 2035, API said, citing a study by IHS Inc.

The Forest Service's Southern Regional Forester Ken Arney said the 15-year George Washington plan "addresses both the long-term ecological sustainability of the George Washington National Forest, as well as the long-term social and economic needs of those that depend on or are impacted by the Forest."

In addition to greatly restricting new oil and gas development, the plan nearly doubles riparian protections and recommends that Congress designate a 90,000-acre national scenic area on Shenandoah Mountain in Rockingham, Augusta and Highland counties and 27,000 additional acres of new wilderness.

It also would increase the lands suitable for timber production from 350,000 acres to 452,000 acres and seek a several-fold increase in the area of prescribed burns to mitigate wildfires. The minimum road system needed for management also decreased from 1,700 miles to 1,500 miles.

So far, exploration in the George Washington has been sparse, with five wells drilled -- all of them dry -- and one well drilled on adjacent lands since the 1990s. Still, the oil and gas occurrence potential in the forest is considered "high," according to an analysis prepared by BLM.

Nationwide, about 5.3 million acres of the Forest Service's 193-million-acre estate is leased for oil and gas. Industry has developed about 28 percent of those leases and is asking the Forest Service to put up for lease 2.6 million additional acres in 45 forest units.

Oil and gas production in national forests totaled 16.7 million barrels of oil and 194 million cubic feet of natural gas in 2010 from almost 3,200 wells. The lion's share of federal oil and gas production occurs on lower-lying BLM lands.

WATER POLLUTION:

Coal company could be liable for $1B in fines -- groups

Manuel Quiñones, E&E reporter

Published: Tuesday, November 18, 2014

Environmental groups are threatening to sue an embattled Kentucky coal company that they say may owe more than $1 billion in fines for Clean Water Act violations.

The groups -- Appalachian Voices, Kentucky Riverkeeper, Kentuckians for the Commonwealth and the Waterkeeper Alliance -- say Frasure Creek Mining LLC, a unit of Mumbai, India-based Essar Group Ltd., filed false water pollution reports with state regulators, adding up to almost 28,000 violations of federal law.

The company essentially copied and pasted old pollution compliance results and filed them as new, according to a notice of intent to sue drafted by attorneys with the Appalachian Citizens Law Center and Pace Law School's Environmental Litigation Clinic.

"Copy and paste is not compliance," Eric Chance, Appalachian Voices' water quality specialist, said in a

statement. "The fact that Frasure Creek continued to flout the law to this extent, even after being caught before, shows it has no regard for the people and communities they are impacting."

Chance added, "Equally disturbing is the failure of state officials to act to stop the obvious violations. We're not sure state officials even look at the quarterly reports."

Environmental groups have been targeting Frasure Creek for similar violations since at least 2010. In 2012, the Kentucky Supreme Court allowed them to intervene in settlement negotiations between state regulators and the company.

But last year, groups protested the state's decision to waive $440,000 of a $660,000 company fine for Clean Water Act violations. The dispute remains pending in Franklin County Circuit Court (*E&ENews PM*, Feb. 1, 2013).

"By all indications, this case looks like the biggest criminal conspiracy to violate the federal Clean Water Act in the history of that law," Waterkeeper Alliance attorney Pete Harrison said in a statement, questioning both state and federal officials for not stepping in.

The Kentucky Energy and Environment Cabinet responded swiftly to the environmental groups' allegations, calling them "inaccurate and inflammatory." State environmental regulators say they have been "actively monitoring compliance with Frasure Creek and other coal mining operations in Kentucky."

The agency, in a blog post about the notice of intent to sue, said it has been monitoring the company's compliance under an April 2013 agreement and had found new violations during a review this year. "Administrative action on those violations is ongoing and is pending within the agency," said the post.

The blog post also detailed the company's "involuntary bankruptcy" last year and the selling off of its mining equipment. Regulators said they were not only working on dealing with ongoing violations, but also making sure the company reclaims mines that have been shut down.

Beyond Frasure Creek, Kentucky's Division of Enforcement has reviewed roughly 179,000 pollution compliance reports and issued more than $3.6 million in penalties.

The back-and-forth is emblematic of the ongoing struggle between environmental groups and regulators on how to best police pollution from coal mines.

"Once again, we find ourselves in the position of having to take action against Frasure Creek for the exact same type of violations we found four years ago," said Ted Withrow, an activist with Kentuckians for the Commonwealth. "The Environmental Cabinet says they do not have the personnel to enforce the Clean Water Act. I would add they do not have the will to do so."

NOAA:

Audit reveals sprawling but fractured data-collection network

Emily Yehle, E&E reporter

Published: Tuesday, November 18, 2014

The National Oceanic and Atmospheric Administration uses ships, buoys, satellites and airplanes to collect data on everything from sea surface temperature to cloud cover -- but the agency lacks a plan to integrate that information, a federal watchdog said yesterday.

The Government Accountability Office report takes a sweeping view of NOAA's observing systems. It comes about two years after the House Appropriations Committee mandated the analysis in the Commerce Department's fiscal 2013 spending bill.

The resulting report describes a fractured system where 41 ocean, coastal and Great Lakes observing systems are split among six offices.

NOAA estimates they cost about $450 million a year to operate and maintain, or about 9 percent of its total annual appropriations. The entire observing system costs more; in total, NOAA operates 113 "systems of record," as well as dozens that are still in the testing stage.

Congressional appropriators could use the report to press the agency for long-term plans on its observing system, particularly as Congress tightens federal budgets. NOAA has come under particular scrutiny because of the expense of launching new environmental satellites -- which account for about a third of the agency's budget -- and the 2013 discovery of financial mismanagement at the National Weather Service.

The GAO report asserts that NOAA's constellation of observing systems lacks overarching planning and cost data, impeding NOAA's ability to integrate the system and making it difficult for stakeholders to hold the agency accountable. The report does not identify any definitive inefficiencies, instead sticking to the importance of setting an overall framework.

NOAA also "has not assessed whether there is unnecessary duplication in its observing systems portfolio," potentially missing out on opportunities to save money, according to the report.

GAO analysts point to the fact that 21 of the agency's observing systems collect data on sea surface temperatures. NOAA officials say that does not necessarily mean the data are duplicative, as each system may be collecting data in different locations, used as backups or providing varying degrees of accuracy. GAO analysts agreed but asserted that it suggests "the potential for unnecessary duplication."

The report also found that NOAA does not keep consistent data on the cost of its observing system. To come up with the $450 million estimate, NOAA surveyed agency officials; the exact cost is not broken down in NOAA's budget or accounting system. That makes it difficult to compare the cost-effectiveness of various observing methods, according to the report.

Indeed, some line offices spent much more than others. The Office of Marine and Aviation Operations spent about $181 million in fiscal 2013, for example, while the National Marine Fisheries Service spent about $24 million. That's because OMAO operated specialized ships and aircraft that cost a lot to maintain and use; in 2013, 16 ships spent 1,702 days at sea while nine planes flew 2,503 flight hours.

In its official response to the report, NOAA agreed with the recommendations, while pointing out that it has already taken some steps to integrate its observing system, including the "development of management structures." That includes an observing systems council to provide agencywide recommendations and a database that catalogs the agency's observing requirements and capabilities.

FISHERIES:

Managers vote to tweak sardine limits

Emily Yehle, E&E reporter

Published: Tuesday, November 18, 2014

Updated at 1:33 p.m. EST.

The Pacific Fishery Management Council voted last weekend to change the formula behind sardine catch levels in a move that environmentalists say will increase the harvest of the species even as its population declines.

In the view of federal fishery managers, the council's vote is merely the incorporation of the latest science, accounting for a "more accurate" measurement of ocean temperature. But in a statement, Oceana argued that the "irresponsible decision" will enable fishermen to harvest 33 percent more sardines.

"The council's action is an affront to common sense and responsible fishery management," said Geoff Shester, Oceana's California campaign director. "Going forward, we will use all available options to protect the few remaining sardines left and the fisheries and wildlife that depend on them."

In the past seven years, the sardine population has declined by 74 percent, according to Oceana. The council's move means fishermen can catch a larger chunk of the species's biomass, up to 20 percent from 15 percent.

The National Marine Fisheries Service asserts that the species' population fluctuates with the ocean temperature -- warmer temperature means more sardines, while colder means less. If the council's action is accepted by NMFS, the annual quota will fluctuate with a more accurate estimate of the ocean's temperature.

In an interview, NMFS Fishery Policy Analyst Joshua Lindsay said the increase in the maximum harvest level to 20 percent is similarly based on more "representative" modeling. While fishermen may be able to harvest more sardines during years when the populations is doing well, they also will be restricted in years when the population is in decline.

As an example, Lindsay pointed to last year's sardine population, which plummeted 40 percent to a record low. Annual quotas were cut by about 66 percent -- a slash that would also occur during the rule the council passed last weekend, he said.

When asked about the species' current population, Lindsay acknowledged that it was "not great." But he pointed to poor ocean conditions over the past several years.

"We have seen a decline in the stock recently," he said. "This is not atypical of the stock. It's really dependent on ocean conditions."

But Oceana pointed to a "collapsing sardine population" that affects a broader food chain, with everything from California brown pelicans to chinook salmon depending on them as a food source. The council's own analysis, it said, found the action will mean higher catches 74 percent of the time.

Most sardines caught in the United States are used as bait and in aquaculture feed. Last year, the fishery netted $14.5 million for the seafood industry.

OCEANS:

Virus caused mass sea-star deaths

Published: Tuesday, November 18, 2014

Scientists say they have found the culprit in a mass sea star die-off occuring along North America's Pacific coast since last year.

A virus called the sea star associated densovirus, or SSaDV, has been ravaging the West Coast's starfish population, essentially turning the animals into "a pile of goo," Cornell University biological oceanographer and microbial ecologist Ian Hewson said.

Before scientists found the culprit, they described the deaths as "sea star wasting syndrome" because the organisms would develop white lesions before their body would sag, rupture and spill out its internal organs (*Greenwire*, Sept. 9).

Researchers say SSaDV is the largest marine wildlife epidemic ever seen, killing up to 19 species of starfish. They do not yet know why the virus struck sea stars when it did, saying it could be anything from a viral mutation to an environmental trigger or starfish overpopulation (Will Dunham, Reuters, Nov. 17). -- **AW**

OIL AND GAS:

Shell employee pleads guilty in airport pipeline leak

Published: Tuesday, November 18, 2014

A Shell Pipeline Co. LP employee has pleaded guilty to federal charges stemming from a 2012 jet fuel leak near Mitchell International Airport in Milwaukee.

Onshore Corrosion Coordinator Randy Jones pleaded guilty to violating the federal Pipeline Safety Act and making false statements to the federal government.

Jones, who worked for Shell for 20 years, was responsible for inspecting the pipeline that brings fuel to Mitchell but failed to fix the pipe after data suggested it was broken, according to the plea agreement.

The resulting spill cost $19 million to clean up (Bruce Vielmetti, *Milwaukee Journal Sentinel*, Nov. 17). -- **AW**

OIL AND GAS:

Spanish navy rams Greenpeace protest ship, injuring activists

Published: Tuesday, November 18, 2014

A Spanish navy boat guarding an oil drilling ship off the Canary Islands rammed Greenpeace boats during a protest, injuring some activists.

The group said its footage filmed off the islands of Lanzarote and Fuerteventura shows the Spanish navy's rhib -- a fast rigid-hull inflatable boat -- deliberately colliding with the Greenpeace ship that was approaching the oil drilling ship Rowan Renaissance. Spain's Ministry of Defense said the protestors had ignored requests to stay at least 1 mile away from the drilling site.

Matilda Brunetti, a 23-year-old Greenpeace activist, said she was screaming in pain as her leg was broken and she was tossed overboard and cut by a propeller. She later received treatment at a Spanish hospital.

"This kind of chasing and violence, I haven't seen anything like that before," said Pablo Accattoli, who was on one of the Greenpeace ships. "It was way out of proportion; they didn't look like they were in control."

The activists were protesting the Spanish government's August approval of oil exploration, despite opposition from local officials and residents.

The Spanish energy company Repsol SA said its ship was supposed to start drilling today, but it may wait longer due to weather conditions (Adam Vaughan, London *Guardian*, Nov. 17). **-- SP**

OHIO:

Lawmakers double down on manure to stem toxic algae

Published: Tuesday, November 18, 2014

In an effort to reduce algae blooms on Lake Erie, Ohio lawmakers are considering legislation that would prohibit farmers from spreading manure on frozen fields.

The bill that passed committee yesterday states that farmers in the western basin of Ohio would no longer be allowed to spread manure if the ground were snow-covered or frozen, if the top 2 inches of soil were saturated with rain, or if the weather forecast predicted more than a half-inch of rain in the next 48 hours.

Additional amendments to the bill include monitoring discharges from water treatment plants and clarifying language about the dumping of dredging material in Lake Erie.

The Ohio House of Representatives is expected to vote on the bill tomorrow.

Last summer, levels of blue-green algae became so intense that the city of Toledo was left without drinking water for two days. Environmental groups and other concerned individuals have been pressing lawmakers to combat the issue of runoff from the fields (Jim Siegel, *Columbus Dispatch*, Nov. 18). **-- MH**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., November 19, 2014

READ FULL EDITION

1.TRANSPORTATION:

One source of Calif.'s fuel of the future will be sewage

FOUNTAIN VALLEY, Calif. -- The contents of your toilet could soon be powering your car and helping to cut down greenhouse gas emissions. In this suburb of Los Angeles, FuelCell Energy Inc. is operating the world's first "tri-generation" plant that converts sewage into electrical power for an industrial facility and renewable hydrogen for transportation fuel.

2.POLITICS:

Latest Keystone XL bill fails, but both sides gird for next battle

By one vote, the U.S. Senate failed to pass a bill last night approving the Keystone XL pipeline, delaying once again the moment when President Obama definitively weighs in on the contentious TransCanada project.

TODAY'S STORIES

3.NATIONS:

What are Canada's remaining options to export oil?

4.ENERGY:
State regulators, electric power and gas industry officials voice concerns about a rapid shift to natural gas

5.CALIFORNIA:
Push underway for L.A. to tax itself again for a 'car light' future

6.RESEARCH:
Scientists build tiny battery with much higher energy density

7.SCIENCE:
North American region's polar bears declined by 25% in past 10 years

8.FORESTS:
Efforts to save forests could doom other carbon-rich landscapes -- study

9.REGULATION:
Consumer group urges states to look for less expensive carbon cuts than EPA suggests

10.COAL:
Despite warnings, India invests heavily in coal energy and mining

11.CHINA:
To meet new climate targets, nation's coal use must fall after 2020 -- think tank

12.DROUGHT:
São Paulo's residents claim city is rationing water as reservoirs recede

13.WIND:
Ikea buys second wind farm in U.S.

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., November 19, 2014

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1.TECHNOLOGY:

New York City tries to cram in some energy storage

NEW YORK -- The startup Urban Electric Power exists behind a steel door on a scary-looking block in Harlem. Get buzzed in and one sees a single L-shaped room with dingy brick walls and chemists at their benches. The CEO is in a little concrete bunker on the right. That CEO, Raymond Johnson, 58, left the fresh air of Boulder, Colo., this summer to head Urban Electric Power because he liked the challenge. The challenge is to mass-produce an extremely cheap, dense, nontoxic battery that could help a big building save money and maybe survive an emergency.

TOP STORIES

2.ELECTRICITY:
Natural gas has 'won,' but will consumers?

3.NUCLEAR:
NRC chief stresses need for strict vendor oversight with new reactors

4.HYDRAULIC FRACTURING:
Ill. judge weighs request for injunction to halt fracking rules
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PG&E CEO presses EPA to harmonize carbon rule with Calif. cap-and-trade program
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NRC, FERC to share cyber practices with other agencies
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EPA raises environmental justice, emissions concerns with Corpus Christi LNG project
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2 energy attorneys join Houston firm
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Icahn's former right-hand man joins Williams board
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Gov.'s budget includes $45M for oil patch infrastructure
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Eagle Ford line now moving gas to Mexico
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Talisman may unload Marcellus Shale lines
14.PRODUCTION:
Drillers plan to pump more despite price drop

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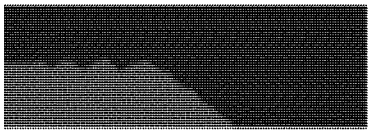

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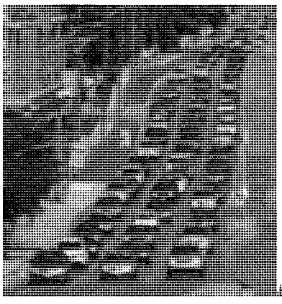

Air & Radiation Law News

for November 18, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Los Angeles, Owens Valley Air Regulators Settle Dispute Over Dust Control Obligation

Los Angeles and the Great Basin Unified Air Pollution Control District have settled a long-running dispute over the scope of the city's obligation to control dust blowing off the dry Owens Lake in the Eastern Sierras (City of Los Angeles...

Climate Change

Climate Change Featured Prominently In Joint Communiqué From G-20 Summit

Leaders from the Group of 20 major economies agreed that preventing climate change should be a fundamental aspect of their work, marking a shift from their primary focus on repairing the ravages of the 2008 economic crisis. ...

Climate Policy

Advocates Urge White House to Embed Climate Resiliency in Federal Programs

Climate resiliency should be embedded in all federal agency policies and programs, from infrastructure investments to planning for extreme weather and other threats, according to recommendations issued Nov. 17 by community leaders from...

Climate Regulation

EPA Power Plan Increases Blackout Risk, Electricity Costs, Texas Grid Operator Says

Texas will see coal unit retirements, higher electricity bills, weaker transmission reliability and a greater risk of blackouts if an Environmental Protection Agency plan to cut carbon dioxide emissions from power plants is implemented...

Climate Regulation

EPA Seeks New Reporting Requirements For Oil, Gas Industry Greenhouse Gases

The Environmental Protection Agency would require the oil and natural gas industry to collect and report additional greenhouse gas emissions data as part of a rule the EPA plans to propose by the end of fall....

Climate Regulation

McCarthy Says China Deal Won't Affect Stringency of Power Plant Carbon Rules

The recent U.S. climate agreement with China won't drive the stringency of the Environmental Protection Agency's proposed carbon dioxide standards for power plants, Administrator Gina McCarthy said Nov. 17....

Congress

White House Advisers Say They Would Recommend Veto of House EPA Bills

White House advisers would recommend President Barack Obama veto three bills scheduled for

consideration on the House floor if the legislation were to reach the president's desk, the administration announced Nov. 17....

Emissions Trading

Withheld EU Carbon Permits Should Never Be Allowed Back in Market, Lawmaker Says

The European Union's proposed carbon-market stability reserve needs to prevent suspended emissions credits from returning to the market at the end of the decade, according to Ivo Belet, the lead lawmaker on the plan....

Energy

British Columbia Legislation Could Hamper Success of Carbon Tax, Research Group Says

British Columbia is rejecting claims that a law meant to help the fledgling liquefied natural gas industry could offset gains made under the jurisdiction's 6-year-old carbon tax....

Energy

Landrieu, Keystone Backers Still Need One Vote to Ensure Approval of Bill

Sen. Mary Landrieu (D-La.) and other supporters of a bill to approve TransCanada Corp.'s Keystone XL pipeline were still one vote shy Nov. 17 of the 60 needed to override a filibuster threat....

International Climate

Australia Backs Plan for Large Coal Project, Snubbing Obama After Call for Climate Action

Australia's Queensland state threw its support behind plans for the nation's largest coal project, two days after President Barack Obama called on the country to step up the fight against climate change....

Pipeline Safety

Data Collection for Pipeline Mapping System Not Feasible as Proposed, Operators Contend

Pipeline operators urged the Pipeline and Hazardous Materials Safety Administration Nov. 17 to reconsider the type and specificity of data the agency may require operators to submit for the National Pipeline Mapping System program....

Radioactive Waste

NRC's Macfarlane Says Rulemaking Needed For Standards on 'Deep Geologic' Waste Sites

The Nuclear Regulatory Commission should develop a generic rulemaking for siting more than one "deep geologic" nuclear waste site in the U.S., outgoing NRC Chairman Allison Macfarlane said....

Renewable Energy

Canadian Aboriginal Groups Challenge Proposed $7 Billion Hydroelectric Dam

Two Canadian aboriginal groups filed a lawsuit in the Federal Court of Canada challenging approval of the $7 billion Site C dam project on the Peace River in northeastern British Columbia (Mikisew Cree First Nation v. Environment Canada, Fed....

Renewable Energy

India Seeks Renewables Without Subsidy As Target for Solar Generation Increases

India said its renewable-energy industry must eventually learn to live without government support and that it's seeking to generate five times more power from solar by 2022 than is currently installed....

Taxes

Wind Energy Tax Credit Under Fire As Congress Split on Lapsed Breaks

The new era in Congress may mean trouble for some old tax breaks....

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Latest News

ALEC Floats Draft Model Bills To Scrap EPA, Restrict Environmental Rules

As state legislatures prepare to convene for their 2015 sessions, the conservative American Legislative Exchange Council (ALEC) is floating draft model bills through which states would call for scrapping EPA and replacing it with a panel of state environmental officials, or alternatively urging EPA to scale back several major policies.

U.S.-China Climate Deal Hinges On Uncertain Fate Of Major EPA Policies

The just-announced climate deal between the United States and China relies heavily on achieving greenhouse gas (GHG) reductions as a result of EPA's power plant rule and other actions in President Obama's Climate Action Plan, but any litigation or other action to curb the policies could also undermine the agreement and any other deals the administration may seek to leverage.

News Briefs

Supreme Court Defers Decision On Hearing Utility MACT Case

The Supreme Court has deferred a decision until its Nov. 25 conference on whether to grant industry's petition for the justices to review a divided appellate court ruling that upheld EPA's utility maximum achievable control technology (MACT) air toxics rule, delaying a decision that was originally slated for a Nov. 14 conference.

Greenwire

AIR POLLUTION:

Regulators squirm as good ozone breaks bad

Amanda Peterka, E&E reporter

Published: Monday, November 17, 2014

Not all air pollution is spewed from tailpipes and smokestacks.

Sometimes, it falls from the sky.

In the stratosphere -- 8 to 30 miles above the Earth -- ozone filters the sun's harmful ultraviolet radiation. But stratospheric intrusions funnel ozone toward the ground, where it combines with petrochemical emissions to make breathing painful and stunt plant growth.

Those ozone intrusions were long understood to be a problem at higher elevations in the western United States, but only recently did federal scientists in a study of the Las Vegas area learn just how big that problem could be.

If U.S. EPA tightens the Clean Air Act ozone standard to a range recommended by its science advisers, Las Vegas would exceed allowable limits every other spring day mostly due to "extra" stratospheric ozone, the National Oceanic and Atmospheric Administration-led researchers found.

"We expected we were going to see intrusions big enough, individual events, which would likely put us in exceedance of the current standard, but episodically," said Andy Langford, a NOAA research chemist and lead author of the study based on spring 2013 data. "But we were really surprised at how high the average background was and what that meant in the context of a lower standard.

"The catchphrase I like to use for this situation," he added, "is 'when good ozone goes bad.'"

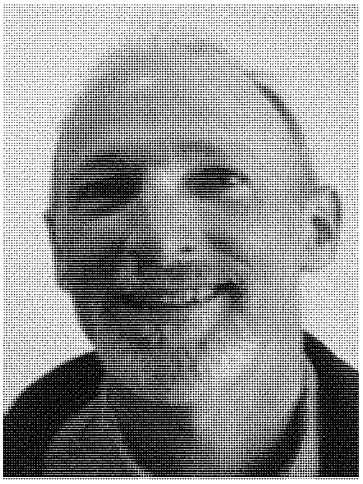
The NOAA study, published in August in the journal *Atmospheric Environment*, joins a growing body of evidence showing background ozone makes up a significant amount of overall springtime levels of the pollutant in the Intermountain West. Those states are considered susceptible to background ozone because of their elevation and pollution drifting from Asia or being released by wildfires, methane leaks and lightning.

The twist for EPA is that Western states may be hard-pressed to meet a tighter ozone standard. The latest public health data, according to the agency's science advisers and staff, show the current standard of 75 parts per billion is inadequate.

"It's a real dilemma for EPA since the Clean Air Act is written so that the only thing you're supposed to really consider are the health effects, and it has been shown that those concentrations are not good for lung function," he said. "They have no choice but to lower the standard because of the health effects. Yet our work and the work of others suggests that it'll be unenforceable. I don't know where they go with that."

EPA Administrator Gina McCarthy today said that the agency would decide by a Dec. 1 court-mandated deadline whether to propose a tighter standard and to finalize it by October 2015. She affirmed that the agency would base its decision on the latest science.

Background ozone, though, has emerged as a key issue as EPA considers lowering the ozone standard to between 60 and 70 ppb.



Andy Langford of the National Oceanic and Atmospheric Administration has measured levels of background ozone in the Las Vegas region that could make it difficult for the area to meet a tighter national standard. Photo courtesy of NOAA.

"Background ozone is rising in importance for three reasons. One, the standard is getting revised downward, so it makes background more important," said Daniel Jacob, a professor of atmospheric chemistry at Harvard University who leads a NASA air quality research team. "The second reason is that emissions have been decreasing in the United States, so the relative importance of background ozone is rising. The third is that it appears that in locations of the U.S. where ozone is mostly from background, ozone has not decreased."

Industry and Republican congressional opponents point to background ozone as a reason for the agency to retain the current standard. They say that high background could force areas to be labeled in nonattainment, a designation that requires states to put in place costly pollution control plans.

Western regulators have also begun raising concerns that background ozone could hamper their enforcement of a tighter standard.

"Some of our areas are very close to background to begin with. The lower the standard, the more impact that background is going to have," said Dan Johnson, executive director of the Western States Air Resources Council. "We're struggling right now with a whole lot of sources of which we have little or no control."

Environmentalists say background ozone shouldn't factor into EPA's decision.

"Background ozone does exist, but it's not a major factor in places where it matters for public health," said Frank O'Donnell, president of Clean Air Watch. "It should not be an excuse for EPA to set a bogus standard -- one not based on the need to protect public health."

Not a 'garden variety' pollutant

Background ozone is defined in many ways, but it generally refers to ground-level ozone if one switched off all man-made emissions of ozone precursors in North America.

The issue is unique to ozone among the criteria pollutants for which EPA sets ambient air quality standards.

Ozone, for one, has a longer life span. It could last a month in the upper atmosphere, long enough for an individual molecule to go around the world several times before coming down to the surface. It also behaves differently in the atmosphere.

"If you take just a garden-variety pollutant like sulfur dioxide, if you go to an urban area and you measure sulfur dioxide in that urban area and you go up in altitude, as you go up the concentrations get lower. That's obvious because humans are emitting it," said Dan Jaffe, a professor of atmospheric and environmental chemistry at the University of Washington. "But ozone is typically the reverse. As you go up in the atmosphere, ozone gets higher."

Background ozone in lower-elevation New England is generally thought to be in the range of 30 to 40 ppb in the spring, about 40 to 50 percent of total ozone, and lower in the summer.

But high-elevation states stretching from Montana to Southern California experience higher amounts generally in the spring because they tap the upper levels of the atmosphere. The latest modeling shows background in the Intermountain West at an average of about 40 to 50 ppb, or upward of 70 percent of total ozone.

"When background is very high, which the modeling shows it is in the western United States, then that background doesn't usually exceed the standard by itself," said Samuel Oltmans, a senior researcher associated with NOAA's Cooperative Institute for Research in Environmental Sciences at the University of Colorado. "But any relatively small contribution from ozone produced in the continental United States will push it over the standard."

Background can sometimes exceed the average range at various sites in the spring.

A monitoring site in Trinidad Head, Calif., that's considered "clean" for measuring background ozone logs in April a range of daily maximum eight-hour average concentrations -- the standard used by EPA to determine Clean Air Act violations -- between 54 and 65 ppb, according to research by Oltmans. Mount Bachelor, a site with an elevation of 9,000 feet in Oregon that's also thought be a good indicator of background ozone, records levels above 60 ppb about a quarter of the time in May.

In Yellowstone National Park, background levels hover around 60 ppb, constituting 70 percent or more of total ozone concentrations, according to some studies. Utah Environmental Quality Executive Director Amanda Smith testified at a congressional hearing last year that Canyonlands National Park regularly measures ozone above 70 ppb.

"You have some level or threshold that EPA is setting for ozone, and then you have some background level. You could think of the space between as being a cushion. That's sort of the allowable ozone that can be produced from domestic anthropogenic emissions, but we're thinning that cushion by pushing the level lower," said Arlene Fiore, an associate professor of earth and environmental sciences at Columbia University. "On the other hand, there's evidence that the background itself may be rising, and there's been attributions for that potentially to the fact that Asian emissions have been rising over the last decade."

'This is not noise. This is important'

In the Las Vegas study, researchers found that if the standard were lowered to 65 ppb, the region would exceed the standard half of the spring, mostly due to background.

"We were sitting up on a mountaintop about 45 kilometers west of Las Vegas, so we saw very little of the pollution from the city," Langford said. "Occasionally, we would get some of that during an upslope, but the concentrations we measured up there were often higher than the concentrations we measured in Las

Vegas during that time of the year. So you know it was coming down [from the stratosphere]. It wasn't coming up from down there."

Stratospheric ozone tends to have the largest effect in the springtime because that's when storms cross the Pacific Ocean and interact with land. Tongues of ozone reach south from the Pacific Northwest toward the equator. Pollution from Asia, as well as biomass burning in Europe, is also in the mix.

"It's kind of a like a croissant, kind of like the dough in a croissant where you get those long strands of fibers interweaved with each other," Langford said. "So the Asian pollution and the stratospheric ozone get stretched out like that in these filaments."

Other contributors include methane emissions, wildfires and lightning, but there's an active debate among scientists over just how important a role each plays.

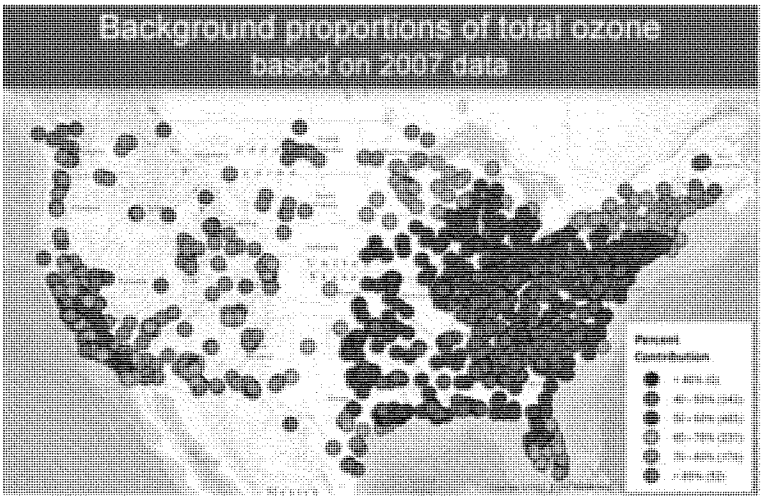
Some scientists put the greatest weight in the stratosphere, arguing that it's responsible not only for spikes but also for a consistent enhancement to background of roughly 30 to 40 ppb in the East and up to 70 ppb in the West.

A recent study from researchers at Princeton University supported stratospheric ozone being a key player, finding that the upper atmosphere's contribution was about three times that of Asia's contribution in May and June in the West.

"This is not noise. This is important," said Allen Lefohn, a Montana-based atmospheric researcher who has contributed to previous EPA ozone documents. "This is important because it deals with not just episodic exceedances of the standard in some places of the country, but it's a major contributor, and per EPA's own maps, to the observed total ozone."

EPA, which used to consider background ozone to be 40 ppb everywhere in the country, is aware of the challenges. In this review, it's dedicated 19 of 32 pages of staff analysis of ozone air chemistry to the nuances of background.

And it's given more weight to background levels in its risk calculations. In prior reviews, EPA considered health risks to be those that occur for man-made North American ozone. This time, EPA has expanded its notion of risk to include background.



[+] As represented in orange and red in this EPA map, background ozone contributes upward of 70 percent of total ozone in many sites in the West. In the East, background makes up 40 to 60 percent of total ozone, as shown in blue

and green. Map courtesy of U.S. EPA.

"This change reflects the fact that people may have health risks from total ozone exposure -- no matter what the ozone's original source," EPA said in response to questions from *Greenwire*.

Based on modeling, EPA has concluded that U.S. man-made sources are responsible for ozone violations across most of the United States. Across the entire country, EPA estimates the seasonal average of background ozone to be between 25 and 50 ppb. The agency noted that at the lower end of the range it's considering for the new standard, "background levels could play a significant role in exceedances" in Western sites.

However, while EPA has paid greater attention to background ozone this review, it hasn't indicated how much background will factor into any revision of the standard.

"In identifying the range of policy options supported by the evidence and information, staff has not considered proximity to background O3 concentrations," the staff-written policy assessment says. "The administrator, when evaluating the range of possible standards that are supported by the scientific evidence, could consider proximity to background O3 concentrations as one factor in selecting the appropriate standard."

'Make-work-for-atmospheric-scientists provision'

To be sure, there's some leeway in the ozone standard.

It's complicated: A violation occurs when the three-year average of the fourth-highest annual maximum daily value tops the standard, meaning an area could exceed the standard four times a year for three years before it's considered in violation. And nonattainment areas generally have two decades to show compliance with the standard under the Clean Air Act.

EPA also says it has tools to address exceedances that are due to wildfires or stratospheric intrusions, pointing to its exceptional events rule. Through the rule, states can submit data showing that violations stemmed from natural causes. The rule, which has typically been used to excuse particle pollution spikes linked to wildfires and dust, recently got its first tryout in the realm of ozone.

On June 14, 2012, Wyoming saw ozone levels spike to 76 and 77 ppb at two air monitors in its western reaches. Using meteorology and other air quality data, state officials determined that a tongue of ozone-rich air had reached down from the upper atmosphere and made its way to the ground; other pollutants typical of man-made emissions, such as carbon monoxide, were absent.

Earlier this year, EPA agreed and said it would not count that day as a violation.

But experts worry the exceptional events process is not up to the task of dealing with more frequent ozone events that would likely occur under a tighter standard. Jaffe, who runs the Mount Bachelor observatory in Oregon, described the process as comparable to completing a master's thesis.

"This is a make-work-for-atmospheric-scientists provision. My students are going to love this," he said. "Why? Because all my students who get a degree in any kind are going to be more in demand because the states are going to need people who understand the data."

House and Senate Republicans have also complained that the "exceptional events" rule is onerous, requiring massive amounts of time and money for a state to prove a violation is due to natural events.

Cara Keslar, ambient and emission monitoring section supervisor at the Wyoming Department of

Environmental Quality's Air Quality Division, said her state submits several exceptional events packages a year, typically for wildfires; EPA usually does not approve them. She said it took about a year to complete the package for the 2012 ozone event.

"It's more work to prove an ozone event than other types of exceptional events, just because of the complicated nature of ozone and ozone formation," Keslar said. "It took us about a year to go through the entire process, to do all the technical background work and then to put together the documentation. And the documentation goes out for public comment, so we need to make sure what we're doing is understandable to the public."

EPA expects to propose revisions to the process in mid-2015. The agency also said it is developing a specific guidance for ozone pollution events tied to wildfires. Both the rule and guidance would be available before states need to make recommendations on which areas should be considered in nonattainment with the new standard.

A global problem?

But scientists also say the exceptional events rule can't be applied in rural, high-elevation areas where studies show that background routinely breaches the thresholds EPA is considering.

"If you have a standard that's somewhere between 60 and 70 parts per billion, you're not talking about events anymore. You're talking about the routine. You're talking about things that happen rather frequently. The events are not exceptional anymore," Harvard's Jacob said. "And at that point, I think the system is going to break."

Jacob, who's been researching background ozone for the last 15 years, says that if EPA tightens the ozone standard it will have no choice but to view ozone as a global pollution problem.

"If we have some kind of international air quality agreement and brought down ozone in this way, we could surely bring down ozone everywhere, down to below 60 parts per billion -- I have no doubt about that," he said. "But we cannot do this with our current system where we're just going after U.S. emissions."

EPA has taken some steps in that direction. Since 2005, it's co-chaired the Task Force on Hemispheric Transport of Air Pollution, which is under the auspices of an international convention on long-range movement of pollutants. The agency also pointed to its work on mitigating methane emissions, a precursor to ozone, on a global basis, as well as its role in agreements with Canada and Mexico to understand the flow of ozone and its precursors across borders.

"The EPA had paid attention to inner-hemisphere transport in the last few years, and they didn't used to. This is a good thing," said Russell Dickerson, a professor of atmospheric and oceanic science at the University of Maryland. "We recognize that we pollute Europe, the Europeans pollute the Mediterranean and the eastern Mediterranean states, possibly China. And China pollutes us, and so on. There is an absolute recognition among the scientific community, and it's coming around in the policy community, too."

Scientists who give more weight to the stratosphere say that looking internationally will only go so far in addressing high background in the U.S. West and that the science hasn't yet been settled.

"The question I would pose back is, do we really know enough to begin negotiations with our partners around the world to quantitatively determine what the effect is going to be on reducing anthropogenic emissions?" said Lefohn, a former editor of *Atmospheric Environment* who has done work for both industry and environmental groups.

Paradigm shift

Some members of EPA's Clean Air Act Advisory Committee a couple of weeks ago asked the agency to devote the committee's next daylong meeting in the spring to the ozone standard and to put a focus on background issues.

Many scientists said they've suggested that EPA add an elevation component to its ozone standard. But that would require legislative changes to the Clean Air Act and likely raise environmental justice issues.

To be sure, fewer people live in the high-elevation Western sites in question. People who live in those places may well just have to accept the reality of high background, Jacob said.

"If you choose to live at high elevation, if you choose to live at 3,000 meters in altitude, at 10,000 feet in Colorado or wherever, you've got to accept being exposed to higher levels of ozone," Jacob said.

Environmentalists, though, believe reductions in man-made emissions will still make a meaningful difference, citing recent research tying high wintertime ozone levels in Wyoming and Utah to oil and gas drilling (*Greenwire*, Oct. 1).

"Obviously, some people would say a lot of the low-hanging fruit has been picked," said Jeremy Nichols, climate and energy program director at WildEarth Guardians. "The challenge of reducing ozone is going to be more difficult than ever, but that doesn't mean that it's impossible or that we should forget about the problem."

WildEarth Guardians has called on EPA to institute a Western interstate air pollution transport regime, but the agency has yet to respond to a 2008 petition from the group. The agency says it's still evaluating issues related to transport and consulting with Western states.

Regardless of whether it's background or expanded oil and gas drilling, it's clear that Western states will have to pay more attention to ozone if EPA tightens the standard.

"It will be a paradigm shift, for sure," Nichols said. "The fact that Wyoming is now having to deal with an ozone nonattainment problem -- who would have ever thought that Wyoming would have to deal with that?"

CLIMATE:

FERC isn't responsible for gauging projects' impact on warming -- LaFleur

Hannah Northey, E&E reporter

Published: Monday, November 17, 2014

The Federal Energy Regulatory Commission chairwoman has a message for activists urging the agency to measure far-reaching effects of greenhouse gas emissions from new gas export terminals and pipelines: It's not FERC's job.

FERC Chairwoman Cheryl LaFleur said the agency is already assessing direct emissions from projects under its reviews required by the National Environmental Policy Act.

But there's no reliable formula, FERC says, for measuring the local or global environmental impacts of cumulative emissions from any pipeline, compressor station or liquefied natural gas export terminal.

Somebody else has to figure out how to crunch those numbers, LaFleur said.

"To the extent an environmental regulator were to establish new rules or guidelines relating to emissions analyses, the commission would take that into account in performing its NEPA review," she said in a statement.

But the nation's top environmental regulator, U.S. EPA, maintains that FERC has the tools it needs to make the emissions assessment.

There are "many well developed tools for estimating greenhouse gas emissions from projects, which agencies, including FERC, can draw on in considering environmental impacts in the NEPA process," EPA spokeswoman Monica Lee said in an email.

Because the NEPA analysis is "intentionally tailored to the individual project situation," there's no single answer that applies in all cases, she wrote. For example, the Department of Energy, she said, has analyzed the environmental impacts of greenhouse gas emissions from some energy projects.

"FERC and other agencies can draw on [that analysis when] doing their NEPA analyses," Lee said.

FERC's consideration of climate impacts as it decides whether to greenlight a gas project has become a contentious issue with activists accusing the agency of too blithely approving new gas projects (*Greenwire*, Nov. 3).

Green groups in recent months have taken to protests and risking arrest at FERC's Washington, D.C., headquarters, and have called on President Obama to require more aggressive climate assessments of gas export hubs, even as Congress moves toward fast-tracking overseas sales (*Greenwire*, Nov. 4).

FERC insists it doesn't have a way to gauge the effects that emissions from one project will have on the environment.

And the commission has said it has found the DOE study Lee mentioned to be of little use in its NEPA analyses.

In approving Dominion Resources Inc.'s $3.8 billion liquefaction project for Cove Point, Md., in late September, FERC rejected criticism that it had not adequately analyzed the project's direct, cumulative and indirect emissions. It said there's no "standard methodology" for gauging how one project's incremental emissions would affect global warming.

FERC also said that it considered a DOE report that attempted to address possible global warming impacts from LNG export terminals. That study found LNG exports for power production in Europe and Asia wouldn't increase emissions when compared to mining or burning coal for 100 years, a point that fueled debate with green groups rallying to halt fossil fuel extraction and the Keystone XL pipeline (*Greenwire*, June 10).

Ultimately, FERC said it wasn't tasked with reviewing emissions from the consumption of U.S. gas abroad and found DOE's model provided little help.

"We had no cause to attempt to assess air emissions, or the climate change impacts of such emissions, from the ultimate consumption of gas exported from the Cove Point LNG Project because the end use is

not part of the project before us," FERC said. "We therefore find that the DOE's life cycle reports and comments we received regarding the reports are not informative to our decision making here."

CLIMATE:

Does national shift to right isolate or empower Calif.?

Anne C. Mulkern, E&E reporter

Published: Monday, November 17, 2014

When much of the country tilted to the right politically on Election Day, it created waves felt even in the bluest state on the left coast.

Democrats still control the California governor's mansion and both chambers of the Legislature, one of the few places where that triumvirate remains. And the Golden State is home to some of the country's most ambitious clean energy rules that liberals back, including the only economywide cap-and-trade program limiting carbon emissions.

California long has been seen as a place that leads the country in innovations, including on energy. But with Congress now headed by Republicans likely to reject any climate or energy mandates, California's larger political role going forward is newly up for debate.

Some conservatives argue that the election represented a push back against government oversight, a message that makes California less likely to wield influence. Environmentalists and other climate action supporters contend California will be more important, as one of the few places illustrating the positive impact of clean energy policies.

California Gov. Jerry Brown (D), just re-elected to his fourth term, rejected the notion that the election put the brakes on moves toward mitigating climate change. By 2050, he said, "we have to dramatically and radically reduce our dependence" on industries and energy sources that emit carbon.

"This is real. We've seen what the drought does. We've seen the extreme weather events. Our fire budget is way overspent," Brown told reporters the day after the election. "This is serious stuff. And the fact that there's some politicians who've put their head in the sand will not stop the growing awareness that the world has to do something."

Brown added, "I'm going to take it as one of my major responsibilities to help bring people around. So I will go to Washington. I'll go to other places. I'll do whatever I can -- not overnight, but over the next four years, I think I'll be able to do it."

California is home to 38.3 million people, about 12 percent of the country's population. Its economy is comparable to the eighth-largest in the world, based on 2012 figures. The state had clean air rules before the federal Clean Air Act became law. And its requirement that automakers produce cars with better mileage paved the way for the federal fuel economy standard.

In addition to cap and trade, the Golden State is advancing a plethora of other climate policies. Those include a mandate that utilities make one-third of their power from renewable fuels by 2020, a low carbon fuel standard designed to spur adoption of biofuels and a regulation requiring carmakers to produce increasing numbers of cars without emissions.

"Given its size, it's tough for California to not be relevant," Mike McKenna, a Washington, D.C.-based

GOP energy consultant, said in an email. "At the same time, I think that most of the nation views California as a cautionary tale rather than an example. High unemployment, business flight, wealth inequality, high adult illiteracy rate -- it is not a very appealing cocktail."

"That said," McKenna added, "everyone is watching" to see what happens with the state's low carbon fuel standard, its cap-and-trade program and the arguments to replace it with a carbon tax.

Losses for Steyer's PAC

The election showed that California's policies aren't popular outside the Golden State, said Matt Dempsey, spokesman for Secure Our Fuels, a campaign fighting against a federal low carbon fuel standard.

He noted the $85 million in campaign contributions that environmental groups and Tom Steyer, the San Francisco-based billionaire environmentalist, spent backing candidates who support climate action. Democrats won in just three of the seven high-profile races where Steyer spent money, and Dempsey said those victories would have happened without Steyer's help.

"Essentially, this election saw the California model through Tom Steyer's work and completely rejected it," Dempsey said.

In Washington state, Steyer spent money to help candidates who supported Gov. Jay Inslee's (D) push for a low carbon fuel standard and a carbon tax, Dempsey said. But Republicans nabbed seats in the Evergreen State, keeping a narrow majority in the state Senate.

"The rest of the country has enjoyed the benefits of an energy boom," Dempsey said, citing the production of oil and natural gas from hydraulic fracturing and other unconventional oil drilling. "California has essentially walled itself off."

Suzanne Henkels, spokeswoman for Steyer's NextGen Climate Action, pushed back against Dempsey's criticisms.

"A Big Oil front group's opinion on energy and climate is about as credible as Vladimir Putin offering recommendations on democracy, Joe Camel giving advice on children's health or Fat Albert dispensing weight loss tips," Henkels said in an email. "Tom Steyer has beaten Big Oil in California before and will beat them again when it comes to making sure Californians get a fair shake."

Henkels added, "As for California's national importance, history is pretty clear that our state has served as a national platform for social, economic, cultural and political change in our country for some time. We would welcome Big Oil remaining ignorant to the lessons of history -- especially as this is an issue where history will judge people as to whether or not they chose to stand up for the best interests of our kids."

EPA rule highlights Calif.?

Some backers of California's climate policies believe the state takes on added significance with the country's move to the right Nov. 4.

"What happens ... when you have an unfriendly Congress is that everybody looks to different states," said Susan Frank, director of the California Business Alliance for a Clean Economy. "California's natural leadership becomes more important on an optics level."

Frank said other states that want to move forward on climate won't be able to rely on federal research. "They're going to look to California as the model," she said.

Frank and others said California's climate programs will offer an example as states decide how to comply with U.S. EPA's power plant rule. The agency is asking power plants by 2030 to cut greenhouse gas emissions roughly 30 percent compared with 2005 levels. It's giving states the ability to choose how they'll comply.

"If you look in the power sector, California's leadership in reducing emissions through renewables gives models to follow," said Bill Magavern, policy director for the Coalition for Clean Air. California also is looking at action on short-lived climate pollutants like methane and hydrofluorocarbons, he said, which could be a policy option for other states.

But McKenna, the GOP consultant, said he doesn't expect California to be used as a model for compliance.

"With the possible exception of Washington, I don't think anyone is looking to California for guidance or example with respect to the existing source rule," McKenna said. "Texas, yes. California, no."

There are some who believe the GOP will try to thwart rollout of the rule by blocking EPA funding. And even if that doesn't happen, the regulation could be in trouble, said Scott Segal, a partner representing power companies, oil and gas, and manufacturing at law firm Bracewell & Giuliani.

"A lot of that rule will be subject to very significant legal scrutiny," Segal said. "No one in California or elsewhere should get to the notion that the 111(d) rule is going to exist in anywhere near the state in which it was proposed."

Attempting extension of cap and trade likely

Republicans in California picked up three seats in the state Assembly in last week's election. In January, the chamber will have 52 Democrats and 28 in the GOP, compared with the 55 Democrats and 24 Republicans with one seat vacant in the last session.

The state Senate will soon have 25 Democrats and 14 Republicans with one seat vacant. It previously had 27 Democrats to 12 in the GOP and one vacancy.

There are questions about what that means for the future of the state's landmark cap-and-trade program. Cap and trade right now lasts until 2020. The state's Air Resources Board (ARB) has said it intends to establish carbon reduction targets for 2030 and beyond and look at ways to hit those goals. There's a debate about whether the ARB needs the Legislature to pass a bill cementing the extension of cap and trade, or whether the agency can do it on its own. And there's controversy over whether broadening it through the Legislature would need a simple majority or a two-thirds vote. California law requires a two-thirds vote to pass taxes. Opponents of cap and trade argue it is a tax.

"We have some challenges ahead to makes sure we keep our very popular climate policies on track," said Frank with the California Business Alliance for a Clean Economy.

Magavern with the Coalition for Clean Air said that "even in the old Legislature it would have been impossible to get a two-thirds supermajority" to extend cap and trade. But he said he won't be alarmed if the program isn't continued past 2030. He has concerns about the program because it allows refineries to buy permits at auction instead of reducing emissions on site. That hurts communities near plants, he said.

"For some of us, cap and trade was never the most important part" of the state's climate law, he said. "There are lots of other policy tools for reducing emissions," including the low carbon fuel standard, appliance standards and building standards that mandate greater efficiency, and incentives for buying

cleaner equipment in the transportation and utility sectors.

Cap and trade accounts for 20 percent of the state's emissions reductions, he said, adding "we can make up that 20 percent in ways that may be more effective and more equitable."

CLIMATE:

U.S.-China deal won't change the Clean Power Plan -- McCarthy

Jean Chemnick, E&E reporter

Published: Monday, November 17, 2014

U.S. EPA won't tighten its greenhouse gas rulemakings to meet President Obama's new climate commitments, Administrator Gina McCarthy said today.

Speaking at a *Christian Science Monitor*-sponsored event, she said emissions targets that Obama unveiled in Beijing last week wouldn't force EPA to revamp its proposal for power plants. The draft adheres to the Clean Air Act, she said, and is based on an assessment of the best system of emissions reduction for the sources it covers.

"We're implementing the individual rules and efforts under the Climate Action Plan, including the Clean Power Plan, in a way that's consistent with the underlying [laws]," McCarthy said. "We are doing it in a consistent way in each and every rule. Not in a way where we let our end goal on climate intervene in a way that's inappropriate."

Obama promised last week the U.S. would cut its emissions by between 26 and 28 percent compared with 2005 levels by 2025. EPA's Clean Power Plan would reduce power-sector emissions by 30 percent by 2030, but some observers have said the electricity sector will have to contribute more reductions because it is decarbonizing more quickly than the rest of the economy (*Greenwire*, Nov. 12).

No individual policy would be the "lynchpin" in achieving the promised reductions, McCarthy said.

"The interagency effort has been looking at what is reasonable to achieve under a variety of the efforts under the Climate Action Plan," she said, referring to the climate blueprint Obama released last year. "They're also looking at what other rules and voluntary efforts might be appropriate to consider in this time frame."

Environmentalists have urged EPA to promulgate Clean Air Act restrictions for methane, and McCarthy said again today that a decision would be announced this fall. EPA is weighing both mandatory and voluntary approaches to methane reduction together with other departments.

"Where that ends in terms of which rule is going to be relied on more heavily is still being analyzed, but we feel like we can make significant, cost-effective reductions," she said. "And we're going to aggressively go after them."

She also hinted the administration would count private-sector reductions toward the 2025 goal, whether they're voluntary or in response to regulations.

The so-called Clean Power Plan will be a primary target for Republican House and Senate majorities beginning in January, and the soon-to-be Senate majority leader, Sen. Mitch McConnell (R-Ky.), has made it clear he plans to hamstring the rule using Congress' "power of the purse."

McCarthy said Obama would resist these efforts to dismantle his second-term agenda.

"I feel very confident that the president has the best interests of the EPA in mind, and he's made very clear what his priorities are," she said. "I feel very well supported in everything that we're doing."

The public comment period on the power plant draft will close Dec. 1.

"The people that we regulate and our stakeholders are paying very close attention to what EPA is doing," McCarthy said. "There is no one banking on us getting stopped."

And she offered EPA's notice of data availability -- which the agency released late last month to ask for comment on proposed changes sought by state and industry stakeholders -- as evidence that EPA is also listening to the regulated community. Some of the proposed tweaks would reduce states' early responsibilities under the rule (*Greenwire*, Nov. 7).

But while EPA will not change its rules to fit Obama's pledge, she called the White House targets "historic." And China's own commitment to cap its growing emissions by no later than 2030 is also "a significant step forward", McCarthy said, given the size of its economy and its heavy reliance on coal. China's goal will require immediate action to expand its renewable energy and efficiency capacities, she said.

NATURAL RESOURCES:

Green coalition backs Grijalva for ranking member

Phil Taylor, E&E reporter

Published: Monday, November 17, 2014

More than 180 environmental, Latino and liberal groups today urged House Democratic leaders to support Rep. Raúl Grijalva (D-Ariz.) to become the top Democrat of the Natural Resources Committee.

In a letter to House Minority Leader Nancy Pelosi (D-Calif.) spearheaded by the Center for Biological Diversity, the groups argued that Grijalva is the Democratic Party's best defense against Republican attacks on environmental laws protecting clean air and water, endangered species and wilderness.

"We believe that Rep. Grijalva has the experience and passion to represent the core environmental and human rights values of the Democratic Party, and the conviction to stand up to the radically anti-environmental House Republican agenda as the next ranking member of the Committee," said the letter, signed by groups including CBD, Earthjustice, Friends of the Earth, the Endangered Species Coalition and WildEarth Guardians.

Many of the same signatories also endorsed Grijalva for ranking member in June 2013, when he was battling Rep. Peter DeFazio (D-Ore.). DeFazio won the Resources post but is now seeking the ranking member position on the Transportation and Infrastructure Committee.

Grijalva appears to have the inside track for Resources this time around, given that no members who are more senior than him on the panel are challenging him.

The green groups' latest letter calls Grijalva a champion of Latino, American Indian, Western and progressive communities and notes his aggressive oversight of the offshore drilling industry and work to

spare the Grand Canyon watershed from uranium mining.

"Congressman Grijalva has been one of our strongest voices for environmental stewardship, protection of public lands and endangered wildlife, and environmental justice for underrepresented communities," Kierán Suckling, executive director of CBD, said in a statement.

WHITE HOUSE:

Task force releases plan to help communities gird for warming

Amanda Peterka, E&E reporter

Published: Monday, November 17, 2014

A task force convened by President Obama will issue recommendations today to help local communities plan and develop projects to increase resilience to climate change-related hazards.

The task force will present its recommendations at a meeting with Vice President Joe Biden and other senior White House officials, as well as view a new administration a toolkit for helping communities deal with climate change, according to a fact sheet released by the White House Council on Environmental Quality.

The toolkit and recommendations are the result of a yearlong effort by the task force and part of the Obama administration's Climate Action Plan.

"The recommendations offer guidance on how the Federal Government should modernize programs and policies to incorporate climate change, incentivize and remove barriers to community resilience, and provide useful, actionable information and tools," CEQ said.

Obama last year established the task force, which is composed of governors, mayors, county executives and tribal officials from around the country.

The task force's recommendations span several areas: building up the resilience to climate change of local communities, the nation's infrastructure, natural resources and populations; supporting climate-smart disaster preparedness; understanding the economics of climate resilience; and building capacity.

The toolkit, which was called for in Obama's Climate Action Plan, is based on 20 case studies and includes step-by-step examples of how communities have responded to climate change. It also shows areas where future floods and droughts are likely to have the biggest impacts.

The Obama administration today also announced several other climate change-related initiatives spread among different government agencies.

U.S. EPA is developing online training for local officials to help identify "resilience opportunities," while the National Security Council plans to hold a climate preparedness exercise for state and local leaders next month in Hampton, Va.

The Department of Energy is launching a disaster recovery mobile application that will provide real-time data on which gas stations have fuel and which neighborhoods have electricity during severe weather events.

The White House Office of Science and Technology Policy, meanwhile, will launch a climate education

initiative focused on the next generation of the American workforce, the administration said.

BIOFUELS:

Study casts doubt on indirect land-use change estimates

Amanda Peterka, E&E reporter

Published: Monday, November 17, 2014

Economic models tend to overestimate the greenhouse gas effects of indirect land-use change, according to a new study by Iowa State University researchers that boosts the ethanol industry's arguments against ILUC estimates.

The study looked at actual land-use change since the mid-2000s, when prices for agricultural commodities rose, compared to predictions of models used by California, U.S. EPA and the European Commission. It found that farmers around the world tend to more intensively use existing agricultural land in response to high global crop prices, rather than convert new lands to agriculture -- contrary to what the models predicted.

"The contribution of this study is to confirm that the primary land use change response of the world's farmers from 2004 to 2012 has been to use available land resources more efficiently rather than to expand the amount of land brought into production," the Iowa State University study says. "This finding is not necessarily new ... however, this finding has not been recognized by regulators who calculate indirect land use."

Indirect land-use change has been a subject of debate since the release of a controversial 2008 paper that tied biofuels production in the United States to ILUC elsewhere in the world. Opponents of ethanol, including environmentalists, argue that the increased diversion of corn to ethanol production and resulting higher corn prices have caused farmers elsewhere to convert land to agriculture and that ILUC emissions should be counted in ethanol's greenhouse gas footprint.

The ethanol industry, on the other hand, has long criticized models that attribute ILUC emissions to domestic production.

The new study was published by the university's Center for Agricultural and Rural Development and received a grant from the Renewable Fuels Foundation, the research arm of the ethanol trade group Renewable Fuels Association.

Study authors Bruce Babcock and Zabid Iqbal of CARD compared average land uses across the 2004-06 time frame to average land uses measured across 2010-12.

They examined "extensive" land-use change, or instances in which new land was brought into agriculture, as well as "intensive" changes, or the increased use of existing agricultural land. Intensive changes included the increased use of practices such as double cropping and reductions in unharvested, fallow and mowed pasture land.

The study found that conversions of new land into agricultural uses occurred in African countries, but those changes likely were not tied directly to higher world commodity prices because global prices typically aren't transmitted to most rural African markets.

A few other countries experienced high rates of conversion -- Argentina, Indonesia, Brazil and Southeast

Asian countries -- but outside of Africa, almost 15 times as much land-use change in the last decade was of the "intensive" type, rather than the conversion of new acres to agricultural uses.

"That countries primarily responded to higher world prices by intensifying land use rather than by converting land from forests and pastures should not be surprising," Babcock and Iqbal wrote. "Many countries, such as China and India, simply do not have available land to bring into agriculture."

Economic models typically overestimate land-use change and related greenhouse gas emissions, the study found, because they tend to group all changes into the extensive category.

"The pattern of recent land use changes suggests that existing estimates of greenhouse gas emissions caused by land conversions due to biofuel production are too high," the study says. "Intensification of land use does not involve clearing forests or plowing up native grasslands that lead to large losses of carbon stocks."

The Iowa State authors said they plan further research involving the creation of a statistical model to explain why some countries did convert more land to agriculture instead of increasing the intensity on existing lands.

RENEWABLE ENERGY:

Interior approves first offshore wind transmission line

Phil Taylor, E&E reporter

Published: Monday, November 17, 2014

The Interior Department has approved the first transmission line in federal waters to serve an offshore wind farm.

Interior's Bureau of Ocean Energy Management approved Deepwater Wind LLC to build a 9-mile subsea cable connecting Block Island to the Rhode Island mainland, a project that will support the company's 30-megawatt Block Island Wind Farm, the agency announced today.

BOEM's Oct. 27 finding of no significant impact for the transmission line keeps the $300 million Block Island on pace to be the first offshore wind farm in U.S. history. Offshore construction is scheduled to begin next summer, Deepwater announced in September.

"This is a major milestone for offshore renewable energy in the United States," Interior Secretary Sally Jewell said in a statement this morning. "But it also represents a big step in our nation's sustainable energy future."

Deepwater in September announced that the five-turbine project had received final approval from the Army Corps of Engineers -- the last of its required federal permits.

The Army Corps evaluated the wind farm because it is being developed in state waters. BOEM evaluated the portion of the transmission line that would cross federal waters.

BOEM's approval is a major milestone both for the wind farm and for Block Island, a popular vacation spot just south of the Ocean State that has long relied on diesel generators for power. The bi-directional transmission line will connect turbines located about 2.5 miles southeast of the island to the mainland while carrying electricity from the onshore power grid to the island.

The next step is for BOEM and Deepwater to agree to the "terms and conditions" of the right of way. BOEM will then send the grant to Deepwater for execution, and the company will be required to pay the first year's rent and provide financial assurance, BOEM said.

The transmission line will be buried about 6 feet below the seabed and will run a total of 21 miles under state and federal waters, making landfall at Narragansett.

The Block Island project already has the support of key environmental groups after Deepwater in February 2013 agreed to delay disruptive construction activities until May to better protect the critically endangered North Atlantic right whale (*E&ENews PM*, Feb. 4, 2013).

The pact with the Conservation Law Foundation will protect a species believed to number in the hundreds that was nearly hunted to extinction for its oil. Right whales and other marine mammals are protected under the Marine Mammal Protection Act.

Deepwater CEO Jeff Grybowski last December told Bloomberg he believed the Block Island project qualified to receive a 30 percent federal investment tax credit, arguing that the company had spent at least 5 percent of the project's budget before the ITC expired Dec. 31.

Grybowski could not be immediately reached this morning.

Deepwater also plans to build a 1,000 MW wind farm off the Rhode Island and Massachusetts coasts to supply electricity to Long Island and New England states. The Deepwater ONE project is slated as the first of the "second generation" wind farms in the United States. Most of the roughly 200 turbines will be more than 20 miles from shore. Deepwater has signed a similar pact with environmentalists on that project.

AIR POLLUTION:

Los Angeles turns to dirt clods in bid to curb dust

Published: Monday, November 17, 2014

In an effort to limit dust storms from Owens Valley in California, Los Angeles will use a new technique to minimize dust on the dry bed of Owens Lake.

Dust storms from the lake bed caused asthma and other breathing problems among valley residents. For almost 20 years, Los Angeles curtailed dust by flooding most of the 110-square-mile lake bed.

Now, the city says it will begin using tractors to create basketball-sized "clods" of dirt that will take up to four years to break down.

The new measure is expected to save enough water to supply 150,000 Los Angeles residents annually (Louis Sahagun, *Los Angeles Times*, Nov. 14). **-- AW**

DEMOCRATIC REPUBLIC OF CONGO:

Conflict between drillers, enviros turns violent

Published: Monday, November 17, 2014

The quest for oil in Africa has turned violent in the Democratic Republic of Congo as environmentalists fight to save national parks from companies champing at the bit to drill there.

New technology like deeper drilling has intensified the hunger for new energy discoveries in West Africa.

Many hydrocarbon producers are eyeing the Congo's national forests as new drilling terrain, supported by national leaders who say impoverished communities with few other options could benefit from drilling.

Now, SOCO International PLC is eyeing Virunga National Park for drilling. Environmentalists say the cost is too great because the conservation area is home to critically endangered species like the silverback mountain gorilla.

The conflict at Virunga has turned violent, with government soldiers shooting at environmental protesters (Jeffrey Gettleman, *New York Times*, Nov. 15). **-- AW**

REGULATION:

IETA's Forrister talks next steps for U.S.-China agreement, EPA emissions plan

Published: Monday, November 17, 2014

What impact will last week's climate agreement between the United States and China have on global emissions reductions and the path toward the next binding international treaty? During today's OnPoint, Dirk Forrister, president and CEO of the International Emissions Trading Association, discusses the details of the agreement and the steps each country will need to take to reach its targets. He also weighs in on the legal defensibility of U.S. EPA's Clean Power Plan.

Click here to watch today's OnPoint.

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Will the most common molecule in the universe be the fuel of the future?

Humans have harnessed hydrogen for a variety of applications, from blasting rockets into space to making common household products like toothpaste. Now, after decades of development, hydrogen is about to find its way into the family car.

2. REGULATION:

States face barriers to cooperating on EPA greenhouse gas rule on power plants

SAN FRANCISCO -- As grid operators, regulators and economists tout the benefits of multi-state plans to comply with U.S. EPA's proposal for curbing greenhouse gas emissions from the power sector, states still face daunting obstacles to working together.

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1.CLIMATE:
Texas grid operator says EPA plan raises reliability questions

The reliability of electricity in Texas could suffer while costs rise under a U.S. EPA plan to lower carbon dioxide emissions from existing power plants, the state's main grid operator said in a new report yesterday.

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With Baker Hughes takeover, Halliburton aims to reduce oil field costs
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Solar giant SunEdison plunges into wind business with $2.4B deal
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Climate-minded investors revolt against major energy companies
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Grid operator says EPA power plant rule 'clarification' hinders cap-and-trade solution
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Ariz. utility moves toward renewable goal with new solar plant
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Pipeline expansions give industry confidence as cold weather arrives
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'Monster wells' are draining water from arid regions -- enviro report
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Engineering graduates on the rise, but fewer women are entering the field
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Energy law firm adds 2 new members in Denver
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Eagle Ford mineral owners settle suit over alleged mismanagement
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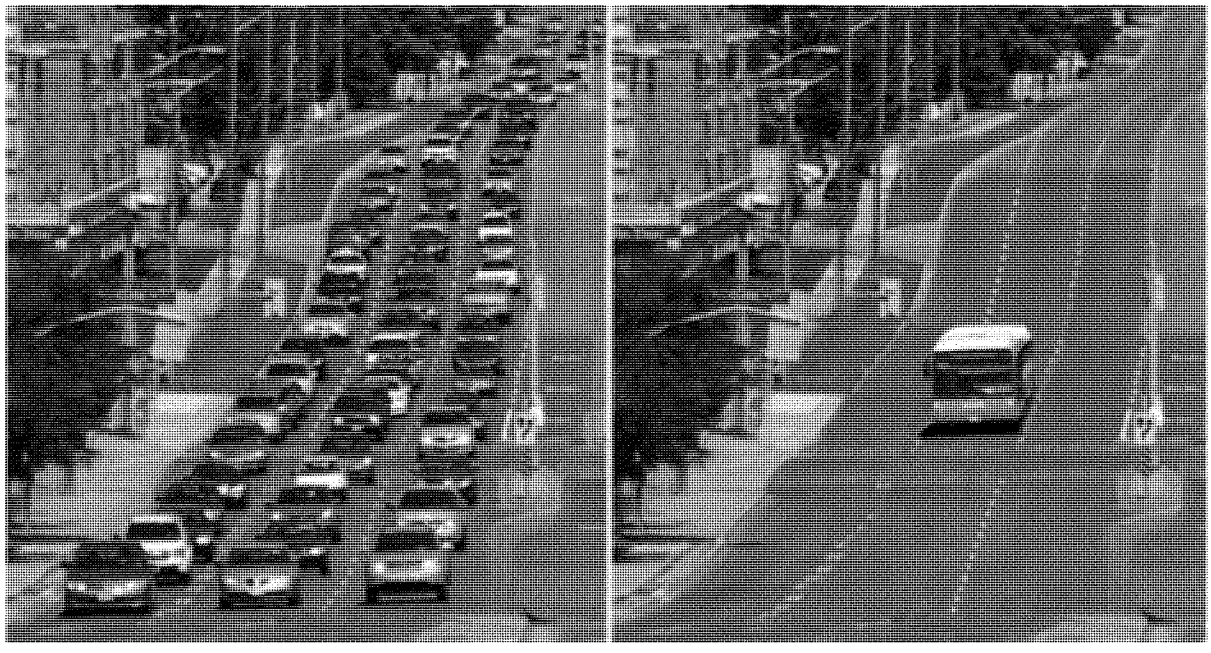

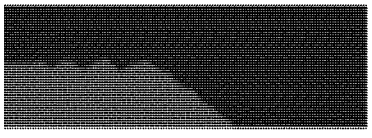

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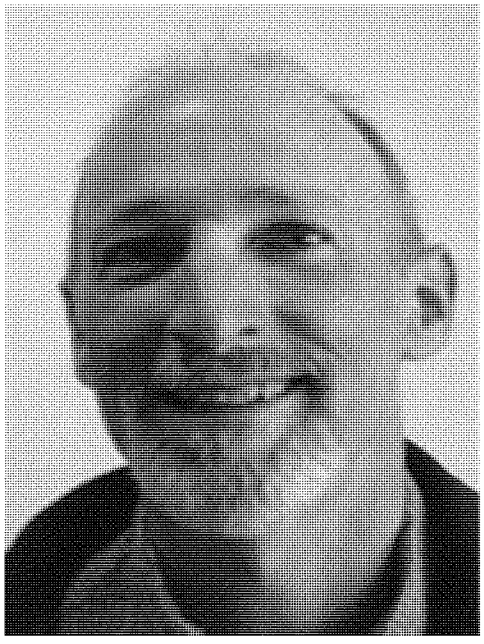
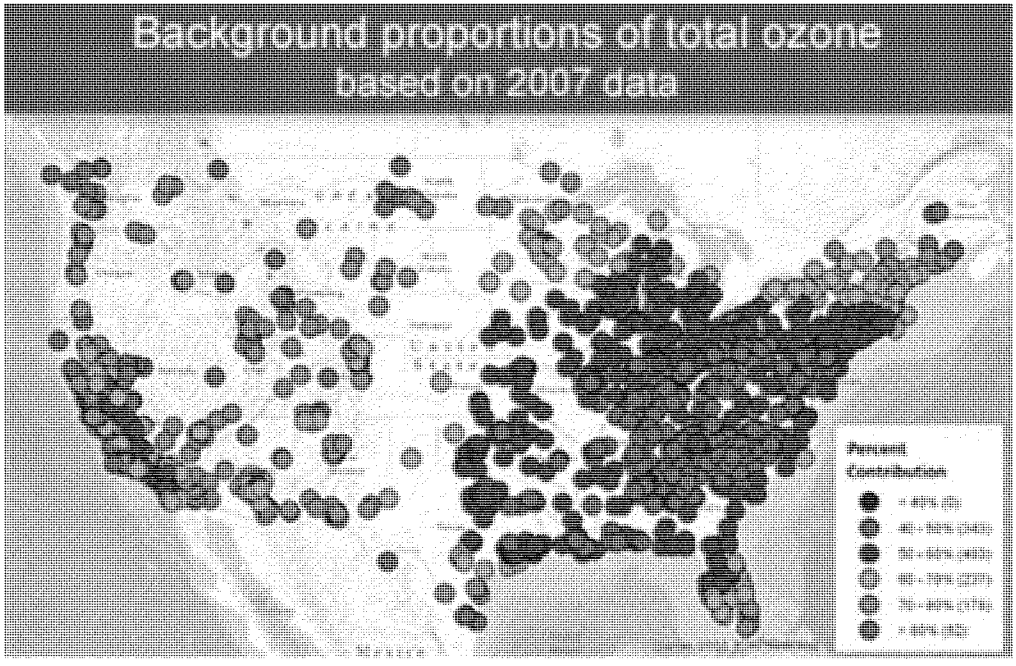
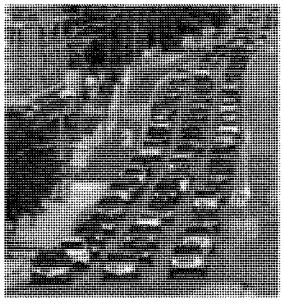



Background proportions of total ozone
based on 2007 data



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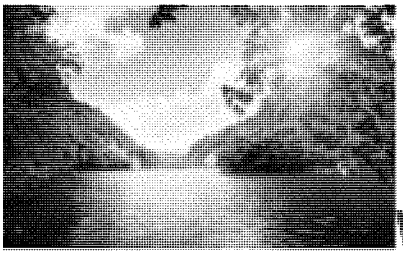

Water Law News

for November 18, 2014

Bloomberg BNA **Daily Environment Report™**

Hydraulic Fracturing

Illinois Fracking Rules Prompt Criticism;
Group Suggests Industry-Driven Changes

The Illinois Department of Natural Resources has published final rules implementing the Hydraulic Fracturing Regulatory Act, triggering complaints from environmental groups that the state had permitted a series of industry-driven changes...

Infrastructure

Water Infrastructure Issues Pose Challenge
To Utilities, Need More Focus, Officials Say

Whether it's dealing with too little water, too much wastewater, natural disasters from Superstorm Sandy or a slowly creeping lava flow heading toward a water plant in Hawaii, water companies and their regulators have a range of challenges...

Water Pollution

Citizen Groups Claim Kentucky Coal Mine
Falsified Discharge Reports; Lawsuit Planned

A Kentucky coal company has falsified water pollution reports for the past two years, concealing nearly 28,000 violations of the Clean Water Act, according to citizens groups that plan to sue over the alleged infractions....

Water Pollution

Maryland Reproposes Phosphorus Rule
With Longer Phase-In Period, Other Changes

The Maryland Department of Agriculture for the third time in two years proposed a regulation that would require farmers to perform soil tests prior to applying phosphorus to their fields and restrict the application of the fertilizer accordingly....

Water Pollution

Settlement Reached in Suits Against EPA
Over Nitrogen in Cape Cod Waterways

The Conservation Law Foundation and the Environmental Protection Agency filed a proposed settlement agreement in federal court Nov. 17 that would resolve a pair of lawsuits brought by the environmental organization seeking to hold the EPA...

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Inside EPA **Risk Policy Report**, 11/18/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

ALEC Floats Draft Model Bills To Scrap EPA, Restrict Environmental Rules

As state legislatures prepare to convene for their 2015 sessions, the conservative American Legislative Exchange Council (ALEC) is floating draft model bills through which states would call for scrapping EPA and replacing it with a panel of state environmental officials, or alternatively urging EPA to scale back several major policies.

Advocates, Industry Spar Over Neonicotinoid Data Following EPA Review

In the wake of an EPA analysis finding negligible benefits from a controversial pesticide product, industry officials and environmentalists are sparring over neonicotinoids' efficacy, with industry officials promising additional data for a broader EPA analysis, and environmentalists arguing companies should have given regulators the information years ago.

States Divided Over Whether EPA Should Withdraw CWA Jurisdiction Rule

States are divided over whether EPA should withdraw its controversial proposed rule to define the Clean Water Act's (CWA) jurisdiction, with some states asking the agency to give them greater input in shaping the rule to ensure proper implementation while other states argue the rule has so many flaws that EPA must revoke it.

Industry Argues Landowners' Challenge To CCS Permits Lacks Legal Basis

Industry lawyers are arguing that an early challenge by landowners to EPA's first ever Safe Drinking Water Act (SDWA) permits under the agency's new rules for carbon capture and sequestration (CCS) lacks a legal basis, saying the plaintiffs cannot meet a standard for Environmental Appeals Board (EAB) review of showing EPA's decision was "clearly erroneous."

News Briefs

EPA Nears Completion Of CWA Industrial Stormwater Permit

EPA is nearing completion of its long-pending revised Clean Water Act (CWA) general permit for reducing industrial stormwater and expects to send it to the White House Office of Management & Budget (OMB) for pre-publication review in the coming weeks, according to an agency water official.

Greenwire

KEYSTONE XL:

Opponents rally outside Landrieu's Capitol Hill home

Manuel Quiñones, E&E reporter

Published: Monday, November 17, 2014

Roughly two dozen activists gathered outside the Capitol Hill home of Sen. Mary Landrieu (D-La.) this morning to protest her support for the Keystone XL oil pipeline from Canada.

Landrieu is spearheading a Senate vote tomorrow on legislation to approve KXL's transboundary crossing. The House passed the same version of the bill last week.

Organizers with climate action group 350.org said activists put up an inflatable pipeline in Landrieu's yard. Police were on site, but they did not arrest any of the demonstrators. A spokeswoman for the U.S. Capitol Police has not responded to a request for comment.

Landrieu's push is widely seen as an effort by the embattled senator to secure victory during next month's runoff election against Republican Rep. Bill Cassidy. Polls show KXL is popular with many voters in the Pelican State.

[+] Keystone XL opponents rally at Louisiana Democratic Sen. Mary Landrieu's Capitol Hill home this morning. Photo courtesy of 350.org.

But environmental advocates resent what they see as Landrieu bringing up the issue for political gain. And they question whether it will really make a difference in the race.

Still, backers of approving the pipeline through legislation have 59 of the 60 votes necessary for passage in the Senate (*E&E Daily*, Nov. 17). And while President Obama has expressed concerns about bypassing the ongoing review process, the White House has not issued a veto threat.

NATURAL RESOURCES:

Green coalition backs Grijalva for ranking member

Phil Taylor, E&E reporter

Published: Monday, November 17, 2014

More than 180 environmental, Latino and liberal groups today urged House Democratic leaders to support Rep. Raúl Grijalva (D-Ariz.) to become the top Democrat of the Natural Resources Committee.

In a letter to House Minority Leader Nancy Pelosi (D-Calif.) spearheaded by the Center for Biological Diversity, the groups argued that Grijalva is the Democratic Party's best defense against Republican attacks on environmental laws protecting clean air and water, endangered species and wilderness.

"We believe that Rep. Grijalva has the experience and passion to represent the core environmental and human rights values of the Democratic Party, and the conviction to stand up to the radically anti-environmental House Republican agenda as the next ranking member of the Committee," said the letter, signed by groups including CBD, Earthjustice, Friends of the Earth, the Endangered Species Coalition and WildEarth Guardians.

Many of the same signatories also endorsed Grijalva for ranking member in June 2013, when he was battling Rep. Peter DeFazio (D-Ore.). DeFazio won the Resources post but is now seeking the ranking member position on the Transportation and Infrastructure Committee.

Grijalva appears to have the inside track for Resources this time around, given that no members who are more senior than him on the panel are challenging him.

The green groups' latest letter calls Grijalva a champion of Latino, American Indian, Western and progressive communities and notes his aggressive oversight of the offshore drilling industry and work to spare the Grand Canyon watershed from uranium mining.

"Congressman Grijalva has been one of our strongest voices for environmental stewardship, protection of public lands and endangered wildlife, and environmental justice for underrepresented communities," Kierán Suckling, executive director of CBD, said in a statement.

SALMON:

Dirty runoff proves deadly for fish

Published: Monday, November 17, 2014

Filtering water through a mixture of gravel, sand and compost could have a lifesaving effect for salmon in Puget Sound.

Stormwater that washes off roads can contain dangerous oils, pesticides and other pollutants that make their way into watersheds. Once in the environment, the contaminants can be fatal to salmon.

Scientists with the National Marine Fisheries Service, Washington State University, and the Fish and Wildlife Service have been researching how best to minimize the impact of toxic stormwater on salmon.

They say simply filtering the water with "green techniques" like rain gardens is part of the solution to help save salmon.

"The results are pretty stark," WSU researcher Jenifer McIntyre said (Phuong Le, AP/*Sacramento Bee*, Nov. 17). **-- AW**

GULF SPILL:

BP asks judge to limit penalty to $12B

Jeremy P. Jacobs, E&E reporter

Published: Monday, November 17, 2014

BP PLC on Friday asked a federal judge to limit the maximum penalty it could face for the Deepwater Horizon oil spill to about $12 billion.

The oil giant contends that its maximum penalty under the Clean Water Act for the 2010 disaster should be $3,000 per barrel of oil spilled.

Federal prosecutors say since the court found BP "grossly negligent" in the run-up to the spill, it is potentially liable for $4,300 per barrel. That could potentially put BP on the hook for up to $18 billion in penalties for the accident that killed 11 people and spilled millions of barrels of oil into the Gulf of Mexico.

In a motion to Federal District Judge Carl Barbier in the Eastern District of Louisiana, BP argued that only the attorney general has the ability to inflate the maximum per-barrel penalty through a regulation and he hasn't done so.

Further, BP argues that there are conflicting regulations from the Coast Guard and U.S. EPA on the fines. The Coast Guard has set the maximum at $4,000 per barrel, and EPA has pegged it at $4,300.

BP said both regulations were procedurally insufficient because they did not receive the requisite notice-and-comment period.

The company also urged the judge to adopt the lower $4,000-per-barrel Coast Guard penalty if he chooses from either.

Notably, the government Friday also asked the court for clarification on the issue. In its own motion, the Justice Department asked the judge to rule on what the maximum penalty could be.

DOJ argued that EPA's $4,300-per-barrel penalty should be used. It said the Coast Guard's 2009 regulation that inflated it to $4,000 per barrel relied on the inflation rate for June 2003 through June 2008 when it should have used the rate for a much longer period -- from June 1997 to June 2008.

The government has argued that 4.1 million barrels of oil was released into the Gulf during the nearly three-month spill. BP counters that the total amount is 3.2 million barrels.

The issue will be central to the third phase of the BP trial, which is slated to begin next year.

RENEWABLE ENERGY:

Interior approves first offshore wind transmission line

Phil Taylor, E&E reporter

Published: Monday, November 17, 2014

The Interior Department has approved the first transmission line in federal waters to serve an offshore wind farm.

Interior's Bureau of Ocean Energy Management approved Deepwater Wind LLC to build a 9-mile subsea cable connecting Block Island to the Rhode Island mainland, a project that will support the company's 30-megawatt Block Island Wind Farm, the agency announced today.

BOEM's Oct. 27 finding of no significant impact for the transmission line keeps the $300 million Block Island on pace to be the first offshore wind farm in U.S. history. Offshore construction is scheduled to begin next summer, Deepwater announced in September.

"This is a major milestone for offshore renewable energy in the United States," Interior Secretary Sally Jewell said in a statement this morning. "But it also represents a big step in our nation's sustainable energy future."

Deepwater in September announced that the five-turbine project had received final approval from the Army Corps of Engineers -- the last of its required federal permits.

The Army Corps evaluated the wind farm because it is being developed in state waters. BOEM evaluated the portion of the transmission line that would cross federal waters.

BOEM's approval is a major milestone both for the wind farm and for Block Island, a popular vacation spot just south of the Ocean State that has long relied on diesel generators for power. The bi-directional transmission line will connect turbines located about 2.5 miles southeast of the island to the mainland while carrying electricity from the onshore power grid to the island.

The next step is for BOEM and Deepwater to agree to the "terms and conditions" of the right of way. BOEM will then send the grant to Deepwater for execution, and the company will be required to pay the first year's rent and provide financial assurance, BOEM said.

The transmission line will be buried about 6 feet below the seabed and will run a total of 21 miles under state and federal waters, making landfall at Narragansett.

The Block Island project already has the support of key environmental groups after Deepwater in February 2013 agreed to delay disruptive construction activities until May to better protect the critically endangered North Atlantic right whale (*E&ENews PM*, Feb. 4, 2013).

The pact with the Conservation Law Foundation will protect a species believed to number in the hundreds that was nearly hunted to extinction for its oil. Right whales and other marine mammals are protected

under the Marine Mammal Protection Act.

Deepwater CEO Jeff Grybowski last December told Bloomberg he believed the Block Island project qualified to receive a 30 percent federal investment tax credit, arguing that the company had spent at least 5 percent of the project's budget before the ITC expired Dec. 31.

Grybowski could not be immediately reached this morning.

Deepwater also plans to build a 1,000 MW wind farm off the Rhode Island and Massachusetts coasts to supply electricity to Long Island and New England states. The Deepwater ONE project is slated as the first of the "second generation" wind farms in the United States. Most of the roughly 200 turbines will be more than 20 miles from shore. Deepwater has signed a similar pact with environmentalists on that project.

DRINKING WATER:

Iowa mulls restrictions to preserve aquifer

Published: Monday, November 17, 2014

Iowa regulators are considering restricting the use of the Jordan aquifer, which provides drinking water to roughly 500,000 Iowans.

Though the aquifer is not currently at risk of being depleted, environmental leaders are hoping to further preserve the reserve, which also provides water to the food processing and ethanol production industries.

"Here it's like we've gotten a note that we need to change our oil. In other states, the red check-engine light is flashing," said Michael Anderson, a senior environmental engineer at the Iowa Department of Natural Resources. "We want to deal with this before it becomes a big problem."

The protections being considered include requiring conservation and alternative water sources for cities, businesses and other uses that exceed set limits (Donnelle Eller, *Des Moines Register*, Nov. 16). **-- AW**

MARYLAND:

Clock ticks on O'Malley's plan to cut use of chicken manure

Published: Monday, November 17, 2014

Maryland Gov. Martin O'Malley (D) faces a key deadline this week to complete rules to help cut the use of chicken manure that are intended to restore the Chesapeake Bay.

O'Malley needs to authorize the regulations to cut Eastern Shore farmers' use of chicken manure as fertilizer by Friday if he hopes to complete the rules before leaving office, sources familiar with the state's regulatory processes say.

Farmers have assailed the rules as costly and unnecessary, and Gov.-elect Larry Hogan (R) has promised to cancel the planned "phosphorus management tool."

Hogan has said the regulations would "basically decimate an entire way of life on the Shore."

State officials have tried to unveil the new regulations twice this year, but both times have reconsidered in the face of heavy opposition from farmers and the poultry industry. A study has shown that farmers would face increased costs by being forced to purchase chemical fertilizer that lacks phosphorus (Timothy Wheeler, *Baltimore Sun*, Nov. 14). **– SP**

MARYLAND:

Churches adopt green practices to avoid stormwater fee

Published: Monday, November 17, 2014

Some Maryland churches that have agreed to take on environmental projects and preach about green issues are receiving a break from the state's stormwater remediation fee.

Labeled a "rain tax" by opponents, the fee was established to help curb the effect of dirty runoff on the Chesapeake Bay. The fee hit religious groups hard, with many charged hundreds or thousands of dollars, depending on their acreage.

Now, after months of negotiations with the county, religious organizations can see significant decreases in their fees if they take steps to curb runoff like installing rain barrels, planting trees and replacing blacktop with permeable pavement.

So far, roughly 30 churches have applied for the exemption (Arelis Hernández, *Washington Post*, Nov. 16). **-- AW**

DEMOCRATIC REPUBLIC OF CONGO:

Conflict between drillers, enviros turns violent

Published: Monday, November 17, 2014

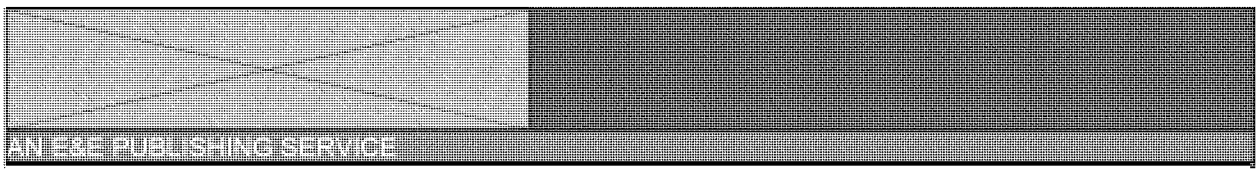
The quest for oil in Africa has turned violent in the Democratic Republic of Congo as environmentalists fight to save national parks from companies champing at the bit to drill there.

New technology like deeper drilling has intensified the hunger for new energy discoveries in West Africa.

Many hydrocarbon producers are eyeing the Congo's national forests as new drilling terrain, supported by national leaders who say impoverished communities with few other options could benefit from drilling.

Now, SOCO International PLC is eyeing Virunga National Park for drilling. Environmentalists say the cost is too great because the conservation area is home to critically endangered species like the silverback mountain gorilla.

The conflict at Virunga has turned violent, with government soldiers shooting at environmental protesters (Jeffrey Gettleman, *New York Times*, Nov. 15). **-- AW**



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Will the most common molecule in the universe be the fuel of the future?

Humans have harnessed hydrogen for a variety of applications, from blasting rockets into space to making common household products like toothpaste. Now, after decades of development, hydrogen is about to find its way into the family car.

2. REGULATION:

States face barriers to cooperating on EPA greenhouse gas rule on power plants

SAN FRANCISCO -- As grid operators, regulators and economists tout the benefits of multi-state plans to comply with U.S. EPA's proposal for curbing greenhouse gas emissions from the power sector, states still face daunting obstacles to working together.

TODAY'S STORIES

3. POLITICS:
Obama sprints into his final years with an expanding climate message

4. FORESTS:
Peru, host of U.N. climate talks, is under fire following killing of forest advocates

5. GEOENGINEERING:
Scientists propose artificial clouds to shade planet from dangerous warmth -- study

6. NATIONS:
Calif. teams with India on early step toward cleaner air

7. ELECTRICITY:
Grid operator says EPA power plant rule 'clarification' is bad news for coal states

8. TECHNOLOGY:
Researchers invent battery that can self-charge from low-level heat

9. CALIFORNIA:
With falling pump prices, will a 'gas tax' from cap and trade still cause pain?

10. COAL:
Power plant developer pushing ahead with Ga. coal facility

11. NEGOTIATIONS:
Breaking with Australia, Canada pledges contribution to climate adaptation fund

12. DISASTERS:
Flooding, landslides still a risk in Switzerland -- authorities

13. WEATHER:
El Niño to hit Horn of Africa, Sahel, and researchers warn of food crisis

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ENERGYWIRE — Tue., November 18, 2014

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With Baker Hughes takeover, Halliburton aims to reduce oil field costs

3.RENEWABLES:

Solar giant SunEdison plunges into wind business with $2.4B deal

4.FINANCE:

Climate-minded investors revolt against major energy companies

ELECTRICITY

5.REGULATION:

Grid operator says EPA power plant rule 'clarification' hinders cap-and-trade solution

6.GENERATION:

Ariz. utility moves toward renewable goal with new solar plant

OIL AND GAS

7.NATURAL GAS:

Pipeline expansions give industry confidence as cold weather arrives

8.HYDRAULIC FRACTURING:

'Monster wells' are draining water from arid regions -- enviro report

9.OIL AND GAS:

Okla. agency amasses massive collection of aerial photos

10.EDUCATION:

Engineering graduates on the rise, but fewer women are entering the field

11.PEOPLE:

Energy law firm adds 2 new members in Denver

12.FINANCE:

N.D.'s state-owned bank rides high amid Bakken boom

13.LAW:

Eagle Ford mineral owners settle suit over alleged mismanagement

14.OIL:

Iran minister heads to UAE as crude prices continue to tumble

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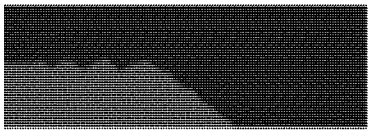

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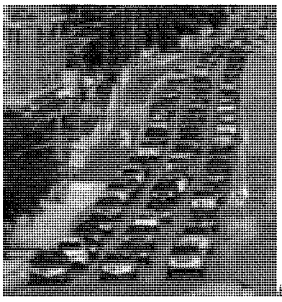
Subject: Air & Radiation Law News for November 17, 2014



Air & Radiation Law News

for November 17, 2014

Bloomberg BNA Daily Environment Report™

Climate Science

Lightning Strikes to Increase, Scientists Say

Lightning strikes will become more frequent as the earth warms, according to scientists. Lightning strikes in the continental U.S. will increase by about 12 percent for each 1 degree Celsius rise in global average air temperature from the...

Energy

House Passes Keystone XL Pipeline Bill, But President Signals He's Likely to Veto

The House voted again Nov. 14 to approve the Keystone XL oil sands pipeline, but President Barack Obama is signaling he may veto any bill that reaches his desk....

Energy

Obama Re-Nominates NRC's Baran
To Fill Term Expiring in June 2018

Jeffery M. Baran, who just joined the Nuclear Regulatory Commission Oct. 14, was nominated again by the White House Nov. 13 to serve a longer term on the commission....

Enforcement

Supervisors at Alaska Seafood Processor
Get Jail Time for Felony Air Act Violations

Two former supervisors at a major seafood plant in Dutch Harbor, Alaska, were sentenced to serve time in jail for felony violations of the Clean Air Act (United States v. Hampton, D. Alaska, No. 3:14-cr-00068-RRB, 11/12/14; United States v....

International Climate

Alberta Premier: Home of Canada Oil Sands
To Follow U.S.-China Lead on Carbon Rules

Alberta, home to Canada's oil sands, is prepared to follow the U.S. and China with stiffer carbon regulations for the fossil-fuel industry, Premier Jim Prentice said....

International Climate

Obama to Pledge $3 Billion for New Fund
To Address Climate Ahead of Negotiations

President Barack Obama will pledge $3 billion to a United Nations climate change fund that's intended to help developing countries boost renewable energy and counter the ill effects of global warming, administration officials said...

International Climate

UN Sustainable Development Network Seeks
Corporate Buy-in Ahead of 2015 Paris Talks

The United Nations Sustainable Development Solutions Network is working with companies on a plan to accelerate low-carbon technology development and with the financial sector to assess climate risk, measures that could be part of an international...

Natural Gas

Energy Department Approves Freeport Project To Export LNG From Texas to Other Countries

The Energy Department approved Freeport LNG Development's liquefied natural gas export project in Texas to export domestically produced LNG to countries that do not have a free trade agreement with the U.S., the department announced...

Renewable Energy

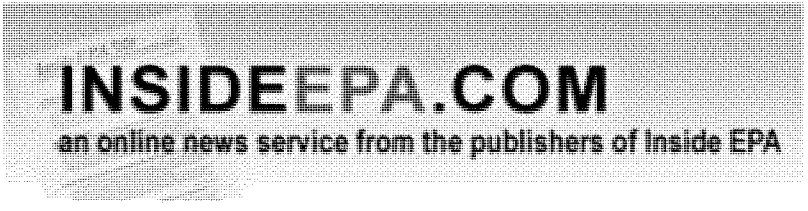
California, Federal Officials Extending Time for Comment on Renewables Plan

Federal and California officials are allowing another 45 days for public comment on the draft Desert Renewable Energy Conservation Plan, the landmark document released in September to guide and streamline development of solar, wind and...

Renewable Energy

Moniz Calls Loan Guarantee Program 'Enormous Success' Amid Progress Report

Amid news the Energy Department's renewable energy loan program expects to earn $5 billion to $6 billion throughout the life of current investments, Energy Secretary Ernest Moniz called the program an "enormous success."...



Inside EPA **Water Policy Report**, 11/17/2014

http://insideepa.com/newsletters/water-policy-report

Latest News

EPA Faults Advocates' Air Study Focus In Bid For NOx-SOx Suit Rehearing

EPA is fighting environmentalists' attempt to cite the agency's dropped nitrogen oxides (NOx) and sulfur dioxides (SOx) pilot study as a reason for a federal appeals court to rehear its ruling backing EPA's decision to shelve a novel joint NOx-SOx air standard, saying advocates are wrong to argue the pilot study was core to the ruling.

States Seek New EPA Guides On ESPS Implementation But Doubt Prospects

The National Association of State Energy Officials (NASEO) is urging EPA to release a specific protocol on how to convert rate-based greenhouse gas (GHG) targets for existing power plants into mass-based limits, suggesting they are not satisfied with the document the agency released on the issue last week.

EPA Eyes 2015 For Release Of Rule To Ease Air Quality Modeling Burdens

EPA is planning to release in spring 2015 a regulation to update its requirements for air quality modeling, saying the measure could help to address concerns from states about difficulties and inaccuracies with modeling for some criteria pollutants while also incorporating new analytical techniques to better model other ambient air pollutants.

News Briefs

EPA Issues Oil And Gas Sector GHG Reporting Rules

EPA has finalized revisions to its greenhouse gas (GHG) reporting rule for the oil and gas sector, including dropping alternative estimation methods that advocates say hindered the agency's ability to gain an accurate picture of the sector's emissions, and also issued a proposal to extend the reporting rules to new transmission and other sources. The measures come ahead of a closely watched agency announcement, expected later this fall, on whether or how the agency will regulate emissions of methane -- a potent GHG -- from the oil and gas sector.

Greenwire

CLIMATE:

How will Obama's $3B pledge play in GOP Congress?

Jean Chemnick, E&E reporter

Published: Friday, November 14, 2014

President Obama will follow his promise of sweeping U.S. cuts in greenhouse gas emissions this weekend with a pledge of $3 billion to help poor countries afflicted by miseries linked to global warming, the White House confirmed today.

Obama is set to announce the U.S. commitment to the United Nations' Green Climate Fund at the G-20

summit in Australia. The president and Chinese President Xi Jinping will also use the gathering of major industrialized and emerging countries to present their new post-2020 carbon dioxide reduction promises in the hopes of spurring other big carbon emitters to make their own commitments early next year.

The U.S. would make its contribution to the Green Climate Fund over four years, building up an account established during 2010 U.N. climate talks in Cancun, Mexico. The U.S. pledge would take the fund nearly a third of the way to its goal -- an initial investment of between $10 billion and $15 billion.

Countries were asked to make pledges at a scheduled Nov. 20 meeting in Berlin, which comes a few weeks before the next round of climate change talks in Lima, Peru. Environmentalists and anti-poverty groups embraced reports of the administration's Green Climate Fund pledge with great enthusiasm this morning, saying it would encourage other contributions.

"The Obama administration should be applauded for taking action and putting real resources on the table to help protect our children's future and invest in greater security for all of us," said Heather Coleman, climate change manager at Oxfam America, in a statement. "This pledge can help ensure developing countries have the tools they need to grow in a low-carbon way and the confidence that America will do its part."

But like Obama's commitment earlier this week to slash U.S. emissions by 26 to 28 percent compared with 2005 levels by 2025, the climate funding is likely to be opposed by Republican majorities in Congress.

"Climate finance brings not just one source of opposition but two sources of opposition from conservatives in the Congress -- both to the notion of foreign aid and to the notion of climate change policy," Harvard University economist Robert Stavins said. "So I think it's particularly challenging."

Since winning control of the Senate last week, Republicans have pledged to use their clout to target administration regulations for carbon dioxide and other heat-trapping emissions. But while they may now have the opportunity to move legislation in both chambers, all those efforts are expected to die on the president's desk.

But Congress' "power of the purse" does put the ball in Republicans' court when it comes to funding administration priorities. And that seems to cast doubt on the administration's ability to deliver on its pledge.

"There's going to be a lot of moves to strip out language that includes any new funding, that's certainly the case," Stavins said.

All of this argues for a greater emphasis on leveraging private capitol rather than directing taxpayer money to international climate finance, Stavins said. U.S. EPA could even do that by allowing international carbon offsets to play a role in its draft rule for existing power plants.

By taking steps to encourage private investment in international projects -- mostly mitigation efforts like deployment of renewable energy -- the administration might also minimize the risk of seeing those funds diverted to other purposes or pocketed by corrupt foreign officials, Stavins said.

Climate aid advocates say they expect the new political environment to complicate efforts to secure generous U.S. contributions to international climate aid.

"Anything in the budget that is tagged climate -- with the theme 'climate' -- is going to be under scrutiny, there's no doubt about it," Oxfam's Coleman said in an interview last night. "I do think it will be an uphill battle, and I think most would agree."

Remembering Bush's pledge

But Coleman and others noted that lawmakers on both sides of the aisle have supported funding in the past for the U.S. Agency for International Development and other agencies that help poor nations cope with weather disasters and provide power and other services to their citizens.

"There is precedent for this," said Alex Doukas, a financial analyst at the World Resources Institute. He pointed to President George W. Bush's pledge in 2008 to contribute $2 billion over five years to the U.N.'s Climate Investment Fund -- a program that supported low-carbon energy in developing countries. The former president, who is not often hailed as a climate change activist, also promised $320 million for the Global Environment Facility.

But Billy Pizer, a deputy assistant Treasury secretary for environment and energy in the Bush administration who worked on many of these issues, noted that Congress didn't immediately fund Bush's pledges of climate aid. The president announced them early in 2008 and included them in his 2009 budget request to Congress, but the money was not provided until the following fiscal year.

The same thing could happen again, Pizer said. Obama could include the funds in his fiscal 2016 budget proposal, and Congress could either grant those funds or not. The U.S. will have four years to deliver on its promise.

Outgoing Senate Foreign Relations Chairman Robert Menendez (D-N.J.) this morning noted the last administration's support for climate change aid.

"President Obama deserves a great deal of credit for building off President George W. Bush's $2 billion pledge for the Climate Investment Fund and positioning the U.S. as a global leader on climate," he said in a statement. "This announcement, combined with the historic announcement with China earlier in the week, shows that the U.S. is serious about addressing climate change and is willing to lead the way."

Menendez is preparing to hand his gavel to Sen. Bob Corker (R-Tenn.), who in 2008 was a member of a bipartisan working group of moderate senators led by then-Sen. Kent Conrad (D-N.D.), who collaborated on energy policy. And Sen. Pat Leahy (D-Vt.), a strong advocate for climate finance, will be replaced as chairman of the Senate State and Foreign Operations Appropriations Subcommittee by Sen. Lindsey Graham (R-S.C.), who in 2010 worked with Secretary of State John Kerry, then a Massachusetts senator, and former Sen. Joe Lieberman (I-Conn.) on a bill that would have capped carbon emissions across the U.S. economy.

Graham still supports action to curb emissions, though he has moved away from cap and trade as a mechanism.

With Corker at the helm of the Senate committee in charge of authorizing international aid programs and Graham heading the Appropriations subpanel responsible for funding them, climate advocates say there is some reason to be optimistic. Coleman noted that Corker and Graham favor international aid generally more than other members of their caucus.

"They understand the value of foreign aid for a variety of purposes," said Coleman. "And I think they understand the value of investments."

And advocates stress that climate aid can benefit U.S. businesses -- especially green technology and infrastructure providers -- by creating markets for their products abroad. That upside should appeal to pro-business Republicans, they say.

Pizer said the Senate seemed less inclined than the House to micromanage agency budgets as part of its spending bills.

"I don't know that the Senate would get into the weeds on the foreign assistance account in the same way that the House would," he said.

Past financing commitments

Alden Meyer, director of policy and strategy for the Union of Concerned Scientists, said Tuesday's announcement of climate pledges and the coming pledge to the Green Climate Fund will give other countries confidence that the U.S. is doing its part toward an international climate deal next year in Paris.

Both emissions reduction and finance for poor countries will be important components of any agreement.

France, Germany and other countries have already pledged money toward the fund, and the U.S. pledge will likely put pressure on other countries that have yet to do so -- like the United Kingdom.

"If they don't come through with capitalizing it, it will be seen as a broken promise," he said.

In the past, offers of finance from the developed world would also have been crucial to persuading major emerging countries to offer more ambitious emissions reduction commitments.

"But I think the landscape has shifted," Meyer said.

China pledged to cap its emissions by 2030 on Tuesday in a joint announcement with the U.S. But while finance commitments may no longer be needed to compel large developing emitters to act, they will be needed to gain poor countries' support for an international agreement next year in Paris.

DOE:

New supercomputers aim to put U.S. back on top

Katherine Ling, E&E reporter

Published: Friday, November 14, 2014

The Energy Department today announced a $425 million investment to build significantly faster computers to handle the trillions of data points that will provide critical solutions for science, climate change, clean energy and nuclear security.

DOE will provide $325 million to build three new supercomputers within the national laboratories for various science, energy and nuclear weapons purposes, according to the agency. The new supercomputer at Oak Ridge National Laboratory will enable at least five times the performance of its current system, Titan, which is the most powerful system in the nation, DOE said. Another new advanced computer will be built at Lawrence Livermore National Laboratory and will be seven times faster than the lab's current machine.

A third supercomputer will be built at Argonne National Laboratory, but its details will be announced in the next few weeks, according to the lab's director, Peter Littlewood.

When completed in about 2017, the Oak Ridge and Lawrence Livermore systems will be capable of

performing about 150 petaFLOPS, which is a computer performing 150 million instructions in the time it takes light to travel 1 foot, Rep. Bill Foster (D-Ill.) explained at a press conference at the Capitol on the announcement.

These supercomputers' boost in operation will only require a 10 percent increase in energy, Energy Secretary Ernest Moniz said at the announcement. Energy consumption is a significant hurdle in advanced computing, especially as nations reach for the next level of supercomputers known as extreme-scale, or "exascale," computing, which would be 20 to 40 times more powerful than existing supercomputers. DOE also announced today a $100 million investment to advance exascale research and development.

"This is about strengthening the scientific enterprise of the United States," Moniz said, noting that supercomputing capability is now as integrated and invaluable to science and industry as it is to the nuclear security complex for which it was originally created.

"This is about handling an incredible amount of data," Moniz said, such as a "material genome project" to better understand the application of materials from solar to batteries.

PetaFLOPS and supercomputing is "kind of an exotic-sounding term, but they have an everyday impact," added Sen. Lamar Alexander (R-Tenn.), who is a leading supporter of DOE's high-performance computing program. He will be in a prime position next year to maintain federal support for supercomputing as likely chairman of the Energy and Water Development Appropriations Subcommittee.

Alexander and Moniz stressed that supercomputing maintains bipartisan and popular support on both sides of the Capitol and would not likely be a point of contention in upcoming DOE appropriations discussions.

But leading scientists have noted that current budget levels would not be enough to maintain U.S. leadership on supercomputing, especially exascale. The United States could not develop an exascale computer until 2025, placing the nation at least five years behind China, Japan and other competitors, a panel of scientists told the House Science, Space and Technology Committee last year (*E&E Daily*, May 23, 2013).

While the two new systems capable of 150 petaFLOPS would be far more powerful than the current fastest computer, China's Tianhe-2 at 55 petaFLOPS, that may not be enough to be the fastest computers in the world when they are operational in a few years.

Moniz, Alexander and Foster stressed that speed is not everything, as supporting memory and communication bandwidth is also key for supercomputers actually having a scientific and private-sector impact.

"I still maintain that we have the deepest well of experience by far and the ability to integrate all these into an effective system for managing complex, flowing dynamics in a variety of systems to the handling of simply huge data and making sense of those data," Moniz said.

Foster, who will be the only remaining physicist when Congress convenes next session, said that while not obtaining an exascale computer first is "a negative," he would be more upset if the U.S. fails to develop the most productive supercomputers, of which speed is only one part.

The House passed H.R. 2495 earlier this fall to amend the DOE High-End Computing Revitalization Act of 2004 to direct DOE to establish two or more national laboratory-industry partnerships to develop hardware and software for two or more exascale systems (*E&E Daily*, Sept. 9).

Alexander introduced a companion measure, S. 733, in the Senate, but the Senate Energy and Natural Resources Committee has yet to consider it.

The three new supercomputers will be developed with IBM Corp.'s Power Architecture, Nvidia Corp.'s processing accelerators and Mellanox Technologies Ltd.'s high-speed networking; the exascale funding will include partnerships with Advanced Micro Devices Inc., Cray Inc., IBM, Intel Corp. and Nvidia, according to DOE.

REGULATIONS:

Ariz. voters tee up test of federal authority

Jennifer Yachnin, E&E reporter

Published: Friday, November 14, 2014

It's been more than 15 years since work began on the extensive Sonoran Desert Conservation Plan in Arizona's Pima County, but environmentalists fear a new law allowing the state to push back against federal authority could jeopardize that project and others.

Arizona voters narrowly approved a ballot proposal this month that will allow the Cardinal State to declare any federal mandate unconstitutional and then halt the use of state or local funds to enforce or administer those laws.

The measure, known as Proposition 122, received 51 percent of the vote on Election Day.

Proponents of the measure, including Gov.-elect Doug Ducey (R), touted the proposal as a way to control the state's budget while fighting Obamacare, the federal health care reform law that remains unpopular among the predominantly Republican state's elected leaders.

But while its supporters didn't zero in on environmental regulations, Sierra Club Grand Canyon Chapter Director Sandy Bahr said there's no shortage of potential targets for the law -- from U.S. EPA's proposed Waters of the United States rule and its Clean Air Act climate proposal for power plants to the Endangered Species Act.

"There are legitimate concerns that they will utilize this because they've already tried," Bahr told *Greenwire*, pointing to recent state legislative efforts to curtail recovery efforts for the Mexican gray wolf and bar state agencies from adopting plans to reduce greenhouse gas emissions without legislative approval.

"It encourages the Legislature to be more irresponsible. And they've already been irresponsible when it comes to federal laws, including federal environmental laws, constantly trying to send messages one way or another," Bahr added.

In the 2012 election cycle, state legislators also sponsored a ballot initiative that would have given Arizona "sovereign and exclusive authority and jurisdiction over the air, water, public lands, minerals, wildlife and other natural resources within its boundaries."

That measure -- intended to allow the state to seize federal lands in its borders -- failed to pass.

Carolyn Campbell, executive director of the Coalition for Sonoran Desert Protection, said she hopes the latest ballot initiative is little more than political grandstanding.

"I'm crossing my fingers that they won't go to those lengths, that this is another shot over the bow philosophically," she said, referring to the failed 2012 ballot initiative.

But Campbell said if state lawmakers move to declare the Endangered Species Act unconstitutional, it could jeopardize long-running efforts on a multispecies conservation plan in Pima County, despite widespread cooperation on the project.

"That's a very, very real case example that we could be dealing with," Campbell said.

Targets, timing unclear

Although Arizona residents approved the measure last week, it could still be some time before the state makes its first attempt to take on the federal government.

Under the new law, the state will have three options to declare a federal law or regulation unconstitutional: a new round of state ballot initiatives -- sponsored by either the state Legislature or a citizen initiative -- or a bill from the Legislature itself.

According to the Phoenix-based Goldwater Institute, which drafted Prop 122, while legislation would be the fastest route, proponents of the new law will most likely pursue another ballot initiative to block any federal programs.

"The folks who are interested in triggering 122 are interested in a referendum," said Clint Bolick, the institute's vice president for litigation.

That's because Arizona gives ballot initiatives, unlike a bill from the state Legislature, special protections that bar state lawmakers from repealing those efforts via legislation.

It remains to be seen what federal programs Prop 122's backers -- including Scottsdale businessman Jack Biltis, who provided most of the funding for the ballot initiative -- will push to challenge under the new law, but Bolick said he expects Obamacare would be among the likely targets.

"There are going to be some strategy meetings coming up among proponents of the measure to determine what the priorities will be, and they have not happened yet, but I would suspect that probably discrete portions of Obamacare could be addressed," Bolick said.

Regardless of what programs the measure targets first, however, foes of the new law expect that Prop 122 will be challenged in court.

"Arizona has a billion-dollar budget problem. The last thing we need is more litigation that is going to cost the state and to cost us relative to loss of implementation of important programs and policies, things that people support," Bahr said.

Although states can decline to participate in federal programs -- like those that have opted out of the recent Medicare expansion triggered by the health care reform law -- Arizona would still be required to follow federal laws, Arizona State University professor Paul Bender told Phoenix CBS affiliate KPHO last week.

"States have to cooperate with federal law," Bender said. "They don't have to enforce federal law, but they have to obey it."

But Bolick dismissed such criticisms, asserting the new law "is unquestionably constitutional."

"There had been some groups that were trying to put measures on the ballot that would nullify federal laws, and states can't nullify federal laws," Bolick said. "But it is equally clear that states can control their spending, and it is completely up to them as to whether they will spend funds to enforce or administer a federal law."

COAL:

Facing 31 years in prison, Blankenship vows to fight charges

Manuel Quiñones, E&E reporter

Published: Friday, November 14, 2014

Former Massey Energy Co. CEO Don Blankenship, one of the most controversial figures in the coal mining industry, faces three decades in prison if convicted of four criminal charges connected to the 2010 Upper Big Branch mine explosion, which killed 29 miners.

West Virginia U.S. Attorney Booth Goodwin announced yesterday afternoon that a federal grand jury had indicted Blankenship on charges of conspiracy to violate mine safety laws and prevent proper Mine Safety and Health Administration oversight of Upper Big Branch in the years leading up to the blast.

The grand jury also faulted Blankenship for making false statements to investors and federal securities regulators by painting the company's safety record as positive, according to the 43-page indictment. The four charges carry a 31-year combined maximum penalty.

Several reports into Upper Big Branch, including by former MSHA chief Davitt McAteer and the United Mine Workers of America, have painted Blankenship as more focused on mining and profits than safety. The indictment reflects those allegations.

The indictment cited a 2009 memo in which Blankenship said, "We'll worry about ventilation or other issues at an appropriate time. Now is not the time."

He's also quoted as telling concerned mine executives, "I could Krushchev [sic] you. Do you understand?" And, "You have a kid to feed. Do your job."

MSHA and reports into Upper Big Branch have described a pattern of safety violations at the mine, including problems with combustible coal dust and faulty equipment. The indictment echoes those findings.

But, to buttress the case against Blankenship himself, the indictment presents evidence he was "fully aware of UBB's practice of routinely violating mandatory federal mine safety standards."

Ever since the Upper Big Branch explosion, MSHA has worked to prevent advance notice of mine inspections. And the indictment accuses Blankenship of alerting staff of inspections, in violation of mine safety law.

"At the entrance to the UBB mine property was a guardhouse," the indictment says. "When federal mine safety inspectors passed this guardhouse on their way to the mine, it was standard practice for a guard to radio the UBB mine office, which sat just outside the entrance to the mine's underground areas, to warm employees in the mine office that the inspectors were on their way."

Last year, former Massey executive David Hughart pleaded guilty to conspiring to prevent proper inspections and, during a federal court hearing, accused Blankenship of ordering the advance notice.

At the time, Blankenship attorney William Taylor, with the law firm Zuckerman Spaeder LLP, said, "By the way, it is not illegal to notify people in a mine that an inspector has arrived on the site and has begun an inspection."

Yesterday, Taylor was more general in his response. "Mr. Blankenship is entirely innocent of these charges. He will fight them and he will be acquitted," he said in a statement.

"Don Blankenship has been a tireless advocate for mine safety. His outspoken criticism of powerful bureaucrats has earned this indictment. He will not yield to their effort to silence him," said Taylor. "He will not be intimidated."

Blankenship has remained outspoken in politics and mine safety issues, including giving *Greenwire* an interview earlier this year (*Greenwire*, April 7). As his indictment became public, his latest Twitter post criticized the competence of current MSHA head Joe Main.

Beyond Hughart, three other former Massey employees have been convicted of charges related to problems at Upper Big Branch. The FBI and the Department of Labor's Office of Inspector General have been leading the investigation.

UMWA President Cecil Roberts said the indictment was justice to the families of more than 50 people who died on Massey property during Blankenship's leadership.

"The carnage that was a recurring nightmare at Massey mines during Blankenship's tenure at the head of that company was unmatched," said Roberts. "No other company had even half as many fatalities during that time. No other company compared with Massey's record of health and safety violations during that time."

Sen. Joe Manchin (D-W.Va.) said, "I've always had complete faith that justice would be served, and Don Blankenship's indictment today is a first step in providing some peace to the families of the Upper Big Branch miners who lost their lives."

GRID:

Calif. asks FERC to help with price fluctuations in new market

Debra Kahn, E&E reporter

Published: Friday, November 14, 2014

The California grid operator requested a federal waiver yesterday from electricity-pricing rules because of price fluctuations in a new market intended to accommodate rising amounts of renewable energy.

The California Independent System Operator filed a petition yesterday asking the Federal Energy Regulatory Commission for an immediate 90-day exemption from rules governing the settlement of energy prices because of software glitches and other issues that spurred price increases in the West's new energy imbalance market.

The market, which gives Western buyers the option to purchase electricity in five-minute increments, is

intended to improve electricity schedulers' ability to fold in renewable energy. Rather than having power plants on reserve, ready to ramp up production to compensate for declining wind and solar, utilities can draw on resources regionwide that may be cheaper than their neighboring plants (*EnergyWire*, Sept. 30).

The market currently covers the service territories of CAISO, which includes about 80 percent of California and part of Nevada, and PacifiCorp, which has 1.8 million electricity customers in six states: California, Idaho, Oregon, Utah, Washington and Wyoming. Nevada utility NV Energy is expected to join in October.

CAISO reported last week that the market had some software problems at its startup Nov. 1 that caused electricity prices to vary by as much as $1,000 per megawatt-hour (*EnergyWire*, Nov. 4). Now the agency is asking permission to manually settle prices in PacifiCorp territory to remove the excess charges, rather than relying on its automated software.

"Granting the requested waiver will avoid subjecting market participants to unnecessary and unrepresentative high prices while continuing the overall successful launch of the Energy Imbalance Market," the waiver request says. "The CAISO's first priority is to spare market participants the continued financial harm caused by the price excursions."

CAISO's filing says issues go beyond software problems. CAISO said it had not modeled all possible conditions during market testing; that some energy resources in neighboring utility PacifiCorp's territory need metering upgrades to be able to participate; and that PacifiCorp has also had outages in its territory that have contributed to supply constraints in the market.

Suspending the market entirely isn't necessary, CAISO attorneys said, as problems haven't affected grid reliability to the point of concern.

"The more extreme step of suspending implementation of the Energy Imbalance Market until the issues noted above are resolved is neither appropriate nor necessary," they wrote. "The CAISO and PacifiCorp will be better able to identify solutions while the Energy Imbalance Market continues to operate."

Officials continued to profess confidence in the market, saying the malfunctions are not atypical.

"We continue to be pleased at the overall functioning of the EIM," said Natalie Hocken, PacifiCorp's senior vice president for transmission and system operations. "Effectively linking the two largest grids in the West is a big undertaking, and we will continue to fine-tune and adjust to operating in a brand new market during these early weeks."

NATURAL GAS:

FERC rejects greens' bid for rehearing on Texas export project

Hannah Northey, E&E reporter

Published: Friday, November 14, 2014

The Federal Energy Regulatory Commission rejected environmentalists' request yesterday that the agency reconsider its approval of Freeport LNG Development LP's liquefied natural gas export project in Texas.

The Sierra Club and Galveston Baykeeper had asked FERC to hold a rehearing on its July 30 approval of Freeport's request to modify an existing terminal in Brazoria County, Texas, to accommodate exports.

The groups argued that FERC failed to consider the cumulative environmental impacts of existing and proposed export projects and of "induced natural gas production."

FERC, they argued, had "erroneously" relied on the Energy Department's decision that the project was in the public's interest.

But FERC rejected their arguments, reiterating its position that the effects of additional gas production are "not reasonably foreseeable, as it is unknown where, or when, such production would occur," and said the Sierra Club failed to identify any uptick in gas production tied to the project.

The commission said its environmental analysis of the project was a multiagency exercise that considered safety and environmental implications. The commission also said FERC is not the appropriate venue for any concerns the Sierra Club may have with DOE's decision that Freeport's project is in the public's interest.

AIR POLLUTION:

EPA lays out compliance plan for power plant start-ups, shutdowns

Amanda Peterka, E&E reporter

Published: Friday, November 14, 2014

U.S. EPA said it plans to offer power plants an alternative compliance option for meeting toxic air pollution standards during the times when they're starting up and shutting down production.

Under the new work practice standard, coal- and oil-fired power plants will be required to use only "clean fuels" during the entire start-up period while bringing online primary pollution controls within an hour of adding their primary fuel. When shutting down units, power plants will be required to stop adding coal or oil prior to shutting down pollution control devices.

EPA says the new compliance option, which is the result of an industry petition for reconsideration, will cut utilities' emissions of hazardous air pollutants.

"We believe that application of this work practice," EPA said, "will lead to HAP emissions during startup periods and shutdown periods that are comparable to, and potentially lower than, those levels authorized during normal operations when averaged over the entire startup and/or shutdown period."

EPA quietly posted the final reconsideration a week ago on its website; an official *Federal Register* notice is forthcoming. The option will become available to utilities when the notice is published.

The changes apply to the start-up and shutdown periods in EPA's utility mercury and air toxics, or MATS, rule and to similar provisions related to the particulate matter standard in new source performance standards for utilities.

Environmentalists have already pushed back against the agency's action, arguing it would harm public health and the environment.

"EPA is unnecessarily weakening the startup and shutdown provisions of the rule, which govern periods when power plants emit a lot of toxic pollution," Neil Gormley, an associate attorney at Earthjustice, said in an email.

When EPA released the two final rules setting the standards in February 2012, the agency called for power plants to comply with numeric air pollution standards at all times.

Industry, however, challenged a number of the rules' provisions in petitions to the agency and argued that it was not possible to achieve the standards while operations are starting up and shutting down.

While EPA last year took action on some of the industry's challenges, it had not yet taken final action on proposed changes to the rules' start-up and shutdown provisions. In the final action last week, the agency said it both took comments on the provisions and reviewed data on pollution released by utilities during start-up and shutdown periods before issuing the changes.

Coal- and oil-fired electricity generating units will be required under the work practice standard to use only clean fuels -- defined by EPA as natural gas, synthetic natural gas, synthesis gas or ultra-low-sulfur diesel -- to fire up boilers. Electricity generating units that choose this option for compliance will be required to have enough clean fuels on hand to warm up the facility to the point where air pollution control devices can be brought online within an hour of adding the primary fuel.

Power plants will be required to comply with the applicable numeric air pollution standard within four hours of the time they start generating electricity or thermal energy.

At the other end, power plants will be required to continue running their pollution control devices for a period after they stop burning coal or oil.

EPA said it based the standard on what the best-performing 12 percent of all electricity generating units are able to achieve. Because clean fuels are "inherently cleaner" than coal and oil, the agency said the work practice standard will "greatly limit" the amount of hazardous air pollutants that are emitted by the units during start-up and shutdown.

Last week, the agency also issued a direct final rule that would change the way power plants are required to electronically report their emissions of mercury and other air toxics. EPA said that it is not making changes to any other parts of the utility MATS or NSPS and that the final 2012 rules remain in effect for all sources. Existing sources must still comply with the rule by April 16 or seek an extension from the compliance date, the agency said.

EPA's action last week is part of a broader debate concerning how to regulate emissions of air pollutants during periods of start-up, shutdown and malfunction under a Clean Air Act that demands continuous emissions reductions. The agency has recently proposed to eliminate industry's legal defense for violations during those periods from a wide swath of air rules (*Greenwire*, Oct. 16).

Rich Alonso, a former head of the air enforcement branch at EPA who now represents energy companies at Bracewell & Giuliani, said that power plants generally supported work practice standards during those periods but that they were concerned about the feasibility of meeting EPA's new requirements.

"I think most folks are probably doing this, but not all coal-fired power plant locations have access to natural gas, so this could be problematic," he said, adding that there were also safety issues related to turning on pollution control devices early.

EPA said it would allow sources to request, on a case-by-case basis, exemptions if they're not able to comply with the work practice standard on safety grounds.

Industry and more than 20 states have concurrently brought a challenge to the entire utility MATS rule to the Supreme Court after the U.S. Court of Appeals for the District of Columbia Circuit upheld it in April

(*Greenwire*, April 15). The Obama administration has urged the Supreme Court to pass on the request; the high court is expected to decide shortly whether to take it up (*Greenwire*, Oct. 17).

AIR POLLUTION:

Study links childhood obesity to tobacco smoke, road emissions

Amanda Peterka, E&E reporter

Published: Friday, November 14, 2014

Exposure to tobacco smoke and road pollution might contribute to childhood obesity, according to a study released this week by University of Southern California researchers.

The study followed more than 3,000 children from age 10 through high school graduation and found research subjects gained more weight as adolescents according to their exposure to air pollution.

"Vehicle miles traveled, exposure to some components of the near-roadway air pollutant mixture, and near roadway residential development have increased across the United States over the last several decades corresponding to the epidemic of childhood obesity," Rob McConnell, a professor at USC's Keck School of Medicine and lead author on the study, said in a statement. "The potential for near-roadway air pollution to be among several factors contributing to the epidemic of obesity merits further investigation."

The study was published Wednesday in the journal *Environmental Health Perspectives*. The authors said the research is among the first to examine the effects of tobacco smoke and road pollution on body mass index.

The study participants, most of whom were white and Hispanic, were enrolled in the Southern California Children's Health Study, an initiative begun in 1992 to study long-term air pollution impacts on children.

Roadway air pollution exposure was determined by taking into account traffic volume, road locations and wind direction. Tobacco smoke exposure data were based on parents' responses to a questionnaire; both maternal smoking during pregnancy and secondhand smoke at home after the child's birth resulted in higher body mass indexes in the studied children.

Maternal smoking during pregnancy was associated with a gain of 0.72 kilogram per square meter of body mass index compared with the median. Secondhand smoke was associated with BMI growth of 0.81 kg/m2, while road pollution effects depended on tobacco smoke exposure. Children exposed to high levels of both smoke and roadway pollution experienced a gain of 2.15 kg/m2 in BMI compared with the median.

The results suggest tobacco smoke and roadway pollution have synergistic effects, but more research is needed, the authors said.

"Further research is needed to determine if our findings can be replicated in other populations," McConnell said, "and to assess both the potential contribution of combustion sources to the epidemic of obesity and the potential impact of interventions to reduce exposure."

The study was funded by the National Institutes of Health, U.S. EPA and the Hastings Foundation.

AIR POLLUTION:

Colo.'s emission control success negated by energy boom -- study

Published: Friday, November 14, 2014

Colorado has clamped down on emissions from oil and gas operations in its most populous region, but a new study indicates air pollution levels are holding steady, thanks to more wells than ever in the Denver-Julesburg Basin.

University of Colorado researchers who conducted the study, which appears today in the journal *Elementa*, found that air in residential backyards near oil and gas wells had hydrocarbon levels 77 times higher than regional background rates for propane, ethane and other chemicals that contribute to the Front Range's ongoing struggle to reduce ozone levels below federal Clean Air Act health standards.

The state's air monitor in Platteville also had higher ambient levels of benzene, a known carcinogen, than Houston, home to some of the nation's biggest refineries.

According to the study, Front Range air quality has not improved despite 2008 rules requiring drillers to capture 90 percent of their emissions.

"Even though the volume of emissions per well may be decreasing, the rapid and continuing increase in the number of wells may potentially negate any real improvements to the air quality situation," the study said as more and more drilling permits are awarded in the Denver-Julesburg Basin.

The state in February increased emission capture requirements to 95 percent for the basin's 25,000 wells, but the study's lead author, Chelsea Thompson, said expected industry growth will make curbing pollution difficult.

"The industry is investing billions of dollars in Colorado," Thompson said. "When it is 5 percent of 60,000 wells, that will be a great deal more" (Mark Jaffe, *Denver Post*, Nov. 13). **-- DTB**

MICHIGAN:

State Senate clears gas tax

Published: Friday, November 14, 2014

In an effort to revive deteriorating roads, the Michigan Senate yesterday approved steep hikes in the gas tax during the next four years.

The increase could raise more than $1 billion annually and is a victory for Gov. Rick Snyder (R), who has been advocating for more road revenue for three years.

If passed by the House, Michigan's gas tax would rise 17 cents by the time the increase is fully implemented Jan. 1, 2018.

The bill was sponsored by Senate Majority Leader Randy Richardville (R) and was passed without debate. After the vote, Richardville called the measure "a big step to show people we're serious" (Egan/Gray, *Detroit Free Press*, Nov. 13). **-- AW**

ZAMBIA:

Candidate aims to replace mining with pot in bid to protect environment

Published: Friday, November 14, 2014

The Green Party candidate for president in Zambia has an unconventional strategy to save the country's environment: Legalize marijuana.

Peter Sinkamba, who is expected to announce his candidacy today, has proposed legalizing medical marijuana in Zambia and selling any surplus crop in foreign markets.

Legalizing marijuana, even for medicinal purposes, would make Zambia the first African nation to do so. Sinkamba, who is running to replace the late President Michael Sata, claims doing so could earn the country billions of dollars.

Those funds, Sinkamba says, could help the country clean up copper mines and move the country away from economic reliance on mining. Copper makes up nearly 70 percent of Zambia's total export market (McDonnell/Ross, London *Guardian*, Nov. 14). **-- AW**

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CLIMATEWIRE — Mon., November 17, 2014

READ FULL EDITION

1.RISK:

Where property rights are king, development continues despite growing wildfire threat

KALISPELL, Mont. -- In the summer of 2003, Montana's Glacier National Park went up in flames as six separate wildfires consumed more than 135,000 acres. In towns throughout Flathead County, where Glacier Park is located, people witnessed smoke plumes resembling bomb explosions rise from behind the mountains and descend to the valley floor, choking the air for days. Most Montanans will say at the edge of the wilderness that wildfires are a part of life. But this hasn't stopped people from building homes there -- not by a long shot.

TODAY'S STORIES

2.ECONOMICS:
On EPA's carbon rule, economists say interstate coordination will be key

3.BUSINESS:
U.S., Chinese firms team up to deliver 800 MW of CSP

4.FINANCE:
No way around Congress for $3B global climate pledge, experts say

5.CARBON MARKETS:
Calif. invalidates 89K offset credits for hazardous waste violations

6.CITIES:
N.Y. climate plan wins unanimous approval

7.OIL AND GAS:
New rules demand more stringent GHG reporting

8.FORESTS:
Logging ban in China's Yunnan province undermined traditional protections -- study

9.OCEANS:
Scientists break new ground in ocean acidification mapping
10.COAL:
Glencore to stop Australian operations for 3 weeks
11.DROUGHT:
Rainfall in Calif. does little to end drought
12.NATIONS:
Chinese media, experts support U.S.-China climate deal
13.WEATHER:
U.K. environment agency issues flood warnings as extreme winds lash southern Britain
E&ETV'S ONPOINT
14.REGULATION:
IETA's Forrister talks next steps for U.S.-China agreement, EPA emissions plan

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ENERGYWIRE — Mon., November 17, 2014

READ FULL EDITION

1.TECHNOLOGY:
U.S.-China climate surprise -- a coal plant that stores CO2 and makes fresh water

Among the many shockers in the climate deal announced last week between the United States and China was this: a plan to jointly build a coal plant in China that would store a million tons of carbon dioxide a year and make copious amounts of fresh water.

TOP STORIES
2.OIL AND GAS:
Halliburton agrees to buy oil-field service rival Baker Hughes for $34.6B
3.ELECTRICITY:
Western states mull consumer protections for rooftop solar
4.SOLAR:
Approval of utility proposals dims outlook for net metering in Wis.
ELECTRICITY
5.UTILITIES:
TVA looks to keep ahead of the curve amid EPA climate rule rollout
6.TRANSMISSION:
Texas commission denies generators' complaint over $600M Houston Import Project
7.REGULATIONS:
Exelon wins bid to charge more for upstate N.Y. nuclear power
8.NATURAL GAS:
Calif. sues BP over gas prices
9.UTILITIES:

Alabama Power says regulations will increase electricity costs

OIL AND GAS

10.REGULATION:

Ill. publishes shale rules amid protests and lawsuit

11.NATURAL GAS:

Old tax break intended to spur production is costing Texas $800M yearly -- report

12.OIL AND GAS:

Air pollution spikes near residential wells -- Colo. study

13.PEOPLE:

Drilling contractors association appoints new leadership

14.COLORADO:

Boulder County extends drilling moratorium

15.OIL:

Russia bracing for 'catastrophic fall' in prices, Putin says

E&ETV'S ONPOINT

16.REGULATION:

IETA's Forrister talks next steps for U.S.-China agreement, EPA emissions plan

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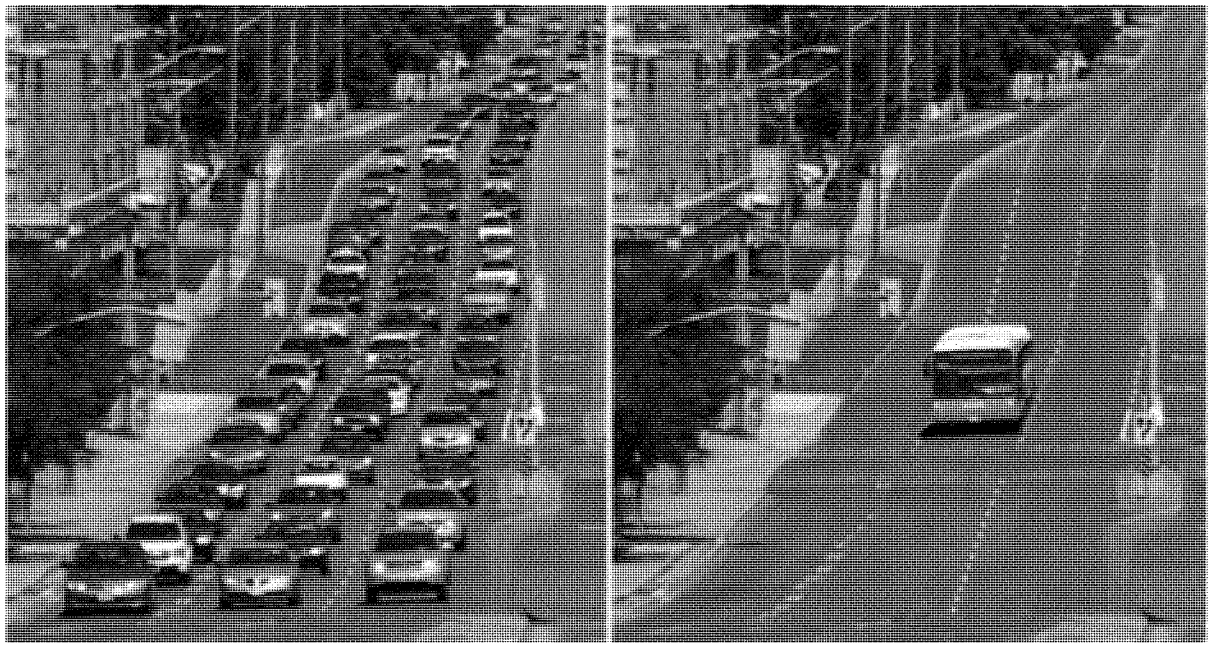

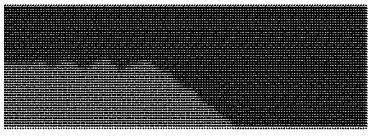

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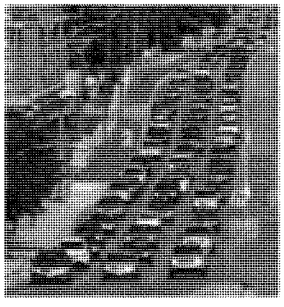

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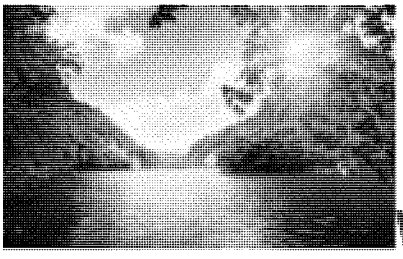
From: Turley, Jennifer
Sent: Mon 11/17/2014 3:45:55 PM
Subject: Water Law News for November 17, 2014



Water Law News

for November 17, 2014

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

Maryland Governor-Elect Seeks Repeal Of Stormwater Fees, Dredging Behind Dam

Restoring the Chesapeake Bay is an environmental priority of Maryland's Gov.-elect Larry Hogan (R), but his intended approach differs significantly from that of outgoing Gov. Martin O'Malley (D)....

Energy

House Passes Keystone XL Pipeline Bill, But President Signals He's Likely to Veto

The House voted again Nov. 14 to approve the Keystone XL oil sands pipeline, but President Barack Obama is signaling he may veto any bill that reaches his desk....

Hydraulic Fracturing

Canadian Claiming Fracking Contaminated Water Can Sue Government, Court Rules

A Canadian woman who claims hydraulic fracturing contaminated her groundwater can sue the Alberta government for allegedly failing to properly investigate her claims and fix any issues, a superior court judge ruled....

Oil Spills

BP Loses Bid for New Trial Over Negligence Related to 2010 Gulf of Mexico Oil Spill

BP Plc has lost a bid for a new trial on findings that it was grossly negligent in the 2010 Gulf of Mexico oil spill, a decision that exposes the company to $18 billion in pollution fines (In re: Oil Spill by the Oil Rig "Deepwater Horizon"...

Water Pollution

Environmental Groups, Republican Lawmakers Debate 'Other Waters' in Proposed Rule

Environmental advocates said the proposed waters of the U.S. rule should be strengthened by bringing certain excluded wetlands under definitive Clean Water Act jurisdiction, while Republican lawmakers described the "other waters"...

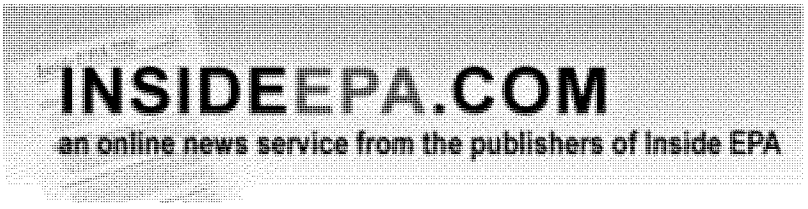
Water Pollution

Home Builder Association Asks Court to Rule On Legality of Traditional Navigable Waters

The National Association of Home Builders on Nov. 24 will try to persuade a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit that a traditional navigable water determination is a final agency action subject...

CORRECTION

An article in the Nov. 14 report about enforcement efforts on hydraulic fracturing inaccurately described Next Generation Compliance as a national enforcement initiative. It is not a national enforcement initiative but a strategy used...



Inside EPA **Water Policy Report**, 11/17/2014

http://insideepa.com/newsletters/water-policy-report

Latest News

Industries Outline Legal Arguments Against EPA's CWA Jurisdiction Rule

Industry groups are outlining legal arguments against EPA's proposal to define Clean Water Act (CWA) jurisdiction that hint at claims they would raise in suits over a final rule, including that the proposal has many gaps in violation of the Administrative Procedure Act (APA) and tries to revive a related rule the Supreme Court vacated in 2001.

News Briefs

Farm Claims CWA Prohibits Water Permits For Dust

A North Carolina farm is urging a federal district court to bar EPA and state agencies from issuing novel Clean Water Act (CWA) permits for farm dust, arguing that the water law's permit exemption for agricultural stormwater includes dust, feathers and other airborne pollutants from feedlots regardless of EPA's policy interpretation.

Greenwire

KEYSTONE XL:

House easily clears pipeline bill; Obama again dodges veto question

Manuel Quiñones, E&E reporter

Published: Friday, November 14, 2014

This story was updated at 2:31 p.m. EST.

The House this afternoon easily passed legislation to approve the Keystone XL oil pipeline from Canada, putting the spotlight squarely on the Senate and President Obama.

The House approved Louisiana Republican Rep. Bill Cassidy's H.R. 5682 by a vote of 252-161, with 31 Democrats voting in favor and no Republicans voting against.

Democrats who supported the KXL bill include Reps. Sheila Jackson Lee, Henry Cuellar, Al Green and Gene Green of Texas; Nick Rahall of West Virginia; Jim Cooper of Tennessee; and Jim Clyburn of South Carolina.

"We're going to make it as easy as possible for the Senate to finally get a bill on the president's desk," Cassidy said yesterday during debate.

Louisiana Sen. Mary Landrieu (D), chairwoman of the Energy and Natural Resources panel, is shepherding the bill in the Senate, along with co-sponsor Sen. John Hoeven (R-N.D.). A vote on her bill is scheduled for Tuesday.

Even though Republicans were hoping to own the KXL debate when they take over the Senate next year, both Landrieu and Cassidy see the current debate as a chance to influence their runoff election next month. Cassidy is hoping to unseat Landrieu.

Cassidy told supporters on Twitter not to be fooled by Landrieu's "desperate 'Hail Mary.'" But Landrieu tweeted, "I'm one of the few that actually fight for bipartisanship, some of my colleagues just talk about it."

Passage is less certain in the Senate, but legislation supporters say they will have the 60 votes necessary to clear the bill through the chamber. "I'm going to say that I'm confident I'll have the 60 votes," Landrieu said during a conference call (E&ETV's The Cutting Edge, Nov. 14).

Supporters have long claimed 57 Senate votes. Then, this week, Sen. Tom Carper (D-Del.) came out in favor of the legislation, bumping up the public tally to 58.

And today, an aide for Sen. Michael Bennet (D-Colo.), a perennial target for KXL backers, said he's likely to vote yes next week. That means, as of now, they have 59 public supporters (*see related story*).

Some other lawmakers have been on the target list, including Sens. Angus King (I-Maine) and Bill Nelson (D-Fla.). But a Nelson aide said this morning that the senator supports KXL but wants to prevent its oil from being exported, so he opposes the bill. And a King aide said his boss was leaning no.

The White House has yet to say whether Obama would sign the legislation, veto it or allow it to become law without his input. The Constitution stipulates that he must sign or veto the bill within 10 days of officially receiving it, not counting Sunday.

Reporters asked the president about the issue again during his current trip to Asia. He downplayed the importance of KXL, saying the oil would end up in international markets. "It doesn't have an impact on U.S. gas prices," he said, without clarifying his intentions.

Pipeline backers quickly shot back, saying KXL is meant not to facilitate crude exports but to reach Gulf Coast refineries, and potentially carry both Canadian and U.S. oil.

"It makes no business sense for our customers to transport oil down to the U.S. Gulf Coast, pay to export it overseas but then pay to transport millions of barrels of higher-priced oil back to the U.S. refineries to create the products we rely on," said TransCanada Corp., the company behind KXL, in a statement today.

Reporter Nick Juliano contributed.

KEYSTONE XL:

Bennet adds support to KXL bill, bringing Senate count to 59

Nick Juliano, E&E reporter

Published: Friday, November 14, 2014

Sen. Michael Bennet (D-Colo.) is expected to back legislation that would approve construction of the Keystone XL pipeline, a spokesman told *Greenwire* this morning, bringing the bill within one vote of hitting President Obama's desk next week.

Bennet brings to 59 the number of senators who are co-sponsoring or have publicly committed to backing S. 2280, the KXL-approval bill slated for a Tuesday vote in the Senate (*E&E Daily*, Nov. 14; E&ETV's The Cutting Edge, Nov. 14).

Sen. Mary Landrieu (D-La.), who is fighting for her political life in a Dec. 6 runoff in Louisiana, secured a vote on the measure, which she co-sponsored with Sen. John Hoeven (R-N.D.), and she says she has rounded up enough Democrats to support it.

For months, Bennet, who led the Democratic Senatorial Campaign Committee this cycle, has said he supports the pipeline, but he has long been seen as a swing vote on a stand-alone KXL-approval bill such as the one headed to the floor next week. In a series of nonbinding budget votes last year, Bennet was one of just four Democrats to back side-by-side amendments from Hoeven and Sen. Barbara Boxer (D-Calif.) that were broadly viewed as proxies for KXL approval (*Greenwire*, March 25, 2013).

And in an interview with *The Wall Street Journal* soon after the KXL bill was introduced earlier this year, Bennet said he supported the pipeline but would prefer that it be considered as part of a broader energy bill and lamented that the fight had become "another one of those idiotic Washington political games" that don't actually accomplish anything.

Come Tuesday, "I expect he'll vote for it," Bennet spokesman Adam Bozzi wrote in an email this morning, in response to a question on the bill.

The pipeline fight has been a fixture all year on the campaign trail, including in Colorado, where the state's two Democratic senators are split over whether to support it. Fellow Democrat Mark Udall lost his re-election race last month after facing a barrage of attacks over his KXL opposition from conservative groups and his Republican opponent, Rep. Cory Gardner, who bested Udall by 2.1 percentage points on Election Day.

Matt Dempsey, a former Senate aide now with the pro-KXL group Oil Sands Fact Check, welcomed Bennet's support, which he said was not a surprise given his earlier statements in support of the project. While Udall's opposition may have been a complicating factor before the election, Bennet's being on board is an encouraging sign for project supporters.

"Now that the former head of the DSCC is in favor ... I think it's within striking distance," Dempsey said.

Democrats yesterday replaced Bennet at the DSCC with Sen. John Tester (D-Mont.), who is co-sponsoring the KXL bill.

REGULATIONS:

Ariz. voters tee up test of federal authority

Jennifer Yachnin, E&E reporter

Published: Friday, November 14, 2014

It's been more than 15 years since work began on the extensive Sonoran Desert Conservation Plan in Arizona's Pima County, but environmentalists fear a new law allowing the state to push back against federal authority could jeopardize that project and others.

Arizona voters narrowly approved a ballot proposal this month that will allow the Cardinal State to declare any federal mandate unconstitutional and then halt the use of state or local funds to enforce or administer those laws.

The measure, known as Proposition 122, received 51 percent of the vote on Election Day.

Proponents of the measure, including Gov.-elect Doug Ducey (R), touted the proposal as a way to control the state's budget while fighting Obamacare, the federal health care reform law that remains unpopular among the predominantly Republican state's elected leaders.

But while its supporters didn't zero in on environmental regulations, Sierra Club Grand Canyon Chapter Director Sandy Bahr said there's no shortage of potential targets for the law -- from U.S. EPA's proposed Waters of the United States rule and its Clean Air Act climate proposal for power plants to the Endangered Species Act.

"There are legitimate concerns that they will utilize this because they've already tried," Bahr told *Greenwire*, pointing to recent state legislative efforts to curtail recovery efforts for the Mexican gray wolf and bar state agencies from adopting plans to reduce greenhouse gas emissions without legislative approval.

"It encourages the Legislature to be more irresponsible. And they've already been irresponsible when it comes to federal laws, including federal environmental laws, constantly trying to send messages one way or another," Bahr added.

In the 2012 election cycle, state legislators also sponsored a ballot initiative that would have given Arizona "sovereign and exclusive authority and jurisdiction over the air, water, public lands, minerals, wildlife and other natural resources within its boundaries."

That measure -- intended to allow the state to seize federal lands in its borders -- failed to pass.

Carolyn Campbell, executive director of the Coalition for Sonoran Desert Protection, said she hopes the latest ballot initiative is little more than political grandstanding.

"I'm crossing my fingers that they won't go to those lengths, that this is another shot over the bow philosophically," she said, referring to the failed 2012 ballot initiative.

But Campbell said if state lawmakers move to declare the Endangered Species Act unconstitutional, it could jeopardize long-running efforts on a multispecies conservation plan in Pima County, despite widespread cooperation on the project.

"That's a very, very real case example that we could be dealing with," Campbell said.

Targets, timing unclear

Although Arizona residents approved the measure last week, it could still be some time before the state makes its first attempt to take on the federal government.

Under the new law, the state will have three options to declare a federal law or regulation unconstitutional: a new round of state ballot initiatives -- sponsored by either the state Legislature or a citizen initiative -- or a bill from the Legislature itself.

According to the Phoenix-based Goldwater Institute, which drafted Prop 122, while legislation would be the fastest route, proponents of the new law will most likely pursue another ballot initiative to block any federal programs.

"The folks who are interested in triggering 122 are interested in a referendum," said Clint Bolick, the institute's vice president for litigation.

That's because Arizona gives ballot initiatives, unlike a bill from the state Legislature, special protections that bar state lawmakers from repealing those efforts via legislation.

It remains to be seen what federal programs Prop 122's backers -- including Scottsdale businessman Jack Biltis, who provided most of the funding for the ballot initiative -- will push to challenge under the new law, but Bolick said he expects Obamacare would be among the likely targets.

"There are going to be some strategy meetings coming up among proponents of the measure to determine what the priorities will be, and they have not happened yet, but I would suspect that probably discrete portions of Obamacare could be addressed," Bolick said.

Regardless of what programs the measure targets first, however, foes of the new law expect that Prop 122 will be challenged in court.

"Arizona has a billion-dollar budget problem. The last thing we need is more litigation that is going to cost the state and to cost us relative to loss of implementation of important programs and policies, things that people support," Bahr said.

Although states can decline to participate in federal programs -- like those that have opted out of the recent Medicare expansion triggered by the health care reform law -- Arizona would still be required to follow federal laws, Arizona State University professor Paul Bender told Phoenix CBS affiliate KPHO last week.

"States have to cooperate with federal law," Bender said. "They don't have to enforce federal law, but they have to obey it."

But Bolick dismissed such criticisms, asserting the new law "is unquestionably constitutional."

"There had been some groups that were trying to put measures on the ballot that would nullify federal laws, and states can't nullify federal laws," Bolick said. "But it is equally clear that states can control their spending, and it is completely up to them as to whether they will spend funds to enforce or administer a federal law."

FISHERIES:

Big Brother meets fishing in new map that tracks vessels worldwide

Emily Yehle, E&E reporter

Published: Friday, November 14, 2014

Last year, a trawler called the Komarovo entered a nature reserve off Russia's eastern coast and stayed in the area for weeks, cruising up, down, back and around in a crisscross pattern.

Was it desperately lost? Or was the trawler -- owned by a company that sells salmon -- illegally fishing in a no-take marine area that boasts several species of salmon?

Oceana is betting on the latter, and in the next few years, the group hopes that anyone with a computer will be able to track similarly suspicious behavior anywhere in the world.

Global Fishing Watch is currently just a prototype, displaying the movements of thousands of ships during 2012 and 2013. Google, Oceana and SkyTruth announced the project yesterday at the World Parks Congress, a once-a-decade event hosted by the International Union for Conservation of Nature this year in Sydney.

The partnership hopes to launch a "near-real-time" version in the next few years, with an eventual aim of allowing the public to see the location of most large fishing vessels. Such data can shed light on everything from global fishing patterns to whether "blacklisted" vessels are following the rules.

Today, that bird's-eye view isn't available, making it easier for vessels to duck fishing regulations and international law.

"That will allow people to see fishing behavior basically all across the globe," said Jacqueline Savitz, vice president for U.S. oceans at Oceana. "We think it can be a game changer in a lot of different ways to try to stop illegal fishing."

The technology comes as illegal, unreported and unregulated fishing -- known as IUU -- gets more recognition. Earlier this year, the Obama administration created a task force to make recommendations on tackling a problem that leads to millions of tons of fish being caught off the books each year (*E&E Daily*, June 18).

Oceana and its partners say Global Fishing Watch can combat IUU in several ways. One is ensuring that vessels, like the Komarovo, don't fish in marine-protected areas. But the map will also allow users to see whether a vessel is fishing in the waters of a country where it is not registered, or pinpoint suspicious behavior like a ship turning off a GPS broadcast of its location.

The online platform takes its data points from the so-called Automatic Identification System, or AIS, network. The International Maritime Organization requires all ships at or more than 300 gross tonnage to use the system, primarily as a safety measure to ensure they don't collide.

Individual countries already use the AIS network to monitor fishing fleets. But Global Fishing Watch takes a historical -- and global -- view, revealing each vessel's journey. It also attempts to remove all cargo ships and other nonfishing vessels.

The prototype revealed yesterday started with 3.7 billion data points that covered the movements of more than 100,000 ships, according to a news release. Fishing behavior was then teased out using computer models to show the fishing activity of 3,125 ships that the groups independently verified were fishing vessels.

Eventually, the platform might be able to track vessels with data that are only a few days old, providing almost real-time information. As the AIS system gets better and more inclusive, the system might also be able to track more boats.

In a statement, SkyTruth President John Amos said the platform could "motivate citizens to watch the places they care about."

"So much of what happens out on the high seas is invisible, and that has been a huge barrier to understanding and showing the world what's at stake for the ocean," said Amos, whose nonprofit works to create images that show the environmental impacts of natural resource extraction. "But now, satellite data is allowing us to make human interaction with the ocean more transparent than ever before."

GULF SPILL:

Judge stands by 'grossly negligent' ruling against BP

Annie Snider, E&E reporter

Published: Friday, November 14, 2014

A federal judge in New Orleans is standing by his ruling that BP PLC was "grossly negligent" in the 2010 Deepwater Horizon oil spill that killed 11 rig workers and gushed millions of barrels of oil into the Gulf of Mexico.

The decision could leave the oil company on the hook for the maximum possible fines under the Clean Water Act -- roughly four times as much as could be owed under a finding of simple negligence, potentially reaching $18 billion (*Greenwire*, Sept. 4).

After the September "gross negligence" ruling by U.S. District Judge Carl Barbier, BP contended the decision rested on a theory for how oil and gas leaked into the well that had been excluded from the trial (*Greenwire*, Oct. 3).

But in an order late yesterday, Barbier said BP's lawyers had themselves "opened the door" to the

testimony in question.

"BP was not, as it claims, a 'victim of surprise,'" Barbier wrote. "Rather, it seems BP was a 'victim' of its own trial strategy."

The company has already said it will appeal the ruling. To that end, the motion ruled yesterday bought BP more time to do so. It now has 60 days.

OIL AND GAS:

La. officials decline to drop lawsuit against energy companies

Published: Friday, November 14, 2014

Plaquemines Parish, La., officials yesterday voted down a bid to drop 21 lawsuits filed against oil and gas companies concerning environmental damage.

The 3-4 vote, with one parish council member abstaining and another leaving before the vote was taken, means the controversial suits will continue. They were first filed in state court but were quickly transferred to federal court. U.S. District Judge Jay Zainey has yet to issue a ruling on what the proper venue is for the legal challenge.

Parish Council Member Byron Marinovich (R), who sponsored the motion, said he supported suing the energy companies last year but changed his mind after he said most of his constituents thought the lawsuit was a bad idea.

He said the restaurant he owned has seen a drop in customers after he said Parish President Billy Nungesser told residents to boycott the business. Nungesser, through a spokesman, denied the claim (Mark Schleifstein, New Orleans *Times-Picayune*, Nov. 13). **-- SP**

WATER POLLUTION:

Houston environmental trial yields settlement, split verdict

Published: Friday, November 14, 2014

Two of the three companies sued by Harris County, Texas, for leaking dumps that officials say polluted the San Jacinto River for decades agreed to pay nearly $30 million in damages, settling the case in the midst of a nearly four-week trial.

McGinnes Industrial Maintenance Corp. and Houston-based Waste Management Inc. agreed to the fine, which state District Judge Caroline Baker announced yesterday.

Prosecutors asked the jury to hold another company, International Paper Co., liable for as much as $25,000 a day in damages from 1973 to 2008 for allowing the release of cancer-causing dioxins from three abandoned disposal pits on the banks of the river. The waste was produced by Champion Paper, but International Paper merged with the company in 2000.

"If they don't have to pay, companies will do nothing about their pollution problems," said Earnest Wotring, an attorney representing the county.

The jury voted 10-2 that International Paper bore no responsibility for the contamination.

"This isn't even a close call," Winstol "Winn" Carter, an attorney representing International Paper, told the jury. "That's why I have the confidence to stand before you and against the government."

Prosecutors couldn't prove that anyone died or developed cancer as a result of dioxin exposure at the river, but instead argued the contamination prevented residents from using the river for recreation and commercial fishing. The jury wasn't allowed to see certain evidence of the pollution or International Paper's earlier admissions of responsibility under U.S. EPA's Superfund program (Matthew Tresaugue, *Houston Chronicle*, Nov. 13). **-- SP**

COAL ASH:

Governors sue legislators over panel created in aftermath of Duke spill

Published: Friday, November 14, 2014

Three North Carolina governors have filed a lawsuit against North Carolina Senate leader Phil Berger (R) and North Carolina House Speaker Thom Tillis (R) over a new coal ash commission created in the aftermath of February's Duke Energy spill.

Current Gov. Pat McCrory (R) and predecessors Jim Hunt (D) and Jim Martin (R) argue that having the Legislature appoint six of the nine members of the commission violates North Carolina's consitutional separation of powers. They said that as an environmental enforcement board, the commission should be entirely appointed by the executive branch.

In a joint statement, Berger and Tillis claimed that the lawsuit uses flawed arguments because McCrory could have vetoed the legislation that created the commission but did not (AP/Hampton Roads [Va.] *Daily Press*, Nov. 14). **-- AW**

HYDRAULIC FRACTURING:

Workers die in Colo., Ohio oil field accidents

Published: Friday, November 14, 2014

One worker was killed and two were seriously injured yesterday in an accident at a Weld County, Colo., hydraulic fracturing site.

The workers were trying to thaw a frozen high-pressure water line when the line ruptured, officials said.

The well, owned by Anadarko Petroleum Corp., was being hydraulically fractured by Halliburton Co., and the workers were employees of Halliburton.

Anadarko said it was suspending its fracturing operations in the region until it could review what happened.

Authorities said the injured workers -- Thomas Sedlmayr, 48, and Grant Casey, 28 -- were taken to area hospitals. Officials haven't yet released the dead worker's identity.

"This is a very difficult time for all of us at Halliburton, and we are working with local authorities as they look into the details of this incident," Halliburton said in a statement. "Out of respect for the families' privacy, we are not releasing any additional information at this time" (Paul/Jaffe, *Denver Post*, Nov. 13).

A worker also died at a hydraulic fracturing site in Ohio this week.

Norman Butler, 48, an electrical contractor for Blue Racer Midstream, was testing and calibrating electrical components on a pump that moves condensate when it exploded Wednesday, killing him (Laura Arenschield, *Columbus Dispatch*, Nov. 14). **-- SP**

ARMY CORPS:

Agency chief touts watershed-based approach to planning

Annie Snider, E&E reporter

Published: Friday, November 14, 2014

The Army Corps of Engineers is taking steps to assess the vulnerability of its infrastructure as climate change begins to elevate sea levels and shift rain and snow patterns, but ultimately the government may need to move to a watershed-based approach to planning, the corps' top officer said yesterday.

"Adaptation and preparation, or preparedness, are not an optional thing for the Corps of Engineers; it's something that we feel we have to do," Lt. Gen. Thomas Bostick told reporters yesterday during a discussion of the agency's new climate adaptation plan.

The corps builds many of the country's critical levees and storm protection systems, as well as dams that provide flood protection and water supply. It is also responsible for keeping river arteries open for commercial navigation, and implementing ecosystem restoration projects that can serve as storm buffers and pollution filters in their own right.

The agency has worked with others across the federal government to develop a tool to estimate potential sea-level rise that it is using to screen the vulnerability of its infrastructure. So far, the corps has looked at about 1,400 of its projects and found that about a third are vulnerable to potential changes, said Kate White, the corps' lead for climate change. About 100 of those, she said, fell into the high or very high vulnerability category, which is where the corps will begin focusing its attention.

Meanwhile, since Hurricane Katrina in 2005, the corps has gone from looking at the most likely scenario for the future when it designs its infrastructure to looking at multiple scenarios for how climate change and shifts in the surrounding environment could play out.

But much of the challenge comes not in building the infrastructure, but in figuring out how to operate it during times of crisis. Floods and droughts can bring complicated political questions about where the water goes, and the corps often finds itself smack-dab in the middle of those debates.

Take, for instance, recent events on the Mississippi River. In 2011, the river saw massive flooding that triggered political battles over whether to activate floodways -- washing out farmers on prime agricultural land -- or risk flooding communities upstream. Then, in 2012, the same region saw a drought that caused water levels on the heavily trafficked waterway to dip low enough to threaten barges' ability to operate along a key stretch.

"I will tell you, from a personal perspective, that time was as intense as the response to Sandy, for me," Bostick said yesterday. "The president, the White House were heavily engaged to ensure that we were able to get traffic moving -- barge traffic moving along the Mississippi -- and we were successful in doing that, but it took a significant response effort."

At the time, the barge industry and industries whose goods the barges take to market called for water to be released from dams upstream on the Missouri River to raise levels. But those reservoirs were not built with the purpose of providing water for navigation, and so, Bostick said, the corps' hands were tied. Instead, the agency opted to blast rock pinnacles along the key stretch, essentially deepening the river.

Many argue that the corps' rules for operating infrastructure are outdated, though. The manuals that the corps relies on were often written decades ago, when the communities it served may have been different and had different needs.

But updating the manuals can be an exceedingly difficult process, Bostick said yesterday.

"Changing a water control manual, for example, on how we would operate a dam is a very difficult thing to do. I mean, some of these water control manuals have been fought over, debated over and developed over many, many years, and to change it, we must go through a long and arduous process."

Bostick said the corps is going through this process in some cases, but "it takes all of the stakeholders to come together, it takes local leaders, both business and government, all the way up to the Congress in order to work together on making the appropriate changes."

That said, Bostick said his agency does sometimes have some flexibility, for instance in how a reservoir that provides both flood protection and water storage is operated during a drought (*Greenwire*, Feb. 27).

Ultimately, Bostick said he believes the corps and the country need to move toward a more systems-based approach to planning and managing water, rather than viewing individual projects in isolation.

"Many say the corps is a collection of individual projects," he said. "What we're saying now is, we ought to look at this as a system. So if you have a series of projects, it doesn't have to be the strength of this one project against this one storm, but it's the series of these projects."

For instance, on a coastline that system could include not just the corps' beach renourishment or a berm, but also wetlands, a barrier island, an oyster reef and houses elevated on piers, he said.

For years, the corps has been talking about the idea of taking a watershed-based approach to funding that would enable this sort of systems approach to thinking about how to reach its goals. Bostick said yesterday that his staff is still working on this and that he thinks such an approach could even reach beyond the corps to include other agencies, but that it's not ready for prime time yet.

But, he said, he believes it can be done. The source of his confidence: the way the federal government and the agencies respond to disasters.

"We do this in disaster," Bostick said. "So after Hurricane Katrina: We're all in, we're all going to fix it; Hurricane Sandy: We're all in, we're all going to fix it. But on a day-to-day, year-to-year basis, it's really difficult for us as a nation to come together and to prioritize."

CHESAPEAKE BAY:

Dredging proposals would cost billions, not help environment -- study

Published: Friday, November 14, 2014

Dredging sediment from the Susquehanna River would do little to help improve the ecological health of the Chesapeake Bay, according to a new study conducted by the Army Corps of Engineers and Maryland officials.

The study estimated that dredging roughly 3 million cubic yards a year, or 1.5 million pickup truckloads, would cost between $48 million and $267 million a year. In order to attain mid-1990 sediment levels, 25 million cubic yards of silt would need to be extracted, costing up to $3 billion total.

"We get very minor, temporary improvements to water quality in the Chesapeake Bay from these large amounts of sediment being removed," said Anna Compton, a biologist with the Army Corps of Engineers' Baltimore District.

Current cleanup efforts, including measures to levy stormwater fees, restrict septic-based development and reduce farming practices, have caused controversies. Maryland Gov.-elect Larry Hogan (R) said dredging would be a more effective way of cleaning up the bay.

Urban and farm runoff that contains nutrient and sediment pollution has caused the Susquehanna to be the largest source of pollution to the bay. The runoff nutrients and chemicals aid algae blooms that have caused massive dead zones in the bay. There is a federally enforced goal to shrink the dead zones by 2025.

For decades, three hydroelectric dams, including the Conowingo Dam, on the Susquehanna have been retaining sediment (*E&E Daily*, May 6). When heavy storms come through, sediment and pollution stored behind the dams are swept downstream and eventually into the bay. Experts predict that the dam reservoirs will reach sediment capacity within a decade (Timothy B. Wheeler, *Baltimore Sun*, Nov. 12). **-- MH**

SOUTH CAROLINA:

State agrees to review record fine for illegal sea wall

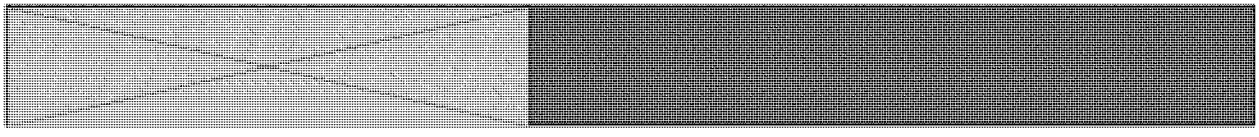
Published: Friday, November 14, 2014

The Department of Health and Environmental Control has agreed to hold a hearing next month about whether to reduce a $750,000 fine for an illegal sea wall built near Charleston, S.C.

The Wild Dunes Ocean Club Villas property owners association admits it built the sea wall on Isle of Palms, but said it had to because rising tides endangered a 58-unit condo building there.

The building protected by the wall is valued at up to $2 million, according to association lawyers.

Since 1988, it has been illegal to build a new sea wall in South Carolina. Health and Environmental Control officials discovered the new wall concealed beneath a pile of sandbags this fall and penalized the club with the largest fine in the agency's history (Sammy Fretwell, Columbia *State*, Nov. 13). **-- AW**



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CLIMATEWIRE — Mon., November 17, 2014

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1.RISK:

Where property rights are king, development continues despite growing wildfire threat

KALISPELL, Mont. -- In the summer of 2003, Montana's Glacier National Park went up in flames as six separate wildfires consumed more than 135,000 acres. In towns throughout Flathead County, where Glacier Park is located, people witnessed smoke plumes resembling bomb explosions rise from behind the mountains and descend to the valley floor, choking the air for days. Most Montanans will say at the edge of the wilderness that wildfires are a part of life. But this hasn't stopped people from building homes there -- not by a long shot.

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U.S., Chinese firms team up to deliver 800 MW of CSP
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14.REGULATION:
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ENERGYWIRE — Mon., November 17, 2014

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U.S.-China climate surprise -- a coal plant that stores CO2 and makes fresh water

Among the many shockers in the climate deal announced last week between the United States and China was this: a plan to jointly build a coal plant in China that would store a million tons of carbon dioxide a year and make copious amounts of fresh water.

TOP STORIES

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Halliburton agrees to buy oil-field service rival Baker Hughes for $34.6B

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Western states mull consumer protections for rooftop solar

4.SOLAR:
Approval of utility proposals dims outlook for net metering in Wis.

ELECTRICITY

5.UTILITIES:
TVA looks to keep ahead of the curve amid EPA climate rule rollout

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Texas commission denies generators' complaint over $600M Houston Import Project

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Exelon wins bid to charge more for upstate N.Y. nuclear power

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Calif. sues BP over gas prices

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Alabama Power says regulations will increase electricity costs

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Ill. publishes shale rules amid protests and lawsuit

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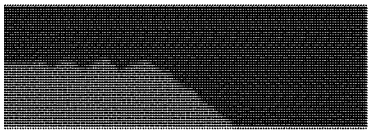

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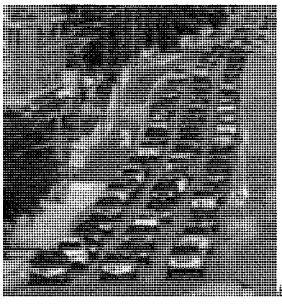
From: Turley, Jennifer
Sent: Fri 11/14/2014 3:45:12 PM
Subject: Air & Radiation Law News for November 14, 2014



Air & Radiation Law News

for November 14, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Develops Alternative Compliance Method For Power Plants During Startup, Shutdown

The Environmental Protection Agency is establishing an alternative work method for power plants to comply with mercury and air toxics standards during times of startup and shutdown, a change requested by industry groups that are still seeking...

Air Pollution

EPA Extends Ferroalloy Rule Comment Period

The Environmental Protection Agency is extending the public comment period on proposed revised emissions standards for ferroalloy production facilities to give companies that would be affected by the proposal additional time to respond....

Air Pollution

EPA Should Detail Unrealized Cost of Meeting Current Ozone Standard, 12 Lawmakers Say

The Environmental Protection Agency's proposal to retain or revise the national ozone standard should be accompanied by a detailed estimate of the unrealized costs of meeting the existing national ambient air quality standard for ozone,...

Climate Change

Obama Urged to Hold the Line on Policies Barring U.S. Funding of Overseas Coal Plants

Eleven environmental groups Nov. 13 called on President Barack Obama to reject congressional efforts to roll back his policies designed to bar U.S. financing of overseas coal-fired power plants. ...

Climate Policy

Coal-Bound Power Predicts Blackouts As U.S.-China Climate Pact Unfolds

Chief executives of the biggest coal-burning utilities in the U.S. predict blackouts and rising power bills if they are not given more time to achieve greenhouse gas emission cuts that underpin the government's climate pact with China....

Climate Policy

Whitfield Believes in Climate Change, Objects to Obama's Approach to Fight It

Rep. Ed Whitfield (R-Ky.), a senior member of the House Energy and Commerce Committee, said he believes in climate change but disagrees with President Barack Obama's use of executive action to combat it....

Climate Regulation

EPA Guidance on Curbing Methane From Oil, Gas Wells Nearly Done, Official Says

The Environmental Protection Agency is close to issuing guidance for reducing methane emissions from oil and natural gas wells, a senior agency official said Nov. 13....

Climate Regulation

EPA Offers Guidance on Flex Fuel Vehicles

The Environmental Protection Agency outlined two methods that carmakers can use to calculate the greenhouse gas impact of flex fuel vehicles capable of using gasoline containing 85 percent ethanol (E85) in a Nov. 12 letter to manufacturers....

Congress

Grijalva Set to Take Top Democratic Spot
On House Natural Resources Committee

Rep. Raul Grijalva (D-Ariz.) is poised to become the ranking Democrat on the House Natural Resources Committee after a top potential rival endorsed him. ...

Congress

House Votes to Eliminate Certain Agency
Reports; Issa Wants Annual Review

The House voted unanimously late Nov. 12 to abolish certain mandatory agency reports from 17 agencies, including the Environmental Protection Agency and the Energy Department, and the bill now will head to President Barack Obama for his expected...

Emissions Trading

U.S. Dormant Carbon Market Seen Winner
Of China Accord; Linked Markets Eyed

The U.S. carbon market that faded over the past decade as European Union trading took off is getting a fresh look after President Barack Obama signed a deal with China to curb emissions....

Energy

Keystone Supporters Face Uphill Battle
To Achieve 60-Vote Threshold in Senate

Sen. Mary Landrieu (D-La.) remained optimistic Nov. 13 that the Keystone XL oil pipeline bill will clear

procedural hurdles and pass the Senate next week, but some of her Democratic colleagues may not be ready to give her a victory....

Energy

LNG Canada Seeks Environmental Approval For West Coast Liquid Natural Gas Terminal

LNG Canada has officially begun the process of seeking environmental approval for its proposed liquefied natural gas plant on Canada's West Coast, which it hopes will eventually allow it to ship 26 million metric tons of LNG annually to...

Hazmat Transport

North Dakota Delays Decision on Setting New Safety Standards for Bakken Crude Oil

The North Dakota Industrial Commission on Nov. 13 postponed a decision on whether to adopt new regulations to improve the safety of Bakken crude oil for transport....

Hazmat Transport

U.S. Manufacturers Urge PHMSA to Support Their Interests Ahead of UN Hazmat Meeting

Manufacturers of hazardous goods attempted Nov. 12 to secure the Pipeline and Hazardous Materials Safety Administration's support for their positions on several proposals by other countries and industry groups to alter international...

Natural Gas

Hoeven Delays Action on LNG Export Bill Hoping to Gain Administration Support

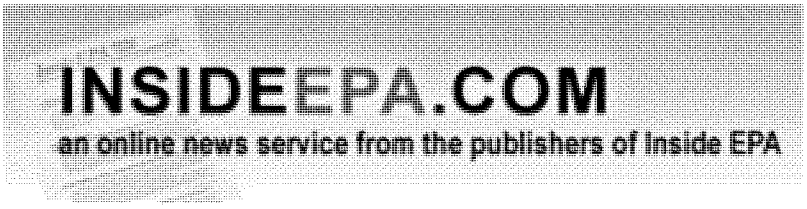
Sen. John Hoeven (R-N.D.) pulled his natural gas export bill from a Nov. 13 Senate Energy markup in order to iron out differences with the Department of Energy that could lead to administration support of the bill in the next Congress that begins...

Renewable Energy

Thune Says Gradual Phaseout of Tax Credit

For Wind Production Could Be Middle Ground

Sen. John Thune (R-S.D.), a member of Senate Republican leadership, said a gradual phaseout of a wind energy production tax credit could be "good middle ground" as Congress considers whether to extend dozens of expired tax credits...



Inside EPA **Weekly Report**, 11/14/2014

http://insideepa.com/newsletters/inside-epa

Latest News

Industry Cost Concerns Add To Doubts Over EPA Gas Star Gold Proposal

Natural gas industry groups are raising concerns that EPA's planned voluntary Gas Star Gold program to cut the sector's emissions is too broad in scope and would impose major burdens that are not cost-effective on many companies, adding to existing doubts about the program's viability unless the agency significantly overhauls the plan.

NERC Sees 'Most States' Moving To Mass-Based Compliance Under ESPS

The North American Electric Reliability Corporation (NERC), the nation's grid reliability overseer, says it expects most states to pursue mass-based greenhouse gas (GHG) limits for complying with EPA's GHG rule for existing power plants rather than the more-complicated rate-based limits the agency initially proposed, an approach NERC says is easier to implement and is more familiar to utilities that have used it without raising reliability concerns in the past.

News Briefs

House GOP Seeks EPA Data On Ozone NAAQS Costs

House Republicans are asking EPA to provide data on the costs of meeting a potentially stricter ozone national ambient air quality standard (NAAQS) that the agency could propose next month, and are also readying a vote for next week on a bill that aims to accelerate EPA's issuance of implementation guidance for meeting NAAQS.

D.C. Circuit Consolidates Suits Over EPA's Climate ESPS

The U.S. Court of Appeals for the District of Columbia Circuit is consolidating two separate suits filed by Murray Energy raising different legal challenges to EPA's proposed utility greenhouse gas existing source performance standards (ESPS), and plans to hold oral arguments the same day as arguments in several states' suit over the ESPS.

Greenwire

NATURAL GAS:

Politically wired nonprofit hooks up U.S. industry with countries seeking LNG

Nick Juliano, E&E reporter

Published: Thursday, November 13, 2014

The ongoing domestic energy boom is fueling an alliance between representatives of U.S. companies that produce natural gas and foreign governments that want to purchase it, documents and interviews show.

Intensified interest from foreign governments toward U.S. energy policy is one of the many outcomes of the massive growth in oil and gas from tight shale formations across the United States. A coalition launched earlier this year to bring together potential U.S.-based suppliers of liquefied natural gas with customers abroad demonstrates one of the ways in which other countries are expanding their presence in Washington, D.C.

LNG Allies Inc., a nonprofit research and advocacy organization, launched in March to encourage policies that would expand LNG exports, which it says would create a more liquid global gas market, expand fuel diversity and enhance energy security in the United States and among other friendly governments.

The group includes members from the embassies of Lithuania and Croatia, as well as the American Petroleum Institute and America's Natural Gas Alliance, according to disclosure filings it was required to submit under the Lobbying Disclosure Act (LDA) and Foreign Agents Registration Act (FARA). It also has been supported by the Natural Gas Supply Association and Delfin LNG, according to Fred Hutchison, the group's executive director.

LNG Allies' mission took on added urgency after Russia's annexation of Ukraine's Crimea region in March, although its creation had been contemplated even before hostilities in that region intensified, Hutchison said in an interview.

The idea for such a coalition came back in October of 2013, at a House Energy and Commerce Committee forum in Washington, D.C., where Hutchison met the Lithuanian Embassy's deputy chief of mission, who was touting Lithuania's construction of a floating LNG terminal and wanted access to U.S. gas.

"And I thought, 'Wow, that sounds like an opportunity for a lobbying assignment,'" Hutchison recalled this week. He said Lithuania and other governments in the region were receptive to the idea but didn't have much money to put behind it, so he reached out to "others who have a stake in the issue" for additional funding.

Most of LNG Allies' financial support comes from its industry members, he said, but the coalition

voluntarily registered under FARA in case the embassies were to contribute more funding in the future.

The coalition held more than two dozen meetings and phone calls with aides to prominent members of Congress and the Obama administration, according to a recent filing under FARA, which requires lobbyists representing foreign governments to submit detailed accountings of their lobbying and fundraising activities that go far beyond what is required under LDA.

Participants in meetings included aides to Sen. John Hoeven (R-N.D.), whose LNG export bill will be marked up in committee today; Sen. Mark Udall (D-Colo.), who introduced a separate export bill earlier this year; the State Department; and the Department of Energy, according to the document. The group also frequently reached out via email to top congressional and administration officials; its first reported contact was a March 28 email to "transmit background information" to two senior aides to Energy and Natural Resources Chairwoman Mary Landrieu (D-La.), who had formally claimed the gavel six weeks earlier.

LNG Allies also publishes regular newsletters on its website and hosts public forums, such as an event last Friday featuring Adam Sieminski, head of the U.S. Energy Information Administration, who provided an overview of a recent EIA analysis of various LNG export scenarios, up to 20 billion cubic feet per day.

The study estimated that producer gas prices would rise 4 to 11 percent by 2040 compared with a reference case, but it also showed an overall boost to U.S. gross domestic product of 0.05 to 0.17 percent, which export proponents say would offset higher energy prices. Sieminski also noted that the model EIA used likely underestimated the total global economic boost from LNG exports, which would be expected to decrease gas prices elsewhere in the world.

"If higher levels of U.S. LNG make it into the world markets, it could put downward pressure on global natural gas prices, and that would lead to higher economic growth," Sieminski told reporters after the event, recommending that policymakers consider other modeling exercises that take a closer look at those global macroeconomic effects.

Hutchison said that event was the first of a planned series of breakfasts and other events the coalition will convene this year to advance its goals. It also hosted a forum earlier this year featuring a keynote address from Udall. Next Wednesday, LNG Allies will host the ambassadors from Lithuania and Latvia for another breakfast event.

Among the attendees at the briefing last week was Giedrius Granickas, first secretary at the Lithuanian Embassy in Washington. He noted it was one of a number of events LNG Allies has hosted this year and provided a chance to network with stakeholders across the debate.

"It's an opportunity to talk to people, to meet people, to establish direct links, and it's not even very important that they share the same ideas," Granickas said in a brief interview before the event. "Because that would be very boring, you know? To have everybody nodding, that's boring. That's not how democracy works."

The embassy also pursues its goals through more traditional diplomatic channels. Granickas recalled an October visit by Lithuanian Prime Minister Algirdas Butkevicius, who met with senior officials including Vice President Joe Biden and Energy Secretary Ernest Moniz. He said the country's energy minister is planning a visit early next year, which would likely include high-level meetings in Washington as well as a tour of oil-and-gas-producing states for meetings with industry representatives.

Lithuania last month opened its first LNG terminal, a floating facility named Independence that officials expect to be fully operational by January, Granickas said. That terminal is large enough to meet Lithuania's entire gas demand as well as up to 90 percent of demand across the entire Baltic region, pending some reforms being pursued by neighboring countries, Granickas said. A fifth of its capacity is

being provided under a contract with Statoil ASA, the Norwegian firm, and the rest will be purchased on the spot market.

While U.S. LNG exports are currently expected to flow largely to Asian markets, given the higher price LNG can fetch on energy markets in that region, Granickas said just increasing international supply would help to bring down prices for Europe.

In meetings with U.S. officials, Granickas said they stressed that once the Federal Energy Regulatory Commission and Department of Energy granted an export license, the company that received it would be largely free to decide to whom it would sell, and said that he respected the values inherent in a free-market economy. Still, he suggested there should be some way for the United States to encourage gas deliveries to European allies, given that they are being forced to pay higher prices by Russia for reasons unrelated to economics.

"That, from the economic logic, seems to be OK," he said. "From the political terms, from the political logic, when we are on the front lines with Russia and we are paying the highest price because we are sticking together with Western Europe and the United States as NATO partner and as the E.U., it's kind of probably not so true. So you know, you have to have that balance."

He noted that European negotiations have pushed for a strong energy chapter to encourage U.S. exports as part of the ongoing negotiations of the Transatlantic Trade and Investment Partnership between the United States and European Union.

A draft European proposal, which leaked earlier this year, would have required the U.S. government to allow exports of crude oil and LNG to countries covered by the treaty. That alarmed Sens. Ed Markey (D-Mass.) and Barbara Boxer (D-Calif.), two of Capitol Hill's leading export skeptics, who said international negotiations were an inappropriate forum to adjust U.S. trade policy.

LNG Allies does not take a position on where U.S. LNG should flow, as long as exports rise, Hutchison said. Because of the urgency of their supply predicament, the earliest public members all come from Eastern Europe, but the coalition also deals with countries in other parts of the world, including South America and Asia, he added.

"That's up to the individual embassies, really, to decide what their objective is," Hutchison said. "It's fair to say that the coalition supports any action that will expedite U.S. gas to our global allies that need it."

Bipartisan group of heavy hitters

LNG Allies is run out of the D.C.-based firm Cornerstone Government Affairs, which was paid $40,000 to lobby Congress and executive branch officials between the coalition's launch in the spring and Sept. 30, the most recent date for which data are available, according to LDA and FARA documents. Hutchison was paid an additional $73,500 for "coalition management services," according to the detailed statement Cornerstone had to file under FARA. It is not clear from the filings how much of that fee is paid by the foreign governments, versus contributions from API and ANGA, but Hutchison said in the interview that most of its support comes from the industry stakeholders.

LNG Allies spending amounts to relative peanuts compared with overall lobbying budgets at the oil and gas groups. API has spent more than $6.61 million on lobbying since the beginning of this year, both in-house and at a half-dozen outside firms; ANGA has spent about $1.1 million between its own lobbying and one outside firm.

The trade associations involved say the coalition offers a good opportunity to advance the interests they share with the foreign governments.

"LNG Allies is working to highlight the profound strategic importance of the American energy revolution, and we're pleased to support that effort alongside other industry groups," Zachary Cikanek, an API spokesman, said in an email. "LNG exports provide an opportunity to create American jobs and grow our economy while bolstering our allies and expanding U.S. geopolitical influence. The voices of America's LNG Allies will help to demonstrate that strategic value to policymakers."

ANGA spokesman Dan Whitten similarly noted the common interests between his members and the foreign governments.

"ANGA's mission is to build demand for natural gas, and LNG Allies represents a group of countries that are interested in opening the door to greater use of American natural gas in a part of the world that would benefit greatly from access to energy supplies from a diverse set of sources," Whitten said via email. "We hope that LNG Allies is successful in opening markets to Eastern European countries so that we and they may take advantage of the many economic and national security benefits that American natural gas offers."

Cornerstone incurred more than $11,000 in expenses, according to the FARA document, more than $7,700 of which went to the law firm Perkins Coie for legal services relating to its establishment. The form also lists spending on taxis or parking for LNG Allies meetings on 72 different days over a nearly six-month span.

Five registered lobbyists worked on the group's behalf, advocating for H.R. 6 and S. 2274, bills from Rep. Cory Gardner (R-Colo.) and Sen. Mark Udall (D-Colo.) that would have set deadlines for DOE to decide whether export licenses were in the national interest. Those bills are identified in two quarterly reports the group filed to comply with the LDA.

Among the lobbyists were former Capitol Hill staffers to members from both parties, according to the documents, their biographies on Cornerstone's website or the LegiStorm congressional staff database: Eric Tober once worked for former Sen. Bennett Johnston (D-La.), a onetime Energy and Natural Resources chairman, until Johnston's retirement from the Senate in 1997, and then at Johnston's lobbying firm; Paul DiNino was deputy chief of staff to then-Senate Democratic Whip Harry Reid (Nev.) from 1999 to 2001; John Keast was chief of staff to then-Rep. Roger Wicker (R-Miss.) until he was elected to the Senate in 2006; and Joseph Barton was an aide to Speaker John Boehner (R-Ohio) from 2007 to 2011, when Boehner was still minority leader. The only listed lobbyist without Capitol Hill experience is Michael Smith, who worked on the 1996 and 2000 presidential campaigns of Bill Clinton and Al Gore and has served other roles within the party.

The FARA documents list two other individuals who are not registered to lobby for LNG Allies under LDA. They are Geoff Gonnella, the group's president, whose biography does not indicate a background on Capitol Hill or in any presidential administrations, and Hutchison, its executive director, a onetime legislative aide to the late Sen. Frank Church (D-Idaho) who also lobbied for Eastman Chemical Co. and served as a communications consultant to the Gasification Technologies Council.

The advocates were active donors in this year's elections, with the exception of Hutchison and Barton, according to the FARA document. In total, they gave more than $34,000 to Democrats and $19,500 to Republicans, according to an analysis of the disclosures.

Hutchison said he was almost always the one who contacted congressional staff or administration officials on behalf of LNG Allies; he made no political contributions.

Unlike LDA, which requires lobbyists to report how much they were paid and what general areas they worked on, FARA requires detailed accounting of whom lobbyists contact and when, as well as a list of political contributions they made during the time they represented a foreign client. That allows for a

greater level of comparison between lobbying and fundraising activities, although it can also suggest correlations that may be subject to misinterpretation, given how common -- and underreported -- both activities are throughout Washington.

An analysis of the FARA record, which includes 70 donations made by other Cornerstone lobbyists listed as representing the group, does not reveal any obvious pattern connecting LNG Allies' activities on the Hill and its political donations. The record also lists 92 contacts between the coalition and U.S. officials or journalists -- 63 emails, 18 meetings, eight phone calls and two voicemails.

Two of the 70 donations came around the same time as developments on the LNG front. On June 19, the day after Udall introduced S. 2494, which cut the deadline in his earlier bill from 90 to 45 days, Smith gave $3,700 to the Colorado Senate Victory Fund, a joint fundraising committee supporting Udall and the Colorado Democratic Party. And on June 30, when someone affiliated with the group emailed "background information" to a top Landrieu aide, Smith donated $2,400 to the Democratic Senatorial Campaign Committee, which was aiding her and others in the party fighting for re-election this year.

Hutchison stressed that there was no link between lobbying activities and political contributions.

"As you well know, by law, you have to separate your participation in and your involvement in discussions at political events and what gets done as you conduct business," he said.

Kenneth Gross, a FARA expert at the D.C. firm Skadden, Arps, Slate, Meagher & Flom LLP, said the coalition's activities did not seem unusual. "It looks like a win-win situation and was set up in a transparent way," he said in a brief interview last week.

But some supporters of aggressive action on climate change say efforts to expand fossil fuel exports are misguided in light of the steep and speedy reductions in greenhouse gas emissions that scientists say are needed to avoid catastrophic warming of the oceans and atmosphere, sea-level rise and more severe weather.

Michael Shank, a former Democratic congressional aide who now lobbies for the Friends Committee on National Legislation, a Quaker organization, said efforts to help U.S. allies free themselves from Russian influence should focus more heavily on renewable technologies and efficiency to maximize long-term security and environmental benefits.

"In prioritizing oil and gas once again, the U.S. is missing an opportunity to lead the democratization of energy worldwide, making renewables affordable and accessible for everyone, everywhere," he said in an email, citing projections that China will claim 40 percent of renewable energy market growth by 2020 and Germany's plan to become 100 percent powered by renewable energy by 2050. "The markets are looking for leadership, yet the U.S. stays stubbornly aligned with an increasingly fossilized notion of energy production. The time to lead is now."

Granickas acknowledged the link between energy and climate change and pointed to aggressive targets set by his nation and others in Europe, which continues to advocate aggressive action in ongoing U.N. negotiations over a new international climate agreement. But he said the situation in the region and Russia's ability to manipulate what its neighbors must pay for energy should remain a separate and more immediate focus.

"At the same time, we would like that energy, at least at the operational terms, would be different from climate talks," he said, "because energy goals are a bit, you know, more tangible in terms of ... achieving them."

ENERGY POLICY:

Loan program tarnished by Solyndra on path to turn $5B profit -- DOE

Katherine Ling, E&E reporter

Published: Thursday, November 13, 2014

The Energy Department now has a $5 billion "I told you so" answer to naysayers who blasted the agency for wasting taxpayer money on clean energy technology.

The controversial loan guarantee program that funded failed solar company Solyndra LLC is now in the black and is estimated to make more than $5 billion through interest payments over the next two decades, according to DOE.

As of September, the program had earned $810 million from interest payments made by more than 30 DOE-backed projects, according to a report released today.

That more than wipes out the $780 million in payouts lost in the bankruptcies of Solyndra, Fisker Automotive Inc. and others, which fueled a feeding frenzy of criticism and oversight hearings on the loan guarantee program. It became the whipping boy of Republicans seeking to highlight the Obama administration's reckless spending -- even briefly making a splash in the 2012 presidential campaign.

The hard numbers cap off a sustained effort by DOE under Energy Secretary Ernest Moniz to polish the battered reputation of the loan guarantee program in preparation for the four new solicitations DOE has announced over the past year for the remaining $40 billion in authority. The agency also issued the first guarantees since the 2011 bankruptcies when it finalized $6.5 billion in loan guarantees in February for the first two nuclear reactors to be constructed in decades, at the Vogtle nuclear plant in Georgia.

The good news, however, may not save Moniz from being hauled up to Capitol Hill for program oversight hearings with the Republican-controlled Congress next session.

Sen. Lisa Murkowski (R-Alaska), soon-to-be chairwoman of the Energy and Natural Resources Committee, will continue to keep a close watch on the program, according to spokesman Robert Dillon.

"We're glad that we're not seeing more of the management failures that we saw in the past, but the committee still has a responsibility to take a comprehensive look at the program to ensure that taxpayers are truly getting a value for their money," he said in an email.

Many of the investigations into the program stemmed from the House Oversight and Government Reform Committee. While current Chairman Darrell Issa (R-Calif.) is term-limited, those competing to take his gavel were no less vocal about ending the program and are not likely to let their complaints go anytime soon as the additional solicitations move forward.

One contender for the chairmanship, Rep. Jim Jordan of Ohio, earned an endorsement for the position from *The Wall Street Journal* because of his efforts to investigate DOE's loan guarantee to Solyndra (*E&E Daily*, Nov. 13).

Rep. Fred Upton (R-Mich.), chairman of the House Energy and Commerce Committee, said that it was congressional oversight that turned the loan program around to a profit and that strong vigilance would continue.

"It appears our thoughtful congressional oversight stopped the bleeding of taxpayer dollars," he said in a

statement. "Our work helped force DOE to make changes and improve its stewardship, but we are not out of the woods by any stretch. Our oversight efforts will continue as problems still persist and more needs to be done to protect billions of dollars in taxpayer interests."

The DOE report notes that the risk of loss exists in any lending or investment, although that risk can be managed through due diligence and monitoring as demonstrated by the Loan Programs Office's "strong portfolio performance to date."

The results support the office's current screening process, DOE said, and the report provides a better perspective of the program.

"We think those results show that [the Loan Programs Office] is succeeding in its mission to help finance the first commercial deployments of innovative technologies in the United States," Peter Davidson, executive director of the program, said in a statement.

"In addition to working toward our mission, we take our responsibility to protect taxpayer interests very seriously. The best perspective for assessing [the program's] financial performance is to look at the portfolio in its entirety. And, as a whole, the portfolio is performing very well," he said.

Of the more than 30 projects that have received DOE backing, 20 are operational and generating revenue. The successful projects have produced clean energy to power more than 1 million U.S. homes, manufactured more than 8 million fuel-efficient vehicles and cut carbon emissions equivalent to taking 3 million cars off the road, according to DOE.

Tesla Motors Inc. created a big splash last year when it paid back its $465 million DOE loan guarantee from the 2010 Advanced Technology Vehicles Manufacturing program in full -- including $17 million in interest.

DOE is reviewing projects for the $16 billion still available from that program and has announced solicitations for the rest of the $40 billion remaining in loan guarantee authority. Last December, it began soliciting applications for an $8 billion pot to support low-emissions fossil energy projects, followed by a $4 billion renewable energy solicitation in the summer and a $12.6 billion funding announcement for advanced nuclear technology earlier this fall (*Greenwire*, Sept. 30).

"We expect to continue to see applications from some of the most innovative technologies that are on the cusp of commercial-scale deployment," DOE spokeswoman Dawn Selak said.

The program has made several adjustments to its process for the next round of solicitations based on feedback from participants, which were reluctant to apply for funding because of its negative political association and because of what many companies said were too many financial costs associated with the program.

DOE is looking into the idea of "co-investing" with other financial institutions to spread more interest and experience with financing clean energy technology, as well as to enable the program to support more projects (*Greenwire*, July 23).

It also revised the application fee schedule. Applicants must pay $50,000 up front, with an additional fee of $100,000 to $350,000 due if they want to proceed to a second phase of consideration.

The revision still does not cover a "credit subsidy cost" that successful applicants must pay -- and which varies from project to project -- to cover the risk to the government in case of bankruptcy. That fee has also been the subject of criticism from the private sector.

CLIMATE:

U.S-China targets seem achievable for both countries, supporters say

Jean Chemnick, E&E reporter

Published: Thursday, November 13, 2014

The new emissions reduction pledges the United States and China unveiled Tuesday night are achievable for both countries and a potential game changer for international climate change negotiations, proponents say.

This week's announcement by President Obama that the United States would slash its greenhouse gas emissions by between 26 and 28 percent compared with 2005 levels by 2025 was the product of more than a year's work.

Former White House climate and energy adviser Heather Zichal said this morning on the sidelines of an event hosted by *The Hill* newspaper that it was the result of a careful analysis by the White House and agencies about what the administration can do without cooperation from Congress.

Zichal, who resigned late last year and is now a member of the board of natural gas giant Cheniere Energy Inc., said White House adviser John Podesta -- as "the keeper for the president's climate agenda" -- acted as convener on the project, bringing together agency experts for an inventory of the possible emissions reductions that could be achieved under existing law.

"I suspect a lot of time was spent looking at models," she said.

The 26-to-28-percent figure is an assessment of what U.S. EPA, the Energy Department and a host of other agencies can do through Clean Air Act rules, building efficiency standards and other policies -- some of which are already in the pipeline, and some of which might be soon. Environmentalists, for example, are optimistic that the ambitious new set of emissions reduction commitments means EPA will soon announce plans to regulate oil and natural gas methane emissions under the Clean Air Act.

The announcement was made during the president's visit to Beijing, and came together with a pledge by China to cap and begin cutting greenhouse gas emissions by 2030 -- the first commitment to reduce absolute emissions by the world's largest-emitting country. Zichal said Secretary of State John Kerry seems to have been the chief advocate for launching the U.S. target together with a commitment by China, a process that sent Kerry and Podesta to China in advance of the president's visit.

"My impression is that Secretary Kerry was actually really instrumental in trying to make everybody understand the U.S.-China relationship as it should be considered for the Paris COP [Conference of the Parties to the U.N. climate convention] in 2015," she said.

"My best guess was that it probably looked good some days and looked bad some days, and some days it probably looked terrible."

But while Kerry, Podesta and U.S. Special Envoy for Climate Change Todd Stern did much of the advance work -- together with agency staff -- Obama also "leaned in" on the issue, Zichal said. He had already worked with Chinese President Xi Jinping on a landmark deal announced last year to limit hydrofluorocarbons using the Montreal Protocol, and the two countries have collaborated on carbon capture and storage and other related issues. Those efforts helped pave the way for this agreement, she said.

On a call with reporters yesterday, EPA Administrator Gina McCarthy also shed some light on the process that led to Tuesday's announcement.

Agencies across the federal government considered what they could do -- under Obama's Climate Action Plan -- to contribute reductions, she said.

"This entire target was based on a thorough interagency review of the available tools in each of the agencies," McCarthy said. Those include the measures outlined in Obama's climate plan as well as "other tools and initiatives that could be teed up and brought to fruition quickly enough to provide the kind of target that has been identified in the agreement so far." Voluntary emissions reductions from businesses and other emitters will also help reduce U.S. emissions, she said.

Podesta held meetings with top officials on a "very frequent basis" to coordinate agencies' climate work, McCarthy added. Those meetings are intended "to make sure that everybody is aligned and looking not just at delivering the actions under the plan, but at looking at what other opportunities are available."

Part of the goal of reducing domestic emissions, McCarthy said, "is to make sure that countries like China, which are going to be so important in these international discussions, step to the plate." This agreement, she added, "is both the U.S. and China stepping up to the plate significantly, and we really do hope that the rest of the countries can follow."

Environmental supporters of the new targets say China is likely to make good on its side of the bargain, too. The Natural Resources Defense Council's Jake Schmidt told reporters today on a call that one-third of China's current coal consumption is already covered under coal-use abatement programs, and China is rapidly expanding its wind and solar power capacity.

China is likely to provide further detail about how it will cap and begin drawing down emissions as part of its new five-year plan covering 2016 through 2021, he said. Part of that might mean moving from a focus on heavy manufacturing toward expansions in the less carbon-intensive service and value-added sectors, Schmidt said.

Reporter Robin Bravender contributed.

AIR POLLUTION:

EPA, enviros agree on decision deadlines for Texas permit challenges

Amanda Peterka, E&E reporter

Published: Thursday, November 13, 2014

U.S. EPA and environmentalists have agreed on a timeline for the agency to respond to petitions challenging permits for three 1970s-era Texas coal-fired power plants.

Under the proposed settlement, EPA would decide by Jan. 23 on the environmentalists' challenges of permit monitoring for the Luminant Generating Company LLC plants.

The agency would then be required to decide by May 15 whether Texas has issued appropriate compliance schedules for plants to report violations of state visibility limits.

The proposed consent decree was published today in the *Federal Register* and will be open for 30 days

of public comment before taking effect.

The coal plants in question: the 2,340-megawatt Martin Lake Steam Electric Station in Rusk County, the 1,880 MW Monticello Steam Electric Station in Titus County and the 1,200 MW Big Brown Steam Electric Station in Freestone County.

The Texas Commission on Environmental Quality in 2011 proposed issuing general operating permit renewals to Luminant, a subsidiary of Energy Future Holdings Corp., for the three plants.

The Environmental Integrity Project and Sierra Club petitioned EPA earlier this year to deny the operating permits. The groups argued that TCEQ's permits don't ensure adequate monitoring of particulates and appropriate schedules for reporting deviations from Texas opacity limits, a marker of particle pollution.

When EPA failed to meet a required 60-day deadline to respond to the petitions, the groups filed a lawsuit in July in the U.S. District Court for the District of Columbia. The proposed consent decree published today resolves that lawsuit.

Along with agreeing on a timeline for responding to the petitions, the groups have agreed to drop other challenges to the Big Brown power plant's permit regarding which emissions are subject to limits and monitoring methods for specific pollutants.

GRID:

FERC approves expansion of Southwest Power Pool

Hannah Northey, E&E reporter

Published: Thursday, November 13, 2014

Federal energy regulators today approved plans to more than double the footprint of Southwest grid operators by adding the Upper Great Plains region of the Western Area Power Administration.

The Federal Energy Regulatory Commission signed off on the Southwest Power Pool's proposal to expand its market space to include a large swath of the Upper Great Plains that spans the U.S. electric grid's Eastern and Western interconnections.

The decision, which wasn't expected until 2015, expands the amount of the United States operating within regional transmission organizations (*EnergyWire*, Feb. 28).

"Today's order is a positive step that greatly expands customer access to organized markets, particularly in the upper-Midwest region, and increases efficiency and reliability for the newly combined market," FERC Chairwoman Cheryl LaFleur said in a statement.

Approved by FERC in 2004, the Southwest Power Pool is the youngest of the nation's RTOs. The grid operator currently serves nine states: Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma and Texas.

SPP will now integrate the Western Area Power Administration -- Upper Great Plains Region, Basin Electric Power Cooperative and Heartland Consumers Power District. Together, the new members provide the backbone of the bulk electric transmission system across seven states in the Upper Great Plains region, consisting of about 9,500 miles of transmission lines, according to FERC.

NUCLEAR WASTE:

DOE needs a better game plan for securing public trust -- GAO

Hannah Northey, E&E reporter

Published: Thursday, November 13, 2014

The Obama administration is being outflanked by media-savvy foes when it comes to securing public support and dispersing information about managing waste from the country's 100 nuclear plants, a new report from the Government Accountability Office finds.

GAO in the report calls on the Department of Energy to craft a coordinated public outreach strategy to explain to the public how the agency plans to manage, transport and ultimately store nuclear waste. House Energy and Commerce Chairman Fred Upton (R-Mich.) and Rep. John Shimkus (R-Ill.), chairman of the Energy and Commerce Subcommittee on Environment and the Economy, requested the report.

DOE officials told GAO they currently have no public outreach strategy.

Without a more public face for the agency, GAO warned that the American public may be unwilling to support DOE's new waste management policies -- regardless of what happens with the abandoned Yucca Mountain nuclear waste site in Nevada.

"According to experts and stakeholders, organizations that oppose DOE's strategy have reached the public by effectively using social media to promote their positions," GAO wrote. "In contrast, DOE currently has no coordinated outreach strategy."

GAO pointed to a 2013 report by the University of Oklahoma that found Twitter and Google searches to be a critical tool in providing the public with information following the 2011 meltdown of three reactors in Japan after a magnitude-9 earthquake and tsunami.

DOE, according to the report, should reach out to the public about how it intends to transport and manage waste. "Without greater transparency and a coordinated outreach program, specific stakeholders and the general public may not have confidence in DOE's efforts to manage spent nuclear fuel and may continue to distrust DOE," GAO wrote.

Public distrust stems from DOE's long and complicated history of failing to find a final resting place for nuclear waste, a situation that has triggered fights on Capitol Hill over the fate of the Yucca Mountain site.

In the 1990s, DOE entered into contracts with owners and generators of spent nuclear fuel to begin disposing of the waste, but the agency was later unable to meet that timeline.

As a result of lawsuits, the government has paid a total of $3.7 billion for storage costs, according to GAO. Last year, DOE proposed a new strategy that called for building consolidated interim storage facilities, which would start operating in 2021 and 2025.

Currently, about 72,000 metric tons of nuclear waste is being stored at 75 sites in 33 states, generally where it was generated, in wet pools or dry casks, according to GAO.

DOE in 2008 submitted a license to the Nuclear Regulatory Commission to build a national repository under Yucca Mountain, but has since -- under the Obama administration -- attempted to pull support for the project. Republicans like Upton and Shimkus argue that the project should move forward (*Greenwire*,

Nov. 6).

DOE officials in notes attached to GAO's report agreed with the findings and vowed to continue to reach out to the public.

AIR POLLUTION:

L.A. officials mull whether to sue battery plant

Published: Thursday, November 13, 2014

The Los Angeles County Board of Supervisors is considering taking legal action against a Vernon, Calif., battery recycler to force the plant to close and clean up area neighborhoods.

The supervisors directed county lawyers to "explore potential legal actions against Exide Technologies" and report back next week with a plan to force the plant to shut down and fix lead and arsenic contamination that has reached nearby homes.

Supervisor Gloria Molina said the move is necessary because an agreement between the state Department of Toxic Substances Control and the company is too weak. The DTSC reached the deal last week, which fined the company $526,000 and ordered it to set up a $9 million trust fund to clean up homes and yards contaminated by the plant (*Greenwire*, Nov. 7). The deal also requires the plant to set aside $38.6 million during the next 10 years to fund a cleanup if the facility closes.

"Trying to go behind the scenes and make this kind of a deal is very, very upsetting to us," Molina said.

Exide, which filed for Chapter 11 bankruptcy protection last year, also faces a criminal investigation by a federal grand jury (Tony Barboza, *Los Angeles Times*, Nov. 12). **-- SP**

PERU:

Solar deal will connect rural residents to grid

Published: Thursday, November 13, 2014

More than 500,000 solar panels will be installed across Peru in coming years after the country was awarded a contract with Ergon Peru SAC.

The $28.5 million deal will connect rural residents to the electrical grid and guarantee the operation of the panels for 15 years, said Peru's energy and mines minister, Eleodoro Mayorga.

It's estimated that 70 percent of rural Peruvians have access to the electrical grid, compared with 90 percent of the country as a whole.

"This is a big leap forward," said Mayorga. "Our goal is for all Peruvians to have electricity by 2019."

The company will install 65,000 panels next year, 125,000 in 2016 and the remaining panels by the end of 2018. The majority of the panels will be installed on rural homes, schools and health clinics (Mitra Taj, Reuters, Nov. 12). **-- MH**

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CLIMATEWIRE — Fri., November 14, 2014

READ FULL EDITION

1.FINANCE:

U.S. to pledge $3B to Green Climate Fund

The Obama administration is poised to announce a pledge of billions of dollars to an international climate change fund ahead of the G-20 summit in Australia this weekend, several sources have told *ClimateWire*.

2.POLITICS:

Fear, uncertainty greet new Md. governor on climate policy

It's been a little over a week since Maryland's election, and speculation remains high about the direction Gov.-Elect Larry Hogan (R) plans to take the state with climate policy.

TODAY'S STORIES

3.SCIENCE:

U.S. to become thunderstruck with lightning storms as temps rise

4.ADVOCACY:

Growth of wood-fueled power in Europe fuels protest from Southern green groups

5.FORESTS:

Top agribusiness announces zero-deforestation policy

6.WILDLIFE:

Intertidal crabs can adapt to climate change but lack the energy for much else -- study

7.FLOODS:

Landslides lead to fatalities in northern Italy

8.NATIONS:

Heads buried in sand, Australians protest government's climate policies

9.NEGOTIATIONS:

BHP urges nations to set global carbon price

10.PUBLIC HEALTH:

Switch to meat-heavy diet in developing regions would lead to GHG spike

E&ETV'S THE CUTTING EDGE

11.KEYSTONE XL:

***E&E Daily*'s Quiñones talks latest vote counts, prospects for final passage**

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ENERGYWIRE — Fri., November 14, 2014

READ FULL EDITION

A possible takeover of Baker Hughes Inc. by Halliburton Co. would create a powerhouse in the hydraulic fracturing

1.OIL AND GAS:

Halliburton's potential buyout of rival would grab larger share of frack market

business and also give Halliburton greater influence in other areas of the oil field service industry.

TOP STORIES

2.NEWSMAKER:

For veteran CEO, electric evolution more likely than revolution

3.BAKKEN:

N.D. delays crude-by-rail safety rules

ELECTRICITY

4.RENEWABLES:

Energy company tied to Mo. political dynasty looks to sell Midwest wind farms

5.UTILITIES:

Calif. commissioner under fresh fire for undisclosed payments

OIL AND GAS

6.OFFSHORE DRILLING:

Deepwater Gulf production will hit peak in 2016, analysts say

7.PEOPLE:

Northern Gateway pipeline project supervisor to retire

8.ARCTIC:

Norway, China pair up on oil search

9.NEW MEXICO:

County votes to restrict drilling

10.HYDRAULIC FRACTURING:

Ill. residents sue state to stop fracking

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11.KEYSTONE XL:

***E&E Daily*'s Quiñones talks latest vote counts, prospects for final passage**

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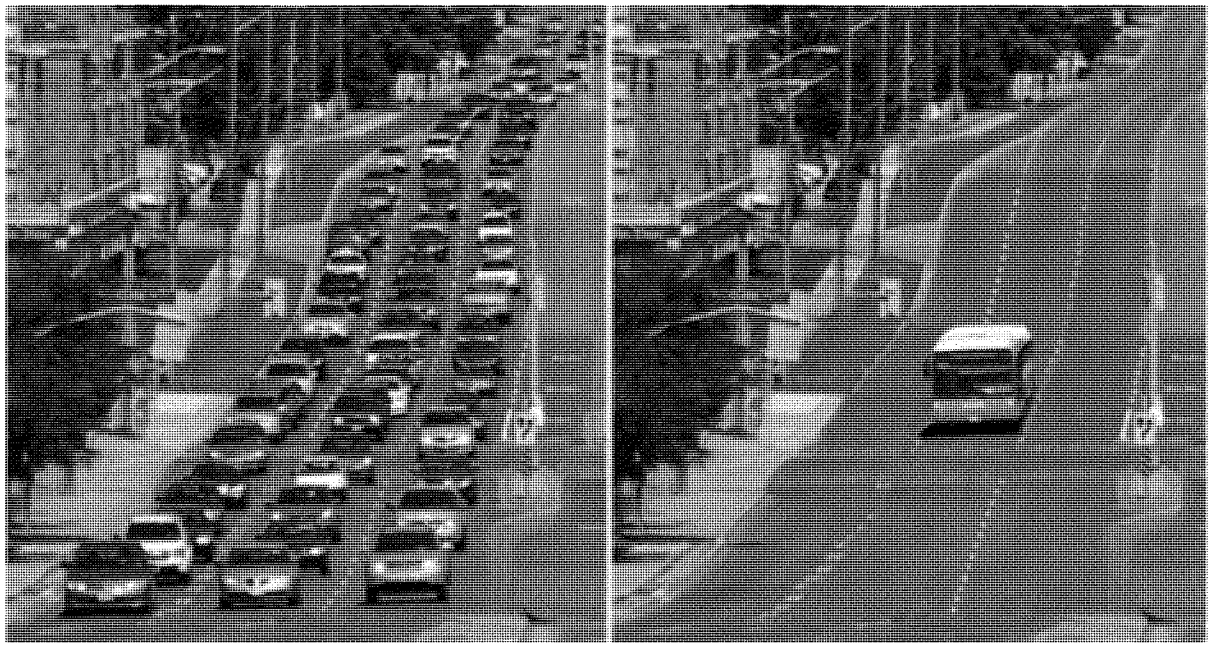

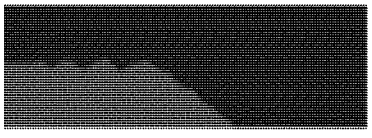

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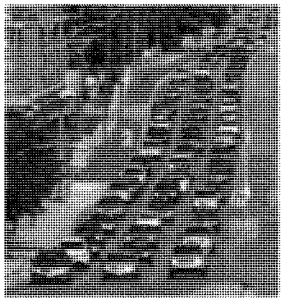

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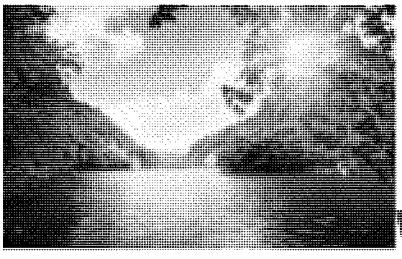
From: Turley, Jennifer
Sent: Fri 11/14/2014 3:05:16 PM
Subject: Water Law News for November 14, 2014



Water Law News

for November 14, 2014

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Dam's Protection of Chesapeake Bay Ebbing, Upstream Pollution Cuts Key, Study Says

A hydroelectric dam that for decades has trapped most of the sediment flowing down the Susquehanna River toward the Chesapeake Bay can no longer be relied upon as a pollution barrier, according to a draft study. ...

Energy

Keystone Supporters Face Uphill Battle To Achieve 60-Vote Threshold in Senate

Sen. Mary Landrieu (D-La.) remained optimistic Nov. 13 that the Keystone XL oil pipeline bill will clear procedural hurdles and pass the Senate next week, but some of her Democratic colleagues may not be ready to give her a victory....

Enforcement

EPA Looks to Include NextGen in Fracking Enforcement Efforts, Agency Official Says

The Environmental Protection Agency's Office of Enforcement and Compliance Assurance is looking to incorporate Next Generation compliance strategies into its hydraulic fracturing enforcement efforts, a senior agency official...

Hydraulic Fracturing

Colorado County Extends Moratorium On New Drilling Permits Three More Years

The Boulder County Commission voted to extend by three years the county's moratorium on new oil and gas drilling permits, citing health, safety and environmental concerns....

Hydraulic Fracturing

Los Angeles Wants Help With Fracking Regulations

City of Los Angeles planning officials want outside technical assistance to draft a proposed ordinance to regulate oil and gas well stimulation activities, including hydraulic fracturing. In a long-awaited report to the City Council Nov....

Natural Resources

Senate Panel Backs Wyden Bills to Boost
Oregon Logging, Klamath River Basin Plan

A bill to allow for more logging in forests located on federal land in Oregon was amended and approved by the Senate Energy and Natural Resources Committee on a 15-7 vote Nov. 13....

Oil & Gas

Despite Tighter Rules, Colorado Drilling
Drives Increase in Emissions, Study Shows

Ozone precursors are elevated across Northern Colorado, despite a tightening of emission standards for the oil and gas industry in 2008, according to a new study by University of Colorado researchers. ...

Oil Spills

Shell Can't Sue Environmental Groups
To Head Off Arctic Drilling Suits, Court Rules

Royal Dutch Shell Plc cannot be allowed to pre-emptively head off challenges to oil spill response plans through a lawsuit of its own seeking a declaratory judgment approving the response plans, an appeals court ruled Nov. 12 (Shell Gulf of...

Water Resources

Third High-Flow Release of Colorado River
Water Aims to Restore Downstream Areas

The Interior Department is conducting a high-flow release from Glen Canyon Dam in Arizona in the latest effort to send tons of sand and sediment for redeposit along downstream reaches as sandbars and beaches to help restore the ecosystem. ...

Inside EPA **Weekly Report**, 11/14/2014

http://insideepa.com/newsletters/inside-epa

Latest News

EPA Advisors Supportive Of 'Risk-Weighted' VOC Drinking Water Regulation

EPA advisors are generally supportive of the agency's novel strategy to regulate carcinogenic volatile organic compounds (cVOCs) in drinking water as a group by using an approach based on risk-weighted factors, despite some concerns about policy and technical hurdles in using this approach, which is costlier than traditional methods.

Greenwire

ENERGY TECHNOLOGY:

Calloused hands steer voyage to clean power's new world

Katherine Ling, E&E reporter

Published: Thursday, November 13, 2014

Second of two stories on efforts to tap ocean energy. Click here to read the first.

EASTPORT, Maine -- The old saying is true: Time and tide wait for no man.

That's why 12 men working to haul tidal-energy equipment out of the swift-moving currents off Eastport were on the job at 4 a.m. on an early fall morning. They were getting ready for a 6 a.m. slack tide -- the opening of a 40-minute window of calm water at high tide needed to safely complete their mission on Cobscook Bay.

The armada -- an 80-foot-long barge and three small work boats -- was commissioned to retrieve 40,000 pounds of equipment owned by Ocean Renewable Power Co. After years of work to design and build the massive tidal-energy device, the company's engineers were now spectators as their contractors, Eastport boat Capt. George "Butch" Harris Jr. and CPM Constructors, did the work.

Local contractors have been vital to leading marine hydrokinetic companies like Ocean Renewable Power, whose projects include the first U.S. grid-connected tidal project. Fishermen, divers and harbor pilots save time and cash for energy developers struggling to navigate the shoals on the way from tech startup to commercial success.

"They have a Ph.D. in the water around them," Bob Peacock, one of only two local harbor pilots who also helps the company, said of his fellow contractors. "These people live on the water every day. They can tell you so much more about Mother Nature and what is going to happen to your design."

Locals provide transportation, offer advice on designs and materials that can survive ocean conditions, and boost goodwill for the company in towns near hotbeds of ocean energy. In turn, marine power developers provide job opportunities and an economic boost for coastal areas.

A "real world" check is crucial for energy entrepreneurs whose engineers often come with "an aerospace perspective," said Richard Kimball, an engineering professor at the Maine Maritime Academy in nearby Castine.

"They want it to be a sexy aerospace turbine, but no, it has to be a grungy propeller" -- marine grade to withstand salt corrosion and underwater debris, Kimball said.

The design of Ocean Renewable's "OCGen" energy system that the crew retrieved from the bay went through several iterations. It involved parts resembling airplane wings, foam and hemispherical domes on the side of the floating tube, known as the "buoyancy pod," according to Jarlath McEntee, the company's vice president of engineering and chief technology officer.

The Ocean Renewable Power team took its design to several local marine contractors, including Harris, CPM Constructors owner Eldon Morrison, and harbor pilot and marine fabrication shop owner Gerald "Jerry" Morrison.

Local expertise then helped engineers modify the project.

The wings and foam definitely had to go, Ocean Renewable Power was advised. The final product looked much like a series of oil drums welded together for the buoyancy pod, with long "crossflow" turbines underneath (the turbines were from a previous test) and long nylon-based lines to secure it to mooring blocks on the ocean floor.

[+] A local crew from CPM Constructors and a Wetwork Inc. diving team prepare to retrieve Ocean Renewable Power Co.'s tidal-energy device early in the morning in Cobscook Bay, Maine. Photo by Katherine Ling.

The final version of OCGen was heavier than the engineers had envisioned, but it was also less expensive and still did its job: test the anchors and mooring device and gather data on water drag and the durability of lines and materials. The prototype was fabricated by CPM Constructors and the mooring blocks by Jerry Morrison at Morrison Manufacturing Inc.

"We try to find the easiest route," Harris said. "Sometimes, the engineers and the guys working have different ways of looking at things, and between the two of them, we come up with a really good idea."

'Uniqueness'

Harris was one of the first people sought out by Ocean Renewable Power when it came to Eastport about eight years ago in search of a place to test an earlier design known as TidGen.

A fourth-generation native of Eastport, Harris is an important link to the town's salmon and sardine fishing past and to its future as a tourist lure -- and viable revival of its marine industry.

Harris runs fishing charters for urchins, lobsters and scallops. He guides whale-watching trips on his 118-foot, double-masted schooner, the Ada C. Lore, which was built in 1923 and restored by Harris. And he pilots his lobster-style working boats Black Sheep and Lady H for scientific, commercial or recreational expeditions.

For the Ocean Renewable project, he's helping the company and the University of Maine monitor the project's effects on wildlife and is an emissary for the fishermen.

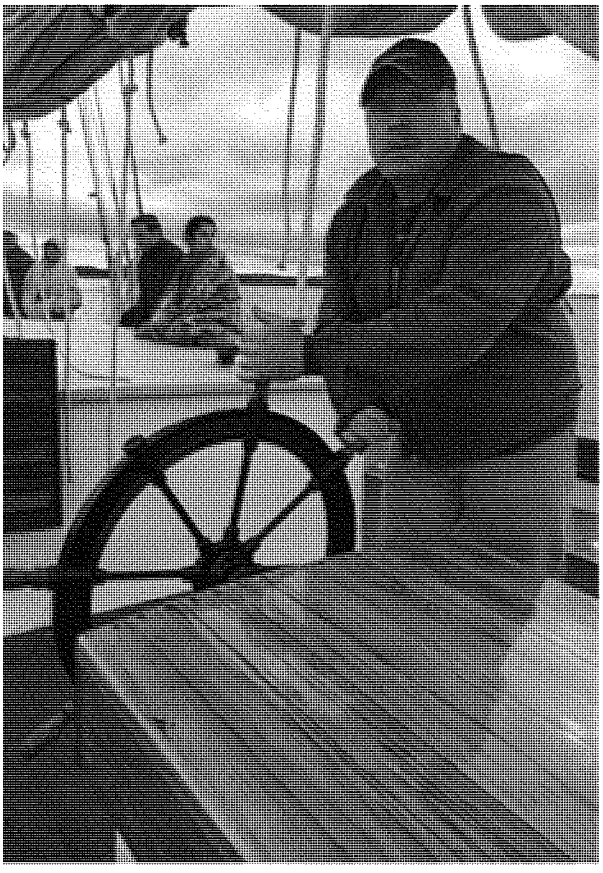
"He is willing to do anything and is able to do anything well," Ocean Renewable's McEntee said.

Experienced adaptation and simplification are what Harris and the other marine contractors offer McEntee's company.

The barge used to deploy and retrieve equipment was custom-made with repurposed bridge steel by CPM. It replaced a rental barge and crane that cost about $50,000 per month and another that cost about $60,000 to haul to work sites, Eldon Morrison said.

The custom barge can be easily disassembled and its parts sent to other projects when Ocean Renewable isn't using it.

The contractors and company don't always agree on everything. Ocean Renewable, for example, for one device used expensive titanium bolts and bronze bearings, which the contractors thought unnecessary given that the device would only be in the water for a limited amount of time, according to Eldon Morrison and Harris. The OCGen model used steel bolts and vesconite (plastic) bearings, according to the company.



Eastport Capt. Butch Harris turns his 118-foot schooner, Ada C. Lore, in order for tourists to get a better view of a minke whale locals have named "Stumpie" for his telltale damaged dorsal fin. Photo by Katherine Ling.

Eldon Morrison, who founded CPM Constructors in 1985 -- and is Jerry Morrison's uncle -- said fishermen and those in the construction business tend to be "very practical."

"I believe in using things that have worked in the past in the industry and just adapt them to what you are doing on the new things," he said.

Morrison and Harris said they hope more marine energy companies call. The regional economic boost is nice, they said, and they love the challenge.

CPM has probably built 250 bridges in its 30 or so years, but it's only done one marine power project, Morrison said.

"The uniqueness is really important," he said.

Peacock, the harbor pilot and former head of the Eastport City Council, also saved Ocean Renewable from a possible fiasco when the company heeded his warning to provide a 60-foot clearance between the wave device and the water surface instead of the 40-foot buffer the company had planned, he said.

A smaller margin would have put the device at risk of being clipped by freighters arriving in port at extreme low tides.

"You can get up to a minus-4-foot tide at times, and the stern of the ship can squat down 10 feet if it has

speed on it," he said.

McEntee lauds the local help.

"Everyone thinks that they can just come to another area based on experience elsewhere," he said, "but it takes time to get up to speed."

'They try to fit in'

Eastport has a small-town caution about outsiders -- whom locals dub "people from away," or PFAs -- and even more so about companies that parachute in.

The town has had its share of disappointments from other energy companies and projects attracted to its deep harbor and swift waters.

The town is close to Franklin D. Roosevelt's summer home on Campobello Island, and the former president made a considerable push to build a dam system to capture energy from the tides, the Quoddy Dam Project, in the 1930s. Congress eventually halted it for being too expensive.

In the 1970s, the coal producer Pittston Co. of Greenwich, Conn., looked into building a 250,000-barrel-a-day oil refinery along with a supertanker terminal but abandoned the project in 1983 because of a jump in costs and shifts in the global oil market.

Then, the Eastern Generation and Transmission Co. tried to build a coal-fired power plant and an airport that some saw as struggling Eastport's "last chance to avoid economic oblivion," according to an article in the *Bangor Daily News'* weekend edition May 25-26, 1986. Eastport voters rejected the project in a 1987 referendum.

Last year, Thermogen Industries started a production facility on the site of an old herring processing plant here to make "bio-coal" pellets from waste left from wood harvesting as a cleaner replacement for coal at power plants.

And there's interest in developing a liquefied natural gas facility, offshore wind and other tidal energy projects.

Ocean Renewable Power has tried to keep everyone informed about what it is doing and where it will be, including monthly updates for officials in Eastport and Lubec and occasional meetings with the local fishermen, according to interviews with various townspeople.

"They work really hard to fit in, and they work really hard to always use local people," including local restaurants to cater events and meetings and to house people, said Mary Repole, who has led the City Council here for the past two years and runs a dental office with her husband.

"They are also very nice people. They try to fit in as opposed to just sitting around being superior in any way. They are really great about that," she said.

Said Peacock, Ocean Renewable Power "did a good job as any I have ever seen in bringing a local understanding: understanding the locals and the locals understanding what [the company] wants to do. That takes a lot of work."

KEYSTONE XL:

White House comes closer to veto threat

Manuel Quiñones, E&E reporter

Published: Thursday, November 13, 2014

White House Press Secretary Josh Earnest came close but stopped short of saying President Obama would veto legislation to approve the Keystone XL oil pipeline from Canada.

Asked by reporters during a presidential trip to Asia, Earnest tried to avoid the veto question by touting the ongoing State Department review of the transboundary project and litigation in Nebraska.

"There has been other legislative proposals that have been floated to try to influence the outcome of this decision about the construction of the pipeline. The administration, as you know, has taken a dim view of these kinds of legislative proposals in the past," said Earnest, stressing that the president would consider the pipeline's climate effects before making up his mind.

But reporters pressed Earnest on the veto question.

"There have been previous proposals that I expect would be consistent with proposals that have been discussed overnight," he said. "And in evaluating those earlier proposals, we have indicated that the president's senior advisers at the White House would recommend that he veto legislation like that."

The Senate is scheduled to vote next week on S. 2280 by Sens. Mary Landrieu (D-La.) and John Hoeven (R-N.D.).The House is poised to debate the same language under H.R. 5682 this afternoon, but vote tomorrow.

Beyond concerns about KXL's climate impacts and its carrying of Canadian oil sands, critics have zeroed in on the reason for the planned votes -- to help Landrieu in her runoff next month against Rep. Bill Cassidy (R), who is leading the House effort.

Skeptical Democrats also wonder why the legislation includes a provision to make challenges to the KXL approval be heard by the U.S. Court of Appeals for the District of Columbia Circuit.

Environmental group 350.org is mobilizing supporters to contact Democratic senators who may be on the fence. The Sierra Club in Delaware is also planning pressure campaigns against Democratic Sens. Tom Carper and Chris Coons.

Last night, a spokeswoman for Carper said the senator had decided to support the legislation, giving backers at least 58 votes. They need 60 to pass the measure. Every Republican supports the bill, and some Democrats could still decide to vote in favor.

A Carper spokeswoman said, "He is hopeful that moving forward with this bipartisan bill will pave the way for Congress to work together on other measures to increase our energy independence while also addressing the real environmental and public health threats we face from greenhouse gas pollution."

TransCanada Corp., the company seeking permission for the pipeline, said in its own statement, "We continue to believe that Keystone XL should be approved and we will work with policy makers who want to work in a bipartisan fashion to make the construction and operation of Keystone XL a reality."

OCEANS:

U.S. and Kiribati ink major agreement on Pacific conservation

Corbin Hiar, E&E reporter

Published: Thursday, November 13, 2014

Leaders from the United States and the Republic of Kiribati agreed today to coordinate and jointly support research and conservation activities in more than 647,000 square miles of protected land and water in the Pacific Ocean.

The deal was brokered by Interior Secretary Sally Jewell and Kiribati President Anote Tong in Sydney, Australia, on the sidelines of the World Parks Congress. The once-a-decade forum on protected areas is organized by the International Union for Conservation of Nature, a global environmental group.

The agreement aims to strengthen the cooperative management of the U.S. Pacific Remote Islands Marine National Monument -- a 490,000-square-mile collection of tropical islands, atolls and seven national wildlife refuges in the south-central Pacific -- as well as Kiribati's 157,630-square-mile Phoenix Islands Protected Area (PIPA) in the central Pacific, which is recognized by UNESCO as a World Heritage Site. The two protected areas -- collectively called the Phoenix Ocean Arc -- make up a wide swath of the Pacific and include entire island ecosystems, coral reefs, seamounts and marine areas.

"With this cooperative arrangement, our two nations are embracing a shared vision of marine conservation that crosses political boundaries and helps protect pristine areas in the Pacific," Jewell said at a signing ceremony, according to a press release. "It is a commitment we are making together for the health of our ocean as it faces growing pressure from climate change, ocean acidification and other threats."

Speaking about the deal in an earlier address to the World Parks Congress, Tong welcomed the U.S. assistance. "In undertaking the initiative to close off the Phoenix Islands Protected Area, we realized our limitations to be able to conduct enforcement," he said, referring to a problem common to many small island nations. "The United States have a lot more U.S. Coast Guard vessels than we have. So we will be asking them to do a lot of work for us."

With the help of the United States, Kiribati plans to enforce its ban on commercial activities in PIPA starting in January. The countries will also collaborate on the removal of shipwrecks, conservation of seabirds, and eradication of rats and other nonnative species from atolls.

Tong also expressed hope that a new U.S.-China pact to reduce emissions of planet-warming gases could pave the way for a broader binding international treaty at next year's U.N. climate negotiations in Paris (*Greenwire*, Nov. 12).

"Before the events of the last few days ... some people asked me, 'What are the chances of an agreement in Paris?' And I said, 'Maybe 70 percent,'" Tong recounted. "After the announcement of yesterday, it will be about 95 percent or even more."

'Think beyond the discrete boundaries'

In an address after Tong, Jewell argued that the deals with Kiribati and China are evidence that international cooperation on promoting conservation and combating climate change is increasingly necessary. "The issues we're talking about are big," Jewell said. "They can't be done by any nation alone. They must be done in collections of nations working together."

She added, "More and more, it's clear that political, man-made boundaries are irrelevant to resources and wildlife. … Ocean acidification -- a consequence of climate change -- will not protect the Pacific Remote Islands Marine National Monument, even though we have set it aside, if we do not act on climate change. So it is not simply enough to protect places. We must also manage our resources at a landscape level."

The line in her 15-minute speech that drew the most applause called for protection of certain areas from drilling and mining.

"The challenge that I have for you, and I have for me, is to think beyond the discrete boundaries of protected places, to recognize that successful conservation in the 21st century and beyond means moving from random acts of kindness, like individual, discrete protected places, to looking at strategic conservation that goes beyond these areas," she said, "because there are places on this planet that are too special to drill or mine or build on. They must be set aside."

OIL AND GAS:

Judge hears arguments in La. coastal damage case

Published: Thursday, November 13, 2014

Lawyers representing dozens of oil, gas and pipeline companies asked a federal judge to dismiss a lawsuit brought by a Louisiana flood control board seeking compensation for coastal damage from drilling and dredging.

U.S. District Judge Nannette Jolivette Brown of the Eastern District of Louisiana heard more than two hours of arguments from the companies, which contend the suit seeks fines that should be imposed instead by regulators and that the legal action is barred by a controversial state law enacted this summer.

The judge didn't say when she would issue a decision in the case but said it would likely come in December or later.

Chevron Corp. attorney Robert Meadows told the judge that federal law was the proper tool to seek redress from the industry firms.

Jim Swanson, an attorney for the Southeast Louisiana Flood Protection Authority-East, said there was "not a single case in the history of the world" to support the claim (AP/*Fuel Fix*, Nov. 12). **-- SP**

EPA:

IG advances probe of agency's work on Alaska mining project

Manuel Quiñones, E&E reporter

Published: Thursday, November 13, 2014

U.S. EPA's Office of Inspector General is proceeding with its probe of the agency's handling of the Pebble copper and gold mining project in southwestern Alaska.

Spokeswoman Jennifer Kaplan said the inspector general review has moved in recent weeks from preliminary research to field work.

At issue is EPA's Bristol Bay Watershed Assessment, a study of the potential impacts of large-scale mining on the region's resources.

Kaplan said the preliminary phase of the investigation was to determine whether EPA followed the necessary laws, policies and procedures. The field work focuses on studying the agency's outreach efforts to tribes and the public, plus a review of emails.

EPA critics, including Pebble executives, accuse the agency of relying on shoddy science and colluding with mine opponents.

EPA said it will decide by early next year whether to move forward with pre-emptive restrictions on the mine. The agency defended its work by touting years of scientific inquiry, public comment and independent peer reviews.

The debate is playing out in litigation, including a lawsuit that accuses EPA of effectively creating three federal advisory panels outside the confines of the Federal Advisory Committee Act -- an Anti-Mine Coalition FAC, an Anti-Mine Scientists FAC and an Anti-Mine Assessment Team FAC (*Greenwire*, Sept. 25).

EPA laid out its response in documents filed earlier this month, calling on Alaska U.S. District Court Judge Russel Holland to toss the case and reject an injunction against agency actions.

"Plaintiff is effectively asking the Court to place on hold EPA's regulatory process regarding Pebble's proposed mining operations. Doing so would constitute a remarkable waste of agency resources, and would frustrate and run counter to the public's tremendous participation in this regulatory process," EPA's filing said.

It added, "Plaintiff has not presented any basis on which to upset EPA's orderly decision-making process in which thousands of other groups and individuals also have a stake and care deeply."

In the election this month, Alaskans approved a ballot initiative that would require legislative approval for projects like Pebble. But the company or the state could end up taking it to court.

The political landscape for Pebble remains undetermined. Independent gubernatorial candidate Bill Walker is against Pebble and leading in the polls, but he has also questioned EPA's involvement.

In the Alaska Senate race, Republican Dan Sullivan yesterday declared victory over Sen. Mark Begich (D), who opposed the mine. Sullivan has not taken a firm position on Pebble itself, but has also questioned EPA's involvement.

Even with uncertainty in Alaska, the Republican takeover of the Senate means there will likely be more oversight of EPA's handling of Pebble next year. The likely leader of the Senate Energy and Natural Resources Committee, Sen. Lisa Murkowski (R-Alaska), has been deeply skeptical of the agency's involvement.

Murkowski has joined other EPA critics in pushing for legislation to prevent the agency from using Section 404 of the Clean Water Act to veto or limit dredge-and-fill projects prior to the permitting process.

More broadly, Republicans have made boosting mining and reducing permit delays a legislative priority. And this week, the National Mining Association released the results of a survey showing manufacturer concern with accessing raw materials.

OREGON:

Lone ranger gets partner at pristine watershed

Published: Thursday, November 13, 2014

A lone ranger who patrols the 150-square-mile protected area of the Bull Run Watershed will finally have some assistance after the Portland City Council yesterday approved a request for a second full-time ranger.

Dan Weidinger, the Portland Water Bureau's sole patrol at Bull Run, will have company beginning in 2015.

The council approved the request that was part of a $10.1 million fall budget adjustment. Portland Water Bureau Commissioner Nick Fish and Administrator David Shaff pushed for the additional ranger and said it was "absolutely essential" to help Weidinger.

The federally protected area provides water to an estimated 1 million people (*Greenwire*, Nov. 4).

The new ranger will likely be installed by the spring during "trespassing season" and will help increase safety to the area (Andrew Theen, Portland *Oregonian*, Nov. 12). **-- MH**

AUSTRALIA:

Environment chief vows to ban Great Barrier Reef sediment dumping

Published: Thursday, November 13, 2014

Dumping sediment in the Great Barrier Reef Marine Park could soon be outlawed.

Australia's Environment Minister Greg Hunt said he plans to ban the practice of discarding sediment dredged elsewhere in the national park using the Great Barrier Reef Marine Park Authority.

Disposing of seabed sediment in coral reefs can deplete oxygen levels, suffocating coral and fish.

Hunt's plan somewhat diverges from a plan proposed by the Labor Party. That plan would bar the dumping of sediment not just in the marine park, but also in the reef's World Heritage area, which also includes inland areas and ports.

Environmental groups applauded the ban but said it should be expanded to cover the entire heritage area (Oliver Milman, London *Guardian*, Nov. 12). **-- AW**

BRAZIL:

Locals practice sustainable fishing to protect species

Published: Thursday, November 13, 2014

In Brazil's Amazon rainforest, fishermen are working to protect one of the ecosystem's largest and most sought-after fish by implementing sustainable fishing practices.

Locals are protecting the pirarucu, a fish that can grow to 400 pounds and stretch 7 feet long, by banning certain nets and pushing for the catch and release of younger fish, as well as prohibiting outsiders from fishing.

"Just a short while ago, we feared that wild pirarucu could disappear from the Amazon," said Ruiter Braga, a fishing technician for Mamirauá, a rainforest reserve that helped in developing management techniques. "But we figured out that the only way to save the pirarucu was to involve the people living in the forest who depend on the fish for their own survival."

The species has faced many challenges in recent decades due to overfishing and habitat degradation. Excluding local fishermen, officials banned fishing of pirarucu in 1996 in the Brazilian state of Amazonas.

Although conservation attempts across the Amazon have helped pirarucu populations recover, illegal fishing still occurs in many parts of the country (Simon Romero, *New York Times*, Nov. 12). **-- MH**

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U.S. to pledge $3B to Green Climate Fund

The Obama administration is poised to announce a pledge of billions of dollars to an international climate change fund ahead of the G-20 summit in Australia this weekend, several sources have told *ClimateWire*.

2.POLITICS:

Fear, uncertainty greet new Md. governor on climate policy

It's been a little over a week since Maryland's election, and speculation remains high about the direction Gov.-Elect Larry Hogan (R) plans to take the state with climate policy.

TODAY'S STORIES

3.SCIENCE:

U.S. to become thunderstruck with lightning storms as temps rise

4.ADVOCACY:

Growth of wood-fueled power in Europe fuels protest from Southern green groups

5.FORESTS:

Top agribusiness announces zero-deforestation policy

6.WILDLIFE:

Intertidal crabs can adapt to climate change but lack the energy for much else -- study

7.FLOODS:

Landslides lead to fatalities in northern Italy

8.NATIONS:

Heads buried in sand, Australians protest government's climate policies

9.NEGOTIATIONS:

BHP urges nations to set global carbon price

10.PUBLIC HEALTH:

Switch to meat-heavy diet in developing regions would lead to GHG spike

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11.KEYSTONE XL:

***E&E Daily*'s Quiñones talks latest vote counts, prospects for final passage**

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ENERGYWIRE — Fri., November 14, 2014

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Halliburton's potential buyout of rival would grab larger share of frack market

A possible takeover of Baker Hughes Inc. by Halliburton Co. would create a powerhouse in the hydraulic fracturing business and also give Halliburton greater influence in other areas of the oil field service industry.

TOP STORIES

2.NEWSMAKER:
For veteran CEO, electric evolution more likely than revolution

3.BAKKEN:
N.D. delays crude-by-rail safety rules

ELECTRICITY

4.RENEWABLES:
Energy company tied to Mo. political dynasty looks to sell Midwest wind farms

5.UTILITIES:
Calif. commissioner under fresh fire for undisclosed payments

OIL AND GAS

6.OFFSHORE DRILLING:
Deepwater Gulf production will hit peak in 2016, analysts say

7.PEOPLE:
Northern Gateway pipeline project supervisor to retire

8.ARCTIC:
Norway, China pair up on oil search

9.NEW MEXICO:
County votes to restrict drilling

10.HYDRAULIC FRACTURING:
Ill. residents sue state to stop fracking

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***E&E Daily*'s Quiñones talks latest vote counts, prospects for final passage**

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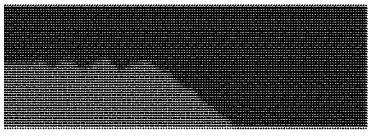

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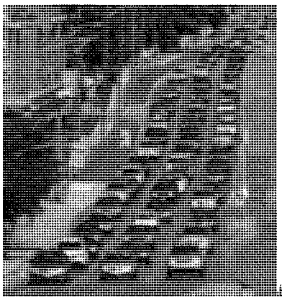


Air & Radiation Law News

for November 13, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

China Blocks Smog Data After Failing To Clean Skies Before APEC Gathering

After failing to rid Beijing's skies of pollution before a gathering of world leaders, Chinese officials took a different approach to smog control: limit the data....

Air Pollution

EPA Agrees to Act on Petitions Related To Texas Power Plants to Settle Lawsuit

The Environmental Protection Agency agreed to deadlines to act on petitions submitted by the Environmental Integrity Project and the Sierra Club requesting the agency object to permits issued by Texas to three power plants (Envtl. Integrity...

Air Pollution

EPA Defends Legality of Process Used to Set Industrial Boiler Toxic Emissions Standards

The Environmental Protection Agency told a federal appeals court that the process used to review and revise hazardous air pollutant standards for industrial boilers, including a decision to not account for emissions that could occur during...

Air Pollution

EPA Removes Defense From Wool Fiberglass Proposal

The Environmental Protection Agency is withdrawing proposed language that would have shielded wool fiberglass manufacturing and mineral wool production facilities from being assessed civil penalties for regulatory violations caused...

Congress

Landrieu's Opponent Promised Senate Panel Seat

Rep. Bill Cassidy (R-La.), who faces Democratic incumbent Sen. Mary Landrieu in a Dec. 6 runoff election, has been promised a seat on the Senate Energy and Natural Resources Committee if he wins the election. In a statement, incoming Senate...

Energy

Dueling Keystone Votes Aim To Influence Louisiana Senate Race

The Louisiana Senate runoff is playing out on Capitol Hill as both parties set votes to force approval of the Keystone XL pipeline, each designed to bolster their candidate in the contest....

Energy

IEA Pushes Nuclear as Carbon Dioxide Emissions Set to Reach Unsustainable Limit

Nuclear power is needed to help reduce global fossil-fuel emissions that are set to reach limits advocated by scientists by 2040, according to the International Energy Agency....

Energy

Project Advancing to Use Carbon Dioxide To Make Other Products, Wyoming Says

Wyoming is moving forward with a $15 million project to develop commercial uses of carbon, Gov. Matt Mead (R) said. ...

International Climate

U.S., China Set Long-Term Carbon Emission Targets in Bid to Push Global Climate Action

In a surprise joint announcement after two days of bilateral talks in Beijing, the U.S. and China on Nov. 12 set long-term targets for reducing carbon emissions, building momentum for global climate talks in Paris in 2015....

International Climate

U.S. May Need Stronger Power Plant Rule, New Methane Regulation to Meet Pledge

The U.S. would need to regulate methane from the oil and gas sector and achieve more greenhouse gas emissions cuts from its plan to limit carbon dioxide emissions from power plants to meet President Barack Obama's new pledge to cut U.S. emission...

Radioactive Waste

GAO Calls for Energy Department Strategy To Build Public Acceptance of Spent Fuel

The Department of Energy should develop a coordinated outreach strategy to help the public understand issues related to the disposal of commercial spent nuclear fuel, the Government Accountability Office said in a report released Nov. 12....

Renewable Energy

Australia Opposition Party Balks on Deep Cuts to 2020 Renewable Energy Targets

Australia's main opposition party has abandoned negotiations on the future of the country's renewable energy program, accusing Prime Minister Tony Abbott's administration of demanding changes that would

destroy the renewable...

Renewable Energy

China's Hunger to Produce Clean Energy
Leaves No Solar Rooftop Panel Behind

China, the world's biggest solar market for two years running, is pushing to get more panels onto factories, schools and even greenhouses as it seeks to meet its goals under a historic climate deal with the U.S....

Renewable Energy

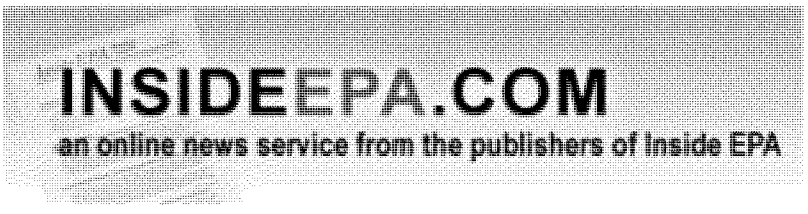
U.S. Expects to Earn $5 Billion From Energy
Loan Program That Backed Solyndra

The U.S. government expects to earn $5 billion to $6 billion from the renewable energy loan program that funded failed projects, including solar startup Solyndra LLC, a return on investment cited as justification for President Barack Obama's...

Vehicle Fuels

EPA Denies Using Disparate Methods
To Assess Small Refiner Exemptions in 2013

The Environmental Protection Agency consistently evaluated all requests from small petroleum refiners to be exempted from the renewable fuel standard blending requirements in 2013, it told federal appellate judges Nov. 12 (Hermes Consol....



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Latest News

EPA Offers Utility MACT Compliance Alternative During Boiler 'Startups'

EPA is offering the utility industry an alternative option for complying with its power plant maximum achievable control technology (MACT) emissions rule during startups of boilers used at power plants, a concession to industry groups that successfully petitioned the agency to reconsider the rule's boiler startup compliance provisions.

Court Arguments Reveal Hurdle For Refinery To Regain EPA's RFS Waiver

A small Wyoming refinery faces a seemingly major hurdle in its legal bid to regain a waiver from EPA's renewable fuel standard (RFS) production requirements after Department of Justice (DOJ) lawyers at oral arguments denied the company's main claim that EPA treated competitors more leniently when deciding on granting exemptions.

McCarthy Vows EPA Climate Rules Will Help Achieve U.S.-China GHG Deal

EPA Administrator Gina McCarthy is vowing that the agency's suite of pending climate policies -- from greenhouse gas (GHG) rules for utilities and trucks to reducing energy sector methane pollution and potential other rules -- will help the United States achieve its targets under the just-announced major U.S.-China GHG reduction agreement.

News Briefs

Montana Governor Seeks To Speed EPA Asbestos Assessment

Montana Gov. Steve Bullock (D) is urging EPA Administrator Gina McCarthy to hasten the completion of the agency's long-running assessment of the human health risks of a particular type of asbestos found in the Libby, MT, vermiculite mine, which is now a Superfund site.

EPA Urged To Overhaul Small Business Rule Reviews

The progressive Center for Effective Government (CEG) is urging EPA and other agencies to overhaul procedures for conducting reviews of pending rules' potential impacts on small businesses, saying the existing process allows too much influence from major corporations that use the reviews to soften regulations to their benefit.

Greenwire

CLIMATE:

Obama flexes his muscle with emissions-reduction plan

Jean Chemnick, E&E reporter

Published: Wednesday, November 12, 2014

President Obama last night reasserted his power to act on climate change without Congress, using a trip to China to announce new U.S. emissions-reduction obligations that he said could be achieved under authorities he already has.

Obama pledged that the United States would cut its heat-trapping emissions to between 26 and 28 percent below 2005 levels by 2025. His announcement -- which came together with a new promise by China to cap its own emissions no later than 2030 -- is the first and perhaps most significant U.S. contribution toward an international climate agreement to be finalized in Paris next year (*ClimateWire*, Nov. 12).

It also comes one week after Democrats lost control of the Senate, ensuring that Obama's climate policies would face strong opposition from a united Republican Congress during his last two years in office. Likely Majority Leader Mitch McConnell (R-Ky.) has already signaled his willingness to use every legislative tool at his disposal to roll back the rules U.S. EPA is pursuing to reduce carbon dioxide and to kill any future plans it might have to limit methane or other greenhouse gases.

McConnell said during a media availability on C-SPAN today that the announcement showed Obama's refusal to work with Republicans.

"I was particularly distressed by the deal apparently he's reached with the Chinese on his current trip, which as I read the agreement, requires the Chinese to do nothing at all for 16 years while these carbon emission regulations are creating havoc in my state and other states around the country," said McConnell, who cast himself as the defender of Kentucky's coal country during his successful race for re-election this year.

But by using the Beijing meeting with Chinese President Xi Jinping as the backdrop for this new commitment, Obama has reminded Congress -- and the world -- that he's still president, despite last week's electoral drubbing, said Norman Ornstein, a political scientist at the American Enterprise Institute.

"I think Obama is making a statement both to the international community and Congress, and to the American public," he said in an email to *Greenwire*. "The election won't change his commitment to shape policy."

Paul Bledsoe, a senior fellow on energy and society at the German Marshall Fund, said Obama's announcement was not directly related to last week's midterm election and instead showed his commitment to acting on climate change. A group within the White House, headed by senior adviser John Podesta, has been working for months on the United States' 2025 targets, a process that led Podesta to visit Beijing ahead of Obama's trip to finalize last night's announcement.

"There is no substitute for presidential leadership on key foreign policy issues," said Bledsoe. "Congress simply is unable to act, and the president is reminding us of that."

The joint announcement by the world's two largest economies shows a new awareness that combating warming will require cooperation, he said. It could be a turning point, provided China doesn't try to renege on its promises during next month's U.N. talks in Lima, Peru.

"Future generations may look back on this as the moment when the world finally got serious about climate protection, just as they look back on arms-control efforts during the Cold War," he said.

Republicans push back

But Republicans in Congress said that Obama's new commitments are dead on arrival, especially now that their party will control both chambers.

McConnell said today that Republicans are already mulling a response to Obama's announcement.

"[W]e'll be discussing all that with our colleagues here in the next few days before we get ready to take over the new majority," he said.

House Energy and Commerce Committee Chairman Fred Upton (R-Mich.) and Energy and Power Subcommittee Chairman Ed Whitfield (R-Ky.) said in a joint statement that China would profit from Obama's plans to double down on U.S. emissions. Last night's agreement would permit China -- already the world's largest emitter of CO2 -- to continue to grow its emissions through 2030. China said it will "make best efforts to peak early" and announced its intention to boost the percentage of non-fossil fuels in primary energy consumption to "around" 20 percent by 2030.

But Upton and Whitfield said the agreement would place the U.S. economy at a competitive disadvantage.

"Just when we are finally getting back on firmer economic footing, thanks in large part to our game-changing energy boom, a lame-duck president is working to stack the deck against American jobs, wage increases, and affordable energy," the two said. "Our top priority must be jobs and the economy -- plain and simple."

And Sen. James Inhofe (R-Okla.), who is poised to reclaim the Senate Environment and Public Works Committee gavel, blasted the pledge as a "non-binding charade" -- especially for China, which could continue to "buy time" through 2030 as the U.S. slashes its own emissions.

"The American people spoke against the president's climate policies in this last election," said Inhofe. "They want affordable energy and more economic opportunity, both which are being diminished by overbearing EPA mandates.

"As we enter a new Congress, I will do everything in my power to rein in and shed light on the EPA's unchecked regulations," said Inhofe, who has promised to use his EPW chairmanship to exercise rigorous oversight over both the administration's climate change policies and the science of global warming, which he dismisses as a hoax.

But it is unclear what tools Republicans will have to restrict EPA's climate regulations. The agency is on track to finalize rules for new and existing power plant emissions by June 2015 and is mulling restrictions for oil and natural gas methane, as well. A decision on the latter is due in the next few weeks, and last night's announcement might signal that EPA will move forward on those rules.

Meanwhile, a Republican-held Senate might be more likely to pass policy riders and stand-alone legislation to kill some or all of the rules, but those efforts would still need to attract 60 votes to overcome a likely Democratic filibuster. The Congressional Review Act allows resolutions vetoing executive branch rules to clear the Senate on a simple majority. But the rarely used law still requires a presidential signature, and opponents of regulations don't have the two-thirds majority they would need to override Obama's veto.

Ornstein said Republicans might use next year's congressional budget process as a tool to strip EPA's authority. By attaching reconciliation instructions to the budget, Senate GOP leaders could ensure that EPA-related legislation clears the Senate under expedited rules that include a simple majority.

The maneuver requires lawmakers to argue that EPA policies will have an effect on balancing the budget, but Ornstein said a case could be made. "I assume the rationale will be that curbing carbon emissions reduces GDP and corporate tax revenues, thus worsening deficits," he said.

Still, that legislation would be likely to receive a presidential veto.

Cabinet pledges support

The president's Cabinet, meanwhile, offered enthusiastic backing for Obama's new set of emissions pledges.

EPA chief Gina McCarthy pledged her agency's support during a call with reporters.

"I think that the targets are ambitious, but they are achievable," she said. She called the agreement a "significant step forward" that builds on progress the administration has made under Obama's leadership.

"I am convinced that building on the efforts that are already underway, delivering as we will on the president's Climate Action Plan and looking at executive authorities that the president currently has -- as well as voluntary actions that are going to move forward -- that we'll be able to deliver these reductions," she said.

She touted steps her agency is already taking to curb domestic greenhouse gas emissions, including a draft rule to curb emissions from power plants, a rule to cut emissions from heavy-duty trucks, and efforts to curb hydrofluorocarbons and ozone-depleting substances. The administration is also working on a plan to limit methane emissions and taking action to address volatile organic carbon emissions from natural gas wells, she added.

And Secretary of State John Kerry said in a column in *The New York Times* yesterday that cooperation with China would ensure a meaningful global response to warming.

Calling engagement with China "the world's most consequential relationship," Kerry wrote that the announcement would pave the way for successful negotiations in Lima, leading to an agreement in Paris next year.

"The commitment of both presidents to take ambitious action in our own countries, and work closely to remove obstacles on the road to Paris, sends an important signal that we must get this agreement done, that we can get it done, and that we will get it done," he wrote.

And Senate Democrats preparing to enter the minority applauded Obama for using his existing powers to address climate change.

"Now there is no longer an excuse for Congress to block action on climate change," said Sen. Barbara Boxer (D-Calif.), the outgoing chairwoman of the Environment Committee. "The biggest carbon polluter on our planet, China, has agreed to cut back on dangerous emissions, and now we should make sure all countries do their part because this is a threat to the people that we all represent."

Reporter Robin Bravender contributed.

GRID:

Overseers flag concerns as system shifts to gas, renewables

Hannah Northey, E&E reporter

Published: Wednesday, November 12, 2014

A national surge toward natural gas and renewable energy driven by cheap gas and new government rules and policies is creating reliability concerns -- especially in the Midwest, New York and Texas -- and weakening buffers for blackouts, grid overseers warned today.

And those problems loom even before considering the impact of U.S. EPA's power plant initiative, the North American Electric Reliability Corp. said.

Atlanta-based NERC's annual long-term reliability assessment says reserves of on-hand electric capacity for grid reliability are declining in the Midwest, New York and Texas despite historically low demand for electricity.

Power plant closures, a slowdown in new construction and retirements triggered by new environmental regulations are hampering power supplies in those areas and cutting reserve margins, John Moura, NERC's director of reliability assessment, told reporters on a call today. Moura noted that although Texas has new capacity coming online that will elevate reserves through 2018, the state's reserve margins are slated to dip thereafter.

NERC is responsible for crafting reliability and security standards subject to reviews by the Federal Energy Regulatory Commission.

The grid monitor sees more than 83 gigawatts of fossil and nuclear capacity being retired between 2011 and 2024. Slightly more than 44 GW of coal-fired generation will be retired between now and 2024 and almost 30 GW of gas-fired generation, NERC said. The outlook is a slight decrease from its assessment last year, which found more than 85 GW of capacity could be retired by 2023.

Although NERC's assessment did not include the potential effects of EPA's proposed Clean Power Plan under Section 111(d) of the Clean Air Act, the report did analyze and question EPA's assumptions about efficiency and infrastructure, and made clear the proposal has clear implications for grid reliability.

The Clean Power Plan will accelerate the nation's shift toward natural gas, solar and wind, and a stronger focus needs to be placed on the long construction timelines for new transmission and pipelines, NERC said. Citing a recent study conducted by Energy Ventures Analysis, NERC noted that under EPA's proposal, almost half the country's generation could come from gas-fired generation by 2040 -- and more than the traditional three-year lead time for gas pipeline projects will be needed.

"With this shift toward more natural gas consumption in the power sector, the power industry will become increasingly vulnerable to risks from natural gas supply and transportation issues," NERC wrote. "Adverse winter weather, such as the 2014 polar vortex, provided an example of the potential impacts to supply and transportation."

NERC also said that EPA assumes energy efficiency will grow at a rate that "exceeds recent trends and projections," and that the implications of such an assumption -- or the failure of that scenario to play out -- are complex and could put states in precarious situations.

"What we're really concerned with is really the spillover effect that can occur within that proposed plan, where if you don't achieve those levels of energy efficiency that are expected, you'll have to make up that carbon reduction in different ways, which could include [renewables], retirements of other coal resources," Moura said.

A new resource mix is going to require new approaches to assessing reliability, something NERC through its Essential Reliability Services Task Force hopes to implement during the next one to two years, Moura

said. Such an approach would consider the characteristics of wind and solar, and the need for services that baseload plants provide, including voltage support.

"If we continue to go down the path of only looking at resource adequacy, that assumes every megawatt is a one-for-one replacement, and we need to start conducting future reliability assessments understanding that is not the case," Moura said. "As we add in certain resources with different reliability characteristics, we're going to need a new approach, new tracking, monitoring and measurement to ensure we can maintain the right [services for reliability]."

Separate report on EPA rule

Today's report arrives on the heels of NERC's issuance last week of a report that highlights grid reliability concerns with EPA's Clean Power Plan (*Greenwire*, Nov. 7). EPA later criticized NERC's draft analysis, saying the organization overlooked new capacity that will be built by 2020, namely new natural gas and renewable generation that would help offset retirements of older coal-fired units, aided by improvements in efficiency that will decrease demand.

Tom Burgess, NERC's vice president and director of reliability assessment and performance analysis, told reporters that NERC is "looking at both sides of the coin," including retirements anticipated for a number of reasons, as well as new generation on the horizon and the need for more infrastructure.

But John Moore, senior attorney with the Natural Resources Defense Council, said both the long-term assessment and NERC's analysis of the EPA rule need to take a more holistic approach, and focus on the reliability benefits of clean energy as opposed to simply analyzing the challenges of a changing energy landscape.

"In particular, NERC should take a closer look at the reliability values of wind and solar," Moore said. "For example, wind is now dispatchable and can provide vital grid reliability services. This is truly the time for regional and larger transmission system planning with grid operators and states working closely together to ensure these clean, renewable resources are sufficiently integrated so that we will have a reliable grid and lower customer bills."

Burgess told reporters today that it's too early for grid operators to estimate what kind of consequences a newly announced U.S.-China deal could have on EPA's carbon proposal or grid reliability.

"We have an eye on it, and we'll be monitoring it," Burgess said.

EPA:

McCarthy 'confident' Obama has her back

Robin Bravender, E&E reporter

Published: Wednesday, November 12, 2014

Senate Republicans are pledging to do whatever they can to trash contentious U.S. EPA air and water rules when they're in charge next year.

But EPA boss Gina McCarthy thinks President Obama will stand up for her agency.

"I think the president has been very clear in the direction in which he is moving. It has not changed at all," McCarthy told reporters today when asked whether she was confident President Obama would reject any

efforts to hamstring EPA policies.

Likely incoming Senate Majority Leader Mitch McConnell (R-Ky.) has already promised votes that take aim at EPA's regulations, and a host of other GOP lawmakers are expected to seize every opportunity to target controversial rules like those aimed at reducing greenhouse gas emissions from coal-fired power plants and clarifying the scope of the Clean Water Act.

The Senate Democratic majority has long been EPA's first line of defense against such attacks, but with the GOP eyeing policy riders and hoping to get moderate Democrats' support for anti-EPA measures, Obama's veto pen represents EPA's best defense.

And McCarthy doesn't think Obama will budge. "I'm very confident both in his support, but I'm also confident that, based on history, we know that a healthy environment for our kids has always ... and should garner continued support, bipartisan support," McCarthy said.

"We are really hoping that we can continue to work with Congress to explain the work that we're doing to make them understand that a healthy environment is not just good for our kids, but good for our economy."

CLIMATE:

Surveys show huge gap between farmers, ag scientists on warming

Tiffany Stecker, E&E reporter

Published: Wednesday, November 12, 2014

Farmers in the U.S. heartland have strong doubts about human actions contributing to global warming, a peer-reviewed study has found.

In a survey of nearly 4,800 Midwestern corn farmers, only 8 percent believed climate change was caused by human actions, and more than a third thought it wasn't happening or that there wasn't enough evidence to prove its existence.

The findings mirror results from a recent survey of farm experts from agribusinesses and advisers from the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) and soil conservation districts. About 12 percent of crop advisers said they believe climate change is caused by humans, and 25 percent said global warming is false or lacks proof.

Half of surveyed USDA scientists said human activity contributes to climate change, and 53 percent of state and extension climatologists agreed. Almost one-fifth of 239 agricultural extension educators -- those who take university research and apply it in the field -- said they believe global warming is linked to human activity.

The gap makes for difficult communications, said Linda Prokopy, lead author of the study and an associate professor of natural resource social science at Purdue University.

"As we're trying to develop outreach to the agricultural community, we need to understand where they are," said Prokopy.

The data were drawn from surveys in 2011 and 2012, before the drought that shriveled corn crops in the Midwest in the summer of 2012.

Farmers were surveyed from North Dakota to Ohio, and advisers were polled in Nebraska, Iowa, Indiana and Michigan. While the drought sparked discussion on climate change nationwide, it's unlikely that it would have changed the survey results, Prokopy said.

Sample sizes varied greatly. The farmer survey was the largest, with nearly 4,800 respondents. Two scientist surveys were taken in 2011 and 2013 -- with 121 and 33 respondents, respectively -- from researchers on projects to offer climate information to corn growers.

More than 1,600 advisers completed a survey, and 19 climatologists were asked their thoughts on climate change.

Prokopy has submitted another paper for review that delves into the different takes on climate change between public advisers and private advisers. NRCS staff members, Farm Service Agency workers and those affiliated with soil conservation districts were far more likely to believe in man-made climate change. Employees of state departments of agriculture, certified crop advisers, agricultural retailers, agricultural bankers and cooperative members were more likely to be skeptical, she said.

The proportion of Iowa farmers who said they believe in man-made climate change increased from 2011 to 2013, according to an Iowa State University Extension and Outreach poll (*ClimateWire*, Nov. 8, 2013).

Another study from the University of California, Davis, found that climate change does concern farmers, but not as much as the potential regulation that could come with it (*ClimateWire*, Sept. 12, 2013).

In order to bridge the climate divide in the Midwest, educators must reduce the threat to "individual worldviews" that global warming can stir, the study's authors say.

One way of doing this is to use climate-tracking tools, like a tracker to count corn-growing degree days, that bring in historical climate data and seasonal projections.

"Scientists need to be cognizant of divergent worldviews as they present their findings and avoid inflammatory statements or assumptions that could block receptiveness to learning about the climate cycle and how farmers can use that information in their decision making," the authors state.

BIOFUELS:

Govs. Brown, Inslee warn administration about scaling back RFS

Amanda Peterka, E&E reporter

Published: Wednesday, November 12, 2014

The Democratic governors of Washington and California are warning that a rollback of federal biofuel mandates could thwart state efforts to support low-carbon advanced biofuels.

In a letter to Obama administration officials, Govs. Jay Inslee of Washington and Jerry Brown of California said that scaling back the federal renewable fuel standard this year, as U.S. EPA is considering, would create an uncertain policy atmosphere that could hurt their states' renewable fuel initiatives.

California has in place a low-carbon fuel standard to fast-track adoption of advanced biofuels, while Washington is in the midst of drafting a similar policy.

"These efforts will be most effective if complemented by strong and consistent federal policy support for advanced biofuels," the governors wrote in the letter obtained by *Greenwire*, dated Friday.

According to industry observers, EPA is likely to release its final 2014 renewable fuel standard rule in the coming weeks. EPA sent its final rule to the White House Office of Management and Budget for interagency review in August; as of this morning, the rule was still listed at OMB.

The agency's proposed rule from last November called for a 16 percent cut in the overall mandate for renewable fuel use this year compared with the level Congress anticipated when the renewable fuel standard was enacted into law in 2007. For advanced biofuels, EPA proposed a mandate of 2.2 billion gallons for 2014, compared with the RFS level of 3.75 billion gallons. The agency also proposed to change the way in which it calculates annual renewable fuel mandates, basing targets for the first time on the ability of the oil industry to distribute biofuels.

In their letter to EPA Administrator Gina McCarthy and Office of Management and Budget Director Shaun Donovan, Inslee and Brown urged EPA to "refrain from adopting new methodologies that would curb investment in low carbon renewable fuels" and to provide that renewable fuel volumes in the country "increase steadily, not just for 2014, but through 2022 and beyond."

The Obama administration is poised to overturn at least five years of progress in domestic biofuels, the Democratic governors warned.

"The significant volume reductions in EPA's 2014 proposal damaged the policy stability that is essential to the RFS, and we are concerned that the same action could be taken in coming years," they wrote.

The governors' concerns are similar to those voiced by the advanced biofuels industry over the past several months in response to the EPA proposal. Oil industry groups, on the other hand, have urged the Obama administration to enact even lower biofuels mandates on the grounds that there are constraints to their ability to use renewable fuels.

Industry observers expect both the biofuels and oil industries to launch legal challenges against EPA's final rule.

SENATE:

Energy Committee assignment promised to Cassidy

Nick Juliano, E&E reporter

Published: Wednesday, November 12, 2014

Senate committee rosters won't be finalized for at least a few more weeks, but the Energy and Natural Resources Committee is sure to include a Louisianan regardless of the results of the upcoming runoff to decide who will represent the state.

Republican Leader Mitch McConnell (Ky.), who is in line to be majority leader next year, today promised an ENR seat to Rep. Bill Cassidy (R-La.), who is attempting to unseat Sen. Mary Landrieu (D) in the Dec. 6 race.

"I'm excited to announce that when elected, Dr. Cassidy will be a member of the Senate Energy and Natural Resources Committee. I'm confident Dr. Cassidy will use this position to succeed where Senator

Landrieu failed," McConnell said in a statement released by the Cassidy campaign this morning. "One of our top priorities will be actually passing the Keystone XL pipeline. And Dr. Cassidy will help lead the charge to rein in EPA regulations that are raising utility rates and costing jobs."

Cassidy's promised ENR seat comes a day after word began circulating that Senate Democrats may vote on a KXL bill during the lame-duck session that begins today, a move that would aid Landrieu's campaign ahead of the runoff (*E&E Daily*, Nov. 12).

Landrieu, who led the committee this year, has criticized environmental regulations as too costly to the economy and repeatedly called for approval of the KXL pipeline, which would carry oil sands crude from Alberta to Gulf Coast refineries. Since becoming Energy chairwoman earlier this year, Landrieu has touted the opportunities that clout has provided to advance policies important to her home state's oil and gas industry. But that argument took a hit when Republicans secured control of the Senate, meaning she won't hold a gavel next year regardless, and Cassidy has argued she is too close to President Obama and other Democrats to truly go to bat against the administration's environmental agenda.

"I'm excited to serve on the Energy Committee and will use that seat to stand up to President Obama, to deliver a floor vote on the Keystone XL pipeline and to protect Louisiana's energy industry," said Cassidy, currently a member of the House Energy and Commerce Committee. "Senator Landrieu may have talked the talk on energy, but she never walked the walk. Louisiana will now have representation on this esteemed committee that's with them, not Barack Obama."

A Landrieu spokesman pointed to work she has done throughout her career, including co-authoring the Gulf of Mexico Energy Security Act, which opened new areas to drilling and directed a share of revenue back to Louisiana; placing a hold on Jack Lew's nomination to lead the White House Office of Management and Budget to pressure the administration to lift its offshore drilling moratorium; and supporting liquefied natural gas (LNG) and refinery projects in the state.

Cassidy would be a "welcome addition" to the Energy Committee, said Robert Dillon, a spokesman for Sen. Lisa Murkowski (R-Alaska), who is in line to lead the panel come January.

This year, Democrats enjoyed a 12-10 advantage on the Energy Committee, meaning Republicans would have at least one more seat on the panel to fill besides Cassidy's if that margin is reversed. Don Stewart, a McConnell spokesman, said ratios are still being negotiated and declined to speculate on who else may join the panel.

Some members may also leave to join other panels, as typically happens between sessions of Congress, meaning there would be additional openings to be filled.

Dillon noted the committee traditionally has included a heavy contingent of members from Western states, where energy production is more prevalent and larger areas of land are managed by the federal government, and he said more emphasis on the region was likely in the next Congress. Currently, six of the 10 Republicans and five of 12 Democrats on the committee come from Western states, as defined by the Census Bureau.

Committee assignments are expected to be decided by early next year at the latest and could be decided by the time lawmakers adjourn for the holidays.

CLIMATE:

Court rulings pushing administration on GHG reviews will stand

Manuel Quiñones, E&E reporter

Published: Wednesday, November 12, 2014

A series of federal court rulings faulting the Obama administration for not giving climate concerns enough scrutiny in coal-leasing mining decisions will stand.

At issue is Colorado U.S. District Court Judge R. Brooke Jackson's June and September rulings against an Arch Coal Inc. mine expansion within the Gunnison National Forest, plus pro-coal-mining provisions of the Colorado roadless rule (*Greenwire*, Sept. 17).

In both cases, Jackson said, federal regulators should have spent more time addressing the potential climate impacts of mining, or at least have better explained why they weren't looking into issues like the social cost of carbon.

Environmental groups that launched the litigation against the Bureau of Land Management and Forest Service said the deadline for the administration or Arch to appeal was Monday. Neither has indicated its intention to do so.

"The Obama administration's move to accept this ruling and not appeal is an encouraging sign that it will take the hard look at the climate pollution caused by unlocking hundreds of millions of tons of coal for mining," said Earthjustice attorney Ted Zukoski.

Without an appeal, agencies are likely to move forward with beefing up their reviews for the mine expansion and Colorado roadless rule. Arch executive Deck Slone expressed support for a speedy process and touted the rule as a compromise between conservation and mining interests.

"As the court recognized, the Colorado Roadless Rule was a significant achievement and a testament to what collaboration and cooperation can achieve," he said. "It's regrettable and unfortunate that a central tenet of that rule -- the North Fork exception -- has been vacated on procedural grounds."

He added, "The West Elk mine is a cornerstone of the regional economy in the North Fork Valley, and the Sunset Trails lease is important to the future of the mine and the more than 350 direct jobs there."

In recent weeks, amid the possibility of an appeal, Zukoski had pointed out that the Federal Energy Regulatory Commission is using the controversial social-cost-of-carbon calculation as it considers the proposed natural gas pipeline capacity in New York and Pennsylvania.

Environmental groups want the administration to use such reviews for National Environmental Policy Act project reviews and not just to defend rulemaking.

RENEWABLE FUELS:

Judges weigh refinery's case seeking exemption from RFS

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, November 12, 2014

A small Wyoming refinery today asked federal judges to overturn U.S. EPA's denial of its request for an exemption from complying with the agency's renewable fuel standard.

Hermes Consolidated Inc., which does business as the Wyoming Refining Co., claims it qualified for an additional two-year "small refinery exemption" from meeting the 2013 standard, which requires refineries to either blend renewable fuels or purchase credits.

The refinery, which is located in Newcastle, Wyo., and employs about 110 people, previously obtained such an exemption. But in January, EPA rejected its request for another, relying on the refinery's financial situation as well as more a refined metric to determine how difficult it would be for the refinery to comply.

At the U.S. Court of Appeals for the District of Columbia Circuit today, the refinery, which was acquired in 2011 by Black Elk Refining LLC, argued that EPA shifted its method for calculating whether an exemption should be granted in the middle of 2013, putting it at a disadvantage.

Eric Miller of Perkins Coie, representing the refinery, criticized EPA's "failure to treat like applicants alike."

But that argument was challenged by the three-judge panel and rebutted by EPA's attorney. Judge Srikanth Srinivasan, a Democratic appointee, said that if EPA had changed its model at the end of 2012, that would have similarly been challenged the following year.

And Chief Judge Merrick Garland said he was "not following" Miller's argument because the small refineries that apply for the exemption are not direct competitors. So EPA changing its metric didn't put the Wyoming refinery at a disadvantage.

"Why should that matter," Garland, a Democratic nominee, asked, "if they are not competing with each other?"

Justin Heminger of the Department of Justice, representing EPA, also contended that EPA had not, in fact, changed models in the middle of the year.

But the panel also had problems with EPA's analysis.

Many of the specific figures of the case are sealed from the public because of the refinery's confidential business information. But the refinery's case largely focuses on the cost of renewable identification numbers, or RINs, credits it would have to buy to comply with the standard.

The refinery argues that compliance would be particularly costly because refineries anticipated reaching the 10 percent "blend wall," a technological constraint on the amount of biofuels that can be used in today's fueling infrastructure. Consequently, the price of RINs shot up as refineries sought to ensure compliance with the 2013 standard.

The Wyoming refinery has an inability to blend biofuels, so compliance would depend on the purchase of RINs.

In rejecting its exemption request, EPA said the refinery should have done more to install infrastructure upgrades in order to comply with the requirements by blending fuel. It also noted that the refinery paid out a significant dividend to its investors the previous year.

But the judges noted that some of the figures EPA relied on appear to be wrong. In particular, Srinivasan noted that EPA's figure for the company's net income was off by 73 percent.

Srinivasan pointed out that EPA said that the refinery's net income would be significantly greater than RIN cost and that it was profitable enough to comply.

The judge expressed reservations about backing the agency's denial if it relied on faulty figures.

Heminger argued that EPA, as well as the Energy Department, analyzed other figures that were accurate.

But Srinivasan asked, "Is it clear that EPA would have reached the same decision" without the net income numbers?

A decision in *Hermes Consolidated Inc. v. EPA* is expected by next summer.

ENERGY MARKETS:

Coal, oil will plateau by 2040 while renewables soar -- IEA

Manuel Quiñones, E&E reporter

Published: Wednesday, November 12, 2014

Coal and oil will both plateau by 2040 as renewable energy sources make significant gains, according to a report released today by the International Energy Agency.

IEA, in its latest "World Energy Outlook," predicted that the world energy supply would come from four relatively equal sources -- coal; oil; natural gas; and low-carbon production, including renewables and nuclear.

In 2012, IEA said coal was growing so fast, particularly in the developing world, that it would come close to overtaking oil as the globe's most dominant energy supplier.

But although the growth continues, IEA said coal's future was constrained because of global efforts to improve energy efficiency, address pollution concerns and reduce greenhouse gas emissions.

IEA, an association of countries, predicted that coal demand would be 15 percent by 2040 but said growth would slow down significantly after 2020. Demand will peak in China, drop by a third in the United States but keep growing in India, the report said.

In other words, by 2040, coal will no longer be the world's leading fuel for power production. That title will go to renewables, according to IEA.

"As our global energy system grows and transforms, signs of stress continue to emerge," Maria van der Hoeven, the group's executive director, said in a statement. "But renewables are expected to go from strength to strength, and it is incredible that we can now see a point where they become the world's number one source of electricity generation."

For now, it's competition from natural gas that's hurting coal companies the most, along with new pollution constraints and market conditions.

In fact, IEA said demand for natural gas would be 50 percent higher and it would be the only fossil fuel growing at a significant rate by 2040, despite U.S. production receding after 2030.

Coal companies are already feeling the pinch.

In recent weeks, Peabody Energy Corp. announced a $154 million third-quarter loss, Arch Coal Inc. a $97 million loss and Alpha Natural Resources Inc. a $185 million loss.

The Institute for Energy Economics and Financial Analysis released a memo yesterday questioning the ability of coal companies mining in the Powder River Basin to recover.

"We focus on the Powder River Basin producers because while they should be performing better than their peers elsewhere in the country in the current low-price environment, they aren't," wrote Tom Sanzillo, a former deputy comptroller for the state of New York and author of numerous papers questioning coal industry finances.

"Coal prices can improve, but not by much, because low natural gas prices now present an ever-present source of competition," Sanzillo wrote in the brief document.

Coal companies have benefited from a recent rise in natural gas prices and say global demand from countries like India, as outlined by IEA, will help keep them afloat.

"Advancing social and economic progress to alleviate energy inequality is the task for all global leaders," Peabody CEO Gregory Boyce said this week during the ongoing Asia-Pacific Economic Cooperation meeting in China, where President Obama and his Chinese counterpart just announced efforts at reducing CO2 emissions (*ClimateWire*, Nov. 12).

"Bringing an end to energy poverty -- the world's No. 1 human and environmental crisis -- should be our first-order priority toward inclusive growth and regional connectivity," said Boyce, stressing the company's new message. "Once we solve this crisis, our other societal needs become far more achievable."

When it comes to oil specifically, IEA predicted that supplies would rise to 104 million barrels per day by 2040, but they depend on investments in the Middle East.

That's because forecasters expect output to level off in the U.S. and fall back in other nations not belonging to OPEC.

Nuclear, which has seen a tough time following the 2011 reactor meltdown in Fukushima, Japan, will see 60 percent growth by 2040, concentrated in China, India, South Korea and Russia, but will remain below its historical peak, IEA said.

News that Japan is considering reopening at least some of its idled nuclear reactors boosted the price of uranium, which has been in decline for years.

BIOFUELS:

E85 sales to at least double in the next decade -- report

Amanda Peterka, E&E reporter

Published: Wednesday, November 12, 2014

Sales of gasoline tailored for flex-fuel vehicles will at least double by 2023, according to a report released today.

During the same time, however, sales of E85 could increase as much as twentyfold, depending on the price of the fuel relative to regular gasoline and the rate at which automakers produce flex-fuel vehicles, the report from the National Association of Convenience Stores' Fuels Institute found.

E85, gasoline containing up to 85 percent ethanol for use in flex-fuel vehicles, is widely seen as a potential means for increasing the amount of ethanol sold in the United States and meeting future renewable fuel mandates.

"We developed this report in direct response to requests from multiple congressional committees to provide a comprehensive source for information about the market for E85," Fuels Institute Executive Director John Eichberger said in a statement. "This objective analysis of E85 in the market and the range of its market potential is essential to provide guidance regarding the potential for E85 to meet the goals of the renewable fuel standard."

Up to now, E85 uptake by drivers has been hampered by disconnects between where flex-fuel vehicles are located and where E85 is sold at gas stations.

As of January, there were 14.2 million to 16 million flex-fuel vehicles registered on the road in the United States, or 6 percent of all registered light-duty vehicles.

But right now, just 2 percent of the nation's 152,900 gas stations offer E85 as a fuel choice. The majority of stations that sell E85, 60 percent, are located in just 10 states. Minnesota has the most gas stations selling E85, operating 303 of them in 2014.

According to the Fuels Institute report, there is room for growth both in the number of flex-fuel vehicles on the road and in the number of gas stations selling E85.

The report found that sales of E85 will increase from 196 million gallons in 2013 to at least 400 million gallons and up to 4.4 billion gallons by 2023. And by 2023, there could be 8,907 to 11,151 gas stations selling E15 and 25.9 million flex-fuel vehicles on the road.

The report takes into account retail sales data from more than 300 fueling locations that sell E85, consumer trends and vehicles sales, among other factors.

Whether E85 sales end up at the higher range of the estimates largely depends on the price at which gas stations offer the fuel, the report found. Because E85 contains about 23 percent less energy than regular-grade gasoline, the fuel must be priced sufficiently low enough for it to make economic sense for a flex-fuel vehicle owner to fill up with it at the gas station. The report found that E85 ideally must be priced 60 cents lower than regular-grade gasoline in order for consumers to use the fuel.

E85's growth also depends on the automobile industry continuing to adopt flex-fuel vehicles at current rates.

"Increasing the E85 station count would improve the potential for additional E85 sales and introduce additional competition to the market," Eichberger said. "But several other factors -- including the relative price of E85 compared to unleaded gasoline and the number of vehicles on the road that can operate on E85 -- must also be evaluated to determine the potential E85 market, especially because flex-fuel vehicles can operate on either E85 or gasoline."

AUTOS:

Hyundai, Kia to expand fuel-efficient lineup

Published: Wednesday, November 12, 2014

Hyundai Motor Co. and affiliate Kia Motors Corp. plan to triple the number of fuel-efficient cars offered by

2020, the carmakers announced today.

The companies have a combined total of seven fuel-efficient cars today and say they plan on having "at least" 22 by 2020.

Last week, in an effort to meet emissions regulations in the United States, Europe and South Korea, the companies pledged to increase the fuel economy in all vehicles by 25 percent by 2020.

Investors have expressed concern recently over Hyundai's new Genesis and Kia's new Soul for having lower fuel mileage than previous models. In addition to those concerns, the companies were recently fined $350 million by the United States for overstating vehicles' fuel economy (*Greenwire*, Nov. 3).

The companies plan to release 12 hybrid models that expand the lineup of small cars and sport utility vehicles. Plans also include six plug-in hybrid midsized and compact cars, two fuel cell cars, and two battery-powered electric cars (Hyunjoo Jin, Reuters, Nov. 12). **-- MH**

CALIFORNIA:

Cutting carbon emissions could boost jobs in Los Angeles

Published: Wednesday, November 12, 2014

A stricter carbon-cutting goal in Los Angeles could create thousands of jobs in the near future, said Mayor Eric Garcetti on Monday.

Garcetti cited a new University of California, Los Angeles, study finding that for every $1 million invested in energy efficiency programs, the city will gain 16 jobs a year.

Los Angeles has set a goal of cutting 15 percent of its carbon emissions between 2012 and 2020, higher than California's overall goal of cutting 10 percent during that same period.

If the goal is met, the amount of carbon emissions eliminated would equate to taking 440,000 cars off L.A. streets annually, said officials.

The mayor is promoting city programs that offer rebates for residents who buy energy-efficient appliances and support low-flow toilets and other energy-saving upgrades at small businesses.

"Energy efficiency is a win-win situation for anyone," said Jose Huizar, a Los Angeles city councilman. "Customers save money. The department doesn't have to build as many power plants. And we keep pollution out of our environment" (Emily Alpert Reyes, *Los Angeles Times*, Nov. 10). **-- MH**

JAPAN:

Contaminated water remains critical problem at Fukushima

Published: Wednesday, November 12, 2014

Instead of dismantling damaged reactors or removing fuel rods more than three years after the Fukushima Daiichi nuclear reactors melted down, the most pressing issue confronting cleanup at the Japanese nuclear power plant remains radioactive water.

Workers continue building more storage tanks -- almost 1,000 already house more than 500,000 tons of radioactive water -- as more water is required to keep reactors from overheating.

"Our effort to mitigate the problem is at its peak now," said Akira Ono, head of the Fukushima Daiichi plant, which was severely damaged by an earthquake and subsequent tsunami in 2011. "Though I cannot say exactly when, I hope things start getting better when the measures start taking effect."

Of the plant's 6,000 employees, the vast majority deal with contaminated water, threatening to exhaust the workforce as workers reach annual radiation exposure limits.

Some water is reused, but groundwater flowing into the plant has doubled the amount of contaminated water. The surplus must be pumped to the storage tanks at the surface, which have experienced recent leaks.

The entire decommissioning project for all six reactors is expected to take at least 40 years and cost about $90 billion (Mari Yamaguchi, Associated Press, Nov. 12). **-- DTB**

RENEWABLES:

Greenwood Energy's Patrignani discusses investment opportunities in Latin American market

Published: Wednesday, November 12, 2014

What opportunities exist for U.S. energy companies in the Latin American renewables market? During today's OnPoint, Camilo Patrignani, CEO of Greenwood Energy, a company heavily invested in Latin America, discusses the opportunities for investors, as well as the challenges and regulatory uncertainty that are pervasive in the Latin American renewables space.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Thu., November 13, 2014

READ FULL EDITION

1.GEOENGINEERING:

Legal mess hampers understanding of a major CO2 sequestration test

The second phase of what is believed to be the world's largest ocean-based geoengineering experiment started out with an early-morning knock on the door of the Vancouver offices of the aboriginal corporation in British Columbia that had conducted it.

2.REGULATION:

U.S.-China climate deal will create some stormy political weather

A climate deal between the United States and China could spur new regulations on vehicle-efficiency standards, refrigerant pollutants and methane emissions from the oil and gas sector, launching a new round of executive action that is sure to raise objections from a Republican-dominated Congress.

TODAY'S STORIES

3.STATES:

States square off over lawsuit to block EPA carbon rule

4.NEGOTIATIONS:
Just how ambitious is China's pledge?

5.ISLANDS:
Leader of Pacific island nation facing sea-level oblivion praises U.S.-China climate agreement

6.SCIENCE:
Researchers puzzle over differences between climate models and natural records

7.EXTREME WEATHER:
Eastern tropical cyclones can cause Midwestern flooding -- study

8.RENEWABLE ENERGY:
Boom in clean power gathers strength in West Africa

9.OCEANS:
Data analysis suggests end to global warming 'hiatus' -- researcher

10.OCEANS:
Drones plunge into Antarctic waters for data on warm underwater currents

11.ARCTIC:
Lack of U.S. icebreakers puts polar research, defense at risk

12.CITIES:
Designed to mitigate flooding, Jakarta's sea wall proposal raises questions

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., November 13, 2014

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1.CLIMATE:
U.S.-China energy partnerships get White House nod in major emissions deal

As part of a major U.S.-China agreement to cut greenhouse gas emissions, President Obama and Chinese President Xi Jinping also decided to keep plugging away at an energy research partnership viewed as a bright spot in the nations' relations.

TOP STORIES

2.ELECTRICITY:
Schumer blasted over plan to stymie FERC action on N.Y. market

3.ELECTRICITY:
Even as grid persists, EEI speakers say utilities' approach must evolve

4.NATURAL GAS:
4 pipelines in the works would bring Northeast gas to markets

ELECTRICITY

5.RENEWABLES:
In gridless Alaska, wind program aims to drive down expensive electricity prices

6.UTILITIES:
Institutional challenges persist in effort to recruit women

7.UTILITIES:
Long Island puts off renewable energy proposals for at least a year

OIL AND GAS

8.HYDRAULIC FRACTURING:
Texas legislators look for middle ground in response to Denton ban

9.NATURAL GAS:
Tensions at holy site spell trouble for electricity deal

10.MARKETS:
Natural gas, renewables will see big growth as 'global energy system' matures -- IEA

11.PEOPLE:
Marathon Oil appoints new director

12.HYDRAULIC FRACTURING:
Halliburton 'war room' monitors frac sand's movements

13.HYDRAULIC FRACTURING:
Voter-approved bans do little to settle local control issues

14.TRANSPORT:
N.Y. crude-by-rail terminal plans dropped

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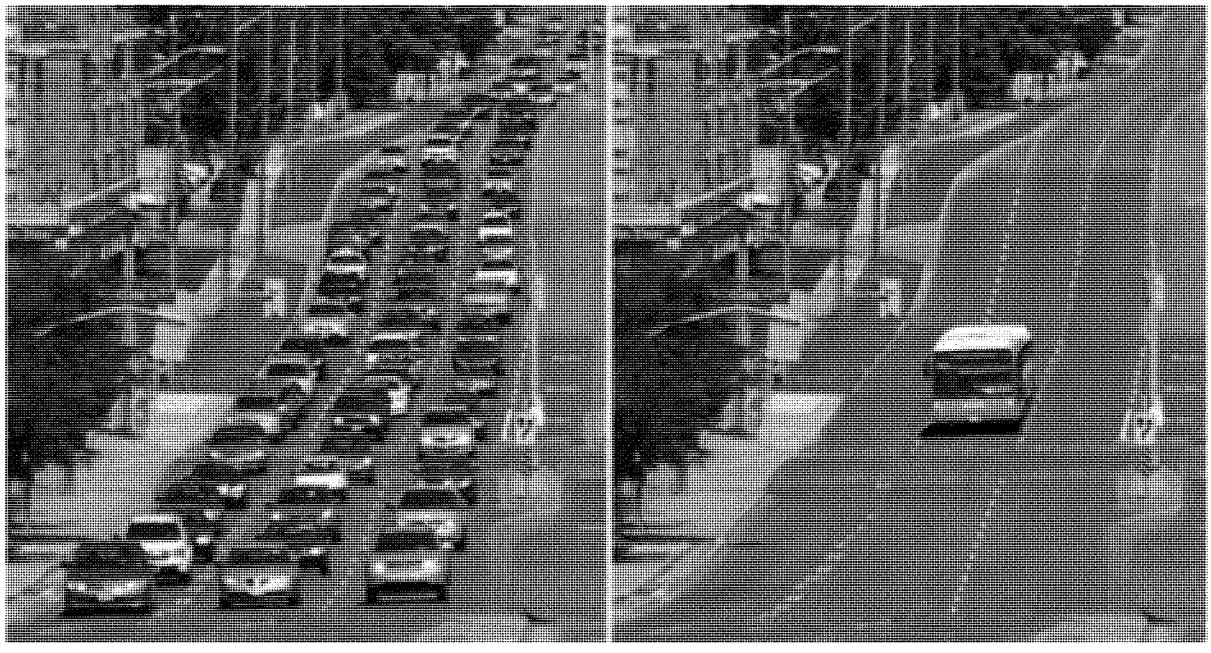

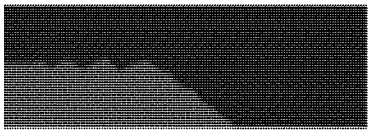

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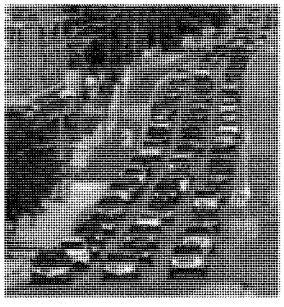

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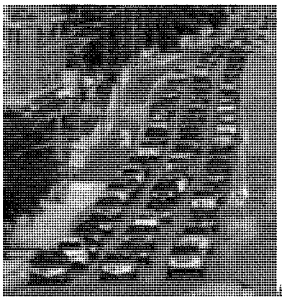
Subject: Air & Radiation Law News for November 12, 2014



Air & Radiation Law News

for November 12, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Develops Guidance on Interpretation Of Air Data From Handheld Sensor Monitors

The Environmental Protection Agency is developing informal guidance for citizens that will explain how to interpret air quality data from handheld sensor monitoring technologies, a senior agency official said....

Climate Change

Quebec Legislature Wants Province to Study Climate Change Implications of Energy East

Quebec's legislature has directed the provincial government to conduct its own environmental assessment of TransCanada's proposed Energy East pipeline project, asking it to specifically investigate the climate change implications...

Climate Regulation

EPA Will Continue Work on Carbon Rules, Says Efforts Shouldn't Be 'Political Football'

The Environmental Protection Agency will continue work on its carbon pollution standards for power plants despite pledges from congressional Republicans to stop them, spokeswoman Liz Purchia told Bloomberg BNA Nov. 10....

Congress

Seniority Not Determining Factor, Pelosi Says In Endorsing Eshoo for Energy Panel Post

House Minority Leader Nancy Pelosi (D-Calif.) again has endorsed fellow California Democrat Rep. Anna Eshoo over Rep. Frank Pallone (D-N.J.) in the race for the top Democratic spot on the House Energy and Commerce Committee. ...

Emissions Trading

EU Carbon-Fix Vote Method Is Open Question After Rule Change, Adding to Complications

European Union governments will have two options for calculating what voting majority is needed to reach a deal on a proposed carbon market fix, according to an EU rule that took effect this month....

Energy

Senate Energy Chairman Landrieu Sets Vote On Bill to Expedite Decisions on LNG Exports

Sen. Mary Landrieu (D-La.), who is fighting for her political life in a December runoff, has scheduled a Nov. 13 vote in the Senate Energy and Natural Resources Committee on a bill that would expedite agency decisions on natural gas exports....

Enforcement

Chevron Fined Over Noncompliant Gasoline

Chevron Corp. has paid $329,700 in penalties for supplying 4.4 million gallons of over-oxygenated fuel to California retail gasoline stations, state air quality officials said Nov. 10. The penalties stem from the company's self-reported...

Renewable Energy

BrightSource, Shanghai Electric to Build Solar Projects

BrightSource Energy Inc. and Shanghai Electric Group Co. plan to build two 135-megawatt solar thermal power plants in China, the first proposal under a joint venture to develop utility-scale projects. Located in western China's Qinghai...

Renewable Energy

Texas Power Line Owner Plans Battery Fix For Fluctuating Output From Wind, Solar

Oncor Electric Delivery, owner of the largest power-line network in Texas, wants to spend more than $2 billion on batteries to solve the problem of fluctuating output from wind and solar....

BNA INSIGHTS

BNA Insights: Why Government Must Acknowledge the Interdependence of Energy and Water

California is the midst of a three-year drought with no end in sight. And while most of the news coverage focuses on municipal and agricultural sustainability, another danger looms in the background: energy security.

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Inside EPA **Environmental Policy Alert**, 11/12/2014

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Latest News

EPA Offers Broad Defense Of Boiler MACT Air Toxic Regulation's Legality

EPA is offering a broad defense of the legality of all provisions in its maximum achievable control technology (MACT) air toxics rule for large major source boilers, rejecting industry attacks on a mandate to conduct boiler energy audits and other alleged flawed requirements while also fighting advocates' claims that the rule is too weak.

EPA, Environmentalists Resist Texas' Effort To Block GHG Permitting

EPA and environmentalists are rejecting Texas' arguments that the agency cannot permit greenhouse gases (GHGs) at new or modified sources until it issues *de minimis* pollution thresholds, saying in new legal briefs that the state is intentionally misreading the recent Supreme Court ruling that narrowed the agency's permitting authority.

Greenwire

WHITE HOUSE:

Obama, Asia-Pacific leaders commit to energy goals at summit

Robin Bravender, E&E reporter

Published: Tuesday, November 11, 2014

President Obama joined leaders of the Asia-Pacific Economic Cooperation bloc today in expanding their goals for boosting renewable energy, cutting fossil fuel consumption and curbing wildlife trafficking.

Obama and others in the 21-member bloc convened on the shores of Lake Yanqi in Beijing for the group's annual economic meeting, where they agreed to a broad range of trade, economic and environmental goals.

"With U.S. leadership, the Asia-Pacific Economic Cooperation (APEC) forum plays an important role in pursuing green and sustainable growth in the region," the White House said in a statement. "APEC has elevated initiatives and partnerships aimed at promoting environmental protection in a diverse set of areas."

The economies of APEC's members -- including China, Russia, Canada, Japan, South Korea and Canada -- account for about 58 percent of global gross domestic product, 52 percent of the Earth's surface area and 59 percent of the world's population, the White House said. APEC's members also account for about 60 percent of global energy demand.

APEC leaders agreed to reduce "wasteful consumption of fossil fuels" by expanding the number of APEC economies that undergo voluntary peer reviews of their fossil fuel subsidies. In 2009, APEC leaders agreed to phase out inefficient fossil fuel subsidies to reduce greenhouse gas emissions and to cut wasteful energy consumption, the White House said.

Member nations have also agreed to double the share of renewable energy in the region's energy mix by 2030. That effort will involve new projects that focus on capacity building and grid integration of renewables. The nations also plan to work to reduce their energy intensity by 45 percent by 2035 in order

to support stable oil and gas supplies and to prepare energy infrastructure for the impacts of natural disasters and climate change.

"APEC economies will expand collaborative efforts to develop emergency response mechanisms, strengthen energy infrastructure, and increase timely, relevant, and reliable data that can address both safety as well as short-term disruptions in energy supplies after disasters," the White House said.

The countries' leaders pledged to expand efforts to combat wildlife trafficking by curbing demand for illegally traded products and boosting law enforcement cooperation. They also reaffirmed their commitment to crack down on wildlife-related crimes. "APEC serves as a valuable forum to pursue efforts to combat this pernicious trade by tackling the demand side of the economic equation, shifting consumer purchasing patterns in tandem with bolstering law enforcement cooperation," the White House said.

APEC member nations have also promoted the widespread use of electric vehicles (EVs) through greater alignment of rules concerning vehicle charging, using international standards as the basis for new regulations and establishing an EV research center by the end of 2015.

Obama and Chinese President Xi Jinping are also expected to discuss energy and climate change at a private dinner tonight.

The leaders are expected to "discuss a range of other bilateral and global issues that are of mutual interest to the United States and China," White House deputy national security adviser Ben Rhodes said today during a press briefing.

"Specifically," he said, "I'd expect there to be a discussion around our cooperation on clean energy and climate change as our two countries prepare for the ongoing international climate negotiations heading into next year."

ETHANOL:

Biofuel groups fault Northwest states' plans for low carbon standard

Tiffany Stecker, E&E reporter

Published: Tuesday, November 11, 2014

Washington state and Oregon should avoid replicating California's biofuel program and remove assumptions that will hurt corn ethanol, two industry groups warned this week.

The Renewable Fuels Association and Growth Energy issued the warning in recent comments to the Oregon Department of Environmental Quality (DEQ) and the Washington Office of Financial Management that ask regulators to remove proposed penalties for "indirect land use change."

"The ethanol industry was surprised and highly disappointed to see that the Phase 2 proposed rule includes subjective penalty factors for hypothetical indirect land use changes (ILUC) for select biofuels, but no indirect effect penalty factors for any other fuel types," Geoff Cooper, senior vice president of the Renewable Fuels Association, told Oregon DEQ in a letter.

ILUC is based on the economic assumption that a change in land use in one part of the world will affect markets to encourage land-use change in another part of the world. This may lead to increases in carbon emissions. For example, an Iowa farmer who plants corn to sell to an ethanol producer may contribute to a rise in the global price of corn, which would push Brazilian farmers to clear rainforest in order to take

advantage of high commodity prices.

Chris Bliley, director of regulatory affairs for Growth Energy, also warned against the inclusion of ILUC in Washington's biofuels program, as well as modeling the program after California. California has settled on a policy that seeks to regulate conduct outside of state borders, said Bliley.

"A [low carbon fuel standard] on the West Coast, for example, would be trying to change the way a biorefinery located in Nebraska produces ethanol," wrote Bliley in comments to Jim Cahill, senior budget assistant to Oregon Gov. John Kitzhaber (D).

"It is clear from California's experience with its own LCFS program that the state-level carbon-intensity regulations have served little environmental purpose. Ethanol to which California has assigned a high carbon-intensity score may not be sold in California, but it is sold elsewhere," Bliley continued.

The trade groups lost in their lawsuit against California's program in federal court in January. They have asked the Supreme Court to take up the case (*E&ENews PM*, March 20).

Oregon recently extended its deadline for comments to the end of the month. There is no formal rulemaking proposal yet in Washington, and Growth Energy's comments aren't part of any official public comment period or rulemaking process.

Oregon has undergone the rulemaking process, and Washington has released a draft report on how the policy could be applied in the state.

SOCIETY:

Sports teams push eco-friendly messages

Published: Tuesday, November 11, 2014

In an effort to stimulate conversation about environmental issues, the Manchester United soccer team in England is hoping to communicate eco-friendly messages to fans during soccer matches.

"With 659 million fans around the world and two hours of live television in a billion homes, we're a powerful voice in speaking to those fans on these issues," said Richard Arnold, Manchester United's managing director.

In addition, the club has installed a 45-kilowatt-capacity solar-paneled roof to an "eco-trail" near the car park.

Manchester United isn't the only sports team attempting to communicate eco-friendly messages to its fans. The Brooklyn Nets basketball team in New York is holding a contest to get local businesses to commit to energy efficiency measures and rewards winners with free tickets and signed memorabilia. The Seattle Mariners baseball team holds green trivia that focuses on recycling during games.

"We don't campaign or lobby fans to change their behavior. We're not in the finger-wagging business. [But] our fans are aware of what we do. It's very much leadership by example," said Dale Vince, owner of the Forest Green Rovers soccer club and founder of the green electricity company Ecotricity (Oliver Balch, London *Guardian*, Nov. 10). **-- MH**

NATIONAL PARKS:

Grand Canyon proposes to reduce noise from aircraft

Phil Taylor, E&E reporter

Published: Tuesday, November 11, 2014

Grand Canyon National Park late last week proposed to loosen restrictions on air tour pilots who use quieter aircraft, part of an ongoing effort to incentivize the restoration of natural quiet that drew praise from Sen. John McCain (R-Ariz.).

The proposal by the park and the Federal Aviation Administration would exempt pilots who fly quiet aircraft through the Dragon and Zuni Point corridors during the first quarter of 2015 from counting those flights against their annual allocations.

If the plan succeeds in reducing noise in the desert canyon, the agencies will consider extending the relief to part or all of the fourth quarter of 2016.

The agencies are taking comments from the public through Dec. 10.

"This is a major step forward for promoting tourism jobs in northern Arizona and enhancing the soundscape at Grand Canyon National Park," McCain said Friday in a statement. "Air tours provide a unique sightseeing experience for people who might otherwise not be able to visit the Grand Canyon, particularly the elderly and the disabled."

The Park Service estimated that the new plan would allow for an additional 3,700 flights through the scenic Dragon-Zuni flight corridor during the more popular summer months, McCain said.

He said the added flights will support tourism while implementing legislation he authored and passed in the 2012 highway bill requiring that all aircraft in the Grand Canyon be equipped with quiet technology within 15 years.

McCain's amendment to the highway bill also required NPS and FAA to provide incentives for quiet aircraft technology.

Last week's proposal is the latest of several planned incentives, the agencies said.

FAA in February announced plans to distribute FAA-held allocations to commercial tour operators in proportion to the number of quiet technology operations flown in the first six months of the year.

NPS beginning this year also reduced the per-flight fee from $25 to $20 for an air tour using quiet technology.

Air tours over the Grand Canyon have been controversial since Congress in 1987 approved the National Parks Overflights Act sponsored by McCain, which required FAA and NPS to reduce noise pollution at the Grand Canyon by restricting aircraft.

The Park Service spent millions of dollars on a draft plan in 2011 to require that planes and helicopters fly at higher altitudes and forgo flights near sunrise and sunset, among other restrictions to restore quiet. But the plan was set aside as a result of McCain's highway bill language.

WILDLIFE:

Calif.'s shrinking Salton Sea poses threat to birds, air quality

Published: Tuesday, November 11, 2014

In California, officials are scrambling to fend off the ecological consequences expected as the 110-year-old Salton Sea continues to shrink.

The sea, created by accident when the Colorado River overran a series of dikes, now serves a crucial ecological role in the state's southeast, where it draws as many as 400 species of migrating birds.

"It's not a tragedy yet, but it could be a forthcoming tragedy if there is a failure of our government officials to take preventive measures," said Roger Shintaku, director of the Salton Sea Authority.

The state's drought and water diversions from the Colorado River to farms make the shoreline migrate a little to the north of the desert town of Mecca each year. That means fewer fish for birds to eat and more dust that blows into the air near schools and homes.

A recent study by the nonprofit Pacific Institute predicts water volume will decrease by 60 percent within 15 years, exposing 100 square miles of lake bed. The report said that will make it impossible for the area to meet federal air quality standards and cost $29 billion to $70 billion over 30 years (Felicity Barringer, *New York Times*, Nov. 10). **-- SP**

OIL AND GAS:

Calif. needs European-style refinery regs to ensure safety -- CSB

Published: Tuesday, November 11, 2014

California regulators need to significantly tighten restrictions on oil refineries to more closely resemble stricter regulatory regimes in Europe, the U.S. Chemical Safety Board said in its final report on the 2012 Chevron Corp. refinery fire in Richmond.

The report says the state regulator should "enhance its process safety management regulations for petroleum refineries to ensure a more robust and adaptive regulatory regime."

The board recommended a more comprehensive analysis of process hazards, documented use of safer systems analysis to reduce risk, analysis of how effective safeguards to control hazards are, more effective process safety indicators, and more rigorous inspections and audits.

The changes are needed to make oil refineries as safe as refining and chemical facilities in Europe and Australia, and to incorporate safety principles already in use in the nuclear and space industries in the United States, the board said.

California's Division of Occupational Safety and Health took the first step to write tighter refinery regulations when it released draft regulations for refinery safety in September.

Earlier this year, CSB proposed similar regulatory steps, but the plan was voted down by board members, who said the agency needed more time to review the idea (*Greenwire*, Jan. 16).

CSB, which makes nonbinding recommendations, will hold a public meeting in December to release its third and final report on the Chevron fire, CSB Chairman Rafael Moure-Eraso said (Craig Lazzeretti,

Contra Costa Times, Nov. 10). -- **SP**

NATURAL GAS:

Trade group offers online map of roadside refueling stations

Sean Reilly, E&E reporter

Published: Tuesday, November 11, 2014

Natural Gas Vehicles for America today launched an online map to help truckers and other drivers find stations where they can fuel up on compressed natural gas or liquefied natural gas.

The map also shows how far -- in increments of 100, 400 and 600 miles -- drivers can expect to go on gas supplies available at a particular station.

The online map "is an important addition to our online resources that help further expand the use of natural gas as a vehicular fuel," said Matt Godlewski, the president of NGVAmerica, in a news release.

While the Energy Department's Alternative Fuels Data Center already maps stations that sell natural gas, the range information on NGVAmerica's site is an added feature, said Paul Speraw, a spokesman for the trade group.

"It's a good visual way to show people how far they can go and what routes or areas are available to them," Speraw said.

The map, which draws on information collected by the data center, will be updated monthly.

There are more than 1,500 natural gas fueling stations nationwide, with up to 300 more expected this year, the group said on the site. While a little more than half are open to the public -- as opposed, for example, to those run by industry or government fleet operators -- more are being built "with an emphasis on creating a traditional fueling experience for the customer," the group added.

WATER POLLUTION:

Scientists detect trace levels of radiation from Japan disaster off Calif. coast

Published: Tuesday, November 11, 2014

Researchers have detected the first faint traces of radioactivity off the coast of California from the Fukushima Daiichi nuclear disaster, though scientists say the radiation levels are not high enough to threaten human or marine life.

Ken Buesseler, a nuclear chemist at the Woods Hole Oceanographic Institution, said the radioactivity was detected in water samples collected from a research vessel 100 miles off the coast of Eureka, Calif., in August.

The findings confirm a similar report last year by Canadian researchers, who detected faint traces of radioactivity in the ocean off the coast of British Columbia.

The level of cesium-137, which is measured in units called becquerels, is more than 1,000 times lower than U.S. EPA drinking water standards, Buesseler said (David Perlman, *San Francisco Chronicle*, Nov. 10). **-- SP**

DENMARK:

Nation aims to end fossil fuel use by 2050

Published: Tuesday, November 11, 2014

Denmark hopes to end its use of fossil fuels in all forms by the year 2050.

To date, 40 percent of the country's grid power is from renewable energy, and the country hopes to expand that number to 50 percent by 2020. Denmark joins neighboring Germany with its ambitious renewable energy plan.

Although many throughout Europe welcome the goal, some critics worry that if a power backup is needed, and there is no wind or sun, the country could face many problems.

"We are really worried about this situation," said Anders Stouge, the deputy director general of the Danish Energy Association. "If we don't do something, we will in the future face higher and higher risks of blackouts."

The Danish government also has provided short-term subsidies for companies of traditional power plants concerned with the possibility of bankruptcy (Justin Gillis, *New York Times*, Nov. 10). **-- MH**

CHINA:

Beijing blocks pollution data during APEC

Published: Tuesday, November 11, 2014

Authorities have censored pollution-monitoring data during the seven-day Asia Pacific Economic Cooperation conference in Beijing this week.

Many residents get detailed pollution updates by monitoring websites and apps, which usually provide data from Beijing city authorities and the U.S. Embassy.

Readings from the U.S. Embassy are widely considered more accurate and trustworthy, but embassy readings were not publicized on the monitoring websites during the conference this week.

According to a posting on Beijing-air.com, the monitoring site had "received instructions from authorities saying that this month's air quality readings will be based only on what is released by the Beijing environmental protection bureau."

The Chinese government also took steps to curb pollution in the Beijing area during the conference. The closure of factories, postponement of a coal-heating season and car ban all helped coin the new term "APEC blue," which described the uncharacteristic color of the sky in Beijing last week (Louise Watt, Associated Press, Nov. 11). **-- AW**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., November 12, 2014

READ FULL EDITION

1.NEGOTIATIONS:

Obama announces 'major milestone,' a landmark climate agreement with China

President Obama and Chinese President Xi Jinping struck a historic climate change agreement in Beijing last night, vowing that the world's two largest emitters of greenhouse gases will each undertake steep cuts in the coming decade and will work together toward a new global deal.

2.GEOENGINEERING:

Are record salmon runs in the Northwest the result of a controversial CO2 reduction scheme?

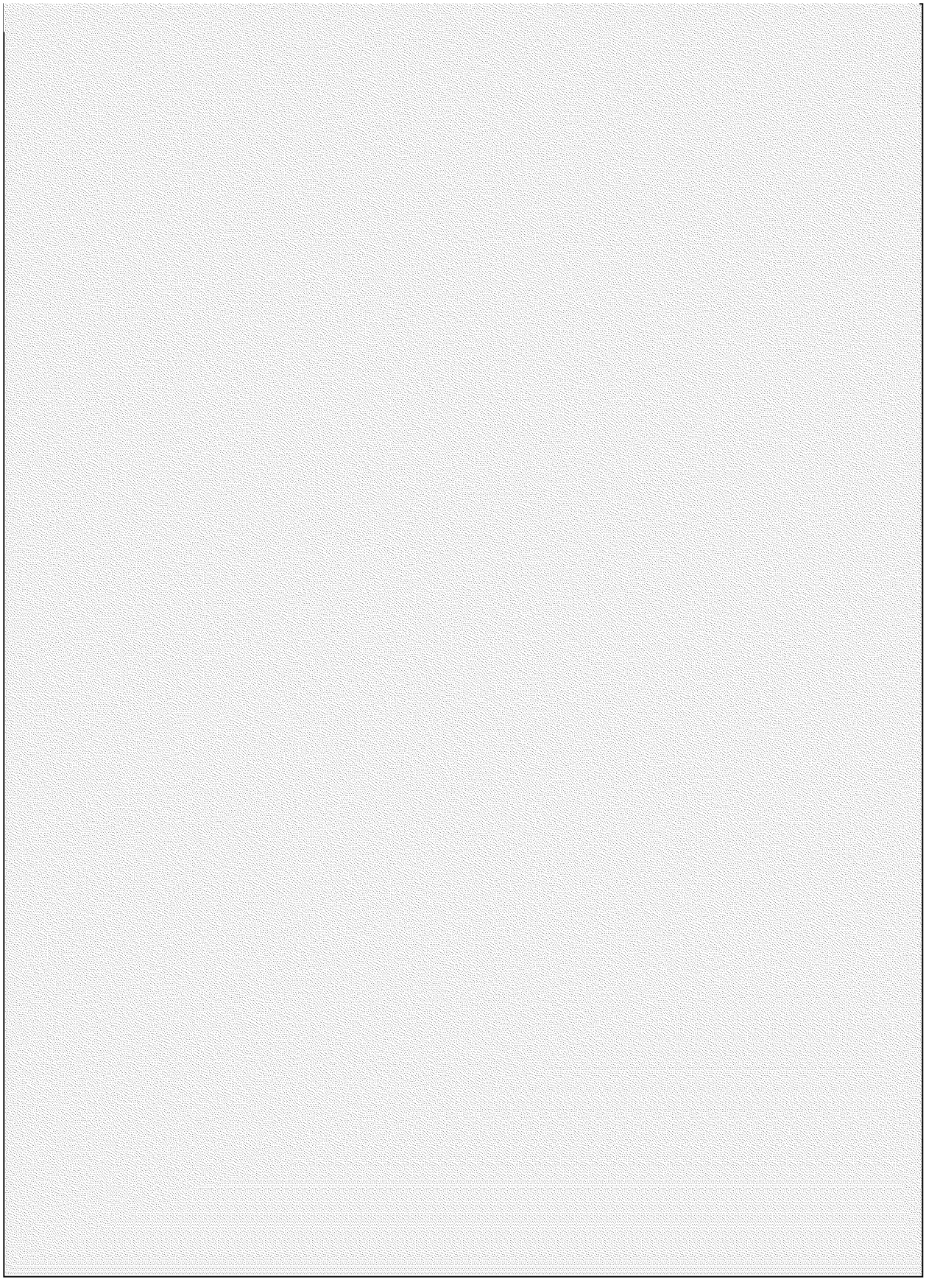
For the past 100 years, the Haida First Nations tribe in Canada has watched the salmon runs that provided its main food source decline. Both the quantity and quality of its members' catch in the group of islands they call home, off the coast of British Columbia, continued to drop. The search for better solutions for the small village of Old Massett eventually led the Haida down a path that culminated in the largest ocean fertilization project of its kind ever attempted.

TODAY'S STORIES

3.ADVOCACY:
How one writer is shaping the pro-fossil fuel debate
4.RESEARCH:
Republicans driven to deny climate change by its 'solutions'
5.FORESTS:
New maps highlight Peruvian forest risks and rewards
6.ADAPTATION:
Prophetic scientist presses New York City to 'switch the living and the dead'
7.TECHNOLOGY:
2 massive energy storage projects to be built in Midwest
8.BUSINESS:
Despite economic decline, Detroit remains significant GHG emitter -- study
9.SCIENCE:
Climate change allowed rats to overcome rabbits in the evolutionary race
10.CALIFORNIA:
Lifeguards on L.A. County beaches have record number of ocean rescues
11.SCIENCE:
Satellite data may underestimate planetary warming by 30% -- study
12.NATIONS:
Think tank calls on Australia to cut emissions by 40%
13.EMISSIONS:
Eastern E.U. countries 'categorically reject' IPCC climate goals

E&ETV'S ONPOINT

14.RENEWABLES:
Greenwood Energy's Patrignani discusses investment opportunities in Latin American market



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ENERGYWIRE — Wed., November 12, 2014

READ FULL EDITION

1.ELECTRICITY:

Texas utility sees benefits in potential $2B battery storage rollout

Oncor Electric Delivery Co. said it's willing to invest more than $2 billion in a battery storage system in Texas after commissioning a study that found potential benefits in a state known for its partially deregulated power market. But the Dallas-based regulated utility said Texas would need to provide legislative or regulatory clarity to make its storage rollout concept possible.

TOP STORIES

2.SECURITY:

'Dragonfly' shows how simple human errors can undermine advanced defenses

3.TRANSMISSION:

Clean Line pursues key approvals for Midwest wind projects

4.OIL:

Driller exits up-and-coming shale play over low crude prices

ELECTRICITY

5.ELECTRICITY:

Duke sees possible role for nuclear as coal prospects dim

6.GRID:

Outlook for new generation brightens in New England

7.UTILITIES:

Ariz. regulators propose easing efficiency requirement

8.UTILITIES:

Northwestern groups consider their own energy imbalance market

9.NATURAL GAS:

Chilly Minn. should see lower prices this winter

OIL AND GAS

10.LNG:

Former gas import terminal begins its export transformation

11.HYDRAULIC FRACTURING:

Colo. city cannot enforce fracking moratorium during appeal -- judge

12.NATURAL GAS:

Sovereign wealth fund for shale revenues on tap in U.K.

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Greenwood Energy's Patrignani discusses investment opportunities in Latin American market

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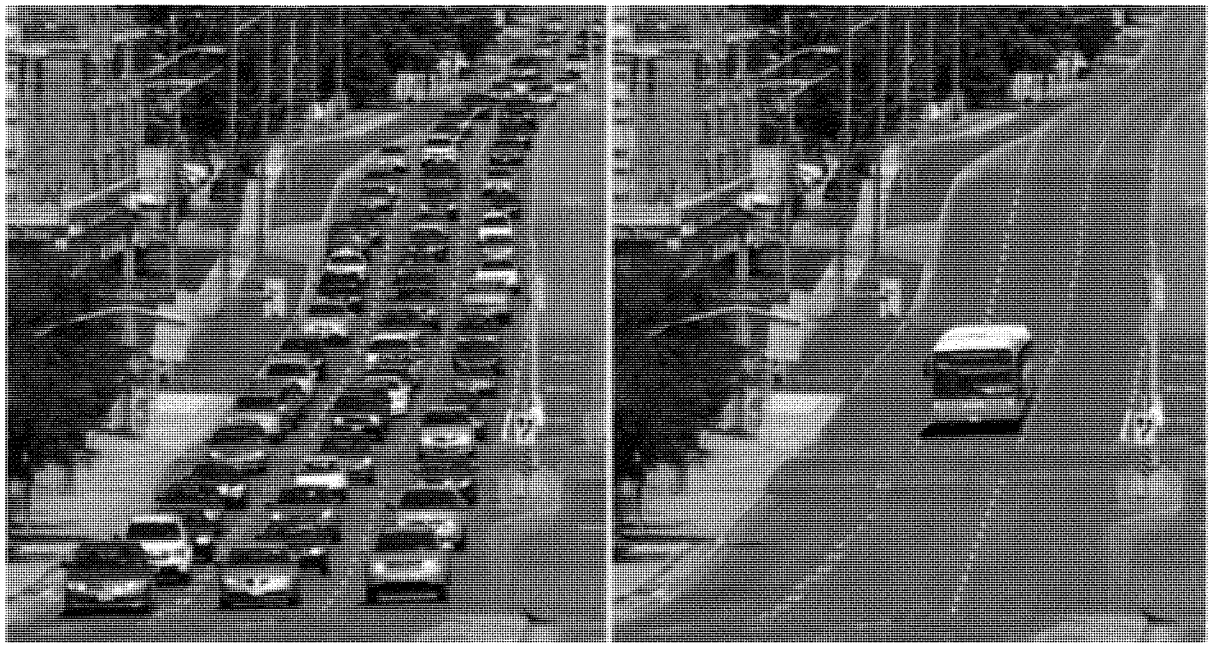

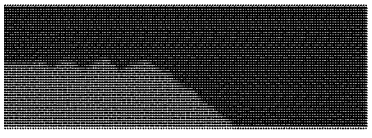

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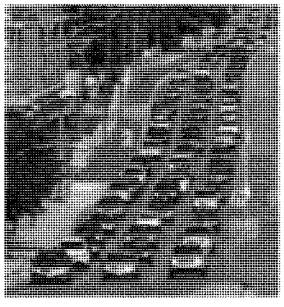

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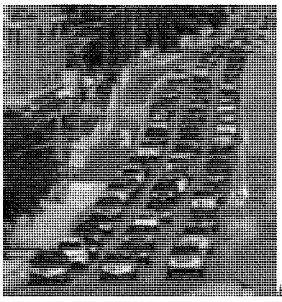

Air & Radiation Law News

for November 11, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Develops Guidance on Interpretation Of Air Data From Handheld Sensor Monitors

The Environmental Protection Agency is developing informal guidance for citizens that will explain how to interpret air quality data from handheld sensor monitoring technologies, a senior agency official said....

Climate Change

Quebec Legislature Wants Province to Study Climate Change Implications of Energy East

Quebec's legislature has directed the provincial government to conduct its own environmental assessment of TransCanada's proposed Energy East pipeline project, asking it to specifically investigate the climate change implications...

Climate Regulation

EPA Will Continue Work on Carbon Rules, Says Efforts Shouldn't Be 'Political Football'

The Environmental Protection Agency will continue work on its carbon pollution standards for power plants despite pledges from congressional Republicans to stop them, spokeswoman Liz Purchia told Bloomberg BNA Nov. 10....

Congress

Seniority Not Determining Factor, Pelosi Says In Endorsing Eshoo for Energy Panel Post

House Minority Leader Nancy Pelosi (D-Calif.) again has endorsed fellow California Democrat Rep. Anna Eshoo over Rep. Frank Pallone (D-N.J.) in the race for the top Democratic spot on the House Energy and Commerce Committee. ...

Emissions Trading

EU Carbon-Fix Vote Method Is Open Question After Rule Change, Adding to Complications

European Union governments will have two options for calculating what voting majority is needed to reach a deal on a proposed carbon market fix, according to an EU rule that took effect this month....

Energy

Senate Energy Chairman Landrieu Sets Vote On Bill to Expedite Decisions on LNG Exports

Sen. Mary Landrieu (D-La.), who is fighting for her political life in a December runoff, has scheduled a Nov. 13 vote in the Senate Energy and Natural Resources Committee on a bill that would expedite agency decisions on natural gas exports....

Enforcement

Chevron Fined Over Noncompliant Gasoline

Chevron Corp. has paid $329,700 in penalties for supplying 4.4 million gallons of over-oxygenated fuel to California retail gasoline stations, state air quality officials said Nov. 10. The penalties stem from the company's self-reported...

Renewable Energy

BrightSource, Shanghai Electric to Build Solar Projects

BrightSource Energy Inc. and Shanghai Electric Group Co. plan to build two 135-megawatt solar thermal power plants in China, the first proposal under a joint venture to develop utility-scale projects. Located in western China's Qinghai...

Renewable Energy

Texas Power Line Owner Plans Battery Fix For Fluctuating Output From Wind, Solar

Oncor Electric Delivery, owner of the largest power-line network in Texas, wants to spend more than $2 billion on batteries to solve the problem of fluctuating output from wind and solar....

BNA INSIGHTS

BNA Insights: Why Government Must Acknowledge the Interdependence of Energy and Water

California is the midst of a three-year drought with no end in sight. And while most of the news coverage focuses on municipal and agricultural sustainability, another danger looms in the background: energy security.

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Inside EPA **Risk Policy Report**, 11/11/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Weighs Major Data Questions In Plan For Reviewing SO2 Air Standard

EPA plans to address major data policy questions in its plan for reviewing the sulfur dioxide (SO2) national ambient air quality standard (NAAQS), including how to assess and incorporate first-time air monitoring data collected by states following the last review and other information that could inform whether EPA revises the standard.

As GOP Gains, Memo Urges States To Do 'Nothing' To Comply With ESPS

As Republican victories in dozens of state gubernatorial and legislative races likely will create significant new hurdles for EPA efforts to get states to submit plans for complying with its greenhouse gas (GHG) rule for existing utilties, a GOP strategist is urging state officials to withhold their plans as a way to test the reach of EPA's authority.

EPA Eyes Voluntary Program To Help States Attain Stricter Ozone NAAQS

EPA is weighing the potential for its successful Advance voluntary air pollution reduction program to help states attain a likely tightening of the ozone national ambient air quality standard (NAAQS), touting the success of the Advance program in encouraging early action by states to cut pollution and attain the existing NAAQS.

To Spur Regional Plans, RGGI Seeks More 'Equity,' Stricter ESPS Target

The nine states in the Regional Greenhouse Gas Initiative (RGGI) cap-and-trade program are praising the basic structure of EPA's proposed climate standards for existing utilities, while urging greater equity among state emission targets in part to encourage other states to join RGGI or create their own regional compliance plans.

News Briefs

DOJ, Industry Decline To File High Court GHG 'Trust' Suit Briefs

The Department of Justice (DOJ) and industry groups have declined to respond to youth plaintiffs' request for the Supreme Court to review novel litigation on whether EPA and other agencies have a public trust duty to reduce greenhouse gases (GHGs), a move that one industry source says signals that they believe the plaintiffs' petition lacks merit and should be denied without any need for a response.

Greenwire

CLIMATE:

Former Treasury chief sounds alarm on another 'cruel and dangerous crisis'

Jean Chemnick, E&E reporter

Published: Monday, November 10, 2014

Soon after his 2006 confirmation as Treasury secretary, Henry Paulson visited President George W. Bush at Camp David to brief the president on the rising costs of Social Security, Medicare and other programs that conservatives feared would put the U.S. on a path to insolvency.

But Paulson recalls that he wanted to alert Bush to a much larger threat.

"I asked instead to talk about the financial markets, because I saw excesses and I saw the financial crisis coming," Paulson said.

The career investment banker who had resigned as Goldman Sachs CEO for the Treasury post said he wasn't sure then where problems would start. He said he didn't point to a dangerous bubble in the mortgage markets, which would explode the next year and plunge the world into an economic crisis. He remembers telling the president that the cause of the crisis would seem obvious with "20/20 hindsight."

Eight years have passed since that trip to the Maryland woods, and the nation is rebounding from the recession -- a fact Paulson says is due in no small part to often-unpopular last-minute heroics of Bush's team and of the Obama administration that came after it.

But Paulson warns the United States and the world are now facing a new threat that has been building for many years, and for which the markets and the government are unprepared: global warming.

In interviews with *Greenwire* and in a much-circulated op-ed column he published in June in *The New York Times*, Paulson talked about a growing "climate bubble," which threatens both the environment and the world economy.

"The definition of a bubble is that it's not fully understood by the markets until it bursts," Paulson said. Like the mortgage bubble, he said, the climate bubble is quietly growing as a result of excesses in the market -- in this case, the carbon dioxide that has been pouring into the Earth's atmosphere for generations from sources that paid no penalty.

In both the financial and the climate change crises, Paulson said, flawed government policies were a "root cause" -- offering incentives to borrow on the one hand, imposing no disincentives to pollute and providing tax advantages for fossil fuels use on the other.

But Paulson said he has had second thoughts about the bubble analogy as it relates to climate change, because it will never "burst."

"There's a huge difference that makes the climate change crisis a much more cruel and dangerous crisis," he said. "And that is that greenhouse gases stay in the atmosphere for centuries, and they're cumulative."

Greenhouse gases dating back to the start of the Industrial Revolution are already driving warming -- the investment banker calls them "nature's way of charging us compound interest" -- and as they accumulate further, there will be fewer and fewer opportunities left to right the ship.

So in contrast to the financial crisis, "there's no opportunity for the government to come in at the last minute and avert the worst outcomes," he said. That means society must take action now despite uncertainties about the severity and timing of the threat -- or face the consequences.

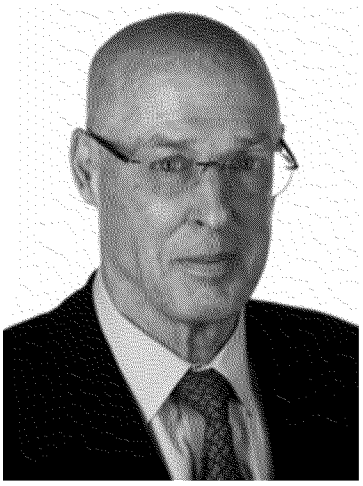
'Enormous foresight'

Paulson, 68, grew up on an Illinois farm and spent his summer vacations fishing and hiking in Quetico Provincial Park in Ontario.

He worked as a counselor at Adventure Unlimited, a Christian Science summer camp in Buena Vista, Colo., to which Paulson and his wife, Wendy, recently gave $2 million.

The camp helped Paulson appreciate nature.

"All my life, I've been a conservationist," he said. "That was always my avocation. My vocation was finance, my avocation was conservation."



Henry Paulson, who served as Treasury secretary under President George W. Bush, has emerged as one of his party's top voices for climate action. Photo courtesy of the Paulson Institute.

Even during the 32 years he spent climbing the rungs at Goldman Sachs, Paulson frequently held senior volunteer posts at environmental organizations. He served as chairman of the board of the Nature Conservancy from 2004 to 2006 and now co-heads that organization's Latin American Conservation Council.

Wendy Paulson has also been a board member of the Nature Conservancy.

"As a couple, they are conservation heroes," said Tracy Wolstencroft, another Goldman Sachs alumnus. "They devote most of their energy to this work."

The Paulsons have a son, Merritt, who owns the Portland Timbers soccer team in Oregon, and a daughter, Amanda, a reporter at the *Christian Science Monitor*. They have four grandchildren -- who figure in Paulson's worries about global warming.

Mark Tercek, who is now president and CEO of the Nature Conservancy, remembers Paulson as a pioneer during his decades at Goldman Sachs, perceiving future trends that now with hindsight seem obvious.

"Hank had enormous foresight," said Tercek, who worked several rungs below Paulson after Tercek joined the investment banking firm in 1984.

Working for Goldman Sachs in Asia in the early 1990s, Tercek recalls watching how Paulson ramped up the firm's involvement in that region at a time when few other investment banks saw what Asia -- and China in particular -- would soon mean to the global economy.

Paulson, then a co-head of investment banking with oversight over Goldman's Asia operations, began

making personal visits every couple of months to meet with Chinese officials, developing contacts that would pay dividends for the firm in the years that followed. These relationships would deepen as he rose further at Goldman and then became Treasury secretary.

"Hank has one of the world's best Rolodexes," Tercek said. Relationships are particularly important to Paulson, he said. "But I don't mean back-slapping buddy, I mean advisory relationships on tough, complicated challenges."

China

Wolstencroft, who is now CEO and president of the global executive search firm Heidrick & Struggles International Inc., said Paulson's straightforward Midwestern manner has been a particular asset when it comes to engaging Chinese leaders.

"China has enormous respect for Hank, because they see him as having been there a long time and consistently, and in his meetings he has always focused on blunt and candid exchanges and a search for solutions," said Wolstencroft, who remembers being interviewed by Paulson before he joined the firm as a young associate.

As Paulson sees it, one of the most important relationships in the world right now is the one between China and the United States. And that is particularly true when it comes to climate change -- a problem the two powers do more to accelerate than any other country, but also have the unique potential to help solve.

Paulson said there is an opportunity for a partnership between the world's largest developed and developing emitters. The United States can be an engine of innovation, he said, creating technologies that will help decarbonize the world's economy. And China -- with its thirst for new energy infrastructure to support a rapidly expanding economy -- could test that new technology on a mammoth scale.

Paulson's fellow Republicans frequently cite China's growing emissions when arguing against U.S. regulation, but he says China's government understands the need to control them. Pollution is worsening public health and creating a drumbeat for action within China, he said.

"The Communist Party won't survive in China unless they make real progress on air quality."

Without many of the tools that are available in the United States -- a legal system that allows for enforcement of environmental laws, an agency devoted to regulating emissions -- the Chinese government has instead incorporated emissions reduction goals into its centrally controlled economy.

The result is a new environment where Chinese public officials are evaluated and promoted in part based on their success in managing pollution. And at a United Nations summit in New York City in September, the world's highest-emitting nation won applause from environmentalists when it pledged to cap its greenhouse gases "as soon as possible." China is expected to fill in details ahead of next year's U.N. talks in Paris, which aim to finalize a post-2020 agreement on emissions.

Paulson called the U.N. talks "very important."

"But the thing that gives me some hope -- and I think in some ways is more important than Paris -- is that I believe this is an important area of focus for the U.S. and China," Paulson said. Climate change is sure to be discussed when President Obama visits Beijing this week to attend a summit and meet with China's President Xi Jinping. "Let's hope that meaningful and accelerated progress starts to flow from that visit.

"And that's one of the reasons why I'm pressing as hard as I am for the U.S. to make progress," Paulson

said. "If we're a leader here, I think it's easier to encourage China to do even more."

Others familiar with the U.S.-China talks said recently that climate change will be high on the agenda at the meeting, but a bilateral announcement may not be in the cards (*ClimateWire*, Nov. 3).

Paulson chose outreach to China as his primary area of focus after he left office in 2009, and not just on climate change.

"I have a long history of working with China and know many of the leaders well," he said.

In September, the Chicago-based Paulson Institute, established to promote economic opportunity and environmental preservation in China and the U.S., launched an initiative in China to provide a "neutral convener" to help find ways to curb emissions in the context of rapid economic growth (*Greenwire*, Sept. 5).

Risk management

Another way Paulson hopes to move the ball on climate is by engaging the private sector. Drawing on his long career advising clients on risk management, Paulson joined with climate donor Tom Steyer and former New York Mayor Michael Bloomberg in June to unveil the "Risky Business" report, an assessment of the warming-related vulnerabilities of U.S. businesses (*ClimateWire*, June 24).

The report sought to show how sea-level rise, extreme heat, crop loss and other climate-change-driven occurrences could chip away at businesses' bottom lines.

One example: the 1-in-20 probability that by the end of this century, more than $701 billion worth of existing coastal property will be below mean sea levels, with $730 billion of additional property at risk during high tide. The report also cites a 5 percent chance that crop yields will drop more than 20 percent in the next quarter-century.

"The thing that I'm focused on are the outsized risks," Paulson said. "What I call small but deep holes."

Climate change ushers in a host of relatively unlikely but potentially catastrophic risks, as scientists continue to grapple not with whether human emissions are spurring warming but with how quickly it is occurring and what its effects will be.

"I'm much more concerned about what we don't know than what we do," Paulson said.

This is not a sentiment frequently expressed by Republicans. GOP members of the House and Senate frequently point to a minority of scientists who still say that harmful man-made climate change is not occurring. Mandatory action to curb emissions should wait until there is certainty, they say, especially if it comes at a cost. But Paulson said bipartisan cooperation would eventually be needed.

"If we are going to make a meaningful difference in the trajectory of climate change, it will be imperative that we have individuals on both sides of the aisle working together," he said. "The scope of the problem and risk to the economy and the environment are simply too far-reaching to be partisan."

Michael Greenstone, a former adviser to Obama on energy and economics now on the faculty at the University of Chicago, said Paulson is an important ambassador to Republicans and to the business and finance communities.

"I think having someone they can trust delivering that message -- I don't think there's a substitute for that," said Greenstone, who was an adviser on "Risky Business."

'Short-termism'

Business support could ultimately prove decisive in allowing a comprehensive carbon policy to move forward, Greenstone said.

"At the end of the day, the private sector has an enormous role to play both in influencing whatever climate policy the U.S. produces and in responding to the incentives created by that policy," Greenstone said.

Paulson said the private sector can do much to mitigate and prepare for climate change. While at Goldman Sachs, he created the Environmental Strategy Group to identify environmental risks and investments for clients. The group was headed by Tercek, who says it prepared him for his current position at the Nature Conservancy.

But while companies can invest in efficiency and harden their operations against the effects of climate change, "I do think you can't ask companies to do everything we're going to need to do without the appropriate government policies," Paulson said.

The "appropriate government policy" in Paulson's view is a carbon tax that would internalize the cost of emissions and give the private sector a signal to act.

But the financial crisis showed how reluctant government officials are to take action on long-term problems, especially if doing so is a political risk.

"The issue that we face everywhere throughout society today, whether it's government, whether it's business," he said, "is short-termism."

RENEWABLE ENERGY:

Another Koch group warns against PTC extension

Nick Juliano, E&E reporter

Published: Monday, November 10, 2014

For the second time in less than a week, conservative activists are urging Congress not to extend a key renewable energy tax credit, saying that doing so would be tantamount to endorsing President Obama's climate agenda.

Americans for Prosperity today sent a letter to Capitol Hill outlining its objections to the production tax credit, which Senate Democrats hope to extend during the lame-duck session that begins later this week.

"Americans for Prosperity requests that you reject any package that includes the expired wind production tax credit," writes Brent Gardner, AFP's director of federal affairs, in a letter addressed to all members of the House and Senate. "A vote for the PTC is a vote in support of President Obama's destructive climate action plan."

The letter echoes many of the arguments in a broader coalition letter sent last week from the American Energy Alliance, AFP and other conservative organizations (*Greenwire*, Nov. 6).

Both groups are linked to the billionaire industrialist Koch brothers' political network, which reportedly planned to spend at least $290 million in this year's elections and aired more than 40,000 ads on behalf of Republicans and conservative causes, according to the Center for Public Integrity.

The PTC is part of a broader "tax extenders" package that would renew numerous incentives that lapsed last year. Congress is expected to act before adjourning, but the House and Senate are divided over how broad the package should be.

Republicans in the lower chamber have been pushing to make just a few of the incentives permanent, such as bonus depreciation and the research and development credit. But Senate Democrats have pushed a broader package, which won bipartisan support in the Finance Committee and would renew the PTC and about 50 other tax breaks.

Leaders in both parties are said to want to dispatch with this year's unfinished business so as to start next year with a clean slate, when Republicans will control both sides of the Capitol. That is leading wind industry lobbyists to be cautiously optimistic about their chances of winning an extension as part of a larger extenders package, given Republican desires to see things like bonus depreciation go back into effect. But AFP, AEA and their allies are expected to keep up their pressure over the PTC through the end of this year.

While the PTC maintains support among several Republicans from windy states, conservatives say it is a giveaway to businesses that the United States cannot afford. A PTC extension would cost about $13 billion over a decade.

The wind industry says the tax credit is necessary to increase carbon-emissions-free renewable electricity, that it costs taxpayers less than permanent incentives enjoyed by the oil and gas industry, and that it supports tens of thousands of construction and manufacturing jobs.

"Anti-renewable energy groups like Americans for Prosperity are out of sync with the wide majorities of Republicans, Democrats and independents who support keeping this successful policy so that we can keep this business growing and bring this low-cost clean energy to more Americans," said Peter Kelley, a spokesman for the American Wind Energy Association.

CLIMATE:

U.N. process requires 'central' U.S. role, Senate Dems tell Obama

Jean Chemnick, E&E reporter

Published: Monday, November 10, 2014

Four outgoing Senate committee chairs are urging President Obama to use his authority to make ambitious pledges for emission reductions and donations to help poor nations adapt to climate change at next year's U.N. global warming treaty talks.

In a letter Friday, the four say bold U.S. commitments are key to making next year's Paris talks a success.

"The U.S. can play a central role in encouraging such participation by making strong commitments that the rest of the world can follow," says the letter, signed by Foreign Relations Chairman Robert Menendez (D-N.J), Environment and Public Works Chairwoman Barbara Boxer (D-Calif.), Finance Chairman Ron Wyden (D-Ore.) and Budget Chairwoman Patty Murray (D-Wash.).

The letter comes as countries are preparing pledges of climate aid through the so-called Green Climate Fund for a meeting this month in Berlin. The White House is also readying a new U.S. pledge to reduce greenhouse gases after 2020 -- a follow-up to Obama's promise five years ago to cut emissions 17 percent below 2005 levels by 2020. The new emissions pledge is expected early next year, well ahead of the December talks in Paris (*Greenwire*, Nov. 18, 2013).

The four Democrats note that the United States is already well on its way to meeting its 2020 international climate commitment.

"This gives the U.S. a proven record in emission reductions, and the [U.S. EPA] has already laid out new plans for further reducing emissions beyond 2020, but we can't do it alone," they wrote. The European Union recently committed to cutting emissions by at least 40 percent compared with 1990 levels by 2030 -- a move that should give the United States and other countries the confidence to act, they said.

The 2020 emissions reduction pledge depends heavily on EPA's proposed Clean Power Plan, which would require utilities across the country to make hefty emissions cuts by that year -- cuts that many have argued should be phased in more gradually or left to later years.

Any post-2020 pledge, meanwhile, would require new administration actions -- including possible new restrictions on the oil and natural gas sector's methane emissions. EPA is due to announce in the coming weeks whether it will pursue those regulations.

All of these rules will be targeted by Republican majorities in both chambers of Congress next year, as GOP lawmakers use the annual appropriations process, the Congressional Review Act and other tools to push back against rules they criticized during this year's campaign.

In an interview published Friday in Kentucky's *Lexington Herald-Leader*, the likely Senate majority leader in the next Congress, Sen. Mitch McConnell (R-Ky.), said he would make it a priority "to try to do whatever I can to get the EPA reined in."

But McConnell acknowledged that the odds are good that Obama will veto any legislation that would pare back his second-term climate agenda, even if it comes attached to spending legislation. And GOP majorities in the House and the Senate are too slim to override his veto.

On climate finance, however, the odds might be different. The Senate Democrats urge Obama to prepare a generous pledge to help developing nations adapt to climate change and address their own emissions.

"These countries will not be willing to join international emissions efforts unless the U.S. displays a willingness to assist them in adapting to the threat of climate change," they note.

But Congress has appropriations power, and it seems doubtful that the new Republican majorities will approve generous sums to build irrigation systems and solar farms to address an issue that many Republicans say doesn't exist.

BIOFUELS:

KiOR files for bankruptcy after defaulting on loan

Published: Monday, November 10, 2014

Biofuel maker KiOR Inc. said in a stock filing that it missed a $1.8 million loan payment to the state of Mississippi and now owes more than $312 million, which is due immediately.

The company disclosed the loan default Friday and filed for Chapter 11 bankruptcy protection late yesterday at the U.S. Bankruptcy Court in Delaware. The company estimated its assets are worth between $10 million and $50 million and reported debts between $100 million and $500 million (Jeff Amy, AP/ABC News, Nov. 10).

The company was supposed to pay the Mississippi Development Authority by midnight Wednesday. When it failed to do so, Mississippi sent a default notice notifying the company it owed $69.4 million in principal and at least $9 million in interest from the default, bringing the total to $78.6 million.

In addition, the Pasadena, Texas-based company said its default on the Mississippi loan triggered provisions of other loans, making an additional $234 million immediately due (AP/*Fuel Fix*, Nov. 7). **-- SP**

URANIUM:

NRC grants license extension to Neb. mine

Published: Monday, November 10, 2014

A uranium mine has been granted a 10-year license extension in northwestern Nebraska, the Nuclear Regulatory Commission said Thursday.

The license allows Crow Butte Resources, located near Crawford, Neb., to continue uranium mining through Nov. 5, 2024. Cameco Resources, the mine's parent company, originally filed for renewal in 2007, but due to a backlog of license filings, the NRC allowed the company to continue mining in the interim.

Last year, the mine produced 700,000 pounds of uranium, according to Cameco spokesman Ken Vaughn. Although the industry has been stagnant since Japan's Fukushima Daiichi disaster in 2011, Vaughn said the company plans on expanding mining operations.

Environmental groups have opposed the mine and have said the mine pollutes aquifers.

In the extension announcement last week, NRC said "there would be no significant environmental impact from continuing operation for another 10 years" (AP/*Casper* [Wyo.] *Star-Tribune*, Nov. 8). **-- MH**

AIR POLLUTION:

Drought makes smog worse in Los Angeles

Published: Monday, November 10, 2014

Smog is sticking around Los Angeles more this year thanks to continued dry spells in California.

Heat and drought in the state have helped descending warm air trap pollutant-laden cool air close to the ground. That pollution would normally be blown out of the way with rain or wind, but high-pressure systems this year have kept the pollution stagnant.

Last winter, for example, the San Joaquin Valley Air Pollution Control District recorded the worst pollution in more than a decade. Higher temperatures speed chemical reactions that create ozone, a lung-damaging ingredient in warm-weather haze.

The result is palpable health consequences for many, especially people who already suffer from respiratory ailments like asthma (Tony Barboza, *Los Angeles Times*, Nov. 10). **-- AW**

AUSTRALIA:

Renewable energy investments drop 70%

Published: Monday, November 10, 2014

Renewable energy investments in Australia have dropped 70 percent over the past year as the country loses green businesses overseas, according to a new report by the Climate Council.

While Australia has lost out on investments for renewable energy projects, China's renewable energy capacity exceeded its fossil fuel capacity last year.

"Investment that could be coming to Australia is instead going overseas to countries that are moving to a renewables energy future," said Tim Flannery, an author of the report.

Australia has recently come under scrutiny for not having a more ambitious plan to cut carbon emissions.

"The U.S. is also rapidly exploiting the global shift to renewable energy, coming second only to China for installed renewable energy due to a range of state-based renewable energy targets, incentives and initiatives," Flannery said (Australian Associated Press/London *Guardian*, Nov. 9). **-- MH**

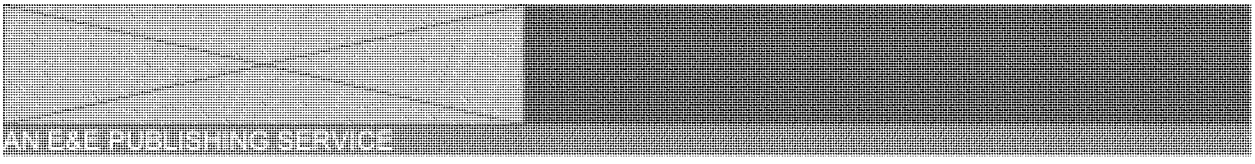
ADAPTATION:

Notre Dame's global index ranks climate preparedness

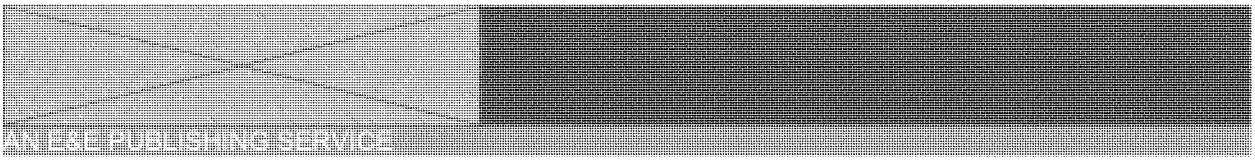
Published: Monday, November 10, 2014

Which countries are best prepared to handle the impacts of climate change? During today's OnPoint, Joyce Coffee, managing director of the Notre Dame Global Adaptation Index, discusses her organization's yearly assessment of countries' ability and readiness to adapt to climate change and explains how the world's leaders in adaptation are improving their resiliency.

Click here to watch today's OnPoint.



ClimateWire will not publish on Veterans Day, Tuesday, Nov. 11. It will return on Wednesday, Nov. 12.



EnergyWire will not publish Tuesday, Nov. 11. It returns Wednesday, Nov. 12

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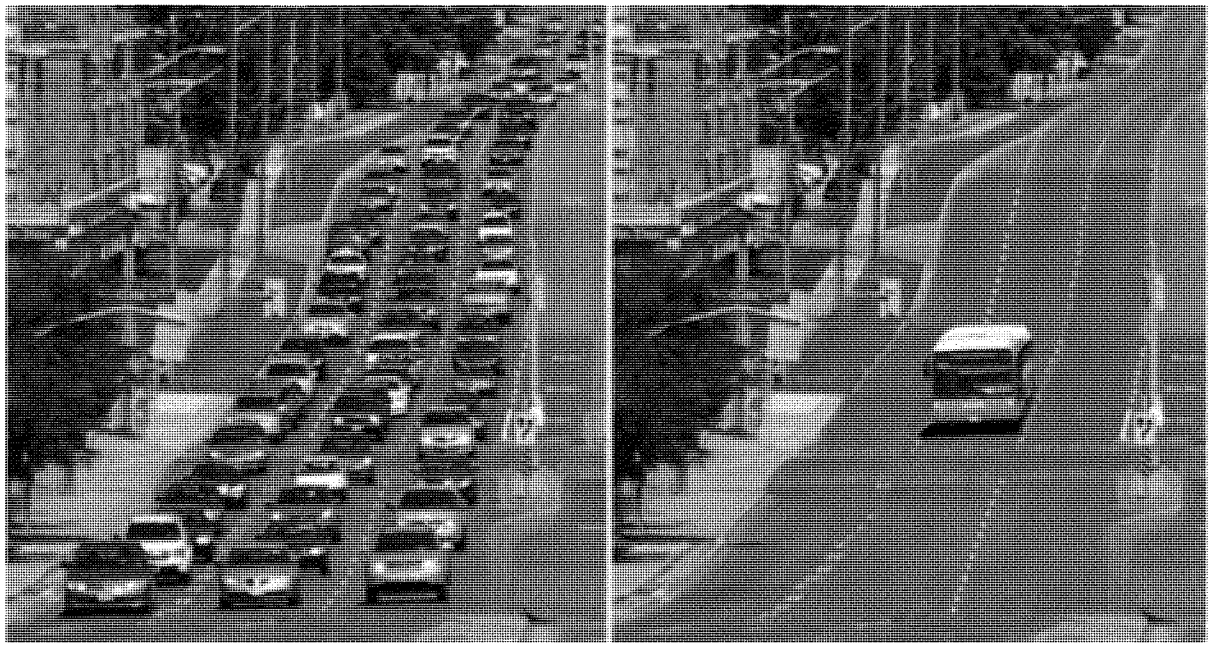

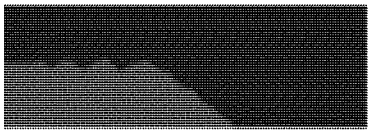

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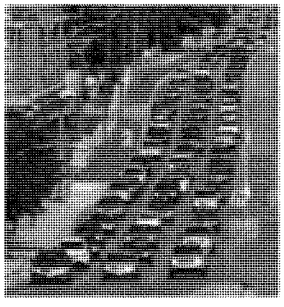

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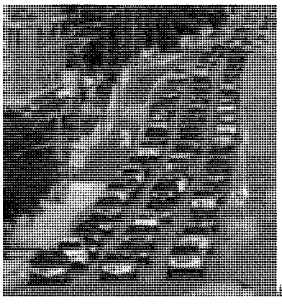
Subject: Air & Radiation Law News for November 7, 2014



Air & Radiation Law News

for November 7, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Comment Period on Grain Elevator Rule Extended

The Environmental Protection Agency will now accept comments on proposed revisions to national emissions standards for grain elevators (RIN 2060-AP06) until Dec. 22 following a second extension of the public comment period. The EPA, in...

Air Pollution

EPA Proposes Limit on Mercury Emissions From Equipment at Phosphoric Acid Plants

The Environmental Protection Agency is proposing to limit previously unregulated mercury emissions from facilities that manufacture phosphoric acid, a chemical used in food manufacturing and specialized chemical processes....

Air Pollution

EPA Settles Sierra Club Lawsuit, Agrees To Act on Dallas Nonattainment Area

The Environmental Protection Agency will settle a lawsuit brought by the Sierra Club by agreeing to deadlines to determine whether the Dallas-Fort Worth metro area has met the 1997 ozone national ambient air quality standard (Sierra Club...

Air Pollution

Fertilizer Companies Agree to $50 Million In Equipment Upgrades to Curb Emissions

Three affiliated fertilizer companies will be required to spend about $50 million on pollution control and monitoring systems under a proposed consent decree announced Nov. 6 by the Environmental Protection Agency and federal prosecutors...

Climate Change

EU Lawmakers' Resolution Urges Nations To Set Basis for 2015 Global Climate Deal

Climate negotiators at next month's United Nations Framework Convention on Climate Change meeting in Lima, Peru, should urgently consider how to close the "gigaton gap" between actual greenhouse gas emissions and the reduced...

Climate Regulation

EPA Outlines Options for State Conversions Of Carbon Emissions Rates for Power Plants

The Environmental Protection Agency has offered states two options for converting the proposed rate-based carbon dioxide emissions standards for existing power plants into mass-based standards for the purposes of emissions trading programs....

Congress

House Plans Vote on EPA Permit Bill, Other Measures in Lame-Duck Session

The Republican-controlled House will take up several bills the week of Nov. 17 that would require more transparency in Environmental Protection Agency rulemakings and rein in its regulatory authority, House Majority Leader Kevin McCarthy...

Energy

White House Would 'Consider' Legislation Approving Keystone, Spokesman Earnest Says

The White House would be willing to "consider" legislation approving Keystone XL pipeline, Press Secretary Josh Earnest said Nov. 6....

Fuel Efficiency

EPA, DOE Release 2015 Fuel Economy Guide

The Environmental Protection Agency and the Energy Department released Nov. 6 their fuel economy guide to help consumers choose fuel-efficient and low greenhouse gas-emitting model year 2015 vehicles. The annual guide provides "best-in-class"...

Hazmat Transport

Federal Railroad Administration Chief Szabo To Resign, Work for Chicago Planning Agency

Joseph Szabo, who heads the Federal Railroad Administration, is resigning, Bloomberg BNA has confirmed....

International Climate

Obama, Chinese Leader Expected to Raise Climate Issue in Beijing, Observers Say

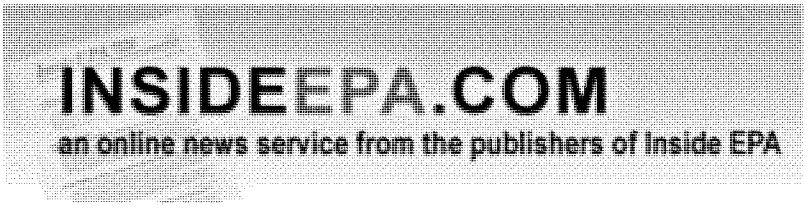
Environmental groups that closely monitor talks toward a 2015 international climate deal said Nov. 6 that climate change is likely to be a top issue raised between President Barack Obama and China President Xi Jinping next week when they have...

Renewable Energy

Wind Production Tax Credit Linked

To Democrats in Letter Opposing Extension

Republican leaders in the House and Senate should oppose attempts to reinstate the wind production tax credit, groups linked to the Tea Party and the fossil fuel industry wrote in a letter Nov. 6 linking the effort to President Obama and Senate...



Inside EPA **Weekly Report**, 11/07/2014

http://insideepa.com/newsletters/inside-epa

Latest News

EPA Guide On State GHG Targets Raises Fears Over 'Race To The Bottom'

EPA's just released guide on how to convert states' rate-based greenhouse gas (GHG) targets to mass-based limits under the agency's proposed rule for existing power plants offers a series of examples for how to calculate the mass limits that many states say are crucial if they are to consider multi-state trading programs as a compliance option.

EFAB Urging EPA To Help Set 'Green' Bond Standards For Infrastructure

EPA financial advisors are urging the agency to play a role in setting market standards for the definition and the use of green bonds -- increasingly popular financial instruments used for a variety of environmental purposes such as climate change mitigation and green infrastructure projects.

Groups Outline Competing Cost Considerations For EPA's RMP Updates

Environmental and industry groups are urging EPA to weigh competing costs in updating its accident prevention program for industrial facilities with environmentalists and labor arguing the current rule is inadequate to prevent disastrous costs to human health and the environment, while industry and several senators contend certain changes would unnecessarily burden businesses.

NERC Says EPA Climate Rule's 'Building Blocks' Spur Reliability Concerns

The congressionally chartered North American Electric Reliability Corporation (NERC) says EPA's unrealistic assumptions in setting targets under the four building blocks of its climate rule for existing power plants could have major adverse grid reliability impacts, echoing industry charges and bolstering the case for changes that could soften the rule's emissions goals.

News Briefs

EPA Again Extends Grain Elevator NSPS Comment Deadline

EPA is again extending the comment deadline -- from Nov. 6 to Dec. 22 -- on its proposed amendments to its new source performance standards (NSPS) for grain elevators that store corn used to make ethanol, after Nebraska urged the agency to grant more time to review a host of concerns about the rule during the busy harvesting season.

Greenwire

RENEWABLE ENERGY:

Conservatives tie PTC to Obama agenda in bid to sink lame-duck deals

Nick Juliano, E&E reporter

Published: Thursday, November 6, 2014

Fearing a potential lame-duck compromise that would extend a key renewable energy tax credit, dozens of conservative groups are warning newly empowered Republicans that extending the credit would amount to an endorsement of President Obama's broader climate change agenda.

The warning comes following a wave election that will sweep Republicans into control of the Senate next year and ahead of a brief session this month in which Democratic leader Harry Reid (Nev.) will still control the upper chamber. A top order of business for the lame-duck session is reinstating a variety of expired tax incentives, but the House and Senate cannot agree on the scope of the package or whether it would include the production tax credit, which benefits wind and other forms of renewable electricity.

While some Republicans in windy states say they support the credit, the network of conservative groups fighting the PTC -- many of which have been linked to the industrialist Koch brothers -- are trying to link the credit to broader Obama policies that have been condemned by the GOP.

The American Energy Alliance and 66 other groups sent a letter today to House Speaker John Boehner (R-Ohio) and Senate Minority Leader Mitch McConnell (R-Ky.) arguing that allowing the PTC to be extended this year would sacrifice leverage in upcoming tax reform negotiations and hand Democrats a win.

"Rejecting efforts to extend the PTC is a meaningful way for this Congress to oppose the president's climate plan," the groups write. "A vote for extending the PTC is a vote for the president and the majority leader's agenda."

The letter comes amid intensifying negotiations over the postelection lame-duck session. Throughout the year, House Ways and Means Chairman Dave Camp (R-Mich.) has been pushing to make a few extenders permanent, such as the research and development tax credit, while eliminating the rest. His Senate counterpart, Finance Chairman Ron Wyden (D-Ore.), wants to extend all of the credits through next year to provide breathing room for more comprehensive tax reform in the upcoming Congress.

The extenders lapsed at the end of last year, and the Internal Revenue Service has said Congress risks complicating the upcoming filing season if it does not reach a deal on extenders this year.

Several tax lobbyists say House Republican leaders have demonstrated a desire to "clear the decks" and suspect they would be willing to go along with Wyden's extenders bill. A senior House GOP aide said earlier this week that the PTC would not be in whatever package initially comes to the House floor, but allowed for the possibility that it could eventually be adopted as part of negotiations with the Senate.

Killing the PTC has been a top priority this year of AEA and other Koch-linked groups, and the letter indicates some worry that House leaders do not share that passion.

"The letter is, in part, an expression of concern among groups that are usually aligned with Koch (and the conservative movement) that House leadership is starting to stray pretty far off the reservation with respect to tax extenders," said Mike McKenna, a Republican lobbyist whose clients include a Koch Industries affiliate. "It has the potential to be a significant source of conflict."

It remains to be seen how congressional Republicans will respond, especially in the wake of a massively successful election in which several business-friendly Republicans managed to fend off tea party primary challenges earlier in the year.

"Nobody's in danger right now," a Republican aide said, suggesting that although lawmakers may not respond to this request, it is unlikely to lead to a broader rift between the GOP and the Koch brothers. "I don't think there's any chance that divorce papers are being drafted."

Wind industry officials say they remain cautiously optimistic that the PTC will be extended during the lame duck.

"Both House and Senate R's seem to want to get tax extenders off their plate," one wind lobbyist said in an email.

A spokesman for the American Wind Energy Association dismissed the letter as more of the same from "Koch-funded front groups" that for years have been fighting the policy, which wind boosters say creates jobs in rural communities and the manufacturing sector.

"Their opposition to wind power is out of sync with the bipartisan support Republicans, Democrats and independents and the vast majority of Americans all have for homegrown wind energy," said Peter Kelley, AWEA's vice president for public affairs. "Two of the Senate's recently elected newcomers, Republicans Cory Gardner of Colorado and Joni Ernst from Iowa, have both supported an extension of the production tax credit because they've seen how wind power fosters economic growth and creates jobs back home."

YUCCA MOUNTAIN:

Senate Democrats' loss seen as lifeline for abandoned project

Hannah Northey, E&E reporter

Published: Thursday, November 6, 2014

Promoters of the Yucca Mountain, Nev., nuclear waste repository left for dead by the Obama administration are celebrating Republicans' Senate takeover as a chance for resurrecting a project stymied by outgoing Senate Majority Leader Harry Reid (D-Nev.).

"It's looking up for Yucca," said Lake Barrett, a former Department of Energy official turned energy consultant. "Yucca is going up in viability through this process; on the merits, it'll start to stand out."

Republicans keen to see the project proceed after a decadeslong impasse agree.

Rep. John Shimkus (R-Ill.) said he plans to work with his Senate counterparts on a nuclear waste strategy to ensure the repository is completed. Central to that push will be newly released reports -- with three more expected to be released by January 2015 -- showing the Nuclear Regulatory Commission's finding that the site in Nevada would meet appropriate safety standards after its closure (*E&ENews PM*, Oct. 16).

"Safe and responsible long-term storage of nuclear waste will continue to be a priority for the committee next Congress, and we will continue to press the administration to finish its licensing of Yucca Mountain," Shimkus said in an email.

Reid has for decades made killing Yucca Mountain a top priority, saying just last month the site is "all through." But Reid's departure from the majority leader post saps his power to block the project, and Republican appropriators might now be able to fund the NRC's review of the government's stalled application for the repository.

But Yucca Mountain is not a pure partisan issue.

Kevin Book, a chief analyst at ClearView Energy Partners, noted the Senate mustered a 60-vote majority in 2002 -- including Democrats hoping to get nuclear waste out of their states -- over Reid's objections to a Yucca siting resolution (*Greenwire*, July 10, 2002).

To be sure, Reid continues to carry a lot of weight in the Obama White House. And NRC officials have said DOE isn't pursuing the repository license.

It's not clear the Obama administration would fold on its opposition to Yucca Mountain funding. And it could cost millions -- if not billions -- to back a federal review of DOE's application to build the repository about 100 miles outside Las Vegas.

There are also questions about the site itself. Former NRC Commissioner Victor Gilinsky wrote a recent op-ed in the *Bulletin of the Atomic Scientists* that outlines what he sees as major water problems with the Nevada site.

Sources also question whether the White House or Reid will prioritize the nomination and confirmation of a third Democrat to the NRC during the lame-duck session that starts next week. NRC Chairwoman Allison Macfarlane has announced she'll step down at the end of this year. In addition to MacFarlane, the commission has two Democrats and two Republicans (*E&E Daily*, Nov. 6).

"If Obama is serious, and I believe he is serious, about all of the above, you can't [nominate] a hard-left person," Barrett said. "If he puts in a strong anti-nuclear person, it'll just add to the woes of nuclear being a [low-carbon power source]. What role Reid will choose to play is the $64,000 question."

New day for nuclear?

Election night also brought about big changes for the NRC on Capitol Hill.

Sen. James Inhofe of Oklahoma, who has called for Yucca Mountain to move forward, is almost certainly the next chairman of the Senate Environment and Public Works Committee, a powerful panel that oversees the NRC.

Inhofe's ascent in the committee would end Democratic Sen. Barbara Boxer's run as chairwoman. She had a prickly relationship with the NRC over its investigation into the now-shuttered San Onofre nuclear power plant in her home state of California.

The shift is also seen as creating a more supportive environment for the nuclear industry.

Inhofe has repeatedly joined his Republican EPW colleagues in criticizing the NRC for over-regulating reactor operators.

During Senate hearings last year, Inhofe repeatedly said the nuclear industry is already weighed down by "new and unnecessary regulations" and questioned whether the NRC was rushing safety upgrades stemming from the 2011 nuclear disaster at Japan's Fukushima Daiichi plant without considering differences between Japan and the United States (*E&E Daily*, Feb. 6, 2013).

Inhofe has also criticized the Obama administration's support for nuclear power.

In February 2012, Inhofe accused President Obama of taking credit for creating thousands of jobs at Southern Co.'s Vogtle plant in Georgia even though former Energy Secretary Steven Chu "was the one who said that nuclear power is the 'lesser of two evils' and the president himself designated a chairman of the NRC who opposes nuclear power" (*E&ENews PM*, Feb. 15, 2012).

But the Republican senator has also shown support for the agency, supporting the last two Obama nominees -- NRC General Counsel Stephen Burns, a Democrat, and Jeffery Baran, an aide to Rep. Henry Waxman (D-Calif.) -- earlier this year.

Both commissioners have since been sworn in at the NRC.

ENERGY EFFICIENCY:

DOE bid to overhaul Reagan-era furnace standards sparks industry protest

Katherine Ling, E&E reporter

Published: Thursday, November 6, 2014

The Department of Energy's rewrite of a 1987 energy efficiency standard for residential furnaces has drawn opposition from the gas industry, which says the effort would spur a shift to electric heaters and drive up U.S. greenhouse gas emissions.

"We are deeply concerned that -- if not appropriately structured -- this rule could prove to be the first energy efficiency standard issued in the history of the department that has the real-world impact of increasing our nation's overall energy consumption and carbon footprint," American Gas Association President and CEO Dave McCurdy told DOE in a letter late last month.

The most advanced "condensing" furnace can reach 90 percent efficiency, but it could require expensive structural changes that could drive people to install electric units, the trade group said. Current "non-condensing" gas furnaces would not meet the proposed efficiency standards being reviewed by the White House Office of Management and Budget, AGA said.

Without the option for less-expensive gas furnaces, AGA said, people who cannot afford the alternative

will switch to electric furnaces. That will lead, the group said, to more heat-trapping emissions, undermining President Obama's Climate Action Plan. Obama has pledged to cut by 2030 at least 3 billion metric tons of carbon dioxide emissions through energy efficiency. The administration is about two-thirds of the way to that goal, based on efficiency regulations adopted since Obama took office, and gas furnaces are "a large target for potential energy efficiency gains," according to the Energy Information Administration.

But backers of the DOE revision say the higher efficiency standard is needed to move gas furnaces beyond regulations put in place by the Reagan administration.

"This is about the oldest standard in the books," said Andrew deLaski, executive director of the Appliance Standards Awareness Project. "Unless there is some other policy that somehow pushes somebody to the more efficient product other than the standard, then you will just have the status quo" if both conforming and non-conforming options are available.

In 2010, natural gas space heating accounted for approximately 3 percent of the United States' CO2 emissions, and consumers spent about $39 billion to warm their houses with gas -- about 15 percent of total residential end-use energy expenditures, according to an AGA analysis.

DOE's preliminary life-cycle cost analysis of the proposed standard, released in September, failed to find the fuel-switching impact on costs or emissions that AGA predicts.

Kathryn Clay, AGA's vice president of policy strategy, said DOE's numbers don't reflect the "real world" impact of having only one standard. Condensing furnaces, she said, require the installation of venting pipes that go through the side of the house, while non-condensing furnaces are vented vertically, mainly through chimneys, and making that venting switch could be costly.

An industry-commissioned survey found that builders and contractors would switch to electric furnaces about 20 percent of the time under a more stringent gas furnace standard. The survey was conducted by the Gas Technology Institute for AGA and the American Public Gas Association.

Electric furnaces that rely on power from coal-fired power plants are linked to more carbon emissions, AGA said. Even if the electricity is generated from gas, it's more inefficient -- meaning more emissions and energy -- to turn natural gas into electricity and then into heat than it is just to burn gas for heat.

The fuel switching would change the cost of the standard, AGA said. Instead of the new rule saving $36 million over 30 years as DOE has calculated, it would increase energy costs by $45 million, the trade group said.

And instead of cutting 280,600 metric tons of CO2 a year, the group said, the standard would increase carbon emissions by 349,000 metric tons per year.

DOE has scheduled a public meeting at its Washington, D.C., headquarters tomorrow to discuss the analysis of the furnace proposal's fuel-switching impacts.

Many options

Understanding the consequences of fuel switching is important, but there are more options on the table other than having two standards, said Robin Roy, director of clean energy strategy at the Natural Resources Defense Council. "The idea of a new or separate product class is not one which is inherently bad," he said.

"What we are trying to do is find the maximum energy efficiency savings that are technically feasible and

economically justified," Roy said. "That leaves a fair amount left to discussion."

DOE could consider allowing a waiver from the standard if conditions make putting in the more efficient gas furnace infeasible, he said.

AGA agreed to such a waiver for furnaces under a previous version of the rule that was later contested by APGA.

DOE tried to revise the gas furnace standards in 2007 and 2011, respectively. Both were contested in court -- the first time by environmental groups and states, and the second time by industry; the latest court challenge led to a settlement with APGA last spring and called for DOE to issue a new standard in 2016.

A new rule could also allow for regional differences, as did the 2011 version, which let Southern states that do not often use heating to have the option of the less efficient furnace.

Different regions and their electric generation mixes play a key role in just how much carbon emissions would increase if consumers switch to an electric furnace, as some regions' power plants are more carbon-intense than those of others.

AGA maintains that fuel switching would significantly increase emissions in the Midwest and in some Southern states, including Mississippi and Alabama. The group said emissions would rise slightly in New England and the Mid-Atlantic and South Atlantic states.

But switching to an electric furnace more than likely means switching to heat pumps in most cases, according to deLaski of the Appliance Standards Awareness Project. That technology continues to get more efficient and cheaper; some advanced heat pumps are able to work in temperatures as low as minus 15 degrees Fahrenheit.

"Technology has moved forward leaps and bounds. There have been enormous technological progress, and yet the standard hasn't changed," deLaski said.

"The heat pump is getting more efficient, and electricity is getting more decarbonized," especially in the outlook for 10 years from now, he said. The trend toward the heat pump makes the gas industry "more nervous," as heating consumption is a significant part of the gas consumption load in a home, deLaski said.

"They lose the heating load, and it pretty much challenges the business model," he said.

AGA says more of its utilities are moving to rates based on connections rather than how much gas is consumed -- an approach comparable to that used by cable companies. That system lets utilities work more on energy efficiency, the group said. So far, about half of the states have or are considering decoupling rates from consumption, according to an analysis of AGA data.

Avoiding another lawsuit

Everyone does agree that the other electric furnace option -- a resistance heater -- is the worst option but also the least likely to be chosen, but AGA says the few times it would be installed would have an "outsize" effect on costs and emissions, despite its small numbers.

Technology innovation also plays a significant role in other options for the rulemaking.

Improving technology could deal with the issues related to changing the venting from vertical to horizontal and some associated issues with "orphaned" water heaters that are connected and also run on gas if there's a switch to electric, according to Steve Nadel, executive director of the American Council for an Energy-Efficient Economy.

"There should be one standard set at a level that makes the most sense ... because the vast, vast majority of applications you can use condensing," Nadel said. "If some people lose a little, that is the nature of the game." But more likely, he said, there will be some way to deal with those barriers, as well.

AGA's Clay agrees that technology could eventually provide an answer to easily and cheaply swap a condensing furnace in a house setup for a non-condensing furnace, but the industry is not there yet.

DOE could help by reinvigorating its natural gas research and development budget and focus to accelerate that conversion technology among other projects that should be considered, given the natural gas boom unleashed from hydraulic fracturing, she said.

But relying on technology that doesn't exist yet, hard-to-manage waivers or differing regional standards is too much of a risk in the short run in terms of achieving what everyone wants -- a decrease in carbon emissions, Clay said.

Having two standards is the "cleanest way of enforcement," she said, and allows consumers to "fall back" on the non-condensing furnace if they must. The overall market trend is toward the adoption of the more efficient condensing furnace, and that will eventually phase out the other technology as building stock is turned over.

"The alternative is to pretend [fuel switching] isn't a problem and end up paying the consequences in the short term because we did not play the long game," Clay said.

What everyone says he or she does not want is a lawsuit to delay the standards again.

Roy said these types of discussions now would probably prevent that from happening again.

"If you give proper consideration to the options out there -- I think the record is out there, and the record will support whatever the secretary [of Energy] decides," Roy said. "At the end, let the numbers speak for themselves."

EPA:

House plans lame-duck votes on 3 bills targeting agency rules

Amanda Peterka, E&E reporter

Published: Thursday, November 6, 2014

The House will consider a trio of measures aimed at easing U.S. EPA regulations when it returns for the lame-duck session, Majority Leader Kevin McCarthy (R-Calif.) said today.

Among the bills on tap for the week of Nov. 17 are two pieces of legislation aimed at improving the science behind EPA regulatory decisions.

One, H.R. 1422, is meant to correct what Republicans say is a bias and imbalance in EPA's science advisory panels, which offer guidance to the agency on a variety of issues, such as the development of

air pollution rules.

The bill by Rep. Chris Stewart (R-Utah), chairman of the House Science, Space and Technology Subcommittee on Environment, would add new peer-review requirements related to balance and independence and would require more disclosure of potential conflicts of interest.

The full committee approved the proposed legislation in April 2013 over objections from Democrats (*Greenwire*, April 11, 2013).

The second bill scheduled for consideration, H.R. 4012, targets the "secret science" behind EPA rules that many GOP lawmakers oppose. The legislation sponsored by Rep. David Schweikert (R-Ariz.) would require EPA to make its data more transparent.

Democrats have opposed the bill, calling it an "insidious attack" on EPA's ability to use science to protect public health (*E&ENews PM*, Oct. 29). The bill cleared the Science Committee in June along party lines.

Rounding out the trio is a bill that would expedite the air permitting process for new manufacturing facilities. H.R. 4795, from Rep. Steve Scalise (R-La.), which was advanced by the House Energy and Commerce Committee in June also on party lines, would compel EPA to issue guidance on permitting needs and to provide Congress with yearly updates on how the agency is expediting the permitting process under the Clean Air Act's New Source Review program.

The heart of the bill, though, is a provision that would require EPA to issue implementing regulations and guidance whenever it sets a new National Ambient Air Quality Standard under the Clean Air Act. If EPA does not issue guidelines concurrent with a new standard, new manufacturing facilities seeking to obtain air quality permits would not be required to meet the new standard (*E&ENews PM*, June 10).

CLIMATE:

Obama must hold firm against GOP assaults on environment -- NRDC

Jean Chemnick, E&E reporter

Published: Thursday, November 6, 2014

A leading environmental group said today it expects President Obama to stand his ground if incoming Senate Majority Leader Mitch McConnell makes good on his pledge to use Congress' "power of the purse" to kill U.S. EPA carbon rules.

The Kentucky Republican has said the annual appropriations process will be the Republican Congress' "best tool" to combat administration actions the GOP has long opposed -- especially EPA's two proposals to limit power plant CO2.

But Natural Resources Defense Council Government Affairs Director David Goldston said on a call this morning that placing policy riders on spending bills is "a method of hostage taking" and that greens would expect the Obama administration to veto any bill that came with those kinds of strings attached.

"In previous fights, the president has made clear that he will not be cowed by an appropriations strategy by people trying to load up spending bills with provisions that the public doesn't support," he said. "We would expect that to be the case again."

By trying to use the appropriations process to legislate, said Goldston, the Republican-controlled

Congress would risk "fiscal chaos," especially if their strategy is to shut down the federal government if Obama doesn't comply.

McConnell has said government shutdowns and debt limit fights will be off the table in the new Congress.

Goldston and other NRDC staff said on the call they are concerned that the new Republican House and Senate will advance a strongly anti-environmental agenda, with attacks not only on the two greenhouse gas rules but on any new EPA proposal to address ozone emissions, the agency's Waters of the United States proposal and numerous other environmental safeguards.

But Goldston saw a "silver lining" in the aftermath of Tuesday's electoral defeat of congressional Democrats. The Republican majority in the House has pursued a strong anti-regulatory agenda for four years, but it has "mostly flown below the radar" because the Democratic Senate ensured none of those measures would advance.

"The public will now see what the Republican agenda is and what's at stake here," said Goldston.

But David Doniger, NRDC's climate and clean air program director, said he did not expect the administration to spend its last two years in office just playing defense against a combative Congress.

He pointed to White House press secretary Josh Earnest's statement Tuesday before the polls closed that the president "will use his executive action to take some additional steps, but he's also going to continue to talk about this issue in a way that lays the groundwork for action by future presidents and future Congresses" (*Greenwire*, Nov. 5).

Those words were a possible reference to administration plans to curb methane emissions from oil and gas -- a decision EPA is due to release in the next six weeks.

Said Doniger: "This underscores that this issue is not going away, and the authority that he has he's going to protect, and the option for future Congresses to do more he wants to protect."

Moving ahead with the Clean Power Plan and other administration actions is key to allowing the U.S. to meet its international commitments to reduce greenhouse gases 17 percent below 2005 levels by 2020, he noted.

GREEN JOBS:

Republican districts lead clean energy job growth in Q3 -- report

Katherine Ling, E&E reporter

Published: Thursday, November 6, 2014

A majority of the 18,000 jobs the clean energy industry added in the third quarter of 2014 materialized in Republican districts, and constituents in both parties would be hurt if Congress fails to renew expiring tax incentives for renewable energy, according to a report released today by an environmentally oriented business group.

More than 9,000 jobs were created in congressional districts represented by GOP members of Congress compared with 7,690 jobs in Democratic-led districts and 1,250 jobs in projects that spanned districts of both parties, according to the Environmental Entrepreneurs (E2) report.

The 18,000 clean energy jobs created from July to September continued an upward trend for the year and were equivalent to the total number announced in the first two quarters of the year. The start of fiscal 2014 experienced one-third of last quarter's growth because of federal tax and state policy uncertainty, and next year is threatening to see similar numbers if the tax incentives are not extended, according to E2.

Since the wind production tax credit expired almost a year ago, that industry has only added 5,000 jobs, which is down at least half as many as the same time in 2012, E2 said.

"The election is over. Now it's time to live up to the stump-speech promises," E2 Executive Director Bob Keefe said in a statement. "One easy way to create jobs and drive economic growth in both red and blue states alike is by moving quickly to extend clean energy and energy efficiency tax incentives and other smart policies."

In total, there have been about 36,000 clean energy jobs created in the first three quarters of fiscal 2014, according to E2 data, although the group notes that their reports are "not an exhaustive tally of job creation in the clean economy." The group said more than 78,600 clean energy jobs were announced in 2013.

In comparison, oil and gas production in Texas alone created 19,000 new jobs last year, according to the latest data from the Energy Information Administration, although preliminary data from 2014 shows slower growth (*EnergyWire*, Nov. 6).

Companies influenced by tech-entrepreneur Elon Musk accounted for 8,000 of the third-quarter clean energy jobs, including an announcement about Tesla's "gigafactory" to make lithium-ion batteries for electric cars and energy storage to be built in Nevada and SolarCity's announcement of a solar panel manufacturing plant in New York. The pair of facilities also boosted the clean energy manufacturing sector to its best results since E2 started the report in 2011, it said.

Those announcements pushed Nevada to become the top-ranking state for clean energy job additions and New York as second, followed by California, Colorado, North Carolina, Michigan, Connecticut, Louisiana, Texas, and Illinois and Maryland, which tied for 10th.

Solar generation also continued to be a bright spot for the clean energy sector, creating 4,600 jobs in the third quarter, according to the report.

COAL:

Think tank report slams industry's 'poverty' claims

Manuel Quiñones, E&E reporter

Published: Thursday, November 6, 2014

This story was updated at 6:23 p.m. EST.

The coal industry's claim that it helps alleviate energy poverty is more a public relations talking point than a real commitment, said a new report by a left-leaning think tank.

The policy paper, authored by the Australia Institute, takes particular aim at U.S. coal giant Peabody Energy Corp.'s Advanced Energy for Life campaign.

The industry claims that cheap and widely available coal can help the developing world in particular boost its energy production and, therefore, quality of life.

But the report sees the argument as disingenuous. "Peabody's only contribution to energy poverty is maintaining a website and social media page which promotes coal as the solution to the problem," the document said.

The energy poverty argument has been gaining currency among fossil fuel promoters in recent years and has a strong backer in Australia's new Prime Minister Tony Abbott, a conservative who recently scrapped his country's carbon tax and has called coal "good for humanity."

Beyond the rhetoric, Peabody and Abbott's government have been pushing the energy poverty argument in advance of this year's upcoming G-20 leaders' summit in Brisbane, Australia.

But the think tank report said, "Although the company contributes to many charitable causes, it does not donate money, staff time, expertise or discounted fuel to any project that directly alleviates energy poverty."

Environmental advocates have long seen Peabody's advocacy on the issue as a way to shore up its business. But the new report is among the bluntest critiques of the company.

It points to other fossil fuel and mining companies that are supporting renewable energy projects in developing countries, including BHP Billiton Ltd. backing solar generation in Pakistan.

"Despite extensive searches and contact with companies and mining lobby groups," said the document, "we could not find a single example where coal companies have supported coal-powered energy poverty alleviation projects."

The coal industry would say its simple existence is making a difference. "Citizens in nations with access to affordable power consistently enjoy better health and greater prosperity," Peabody's chief, Gregory Boyce, said during a recent statement, "and coal is at the foundation of this progress."

But the report further tries to debunk claims that coal helps boost economic growth, life expectancy and quality of life. Its authors stress that any historical improvements are a correlation rather than causation.

"Further analysis of official data shows that developed countries have reduced coal use while economic growth has been unaffected," they wrote. "Developing countries are now the major coal users, but with alternatives becoming cheaper, they are likely to reduce coal use much earlier in their development."

Despite the report's skepticism, at least some anti-poverty advocates have talked about the need for coal-fired power, among other energy sources, to help the developing world (*ClimateWire*, Aug. 5).

Indeed, the International Energy Agency has predicted that coal demand would continue to grow by about 2.3 percent per year on average through 2018, largely from increasing demand in the developing world.

"It is Peabody's view that nations will continue to pursue policies that expand coal use," the company said in a report on the issue. "Peabody believes coal has an essential and irreplaceable role in any balanced energy policy."

And today, in a rebuttal to the report, Peabody said, "Reasonable people can disagree on the urgency of addressing energy poverty, but it's hard to question the crisis we face when millions die annually from indoor air pollution. We should use all fuels to alleviate energy poverty and spend less time debating and more time taking action to create energy access for those who need it most."

But the Australia Institute and other critics accuse the coal industry of downplaying the increasing cost-effectiveness of renewable energy sources and the need to reduce carbon emissions.

The think tank's report said, "To make serious reductions in coal-fired power greenhouse emissions, carbon capture and storage is required." But the technology's penetration, it suggested, has not kept up with the need.

In its rebuttal, Peabody touted being engaged with international organizations on energy and joining efforts aimed at making coal cleaner, including the FutureGen Alliance, which is retrofitting an old coal plant in Illinois to capture its CO2 emissions.

Peabody is actively engaged with the world's leading institutions such as the International Energy Agency, the World Bank, Organization for Economic Cooperation and Development nations, Group of 20 governments, and others on policies and actions to boost the developing world.

"Providing low-cost electricity that fosters economic prosperity and a better quality of life by mining and marketing coal is core to Peabody's mission and the heart of our activities worldwide," the company said.

The Obama administration has made cutting funds for overseas coal plant projects without CCS a priority within its Climate Action Plan. Only the poorest of countries get a pass.

But pro-coal lawmakers in Congress, plus countries such as Australia and Japan, are going a different route, pushing to continue supporting coal's growth as a way to not only alleviate energy poverty but also encourage the growth of pollution-reduction technologies -- and, of course, keep the industry alive.

FOSSIL FUELS:

DOE announces $65M to improve fracking, CO2 capture

Katherine Ling, E&E reporter

Published: Thursday, November 6, 2014

The Energy Department today announced about $65 million in funding for fossil fuel research to improve unconventional production methods and advance the production of "syngas" from coal.

DOE will provide almost $50 million for three field laboratories and six research projects to improve the efficiency and environmental impact of oil and natural gas production from hydraulic fracturing. The three field laboratories will include on-site work in the Marcellus and Utica shale plays and will last from three to five years, according to DOE.

The research will be conducted by universities and companies located in West Virginia, Illinois, Ohio, Montana, Texas, California and Oklahoma and will be managed by the National Energy Technology Laboratory. The winning projects include research to advance site characterization and basic subsurface science, as well as improved methods for production with fewer chemicals, water and energy; sealing of wells; fracture diagnostic tools; and replacement of water with liquefied natural gas as a fracturing fluid.

"These selections will help provide timely science and technology that will minimize environmental impacts of [unconventional oil and natural gas] development while maximizing the economic and national security benefits," DOE said in a statement.

Separately, DOE awarded about $16 million to four gasification research projects that will focus on converting coal into hydrogen-rich syngas. Syngas is seen as an important part of the integrated gasification combined cycle (IGCC) technology that aims to capture 90 percent of carbon dioxide emissions from coal and other fossil fuel power plants.

"By partnering with industry on promising pathways for high-efficiency, low-pollution power generation and syngas production, the Department is demonstrating its commitment to innovative solutions for growing the economy and using coal while protecting the environment," Energy Secretary Ernest Moniz said in a statement. "Advances in the gasification process will allow industry to develop technologies that may open pathways to carbon use in beneficial new ways while also advancing an important method for reducing greenhouse gas emissions."

The four projects span the country -- New York, California, Connecticut and Colorado -- and will be developed by Aerojet Rocketdyne Inc., Alstom Power Inc., Praxair Inc. and TDA Research Inc.

AIR POLLUTION:

EPA extends comment period on updated standards for grain elevators

Amanda Peterka, E&E reporter

Published: Thursday, November 6, 2014

U.S. EPA is again extending the public comment period on an update to 30-year-old standards for grain elevators.

The agency will allow stakeholders to weigh in an extra 45 days until Dec. 22, according to a notice scheduled to be published in tomorrow's *Federal Register*. This is the second time EPA has extended the comment period; an initial Oct. 7 deadline was bumped back by 30 days.

EPA's proposed rule would update Clean Air Act standards first issued in 1978 for the concrete towers that receive, store, weigh and transfer grain. The agency has proposed to tighten emission limits for newly constructed and modified grain facilities, as well as change the method for determining which grain elevators must comply with the rule (*Greenwire*, July 9).

According to EPA, the changes in the rule would reduce coarse particle pollution by 31 tons and cost the industry $1.1 million a year. About 900 grain elevators are subject to the current standards.

The Nebraska Department of Environmental Quality had requested an additional extension on the grounds that it came amid many other significant air regulatory actions and "at the busiest time of the year" for the grain industry. According to NDEQ, the Nebraska harvest season runs from June through November and covers 21 million acres of harvested croplands.

"The EPA is effectively denying the grain industry the opportunity to adequately analyze and comment on the first changes to these regulations in over 30 years," NDEQ said in its Oct. 24 letter requesting more time for comment.

FRANCE:

Authorities arrest 2 men in suspected drone flight over nuclear plant

Published: Thursday, November 6, 2014

French authorities have arrested two men suspected of flying a drone over a French nuclear reactor.

The National Gendarmerie said authorities were questioning the men after they were found with a drone yesterday near the Belleville Nuclear Power Plant in Belleville-sur-Loire, a town in the Cher region, south of Paris.

The men's names were not released.

The arrest comes after at least 15 sightings of drones flying over nuclear reactors in France, raising security concerns (AP/London *Guardian*, Nov. 6). **-- SP**

CHINA:

Polluters fail to cut smog ahead of APEC meeting

Published: Thursday, November 6, 2014

Several areas surrounding Beijing have failed to cut emissions ahead of the Asia-Pacific Economic Cooperation summit, which will be attended by dozens of world leaders next week, said the environmental ministry.

China had pledged to decrease traffic and close factories within a 124-mile radius of the capital city and cut emissions by 30 percent for APEC.

The Ministry of Environmental Protection made inspections around Beijing this week to check whether the pollution curbs were being implemented. The agency found many factories were not following the orders and many were exceeding emission levels. One firm failed to install mandatory monitoring systems and refused to let inspectors access polluting equipment, said the ministry.

Officials called the mayor of Anyang in the province of Henan to discuss the issues of implementation and said the city had not supervised or punished polluters enough.

President Obama and other world leaders are attending APEC next week (Stanway/Chen/Reklev, Reuters, Nov. 6). **-- MH**

FRANCE:

After lagging on solar, nation preps to build Europe's largest PV plant

Published: Thursday, November 6, 2014

In a move that will make up lost ground for the country's dismal solar energy sector, France is set to construct Europe's largest photovoltaic solar power plant.

The $450 million project being managed by Neoen, a Paris-based company, will be able to produce enough electricity to supply the nearby city of Bordeaux for a year.

France has been behind on solar energy production compared with other European countries Germany, Italy and Spain. In June, the country produced 5,095 megawatts of photovoltaic capacity, which equated to 1 percent of energy consumption for the first half of the year. Meanwhile, Germany produced 37,000 MW in the same time period.

Officials estimate the 300 MW plant will be connected to the grid by October 2015.

"We're below the price of new nuclear electricity in Britain," said Xavier Barbaro, chief executive at Neoen. "So the parity between nuclear energy, which is costing more, and solar, which continues to drop, is happening now, in 2014.

"Four or five years ago, nobody thought that would be possible before 2020" (Michel Rose, Reuters, Nov. 5). **-- MH**

ELECTION 2014:

ClearView's Book previews energy policy landscape following power shift

Published: Thursday, November 6, 2014

This week's power shift in Washington is expected to have direct impacts on some of the most debated energy and environment policies. Will a Republican-led Senate bring more partisanship or attempt to bridge the divide between the White House and Congress? During today's OnPoint, Kevin Book, managing director at ClearView Energy Partners, discusses committee shake-ups, the future of U.S. EPA air and water regulations, exports policy, and Keystone XL. He also gives his take on Tom Steyer's effectiveness in the midterms and talks about how the environmental community should refocus its spending strategy heading into 2016.

Click here to watch today's OnPoint.

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Millions wasted on 'wrong solutions' to fire prevention -- study

Fire prevention dollars could be better spent on land-use management than on oversimplified solutions that sometimes only exacerbate the problem, wildfire researchers say.

2.REGULATION:

In the wake of elections, legal experts explore vulnerabilities in the EPA power plant rule

A Republican sweep of the Senate this week has put President Obama's climate agenda in the cross hairs, with EPA's proposed rule on power plant carbon emissions as an obvious early target.

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Musk-backed projects help boost U.S. clean energy job totals 20% in 3rd quarter

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Asia's economy appears to be the most vulnerable to extreme weather

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Ill. regulators back FutureGen in Sierra Club lawsuit

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Icelandic assembly highlights divide between haves and have-nots in Arctic region

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Experts targeting weather services to women as a way to save lives

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Queen Elizabeth II: Newest big-name climate hawk?

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Downpour, flooding kill 12 in Haiti

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1.OIL:

Don't expect OPEC to curb production, says Iraq's U.S. ambassador

HOUSTON -- Oil and gas companies can expect no help from OPEC on oil prices later this month, a prominent Iraqi government official told an audience here yesterday.

2.FINANCE:

Wall Street innovators push energy MLPs into riskier terrain

Carl Icahn, already rich beyond imagination, had just made himself richer.

TOP STORIES

3.OIL AND GAS:

Chesapeake Energy dogged by subpoenas from DOJ, states

4.GRID:

Utilities move to satisfy customers' desire for distributed solar -- Moody's

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Ill. officials, grid operators discuss potential of multi-state strategy for carbon compliance

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La. regulator heads for runoff as challenger talks ethics, solar

7.ELECTRICITY:
Dynegy may shed Calif. assets as it expands in East, Midwest
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Streamlined operations are TVA CEOs' trademark

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Analysts see another winter of tight pricing
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Illinois finalizes fracking rules -- no, you can't see them
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NYC pension funds battle for climate's place in the boardroom
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OPEC members concerned but 'not panicking' over oil prices
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Higher CEO pay in Europe worries investors

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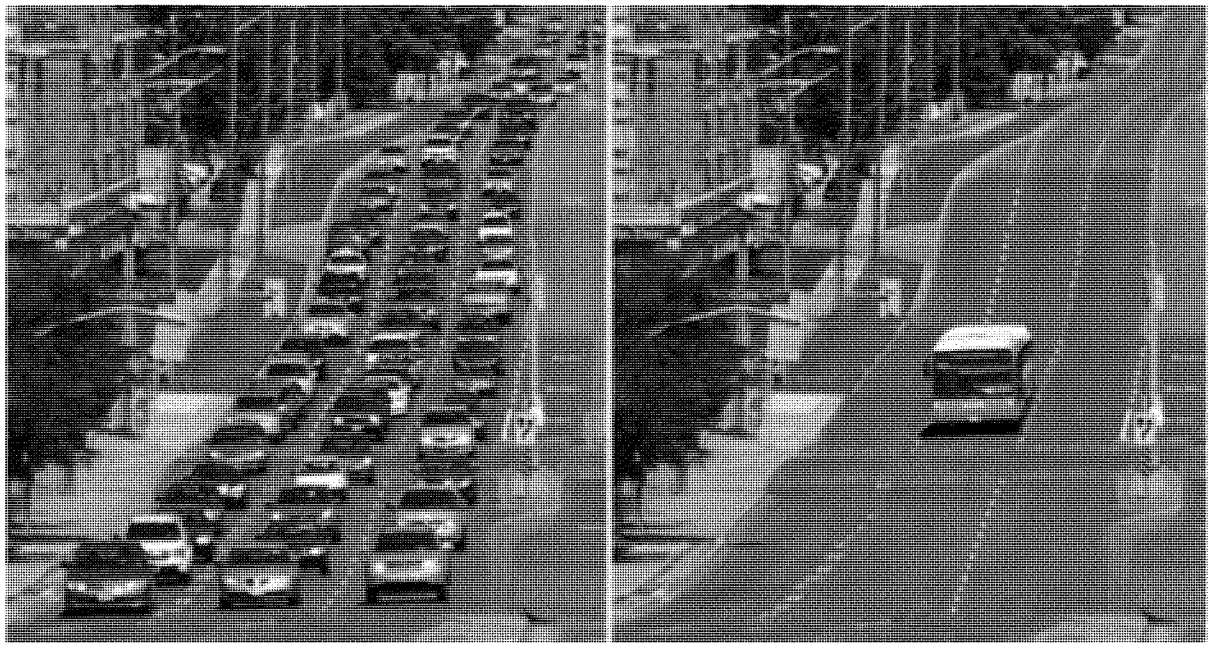

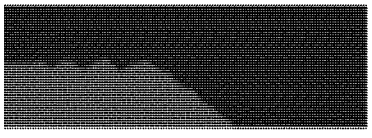

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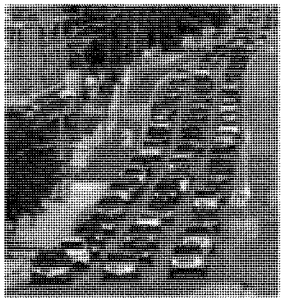

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Sent: Fri 11/7/2014 3:40:01 PM
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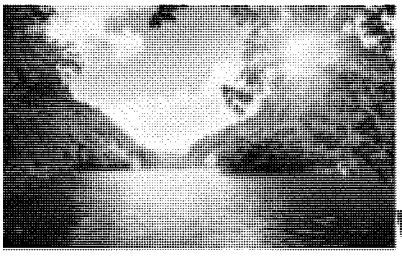


Water Law News

for November 7, 2014

Bloomberg BNA **Daily Environment Report™**

Chesapeake Bay

More Study Needed to Determine Effects Of Fracking on Bay Health, Commission Told

Much of the unconventional natural gas extraction in Pennsylvania is happening within the Chesapeake Bay watershed, and research is needed to determine the extraction boom's effects on the estuary, a member of the Chesapeake Bay Program's...

Hydraulic Fracturing

After Long Process, Illinois Approves Final Rules to Implement Fracking

Illinois' Joint Commission for Administrative Rules (JCAR) granted final approval Nov. 6 to the Department of Natural Resources' rules implementing the Hydraulic Fracturing Regulatory Act (HFRA)....

Hydraulic Fracturing

Water Recycling Systems Tried for Fracking, But Technical, Economic Challenges Remain

Some companies are developing better ways to recycle water for hydraulic fracturing despite the technical and economic difficulties and the hesitation of oil and gas companies to try different technologies....

Water Pollution

Los Angeles Area Paper Recycler Violated Clean Water Act, Advocates Say in Complaint

Environmental justice advocates have filed a lawsuit accusing International Paper Co.'s recycling facility in Norwalk, Calif., of violating its Clean Water Act stormwater discharge permit (California Communities Against Toxics...

Water Pollution

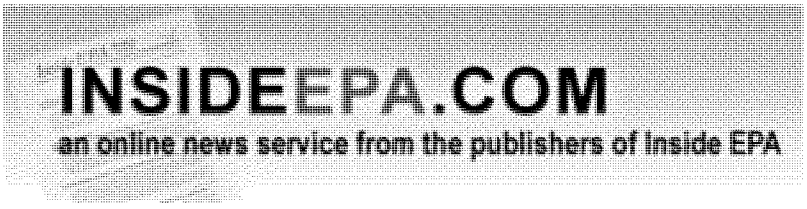
Sewage Utilities Should Contact Regulators Upfront About Health Threats, Official Says

When dealing with a potential threat such as the Ebola virus to wastewater workers, sewage treatment facilities should coordinate early on with the appropriate regulatory authority, a utility official said Nov. 6....

Water Resources

Online Financial Model Designed to Help Businesses Understand, Quantify Water Risks

An online financial modeling program will allow companies to evaluate what water risks they face as a result of water scarcity in any region of the world....



Inside EPA **Weekly Report**, 11/07/2014

http://insideepa.com/newsletters/inside-epa

Latest News

Advocates Seek Transfer Of EPA Cooling Water Rule Suit To 2nd Circuit

Environmentalists are asking the U.S. Court of Appeals for the 4th Circuit to transfer consolidated litigation over EPA's Clean Water Act (CWA) cooling water intake rule to the 2nd Circuit instead, saying the 2nd Circuit remanded an earlier version of the rule and therefore should also decide whether EPA's revised rule is acceptable.

Environmentalists Argue Kentucky Water Quality Criteria Are Unprotective

Kentucky environmentalists are urging a federal district court to restore the state's former water quality criteria, arguing the current standards for selenium and nutrients do not adequately protect human health or aquatic life, particularly in headwaters that lack fish, where they say the fish tissue-based selenium criteria are unenforceable.

News Briefs

Water Utilities Seek FY15 WIFIA Funds

Drinking water officials are renewing calls for House appropriators to fund a novel water infrastructure financing pilot in the fiscal year 2015, with new emphasis on the need for administrative funds to help EPA figure out how to implement the Water Infrastructure Finance and Innovation Authority (WIFIA).

Greenwire

WATER POLICY:

Ascendant Senate GOP could target Obama admin waterways proposal

Annie Snider, E&E reporter

Published: Thursday, November 6, 2014

The Obama administration's controversial Clean Water Act proposal didn't play at the same level as its climate regulations in the midterm campaigns that brought Republicans a new Senate majority, but it could rank as one of the top environmental targets in the next Congress.

Last month, 24 Senate Republicans including the presumptive new Senate majority leader, Mitch McConnell (R-Ky.), called the proposal to increase the number of streams and creeks that receive automatic protection under the 1972 law an "unprecedented executive overreach" that would give agencies "virtually unlimited regulatory authority."

The House has already voted to block the proposed rule and drew 35 Democratic votes to the measure (*E&E Daily*, Sept. 10). Sen. Pat Roberts (R-Kan.) has publicly been pressing current Senate Majority Leader Harry Reid (D-Nev.) to take up the legislation or one of the Senate's bills targeting the proposal.

But whether and how Republicans approach the issue once they're in the position to set the agenda remains to be seen.

"The Republicans in general are going to have to decide what aspects of the administration's agenda they most dislike and therefore which ones they want to attack," said Lowell Rothschild, senior counsel at Bracewell & Giuliani LLP. "There's obviously a whole laundry list, and so they're going to have to be strategic."

Despite significant Republican gains Tuesday night, it's not clear whether opponents of the rule have enough allies for a filibuster-proof vote in the Senate to block the rule.

Sen. John Barrasso (R-Wyo.) offered an amendment to block it during last year's water infrastructure bill but was eight votes short of the 60 needed. At least five of the Democrats who opposed the amendment are being replaced by Republicans, but neither side feels confident that the test vote -- which came before the proposed rule was released and before extensive campaigning on both sides -- is a solid indication of how members would vote today. Both supporters and opponents of the regulation are working to draw centrist lawmakers to their sides.

If Republicans do move to block it, the appropriations cycle is the likely place to do so. And if Republicans' promises to return to regular order come to fruition, opponents could have the opportunity to block the water rule in the funding bill for U.S. EPA and the Interior Department without risking shutting down the entire government.

President Obama "would be in a position where he would have to either veto EPA's budget, resulting in the shutdown of EPA, or accept the language," Rothschild said. "I don't think you'd find a whole lot of Republicans who would be upset if the president vetoes the EPA's budget but doesn't shut down the rest of the government."

That same EPA and Interior funding bill is also a spot where opponents could attempt to block the Obama

administration's climate regulations. Many expect that a bill doing that would draw a swift veto from Obama.

That opens the question, then, of whether a deal might be made between Republicans and the administration, for instance, to sign a bill that blocks the water regulations but leaves the climate regulations intact.

Supporters of the water rule say they have received assurances from the administration that they will see no such trade.

"I trust them," said Steve Moyer, vice president for government affairs at Trout Unlimited. "They've said this is a high priority, and they're going to follow through to the end. The [EPA] administrator has said it to us 10 different ways."

Room for compromise?

But an up-or-down vote on the water regulation itself is not the only option available to lawmakers.

"The Senate is really interested in showing that they can govern before the big election in 2016," Moyer said. "Then we have a chance of making a deal on Waters of the U.S. in an appropriations rider that might actually be useful."

For instance, during floor consideration of the House measure to block the proposal earlier this year, Democrats offered a number of amendments, including one to block the proposal if opponents' concerns that a vast expansion of federal power proved correct. None was approved.

Other potential process compromises have been hinted at in recent correspondence between Senate Agriculture Committee Democrats and the administration.

Both supporters and opponents of the rule are entrenched, making a compromise on the substance politically difficult. None of the key players are talking about such a possibility publicly.

"There's a pretty clear choice before senators, which is: Do we want our waterways fully protected under the Clean Water Act or do we not?" said Elizabeth Ouzts with Environment America. "That is a pretty black-and-white choice."

But Rothschild said both sides might have something to gain if they took a pragmatic approach to the issue.

While some aspects of the proposed rule would be technically difficult to find middle ground on, he said some areas could be ripe for compromise. For instance, supporters of the rule are very interested in protecting certain so-called isolated waters like prairie potholes that were thrown into regulatory confusion by a 2001 Supreme Court decision. Many of these waters would remain in limbo even under the proposed rule.

Rothschild said a deal could potentially be reached to have some specific sets of these waters covered in exchange for the administration pulling back in other parts of the rule like how similar small waters can be considered as a unit rather than individually.

"There's a lot of room for innovative compromise," he said.

OCEANS:

Scientists discover new coral species off Calif. coast

Emily Yehle, E&E reporter

Published: Thursday, November 6, 2014

Researchers recently found a new species of deep-sea coral in little-explored underwater canyons off California's coast, according to the National Oceanic and Atmospheric Administration.

The white coral -- likely related to gorgonian corals, or sea fans -- live about 600 feet below the surface. Gary Williams, a biologist with the California Academy of Sciences, led the team that discovered them during a NOAA-led expedition.

The coral was in "the Football," an oval-shaped area north of the underwater Bodega Canyon. It is close to two national marine sanctuaries: the Gulf of Farallones and Cordell Bank. Before last month's expedition, scientists knew little about what lived there.

In a statement, Farallones Superintendent Maria Brown said knowledge of the corals will help manage the sanctuary's ecosystem.

"Deep-sea corals and sponges provide valuable refuge for fish and other marine life," she said. "Data on these life forms helps determine the extent and ecological importance of deep-sea communities and the threats they face."

The discovery comes as NOAA researchers also collect information on deep-sea coral along the East Coast, sending underwater vehicles to photograph cities of coral in underwater canyons of the Atlantic (*Greenwire*, Aug. 28). The agency is aiming to map the extent of the country's deep-sea coral -- which has been less studied than its shallow-water relative -- and take steps to protect it from fishing.

On the West Coast expedition, NOAA-led researchers also conducted video surveys of rocky habitat that was previously mapped only through sonar data. They revealed "an abundance and diversity of life," according to Cordell research coordinator Danielle Lipski.

Researchers also found bundles of skate eggs on rocks surrounding a catshark nursery area. Peter Etnoyer, a deep-sea biologist at NOAA, called that combination "highly unusual."

WILDLIFE:

More than 100 birds die in oil sands tailings ponds

Published: Thursday, November 6, 2014

At least 122 birds landed and died in tailings ponds at three oil sands mines in Alberta, prompting an investigation by provincial environmental regulators.

The Alberta Energy Regulator confirmed yesterday birds had died in toxic ponds operated by Canadian Natural Resources Ltd.'s Horizon Oil Sands, Syncrude Canada Ltd.'s Mildred Lake and Suncor Energy Inc. in the Athabasca oil sands region.

Mining companies are legally obligated to prevent birds from landing on water containing heavy metals

and harmful chemicals including bitumen and toluene.

CNRL blamed extreme fog for at least 60 birds landing on its pond north of Fort McMurray, Alberta, despite an operational waterfowl deterrence system.

Thirty oiled birds have been recovered from Syncrude's operation in the last day, and spokesman Will Gibson said the company would be "reviewing our systems to see if there's any improvements we can make to make sure this doesn't take place again."

A Suncor spokesman said the deterrence system in place prevented all but six of a 120-bird flock from landing on the tailings pond.

A University of Alberta report released earlier this year estimated 200,000 birds land annually on tailings ponds despite deterrents, killing a small percentage that come into contact with surface bitumen or fresh tailings.

Regulators promised to release more information as the investigation is ongoing, but Alberta New Democratic Party Leader Rachel Notley called the lack of information "worrisome" in light of what she sees as the provincial government's failure to deal with problems stemming from the booming industry sector.

"We think that whether this is a small number of ducks or a larger number of ducks, we're going to see these kinds of problems continue until the government finally shows some leadership around balancing the environmental necessity of the oil sands along with the sustainability of the jobs," she said (Brent Wittmeier, *Edmonton Journal*, Nov. 6). **-- DTB**

GULF SPILL:

Court says no need to take up BP, Anadarko rehearing bid

Jeremy P. Jacobs, E&E reporter

Published: Thursday, November 6, 2014

A federal appeals court said yesterday there is no need to take up BP PLC and Anadarko Petroleum Corp.'s request to reconsider a ruling that the companies are liable for oil spilled in the Gulf of Mexico in the 2010 Deepwater Horizon accident.

The companies have asked the 5th U.S. Circuit Court of Appeals to revisit a June ruling that upheld a lower court's decision that the companies are liable for civil fines under the Clean Water Act because they were co-owners of the Macondo well.

The liability finding meant the companies could face billions of dollars in penalties.

They claimed that the three-judge panel made factual and legal errors.

But in a 12-page order, the same panel rejected those arguments and clarified its opinion.

For example, BP and Anadarko claim the opinion erred by stating that the well has been lined and sealed with cement when, in fact, it hadn't been completely sealed.

The panel responded that the companies' parsing of their language was misleading.

"We are doubtful that the panel opinion has created any confusion on this issue," the judges wrote. "Nevertheless, we here clarify that the above statement was not intended to imply that the cement created a *successful* seal in the well."

The court also said BP and Anadarko's arguments were a "red herring."

"Whether the cement initially sealed the well was immaterial to the panel opinion's holding," they wrote. "It is only the fact that the cement in the well ultimately failed to stop the flow of oil."

BP and Anadarko have asked the court to rehear the case en banc, meaning before a larger panel of judges. That request is still pending.

The 5th Circuit proceedings are part of the multifaceted Deepwater Horizon case. A lower court judge has also found BP acted "recklessly" in the spill, meaning the company could be on the hook for up to $18 billion in penalties (*Greenwire*, Sept. 4). The exact amount will be determined in future proceedings.

Click here to read the order.

FOSSIL FUELS:

DOE announces $65M to improve fracking, CO2 capture

Katherine Ling, E&E reporter

Published: Thursday, November 6, 2014

The Energy Department today announced about $65 million in funding for fossil fuel research to improve unconventional production methods and advance the production of "syngas" from coal.

DOE will provide almost $50 million for three field laboratories and six research projects to improve the efficiency and environmental impact of oil and natural gas production from hydraulic fracturing. The three field laboratories will include on-site work in the Marcellus and Utica shale plays and will last from three to five years, according to DOE.

The research will be conducted by universities and companies located in West Virginia, Illinois, Ohio, Montana, Texas, California and Oklahoma and will be managed by the National Energy Technology Laboratory. The winning projects include research to advance site characterization and basic subsurface science, as well as improved methods for production with fewer chemicals, water and energy; sealing of wells; fracture diagnostic tools; and replacement of water with liquefied natural gas as a fracturing fluid.

"These selections will help provide timely science and technology that will minimize environmental impacts of [unconventional oil and natural gas] development while maximizing the economic and national security benefits," DOE said in a statement.

Separately, DOE awarded about $16 million to four gasification research projects that will focus on converting coal into hydrogen-rich syngas. Syngas is seen as an important part of the integrated gasification combined cycle (IGCC) technology that aims to capture 90 percent of carbon dioxide emissions from coal and other fossil fuel power plants.

"By partnering with industry on promising pathways for high-efficiency, low-pollution power generation and syngas production, the Department is demonstrating its commitment to innovative solutions for growing

the economy and using coal while protecting the environment," Energy Secretary Ernest Moniz said in a statement. "Advances in the gasification process will allow industry to develop technologies that may open pathways to carbon use in beneficial new ways while also advancing an important method for reducing greenhouse gas emissions."

The four projects span the country -- New York, California, Connecticut and Colorado -- and will be developed by Aerojet Rocketdyne Inc., Alstom Power Inc., Praxair Inc. and TDA Research Inc.

ITALY:

Floods raise concerns about environmental neglect

Published: Thursday, November 6, 2014

Floods across Italy this week have renewed environmental concerns about abandoned farms in the area and flawed construction projects.

Water and mud decimated orchards and vineyards in Tuscany, Liguria and Veneto, while the Po River rose 2 meters (6.5 feet) in just 24 hours, according to the national agriculture association Confederazione Italiana Agricoltori.

Much of Italy is susceptible to flooding thanks to the country's mountains, but farmers' association Coldiretti said foolhardy construction projects and neglected farmland have exacerbated the problem.

The association predicts that 82 percent of Italian towns, housing some 5 million people, were at risk of landslides and flooding.

Floods yesterday came as Liguria's main city Genoa was still recuperating from early October flooding that killed one man and covered streets in mud and debris (Ilsa Binnie, Reuters, Nov. 5). **-- AW**

ELECTION 2014:

ClearView's Book previews energy policy landscape following power shift

Published: Thursday, November 6, 2014

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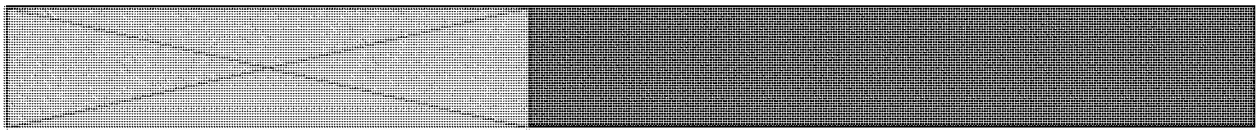
Click here to watch today's OnPoint.



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Millions wasted on 'wrong solutions' to fire prevention -- study

Fire prevention dollars could be better spent on land-use management than on oversimplified solutions that sometimes only exacerbate the problem, wildfire researchers say.

2.REGULATION:

In the wake of elections, legal experts explore vulnerabilities in the EPA power plant rule

A Republican sweep of the Senate this week has put President Obama's climate agenda in the cross hairs, with EPA's proposed rule on power plant carbon emissions as an obvious early target.

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Musk-backed projects help boost U.S. clean energy job totals 20% in 3rd quarter

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Asia's economy appears to be the most vulnerable to extreme weather

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Ill. regulators back FutureGen in Sierra Club lawsuit

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Documentary links national security with climate change

7.FORESTS:

Scientists say proposed law in Brazil would let mining companies destroy forests

8.ARCTIC:

Icelandic assembly highlights divide between haves and have-nots in Arctic region

9.WEATHER:

Experts targeting weather services to women as a way to save lives

10.SOCIETY:

Queen Elizabeth II: Newest big-name climate hawk?

11.FLOODS:

Downpour, flooding kill 12 in Haiti

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Don't expect OPEC to curb production, says Iraq's U.S. ambassador

HOUSTON -- Oil and gas companies can expect no help from OPEC on oil prices later this month, a prominent Iraqi

government official told an audience here yesterday.

2.FINANCE:

Wall Street innovators push energy MLPs into riskier terrain

Carl Icahn, already rich beyond imagination, had just made himself richer.

TOP STORIES

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Chesapeake Energy dogged by subpoenas from DOJ, states

4.GRID:

Utilities move to satisfy customers' desire for distributed solar -- Moody's

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5.CLIMATE:

Ill. officials, grid operators discuss potential of multi-state strategy for carbon compliance

6.ELECTION 2014:

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***E&E Daily*'s Juliano previews legislative battles facing new Congress**

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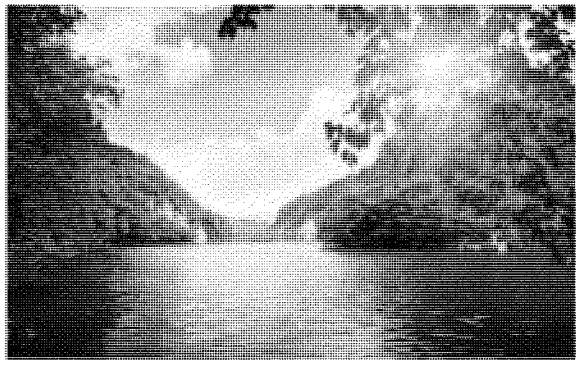

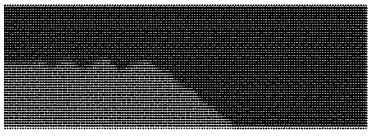

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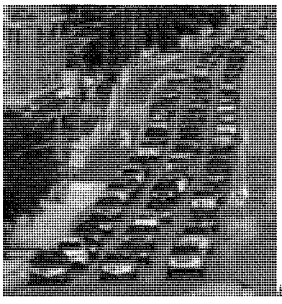

Air & Radiation Law News

for November 6, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Beijing May Face Smoggy Skies During APEC Summit Despite Cleanup Efforts

Beijing may be hit by smoggy weather as world leaders gather in China's capital for a summit, even as the government pushes for blue skies by shutting power plants and banning street-side barbecues....

Climate Regulation

Supreme Court Decision Has No Bearing On State Permitting Case, EPA Tells Court

A U.S. Supreme Court decision limiting the scope of the Environmental Protection Agency's greenhouse gas permitting program has no bearing on how those requirements apply to states, the agency told a federal appellate court (Texas v....

Climate Regulation

Utility Group Urges Delay in EPA Power Plant Carbon Rules to Shield Electricity Grid

The Obama administration's plan to cut carbon emissions threatens the nation's electricity supply by forcing old coal plants to shut before replacement power is in place, the group that oversees the U.S. electricity system...

Congress

Senate Republicans May Seek to Revive Blocked Bills With Reid Out of Majority Post

Senate Majority Leader Harry Reid (D-Nev.), who shepherded some big bills like the Affordable Care Act into law during his tenure, also has been adept at burying legislation he doesn't like....

Energy Efficiency

Information Requested on Federal Standards For Residential Central Cooling, Heat Pumps

The Energy Department has issued a request for information on whether to amend energy efficiency standards for residential central air conditioners and heat pumps....

Enforcement

EPA Expanding Administrative Enforcement Process to Include Ship Air Pollution Fines

The Environmental Protection Agency will expand its administrative civil penalty procedures to include air pollution penalties assessed under the Act to Prevent Pollution from Ships, according to a direct final rule to be published Nov....

International Climate

China Moves Up on Global Adaptation Index As Scandinavian Countries Remain on Top

China is one of many countries that have improved their readiness to adapt to climate change, according to an updated index released Nov. 5....

Congress

Energy Policy Issues Seen Ripe For Compromise After Republican Gains

President Barack Obama and Republicans now in charge of Congress may find common ground on energy issues like nuclear power, wind turbines and efficiency even as they continue to fight over climate change and drilling access....

Congress

House Science Committee Expected to Probe Evidence Supporting EPA Rulemakings

The leadership of the House Science Committee will remain constant in the 114th Congress, with Rep. Lamar Smith (R-Texas) continuing as chairman and Rep. Eddie Bernice Johnson (D-Texas) intending to stay on as ranking member, according to...

Congress

Lisa Murkowski Set to Lead Senate Energy; Senate Poised to Approve Keystone, Exports

Sen. Lisa Murkowski (R-Alaska) is set to become chairman of the Senate Energy and Natural Resources Committee thanks to the Republican takeover of the Senate....

Congress

Republican Election Gains Bode Well For More EPA Oversight, Keystone Pipeline

Republican gains in the midterm elections put one of the Senate's top climate change skeptics at the helm of the Senate Environment and Public Works Committee and mean that legislation to approve the Keystone XL pipeline and fund the Yucca...

Congress

Republican Gains Put Cochran in Line To Chair Senate Appropriations Committee

Republicans' strong gains in the Nov. 4 election have put Sen. Thad Cochran (R-Miss.) in line to retake

the chairmanship of the Senate Appropriations Committee in the 114th Congress....

Congress

Republican Senate Wins in Kentucky,
West Virginia Show Power of Coal Lobby

A Republican strategy that portrayed the Obama administration as hostile to coal paid huge dividends in the Nov. 4 election that gave the party control of the Senate for the first time in nearly a decade....

Congress

Republicans Expand Their Majority
On House Energy and Commerce Committee

Republicans are in a position to increase their majority on the House Energy and Commerce Committee in the 114th Congress, while Democrats are left to battle over who will be the new ranking minority member....

Congress

Senate Environment Committee to Focus
On EPA Oversight Under Inhofe Chairmanship

Republican control of the Senate means Sen. Jim Inhofe (R-Okla.), who questions the role of human activity in climate change, will lead the Senate Environment and Public Works Committee. ...

Taxes

New Jersey Voters Approve Increase
In Funding for Environmental Programs

New Jersey will increase the share and change the allocation of certain tax revenues constitutionally dedicated to environmental programs effective July 1, 2019, following voter approval of a question on the statewide ballot in the Nov....

Taxes

North Dakotans Reject Measure to Dedicate
Oil Extraction Tax Revenues to Conservation

North Dakota voters Nov. 4 roundly rejected a proposed constitutional amendment that would have dedicated 5 percent of the state's oil extraction tax revenues to conservation efforts....

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Latest News

Lacking Votes To Block GHG Rules, EPA Critics Eye 'Tailored' Fixes

In the wake of Republicans' mid-term election victories, critics of EPA's greenhouse gas (GHG) rules say lawmakers in the next Congress may consider tailored fixes to modify key deadlines and other rule provisions, an approach they say is more likely to succeed because they lack votes to push through legislation blocking the rules.

Observers Downplay Data Losses From EPA Reducing Air Monitor Network

State officials and other observers are downplaying the potential adverse impacts on emissions data collection following EPA's decision to scrap funding for 44 air monitoring sites in its chemical speciation network (CSN) that assess the components of air pollution, saying the remaining network will provide adequate coverage.

'Hybrid' Federal-State Suit May Open Door To New Air Nuisance Challenges

Environmentalists are crafting a hybrid suit of federal and state law that could create a new approach for pursuing nuisance claims for air pollution without triggering Clean Air Act preemption claims, by citing federal air law authority to seek stricter pollution controls on industrial emissions sources under state-specific public nuisance laws.

Republicans' Control Of Senate Poses Major Test For EPA's Climate Rules

With Republicans having taken control of the Senate, EPA's climate change agenda is facing some of its most severe tests as GOP leaders in both chambers of Congress appear likely to seek early votes to block the agency from completing its pending greenhouse gas (GHG) and other rules.

Greenwire

SENATE:

Republican wave unlikely to sweep away Obama's major rules

Nick Juliano, E&E reporter

Published: Wednesday, November 5, 2014

Despite their impressive gains last night, Republicans do not appear to have flipped enough seats to undo most of President Obama's environment and climate change agenda.

The united GOP Congress should be able to send him legislation that would approve the Keystone XL pipeline and to achieve narrower limits on the most controversial impending rules.

Republicans picked up at least seven seats in yesterday's elections, with additional gains possible in Alaska and next month's runoff in Louisiana as well as a possible recount in the unexpectedly close Virginia race.

Outgoing Majority Leader Harry Reid's tight control over the chamber prevented nearly all controversial votes over the last two years, with the exception of the all-night "vote-a-rama" in early 2013 when senators voted on nearly four dozen nonbinding amendments to the budget resolution.

That series of votes saw members weigh in on a carbon tax, EPA air toxics rules, requiring more cost-benefit analysis of regulations and approval of Keystone XL. Senators also weighed in on a controversial water regulation during consideration of an infrastructure bill later in the year.

The most significant gains on energy and environmental issues came in Iowa and Colorado, where retiring Sen. Tom Harkin (D-Iowa) voted with the majority of Democrats on all seven relevant amendments and defeated Sen. Mark Udall (D-Colo.) voted with his party on six of the seven measures. Arkansas Sen. Mark Pryor (D) voted with Republicans whenever energy or environmental issues came up, and Sen. Mary Landrieu (D-La.) was with Republicans in all but one amendment analyzed by *Greenwire*.

All of the energy-related budget amendments fell short of the 60 votes needed to overcome a filibuster, with the exception of one aimed at approving KXL. Republicans and industry supporters are confident a bill approving the pipeline will quickly reach the president's desk next year (*see related story*).

Using those tallies as a base line, Republicans don't appear to have flipped enough seats to end a filibuster -- even if they eventually win Alaska and Louisiana and if a recount reverses Sen. Mark Warner's victory in Virginia.

In the new Senate, Republicans likely have between 55 and 59 votes to block action on climate change based on seats that flipped this year. (Click here for a chart that breaks down the seven amendment votes and how they could flip in the new Senate.)

Sen. James Inhofe (R-Okla.), who is expected to lead the Environment and Public Works Committee, secured 47 votes for an amendment to bar greenhouse gas regulations. At least six Democrats who voted against the measure were unseated by Republicans who likely would support it, and that figure

could grow to eight depending on Begich's and Warner's fates. But that would still leave Inhofe with 55 supporters. A separate budget amendment from Sen. Roy Blunt (R-Mo.) to block a carbon tax, which the administration has not proposed, won 53 supportive votes and could gain as many as six more based on the outcome of the election, but that would still leave it one short of a filibuster-proof margin.

Industry supporters acknowledge they are going to be unlikely to completely sweep away EPA's climate rules, but that doesn't mean Republicans won't be more aggressive.

Scott Segal, a lobbyist with Bracewell & Giuliani who represents utilities and coal companies among other clients, said Republicans would "certainly" try to undo the entire rule with either a Congressional Review Act resolution, which requires only 51 votes to pass, or via an appropriations rider, but either of those efforts could be blocked by the president.

"I'm not sure that we have the votes to actually advance those across the finish line, particularly if they are vetoed," he said on a conference call today, suggesting narrower tweaks may still be possible.

Other priorities considered during the budget debate were amendments to end EPA's mercury and air toxics rule for power plants, which failed 46-53 and would pick up at most nine additional supporters.

Water rule, ozone standard

Another regulation expected to be a top Republican target is EPA's rule delineating what qualifies as a "water of the United States" subject to federal regulation.

Environmentalists say the rule is needed for upstream tributaries and wetlands that would otherwise lack federal protection, but conservatives have attacked it as a costly expansion of government power.

Sen. John Barrasso (R-Wyo.) offered an amendment to block it on last year's water infrastructure bill but came up eight votes short of overcoming a filibuster. Five Democrats who opposed the amendments lost their seats or retired and are being replaced by Republicans; a Warner loss would flip another vote. And Sen. Lisa Murkowski (R-Alaska) was not present for the vote, adding another likely supporter. But that would still leave the effort stuck at 59 votes in favor.

One top GOP target that has not previously been subject to a Senate vote is EPA's forthcoming rule expected to tighten the National Ambient Air Quality Standard for ozone, which has been in the works for years.

Most Republicans signed a letter to then-EPA Administrator Lisa Jackson in 2011 expressing concerns with the rule. Landrieu, who faces a runoff next month, and Sen. Joe Manchin (D-W.Va.) also signed the letter.

Jeff Holmstead of Bracewell & Giuliani, a former EPA air chief, noted Congress may be able to block or delay the ozone rule because it is not a "legacy issue for the White House," unlike the climate change rules. Indeed, Obama reportedly blocked EPA from tightening the standard in September 2011, suggesting he may be willing to work with Congress, where Democrats from states with heavy manufacturing or oil and gas extraction could be willing partners.

"Given the fact this issue is not a presidential priority I think it's possible we could see some legislative action, perhaps a rider," he said. "That is not going to fundamentally change the Clean Air Act, but there are ways this standard could be delayed or softened."

Reporters Annie Snider and Amanda Peterka contributed.

SENATE:

Keystone XL's a 'big winner' in midterms, project backers say

Manuel Quiñones, E&E reporter

Published: Wednesday, November 5, 2014

This story was updated at 1:56 p.m. EST.

Keystone XL pipeline supporters looking for a path forward on the project by congressional approval -- rather than waiting for President Obama to decide -- are claiming victory, even as backing from some Democrats remains uncertain.

Boosters of KXL's transboundary crossing from Canada for years have enjoyed strong support in the GOP-controlled House and now are saying they will have a filibuster-proof majority in support of the pipeline in the Senate next year.

"From everything we've seen, it is above 60 in the Senate," said Matt Dempsey, the voice behind Oil Sands Fact Check, a pro-pipeline website.

Republicans will hold at least 52 seats in the upper chamber of the next Congress. And several Democrats in the past have voted for pro-KXL legislation or urged the president to approve the pipeline.

In April, Democratic Sens. Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Claire McCaskill of Missouri, Jon Tester of Montana, Joe Donnelly of Indiana and Mark Warner of Virginia sent Obama a letter urging approval for KXL. Warner's race remains uncertain but appears likely to end in his re-election.

Beyond the senators on the April letter, Democratic Sens. Bob Casey of Pennsylvania, Michael Bennet of Colorado and Bill Nelson of Florida have also taken pro-KXL votes. In 2013, however, they also voted for an amendment adding caveats to an approval (*Greenwire*, March 25, 2013).

Even though pipeline backers may not need them, Delaware Democratic Sens. Chris Coons and Tom Carper may also back legislation approving the bill. Races in Alaska and Louisiana remain uncertain, but the outcome of those contests would likely not change the calculation on KXL.

Despite claims of a filibuster-proof majority, KXL backers still have to contend with the possibility of at least some supportive Democrats voting against approval of the pipeline. And there's always the likelihood of a presidential veto.

Dempsey pointed to polls showing strong national support for the pipeline. "This is a very strong coalition," he said. "It's hard to see [opponents] getting much attention at this point."

KXL supporters have floated the idea of a stand-alone bill for the pipeline's approval or including the language as part of budget measures or bipartisan energy packages dealing with pipeline infrastructure and natural gas exports.

Russ Girling, chief executive of TransCanada Corp., the company behind the project, released a statement saying it "has always enjoyed bipartisan support and is a great example of an issue where both parties can work together to create jobs and enhance energy security for the United States."

Fossil fuel backers began declaring victory long become the polls closed. Even though environmental advocates spent tens of millions touting climate concerns, they were largely silent on hot topics like hydraulic fracturing or KXL, opting instead to focus on an attempt to keep the Senate held by Democrats.

Dempsey said backers knew KXL would be the "big winner, regardless of how the election turned out. You knew that it was going to be a good night for Keystone. Keystone was going to win."

Louis Finkel, executive vice president at the American Petroleum Institute, said in an interview, "Our candidate has always been energy." And he declared victory over greens. "In the end," said Finkel, "voters rejected the message they send out there."

'Not backing down'

Environmental groups know they fell short of their goals this election cycle but say the results are a motivation to boost their efforts. "While we have lost friends in Congress, we are gaining them in the streets as our movement grows stronger and broader," said Michael Brune, the Sierra Club's executive director.

Even though such issues as the economy, abortion and candidates' support of Obama took precedence in many of the races, green leaders say they pushed candidates to discuss climate change and support cleaner energy sources.

"We're not backing down. A Congress elected by corporate polluters may think it can force a polluter agenda on this country," Brune said. "But public support is solidly behind action to tackle the climate crisis. There is a growing movement of climate and clean-energy voters that will be standing up to polluters and their political allies every step of the way."

Elizabeth Thompson, top Environmental Defense Fund climate and elections advocate, said during a press conference, "Yesterday was not a referendum on climate." Instead, she said, "it was a really, really bad day for Democrats."

When it comes to KXL, there is already talk about raising the issue's profile during the lame-duck session of Congress and as the GOP majority settles in next year. Despite the election, Obama will remain the decider.

"This is a president whose said he wants to heal the planet -- and now's his chance to prove it," May Boeve, executive director of 350.org, said in a statement. "President Obama can't approve the most massive oil infrastructure project in modern history, while claiming to be a climate champion."

She added, "President Obama has the power to reject the Keystone pipeline outright, and do right by his own legacy. We're gearing up to hold his feet to the fire, and we're confident that when everything's said and done, Keystone XL will not be built."

GRID:

Key senator, industry reps say report on EPA rule validates reliability concerns

Hannah Northey and Jean Chemnick, E&E reporters

Published: Wednesday, November 5, 2014

Fresh warnings today from grid overseers about potential reliability issues stemming from the Obama administration's power plant initiative are likely to validate -- and elevate -- previously expressed concerns of the new GOP majority.

Republican Sen. Lisa Murkowski of Alaska, poised to take the helm of the powerful Senate Energy and Natural Resources Committee, said a preliminary reliability review from the North American Electric Reliability Corp., the federally designated grid reliability overseer, adds weight to concerns she has repeatedly raised in the past about U.S. EPA's proposal to reduce greenhouse gas emissions from existing power plants, her spokesman said.

"She has every confidence in the electric reliability organization that put out the report," said Robert Dillon, a spokesman for the senator, adding that her office is still working through the report. "Just looking at the executive summary, it raises important questions about reliability, and it'll be something she'll explore more in-depth as she moves forward in the committee."

Murkowski, he added, has not expressed an opinion about the EPA rule but has said the ENR committee must assess all possible impacts so rules can be fairly judged.

Dillon said today's NERC report "validates the concerns" Murkowski has long raised about the draft rule's impacts.

NERC in its report said grid overseers could not conclude whether EPA's targets are achievable, and called for detailed analysis by power companies and regulators to determine whether an unprecedented switch away from coal-fired plants to natural gas, wind and solar generation, as well as increased energy efficiency, can be managed according to EPA's timetable (*EnergyWire*, Nov. 5).

NERC also recommended consideration of a backstop "safety valve" that would allow particular coal plants to keep running outside the EPA plan's targets if required to ensure adequate power supplies and essential voltage and frequency support in vulnerable sections of the grid.

NERC said it will follow up today's report with a more detailed reliability assessment early next year. Gerry Cauley, NERC's chief executive, said the organization didn't find "unrealistic" the plan's ultimate goal of reducing emissions from existing power plants to 30 percent below 2005 levels by 2030 but questioned whether there is sufficient time to ensure that adequate power lines and pipelines are in place to replace shuttering plants.

But a spokeswoman for EPA said in an email that there are no examples in which Clean Air Act standards have caused the "lights to go out," and that the agency's Clean Power Plan reflects coordination with the Federal Energy Regulatory Commission, the Energy Department, grid operators, state regulators and others. The rule also reflects the agency's significant attention to protecting public health and the environment without interfering with the country's reliable supply of electricity, said Liz Purchia, a spokeswoman for the agency.

"EPA's analysis finds that the proposal would not raise significant concerns over regional resource adequacy or raise the potential for inter-regional grid problems," she said. "Any remaining local issues would be managed, as they are today, through standard reliability planning processes. In addition, as recently as last week in a Notice of Data Availability, EPA reiterated its commitment to ensuring reliability and to being responsive to public input."

Purchia pointed to EPA's NODA, in which the agency asked for public comment last week on a menu of possible changes to its original proposal, including some that seek to address these reliability concerns by giving states extra time to plan, permit and build pipelines and other infrastructure. Purchia said the NODA demonstrates the agency's willingness to seek other ideas and comments toward a final rule that

is flexible for states.

Yet concerns remain.

"We've been telling EPA, these are massive infrastructure projects that require big engineering, long lead times in permitting and construction schedules that are difficult to fit in a tight box," said Bill Bumpers of Baker Botts LLP. "Anything that really imposes significant reductions before 2025 [from natural gas] is a recipe for disaster."

The June 2 proposal front-loads the reductions it says states can achieve on-site at coal-fired power plants and by ramping up existing natural gas units -- requiring states to achieve those cuts beginning in 2020. The latest deadline for states to complete their implementation plans for the rule is 2017. Utility representatives protest that it will be impossible for many combined-cycle natural gas power plants to ramp up to 70 percent capacity, as the EPA proposal envisions, three years later.

Last week's NODA sought to address these concerns by requesting comment on whether EPA should phase in its interim emissions reduction requirements more gradually after 2020.

That would be better than the original proposal, Botts said, but not good enough. A better solution would be to assign states no requirements based on fuel switching from coal to gas until 2025 -- giving utilities more time to navigate the permitting process for new pipelines that may extend hundreds of miles across state or national borders.

Scott Segal, who represents industry clients at Bracewell & Giuliani, said the NODA demonstrates that EPA is becoming aware that the rule's interim deadline is unrealistic.

"Like I've heard they say at an AA meeting, step one is admitting you have a problem," he quipped.

'Not enough time'

Rather than tinker with the stringency of the interim deadlines, Segal said, EPA should get rid of them altogether and find other ways for states to demonstrate early progress toward their 2030 goals.

"The lack of physical infrastructure is not the only problem that exists with the interim deadlines," he said. "They are also completely scrambling the way the states regulate and govern their energy systems."

State implementation strategies will almost certainly require energy regulators to change the way they make dispatch decisions, choosing generation for environmental reasons instead of economic ones. But economic dispatch is baked into consumer protection laws in many states -- and even some state constitutions -- making legislative fixes necessary. These political battles in state capitols are unlikely to be over by 2020, Segal said, particularly if they don't start until after states submit their implementation plans.

"It's just not enough time," he said.

Joe Power, vice president of federal legislative and regulatory affairs with Ameren, agreed.

"We're going to be telling the EPA, if you don't remove the interim targets ... there's going to be reliability concerns," he said, adding that many utilities have already ramped up gas plants and heat rate at coal facilities, leaving them with the choice of retirements.

The utility industry, Power said, has already taken the steps EPA outlined -- also dubbed "building blocks" --

to increase the heat rate of coal plants and redispatch gas plants up to 70 percent. That leaves companies looking to pipeline capacity for more gas and power lines to replace mostly coal plants that will need to retire.

"The system is going to see power flows it's never seen before," he said. "There's no way to know, and this is what NERC is saying, how that's going to work and how the transmission system can actually accommodate that. If you can't do blocks one and two, you're left trying to retire your way into compliance."

Another problem, Power said, is that a utility cannot always retire a plant, namely if a grid operator says the unit must run for reliability. Ameren joined a group of utilities in releasing a white paper outlining recommendations, including scrapping the rule's interim compliance deadlines and giving states more leeway.

Jo Ann Emerson, CEO of the National Rural Electric Cooperative Association, said in a statement that the NERC report rightly questions a greater reliance on natural gas generation, "unrealistic" improvements to existing plants and a lack of infrastructure to support expanded renewable energy transmission. "It's time for the EPA to withdraw this overreaching rule and work with industry partners to achieve goals that won't adversely impact the people at the end of the power lines," Emerson said.

Others were more optimistic.

John Moore, senior attorney with the Natural Resources Defense Council, said he highly respects NERC and said the group has a significant role to play with the industry's compliance with the EPA rule. NRDC, he said, agrees that in-depth reliability assessments shouldn't begin until after the rule is finalized.

But Moore said not all the discussion in the report acknowledges ongoing work to reduce load in some parts of the country, or studies showing that integrating large amounts of wind and solar onto the grid is feasible and economical.

TRANSPORTATION:

Senate switch dims chances of highway funding action this year

Sean Reilly, E&E reporter

Published: Wednesday, November 5, 2014

Yesterday's election returns are likely to snuff already faint prospects for passage of a long-term highway and transit funding bill on Capitol Hill in the lame-duck session scheduled to start next week.

And while the results of a host of state and local transportation funding measures produced a mixed scorecard, the outcome of a closely watched Massachusetts initiative highlighted the continued political obstacles to raising fuel taxes.

On the first front, Sen. James Inhofe (R-Okla.) is expected to reclaim the chairmanship of the Senate Environment and Public Works Committee, which is charged with writing the highway funding provisions of any transportation reauthorization legislation.

Not only do lawmakers face a crush of pressing business in the lame-duck session, but letting a long-term transportation bill go through while Sen. Barbara Boxer (D-Calif.) remains chairwoman of the committee would entail Inhofe's giving up "a huge possible success," said Steve Ellis, vice president of Taxpayers for

Common Sense, a watchdog group.

June DeHart, a lawyer and lobbyist with the firm of Manatt, Phelps and Phillips LLP, who works on transportation issues, also predicted no action this year, although she thought the long-term prospects were good.

"Republicans will wait until they control both houses in the next Congress," DeHart said.

Federal highway and transit programs are currently operating under a short-term extension that will expire at the end of May 2015. Boxer and Sen. Tom Carper (D-Del.), who leads the EPW subpanel on Transportation and Infrastructure, have argued that the best chance for approving a six-year bill is during the next few weeks when departing lawmakers could be more inclined to approve an increase in the federal gas tax to shore up the Highway Trust Fund.

The tax, the trust fund's main source of revenue, has been at its current level of 18.4 cents per gallon since 1993. With receipts running short of congressionally imposed spending demands, the fund has needed tens of billions of dollars in bailouts of general Treasury revenue in recent years. Before lawmakers approved the current extension in July, federal transportation leaders had warned they would otherwise have to begin rationing reimbursement to states for highway projects already underway.

Prominent business organizations, such as the U.S. Chamber of Commerce and the American Trucking Associations, support a gas tax hike to avert future crises; in June, Sens. Chris Murphy (D-Conn.) and Bob Corker (R-Tenn.) joined forces to propose raising the tax by 12 cents per gallon over two years and then tying it to the inflation rate.

But at the Taxpayer Protection Alliance, another watchdog group, President David Williams said the turnover in party control means that "any sort of tax increase will be completely off the table."

In a statement, however, Carper signaled he wasn't giving up hope of lame-duck action on a "multi-year" transportation measure.

"Both Republicans and Democrats agree this will put Americans to work, help businesses be more competitive, grow our economy, and give cities and states the certainty they need to make smart investments in our transportation infrastructure," Carper said. "There's no good reason to wait to begin moving forward with bipartisan initiatives like investing in transportation infrastructure that would address some of the most fundamental challenges facing our country."

While state lawmakers in Massachusetts last year approved a 3-cents-per-gallon increase in the state gas tax, voters there yesterday repealed -- by a 53 to 47 percent margin -- a related provision linking the tax to the consumer price index, according to the Center for Transportation Excellence, a research clearinghouse. Supporters of the repeal measure had argued that future increases should require legislative approval, not occur automatically.

The measure was among two dozen state and local transportation funding ballot measures around the country formally tracked by the center, which is affiliated with the American Public Transportation Association, a transit advocacy group. Of those, the center counted victory in 15, policy manager Ashley Robbins said.

In general, she said, the results showed that voters were more inclined to back measures to restore and preserve existing services, but less likely to support new initiatives.

In the metropolitan Atlanta area, for example, Clayton County residents agreed to a penny sales tax increase that will restore and expand transit service lost to budget cuts in 2010.

In Maryland, voters approved a constitutional amendment intended to make it harder for elected officials to tap transportation revenue for other purposes.

But Austin, Texas, voters defeated a proposed $600 million bond issue to help finance a rail system, while residents of Pinellas County, Fla., rejected a 1-cent sales tax increase that supporters had hoped would help underwrite a stronger transit system for the Tampa Bay area.

CALIFORNIA:

Brown romps to historic fourth term, faces challenges on water, energy

Debra Kahn, E&E reporter

Published: Wednesday, November 5, 2014

California Gov. Jerry Brown (D) cruised to a record fourth term last night, defeating Neel Kashkari (R) by 58.7 to 41.3 percent, riding a wave of support from the densely populated coast.

In a Twitter statement, Brown thanked voters "for giving me their confidence a 4th time."

He added, "In CA where once they called us a failed state, we're now showing the way."

Brown, 76, served his first two terms as governor from 1975 to 1983, before passage of a 1990 constitutional amendment restricted most statewide elected officials to two terms. Brown made three unsuccessful runs for president and one for Senate.

He made a political comeback at the local level in 1998, when he was elected mayor of Oakland. He jumped back on the statewide stage in 2006, winning a race for attorney general. He ran and won his gubernatorial bid in 2010.

In his run for the historic fourth and final term this year, Brown did little campaigning. He devoted most of the $3.9 million spent by his campaign this year to promote ballot initiatives on water projects and establishing a savings and debt repayment fund. Both passed yesterday (*ClimateWire*, Nov. 5).

Water issues loom large for Brown's fourth term. He has promised to focus heavily on water, taking advantage of a historic drought that has brought rare political consensus on the need to monitor and manage groundwater.

"Like energy and climate change, that have been contentious but also led to very productive initiatives, the same will be true of water, and it'll be something I will put front and center," he said last month (*ClimateWire*, Oct. 21).

Brown has also promoted a major water infrastructure project, the Bay Delta Conservation Plan. The proposal to build tunnels under the Sacramento-San Joaquin River Delta faces fierce opposition from environmentalists.

"The groundwater regulation probably goes to the front of the line because of the urgency of it," said V. John White, executive director of the Center for Energy Efficiency and Renewable Technologies, a nonprofit coalition. "The tunnels are going to be beyond his term."

Brown has been impatient with reporters who pressed him for more details on his plans, which also include a major push for high-speed rail.

"Besides the water, we've got, what else have we got?" he asked a reporter last week. "Oh, we've got that train to move from north to south, I mean, getting that thing built. That's going to take some time. I mean, that's more than a 15-minute coffee break."

Besides those projects, observers expect he will work on his climate initiative. Brown has visited China and Mexico and signed agreements with both countries to work on carbon pricing. California's existing cap-and-trade system for greenhouse gases is set to expand in January to include transportation fuels.

"I think that that's something the world needs, is for whoever is governor of California ... to continue to show a level of leadership we just aren't seeing by other states, or certainly by the federal government," said Kathryn Phillips, director of Sierra Club California. "California is the one who has to make us part of the international conversation about how we address climate change."

Next up, experts are anticipating a new emissions target for 2030, building on the existing target of 1990 emissions levels by 2020.

"Everything I've seen is the governor intends to propose and seek adoption of a target," White said.

White said he saw room for new programs for clean transportation, building efficiency and low-carbon electricity to further lower emissions. More international and domestic climate partnerships could also be in the offing, he said, including a potential alliance with Germany.

"He clearly is looking to find a way to have us continue to lead but also to get others to follow," White said.

WYOMING:

Victorious governor vows push for coal, against grouse listing

Published: Wednesday, November 5, 2014

Wyoming Gov. Matt Mead (R) plans to continue pushing back against U.S. EPA regulations and advocating for increased coal use during his second term.

Mead was easily re-elected in the conservative state yesterday.

He told campaign workers yesterday in Cheyenne his new term "provides an opportunity for me and the office to continue our work on the energy strategy, the water strategy, expanding technology and broadband in the state, continuing to strengthen our local governments and our infrastructure."

Mead said he was optimistic coal production would continue to play a crucial role in the state, which leads the nation in production of the fossil fuel.

The governor said he would push the state's congressional delegation to sponsor federal legislation barring legal challenges to Wyoming's wolf management plan. Mead said he also will continue to lobby against a possible endangered species listing for the sage grouse (Ben Neary, AP/*Seattle Post-Intelligencer*, Nov. 5). **-- SP**

AIR POLLUTION:

Calif. regulators, N.Y. back greens in hazardous-emissions lawsuit

Amanda Peterka, E&E reporter

Published: Wednesday, November 5, 2014

California air quality regulators and the state of New York are seeking permission to argue in support of environmentalists in a lawsuit that calls into question how stringent U.S. EPA emissions standards for hazardous air pollutants must be.

In a friends-of-the-court motion late last week, the California Air Resources Board, the South Coast Air Quality Management District and New York asked the U.S. Court of Appeals for the District of Columbia Circuit for time in upcoming oral arguments next month.

The states say EPA's 2012 air standards for hexavalent chromium, a toxic pollutant, released by the chrome-plating industry are not as stringent as the Clean Air Act requires and would undermine the state-federal relationship when it comes to regulating air pollution. They say they're concerned a favorable court decision for EPA would set a negative precedent.

"EPA's flawed interpretation will increase the chance that state efforts to reduce toxic air emissions will merely displace emissions rather than reduce them," the states wrote in a Sept. 30 court brief. "And it will place greater burdens on state regulators in the future."

At issue is whether EPA, when it revises toxic air pollution standards, is required to adhere to the same regulatory floor as when it first issued the standards. For hazardous pollutants, the Clean Air Act requires that EPA's standards reflect the maximum achievable control technology, or MACT.

In 2012, EPA revised 1995 hexavalent chromium standards for the chrome-plating industry that did not reflect control technology that industry had used in California to meet standards that had been more stringent. The agency excluded that technology from its analysis, finding that the controls would not be cost-effective for facilities outside California.

EPA argues that the stringency requirement in the Clean Air Act applies only to the first issuance of a standard and that it has the authority to consider cost-effectiveness in revisions.

Environmentalists challenged the standards in a November 2012 petition for review. Oral arguments are scheduled for Dec. 3 in Washington, D.C.

It's rare for parties that have filed friends-of-the-court briefs to present their case during oral arguments. The California regulators and New York argue that they bring a unique state perspective that adds to the environmentalists' arguments against the standards.

In their Sept. 30 brief, which contains points they would likely raise should the court grant time during the oral arguments, they argue EPA should have set more stringent standards that reflect the controls used in California. Setting the standard based on cost "will expose communities around the country to far more cancer-causing hexavalent chromium than a MACT analysis would allow," they wrote.

The state parties also said EPA's rule undermines the cooperative federalism nature of the Clean Air Act, which grants both states and the federal government authority to ensure clean air quality. They argue that the Clean Air Act envisions states leading the way to more stringent national air toxic standards.

"Instead of ensuring that sources across the country catch up to California's sources in reducing hexavalent chromium emissions, EPA has declined to follow California's lead," they wrote. "This has not only deprived California regulators and facilities of the leadership role the state envisions for them, it has also deprived other states of the opportunity to rely on strong national standards."

The governmental parties say toxic air pollution from other states under the weaker national standard could drift across California's borders and undo the protections previously achieved in the state.

Rep. Henry Waxman (D-Calif.) earlier this year also filed a friends-of-the-court brief, arguing that in the 1990 Clean Air Act amendments Congress intended revised standards to be based on maximum achievable control technology.

EPA:

White House, OPM approve staff-cutting plans

Robin Bravender, E&E reporter

Published: Wednesday, November 5, 2014

Another round of staff trimming is on track for January at U.S. EPA after top government budget and human resource offices signed off on the plans.

EPA management's plans to cut about 200 employees won the approval of the White House Office of Management and Budget and Office of Personnel Management, EPA acting deputy chief Stan Meiburg told employees last week in an email.

Their approval was needed before the agency could offer buyouts and early retirements to staffers at nine offices across the country. Participants will be expected to leave the agency no later than Jan. 9.

Meiburg said the buyouts are an effort "to improve EPA's ability to attract new talent, build diversity in our staff, and provide the needed tools to protect human health and the environment."

EPA union officials, however, have expressed concerns that the employees left behind will be saddled with more work and fewer resources at a time when agency morale is already suffering thanks to resource constraints and political attacks.

"I'm just interested in how it all shakes out, particularly with how we're going to get our jobs done here; that's my biggest concern," said John O'Grady, president of the American Federation of Government Employees chapter representing EPA workers in the Chicago region.

EPA is targeting employees in two regional offices -- the New York-based Region 2 office and the Chicago-based Region 5 office. Offers will also be made to staffers in the Office of Administration and Resources Management, Office of Chemical Safety and Pollution Prevention, Office of Research and Development, Office of Water, Office of Solid Waste and Emergency Response, Office of Air and Radiation, and Office of International and Tribal Affairs.

Meiburg said notices would be sent to employees in those offices with more details about eligibility and noted that participation is completely voluntary.

Under the first round of EPA buyouts offered earlier this year, employees were offered a lump sum of up

to $25,000 to leave -- the maximum amount allowed by the Office of Personnel Management. The early outs allowed certain employees to retire early and immediately receive annuity payments.

Earlier this fall, EPA sent draft documents to employees outlining which positions would be targeted (*Greenwire*, Oct. 3).

Changes have since been made to those plans, and EPA answered questions from the White House budget office and OPM prior to signing off on the plans, EPA spokeswoman Liz Purchia said today. She declined to provide updated copies of EPA's plans.

JAPAN:

Utility removes first spent fuel rods from crippled plant

Published: Wednesday, November 5, 2014

The operator of Japan's Fukushima Daiichi nuclear power plant -- closed since a series of meltdowns more than three years ago -- removed 400 metric tons of spent uranium fuel from the facility in the first step of a cleanup process that is expected to take decades.

Tokyo Electric Power Co. has completed the yearlong operation to remove 1,331 spent fuel rods from the upper levels of the reactor 4 building, the company said.

The company targeted the area first because the building was thought to be especially vulnerable to collapsing in a future earthquake. TEPCO still needs to remove 180 fuel assemblies that have not been used, but these are considered less dangerous than spent fuel rods.

The spent rods and 22 unused assemblies were placed in a storage pool at the plant, the company said (Aaron Sheldrick, Reuters, Nov. 5). **-- SP**

INDIA:

Smog reduces grain yields in populated areas -- study

Published: Wednesday, November 5, 2014

Air pollution in India is impacting the country's grain yields, according to a new study published in the *Proceedings of the National Academy of Sciences*.

After examining 30 years of data, scientists determined that densely populated areas had wheat yields 50 percent lower than what they could have been in 2010. The study found that nearly 90 percent of the decrease in potential food production could be attributed to smog, while 10 percent could be linked to climate and precipitation changes.

"The numbers are staggering," said Jennifer Burney, an author of the study and scientist at the University of California, San Diego. "We hope our study puts the potential benefits on cleaning up the air on the table."

Although the new research found that smog is impacting grain yields, India has been increasing food production in recent years due to new technologies and management techniques. Controlling smog is often done at local levels, and Burney said there are technologies available to reduce smog in many

areas (Chris Arsenault, Reuters, Nov. 4). **-- MH**

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CLIMATEWIRE — Thu., November 6, 2014

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1.REGIONS:

Republican gains in Wash. Legislature spoil plans for a West Coast bloc of climate action states

A mixed bag of electoral victories in Washington state and Oregon on Tuesday night opened some room for the ambitious climate agendas of the states' green-minded governors. But failure to tip the Washington Senate left environmentalists just shy of the across-the-board victory many had hoped for.

2.REGULATION:

China's planners aim to cap carbon emissions from steel, cement producers by 2020

HONG KONG -- The Chinese government for the first time has said publicly that it will cap carbon dioxide emissions from two major polluting industries, but its impact on the nation's overall climate change mitigation remains unclear.

TODAY'S STORIES

3.TECHNOLOGY:

Tesla speeds up timeline on battery cell production at 'Gigafactory'

4.RENEWABLE ENERGY:

Can wave power be harnessed with cheap 'Third-World engineering'?

5.BUSINESS:

More companies begin to focus on exposure to water shortages

6.NATIONS:

Norway leads global climate change adaptation; U.S. falls back in readiness

7.NEGOTIATIONS:

Kerry sees potential emissions-reduction deal with China

8.SCIENCE:

Scientists are unsure why North Pacific is unusually warm

9.MOVIES:

'Cliffies' honor climate change depicted in Hollywood

10.NATIONS:

Uganda struggles with cost of climate change responses

E&ETV'S ONPOINT

11.ELECTION 2014:

ClearView's Book previews energy policy landscape following power shift

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ENERGYWIRE — Thu., November 6, 2014

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Gas pipeline megaproject's fate hangs in the balance of still-undecided Alaska governor race

Alaska's cliffhanger gubernatorial election is raising serious concerns about whether the state's major oil companies will continue to work with Alaska to build a proposed multibillion-dollar liquefied natural gas pipeline and export project.

TOP STORIES

2.ENFORCEMENT:

Dropped crude-by-rail case highlights regulator's 'steep learning curve'

3.GRID:

Calif.'s first major energy storage buy bodes well for global market, backers say

4.OIL:

Expensive efficiency breakthroughs could suffer if price slump continues

ELECTRICITY

5.GRID:

Trade group rolls out new program to help utilities assess smart-grid projects

6.MARCELLUS SHALE:

Multiple mini-power plants planned near gas wells

OIL AND GAS

7.WORKFORCE:

Texas led 2013 energy job growth -- EIA

8.HYDRAULIC FRACTURING:

Army Corps FOIA tussle continues in Ohio

9.OIL:

U.S. shale can withstand low crude prices, consultants say

10.NATURAL GAS:

Emergency order halts work at W.Va. wells near chemical plant

11.OIL:

Refiner swaps out Iraqi imports for U.S. crude

E&ETV'S ONPOINT

12.ELECTION 2014:

ClearView's Book previews energy policy landscape following power shift

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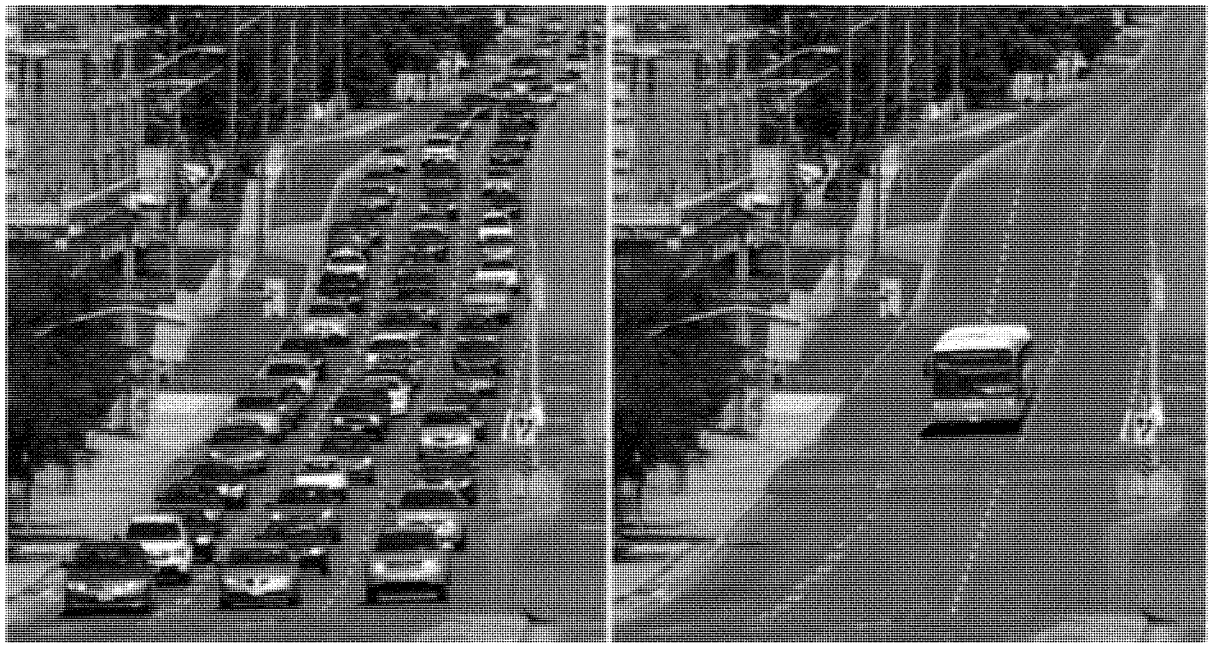

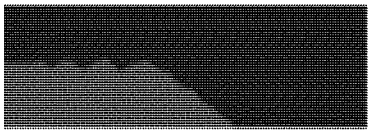

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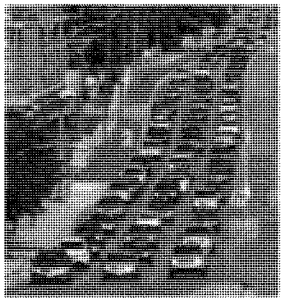

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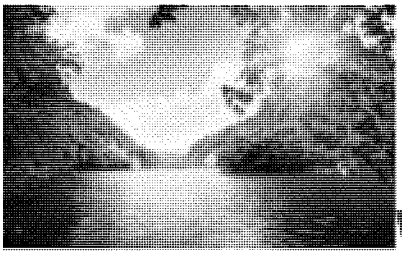
Subject: Water Law News for November 6, 2014



Water Law News

for November 6, 2014

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Maryland Awards $970,000 for Poultry Farm Manure-to-Energy Plan to Cut Nutrient Runoff

The Maryland Department of Agriculture announced a $970,000 grant to get manure-to-energy technology installed at an Eastern Shore poultry farm, saying the system could reduce the farm's nutrient pollution by 90 percent. ...

Hydraulic Fracturing

Spending on Water Treatment for Fracking to Rise

U.S. hydraulic-fracturing companies may triple spending on water treatment and reuse over the next six years as drought in the West threatens supplies and regulators enact stricter waste measures. Spending may increase to $357 million in...

Water Infrastructure

CDC Developing Guidelines for Wastewater Workers Handling Ebola-Contaminated Waste

Hospital waste contaminated with Ebola virus can be discharged into sanitary sewers without posing a significant risk to wastewater utility workers wearing protective gear, a Centers for Disease Control and Prevention official said Nov....

Water Resources

Water Use Continues to Fall, USGS Says, Less for Power Generation, More for Mines

U.S. water use has been continuing to decline in industrial, agricultural and public supply sectors, according to a U.S. Geological Survey report released Nov. 5....

California

California Voters Approve $7.5B Water Bond, Local Measures Banning Fracking, GMOs

California Proposition 1, a $7.5 billion water infrastructure bond and spending plan, sailed to victory Nov. 4, winning the support of nearly 67 percent of the state's voters....

Congress

Gibbs Remains Chairman of Water Resources Subcommittee; Ranking Member Spot Open

Rep. Bob Gibbs (R-Ohio) will retain the chairmanship of the House Transportation and Infrastructure Subcommittee on Water Resources and Environment in the 114th Congress. ...

Hydraulic Fracturing

Denton First City in Texas to Ban Fracking; Industry Says Ban Violates State Constitution

The Texas Oil and Gas Association filed a declaratory action Nov. 5 and request for injunctive relief in state district court against the city of Denton, saying that its ban on hydraulic fracturing is inconsistent with state law and violates...

Water Pollution

Rhode Island Voters Approve $53 Million Bond Issue for Water, Outdoor Projects

Rhode Island voters overwhelmingly approved a bond issue (Question No. 7) Nov. 4 that will allow the state to borrow up to $53 million to fund projects related to the outdoors and the environment....

Inside EPA **Weekly Report**, 11/07/2014

http://insideepa.com/newsletters/inside-epa

Latest News

Suit Claims EPA Dodged Vow To Review Cooling Permits' Species Impacts

Environmentalists are mounting the first of what could become a series of suits over Endangered Species Act (ESA) impacts from state-issued permits for cooling water intake structures, claiming EPA is failing to follow through on prior promises to veto such permits if they would have "more than minor" effects on

listed species or critical habitat.

News Briefs

Suit Aims To Preserve EPA Denial Of SRF Money For Bridge

Environmentalists have filed a suit in a New York state court in order to ensure EPA's precedential decision to reject the state's plan to use water infrastructure funding for a bridge replacement project is sustained while state agencies contemplate an appeal of EPA's decision or move ahead with their plans despite EPA's objection.

Greenwire

SENATE:

Republican wave unlikely to sweep away Obama's major rules

Nick Juliano, E&E reporter

Published: Wednesday, November 5, 2014

Despite their impressive gains last night, Republicans do not appear to have flipped enough seats to undo most of President Obama's environment and climate change agenda.

The united GOP Congress should be able to send him legislation that would approve the Keystone XL pipeline and to achieve narrower limits on the most controversial impending rules.

Republicans picked up at least seven seats in yesterday's elections, with additional gains possible in Alaska and next month's runoff in Louisiana as well as a possible recount in the unexpectedly close Virginia race.

Outgoing Majority Leader Harry Reid's tight control over the chamber prevented nearly all controversial votes over the last two years, with the exception of the all-night "vote-a-rama" in early 2013 when senators voted on nearly four dozen nonbinding amendments to the budget resolution.

That series of votes saw members weigh in on a carbon tax, EPA air toxics rules, requiring more cost-benefit analysis of regulations and approval of Keystone XL. Senators also weighed in on a controversial water regulation during consideration of an infrastructure bill later in the year.

The most significant gains on energy and environmental issues came in Iowa and Colorado, where retiring Sen. Tom Harkin (D-Iowa) voted with the majority of Democrats on all seven relevant amendments and defeated Sen. Mark Udall (D-Colo.) voted with his party on six of the seven measures. Arkansas Sen. Mark Pryor (D) voted with Republicans whenever energy or environmental issues came up, and Sen. Mary Landrieu (D-La.) was with Republicans in all but one amendment analyzed by *Greenwire*.

All of the energy-related budget amendments fell short of the 60 votes needed to overcome a filibuster, with the exception of one aimed at approving KXL. Republicans and industry supporters are confident a bill approving the pipeline will quickly reach the president's desk next year (*see related story*).

Using those tallies as a base line, Republicans don't appear to have flipped enough seats to end a filibuster -- even if they eventually win Alaska and Louisiana and if a recount reverses Sen. Mark Warner's victory in Virginia.

In the new Senate, Republicans likely have between 55 and 59 votes to block action on climate change based on seats that flipped this year. (Click here for a chart that breaks down the seven amendment votes and how they could flip in the new Senate.)

Sen. James Inhofe (R-Okla.), who is expected to lead the Environment and Public Works Committee, secured 47 votes for an amendment to bar greenhouse gas regulations. At least six Democrats who voted against the measure were unseated by Republicans who likely would support it, and that figure could grow to eight depending on Begich's and Warner's fates. But that would still leave Inhofe with 55 supporters. A separate budget amendment from Sen. Roy Blunt (R-Mo.) to block a carbon tax, which the administration has not proposed, won 53 supportive votes and could gain as many as six more based on the outcome of the election, but that would still leave it one short of a filibuster-proof margin.

Industry supporters acknowledge they are going to be unlikely to completely sweep away EPA's climate rules, but that doesn't mean Republicans won't be more aggressive.

Scott Segal, a lobbyist with Bracewell & Giuliani who represents utilities and coal companies among other clients, said Republicans would "certainly" try to undo the entire rule with either a Congressional Review Act resolution, which requires only 51 votes to pass, or via an appropriations rider, but either of those efforts could be blocked by the president.

"I'm not sure that we have the votes to actually advance those across the finish line, particularly if they are vetoed," he said on a conference call today, suggesting narrower tweaks may still be possible.

Other priorities considered during the budget debate were amendments to end EPA's mercury and air toxics rule for power plants, which failed 46-53 and would pick up at most nine additional supporters.

Water rule, ozone standard

Another regulation expected to be a top Republican target is EPA's rule delineating what qualifies as a "water of the United States" subject to federal regulation.

Environmentalists say the rule is needed for upstream tributaries and wetlands that would otherwise lack federal protection, but conservatives have attacked it as a costly expansion of government power.

Sen. John Barrasso (R-Wyo.) offered an amendment to block it on last year's water infrastructure bill but came up eight votes short of overcoming a filibuster. Five Democrats who opposed the amendments lost their seats or retired and are being replaced by Republicans; a Warner loss would flip another vote. And Sen. Lisa Murkowski (R-Alaska) was not present for the vote, adding another likely supporter. But that would still leave the effort stuck at 59 votes in favor.

One top GOP target that has not previously been subject to a Senate vote is EPA's forthcoming rule expected to tighten the National Ambient Air Quality Standard for ozone, which has been in the works for years.

Most Republicans signed a letter to then-EPA Administrator Lisa Jackson in 2011 expressing concerns with the rule. Landrieu, who faces a runoff next month, and Sen. Joe Manchin (D-W.Va.) also signed the letter.

Jeff Holmstead of Bracewell & Giuliani, a former EPA air chief, noted Congress may be able to block or

delay the ozone rule because it is not a "legacy issue for the White House," unlike the climate change rules. Indeed, Obama reportedly blocked EPA from tightening the standard in September 2011, suggesting he may be willing to work with Congress, where Democrats from states with heavy manufacturing or oil and gas extraction could be willing partners.

"Given the fact this issue is not a presidential priority I think it's possible we could see some legislative action, perhaps a rider," he said. "That is not going to fundamentally change the Clean Air Act, but there are ways this standard could be delayed or softened."

Reporters Annie Snider and Amanda Peterka contributed.

SENATE:

Keystone XL's a 'big winner' in midterms, project backers say

Manuel Quiñones, E&E reporter

Published: Wednesday, November 5, 2014

This story was updated at 1:56 p.m. EST.

Keystone XL pipeline supporters looking for a path forward on the project by congressional approval -- rather than waiting for President Obama to decide -- are claiming victory, even as backing from some Democrats remains uncertain.

Boosters of KXL's transboundary crossing from Canada for years have enjoyed strong support in the GOP-controlled House and now are saying they will have a filibuster-proof majority in support of the pipeline in the Senate next year.

"From everything we've seen, it is above 60 in the Senate," said Matt Dempsey, the voice behind Oil Sands Fact Check, a pro-pipeline website.

Republicans will hold at least 52 seats in the upper chamber of the next Congress. And several Democrats in the past have voted for pro-KXL legislation or urged the president to approve the pipeline.

In April, Democratic Sens. Heidi Heitkamp of North Dakota, Joe Manchin of West Virginia, Claire McCaskill of Missouri, Jon Tester of Montana, Joe Donnelly of Indiana and Mark Warner of Virginia sent Obama a letter urging approval for KXL. Warner's race remains uncertain but appears likely to end in his re-election.

Beyond the senators on the April letter, Democratic Sens. Bob Casey of Pennsylvania, Michael Bennet of Colorado and Bill Nelson of Florida have also taken pro-KXL votes. In 2013, however, they also voted for an amendment adding caveats to an approval (*Greenwire*, March 25, 2013).

Even though pipeline backers may not need them, Delaware Democratic Sens. Chris Coons and Tom Carper may also back legislation approving the bill. Races in Alaska and Louisiana remain uncertain, but the outcome of those contests would likely not change the calculation on KXL.

Despite claims of a filibuster-proof majority, KXL backers still have to contend with the possibility of at least some supportive Democrats voting against approval of the pipeline. And there's always the likelihood of a presidential veto.

Dempsey pointed to polls showing strong national support for the pipeline. "This is a very strong coalition," he said. "It's hard to see [opponents] getting much attention at this point."

KXL supporters have floated the idea of a stand-alone bill for the pipeline's approval or including the language as part of budget measures or bipartisan energy packages dealing with pipeline infrastructure and natural gas exports.

Russ Girling, chief executive of TransCanada Corp., the company behind the project, released a statement saying it "has always enjoyed bipartisan support and is a great example of an issue where both parties can work together to create jobs and enhance energy security for the United States."

Fossil fuel backers began declaring victory long become the polls closed. Even though environmental advocates spent tens of millions touting climate concerns, they were largely silent on hot topics like hydraulic fracturing or KXL, opting instead to focus on an attempt to keep the Senate held by Democrats.

Dempsey said backers knew KXL would be the "big winner, regardless of how the election turned out. You knew that it was going to be a good night for Keystone. Keystone was going to win."

Louis Finkel, executive vice president at the American Petroleum Institute, said in an interview, "Our candidate has always been energy." And he declared victory over greens. "In the end," said Finkel, "voters rejected the message they send out there."

'Not backing down'

Environmental groups know they fell short of their goals this election cycle but say the results are a motivation to boost their efforts. "While we have lost friends in Congress, we are gaining them in the streets as our movement grows stronger and broader," said Michael Brune, the Sierra Club's executive director.

Even though such issues as the economy, abortion and candidates' support of Obama took precedence in many of the races, green leaders say they pushed candidates to discuss climate change and support cleaner energy sources.

"We're not backing down. A Congress elected by corporate polluters may think it can force a polluter agenda on this country," Brune said. "But public support is solidly behind action to tackle the climate crisis. There is a growing movement of climate and clean-energy voters that will be standing up to polluters and their political allies every step of the way."

Elizabeth Thompson, top Environmental Defense Fund climate and elections advocate, said during a press conference, "Yesterday was not a referendum on climate." Instead, she said, "it was a really, really bad day for Democrats."

When it comes to KXL, there is already talk about raising the issue's profile during the lame-duck session of Congress and as the GOP majority settles in next year. Despite the election, Obama will remain the decider.

"This is a president whose said he wants to heal the planet -- and now's his chance to prove it," May Boeve, executive director of 350.org, said in a statement. "President Obama can't approve the most massive oil infrastructure project in modern history, while claiming to be a climate champion."

She added, "President Obama has the power to reject the Keystone pipeline outright, and do right by his own legacy. We're gearing up to hold his feet to the fire, and we're confident that when everything's said and done, Keystone XL will not be built."

SUPREME COURT:

Justices question use of Sarbanes-Oxley to prosecute Fla. fisherman

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, November 5, 2014

A majority of the Supreme Court today appeared concerned about federal prosecutors charging a Florida fisherman under a white-collar law with destroying evidence for allegedly tossing fish overboard.

The justices sharply questioned the government's attorney on why attorneys chose to prosecute John Yates of Holmes Beach, Fla., under the 2002 Sarbanes-Oxley Act, which was enacted following the Enron scandal.

"You make him sound like a mob boss," said Chief Justice John Roberts.

Roman Martinez of the solicitor general's office responded that prosecutors exercise discretion in applying the law and "we do not prosecute every fish disposal case."

"The point is you could," Roberts responded, adding that even threatening prosecution under the law's "anti-shredding" provision, which carries a maximum 20-year prison sentence, gives the government "incredible leverage."

In August 2007, federal and state regulators boarded Yates' boat, the Miss Katie, in the Gulf of Mexico to inspect safety equipment and his recent catch.

Yates, 62, had 3,000 pounds of fish on his boat, and the regulators suspected that some were under the 20-inch minimum for red grouper, which is protected for conservation. They measured and found 72 that they alleged were undersized.

The investigators instructed Yates to preserve the fish. When they returned the next day, they remeasured and found 69 fish they said were too small. They alleged that Yates instructed his crew to throw fish overboard.

Yates contends that the fish weren't too small and that the regulators measured in a haphazard fashion. For some, he said in court documents, the size of the fish varies depending on temperature and whether it is measured with its mouth open or closed.

Three years later, federal prosecutors charged the fisherman with violating an anti-shredding provision in the Sarbanes-Oxley Act. The white-collar law says a suspect in an investigation who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object" can be prosecuted under the criminal statute.

Prosecutors argued that the three fish constituted tangible objects and secured Yates' conviction in a federal jury trial. A federal appeals court later upheld the conviction, as well as Yates' 30-day sentence followed by three years' probation.

The justices struggled with how to define "tangible object" during arguments today.

John Badalamenti, an assistant federal defender from Florida representing Yates, argued that taken in context of the law, the phrase referred to devices "designed to preserve information."

But Justice Elena Kagan had trouble with that definition. She said she reads the law as "really not just about corporate fraud" and said other language in the law "suggests breadth."

"Congress gives very strict penalties to a lot of minor things," Kagan said. "That's what it does."

But much of the most aggressive questioning, especially from conservative justices, was reserved for Martinez.

Justice Antonin Scalia sharply questioned whether it was the policy of the Justice Department to prosecute under the most severe law possible.

"He could have gotten 20 years," Scalia said incredulously. What kind of "mad prosecutor" pursues such a sentence for this crime, he asked.

Many hypotheticals were also proposed by the justices in an attempt to grasp when someone could be prosecuted with the Sarbanes-Oxley provision under the government's reading.

Justice Stephen Breyer proposed what he called a "ridiculous example" of taking revenge against his postman by ripping up mail delivered to his house. He said that under the government's interpretation, there is a "risk of arbitrary" enforcement.

Justice Samuel Alito added that the government is "really asking the court to swallow something that is really hard to swallow."

As the arguments concluded, Justice Anthony Kennedy suggested renaming the law.

"Perhaps Congress," he said, "should have called this the Sarbanes-Oxley-Grouper Act."

A decision in *Yates v. United States* is expected by the end of June.

CALIFORNIA:

Brown romps to historic fourth term, faces challenges on water, energy

Debra Kahn, E&E reporter

Published: Wednesday, November 5, 2014

California Gov. Jerry Brown (D) cruised to a record fourth term last night, defeating Neel Kashkari (R) by 58.7 to 41.3 percent, riding a wave of support from the densely populated coast.

In a Twitter statement, Brown thanked voters "for giving me their confidence a 4th time."

He added, "In CA where once they called us a failed state, we're now showing the way."

Brown, 76, served his first two terms as governor from 1975 to 1983, before passage of a 1990 constitutional amendment restricted most statewide elected officials to two terms. Brown made three

unsuccessful runs for president and one for Senate.

He made a political comeback at the local level in 1998, when he was elected mayor of Oakland. He jumped back on the statewide stage in 2006, winning a race for attorney general. He ran and won his gubernatorial bid in 2010.

In his run for the historic fourth and final term this year, Brown did little campaigning. He devoted most of the $3.9 million spent by his campaign this year to promote ballot initiatives on water projects and establishing a savings and debt repayment fund. Both passed yesterday (*ClimateWire*, Nov. 5).

Water issues loom large for Brown's fourth term. He has promised to focus heavily on water, taking advantage of a historic drought that has brought rare political consensus on the need to monitor and manage groundwater.

"Like energy and climate change, that have been contentious but also led to very productive initiatives, the same will be true of water, and it'll be something I will put front and center," he said last month (*ClimateWire*, Oct. 21).

Brown has also promoted a major water infrastructure project, the Bay Delta Conservation Plan. The proposal to build tunnels under the Sacramento-San Joaquin River Delta faces fierce opposition from environmentalists.

"The groundwater regulation probably goes to the front of the line because of the urgency of it," said V. John White, executive director of the Center for Energy Efficiency and Renewable Technologies, a nonprofit coalition. "The tunnels are going to be beyond his term."

Brown has been impatient with reporters who pressed him for more details on his plans, which also include a major push for high-speed rail.

"Besides the water, we've got, what else have we got?" he asked a reporter last week. "Oh, we've got that train to move from north to south, I mean, getting that thing built. That's going to take some time. I mean, that's more than a 15-minute coffee break."

Besides those projects, observers expect he will work on his climate initiative. Brown has visited China and Mexico and signed agreements with both countries to work on carbon pricing. California's existing cap-and-trade system for greenhouse gases is set to expand in January to include transportation fuels.

"I think that that's something the world needs, is for whoever is governor of California ... to continue to show a level of leadership we just aren't seeing by other states, or certainly by the federal government," said Kathryn Phillips, director of Sierra Club California. "California is the one who has to make us part of the international conversation about how we address climate change."

Next up, experts are anticipating a new emissions target for 2030, building on the existing target of 1990 emissions levels by 2020.

"Everything I've seen is the governor intends to propose and seek adoption of a target," White said.

White said he saw room for new programs for clean transportation, building efficiency and low-carbon electricity to further lower emissions. More international and domestic climate partnerships could also be in the offing, he said, including a potential alliance with Germany.

"He clearly is looking to find a way to have us continue to lead but also to get others to follow," White said.

BRISTOL BAY:

Anti-Pebble ballot measure wins by wide margin

Manuel Quiñones, E&E reporter

Published: Wednesday, November 5, 2014

The Bristol Bay Forever initiative, a ballot measure aimed at killing the Pebble copper and gold mining project in the Bristol Bay region of southwestern Alaska, won easily yesterday.

The initiative, which would require legislative approval for large-scale mining projects, won with more than 65 percent of the vote.

Pebble foes have targeted the project with several ballot initiatives in recent years, one of which ended up in the courts. Yesterday's may suffer the same fate.

Voters opposed an anti-Pebble initiative in 2008. In 2011, Lake and Peninsula Borough voters approved the Save Our Salmon initiative, but a state judge this year said it infringed on state prerogatives.

Alaska millionaire and Pebble opponent Bob Gillam has helped bankroll the ballot measures. This time, Pebble LP, the company developing the mine, didn't campaign against Bristol Bay Forever.

Pebble has at least three outstanding federal lawsuits against the Obama administration for proposing pre-permitting restrictions on the project, collaborating with mine opponents and withholding documents under the Freedom of Information Act.

Alaska Democratic Sen. Mark Begich, the first member of the state's congressional delegation to express opposition to the mine, appears to have lost his bid for re-election. Though Begich hadn't conceded by press time today, he trailed Republican Dan Sullivan, 49 to 45 percent, with all precincts reporting.

WATER:

Usage dips to lowest level in 4 decades -- report

Annie Snider, E&E reporter

Published: Wednesday, November 5, 2014

Water use across the country has dropped to the lowest level in 45 years, according to a new report from the U.S. Geological Survey.

By 2010, withdrawals had fallen to about 355 billion gallons of water per day, according to the report, a 13 percent reduction from water use in 2005. Decreases in withdrawals were seen across the spectrum of users, including for thermoelectric power, irrigation, public supply and industries.

"Reaching this 45-year low shows the positive trends in conservation that stem from improvements in water-use technologies and management," Mike Connor, deputy secretary of the Interior Department, said in a statement. "Even as the U.S. population continues to grow, people are learning to be more water conscious and do their part to help sustain the limited freshwater resources in the country."

More than one-quarter of all water withdrawals were happening in four states in 2010: California, Texas, Idaho and Florida. California, currently gripped by an entrenched drought, accounted for 11 percent of total withdrawals nationwide in the study.

Some of the steepest cuts in water use came from the thermoelectric power sector, which accounts for 45 percent of total withdrawals. Between 2005 and 2010, the sector reduced withdrawals by 20 percent -- a change largely attributed to new power plants being built with cooling system technologies that suck in less water from rivers and lakes, a decline in the use of coal, and withdrawal limitations aimed at protecting aquatic species.

The Obama administration recently finalized a rule raising the bar on aquatic protections for existing power plants, which is currently being challenged by both greens and industry. Environmentalists had wanted the administration to set the same technology requirements for existing power plants that new power plants face -- requirements that would not only reduce impacts on species, but also cut water withdrawals. The electric utility industry argues, though, that the requirements come at a time when the sector is already facing myriad new or soon-to-come regulations (*Greenwire*, May 20).

Water withdrawn for irrigation also saw a significant dip, falling 9 percent between 2005 and 2010, according to the study. Irrigation withdrawals are currently at their lowest levels since 1965.

"Irrigation withdrawals in the United States continued to decline since 2005, and more croplands were reported as using higher-efficiency irrigation systems in 2010," said Molly Maupin, a USGS hydrologist. "Shifts toward more sprinkler and micro-irrigation systems nationally and declining withdrawals in the West have contributed to a drop in the national average application rate from 2.32 acre-feet per acre in 2005 to 2.07 acre-feet per acre in 2010."

The decline in withdrawals for irrigation was seen both with surface water and groundwater withdrawals. Surface water use was down 12 percent from 2005, and groundwater withdrawals dropped 6 percent.

Even as populations grew, public supply withdrawals were down 5 percent to 89 gallons per day per capita.

Click here for the report.

OCEANS:

Scientist pushes for micro focus in Great Barrier Reef protection

Published: Wednesday, November 5, 2014

The Great Barrier Reef's big problems -- climate change and global threats -- garner most scientists' focus and the bulk of media attention, but one Australian marine researcher hopes his more than decadelong study ensures the world doesn't overlook the little things.

In 1999, University of Technology, Sydney, professor David Booth and his wife tagged 532 juvenile lemon damsel fish in a lagoon off Queensland. Marking a fraction of one local population of the vibrant yellow fish found throughout the reef, Booth came back each year to determine how long they could survive, despite being a rather unadventurous species.

"We have never found them more than 2 meters [6.5 feet] from their home base," Booth said. "They live in a very restricted world."

Catching one last damsel fish, a record 12 years old, in 2011, Booth is calling his research complete and plans to publish his findings soon.

Climate change and pollution are critical, Booth said, but the homebody damsel fish shows the small-scale saving of marine areas remains important in the face of vast, seemingly insurmountable problems.

"A lot of the time we look at the big picture and we overlook the small scale at which these organisms are actually living," he said. "These little fish remind us that we have to keep on chipping away at protecting the small areas and creatures as well as addressing the big issues" (James Woodford, London *Guardian*, Nov. 4). **-- DTB**

WATER POLLUTION:

W.Va. lab sues to regain license lost in water-testing controversy

Published: Wednesday, November 5, 2014

A West Virginia laboratory is suing state environmental officials for refusing to reinstate its certification after a former technician and supervisor pleaded guilty last month to altering water samples from coal mines to evade state pollution controls.

Appalachian Laboratories Inc. said West Virginia's Department of Environmental Protection is violating the state Environmental Quality Board's order last week, which lifted the suspension of the company's state-issued certification.

The license, which authorizes the lab to collect and analyze water samples required to demonstrate compliance with environmental regulations on behalf of coal and other industrial operations, was suspended in light of the investigation into former employee John Shelton, who pleaded guilty to conspiracy to violate the federal Clean Water Act (*Greenwire*, Oct. 10).

Shelton admitted he "falsified and rendered inaccurate" water samples by diluting, swapping out contaminated samples or drawing samples from "honeyholes," water known to be uncontaminated.

Although no one else was formally charged, Shelton indicated other Appalachian employees were involved. Assistant U.S. Attorney Blaire Malkin said that if the case had gone to trial, evidence from "current and former employees" would also implicate lab manager John Brewer "in the wrongdoing" under "the pressure to get good samples to maintain ... their coal company customers."

But because the decision to revoke the lab's certification made "no mention of ongoing concerns or wrongful conduct beyond" the wrongdoing between 2008 and 2013 in Shelton's plea agreement, Appalachian attorneys argued newspaper quotes from state officials and an environmental agency memo indicating data from the lab would no longer be accepted unfairly targeted the company.

"Defendants have branded Appalachian with a scarlet letter whereby Appalachian's customers can no longer risk doing business with it, and as a result, Appalachian has lost its customers and cannot regain them in light of defendants' open defiance of the stay order," the lab said (Ken Ward Jr., *Charleston [W.Va.] Gazette*, Nov. 4). **-- DTB**

EPA:

White House, OPM approve staff-cutting plans

Robin Bravender, E&E reporter

Published: Wednesday, November 5, 2014

Another round of staff trimming is on track for January at U.S. EPA after top government budget and human resource offices signed off on the plans.

EPA management's plans to cut about 200 employees won the approval of the White House Office of Management and Budget and Office of Personnel Management, EPA acting deputy chief Stan Meiburg told employees last week in an email.

Their approval was needed before the agency could offer buyouts and early retirements to staffers at nine offices across the country. Participants will be expected to leave the agency no later than Jan. 9.

Meiburg said the buyouts are an effort "to improve EPA's ability to attract new talent, build diversity in our staff, and provide the needed tools to protect human health and the environment."

EPA union officials, however, have expressed concerns that the employees left behind will be saddled with more work and fewer resources at a time when agency morale is already suffering thanks to resource constraints and political attacks.

"I'm just interested in how it all shakes out, particularly with how we're going to get our jobs done here; that's my biggest concern," said John O'Grady, president of the American Federation of Government Employees chapter representing EPA workers in the Chicago region.

EPA is targeting employees in two regional offices -- the New York-based Region 2 office and the Chicago-based Region 5 office. Offers will also be made to staffers in the Office of Administration and Resources Management, Office of Chemical Safety and Pollution Prevention, Office of Research and Development, Office of Water, Office of Solid Waste and Emergency Response, Office of Air and Radiation, and Office of International and Tribal Affairs.

Meiburg said notices would be sent to employees in those offices with more details about eligibility and noted that participation is completely voluntary.

Under the first round of EPA buyouts offered earlier this year, employees were offered a lump sum of up to $25,000 to leave -- the maximum amount allowed by the Office of Personnel Management. The early outs allowed certain employees to retire early and immediately receive annuity payments.

Earlier this fall, EPA sent draft documents to employees outlining which positions would be targeted (*Greenwire*, Oct. 3).

Changes have since been made to those plans, and EPA answered questions from the White House budget office and OPM prior to signing off on the plans, EPA spokeswoman Liz Purchia said today. She declined to provide updated copies of EPA's plans.

CALIFORNIA:

First water-use stats show vast regional differences

Published: Wednesday, November 5, 2014

California's coastal residents use far less water than their inland counterparts, according to per-capita water use figures released yesterday.

The statistics, which the State Water Resources Control Board made public for the first time, are meant to help Californians better understand how they can reduce their water usage. Gov. Jerry Brown (D) has asked residents to cut their water usage by 20 percent this year.

The data show big regional differences in water use -- from 84 gallons per person per day in the San Francisco Bay Area to 252 in the Colorado River basin, including the Inland Empire counties of San Bernardino and Riverside.

The measurements don't include industrial, agricultural and businesses' water usage.

Overall, the average Californian uses 131 gallons of water each day, the agency said. But residents of the wealthy Orange County enclave of Cowan Heights use more than 569 gallons each day (Fenit Nirappil, Associated Press, Nov. 4). **-- SP**

EVERGLADES:

Officials release dye in bid to track water movement

Published: Wednesday, November 5, 2014

Neon-green water was dispersed into a portion of the Everglades yesterday in an effort to better understand the swamp's vast network of levees, canals and drainage areas.

The $10 million project has been in the works for eight years, and scientists plan to use it to examine and record the movement of the green water over the next three months.

The dyed water was released into a 2-mile-by-2-mile-wide area, and scientists hope the study will provide insight into how to better connect areas of the Everglades and restore degraded areas.

The Everglades restoration project was authorized by Congress in 2000, with the goal of moving water south. There have been numerous challenges over the years regarding the movement of water. Army Corps of Engineers officials said they hope the project will better help them understand the hydrology of the landscape before investing money into additional projects (Jenny Staletovich, *Miami Herald*, Nov. 4). **-- MH**

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Republican gains in Wash. Legislature spoil plans for a West Coast bloc of climate action states

A mixed bag of electoral victories in Washington state and Oregon on Tuesday night opened some room for the ambitious climate agendas of the states' green-minded governors. But failure to tip the Washington Senate left environmentalists just shy of the across-the-board victory many had hoped for.

2.REGULATION:

China's planners aim to cap carbon emissions from steel, cement producers by 2020

HONG KONG -- The Chinese government for the first time has said publicly that it will cap carbon dioxide emissions from two major polluting industries, but its impact on the nation's overall climate change mitigation remains unclear.

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Tesla speeds up timeline on battery cell production at 'Gigafactory'

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More companies begin to focus on exposure to water shortages

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Scientists are unsure why North Pacific is unusually warm

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'Cliffies' honor climate change depicted in Hollywood

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Uganda struggles with cost of climate change responses

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Gas pipeline megaproject's fate hangs in the balance of still-undecided Alaska governor race

Alaska's cliffhanger gubernatorial election is raising serious concerns about whether the state's major oil companies will continue to work with Alaska to build a proposed multibillion-dollar liquefied natural gas pipeline and export project.

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Calif.'s first major energy storage buy bodes well for global market, backers say

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Expensive efficiency breakthroughs could suffer if price slump continues

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11.OIL:

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ClearView's Book previews energy policy landscape following power shift

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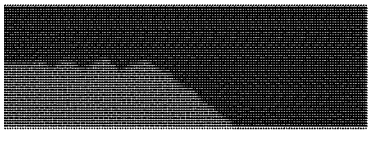

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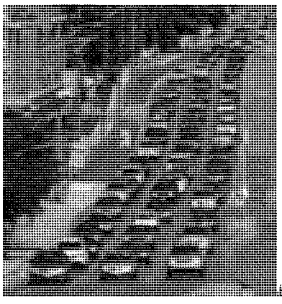
From: Turley, Jennifer
Sent: Tue 11/4/2014 4:23:48 PM
Subject: Air & Radiation Law News for November 4, 2014



Air & Radiation Law News

for November 4, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Arizona Asks Ninth Circuit to Review EPA Implementation Plan for Regional Haze

Arizona has asked a federal appeals court to review an Environmental Protection Agency rule issued under the regional haze program that established more stringent emissions limits at six industrial facilities in the state (Arizona v. EPA,...

Air Pollution

EPA Designates Four New Methods for Use In Monitoring Air Pollutant Concentrations

The Environmental Protection Agency has designated four new methods for monitoring the concentrations of ambient air pollutants, including particulate matter and ozone....

Climate Change

Murphy to Reintroduce Bill Targeting HFCs, Envisions Broader Role on Climate in 2015

With little hope of getting a vote on any climate change legislation in the upcoming lame duck session, Sen. Chris Murphy (D-Conn.) plans to reintroduce in 2015 a bill that would accelerate global cuts in hydrofluorocarbons and other highly...

Climate Regulation

Oil Price Drop to Affect Alberta Policy On Emissions, Could Cause Levy to Rise

Oil's 25 percent slide since June will play a role in Alberta's new climate and carbon regulations, Premier Jim Prentice said....

Emissions Trading

California Designates Communities To Benefit From Cap-and-Trade Revenue

The California Environmental Protection Agency has identified communities burdened by environmental, social and economic issues that could benefit from revenue derived from the sale of allowances under the state's greenhouse gas...

Enforcement

Kia, Hyundai to Pay $100 Million Penalty To Resolve Fuel Economy Discrepancies

Automakers Kia Motors Corp. and Hyundai Motor Co. agreed to pay a $100 million penalty and forfeit nearly $200 million in credits after overstating the fuel economy of several models of vehicles, the Environmental Protection Agency and Justice...

Hazmat Transport

Hazmat Transporters, Offerers Urge Changes, Clarifications to PHMSA Harmonizing Rule

Hazardous material transporters and those seeking to ship such materials are calling for a range of clarifications and changes to a Pipeline and Hazardous Materials Safety Administration proposal that

would harmonize portions of domestic...

International Climate

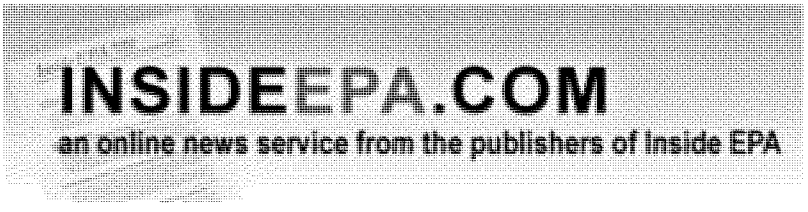
Climate Change Could Soon Cause Severe, Irreversible Impacts, IPCC Reports

The Intergovernmental Panel on Climate Change released the final part of its Fifth Assessment Report in Copenhagen Nov. 2, indicating climate change is "unequivocally" caused by human activity, while outlining options still available...

Renewable Energy

Planned Maryland Wind Farm Poses Risk To National Security, Defense Official Says

Deputy Defense Secretary Robert O. Work told another federal official in an Oct. 30 letter that a planned 150-megawatt land-based wind farm in Maryland "would constitute an unacceptable risk" to national security because it could...



Inside EPA **Risk Policy Report**, 11/04/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

McCarthy Says GHG Auto Deal Shows EPA Can Enforce Power Plant Rules

EPA Administrator Gina McCarthy told reporters that a major proposed settlement with automakers Hyundai and Kia over Clean Air Act greenhouse gas (GHG) violations shows that the agency can and will successfully enforce its pending GHG rules for the power sector.

Gas Sector Warns EPA's Voluntary Methane Reduction Program Could Fail

Natural gas distribution sector officials are warning EPA that its planned voluntary Gas Star Gold program to cut oil and gas industry methane emissions could fail to gain any participants and therefore not succeed in reducing methane levels unless the agency revises the proposal to account for cost, safety and other issues -- posing a major hurdle to a program EPA has suggested could be vital for its broader methane reduction strategy.

Suits Over Haze Plan Test Stringency Of Utility Emissions Control Mandate

Environmentalists and Native American groups are suing EPA over its final regional haze reduction air plan for a coal-fired utility whose emissions affect several western states, arguing that the agency has set a negative precedent by requiring air controls that the advocates argue fail to meet stringent Clean Air Act requirements.

Greenwire

CLIMATE:

U.S. fines 2 automakers for 'flagrant' violation of tailpipe rule

Jean Chemnick, E&E reporter

Published: Monday, November 3, 2014

The Obama administration announced a $350 million settlement today with two Korean automobile manufacturers for selling vehicles whose emissions of greenhouse gases exceed what the companies certified to U.S. EPA.

In a high-profile rollout at Justice Department headquarters, Attorney General Eric Holder and EPA Administrator Gina McCarthy touted the record settlement with Hyundai and Kia as evidence of EPA's thorough auditing practices and DOJ's aggressive environmental enforcement.

Holder called it "a settlement that will send an unmistakable message to automakers around the world: that they must comply with U.S. law; that they must be forthcoming with the EPA about critical certifications requirements; and that the U.S. Department of Justice will never rest in our determination to protect American consumers."

DOJ and the California Air Resources Board jointly filed a complaint today in U.S. District Court for the District of Columbia alleging that the two South Korea-based auto companies sold close to 1.2 million vehicles from model years 2012 to 2013 after misrepresenting their fuel efficiency to EPA. The misrepresentation -- which Holder called "a flagrant violation" of the law -- resulted in 4.75 million more metric tons of greenhouse gases being released into the atmosphere than the auto companies had claimed, EPA estimated.

The first such settlement under EPA's tailpipe emissions rule, the penalty comes in three parts. Hyundai and Kia must pay a $100 million civil penalty, forfeit $200 million worth of greenhouse gas credits they previously earned when they claimed they exceeded the rule's standard of performance, and implement monitoring and auditing procedures estimated to cost another $50 million.

This comes after the companies have separately compensated consumers with a rebate program that

DOJ staff said would cost the companies, which are facing separate class-action lawsuits from consumer groups, hundreds of millions of dollars.

"We were addressing vehicle emissions because it was essential to our fight against climate change," said McCarthy in her remarks. Accurate emissions testing and reporting are required not only to ensure the integrity of the program, she said, but to assure companies that obey the law they will not be placed at a competitive disadvantage.

"When you misstate fuel efficiency on the labels of a car ... that tilts the market in favor of those who don't play by the rules, and it disadvantages those that do play by the rules," she said. "That's simply unfair, and it's illegal."

The settlement also shows that EPA has a "robust audit process" that was able to catch the discrepancies between the companies' claims and their vehicles' actual emissions, McCarthy said. Agency staff identified the discrepancy early in 2012 and were able to hold the company accountable.

It shows that EPA can write rules that are "reasonable," McCarthy said, but that also catch violations and exercise enforcement.

"We can do this for many other sectors, including the power sector," she added.

ENERGY POLICY:

FERC faces heightened scrutiny as gas projects proliferate

Hannah Northey, E&E reporter

Published: Monday, November 3, 2014

The Federal Energy Regulatory Commission these days is drawing a crowd of companies promoting projects linked to the U.S. natural gas boom and protesters who say the agency blithely greenlights too many pipelines, export terminals and other gas infrastructure.

Foes of a FERC-approved export terminal at Cove Point, Md., recently rallied at FERC's Washington, D.C., headquarters, wearing matching shirts and waving signs mocking the panel's handling of gas projects. Activists are staging similar protests this week at the agency's headquarters.

Other FERC critics have taken to Facebook and Twitter or created their own websites to skewer the agency. Women calling themselves the "FERC-etts" sing a spoof of the Beatles' "Yellow Submarine": "We all know FERC's a rubber-stamp machine."

And Jeff Tittel, director of New Jersey's Sierra Club, tells his FERC joke: "They're the Will Rogers of regulatory agencies. They never met a pipeline they didn't like."

But do FERC foes have more than a punch line?

Since 2006, the agency has approved 451, or 56 percent, of 803 applications for pipelines, compressor stations, storage and liquefied natural gas export facilities. Of projects that failed to advance, 94 are pending and applications for 258 either were denied or were withdrawn by companies. FERC could not provide a more granular breakdown.

And not all 451 approved projects have moved forward, FERC spokeswoman Tamara Young-Allen said.

Some failed to meet construction timelines or safety rules, she said.

But some say it's more than just a numbers game.

An industry source, who asked to remain anonymous for fear of jeopardizing his business before the commission, said FERC is required by Section 7 of the 1938 Natural Gas Act to allow developers to build and operate gas pipelines if they comply with the law and agency regulations and stipulations.

"People may not like this, but it's just not a regulatory regime set up for FERC to reject applications," the source said. "It's really set up for FERC to approve applications that comply with conditions."

FERC officials counter that the agency follows a well-established process -- which includes public comment -- when it considers new natural gas projects.

And FERC Commissioner Philip Moeller said in an email that the agency's environmental reviews force permit applicants to make a host of changes. "To the credit of the process, I'm not aware of any major pipeline proposal that didn't have at least some changes to the initially proposed route," he wrote.

Mike McKenna, a Republican energy lobbyist and strategist, said industry has learned over decades of getting local pushback and undergoing federal environmental reviews to proceed only with projects that have a high chance of success at FERC. "It's not just a question of [whether] FERC [is] approving them all," he said, "it's whether the work [is] being done in a smarter way on the other end."

Even so, sources say what appear to be two prongs of pushback -- a national philosophical movement tied to climate concerns and more regional landowner issues -- are affecting the pace of new pipeline construction. And a court ruling last summer has given environmentalists some hope amid a sea of adverse rulings.

"It's harder to build a pipeline today than it was 10 years ago," an industry source said. "No doubt, it takes more time and it's more expensive."

Opposition on 2 fronts

The best-coordinated opposition to FERC's handling of gas projects is from activists calling on FERC to take an expanded look at environmental and climate implications in project reviews required by the National Environmental Policy Act of 1970.

NEPA requires agencies to weigh environmental concerns in their planning and decisionmaking by preparing detailed assessments of project impacts and alternatives. FERC has refused to take that larger look under NEPA at gas production and argues that there's no current formula for measuring cumulative greenhouse gas emissions (*Greenwire*, Oct. 20).

Landowners near proposed energy projects form a second front.

A sampler of big pipeline projects

• Constitution Pipeline Co. LLC has proposed the 124-mile **Constitution Pipeline** to connect the Marcellus Shale play in Pennsylvania to New York and New England (*Docket No. CP13-499*).

• Algonquin Gas Transmission Co. has proposed the 38-mile **AIM Pipeline** in New York, Connecticut and Massachusetts (*Docket No. CP14-96*).

• Tennessee Gas Pipeline Co., a subsidiary of Kinder Morgan Energy, plans to upgrade its **Northeast Energy Direct Project** network in New York, Pennsylvania, Massachusetts, New Hampshire and Connecticut (*Docket No. PF14-22*).

• Dominion Resources Inc., Duke Energy Corp. and other utilities have announced plans for the **Atlantic Coast Pipeline**, a $5 billion, 550-mile-long link between the Marcellus and Utica plays and North Carolina (*This project hasn't been filed yet at FERC*).

• Houston-based Williams Partners has entered into FERC's pre-filing process to develop the **Atlantic Sunrise Expansion Project**, a series of pipelines and compressor stations to connect Marcellus gas in Pennsylvania to markets as far south as Georgia and Alabama (*Docket No. PF14-8*).

• Mountain Valley Pipeline LLC, a joint venture of EQT Corp. and NextEra U.S. Gas Assets LLC, is proposing to build 300 miles of pipeline from northwestern West Virginia to southern Virginia (*Docket No. PF15-3*).

• Energy Transfer is proposing the **ET Rover Pipeline** -- an 800-mile conduit to bring gas from Pennsylvania, West Virginia and Ohio to connections with the company's existing Panhandle Eastern Pipe Line and other Midwest interconnections near Defiance, Ohio (*Docket No. PF14-14*).

• Spectra Energy Corp. is proposing to build the 250-mile **Nexus Pipeline** that would cut across six counties in northeastern Ohio to connect to existing pipelines in Detroit that would take natural gas to Ontario (*This project hasn't been filed yet at FERC*).

• PennEast Pipeline Company LLC is proposing to build the $1 billion, 108-mile **PennEast Pipeline** that would ship Marcellus and Utica shale gas into southeastern Pennsylvania, New Jersey and other downstream markets (*Docket No. PF15-1*).

Click here to see other pending gas projects.

-- Hannah Northey

Michael Braunstein, a lawyer from Columbus, Ohio, said his firm, Goldman & Braunstein LLP, is handling more cases involving eminent domain negotiations between landowners and private companies building new gas projects.

Most clients opt not to fight projects outright because they have to "attack the basic need or necessity" for a pipeline or compressor station, Braunstein said in an interview. That's an enormously expensive proposition, especially because pipeline developers usually have customers lined up for their product, he added.

"By the time we explain what's involved in that, we find no one's willing to do it because it's so expensive and time-consuming, and you have to advise people the risks of success are 50-50 or perhaps less," Braunstein said. "It's hard to stop a natural gas pipeline in an environment where it's cleaner than coal and you have policy in favor of gas."

Gas is also favored for national security and economic reasons because it's produced in the United States, he added. And pipeline companies can attempt to obtain state approval should FERC reject their proposal, he said.

Although landowners share the interests of activists pointing a finger at climate change and pipeline explosions, Braunstein said coordination between the two camps is often lacking.

"They have the same interest, although they are not natural allies," he said. "Frequently, with the exception of the Keystone XL pipeline ... that sort of organization and coalescence has not occurred."

'Light-handed' reviews?

Attorneys hoping to challenge FERC's review have found mixed results in the courts.

Carolyn Elefant, a D.C.-based attorney, has represented people directly affected by gas projects for the past five years and has found it difficult to win such cases.

"It's difficult to get a foot in the door," Elefant said in an interview. "Basically, FERC's review is very light-handed. The case are very difficult to handle and to make affordable because the process is very complex, the information isn't readily available and the nature of the proceedings are so protracted."

Many of her clients would be open to having a gas project near their home and understand the need for gas is growing amid a shale revolution, she said. They just want to be compensated fairly and have some control, yet FERC isn't willing to exercise control over the companies, she said.

Elefant last spring represented Minisink, N.Y., residents challenging a FERC-approved natural gas compressor station in their town.

Arguing before a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit last May, she maintained that FERC was predisposed to sign off on projects under the Natural Gas Act. Regulators failed to consider the environmental impact of Millennium Pipeline Co.'s facility and dismissed an alternative plan supported by people in the southeastern New York town (*Greenwire*, May 1).

The Minisink group lost. Four months later, the court expressed sympathy for the residents but found that FERC had met its obligations under NEPA (*Greenwire*, Aug. 18).

"Given the choice, almost no one would want natural gas infrastructure built on their block. 'Build it elsewhere,' most would say. The sentiment is understandable," Judge Robert Wilkins wrote in a 33-page opinion. "Though we respect the concerns they raise, we conclude that, as a legal matter, the Commission's decisions were both reasonable and reasonably explained."

Elefant said the landowners and residents she represented painstakingly looked for an alternative location for the compressor station and tried to work within the FERC process, but even those attempts were shrugged off as not-in-my-backyard (NIMBY) desperation.

"That was their argument, and it was somehow morphed into this NIMBYism approach," she said.

Court faults FERC review

But while the courts have repeatedly backed FERC's project reviews under NEPA, the agency isn't bulletproof.

In fact, one case has industry watchers wondering what comes next.

In June, the D.C. Circuit sided with environmental groups -- the Sierra Club and Delaware Riverkeeper Network -- in finding that FERC's environmental review of a major Northeast natural gas pipeline was deficient because it did not take into account how it fit into a larger upgrade for the eastern leg of the "300 Line," which carries gas from western Pennsylvania to eastern New Jersey (*Greenwire*, June 6).

The courts agreed with green groups that FERC should have considered the projects together and weighed their cumulative impacts.

The agency in 2011 found the project would have no significant impact on the environment and later approved the project.

Environmentalists argued that the Northeast Project alone required clearing 265 acres of forest and affected 50 acres of wetlands. In particular, they were concerned about habitat fragmentation and hydrology impacts on wetlands and groundwater.

"FERC doesn't want to get slapped down again," the industry source said. "FERC is looking at projects that are potentially linked with greater scrutiny."

GRID:

Governors urge DOE to tap little-known provision to foster wind

Hannah Northey, E&E reporter

Published: Monday, November 3, 2014

A bipartisan coalition of governors today called on the Energy Department to use its authority to support much-needed power lines and open wind energy markets, although at least one governor who belongs to the group hasn't signed off.

The Governors' Wind Energy Coalition today sent Energy Secretary Ernest Moniz a letter urging him to use for the first time his authority under Section 1222 of the Energy Policy Act of 2005 to partner with power marketing administrations to develop, build, operate and own new power lines that meet certain criteria. The coalition includes governors from across the nation, including the Pacific Northwest, New England, the Midwest, the Mid-Atlantic and the arid Southwest, as well as Hawaii.

Under the little-known provision, the Energy secretary could act through a federal marketing administration -- of which there are four in the nation -- to build and operate new transmission projects within the administration's footprint if the project meets certain criteria, including reducing congestion or meeting electricity demand.

While the language mainly provides a funding mechanism that allows a third-party to pay for the process, the provision has also stirred controversy because it allows the government to advance a power line that faces state objections (*Greenwire*, Dec. 19, 2013).

South Dakota Gov. Dennis Daugaard (R), the coalition's chairman, and Washington Gov. Jay Inslee (D), its vice chairman -- the two signatories to the letter -- warned that the inadequacy of the nation's existing high-voltage transmission system threatens to weaken state economic development and restricts the ability of wind energy to compete in energy markets across the nation.

"We respectfully request your utilization of Section 1222(b) of the Energy Policy Act of 2005 to promote high-capacity and high-voltage transmission development, and your continued support for the important electricity and transmission work undertaken by U.S. Department of Energy's Office of Electricity Delivery and Energy Reliability," the governors wrote.

But a spokesman for the Democratic governor of Arkansas, Mike Beebe, said he hasn't signed off on the

letter. "While Arkansas is a member of the coalition, we are not a signee on this letter; in fact, this is the first we've seen of it," Matt DeCample, a spokesman for the governor, said in an email. "We've not been involved in the national discussion of this particular issue."

Arkansas is front and center in discussions over transmission and renewable energy, as America's windiest states lie in its Central Plains. The development of new transmission infrastructure to carry wind energy across the nation has become a rallying point for the renewables industry.

Houston-based Clean Line Energy responded four years ago to DOE's request for proposals to utilize the agency's authority under Section 1222 to build a $2 billion, 700-mile transmission line project, called the Plains & Eastern Clean Line. The project would funnel 3,500 megawatts of the Oklahoma Panhandle's wind wealth to energy buyers in Arkansas, Tennessee and population centers in other Southeastern states.

If approved, the power line would harness DOE's authority under the Southwest Power Administration (SWPA), the regional power marketing administration, to acquire missing transmission rights of way in Arkansas. The proposed power line was denied public utility status in 2011 (*Climatewire*, June 13).

But Jimmy Glotfelty, founder of Clean Line Energy Partners and a former senior electricity adviser for President George W. Bush, said the company would continue to work with -- and provide benefits to -- states like Arkansas, adding that Clean Line has been doing environmental work for three years now on the proposed power line. Glotfelty added that DOE cannot enter into a partnership or agreement until they complete such a look.

"It's not black and white, it's not that you can go around the state, you have to work with the states and local officials through the development, construction and operation process," he said.

Aside from DOE, the governors' coalition is also throwing its support behind the Federal Energy Regulatory Commission's landmark Order 1000 rule, one of the agency's largest and most complex rulemakings, which survived legal attacks in a federal appeals court last month (*Greenwire*, Oct. 20).

The U.S. Court of Appeals for the District of Columbia Circuit last month rejected a request from the Large Public Power Council for the court to reconsider its August ruling that upheld Order 1000 in its entirety. Order 1000 lays out a new policy and legal framework that calls for regional coordination in grid planning and for abolishing an incumbent utility's "right of first refusal" to build a new project, among other reforms.

Daugaard in a statement called Order 1000 the "primary policy vehicle available to update our nation's outdated electrical grid."

Daugaard, Inslee and Oregon Gov. John Kitzhaber (D) met with FERC in February to discuss ways of supporting new transmission.

CLIMATE:

In Northwest legislative races, only the money is green

Jean Chemnick, E&E reporter

Published: Monday, November 3, 2014

The money in a handful of competitive state Senate races in the Pacific Northwest is overwhelmingly

environmental -- but the messaging isn't.

That's because climate activists from both in and out of state have poured hundreds of thousands of dollars into five Washington and Oregon state Senate races this election cycle in the hopes of securing Democratic majorities to help make the states' two Democratic governors' environmental agendas a reality. But very few of those expenditures are going to finance climate ads or mailers.

The amount of climate money flooding into the two states is unprecedented, something environmental donors tout as evidence that their cause is on the rise.

In Washington this cycle, Washington Conservation Voters Action Fund (WCVAF) and NextGen Climate, the super political action committee founded by billionaire environmental donor Tom Steyer, are the second and third most active political campaign committees in the state. They trail only the Washington Education Association PAC when it comes to in-state fundraising and expenditures, and are the single biggest sources of funding in the races they targeted.

Steyer's PAC has spent more than $1.1 million in the state so far, according to Washington's Public Disclosure Commission website. A $750,000 chunk of that funded independent expenditures to support two Washington state Senate challengers -- Matt Isenhower and state Rep. Tami Green. The Democrats are taking on Republican incumbents in districts Democrats hope will lead them on a path back to the state Senate majority they lost in 2012 after two of their own chose to caucus with the Republicans.

The San Francisco-based PAC's investment seems roughly equal to what the candidates' campaigns have raised directly. Isenhower's campaign has reported raising $478,570 this cycle, while Green raised $362,771, according to the Public Disclosure Commission website. NextGen Climate did not return calls for this story.

WCVAF -- aided by its parent organization, the League of Conservation Voters -- has also spent hefty sums on independent expenditures to support Isenhower, Green and a third Democrat -- former Bellingham City Council member Seth Fleetwood, who is taking on Sen. Doug Ericksen (R) in a northwest Washington district. Ericksen, who leads the Senate's energy and environment panel, is a vocal climate change skeptic and supporter of proposals to increase fossil fuel exports from Washington. He appears on LCV's "dirty dozen in the states" list for the 2013-14 cycle.

The opposition to Ericksen solidified even before Steyer's organization became involved in the state, WCVAF President Shannon Murphy told *Greenwire* last week.

"Sen. Ericksen has been known nationally now as one of the biggest roadblocks to environmental progress here in Washington state," she said. "I think that it's just that his profile excited folks earlier."

Murphy would not say how much of her organization's $1.4 million campaign war chest went to independent efforts to support these three candidates, though she called their races top priorities.

LCV has invested $7 million in helping state leagues support environmental "champions" this cycle but has declined to say how much money went to which state league.

Steyer's PAC has said it planned to invest up to $500,000 in independent expenditures in support of two Democratic Oregon state Senate challengers -- state Rep. Sara Gelser and former state Rep. Chuck Riley. And Oregon League of Conservation Voters Executive Director Doug Moore put OLCV's investment at a likely $125,000 for Gelser and between $200,000 and $250,000 for Riley.

'I have to really walk a moderate path'

But all this green money hasn't turned these state Senate races into referendums on climate change. In fact, environmental issues have seldom been raised, especially by the candidates benefiting from this environmental largesse.

Green, the state representative challenging state Sen. Steve O'Ban (R) in a slightly Republican-leaning district south of Seattle, said she never set out to be an environmental candidate. While she has voted with Washington Conservation Voters 90 percent of the time throughout her career, Green said a climate change message would be "tricky" in the 28th District, where she is the sole Democratic incumbent to be re-elected in eight years.

"I have to really walk a moderate path," she said.

A nurse with a strong union background, Green said in an interview last week that her campaign's only nod to the environment has been a call for a "clean, green Washington" as part of a larger message on workers' rights and the economy.

She said she learned that NextGen had singled her out for support only after a reporter called seeking comment for a story, and she has yet to meet Steyer.

"The money sort of found me, not the other way around," she said.

Nor has she talked to Gov. Jay Inslee (D) about how she might use the Senate seat to support his ambitious environmental agenda. The career-long climate advocate has said he would like to pursue a price on carbon -- either via cap and trade or a tax -- as soon as the next legislative session.

The New York Times in August reported that Inslee met with Steyer to advise the Californian on how to invest his resources in Washington. But while Green said she had talked to Inslee often enough about issues like transportation, she hadn't been recruited as a climate ally.

'We're past questioning the science of climate change'

Local environmental advocates say a climate message resonates with Northwest voters. Murphy said her group chose to target Ericksen, O'Ban and state Sen. Andy Hill (R) -- who is running against Isenhower in the 45th District -- because their beliefs about global warming are out of step with those of their Washington state constituents.

"All three of the incumbents we are trying to defeat this year are climate deniers," she said, using a label that environmentalists and congressional Democrats have used with growing frequency in recent months.

"We're past that here in Washington state," she continued. "We're past questioning the science of climate change, and we're moving forward with addressing carbon pollution."

From increasingly destructive forest fires in the eastern part of the state to the toll ocean acidification has taken on western Washington's prominent shellfish industry, voters are demanding action, Murphy added.

"So we need leaders that will stand up for moving the ball forward," she said.

Moore of OLCV said: "People here care about the future of the state -- there's a unique quality of life that people want to share with their children, and climate change is altering that significantly. We're seeing candidates who oppose climate change or deny its existence take a serious hit from voters."

OLCV funded an ad in the Portland media market in the final days of the campaign blasting Riley's opponent, state Sen. Bruce Starr (R), as an "extreme" lawmaker beholden to fossil fuel interests.

'Steyer has become more of a topic than his issue'

But for the most part, climate change and environmental issues in general have been absent from the Oregon and Washington campaigns, showing up only on campaign finance disclosure forms.

Oregon-based GOP pollster Bob Moore said that was hardly surprising.

"They're talking about issues that they think will move people, and climate change doesn't really impact voters," he said. "It's pretty low on their list of concerns."

Moore said his own polling bears that out, as did the Washington Poll, a nonpartisan academic survey released last week that showed only 2.9 percent of Evergreen State voters named climate change as their top concern this year.

Climate donors know where their issue really ranks, Moore said, and that's why Steyer's group has run ads hammering Starr on abortion rights rather than on his climate skepticism. Reproductive rights might rank behind issues like jobs and education, he said, but at least it's "red meat" for Riley's Democratic base. Climate change wouldn't even be that.

Not only has climate change not become a significant issue in the swing-district Senate campaigns, but some of its out-of-state messengers may have become a liability for the candidates they support, said Todd Donovan, a professor of political science at Western Washington University.

"Steyer has become more of a topic than his issue," he said. "I have a sense that you don't want to be associated with money coming from a San Francisco billionaire."

It's more difficult for the Democratic challengers to brand Republican incumbents as beholden to out-of-state partisans, Donovan said. They have a wider variety of interests backing them, and celebrity donors like the Koch brothers are not very active in Washington legislative races.

Todd Myers of the conservative Washington Policy Center said that by targeting Republicans in swing districts, climate advocates are putting a bipartisan climate policy further out of reach.

"All of this out-of-state money has really poisoned the well," he said. "Potential allies across the aisle have become opponents."

Myers said WPC supports a revenue-neutral carbon tax -- a policy model that has garnered some support from former Republican officials and center-right Washington, D.C., think tanks but has not gained traction with Republican lawmakers inside the Beltway or in the states.

Inslee has said he is open to a variety of policies that could price carbon, and he has commissioned a task force of business, nonprofit and community stakeholders to explore options and make recommendations. The Carbon Emissions Reduction Taskforce is set to present its recommendations to the governor later this month.

But while Inslee says he has not decided what kind of policy model to back, Myers said he appears to be leaning toward a cap-and-trade system of the kind he supported in Congress in 2009. Or if the Democratic governor does float a carbon tax, it is unlikely to return revenue to the public in the form of other tax rollbacks -- a condition of support for most conservatives.

"People have the sense that if Democrats just pick up a couple of seats then they can get their climate bill, but that ignores the history," Myers said.

Democrats controlled both chambers of the Washington Legislature and the governor's mansion in 2009, when the last cap-and-trade bill died in the state Senate, he noted. Support by only one party may not be enough, and if Steyer's bid to flip the state Senate fails to do anything but generate resentment, "it kind of guarantees that there will be no climate policy for another two years."

The next two years will be crucial as U.S. EPA finalizes its rule for existing power plants, leaving states the task of writing implementation plans that in some cases may require legislative action. Conservative supporters of a revenue-neutral levy on emissions have begun to push Oregon to adopt one as a means of complying with the federal regulation. Oregon Gov. John Kitzhaber (D) -- who is up for re-election tomorrow -- is supporting a carbon tax.

Washington could also use a new carbon policy to comply with the federal rule, but that would require a cooperative House and Senate.

Another item on the agenda for both Kitzhaber and Inslee is a low-carbon fuel standard. Oregon's current Clean Fuels Program will sunset in 2015, and Democrats will need to add to their slim Senate majority to ensure they have the votes to extend it.

Inslee has said he already has authority under existing Washington state law to implement a similar policy. Vehicle emissions account for 45 percent of Washington's greenhouse gas emissions.

TRANSPORTATION:

Voters to decide fate of more than two dozen state, local ballot measures

Sean Reilly, E&E reporter

Published: Monday, November 3, 2014

Maryland voters will decide whether to create a transportation funding "lockbox." The residents of a suburban Atlanta county will vote on whether joining the area's MARTA transit system is worth a sales tax increase. And San Francisco voters will have the chance to weigh in on a nonbinding initiative that in essence calls for a more car-friendly community.

Those are among an array of transportation-related measures on ballots around the country in tomorrow's elections. The Center for Transportation Excellence, a research clearinghouse, counts 27 such measures on state and local ballots, most of them related to financing.

If all win approval, the upshot would be almost $10 billion in added transit funding, according to the center, which is affiliated with the American Public Transportation Association.

Among the measures is the proposed penny sales tax hike in Clayton County, Ga. If voters go along with it, the increase would raise about $46 million annually and pay for a mixture of bus service, paratransit and potential commuter rail, advocates say. It would also mark the first major expansion of MARTA, or Metropolitan Atlanta Rapid Transit Authority, since its creation in the 1970s, the center said in a news release. Other localities voting on proposed tax increases are Alameda County, Calif.; Wichita, Kan.; and Kansas City, Mo. On the ballot in Austin, Texas, is a $600 million bond issue that would help pay for a city rail system.

Both this year's election cycle and the 2012 round have seen big increases in the number of state and

local transportation funding measures, said David Goldberg, a spokesman for the advocacy group Transportation for America, who attributed the uptick to a combination of an improving economy and a backlog of work.

"The long recession meant that politicians were reluctant to go to with voters with questions, particularly about raising gas tax revenues, but also meant a lot of deferred projects and fewer resources all around," Goldberg said.

Not all of the proposed ballot measures, however, would raise revenue. Massachusetts voters, for example, will vote on whether to end the automatic indexing of the state gas tax to inflation. That step was part of a law enacted last year that raised the levy by 3 cents a gallon; critics contend that any further increases should also be approved on their own.

In Maryland, the proposed lockbox amendment to the state's constitution aims to make it harder to siphon off transportation revenue for other purposes by requiring the declaration of a state of emergency and the approval by at least a three-fifths majority of both chambers of the state Legislature.

And in San Francisco, a group called Restore Transportation Balance is pushing to redress what it sees as a tilt against motorists. Over the years, local officials have eliminated thousands of parking spaces through new construction and creation of bike lanes, the group says on its website. Among possible changes, the proposed "declaration of policy" urges that at least part of the proceeds of any fee increase affecting drivers be used for construction of new neighborhood parking garages.

In Connecticut, where Gov. Dan Malloy (D) is facing a strong challenge from Republican Tom Foley, a coalition of organizations, from the state chapter of the League of Conservation Voters to the Connecticut Construction Industries Association, joined forces this year to press for more transportation funding and investment.

The coalition hosted a September forum between Foley and Malloy on transportation issues that garnered widespread media attention; Malloy has since announced expansion of train service on the heavily traveled Metro-North commuter rail line into New York City.

"We feel we have succeeded," Karen Burnaska, coordinator of Transit for Connecticut, another part of the coalition, said in an interview last week. "Would we have liked more? Obviously, but we have gotten transportation elevated into the top tier of issues in front of this state."

SENATE:

Republicans might win battle, but lose war -- CAP Action Fund

Jean Chemnick, E&E reporter

Published: Monday, November 3, 2014

If Republicans win a Senate majority tomorrow after months of playing to their conservative base, it will come at the cost of future support from middle-of-the-road voters, the liberal Center for American Progress Action Fund argues in a new report.

The report states that by taking far-right positions on climate change and other issues, Republicans have swapped short-term success for their long-term party brand.

"While these positions may help drive the intensity of the traditional conservative base in the short term,

many of the actions and messages risk alienating the rising American electorate of 2016 and beyond -- Latinos, Millennials, African Americans, and single women," it says.

On climate change, Republican candidates in several states have either expressed skepticism about climate change or adopted some version of the "I'm not a scientist" message, seeking to shut down discussion on the issue, the report notes.

Republican candidates have hammered U.S. EPA's greenhouse gas proposals for power plants as a federal takeover of the power sector that will spur increased electricity prices. Crossroads GPS, which is advised by Republican strategist Karl Rove, has run ads against Sen. Mark Udall (D-Colo.) claiming that EPA's rule would run up power costs "as much as $17 billion." The figure is taken from a U.S. Chamber of Commerce assessment that was released before the draft rule became public and that is not based on its actual provisions (*Greenwire*, May 29).

Republican candidates and message-makers risk alienating swing voters with both their science and their policy messages, the CAP Action Fund report says. Polls show that young voters under age 35 are particularly unlikely to share the view that man-made global warming is not a fact, the report notes. And that could set Republicans up to have a hard time winning their trust two years from now.

"Presidential election years bring a dramatic increase in turnout among young voters," the report notes. And more millennials will be voting in 2016 than ever before -- because more of them will have turned 18. A separate CAP Action Fund report on that demographic shows that a third of American voters in 2016 will have been born in 1978 or later.

The report comes as Republicans are poised to win back control of the Senate for the first time in eight years. With Republican chairmen and now-Senate Minority Leader Mitch McConnell (R-Ky.) in charge of messaging in the upper chamber, its day-to-day workings are likely to change dramatically. But it is unclear whether that will translate to legislation to roll back EPA's greenhouse gas rules or other administration policies that Republicans have targeted on the campaign trail. And if both chambers of Congress pass such legislation, President Obama will certainly veto it.

But Rep. Ed Whitfield (R-Ky.) said last month that even if Obama does block EPA rollbacks from becoming law, having them arrive at his desk will still send a powerful message about the differences in priorities between the two parties.

"If he vetoes it, he vetoes it," said Whitfield, who chairs the House Energy and Commerce Committee's Energy and Power subcommittee.

"It's going to be important that it's on the steps of the president," he said. "Right now, the president is hiding behind" Senate Majority Leader Harry Reid (D-Nev.).

Voters will see Republicans care more about protecting the economy, Whitfield said. "And then, when we get to the 2016 elections, it's going to be a contrast that's easily understood."

Rep. Jim Moran (D-Va.) agreed that a Republican takeover of the Senate would draw attention to the differences between the two parties. But he disagreed that that would help Republicans gain the presidency in 2016.

A Republican coup tomorrow night would be "the best thing that could happen for the Democrats," the retiring congressman said.

Republicans will keep up a steady stream of anti-environmental legislation, which the president would be forced to veto, he noted, and that will raise awareness about the vulnerability of EPA safeguards.

"If you have a situation where the Senate blocks anything the House does, then nobody worries about it," he said. "But if you have both houses in Republican control, I do think they overreach and I think they embarrass themselves, and I think they set themselves up for a possible shift in 2016."

The shift might even be powerful enough to put climate change legislation within reach, he said.

AIR POLLUTION:

Enviros challenge Los Angeles smog plan

Amanda Peterka, E&E reporter

Published: Monday, November 3, 2014

Environmental groups Friday launched a legal challenge against U.S. EPA's approval of a smog reduction plan for the Los Angeles region.

The plan crafted by the South Coast Air Quality Management District and approved by EPA in September violates Clean Air Act requirements for National Ambient Air Quality Standards, according to the coalition of four environmental groups. The petition for review was filed in the 9th U.S. Circuit Court of Appeals.

"Air pollution in the South Coast district is among the worst in the country," said David Pettit, a senior attorney at the Natural Resources Defense Council. "They submitted a plan that the EPA clearly shouldn't have approved."

The lawsuit concerns the area's efforts to come into compliance with the federal standard for ozone, a smog-forming pollutant linked to adverse health effects such as reduced lung function.

EPA set the one-hour ozone standard at 0.12 part per million in 1979 but replaced it in 2008 with an eight-hour standard. The South Coast area of California, however, has never met the one-hour standard; it failed to meet two previous deadlines of 1990 and 2010 for coming into compliance.

The American Lung Association earlier this year ranked the South Coast area, which includes the counties of Los Angeles, San Bernardino, Riverside and Orange, as having the highest ozone pollution out of 277 metropolitan areas.

The plan approved by EPA allows the region to come into compliance with the one-hour standard by Dec. 31, 2022, through a combination of 15 pollution control measures. It also requires the California Air Resources Board to submit contingency measures in 2019 if necessary to meet the emission reduction targets by the deadline.

The plan provides for emissions reductions of 6 tons per day of volatile organic compounds and 11 tons per day of nitrogen oxides -- two important ozone precursors -- by 2022 compared with a 2008 base line. Combined with emissions cuts already in place through the Air Resources Board, the area should experience reductions of an aggregate 13 tons per day of VOCs and 35 tons per day of NOx by the end of 2022, EPA said.

"The EPA finds that an attainment date of December 31, 2022 is appropriate in light of the severity of the 1-hour ozone problem in the Los Angeles-South Coast area," EPA said, "and the limited emissions remaining that can be regulated given the extent to which emissions sources in the South Coast have already been controlled."

The Natural Resources Defense Council, the Sierra Club, Communities for a Better Environment and Physicians for Social Responsibility-Los Angeles are challenging EPA's approval of the plan, calling the agency's decision arbitrary and capricious.

They argue that EPA is rewriting the deadlines contained within the Clean Air Act by putting off compliance with the one-hour standard for almost another decade.

"The EPA is kicking the can down the road, as it has done for decades, turning a blind eye to the hundreds of thousands of people who need clean air because they have asthma and other chronic lung disorders," said Adrian Martinez of Earthjustice, which is representing the environmental groups.

The environmental groups have also objected to the pollution control measures contained in the plan.

In public comments filed on the plan earlier this year, they said the South Coast Air Quality Management District relied on long-term concepts for future control measures rather than reasonably available control measures, as required by the Clean Air Act.

In the same action at the center of the lawsuit, EPA also approved a control strategy for the region to attain the 1997 eight-hour ozone standard of 84 parts per billion.

The lawsuit comes as EPA is weighing whether to further tighten the national ozone standard to between 60 and 70 ppb, an action that would require the Los Angeles region to take further measures to clean up its air.

BRAZIL:

Government approves 31 solar projects

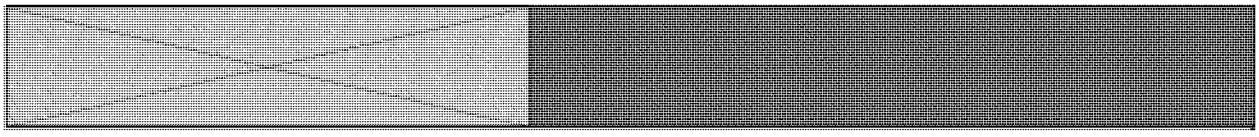
Published: Monday, November 3, 2014

Brazil's government has approved 31 solar projects in a bid to jump-start the industry and diversify its energy sources.

The state energy regulator, Aneel, finished an auction Friday that lasted more than eight hours. The agency signed 20-year energy supply contracts with companies, which will invest $1.67 billion in the projects and start operating in 2017.

The projects, the first large-scale solar plants to be built in Brazil, will generate 1,048 megawatts of electricity.

At the auction, government officials set a maximum price for the power, and solar developers bid against each other to offer the lowest price. Final bids came in around $89 per megawatt-hour, "one of the lowest prices for solar energy in the world," said Mauricio Tolmasquim, head of the government's energy research company, EPE (Marcelo Teixeira, Reuters, Oct. 31). **-- SP**



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CLIMATEWIRE — Tue., November 4, 2014

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1.RECYCLING:

The new alchemy? Company makes jet fuel and plastic soda bottles out of farm wastes

Last week, major players in the packaging industry expressed interest in helping the world get one step closer to a 100 percent renewable plastic product. While many have been working on the technology for several years, a level of 30 percent renewable had been reached. But a tiny company in Wisconsin, Virent Energy Systems Inc., has figured out how to generate the missing 70 percent, gaining the interest of a powerful group: the PlantPET Technology Collaborative.

2.ELECTRICITY:

Researchers predict spreading blackouts as cities grow larger

Electricity blackouts will become more common as surging power demand outpaces public and private utilities' abilities to provide a continuous and reliable flow of power to customers, a new research paper asserts.

TODAY'S STORIES

3.FORESTS:
Authorities seize $20.6M of wood logged illegally in Peru

4.EMISSIONS:
CO2 ranks by far the worst among troublesome climate pollutants -- study

5.TECHNOLOGY:
Pilot plant will begin sucking CO2 from thin air early next year

6.SCIENCE:
Viewing climate change with a far-infrared lens to find clues to warming

7.NATIONS:
Denmark mulls ending coal use by 2025

8.NATIONS:
Australian airport rejects climate change ad ahead of G-20 meeting

9.COAL:
Technology for coal pollution reduction 5 years away -- agency

10.ARCTIC:
Arctic Ocean will be ice-free by 2020 -- Cambridge researcher

E&ETV'S ONPOINT

11.CLIMATE:
Former EPA General Counsel Martella says Clean Power Plan will not survive legal challenges

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In 1983, troubled by the high death rate in the oil field, the Occupational Safety and Health Administration set out to

ENERGYWIRE — Tue., November 4, 2014

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1.OIL AND GAS:

Drilling's safety exemptions and how they got there

In 1983, troubled by the high death rate in the oil field, the Occupational Safety and Health Administration set out to impose a set of worker safety rules on drilling companies. The effort backfired. And when that proposal died, drilling companies wound up exempt from a suite of basic worker protections.

TOP STORIES

2.TECHNOLOGY:
New Berkeley lab seeks the next big battery breakthrough

3.GRID:
Western imbalance market reports some price volatility at startup

4.ELECTRICITY:
Texas power company sees conditional go-ahead for bankruptcy auction plan

OIL AND GAS

5.PIPELINES:
Enbridge boosts 3Q income, mired in delays

6.OFFSHORE DRILLING:
Statoil has 'faith' in embattled North Sea oil business

7.PEOPLE:
Veteran energy attorney joins Houston law firm

8.PEOPLE:
Enbridge subsidiary director resigns from boards

9.OIL SANDS:
Canada finds export routes for landlocked crude

10.SAFETY:
5 workers still being treated for rig fire injuries

ELECTRICITY

11.UTILITIES:
Ohio Supreme Court to weigh in on solar rate structures

12.UTILITIES:
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Former EPA general counsel Martella says Clean Power Plan will not survive legal challenges

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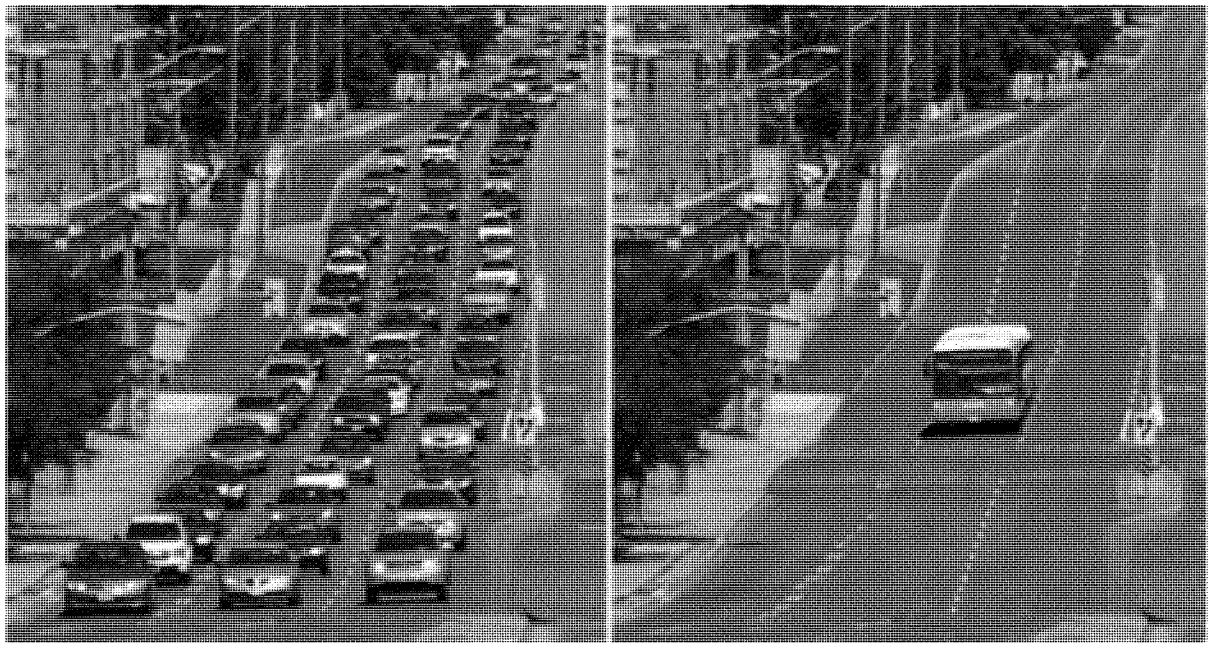

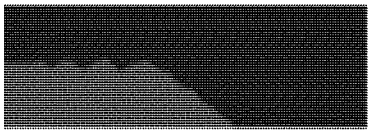

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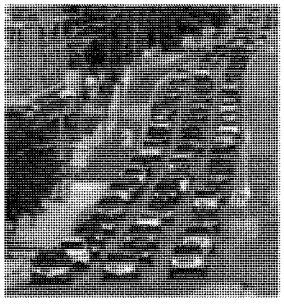

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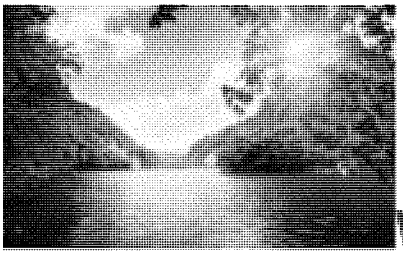


Water Law News

for November 4, 2014

Bloomberg BNA Daily Environment Report™

Chesapeake Bay

Population Growth, Intensified Agriculture
Could Overwhelm Bay Progress, Study Finds

The mandatory Chesapeake Bay restoration program is on track to substantially reduce nutrient and sediment pollution to the estuary but that progress could be overwhelmed by intensified agricultural, population growth and other factors,...

Oil & Gas

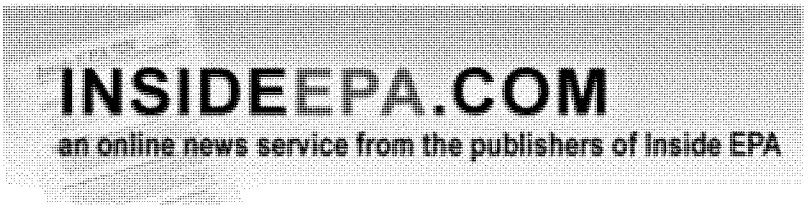
Oil Sands Crude to Reach Gulf of Mexico
Without Keystone XL, Alberta Premier Says

Oil-sands crude will supply Gulf Coast refineries regardless of how President Barack Obama rules on the Keystone XL pipeline, Alberta Premier Jim Prentice said....

Water Infrastructure

Water Groups Seek Appropriations
For Infrastructure Financing Program

The newly created water infrastructure financing program cannot operate, let alone offer loans or loan guarantees, until Congress appropriates funds that were authorized under the recently enacted water resources legislation, according...



Inside EPA **Risk Policy Report**, 11/04/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

New EPA Water 'Affordability' Guidance Will Include Advisors' Changes

EPA plans to include new considerations of water systems' financial circumstances, such as

bankruptcies, pension liabilities and the size of the water system, in its long-awaited framework for assessing a municipality's ability to pay for infrastructure upgrades needed to comply with Clean Water Act (CWA) mandates, changes that agency advisors had urged.

News Briefs

Industry Loses Bid To Rehear CWA 'Shield' Suit

The U.S. Court of Appeals for the 9th Circuit is letting stand its recent decision narrowing the "shield" against legal liability offered by EPA's Clean Water Act (CWA) general permit for stormwater, rejecting industry arguments that the decision undermines the pollution management plans that CWA permit holders must follow.

Greenwire

SUPREME COURT:

Justices to weigh prosecution of fisherman under white-collar law

Jeremy P. Jacobs, E&E reporter

Published: Monday, November 3, 2014

The Supreme Court this week will weigh what some observers say is the government's overzealous prosecution of a Florida fisherman for allegedly tossing three fish overboard.

On Wednesday, the justices will consider commercial fisherman John Yates' appeal of his conviction on destruction of evidence charges.

The main issue of the case, however, is not Yates' fish but whether the government should have prosecuted him under a law typically reserved for white-collar crimes, the Sarbanes-Oxley Act of 2002.

Instead of trying Yates under civil penalty provisions, the government invoked an "anti-shredding" provision of Sarbanes-Oxley.

Many court observers say that part of the law -- which was enacted following the Enron scandal -- was intended for document shredding or other evidence destruction. Even former Rep. Michael Oxley (R-Ohio), who wrote the law, has weighed in with court documents backing Yates.

If the government is successful, said Mark Miller of the conservative nonprofit Pacific Legal Foundation, it would give prosecutors vast discretion to apply Sarbanes-Oxley to low-level civil disputes.

"Here you have what is at most, it would seem to be, an administrative or regulatory issue," said Miller, who filed an amicus brief in the case on behalf of his foundation and several fishing associations. "Sort of inexplicably, the federal government decided to turn a regulatory minor fine into a federal prosecution involving a law for white-collar criminals."

The case dates back to August 2007, when federal and state regulators boarded Yates' boat, the Miss Katie, in the Gulf of Mexico to inspect safety equipment and his recent catch.

They suspected that some of the 3,000 pounds of fish aboard Yates' boat were under the 20-inch minimum for red grouper, a species protected for conservation. After measuring them all, they identified 72 that they said were undersized.

Yates, 62, of Holmes Beach, Fla., argues that the inspectors measured in a haphazard fashion.

The next day, they returned, remeasured and determined that 69 fish were too small.

Three years later, the government charged Yates with violating the anti-shredding provision of Sarbanes-Oxley, which makes it illegal to destroy evidence such as documents, text messages or emails during the course of an investigation. They argued that Yates instructed his crew to toss undersized fish overboard.

The law says a suspect who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object" can be prosecuted.

Yates was ultimately convicted by a federal jury and sentenced to 30 days in prison followed by three years of supervised release. The 11th U.S. Circuit Court of Appeals later upheld the conviction.

The key issue in *Yates v. United States* is the definition of "tangible object" in the law. The government contends that it can apply broadly, including to fish.

"The court of appeals correctly concluded that fish are 'tangible object[s],'" the government said in court documents.

Yates asked the Supreme Court to weigh in on several issues, but the justices limited their review to whether he was "deprived of fair notice" that the Sarbanes-Oxley provision applied to his case.

The court's willingness to take up the case appears to be part of a trend among the justices to address instances of potentially over-aggressive prosecution. Last term, they took up a case brought against a woman who tried to poison her husband's mistress. The government prosecuted her under an international treaty on chemical warfare. The court ruled unanimously in *Bond v. United States* that the government had no need to use the treaty when myriad other criminal laws would have sufficed (*Greenwire*, June 2).

Notably, groups on both sides of the political spectrum have filed friend-of-the-court briefs backing Yates in the case. The U.S. Chamber of Commerce, National Association of Manufacturers, and American Fuel and Petrochemical Manufacturers have weighed in. The government accountability nonprofit Cause of Action has also filed an amicus brief.

Bradley Bondi of Cadwalader Wickersham & Taft, who wrote an amicus brief in the case on behalf of the libertarian Cato Institute, called the government's prosecution of Yates "frightening."

"It raises a serious question about over-criminalization," he said. "You have Mr. Yates, who, at most, could have lost his fishing license briefly ... fined a few thousand dollars."

If the government is successful, he added, Sarbanes-Oxley "could have amazingly broad implications and could be used in an amazingly broad number of ways that no one has conceived."

A decision in *Yates v. United States* is expected by the end of next June.

WATER POLLUTION:

Sierra Club calls for federal probe into Appalachian labs

Manuel Quiñones, E&E reporter

Published: Monday, November 3, 2014

The Sierra Club is calling on federal agencies like U.S. EPA to conduct an investigation into Appalachian water safety issues in light of problems with a certified pollution compliance testing lab in West Virginia.

Last month John Shelton, who worked for an outfit called Appalachian Laboratories Inc., pleaded guilty to a conspiracy charge for diluting water samples from coal mines. He blamed pressure from industry clients (*Greenwire*, Oct. 21).

"This malfeasance highlights the need for state and federal regulators to conduct a full investigation of both Appalachian Labs and other laboratories that conduct water sampling for coal mines in West Virginia and beyond," said Sierra Club national organizer Bill Price.

Environmental groups have for years complained about labs that test for Clean Water Act compliance. In 2010 and 2011, they went after lab operators in Kentucky that submitted what appeared to be falsified monitoring reports.

Attorneys for Nally and Hamilton Enterprises Inc., sued by environmental groups and fined by state regulators, called it an error by a lab contractor (*Greenwire*, May 13, 2011).

"Mounting evidence makes clear that companies can't be relied on to police themselves, and state regulators are not doing enough to identify fraud," Price said in a statement.

The FBI and EPA's Criminal Investigation Division are involved in the ongoing probe concerning Appalachian Laboratories. Officials have not said whether their investigation involves other labs.

The West Virginia Department of Environmental Protection is moving to scrap Appalachian Laboratories' certification to conduct pollution compliance tests.

But last week the West Virginia Environmental Quality Board decided to keep the permit active pending appeal. Appalachian Laboratories said immediate revocation could force the lab to shut down and lay off workers.

Still, DEP said it would no longer accept testing conducted by the company. An agency spokeswoman could not say how many coal mining clients the lab had but said about 20 to 30 percent of the state's coal mining facilities have used the lab in recent years.

"A big part of the Clean Water Act's foundation is the self-reporting program and the reliance on independent testing laboratories to comply with the law," said DEP Secretary Randy Huffman. "Once the integrity of that program is compromised, the entire fabric begins to break down. We can't, and won't, let that happen."

Bill Raney, president of the West Virginia Coal Association, did not respond to a request for comment for this story in time for publication.

In neighboring Kentucky, lawmakers in 2011 approved legislation to require lab certification for water pollution compliance testing. New rules written under the law became effective last year.

Environmental groups are separately asking EPA to yank Clean Water Act oversight authority to regulators in Kentucky, West Virginia and Virginia. The agency has yet to respond, they said.

ENDANGERED SPECIES:

Tumors on sea turtles linked to pollution

Published: Monday, November 3, 2014

Researchers in Florida have linked water pollution to deadly tumors that have formed on endangered sea turtles.

The tumors, forming around the eyes, mouths, fins and soft tissue, have been plaguing the aquatic reptiles for years.

Scientists are linking warming water due to climate change and chemicals in the water as contributing factors to the cancerous growths.

"It's basic chemistry," said Billy Causey, who has studied sea turtles since the 1960s and managed the National Oceanic and Atmospheric Administration's marine sanctuaries in the Florida Keys. "You heat water a little bit and nothing happens. But then you add chemicals to the water, certainly things accelerate."

For decades, the tumors have been affecting sea turtle populations. A herpes virus called fibropapillomatosis was first documented in turtles in 1938 in the Florida Keys. By the 1980s, the virus began to subside. But scientists have seen more turtles turning up with tumors in recent years.

"These things are all lining up in a powerful way," said Kyle Van Houtan, a NOAA scientist. "We realize we have a lot of work, but we think we're on the right track" (Jenny Staletovich, *Miami Herald*, Oct. 31). -- **MH**

WATER POLICY:

Supreme Court will review Fla.-Ga. dispute

Jeremy P. Jacobs, E&E reporter

Published: Monday, November 3, 2014

The Supreme Court today agreed to resolve a long-running water use dispute between Florida and Georgia.

Florida claims Georgia is pulling too much water out of the Apalachicola, Chattahoochee and Flint river basins to provide resources to its growing Atlanta metropolitan area.

The controversy has raged for years, with politicians in both states criticizing the others' motivations. Florida asked the Supreme Court to resolve the issue after failing in previous litigation.

Today, the justices granted Florida's request to file a bill of complaint to the court. That means the high court will address the issue, but an ultimate resolution shouldn't be expected for months, if not years.

Typically, interstate disputes that fall within the high court's original jurisdiction are delegated to a "special master." The court appoints the master -- often a federal judge -- who conducts what is essentially a trial. The master then submits a report to the court, and the two parties can either agree to it or challenge aspects of it.

If there are exceptions to the report, the justices may hear oral arguments, as they did last month in another water dispute between Kansas and Nebraska (*Greenwire*, Oct. 14).

Florida claims Atlanta and its surrounding areas are pulling 360 million gallons per day from the Chattahoochee and projects that number to double by 2040.

The river originates in north Georgia, flows southwest past Atlanta and, at Georgia's southwest corner, joins the Flint River. Together they form the Apalachicola River, which runs south through northwest Florida into Apalachicola Bay in the Gulf of Mexico.

Florida's case largely centers on Lake Lanier, an Army Corps of Engineers reservoir north of Atlanta. Georgia has been pulling water out of the reservoir for its citizens, which Florida says has significantly decreased flows that eventually reach the bay.

Apalachicola Bay was home to Florida's large oyster industry, which formerly accounted for 10 percent of the nation's Eastern oyster supply. The industry, however, collapsed in 2012, and the Commerce Department declared a federal fishery disaster.

The Supreme Court first asked the Obama administration to weigh in on the dispute. The Department of Justice said the dispute is worthy of the Supreme Court's review but urged the high court to wait while the Army Corps updates its management plan for the basin and its five dams. The current "master manual" is from 1958, and the corps plans to issue a draft upgrade next September and finalize it in March 2017.

"The update process, which is ongoing, will include a determination of whether and to what extent storage in Lake Lanier will be used to accommodate the present and future water supply needs of the Atlanta metropolitan area," DOJ said in court documents.

Florida Gov. Rick Scott (R) welcomed the Supreme Court's order, calling it "huge news and a major victory" in a statement.

"For 20 years, Florida has tried to work with Georgia, and families have continued to see their fisheries suffer from the lack of water," he said.

Georgia will now file a response in *Florida v. Georgia*.

Special master appointed for Texas-N.M. water fight

In a separate interstate water case, the court appointed A. Gregory Grimsal, a Louisiana attorney, as its special master in a dispute between Texas and New Mexico.

Texas argues that New Mexico is violating the Rio Grande interstate water compact by diverting water from the river before it crosses into Texas. The Lone Star State asked the high court to resolve the issue.

The 1938 compact allocates the amount of water each state can pull from the Rio Grande, which rises in Colorado and flows through New Mexico and into Texas, where it forms the U.S.-Mexico border, before draining into the Gulf of Mexico.

Texas' case focuses on New Mexico's Elephant Butte Reservoir. It claims that under the compact, water

must be allowed to flow from there unimpeded into Texas. New Mexico, Texas says, is diverting water by pumping it into its Hatch and Mesilla valleys for agriculture.

"New Mexico has, contrary to the purpose and intent of the Rio Grande Compact, allowed and authorized Rio Grande Project water intended for use in Texas to be intercepted and used in New Mexico," Texas says in court documents.

New Mexico has countered that Texas has not identified a specific term of compact that it is allegedly violating.

"There is no requirement under the Compact that New Mexico deliver a specified quantity of water to the New Mexico-Texas state line, a location about 105 miles downstream from Elephant Butte Dam," New Mexico said in court documents.

New Mexico added that "Texas concedes the compact does not" guarantee "a specific quantity of water to Texas or require that New Mexico deliver a specific quantity of water to the New Mexico-Texas state line."

OIL AND GAS:

Alaska residents seek new environmental review of NPR-A project

Published: Monday, November 3, 2014

A report released by the Army Corps of Engineers earlier this year does not explain why the agency did not prepare a supplemental environmental impact statement when signing off on the first oil field development in the National Petroleum Reserve-Alaska, a group of residents contends.

The residents of the remote village of Nuiqsut told the U.S. District Court in Alaska on Oct. 14 that the project by ConocoPhillips Co. has changed substantially and has "created new impacts to the area's complex hydrology, wildlife, tundra, soils and aquatic habitat," the villagers wrote.

The residents said the project changes don't fall within the scope of alternatives first considered in a 2004 environmental impact statement.

Those changes include shifting a road and bridge to a different location, the residents said. U.S. District Judge Sharon Gleason has yet to rule on the claims (Alan Bailey, *Alaska Dispatch News*, Nov. 1). **-- SP**

COAL:

Obama admin delays stream-protection rule

Manuel Quiñones, E&E reporter

Published: Monday, November 3, 2014

The Obama administration is hoping to release the proposal for its landmark rulemaking to protect waterways from coal mining sometime early next year, the Interior Department's Office of Surface Mining said Friday.

OSM, the nation's top coal mining regulator, had originally said it would finalize the so-called Stream

Protection Rule by 2012 under an agreement with environmental groups in litigation against the George W. Bush-era Stream Buffer Zone rule.

Rulemaking delays prompted the groups, including the National Parks Conservation Association, to restart their litigation. As a result, U.S. District Judge Barbara Rothstein for the District of Columbia scrapped the Bush Stream Buffer Zone rule earlier this year (*Greenwire*, July 10).

OSM, while operating under a previous rule promulgated under President Ronald Reagan, had said the new stream rule would likely come out by the end of this year. But for weeks, advocates on different sides of the debate have been predicting another delay. The agency's target is now sometime in the spring.

Congress has also been scrutinizing the rulemaking amid concerns over job losses and OSM problems with former contractors. And the House has cleared H.R. 2824 to prevent OSM from moving forward with a proposal.

Blocking the Stream Protection Rule could be a priority for Republicans if they take over the Senate after tomorrow's elections, which would give them full control of the legislative agenda.

WATER POLLUTION:

Pipeline reopened after spill

Published: Monday, November 3, 2014

A 1,000-mile pipeline that spilled 4,500 barrels of oil near Mooringsport, La., four weeks ago has reopened.

The Department of Transportation's Pipeline and Hazardous Materials Safety Administration gave Sunoco Logistics' Mid-Valley Pipeline the go-ahead to resume 80 percent of the maximum operating pressure until the spill investigation is complete, said Sunoco spokesman Jeff Shields.

U.S. EPA called the spill "major." Recovery efforts are still underway in the Tete Bayou, and an estimated 480 animals were killed by the spill, while an additional 41 were cleaned and treated. The cleanup process is expected to take months.

"They are making a diligent effort to clean it up," said John Kinnebrew of Kinnebrew Energy Group, a family-owned limited liability corporation that has close to 32 acres bordering both sides of the bayou. "I'm impressed with their efforts. They have a lot of people out there working 24 hours a day."

The incident is not the first time Sunoco has been penalized for safety and oil spill-related incidents. Between 2006 and 2013, Sunoco paid $1.2 million in penalties for safety issues. Sunoco pipelines have also spilled thousands of gallons of oil across the United States in the last decade, and the company has incurred hundreds of thousands of dollars in fines (Vickie Welborn, *Shreveport Times*, Nov. 1). **-- MH**

MICHIGAN:

Broken dam concerns local residents

Published: Monday, November 3, 2014

Residents in northern Michigan who once recreated around the O'Neal Lake Dam are questioning state

officials after the dam broke late last summer after heavy rains.

The rains caused a berm around the state-owned dam to break, gushing water into a creek. Instead of blocking the leak, the Michigan Department of Natural Resources removed barrier boards until it could best fix it. The removal of the boards allowed the remaining water to flow out. The 150-acre lake quickly depleted and left a small puddle in the middle of a mud flat.

The O'Neal Lake Dam is not the only dam in the state that is damaged, but its breach was not as serious as others, DNR said. The exiting water flooded only state lands and posed no threat to local residents.

"We have a number of these structures in just this condition, and we have to prioritize which ones we have to do first and which are the most important," said Brian Mastenbrook, field operations manager for DNR. "Most of the dams we've got are in the same age class, and stuff just goes wrong when they get to be 50, 60 years old. They're all at the end of their life span, really."

Local residents are concerned for the local wildlife and aquatic environments in the lake.

"My concern is if it isn't repaired or brought back to its previous level, the loons will leave the lake and return to find a lake with no fish," said Jeff Lange of LoonCorps Northern Michigan (John Carlisle, *Detroit Free Press*, Nov. 2). **-- MH**

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CLIMATEWIRE — Tue., November 4, 2014

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1.RECYCLING:

The new alchemy? Company makes jet fuel and plastic soda bottles out of farm wastes

Last week, major players in the packaging industry expressed interest in helping the world get one step closer to a 100 percent renewable plastic product. While many have been working on the technology for several years, a level of 30 percent renewable had been reached. But a tiny company in Wisconsin, Virent Energy Systems Inc., has figured out how to generate the missing 70 percent, gaining the interest of a powerful group: the PlantPET Technology Collaborative.

2.ELECTRICITY:

Researchers predict spreading blackouts as cities grow larger

Electricity blackouts will become more common as surging power demand outpaces public and private utilities' abilities to provide a continuous and reliable flow of power to customers, a new research paper asserts.

TODAY'S STORIES

3.FORESTS:

Authorities seize $20.6M of wood logged illegally in Peru

4.EMISSIONS:

CO2 ranks by far the worst among troublesome climate pollutants -- study

5.TECHNOLOGY:

Pilot plant will begin sucking CO2 from thin air early next year

6.SCIENCE:

Viewing climate change with a far-infrared lens to find clues to warming

7.NATIONS:

Denmark mulls ending coal use by 2025

8.NATIONS:
Australian airport rejects climate change ad ahead of G-20 meeting
9.COAL:
Technology for coal pollution reduction 5 years away -- agency
10.ARCTIC:
Arctic Ocean will be ice-free by 2020 -- Cambridge researcher

E&ETV'S ONPOINT

11.CLIMATE:
Former EPA General Counsel Martella says Clean Power Plan will not survive legal challenges

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ENERGYWIRE — Tue., November 4, 2014

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1.OIL AND GAS:
Drilling's safety exemptions and how they got there

In 1983, troubled by the high death rate in the oil field, the Occupational Safety and Health Administration set out to impose a set of worker safety rules on drilling companies. The effort backfired. And when that proposal died, drilling companies wound up exempt from a suite of basic worker protections.

TOP STORIES

2.TECHNOLOGY:
New Berkeley lab seeks the next big battery breakthrough
3.GRID:
Western imbalance market reports some price volatility at startup
4.ELECTRICITY:
Texas power company sees conditional go-ahead for bankruptcy auction plan

OIL AND GAS

5.PIPELINES:
Enbridge boosts 3Q income, mired in delays
6.OFFSHORE DRILLING:
Statoil has 'faith' in embattled North Sea oil business
7.PEOPLE:
Veteran energy attorney joins Houston law firm
8.PEOPLE:
Enbridge subsidiary director resigns from boards
9.OIL SANDS:
Canada finds export routes for landlocked crude
10.SAFETY:
5 workers still being treated for rig fire injuries

ELECTRICITY

11.UTILITIES:
Ohio Supreme Court to weigh in on solar rate structures

12.UTILITIES:
Maze of aging Pa. gas pipelines would take billions to replace

E&ETV'S ONPOINT

13.CLIMATE:
Former EPA general counsel Martella says Clean Power Plan will not survive legal challenges

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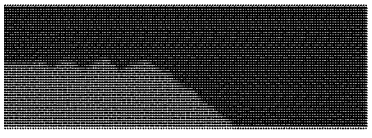

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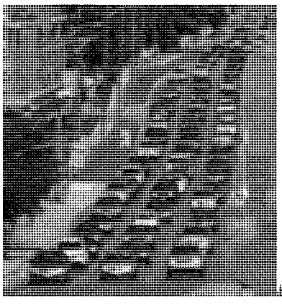

Air & Radiation Law News

for November 3, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Looks to Boost Development, Use of Air Monitoring Sensor Technology

The Environmental Protection Agency is looking to boost development and use of air pollution monitoring sensor technology by businesses, academia, citizens, and states and localities, senior agency officials said at a recent advisory...

Air Pollution

L.A. Ozone Plan Insufficient, Health, Environmental Groups Claim in Lawsuit

Environmental and medical groups sued the Environmental Protection Agency, arguing the plan it approved to reduce ozone in Los Angeles is insufficient to protect public health (Physicians for Soc. Responsibility-Los Angeles v. EPA, 9th...

Climate Change

Climate Plan for San Diego County Insufficient, California Court Affirms

A California appeals court upheld a ruling that San Diego County's climate action plan doesn't comply with the California Environmental Quality Act and ordered a supplemental environmental impact report to be conducted to measure...

Climate Change

Federal Agencies Release Plans Outlining Ways to Mitigate Severe-Weather Impacts

Federal agencies released Oct. 31 plans outlining how they are preparing for floods, rising seas, more intense weather events and other threats posed by climate change....

Climate Policy

Merced County Transport, Land-Use Plan Misses Climate Targets, Groups Say in Suit

An integrated transportation and land-use plan developed for California's Merced County fails to meet state-established regional targets for reducing vehicle-related greenhouse gas emissions, the Sierra Club and Center for Biological...

Climate Regulation

Hearing on Carbon Dioxide Standards For Tribes, Territories Scheduled by EPA

The Environmental Protection Agency has scheduled a public hearing Nov. 19 on a proposed rule to set carbon dioxide emissions standards for power plants in Indian country as well as in Puerto Rico and Guam....

Climate Regulation

Texas Environment Commission Approved By EPA to Issue Greenhouse Gas Permits

The Environmental Protection Agency approved Texas's greenhouse gas permitting program for new and

modified facilities, making the Texas Commission on Environmental Quality the primary greenhouse gas permitting authority in the...

Elections

Energy Issues Loom Large at Final Debates In Alaska, New Hampshire Senate Elections

Senate candidates in New Hampshire and Alaska sparred over a series of energy issues during the final debates in what are expected to be two of the closest Senate elections this cycle and key to determining control of the chamber....

BNA INSIGHTS

'Remarkable Opportunity' for Global Economy in Upcoming Climate Change Talks

An estimated $90 trillion will be invested in infrastructure over the next 15 years: the crucial question is whether this will go into the old brown economy of the past or a new, resource-efficient, low-carbon economy of the future....

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Latest News

Amid Legal Fight, EPA Warns Texas To Properly Run GHG Permit Program

EPA has approved Texas' narrowed request to issue greenhouse gas (GHG) permits for large facilities, but the agency is warning the state to strictly honor it commitments given its stance in pending litigation that EPA is barred from requiring states to permit GHGs until EPA amends the federal program as required by the Supreme Court.

Advocates Criticize EPA's Potential Delay Of Regional Haze Plan Deadline

Environmentalists are criticizing EPA's potential three-year delay -- from July 2018 to July 2021 -- for the deadline by which states must submit to the agency revised plans for reducing regional haze, saying the haze program is already subject to a number of delays and that postponing the air plan deadline will exacerbate the problem.

EPA Unveils Climate Adaptation Plans But Rejects Calls For Firmer Pledges

As part of President Obama's Climate Action Plan, EPA and other federal agencies Oct. 31 released their final plans for adapting to climate change, as well as individual program implementation plans -- measures meant to offset global warming impacts such as flooding, sea-level rise and severe weather events on facilities and actions the agency takes.

Stalled EPA Nominees May Face New Hurdles If GOP Wins Senate Majority

Long-stalled Obama administration nominees for several high-profile EPA and other environmental positions could face even greater hurdles to securing Senate approval if the GOP wins control of the upper chamber in next week's midterm elections, given Republican attacks on EPA and vows to significantly scale back its policy agenda.

Governors' Races Could Scramble Many State Reactions To EPA GHG Rules

Next week's midterm elections are poised to scramble state responses to EPA's greenhouse gas (GHG) standards for existing utilities as control of gubernatorial mansions in several states could flip just as the proposal's comment period is closing and states are beginning to explore potential compliance strategies.

EPA Rejection Of Hanford Cleanup Changes Prompts Formal DOE Dispute

EPA and the Energy Department (DOE) are formally disputing whether DOE can further extend a cleanup milestone governing the removal of radioactive sludge from its Hanford, WA, nuclear complex, with the regulator assessing weekly fines of as much as $10,000 against the department for the breach.

Greenwire

CLIMATE:

38 agencies roll out plans to cope with global warming

Jean Chemnick, E&E reporter

Published: Friday, October 31, 2014

Federal agencies today released updated plans to defend their operations against sea-level rise, more severe storms and other effects of climate change and to improve the carbon footprint and sustainability of the work they do and the resources they manage.

The White House Council on Environmental Quality released documents today from 38 federal agencies, five years after President Obama signed an executive order directing his administration to improve its climate preparedness and sustainability.

During the rollout last year of his second-term Climate Action Plan, Obama said adaptation was as important as the work his agencies were doing to reduce greenhouse gas emissions or secure international cooperation on climate change.

"In the meantime, we're going to need to get prepared," he said in remarks at Georgetown University. "And that's why this plan will also protect critical sectors of our economy and prepare the United States for the impacts of climate change that we cannot avoid."

Today's massive document release revises and expands on a first tranche of adaptation plans that agencies unveiled in February 2013 and comes in response to last November's executive order requiring agencies to periodically update those plans and consider how their efforts affect state and local entities (*Greenwire*, Nov. 1, 2013).

The newly released documents illustrate that climate change is expected to impact almost every agency in the federal government.

The Department of Agriculture says in its updated plan that climate change will affect programs from disaster assistance and crop insurance to support for energy crops as more frequent droughts, insect infestations and other occurrences put pressure on the U.S. agricultural sector.

The agency also oversees the Forest Service, which expects acreage affected by forest fires to double by 2050, requiring more funds for wildfire response.

The Defense Department in a plan released earlier this month and included in today's submission reiterated that climate change is a "threat multiplier" that may lead to global instability and increase demands on the U.S. military. It also noted that many of its military installations are in coastal areas vulnerable to sea-level rise and storm events, and that climate change could interfere with training activities.

Agencies also outlined actions they plan to take to cope with climate-driven threats.

For the Interior Department, those include steps to build a "climate literate workforce" that understands how to incorporate department-level policies on climate adaptation into day-to-day operations, including updates to training programs for employees and to departmental handbooks and literature. Interior's plan also stated that steps might be needed to better address climate change preparedness in National Environmental Policy Act permitting activities for the lands the department manages.

Bruce Stein of the National Wildlife Federation said Interior's adaptation planning stood out from that of other agencies as being particularly strong.

"The plan really makes clear that they seem committed to integrating adaptation into all aspects of the department's bureaus' activities," he said. "So I find that encouraging."

Interior has integrated its plan formally into its manual of procedures, giving it greater legal heft and ensuring that it will be followed more uniformly than may be the case with other departments, he said.

U.S. EPA released not only an updated plan for the agency as a whole, but individual plans for its program offices and 10 regional offices.

The agency pledged to update its brownfields and water infrastructure grant programs to ensure that the investments they support will withstand a changing climate. For example, EPA committed to work with states to consider resilience when funding projects under the Clean Water State Revolving Funds.

Its regional plans look at projected changes in their areas of operation. Heavier precipitation events in EPA's Region 2, which incorporates New York and New Jersey, will mean more pollutants are swept into the local water system. The regional office's plan states that it will incorporate "greater uncertainty" into its Clean Water Act permitting processes. More storms would also mean more demand for revolving fund

investment.

Meanwhile, drought and wildfire in the Great Plains and the Southwest -- served by EPA's Region 8 office -- could cause air quality to worsen.

That region's plan calls for cooperation among state, local and tribal authorities to mitigate higher levels of ozone and particulate matter.

Climate change may also alter the way EPA's voluntary and regulatory programs for ozone are implemented, according to the Region 8 plan. The agency as a whole is considering an update to its Clean Air Act ozone restrictions.

The rules also lay out plans to curb energy use in the nearly half-million buildings and 600,000 vehicles owned by the federal government. Agencies released plans to curb energy, gasoline and water use in their operations, many of which included actions they have already taken.

The Department of Energy pointed to the addition of 33 green buildings to its properties; it currently uses 101 that meet federal guidelines for sustainability.

It also reduced its vehicle fleet by 8 percent compared with fiscal 2012 levels and completed construction of a wind farm in Amarillo, Texas.

This year's tranche of plans put more emphasis on the way agency plans affect state and local communities they serve or where they are located.

"Federal agencies aren't just looking at their own lands and assets, but also looking at how programs affect state and local decisionmaking about air and water," said Jessica Grannis, adaptation program manager at the Georgetown Climate Center. She added that the agencies appeared to have taken this responsibility "to heart" in the plans released today, many of which referenced continued coordination with groups like the president's State, Local and Tribal Leaders Task Force on Climate Preparedness and Resilience.

NEW HAMPSHIRE:

Shaheen goes on offensive over Clean Air Act, efficiency bill

Nick Juliano, E&E reporter

Published: Friday, October 31, 2014

Sen. Jeanne Shaheen (D-N.H.) defended her support for the law President Obama is using to crack down on greenhouse gas-spewing power plants and accused Republican challenger Scott Brown of ignoring the threat and coddling responsible oil companies with lavish government subsidies in last night's final debate of the closely fought campaign.

At one point, Shaheen even accused Brown of intervening to kill the landmark energy efficiency bill she introduced this year with Sen. Rob Portman (R-Ohio).

"When we tried to pass it, my opponent lobbied to try to kill it," Shaheen said. "Not only that, but he continues to support those subsidies to the oil companies."

Shaheen-Portman failed to advance because Republicans and Democrats could not agree on what

amendments could be offered, especially one that would have approved construction of the Keystone XL pipeline, a symptom of a broader procedural war that has left the Senate at a virtual legislative standstill all year. At the time, Republicans downplayed any influence from Brown, and his campaign said he was concerned about KXL, a stance he reiterated last night (*Greenwire*, May 14).

Brown, the former Massachusetts senator who relocated to the Granite State after losing his old, briefly held seat in 2012, returned to a familiar well every time energy or climate issues came up last night, accusing Shaheen of supporting a "national energy tax." The accusation stems from her vote last year for a nonbinding budget amendment from Sen. Sheldon Whitehouse (D-R.I.) that called for any money raised from a hypothetical carbon tax to be returned to taxpayers.

The incumbent said she does not support an energy tax, but both candidates again declined to grapple with whether a carbon price would eventually be necessary to confront climate change.

Shaheen did at various points present herself as taking climate change more seriously, denying Brown's accusation that she opposes nuclear power.

"If you believe in climate change and believe you have to address that -- although my opponent doesn't -- then you've got to have nuclear power as part of the energy mix," Shaheen said.

Later in the debate, she touted her support for bedrock environmental laws, the Clean Water Act and the Clean Air Act, both of which have been used by the Obama administration to pursue controversial polices unpopular with Republicans and industry. Brown has repeatedly touted his support from pro-business groups, such as the U.S. Chamber of Commerce and National Federation of Independent Business, which Shaheen said came in part because of his opposition to environmental protection laws.

"Well I think we need to support the Clean Air Act and the Clean Water Act; my opponent opposes it," she said.

Shaheen also made frequent use of her attack against Brown for supporting various tax incentives for oil and gas companies. When the candidates were given an opportunity to ask each other a question, Shaheen asked why a grocery store cashier should have to "pay through her taxes to subsidize an oil company?"

Brown turned around and accused Shaheen for wanting to tax those same companies more, which he said would not help to achieve "energy independence."

WIND:

Pentagon opposes Md. turbine project

Published: Friday, October 31, 2014

This story was updated at 2:44 p.m.

The Pentagon is objecting to a proposed wind energy project on the Eastern Shore of Maryland because the turbines could create a security risk by interfering with operations at the Naval Air Station Patuxent River.

Rep. Steny Hoyer (D-Md.), whose district includes the base, released a letter from the Department of Defense and said officials concluded that the wind turbines pose "a significant threat" to the "world-class stealth radar system" used at the base.

Hoyer and other elected officials fear that the wind farm could jeopardize 22,500 jobs that the naval station supports in the region.

The project is also facing backlash from bird lovers who believe the turbines threaten bird populations and local landowners who say the turbines could lower property values.

Proponents of the project said the $200 million project would create clean energy, generate tax revenue and bring employment to one of the poorest areas of the state.

The developers of the project, including Pioneer Green Energy LLC, said they have been willing to work with the base. Last year, the Navy tentatively accepted an offer that said the company would turn off the turbines whenever the base wanted to operate its radar for stealth aircraft testing (Timothy B. Wheeler, *Baltimore Sun*, Oct. 30). **-- MH**

AIR POLLUTION:

SBA advocacy office asks EPA to weaken proposed refinery standards

Amanda Peterka, E&E reporter

Published: Friday, October 31, 2014

The Small Business Administration's advocacy office is urging U.S. EPA to scale back proposed standards for reducing refineries' toxic air emissions.

The Office of Advocacy, an independent office within SBA, said the regulations would impose unnecessary costs on small refiners, especially the proposed requirements for fence-line monitoring of hazardous air pollutants.

"Advocacy believes that EPA should adopt regulatory alternatives to reduce the burden of this requirement on small entities," the office wrote in a comment letter dated Tuesday, the closing date of a public comment period on the proposed rule.

The advocacy office's comments are often cited in businesses' legal challenges to federal rules and are magnets for criticism from left-leaning regulatory advocates (*Greenwire*, Oct. 10).

The proposed refinery rule encompasses both the New Source Performance Standards and maximum achievable control technology for refineries under the Clean Air Act. Along with requiring refineries to monitor fence-line concentrations of benzene, it also calls for refineries to upgrade emission controls for storage tanks, address pollution from coking units, and install monitoring and control valves for flares.

There are 142 petroleum refineries considered major pollution sources under the Clean Air Act, as well as seven small area sources, according to EPA. The rule would address pollutants such as benzene, polycyclic aromatic hydrocarbons, nickel and hydrogen cyanide.

EPA says its proposal would make "a visible difference in the health and the environment of communities across the country."

In its comment, the advocacy office said it was concerned the rule's monitoring requirements would pose

unnecessary burdens on small refiners even though EPA public health and environmental risk data show that those sources "are unlikely to raise significant public health or environmental concerns."

EPA's rule would require small refiners to unreasonably hire new workers and build new facilities for monitoring emissions, the office says. Small refiners would also be forced to submit "overly burdensome reports" to EPA on their monitoring.

Small refiners would like to see EPA's final rule provide exemptions for entities for which existing emissions are low enough to protect public health, the office wrote.

"Advocacy recommends exempting small entities that EPA has shown are unlikely to pose an unreasonable risk and limiting the data submitted to EPA to only that necessary to demonstrate compliance," the office said.

Under the amended Regulatory Flexibility Act, EPA is required to convene a small-business panel for all regulations that are expected to have a significant economic impact on small businesses.

In 2011, EPA convened a panel to analyze a slate of revisions to various air standards for refineries. But SBA's Office of Advocacy says the agency did not provide the group with sufficient information on its intended new regulations; the panel ultimately never completed a final report for the agency.

The nation's major oil trade groups have also objected to the proposed regulations and are calling on EPA to delay finalization of the regulations; the agency currently has a court-mandated deadline of April 2015 to finish the rule (*Greenwire*, Oct. 30). Sen. James Inhofe (R-Okla.) also this week called on EPA to withdraw the rule.

Environmental groups, on the other hand, have called on EPA to strengthen its proposal by requiring real-time data from fence-line monitoring -- as opposed to just providing information on peak concentrations -- among other changes (*E&ENews PM*, Oct. 27).

DOE:

Hanford workers getting sick from tanker fumes -- federal report

Kevin Bogardus, E&E reporter

Published: Friday, October 31, 2014

Chemical experts have found that workers exposed to tanker fumes at the Hanford, Wash., nuclear waste site are coming down with health problems.

In a report released yesterday, the 10-member team led by Savannah River National Laboratory found "a causal link" between releases of chemical vapors from the site's underground storage tanks containing radioactive sludge and workers' respiratory issues.

"One of the key analyses that we accomplished was to apply a well-established set of criteria to determine whether there was a causal link between tank vapor exposures and the adverse health effects experienced by tank farm workers. The analysis indicated that this was the case," said Bill Wilmarth of SRNL, who led the team behind the report.

They found "a causal link between chemical vapor releases and subsequent health effects, particularly upper respiratory irritation, experienced by tank farm workers," according to the report's executive

summary.

The report was requested in June by Washington River Protection Solutions, the contractor tasked with cleaning up the hazardous waste stored in Hanford's tanks. The experts made a number of recommendations to improve worker health and safety at the site in their report and will also review WRPS's efforts to fix the problems at Hanford.

A spokeswoman for the Department of Energy, which is responsible for Hanford, said the department is committed to protecting workers at the site.

"Minimizing risks to workers, including chemical vapors in the tank farms, is something the department and its contractors strive for every day," said the DOE spokeswoman. "The department supported WRPS's decision to begin implementing many of the key recommendations while the report was still in draft form, and we look forward to reviewing WRPS's recommendations on next steps."

Hanford Challenge, a watchdog group, blasted the site for exposing its workers to dangerous chemical fumes on the job.

"Hanford's program falls far short of where it needs to be in order to protect workers, or even detect vapor exposures at all," said Tom Carpenter, executive director of Hanford Challenge. "Hanford should not be allowed to continue to play Russian roulette with workers' health."

Hanford's storage tanks contain about 53 million gallons of radioactive and chemical waste. The site once produced plutonium for nuclear weapons but now holds spent fuel rods and hazardous waste, which is taking years for DOE to dispose of.

The site's 177 tanks are arranged in "tank farms" and have been monitored for corrosion over the years. But as waste has been removed from the tanks, that is likely when gases inside have been released, according to the report.

Concerns about chemical vapors at Hanford have been around for some time; DOE first investigated the issue in 1992. This past spring, however, more than two dozen tank farm workers were exposed to the fumes and received medical attention, according to the report.

Hanford has been beset by problems as the cleanup project blows years past deadlines and goes millions of dollars over budget.

This September, the DOE inspector general found that the site's cleanup is two years behind schedule and $179 million over budget (*Greenwire*, Sept. 23).

That tardiness has resulted in penalties for DOE from other parts of the federal government. Earlier this month, U.S. EPA slapped the department with fines of as much as $10,000 a week for not meeting its goals at Hanford (*Greenwire*, Oct. 16).

There have also been allegations of whistleblower retaliation at Hanford. Last week, the DOE IG declined to rule whether a firing of a Hanford contractor employee who raised safety concerns was improper, but the Labor Department has weighed in before on another worker's termination and found that action was illegal (*Greenwire*, Oct. 20).

CHINA:

Steel mills temporarily shutter to clear smog

Published: Friday, October 31, 2014

China's steel mill industry is adjusting production schedules to offset pollution around Beijing in preparation for world leaders, including President Obama, attending the Asia-Pacific Economic Cooperation meeting there in November.

The country, which is the world's top producer and consumer of steel, implemented similar closures during the 2008 Summer Olympics in Beijing.

Industry insiders said the steel industry is already facing weak prices and low demand. Traders are more optimistic and said the closures could boost prices of steel.

Not only is the smog a health problem, but it's also an image problem. Pollution levels hit an eight-month high in mid-October, and marathon runners had to wear face masks earlier this month.

"This emergency plan they have announced is quite stringent and will cause disruptions, but we shouldn't expect it to be very effective or for the pollution problems to be solved instantly," said Tao Wang, an environmental expert at the Carnegie-Tsinghua Center for Global Policy (David Stanway, Reuters, Oct. 30). **-- MH**

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The illuminating journey of former East Germany: from dirty power to 40% renewable energy

BERLIN -- From 200 miles above, Canadian astronaut Chris Hadfield looked out a window of the International Space Station at the shimmering lights below and snapped a photo of Germany's capital. At night, the city's streetlamps trace the roads splaying from the city center like a spiderweb. The pattern of light and darkness chronicles the city's modern history. But the most conspicuous relic of the once-divided city is in the light bulbs themselves.

2.NEGOTIATIONS:

Lowering expectations for near-term U.S.-China joint climate effort

Climate change will be high on the agenda when President Obama meets Chinese President Xi Jinping in Beijing next week for the Asia-Pacific Economic Cooperation meeting and bilateral talks. But the once-intense buzz of a major joint announcement has largely died down. Just one month before a critical U.N. negotiating session aimed at developing the outlines for a new agreement by 2015, analysts said the willingness of the two largest greenhouse gas emitters to lead the world in climate action remains unclear.

TODAY'S STORIES

3.SCIENCE:

World's climate experts lay out 'severe,' 'irreversible' alternatives to a global treaty cutting CO2 emissions

4.AGRICULTURE:

The search for salt-resistant crops

5.RISK:

Army Corps, Park Service give National Mall levee a trial run

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On the anniversary of Sandy, some cities work on more resilient power systems

7.ATMOSPHERE:
Ozone hole remains steady over Antarctica
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Calif. designates regions to receive $83M in cap-and-trade cash
9.CALIFORNIA:
Costs of updating state's water network could approach $500B -- officials
10.COAL:
Swedish energy firm Vattenfall set to sell German coal operations
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German company Reevolt sells kits to electrify VW bug
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Climate change is a 'threat multiplier' for heavy farming nations -- report

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Fort Berthold candidates see chance for change in heart of Bakken Shale

A few thousand voters on North Dakota's oil-rich Fort Berthold Indian Reservation could have a lasting impact in one of the fastest-growing oil fields in North America.

TOP STORIES

2.CAMPAIGN 2014:
Ballot measure in Calif. county seeks unconventional oil drilling ban
3.TRANSPORT:
Crude-by-rail regulator faces internal investigation
4.OIL BOOM:
Manhattan on the bayou? Houston fixes up its image -- and streets -- for flood of new residents

ELECTRICITY

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More large-scale solar plans brewing in Fla.
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Texas grid operator keeps positive outlook for winter supplies
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Calif. gas lines see slower flow after PG&E finds unsafe components

OIL AND GAS

8.EARNINGS:
2 supermajors take the long view on crude prices
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Land board dedicates $5M to schools, airports
10.ADVOCACY:

Group wants more fracking restrictions in its Texas town

11.HYDRAULIC FRACTURING:

Lack of data on offshore fracking sets off alarms

12.SAFETY:

1 worker dies, 1 injured in oil tank explosion

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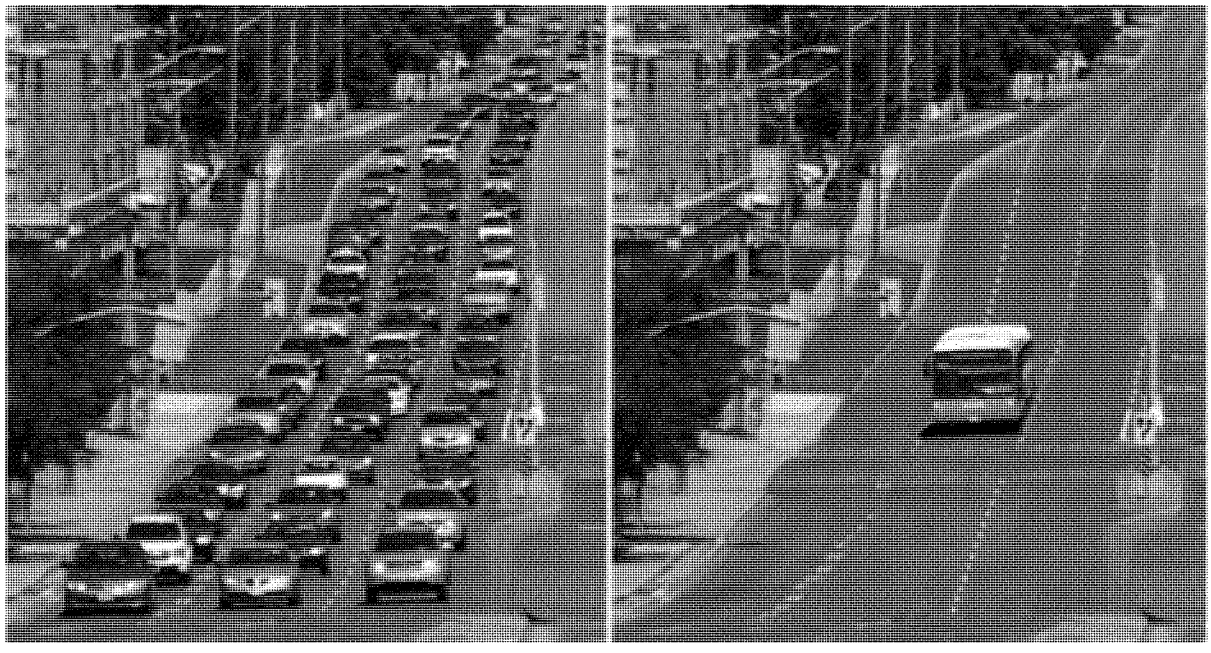

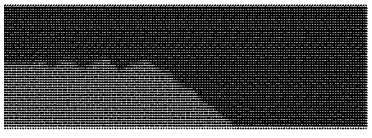

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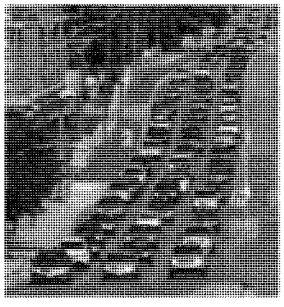

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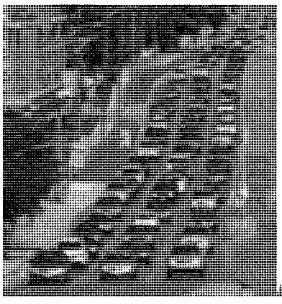


Air & Radiation Law News

for October 31, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

Australian Senate Passes 'Direct Action' Climate Change Bill to Replace Carbon Tax

More than three months after repealing a climate change law that made the nation's biggest polluters pay for their greenhouse gas emissions, Australia's Senate voted Oct. 31 to replace it with a plan that instead offers to reward those...

Climate Regulation

Massachusetts Proposes Global Warming Act Rules for State Transportation Sector

The Massachusetts Department of Environmental Protection will hold a public hearing in Boston Nov. 6 to receive comments on a proposed regulation that would require state transportation officials to demonstrate that plans are in place to...

Elections

Republicans Challenge Landrieu's Clout On Energy in Final Louisiana Senate Debate

Two Republican challengers to incumbent Sen. Mary Landrieu (D-La.), who chairs the Senate Energy and Natural Resources Committee, said in a final Louisiana debate that her failure to secure a floor vote on the proposed Keystone XL pipeline...

Energy

Department of Energy Rules Take Longest For White House to Review, Data Indicate

The White House Office of Management and Budget takes more than five months on average to review regulations crafted by the Energy Department, making the department's rules the most delayed of all federal agencies, according to a Bloomberg...

Energy

Moniz Urges Renewal of Energy Tax Credits, Vows Continued Progress on Climate Change

Renewing and maintaining stable renewable energy tax incentives will be crucial for the development of technologies needed for the U.S. to achieve a low-carbon economy, Energy Secretary Ernest Moniz said Oct. 30....

Hazmat Transport

Canada Updates Safety Requirements In Wake of Lac-Mégantic Rail Disaster

The Canadian government has announced additional railway safety measures in the wake of the July 6, 2013, disaster in Lac-Mégantic, Quebec, in which a runaway train carrying crude oil exploded, killing 47 people and causing extensive...

Radioactive Waste

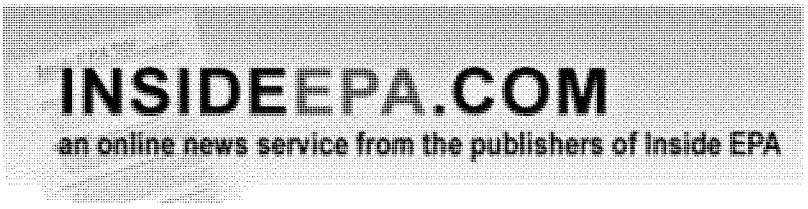
Removal of Oil Field Workers' Exposure Lawsuit to Federal Court Will Be Appealed

Workers who allege they were exposed to radioactive material in southern U.S. oil fields will seek Fifth Circuit review of Exxon Mobil Oil Co.'s successful effort to remove their long-running state suit to federal court under the Class...

BNA INSIGHTS

Tips for Keeping Environmental Enforcement Actions Civil: Maintaining Good Relations With Regulators

One of the more obvious and general suggestions for avoiding regulatory problems, and one that is commonly ignored, is to prioritize, establish and maintain good working relationships with regulators and inspectors....



Inside EPA **Weekly Report**, 10/31/2014

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Latest News

Second EPA CCS Project Approval Faces EAB Suit On Species, Air Impacts

EPA's second ever approval of a carbon capture and sequestration (CCS) project under new Safe Drinking Water (SDWA) permit rules is prompting an Environmental Appeals Board (EAB) suit over claims the permit review failed to fully consider adverse air and endangered species impacts, weeks after landowners filed suit over the first ever permits.

Refiners, Inhofe Urge EPA To Scrap Industry Air Rules, Craft New Analyses

Major refiners and Sen. James Inhofe (R-OK) are urging EPA to scrap its proposed stricter refinery emissions rules and pursue new analyses of the regulations' potential adverse harms for the sector, outlining what they say are a host of legal, practical and economic flaws with the proposal that could serve as grounds for future litigation.

Greenwire

AIR POLLUTION:

EPA considering delay in regional haze deadline

Amanda Peterka, E&E reporter

Published: Thursday, October 30, 2014

U.S. EPA is considering delaying a key deadline for state plans that address haze pollution affecting visibility in national parks, agency officials revealed yesterday.

Tom Powers, senior EPA policy adviser on air quality, said the agency may bump back by three years a July 2018 deadline for states to complete revised plans.

"One of the issues we're looking at is we've heard from many states that they need more time," Powers told members of the agency's Clean Air Act Advisory Committee yesterday at a meeting in Virginia.

Under EPA's regional haze program, states are responsible for developing plans to control pollutants such as sulfur dioxide and nitrogen oxides at individual sources that cause visibility-limiting haze at national parks and wilderness areas. EPA is responsible for approving state plans and for crafting general guidance for states to follow.

EPA first issued its regional haze rule in 1999. The 2018 deadline applies to state submittals of updated 10-year haze plans.

Bumping back the deadline to July 2021 would allow states to incorporate upcoming rulemakings such as a potential revised ozone standard into their plans, Powers said. But he also said EPA was aware of several states that wanted to stick with the 2018 deadline to submit state implementation plans.

"We're exploring SIP provisions that will allow them to do that and to get their SIPs approved early," he said, adding that the agency does not plan to change the next revision deadline of 2028.

According to Powers, EPA has so far taken 1,426 rulemaking actions on pollution control technology for individual sources of regional haze. Of those, 98 percent have been based on state submittals. The program has led to "substantial reductions" in air pollution linked to haze, including the reduction of 500,000 tons a year in sulfur dioxide from sources west of the Mississippi River.

EPA is also exploring changes to the way states must submit five-year progress reports and the way the program addresses man-made sources of air pollution versus natural sources such as wildfires, Powers said. The agency is still deciding whether to issue a guidance or a formal rulemaking; Powers said to expect a decision in the "relatively near future."

Dan Johnson, executive director of the Western States Air Resources Council, said his group welcomed the changes EPA is considering. But he said EPA must also address prescribed wildfires in parks that have both regional haze and public health consequences.

"I think it's going to be pretty challenging when you get to the notion of describing what represents anthropogenic sources versus what's natural that we can't control," he said.

EPA acting air chief Janet McCabe called the issue one of the regional haze program's "most difficult aspects."

FEDERAL AGENCIES:

Supreme Court set to hear momentous whistleblower case

Jeremy P. Jacobs, E&E reporter

Published: Thursday, October 30, 2014

The Supreme Court next week will take up a whistleblower case involving a former air marshal turned solar power consultant in a case that could have broad ramifications for federal employees.

Tuesday's arguments in *Department of Homeland Security v. MacLean* stem from Robert MacLean leaking the Transportation Security Administration's decision to cease deploying air marshals on long-distance flights because of budget shortfalls in 2003.

With the Sept. 11, 2001, terrorist attacks still fresh in the country's consciousness, the report led to a media frenzy. Members of Congress called on TSA to change the policy. Ultimately, the agency reversed itself.

Three years later, when the TSA discovered that MacLean, a former member of the Air Force and border patrol agent, was the source of the information, it fired him. The agency claimed he violated a regulation that prohibited the disclosure of "Sensitive Security Information," or SSI.

MacLean, who now works in Southern California as a consultant for Heritage Solar, a SunPower Corp. dealer, filed a lawsuit, claiming he was unlawfully retaliated against and that TSA violated whistleblowing laws. A federal appeals court sided with him, and the government asked the Supreme Court to take up the case.

The case centers on whether an agency can draft a regulation prohibiting the disclosure of information that can be given the force of law and override federal whistleblower laws.

That, MacLean said in an interview, should frighten every federal employee, including those at U.S. EPA and the Departments of the Interior and Energy.

"It's a disservice to federal employees who work in cubicles in the bowels of government buildings. These are the people who really need whistleblower protections," MacLean said. "You can see the chill factor."

The government notes that following the Sept. 11 attacks, Congress passed the Aviation and Transportation Security Act. The law included a provision directing the Department of Homeland Security and TSA to promulgate regulations prohibiting "the disclosure of information obtained or developed" while working for the agency that it "decides" would be detrimental to national security.

In 2003, the agency's defined SSI generally included "any approved, accepted, or standard security program," including those involving air marshals.

TSA discovered that MacLean made his 2003 disclosure to an MSNBC reporter three years later when he appeared in an "NBC Nightly News" report on a separate incident. MacLean's identity was supposed to be disguised, but the agency was able to identify him.

After losing in an administrative court, MacLean won his retaliation case in an April 2013 U.S. Court of Appeals for the Federal Circuit ruling.

The government contends that the ruling sets a dangerous precedent.

"The decision below," it wrote in court documents, "clears a path for any employee to do what respondent did here: go public with an internal disagreement about how best to allocate finite security resources; put lives in danger by identifying the areas that have received fewer resources; and then attempt to avoid any employment-related repercussions by claiming that publicizing such vulnerabilities revealed 'a substantial and specific danger to public health or safety.'"

MacLean's attorneys say there is an exception to whistleblower protections for "limited circumstances where Congress or the President has determined that the costs of disclosure outweigh its benefits." But they added, "Agency regulations are not included in the exception. Otherwise, agencies could regulate their way out of the public scrutiny whistleblower-protection laws are meant to facilitate."

Several groups have come to MacLean's defense in the case, filing amicus briefs on his behalf. They include the American Federation of Government Employees, Project on Government Oversight and Rutherford Institute, a conservative civil rights group.

John Whitehead, the founder of the Rutherford Institute, wondered why the court even agreed to hear the case, noting that there is no conflict between federal circuits on the issue.

If the justices side with the government, he said, "it will be very, very discouraging" for other potential whistleblowers.

"The whole point of the government in these cases is intimidation," he said.

After hearing oral arguments next week, the court will rule before the end of June.

CLIMATE:

EPA seen easing power plant rule's near-term pressure on states

Jean Chemnick, E&E reporter

Published: Thursday, October 30, 2014

U.S. EPA signaled this week that its final Clean Power Plant rule would be asking less of states early on to reduce emissions of power plants' greenhouse gases.

The notice of data availability (NODA) released by EPA this week proposes tweaks that would both strengthen and weaken the stringency of its original draft, industry lawyers closely following the rulemaking say.

The strengthening changes seem less likely to be adopted than a major change that may effectively weaken many states' emissions targets, they say.

The NODA provision that seems to have the widest base of support among states and industry stakeholders would adjust the assumption about how quickly existing power plants with combined cycle natural gas technology can ramp up to 70 percent capacity and displace coal-based power.

The original proposal assumes the shift can be made by 2020 and assigns states early emission-reduction responsibilities that phase in then.

That means that states like Texas -- with many combined cycle natural gas units running at 50 percent capacity or lower to provide peaking power -- would be required under the original draft to make hefty near-term emissions cuts. Many states would be required to complete most of their overall reductions under the rule by 2020 rather than the final 2030 deadline.

But stakeholders have told EPA that utilities will need more time to build transmission infrastructure to let them run gas plants more.

"It's not as easy as turning a dial," said Jeff Holmstead, who represents industry clients of Bracewell & Giuliani.

States from New Hampshire to Arizona to North Dakota have said in posts to the rule's docket that this front-loaded standard -- sometimes referred to as the rule's "cliff" -- would leave them vulnerable to supply disruptions and rate hikes (*Greenwire*, Sept. 11).

And while the original draft allows for emissions averaging between 2020 and 2029, states that are not ready to meet the interim target in 2020 would have to overperform later to make up for it.

"Even states and companies that are generally supportive of the proposal have been telling EPA that the things EPA assumes can be done by 2020 just can't be done that fast," Holmstead said.

Attorney Kyle Danish of Van Ness Feldman said EPA appeared to be "pretty serious about getting rid of that cliff problem."

"It seems to me that the goal for EPA mostly has to do with getting a certain amount of overall reductions by 2030," he said, adding that the timing of the cuts might be less important.

EPA's notice this week asks for comment on an alternative that would give states extra time to phase in fuel-switching reductions, treating them more like reductions expected from new renewable energy and demand-side efficiency programs. The change would affect the rule's early targets -- the actual means of achieving those targets is left to states in their implementation plans.

Bill Bumpers of Baker Botts LLP, who represents power-sector clients, said he expected EPA to make some changes to its interim requirements in the final rule.

"I think it would be impossible for quite a few states to meet the 2020 interim goals," he said. Even if they did, he said, "it would mean huge economic disruption, because it would mean the retirement of a lot of coal plants, hundreds and hundreds of people unemployed in a very short order."

Rather than just phasing in the fuel-switching reductions more gradually as EPA proposes in the NODA, he said, the agency should throw out the interim targets altogether and focus solely on 2030.

Notice won't weaken rule -- EPA

But while industry representatives generally supported the introduction of a "glide path" for reductions expected from increased gas use, the agency says the NODA does not signal a lessening of the rule's stringency.

Air chief Janet McCabe told reporters this week the document "is not about making the proposal more or less stringent."

The NODA also stresses that point: "The effect of the ideas presented here may have different impacts in different states, increasing the stringency of the [best system of emissions reduction] as expressed in the state goals in some states while decreasing it in others."

The document asks for comment on other alternatives that would strengthen state requirements, including an expansion of the way reductions from natural gas use are used in assigning state responsibilities. This would be done by considering new combined cycle natural gas plants and opportunities for co-firing gas at coal plants when setting state targets.

The document also floats the idea of setting a minimum reduction from natural gas use for all states -- even states that currently have no gas plants.

But even proponents of EPA's rule say those options could put the rule on shaky legal footing. New gas plants are already covered by a new power plant proposal EPA released in September 2013, and the agency would have difficulty justifying assigning states like West Virginia -- which has no gas plants -- a natural gas reduction target.

But if EPA doesn't take steps to reduce the role gas can play in helping states comply and instead extends the timeline for those reductions, it will be writing a less stringent rule.

The NODA also takes comment on some alternatives to the way the draft treats renewables and demand-side efficiency. One proposed tweak that would likely increase the rule's stringency would change the way those reductions are counted -- assuming that renewables and efficiency would go to displace fossil fuel use rather than to satisfy new demand. But other changes would have a mixed effect on state targets that would be harder to quantify.

Sign that EPA's 'listening'

The Minnesota Pollution Control Agency's David Thornton was pleased to see EPA offer an alternative approach to calculating state renewable energy reductions that considers regional markets more closely.

"I think this is a really positive development," he said of the NODA, adding that "it's indicative of how closely EPA has been listening in the last few months."

The NODA's "regional" approach is an attempt to mirror how renewable energy investment crosses state lines, with policies in one state sometimes spurring investments in another.

EPA also hints that it might look at a range of years -- 2010 through 2012 -- when setting state emissions base lines. The June draft looked only at state emissions from 2012 -- a particular problem for Minnesota, because its largest coal-fired power plant was not operating that year.

The document also shows that EPA may tweak its draft to give states credit for reductions made between 2015 and 2020 -- something Thornton said would give his state the confidence to move ahead with policies in the coming few years.

Maine Utilities Commissioner David Littell said the NODA put forward some good technical changes but added that it didn't really address the problem of state parity. States like his own -- which is part of the Northeast's Regional Greenhouse Gas Initiative -- have already made substantial reductions that are not given credit, he said.

"When you're in a region where you've addressed carbon over 40 percent since 2005 and even more substantially since 1990 and EPA's proposing a program that essentially takes that for granted and then requires additional reductions, the equity issue between the regions is a significant concern," he said.

Coal-dependent states actually have more potential to make reductions than EPA's rule suggests, he said.

David Doniger, who directs the Natural Resources Defense Council's climate and clean air program, said it would be the environmental community's task to urge EPA to strengthen its rule, not weaken it.

"There's a pretty wide landing pad in the original proposal, and this proposal adds some new ideas that they heard from stakeholders that makes that landing pad wider still, so they could end up further north or they could end up further south of where the proposal was," he said. "We're going to push them to go north."

EPA:

Agency nixes polluter 'watch list'

Robin Bravender, E&E reporter

Published: Thursday, October 30, 2014

U.S. EPA has decided to jettison its "watch list" designed to keep tabs on the worst polluters.

EPA enforcement chief Cynthia Giles announced the agency's decision earlier this month in a memo to the EPA Office of Inspector General. The IG had urged EPA in a report last year to assess the usefulness of the list started in 2004 to identify polluters with long-standing, significant violations (*E&ENews PM*, Oct. 17, 2013).

The agency's Office of Enforcement and Compliance Assurance "has decided to discontinue the Watch List," Giles wrote in the Oct. 1 memo to IG Arthur Elkins. "Our review found that the Watch List is not an up to date approach for tracking the most important violators, is too rigid and static to provide the most helpful information to managers and that the burdens of maintaining and updating the data were greater than the overall benefits."

EPA's decision to ditch the program was first reported this week by *SNL Energy*.

The IG's office had flagged a series of problems with the list. Among them: Use of the list differed among headquarters and regional enforcement programs, staff had suggested multiple opportunities for improvement, and the public version of the list had limited search capabilities and information.

"Without a proper assessment of the Watch List, the agency runs the risk of maintaining a management tool that does not assist in tracking facilities with long-standing significant violations, has limited transparency and utility to the public, and does not meet the needs of EPA users," the report said.

An EPA spokeswoman yesterday said the agency has launched an effort to construct "a new, more useful, relevant and up-to-date tool" to help focus regional and state discussions around "high-priority violations" of the Clean Water Act, the Clean Air Act, and the Resource Conservation and Recovery Act.

"The new approach will be more efficient and flexible, better able to respond to individual region and program needs, and also more transparent and useful to the public," the spokeswoman said.

The EPA watch list was internal until 2011, when reporters from the Center for Public Integrity and NPR obtained the document through a public records request and published a series of articles. The agency

later posted some of the information on its website.

Those news reports revealed that thousands of facilities across the country were considered "high-priority violators" (HPVs) by EPA because they violated environmental laws and hadn't faced significant enforcement action for at least nine months.

In August, EPA revised its policy for responding to high-priority violations of the Clean Air Act, according to a memo sent by Phillip Brooks, director of the Air Enforcement Division of EPA's Civil Enforcement Office.

Brooks called the overhaul a "significant revision" to the policy first issued in 1998, with two substantial changes.

First, he said, "we have refined the criteria of what constitutes an HPV to sharpen our focus on [Clean Air Act] violations that experience shows are the most likely to be significant for human health and the environment or for maintenance of strong [Clean Air Act] programs." EPA reduced the categories of violations that qualify as high-priority violations from 10 to six, he said.

Secondly, the revision "recognizes the simple fact that even though a violation falls within a category of HPVs, not every such violation warrants additional tracking and attention at a national level," Brooks wrote.

He said the changes are intended to align EPA's expectations for enforcement staff with "the reality of enforcement decisions."

CLIMATE:

If GOP takes the Senate, it won't be because of the power plant rule -- poll

Jean Chemnick, E&E reporter

Published: Thursday, October 30, 2014

Voters in Senate battleground states support U.S. EPA's signature climate change rule by significant margins, according to a poll released today by green political action groups.

The survey commissioned by the Natural Resources Defense Council Action Fund, NextGen Climate Action and the League of Conservation Voters (LCV) shows that voters in five states with competitive U.S. Senate races back EPA's draft rule for existing power plants by double-digit margins.

The poll by Hart Research Associates surveyed likely general election voters in Colorado, Iowa, Michigan, New Hampshire and North Carolina -- states that could decide next week whether Republicans gain control of the Senate.

Support for the Clean Power Plan ranged from 60 percent among Michigan voters to 70 percent among Iowa voters. When respondents were read arguments for and against the proposed rule -- including a statement that opponents say it will "cost tens of thousands of coal-related jobs" -- support dropped but remained above 50 percent in all states. Michigan voters were still the most skeptical, with 52 percent supporting the draft. Iowa voters still backed it by 60 percent.

The poll is part of an ongoing tug of war between industry groups that have sought to use President Obama's carbon dioxide regulations as a weapon against vulnerable Democratic candidates in state and national races, and environmental donors who have devoted unprecedented sums of money to backing climate activists.

Today's poll asked swing-state voters their opinion of Charles and David Koch, billionaire backers of anti-regulatory candidates and think tanks. Thirty-eight percent said they had negative feelings about them, while 11 percent were positive.

Respondents were not asked about billionaire Tom Steyer, who has poured millions of dollars into supporting climate activist candidates through his super political action committee NextGen Climate. LCV has increased its support for its state leagues' efforts to back pro-environmental candidates sevenfold this cycle -- funneling $7 million to state leagues around the country compared with about $1 million in the last cycle.

And both sides have released polling in the final weeks of the campaign to show that voters side with them on EPA's flagship rule (*Greenwire*, Oct. 22). An industry coalition spearheaded by the National Association of Manufacturers and the U.S. Chamber of Commerce released a poll of its own last week finding that voters in Arkansas, Colorado, Florida, Georgia, Iowa, Kentucky, Missouri, Montana, Pennsylvania, Tennessee and Virginia were wary of the rule. The survey showed that those voters were particularly responsive to suggestions that the rule might take an economic toll on their state.

But environmentalists blasted the Partnership for a Better Energy Future's (PBEF) survey as a "push poll" filled with mostly leading questions and for not disclosing the partisan affiliations of respondents. They also noted that the poll still showed that opposition to the EPA draft was less than 50 percent.

Respondents in today's poll said they would be less likely to support a candidate who was skeptical of man-made climate change (49 percent to 17 percent) or who was supported by the Koch brothers (53 percent to 9 percent).

Both today's green poll and last week's industry poll showed that voters support renewable energy. Today's survey showed that 68 percent support candidates who back "expanding clean energy technologies, including solar and wind," while the PBEF survey showed 55 percent of respondents were more likely to support EPA's draft when told that it would boost alternatives.

Today's poll was conducted between Oct. 20 and Sunday and included 1,505 likely general election voters. It has a 2.5-point margin of error for the full sample and a 5.7-point margin for each state.

Also today, the Yale Project on Climate Change Communication released data from a survey in April showing that voters under 30, Latinos, African-Americans, unmarried women and other growing voting demographics are slightly more likely to back candidates who are supportive of climate action (51 percent) than are voters overall (45 percent). Twelve percent of Yale's "Rising American Electorate" is more likely to support an anti-climate action candidate, compared with 17 percent of voters overall.

But while today's data show that voters are somewhat supportive of climate action, numerous polls show that it isn't a high priority for voters. And next year's likely Republican Senate majority seems certain to target Obama's second-term Climate Action Plan, especially the controversial proposal for existing power plants.

ENERGY POLICY:

DOE to use executive power regardless of election outcome -- Moniz

Katherine Ling, E&E reporter

Published: Thursday, October 30, 2014

The Energy Department will continue to "aggressively pursue" President Obama's goal for a clean energy economy through executive authority regardless of whether Republicans take control of Congress on Tuesday, the head of the agency said today.

The path forward for DOE does not vary significantly if the Republicans win a majority in the Senate next week and Sen. Lisa Murkowski (R-Alaska) takes the gavel of the Senate Energy and Natural Resources Committee, Energy Secretary Ernest Moniz said at the Washington Ideas Forum in Washington, D.C.

"When it comes to the Climate Action Plan, which is our main guide to what we are doing in the energy space supplemented by energy security concerns and driving the economy through new manufacturing ... we are exercising all of those programs through existing executive authority," Moniz said at the event, sponsored by *The Atlantic* and the Aspen Institute.

Moniz added that DOE has "very good relationships" with Murkowski and the current chairwoman of the Energy and Natural Resources Committee, Sen. Mary Landrieu (R-La.), and that the agency works well with leaders in both chambers.

If Republicans take control of the Senate and Murkowski becomes the head of the committee, she is sure to press DOE on several key issues already high on her priority list, including repealing a ban on U.S. crude oil exports and the Keystone XL pipeline.

At the forum, Moniz would not state an opinion about whether the country should resume exporting crude oil, but he said there are several agencies working on the issue and understanding the full context of the situation is crucial to any decision.

"This discussion, generally speaking, is happening without the context of we still import 7.5 million barrels of crude oil a day. We have become in just a few years a substantial exporter of oil products," Moniz said. "This is a very important consideration."

Moniz added that the United States is still linked to global oil markets and prices.

"We are evaluating all of the factors, and I think that perhaps the arguments are a little bit overventilated at the moment," he said.

As usual, Moniz passed on the question of KXL, as he said it was the State Department's responsibility.

In a preview of DOE's work on the first part of the four-year Quadrennial Energy Review (QER), Moniz said the agency has realized that the nation has the "right level" of infrastructure investment for future needs, but where that investment is going should be focused on 21st-century infrastructure that is "clean and resilient."

"It is a question of how we direct it, guide it, to a kind of clean energy future we are looking for," Moniz said. "How do we guide it towards having the transactional capacity to support a clean energy future" that is also resilient to extreme weather, cyber hacking and physical attacks?

Moniz earlier this year said the results of this first QER review of pipelines, transmission, oil by rail, methane leaks and other infrastructure would likely be finished at the end of the year and shared in January.

Touching on another issue that usually comes up after the elections, Moniz reiterated the need to extend the renewable tax credits and "to do it in the way there is predictability on all sides." He also voiced support for expanding master limited partnerships to all energy companies, saying it could "provide an excellent new vehicle for attracting private capital into the future."

Thomas Fanning, the chairman, president and CEO of utility Southern Co., who spoke after Moniz at the forum, said that while he thinks Moniz is "fabulous," the best tax reform would be to eliminate all the tax incentives except accelerated depreciation and to lower the corporate tax rate to 25 percent.

"Give me that, I am in," he said.

The leaders of the Senate Finance Committee, Sens. Ron Wyden (D-Ore.) and Orrin Hatch (R-Utah), said before the congressional recess that they would like to pass a "tax extenders" package -- including about a dozen energy-related tax breaks such as the production tax credit among its 50 or so provisions -- during the post-election lame-duck session, with a substantial overhaul of the tax code beginning next year.

But what that tax code would look like -- in particular, for energy -- will depend on which party controls the Senate (*E&E Daily*, Sept. 18).

NATURAL GAS:

Law school urges FERC to consider climate change in export reviews

Hannah Northey, E&E reporter

Published: Thursday, October 30, 2014

The Columbia Law School is calling on the Federal Energy Regulatory Commission to consider climate change and sea-level rise in environmental reviews of two liquefied natural gas terminals in Louisiana and Maine.

The Sabin Center for Climate Change Law said in two separate letters to FERC that the agency is legally required to consider increases in flooding and storm surge when reviewing Louisiana LNG Energy LLC's LNG export terminal in Plaquemines Parish, La., and a second proposed LNG bi-directional import and export terminal at Mill Cove in Robbinston, Maine, on Passamaquoddy Bay. FERC does not comment on filings.

FERC serves as the lead on environmental reviews for more than a dozen LNG export projects. Developers must obtain permission from the Energy Department to export domestic gas to countries that do not have a free-trade agreement with the United States.

The Sabin Center for Climate Change Law in New York develops legal techniques to fight climate change, and trains students and lawyers. The center, notably, received $3.5 million earlier this year from conservationist Andrew Sabin (*Greenwire*, Aug. 19).

The law center pointed out that FERC did not include sea-level rise when issuing a notice of intent to conduct an environmental review of the LNG terminals. The notice of intent provides a description of the proposed project and invites comments as FERC embarks on an environmental review under the National Environmental Policy Act.

FERC is required under NEPA to consider the potential effects of climate change on proposed projects,

including sea-level rise and storm surge that pose significant risks to coastal zones in the northeast and southeast United States, the center said.

"Pursuant to its obligations under the National Environmental Policy Act, the commission must consider sea level rise and related coastal processes as reasonably foreseeable significant adverse impacts," the law school wrote. "NEPA's implementing regulations provide that agencies must consider reasonably foreseeable indirect and cumulative environmental impacts."

The law school pointed out that the White House Council on Environmental Quality has taken the position -- and several courts have held -- that federal agencies "must evaluate the climate change impacts of their actions," and "define an appropriate threshold against which to compare projected environmental impacts, and this threshold should incorporate future environmental conditions."

Federal and state policy also supports the consideration of climate adaptation in proposed environmental impact statements, the law school said. "President Obama has issued an executive order regarding adaptation, which directs agencies to prepare for the impacts of climate change by integrating consideration of climate change into agency operations and overall mission objectives," the law school wrote.

The arguments shine a light on the growing push for FERC to consider the larger climate implications related to proposed gas projects, including the cumulative emissions from gas production and consumption. FERC has repeatedly said such a far-reaching review is outside the agency's scope (*Greenwire*, Oct. 20).

Click here to read the letter regarding the project in Louisiana.

Click here to read the letter regarding the project in Maine.

AIR POLLUTION:

Court decision offers 'clear path forward' for cross-state rule -- EPA

Amanda Peterka, E&E reporter

Published: Thursday, October 30, 2014

U.S. EPA is eager to begin putting in place a regulatory regime addressing air pollution that crosses state borders after a favorable court ruling, the agency's air chief said yesterday.

The U.S. Court of Appeals for the District of Columbia Circuit last week granted EPA's motion to lift a stay on the program that had been in place since 2011 (*Greenwire*, Oct. 24).

"We're obviously extremely pleased that we'll be able to go forward and work with everybody to implement this," said Janet McCabe, acting assistant administrator for the Office of Air and Radiation. "We'll be moving forward with the steps that we indicated in the motion, and we think everybody has a clear path forward."

McCabe addressed her remarks to EPA's Clean Air Act Advisory Committee, a group of business, environmental and state regulatory agency representatives, at a semiannual meeting yesterday in Virginia.

EPA's Cross-State Air Pollution Rule, or CSAPR, established a program in which EPA would screen

states to see whether their pollution contributes to downwind states exceeding air standards. The agency would then give upwind states a budget for emissions cuts.

The D.C. Circuit issued a stay on the program in December 2011 on a challenge from electric utilities and states. But EPA asked the court to lift the stay after the Supreme Court earlier this year upheld the program.

"While all this CSAPR legal work was going on, we were continuing to think about interstate transport," McCabe said yesterday. "We have been ... trying to plan what if CSAPR comes out this way, what if CSAPR comes out that way? Finally, with this resolution, we feel we can move forward."

McCabe said that the agency would be using the deadlines for compliance that it indicated in its motion to lift the stay. That means that it will start putting in place a first phase of pollution cuts in January and a second phase in 2017.

EPA is also eager to take a number of other regulatory actions that were hinging on the interstate pollution program being put into place, McCabe said.

Among those are decisions on certain state requests to redesignate areas of the country as in compliance with federal air quality standards and decisions on Clean Air Act plans that states have written to cut pollution.

"There are a number of regulatory decisions that have been kind of waiting for that CSAPR litigation to resolve itself," McCabe said. "We're looking at all those pending decisions, and we'll be charting a path forward for those."

The program currently is intended to address transport issues related to the 1997 ozone and particulate matter air quality standards, as well as the 2006 update to the particulate standard.

McCabe said to expect upcoming regulatory action that would compel states to also produce interstate transport plans for the 2008 ozone standard of 75 parts per billion.

"States do have an obligation to deal with interstate transport [state implementation plans] for the 2008 ozone standard," McCabe said. "With the CSAPR pause here, that caused a bit of a delay, but the obligation exists."

URANIUM:

Regulators probe leak at plant during labor dispute

Published: Thursday, October 30, 2014

Nuclear regulators are looking into the cause of a uranium hexafluoride leak Sunday at an Illinois plant that is experiencing a labor dispute.

Honeywell International Inc. has locked out about 135 workers at the facility who are members of United Steelworkers Local 7-669 since their three-year contract expired in August. The company has continued operating the plant -- the only one in the nation that converts uranium oxide to uranium hexafluoride, or UF6, which can be enriched for use as a fuel for nuclear power plants.

The plant has operated using other workers who are not members of the union and contingent workers.

John Smith, a spokesman for the union chapter, said he couldn't speculate on whether the replacement workers were responsible for the accident, although "our members have a lot more experience than the people running the plant right now."

Nuclear Regulatory Commission spokesman Roger Hannah said the agency had not yet determined the cause of the leak (Lewis Krauskopf, Reuters, Oct. 28). **-- SP**

FEDERAL REGISTER:

Director steps down

Robin Bravender, E&E reporter

Published: Thursday, October 30, 2014

Office of the Federal Register Director Charley Barth is leaving his post for a new gig.

Barth, who's been on the job since 2012, has accepted a new position as executive director at heavy equipment manufacturer Cummins Inc. in Indianapolis, he said today in an email. His last day is tomorrow.

PEOPLE

As the head of the Office of the Federal Register, Barth has been responsible for overseeing the government journal that provides the public with access to information about federal regulations, presidential documents and other notices. The director of the office reports to the Archivist of the United States and is also charged with administering the Electoral College and the constitutional amendment process.

Barth was responsible for administering the Electoral College process for the 2012 presidential election and helping to deploy a mobile application for the daily compilation of presidential documents, according to his office. Barth was previously director of records at the Department of the Navy.

Amy Bunk, the director of the legal affairs and policy division at the Federal Register office, will fill in for Barth on an acting basis until a permanent replacement is hired, the office said.

AIR POLLUTION:

EPA refinery rule offers 'no real benefits at enormous costs' -- oil industry

Amanda Peterka, E&E reporter

Published: Thursday, October 30, 2014

The oil industry expressed concerns this week about a U.S. EPA proposal to stem toxic refinery emissions.

The American Petroleum Institute and American Fuel and Petrochemical Manufacturers said the proposal would spur costly changes with only "questionable" environmental benefits. They said EPA had failed to adequately justify the proposed regulations.

"It is in our joint interest to finalize a rule that achieves environmental protection while protecting the competitiveness of U.S. refining," the trade groups wrote in a comment filed with EPA late Tuesday. "However, this proposal includes requirements that impact every aspect of refining, most of which provide no real benefits at enormous costs, and some of which increase safety and operating risk and even some emissions."

The proposed rule encompasses both the New Source Performance Standards and maximum achievable control technology for refineries under the Clean Air Act. The proposal sprang from a 2012 lawsuit by the Environmental Integrity Project and Earthjustice over the agency missing the eight-year deadline to review and revise the new source standards.

The EPA proposal would require refineries to upgrade emission controls for storage tanks, set new requirements for coking units, and install monitoring and control valves for flares. The rule also would require refineries to monitor concentrations of benzene levels at their fence lines (*E&ENews PM*, May 15).

There are 142 petroleum refineries considered major pollution sources under the Clean Air Act, as well as seven small area sources, EPA said. Benzene, polycyclic aromatic hydrocarbons, nickel and hydrogen cyanide are among pollutants the rule is meant to address.

Environmental, public health and community groups earlier this week called on EPA to set tighter standards in its final version of the rule. They say the rule is needed to reduce toxic emissions of pollutants that harm children and the elderly living near refineries (*E&ENews PM*, Oct. 27).

API and AFPM said they conducted "extensive analysis" of the proposal. That analysis, they said, was on top of "tens of millions of dollars" that the oil industry has already spent to respond to an information request by EPA that required collecting emissions inventories and testing at numerous refinery sites.

They say the rule would require the construction of hundreds of new flare systems that go in "direct conflict" with EPA's goal of reducing emissions. The proposal further does not recognize actions taken by the oil industry over the past several years to reduce flaring events, they said.

The groups also say the proposal will require refineries to install "dozens, if not hundreds" of standby emergency pollution scrubbers that must be maintained at all times. The proposal's fenceline monitoring requirement, they say, would establish a de-facto limit on benzene that is not authorized under the Clean Air Act.

They also fault certain standards in the proposal that they said would be more stringent than those EPA has established for new and modified refinery units. And they called the compliance dates set in the proposal "infeasible."

"In many instances, EPA has not met all the requirements to sufficiently justify its proposals," the groups wrote. "EPA has not provided any information in the docket regarding the significant costs associated with many of the controls that would clearly be necessary to meet the proposal."

The public comment period on the rule ended Tuesday night. API and AFPM had previously requested an extended public comment period on the grounds that the proposal was lengthy and technical; EPA had granted that request.

In an interview yesterday, API Director of Regulatory and Scientific Affairs Howard Feldman said he believed that the industry ended up having adequate time to prepare their public comments.

But he expressed doubts that the agency would be able to thoroughly go over the comments and finalize the rule before a court deadline of April 2015. The joint API-AFPM comment runs 428 pages, and the two groups have submitted hundreds more pages of technical analyses in separate documents.

"We're very concerned the agency doesn't have enough time to deal with just our comment package, never mind the other 100,000-plus comments that were already in," Feldman said. "The agency needs to make sure it has adequate time to deal with all these comments."

The court deadline applies to only part of the rule. Feldman encouraged EPA to either renegotiate that deadline or split the proposal into more than one regulatory action.

PUBLIC HEALTH:

Air tests near fracking wells find carcinogen levels above limits -- study

Published: Thursday, October 30, 2014

Oil and gas wells are emitting cancer-causing chemicals into the air, according to a new study that provides the fullest accounting to date of air emissions at hydraulic fracturing sites.

"This is a significant public health risk," said David Carpenter, director of the Institute for Health and the Environment at the University at Albany and the study's lead author. "Cancer has a long latency, so you're not seeing an elevation in cancer in these communities. But five, 10, 15 years from now, elevation in cancer is almost certain to happen."

The researchers found eight harmful chemicals near wells and hydraulic fracturing sites in Arkansas, Colorado, Pennsylvania, Ohio and Wyoming at levels significantly above federal limits. The most common chemicals were benzene and formaldehyde, both classified by government scientists as carcinogens. The researchers also detected high levels of hydrogen sulfide, a chemical that can affect the brain and upper respiratory system.

The scientists trained volunteers who live near the oil and gas wells to conduct air measurements, taking 35 air samples during periods of heavy industrial activity or when the residents felt dizzy or nauseated or had headaches. Participants also took another 41 samples at prescribed times.

The findings were published today in the journal *Environmental Health* (Alan Neuhauser, *U.S. News & World Report*, Oct. 30). **-- SP**

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More cities experiment with electric buses and other, cleaner forms of mass transit

Just as American drivers balance fuel economy, sticker price and overall value when buying cars, transportation

departments nationwide are increasingly forced to weigh fiscal constraints with long-term economic and environmental merits and pitfalls before placing their next bus orders. Faced with a diversity of choices as electric bus makers have multiplied and as diesel and hybrid engines have become more efficient, transit providers are following their own blueprints.

2. TECHNOLOGY:

Scientists prepare an inexpensive, accurate regulatory tool to track greenhouse gas concentrations

A new technique using a pair of laser-based instruments could one day help scientists more accurately detect concentrations of the greenhouse gases considered responsible for climate change.

TODAY'S STORIES

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U.S. flood insurance program can't escape mounting debt from past storms

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Canada accelerates its wind power as U.S. industry recovers

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Arctic shipping rises with ice melt, but doesn't match the hype

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Major growth of solar power could be slowed by shortage of needed metals

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Fewer geese migrating south for the winter, more remaining in Alaska

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Biogas grows in popularity as low-tech alternative fuel

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Japan's shift to green power hits roadblock

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U.K., Germany see 'good chances' to fix carbon permit oversupply

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***EnergyWire*'s Soraghan examines oil and gas drilling industry safety**

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Secret meetings tackle back-to-back energy-sector cyberthreats

The Department of Homeland Security is hosting a series of secret briefings to address "ongoing" cyberthreats to energy control systems, according to security experts.

2. CLIMATE:

PSEG CEO offers support for EPA efforts to curb carbon emissions

Like most electric utility leaders, Public Service Enterprise Group Inc. Chief Executive Officer Ralph Izzo has a few changes in mind that he'd like to see in U.S. EPA's proposed rules to curb carbon dioxide emissions from existing

power plants.

TOP STORIES

3.CLIMATE:
Kan. regulators, commission staff slam EPA carbon proposal

4.EARTHQUAKES:
Up to 10 percent of Okla. quake surge comes from fracking -- state scientist

5.GRID:
Exelon won't make quick nuclear plant decisions next year, CEO says

ELECTRICITY

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Investors demand answers as timeline lags, costs rise for SCANA reactor project

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Texas regulators express concerns about potential grid ties

OIL AND GAS

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Supermajors see spending adjustments ahead amid oil price slump

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Drilling dollars helping to pay for some municipal services -- study

10.MARCELLUS SHALE:
Second lawsuit filed over Pa. governor's plan to drill in state forests

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Shell appoints new chairman

12.GAS EXPORTS:
Freeport LNG facility gets more investors

13.PIPELINES:
TransCanada starts regulatory run for cross-Canada line

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Pa. congressman launches probe of fracking waste disposal

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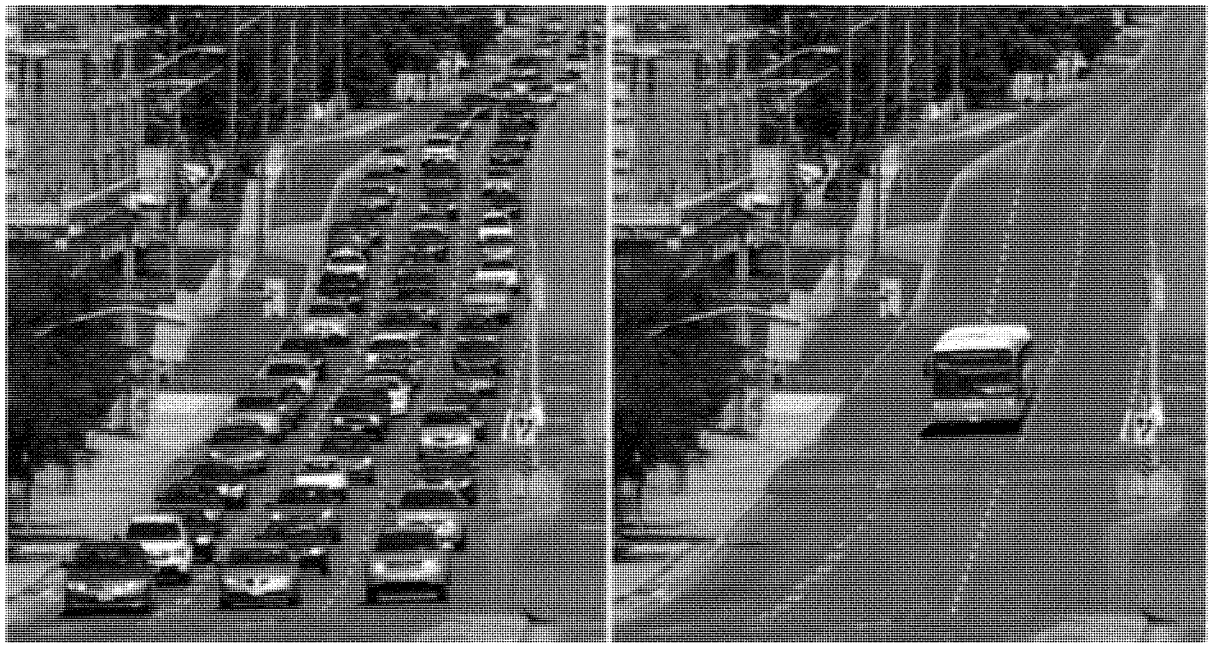

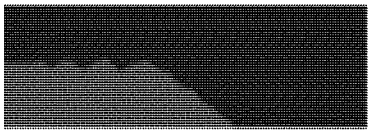

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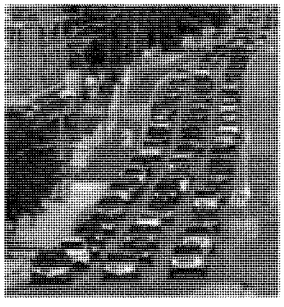

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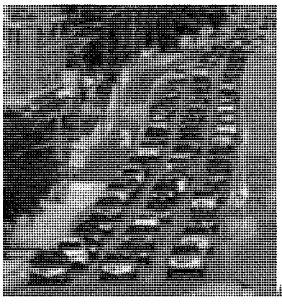

Air & Radiation Law News

for October 30, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Breathing Clean Air Will Come at a Cost
As U.S. Utility Bills Are Predicted to Surge

U.S. electricity markets face years of higher prices as clean air regulations shut more coal-fired power plants than earlier forecast, cutting supply and forcing producers to rely more on natural gas, according to industry analysts....

Air Pollution

EPA Believes Court Tolled Schedule
For Cross-State Rule When It Lifted Stay

The Environmental Protection Agency believes a federal appellate court also revised the compliance deadlines when it agreed to lift its stay on a cross-state air pollution rule for power plants, a senior agency official said....

Climate Change

Cuomo Releases Report on Superstorm Sandy

Gov. Andrew M. Cuomo (D) released a report Oct. 29 that marks the two-year anniversary of Superstorm Sandy and reviews New York's efforts to rebuild after the storm and improve the state's resiliency against severe weather. The report...

Energy

Nuclear Industry Lobbies to Preserve
Tax Credit; Opposes Similar Wind Incentive

The nuclear industry is lobbying to preserve and modify a tax credit that could be worth billions of dollars when new nuclear reactors under construction are placed in service amid efforts by Republicans to end energy subsidies and an upcoming...

Hazmat Transport

Transportation Inspector General to Audit
FRA Enforcement of Hazmat Transport

The Transportation Department's Office of Inspector General will audit the Federal Railroad Administration's enforcement of hazardous material regulations, according to an Oct. 29 letter....

Natural Gas

British Columbia Grants Conditional Approval
For $4.7 Billion Natural Gas Pipeline to Coast

British Columbia has issued a conditional environmental assessment certificate for the 670-kilometer (415-mile) Coastal GasLink Pipeline Ltd. project to bring liquified natural gas from the province's gas-rich northeast to its...

Natural Gas

Increased Gas Production Would Offset
Higher LNG Export Levels, EIA Study Says

Increased production would meet almost all of the additional natural gas demand in the U.S. even if liquefied natural gas exports were to increase well above expected levels, according to an Energy

Information Administration analysis....

Natural Gas

New York Revises Liquefied Natural Gas Rule; Diesel Trucks Expected to Convert

The New York State Department of Environmental Conservation (DEC) revised a proposed rule regulating liquefied natural gas facilities by limiting permitted facilities to those with a capacity of no more than 70,000 gallons (6 NYCRR 570)....

Natural Gas

Report Analyzes British Columbia LNG Role In Global Efforts to Address Climate Change

Natural gas could play a short-term role in helping some nations address climate change by replacing dirtier fuel, but only if viewed as part of a comprehensive policy to limit greenhouse gas emissions, a Canadian think tank said in a report...

Radioactive Waste

Environmental Groups, NRDC Challenge NRC Over Extended Waste Confidence Rule

Nine environmental groups and the Natural Resources Defense Council filed two separate lawsuits Oct. 29 over the Nuclear Regulatory Commission's decision to proceed with its waste confidence rule (Beyond Nuclear v. NRC, D.C. Cir.,...

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Latest News

EPA Faces Legal, Policy Questions After Appellate Court Ends CSAPR Stay

EPA faces a host of legal and policy questions about the future of its air transport policy after a federal appeals court lifted its years-old stay barring the agency from implementing the Cross-State Air Pollution Rule (CSAPR) to curb interstate emissions, including the timing of CSAPR's next phases and the scope of new transport policies.

EPA Eases States' Air Violation Reporting Duty As New Database Launches

EPA is narrowing its 1998 policy defining which facility air violations are “high priority” events triggering federal reporting requirements to help reduce what states have called an onerous recordkeeping burden associated with the agency's new Integrated Compliance Information System (ICIS)-Air reporting database launched earlier this month.

Industry Charges EPA's Modified Source GHG Rule Unlawful, Unachievable

Power and other industry groups are urging EPA to withdraw its proposed rule to reduce greenhouse gas (GHG) emissions at modified power plants, charging that the measure is unlawful on its face because it imposes overlapping regulatory mandates requiring plants to comply with GHG standards for both modified and existing facilities.

DHS Weighs Calls To Improve CFATS, As Industry Cites Conflict With EPA

The Department of Homeland Security (DHS) is weighing competing comments on improving its facility security program, with industry groups citing an "inherent conflict" with EPA information-sharing requirements and urging changes to DHS' inspection protocols, while labor and community groups are calling for greater coordination with other federal programs.

CRS Says EPA Ozone Rule May Spur Congress To Amend NAAQS Process

The nonpartisan Congressional Research Service (CRS) is suggesting that EPA's pending proposal to revise its ozone national ambient air quality standard (NAAQS) could prompt lawmakers to pursue legislation to amend the process for setting NAAQS, including requiring first-time consideration of costs when setting an air standard.

NEWS BRIEFS

ACUS Panel Urges Agencies To Improve Rule Petition Reviews

An Administrative Conference of the States (ACUS) panel has approved draft recommendations urging EPA and other agencies to craft written procedures to improve efficiency in responding to public petitions for rulemaking action, in order to establish better processes for analyzing and responding to the petitions in a reasonable time.

Greenwire

POLITICS:

Are money and power changing the environmental movement?

Manuel Quiñones and Daniel Bush, E&E reporters

Published: Wednesday, October 29, 2014

In a widely circulated memo this week, environmental groups boasted that they're "poised to execute the last phase of our biggest and most sophisticated electoral effort ever."

They're on track to spend $85 million, they said, including $40 million on six Senate races.

Not only are environmental groups spending record amounts of cash on the races, they are also trumpeting a common vision with what advocates call an unprecedented level of coordination. And they vow it will last through future elections.

But their critics say the environmental community's clout has made the movement more pragmatic at the expense of core values, including defeating the Keystone XL oil pipeline.

"This can be called the election when the environmental movement lost its virginity," said Mike McKenna, an energy lobbyist and Republican strategist. "I think their efforts have become more professional. They've actually gotten legitimate guys involved."

Last year billionaire donor Tom Steyer helped elect Massachusetts Rep. Ed Markey (D) to the Senate by opposing fellow Democrat Rep. Stephen Lynch, who supported construction of KXL. Steyer then floated the idea of opposing vulnerable Louisiana incumbent Sen. Mary Landrieu (D), a strong fossil fuel supporter, though in the end he decided to focus on other high-profile races.

Now Steyer, head of the NextGen Climate political action committee, is part of an informal coalition of green groups helping boost candidates who support KXL.

The coalition includes the political arms of the Sierra Club, Natural Resources Defense Council and League of Conservation Voters, which is supporting the likes of Sens. Kay Hagan (D-N.C.) and Mark Begich (D-Alaska), both of whom want the pipeline built.

Last year environmental groups, including LCV, also touted their efforts to help put Democrat Terry McAuliffe into the Virginia governor's mansion. The groups did it, they said, by highlighting Republican Ken Cucinelli's skepticism of climate change.

Now, even though environmental groups are highlighting climate concerns in their campaigns, they are

also running on issues like abortion and the economy hoping to support their allies and beat their foes.

This month, NextGen released a two-minute ad -- long by modern campaign standards -- questioning Colorado Republican Rep. Cory Gardner's support for legislation meant to restrict abortion rights for women. Gardner is looking to unseat incumbent Sen. Mark Udall (D).

"One day he campaigns on the issue of women's health, but then, when pressed by reporters to explain why he is sponsoring a bill denying women their rights," the ad says, "Gardner tries to change the subject, part of a pattern of deception."

The ad raised the eyebrows of environmentalists and industry advocates alike.

"It was a little surprising," said Donald Bryson, North Carolina director of the Koch brothers-backed group Americans for Prosperity. "Energy and the environment are sort of Steyer's go-to things."

Environmental groups leading the effort say it's all part of their strategy. And it appears that different factions within the movement, from LCV and NextGen to 350.org, known for its staunch support for moving the world away from fossil fuels, are on board.

"We're spending more money than ever before and coordinating better than ever before," said Gene Karpinski, LCV's president. "So we're being smart and strategic and sitting around tables state by state and nationally."

Karthik Ganapathy, U.S. communications manager for 350.org, said groups are adjusting to "political realities" in different states. Environmental issues are essential, he said, but voters have myriad concerns.

About Steyer's spending and campaign efforts, Ganapathy said, "I think he's been an incredibly important counterweight to the Koch brothers."

The question is, are liberal donors like Steyer becoming too much like the Koch brothers they so revile?

Critics like Bryson said it's inevitable that green groups would focus on politics over policy once they became more involved in elections.

"Once you start focusing on partisanship, [the] message really starts to become partisan," Bryson said. "You're not focused on the issues that you initially" cared about.

To others, efforts by Steyer and other environmentalists this cycle are a sign that the movement is coming into its own politically.

"My observation from the Steyer team is that they want to win," said Erich Pica, president of the advocacy group Friends of the Earth. "His team is using whatever effective communications tools and issues to win those elections."

'Proof ... in the pudding'

In an interview, Karpinski defended the environmental movement's spending decisions. Yes, the candidate choices are pragmatic, he said, but they also provide a "sharp contrast" to the alternative based on how they've scored on key issues.

LCV's "biggest single investment at the federal level is the state of North Carolina," Karpinski said. "Kay Hagan [has an] 84 percent lifetime score, leans into the climate change issue, understands that EPA has

a role to do to cut climate change pollution."

In contrast, he said, Hagan's opponent, North Carolina state House Speaker Thom Tillis (R), has either tried to avoid questions about climate change or expressed questions about human impacts.

"That's part of the conversation. We're making it part of the conversation," Karpinski said of the climate change debate. "We're running ads talking about that very issue."

The group's ads against Tillis have also focused on other environmental issues, including Duke Energy Corp.'s massive coal ash spill in the state earlier this year. Tillis backed a bill in the state Legislature that environmentalists say won't do enough to hold Duke accountable for the spill.

Similarly, Udall has an LCV lifetime score of 97 percent compared with Gardner's 9 percent grade. In Alaska, Begich has a 77 percent lifetime score. "Not perfect for sure, but a sharp contrast" to his GOP opponent, Dan Sullivan, Karpinski said.

Stephen Kretzmann, executive director of Oil Change International, a nonprofit group that doesn't engage in political campaigns, said, "The calculation has been made that the No. 1 priority is to retain Democratic control of the Senate. If that happens then people will feel that the decision that was made was the correct one."

He added, "The proof will be in the pudding. On Election Day we'll see what happens. If that doesn't happen, there'll be some questioning of that strategy."

Karpinski said groups were indeed looking to "protect the Senate firewall" to stop House measures seen as anti-environment. But he also mentioned LCV endorsements for moderate Republicans like Maine Sen. Susan Collins. At least some liberals were quick to question backing Collins, who not only supports KXL but has also voted against EPA's climate-related rulemaking.

Still, Karpinski said the group was focused on making sure EPA could move forward with its proposals to reduce carbon emissions from power plants. "We need to make sure those rules are the strongest possible, they are defended in the Congress and implemented well in the states," he said.

But what about KXL? That's a priority too, Karpinski said. "It's not," he said, "either-or."

'Major headache'

There are signs environmentalists want to boost their focus on KXL after the November elections and increase their pressure on lawmakers and President Obama on climate issues. The movement's political spending will likely ramp up, too, after this year's record-setting $85 million effort.

"$85 million is a tremendous amount of money in a midterm," but it's still a "drop in the bucket" compared with industry groups, said Pica of Friends of the Earth. "Every environmental group that has a PAC needs to be figuring out how to up its game."

350.org promised to be a "major headache" in an internal memo obtained by MSNBC. "We're ready for a fight, and the last thing President Obama and Democrats need is a rebellion from the left."

It remains to be seen whether environmental groups will avoid a rebellion within their ranks. Divisions exist on issues like natural gas. Steyer has said he's not opposed to all fracking while 350.org is anti-fracking.

Observers say environmentalists are more likely to stick together if Republicans take over the Senate because they will have a common threat. Next year's United Nations climate conference is also of intense interest. Then there's 2016.

"It's going to be more important than ever for Democrats to turn out their base," said Ganapathy, touting the importance of running on climate issues. "In addition to being right for the planet, I think it's a smart move for Democrats politically."

ETHANOL:

Researchers slam study showing cellulosic production ups emissions

Amanda Peterka, E&E reporter

Published: Wednesday, October 29, 2014

Researchers affiliated with the Agriculture Department and Department of Energy are pushing back against a study from earlier this year that questioned the greenhouse gas benefits of producing ethanol from cornstalks, husks and other agricultural wastes.

In a series of correspondence published online today in the November issue of *Nature Climate Change*, the scientists charge that the study out of the University of Nebraska, Lincoln, was based on unrealistic assumptions about the amount of crop waste that cellulosic ethanol companies intend to use. They also faulted the study's scope and modeling and argued that it overlooked carbon savings from co-produced electricity.

The study in question was published in April in *Nature Climate Change* and estimated the effects of removing corn crop residues from 128 million acres across 12 Corn Belt states. It found that total annual emissions from producing biofuel out of those residues would be 7 percent higher than those of gasoline averaged out over five years.

"The claim ... that corn stover-derived ethanol can be worse than gasoline has generated lots of media interest, but offers little value to the research community or to policymakers," a group of researchers from USDA's Agricultural Research Service wrote today. "They have merely demonstrated that if you model an irresponsible and unsustainable scenario, the results will look irresponsible and unsustainable."

Using a computer model, University of Nebraska researchers estimated that removing about 2.7 tons an acre of corn stover per year would add an average of 50 to 70 grams of carbon dioxide per megajoule of biofuels. The states of Minnesota, Iowa and Wisconsin showed the highest net loss of carbon because they have cooler temperatures and have more carbon in the soil.

The findings meant not only that cellulosic biofuels would emit more CO2 than gasoline but that they would fall far short of a statutory requirement that cellulosic biofuels reduce greenhouse gas emissions by at least 60 percent compared to a 2005 gasoline baseline (*Greenwire*, April 21).

The study was backed by a $500,000 DOE grant.

Adam Liska, lead author of the study and assistant professor of biological systems engineering at the University of Nebraska, defended the results in a comment published today along with the criticisms and in a series of emails over the past few weeks with *Greenwire*. Liska expressed disappointment in the response to the study and in its being ignored by the Obama administration in life-cycle analyses of greenhouse gases.

The researchers, he said, specifically designed the study so U.S. EPA could incorporate it into its analyses of biofuels.

"Assuming that the process we identify is real and our estimates are roughly correct, it would be appropriate that the EPA use these values in their analysis, as they are the best scientific estimates we have at this time," Liska wrote in an email. "To not recognize this process is simply to ignore real significant CO2 emissions."

When the study was first released, biofuel producers immediately pushed back against the results, saying they unfairly characterized their operations. Some government researchers were also quick to point to alleged flaws (*ClimateWire*, April 28).

Three separate groups of scientists today published letters to the editor disputing the study's results: the USDA researchers, a group that included scientists from the Department of Energy's Great Lakes Bioenergy Research Center and Pacific Northwest National Laboratory, and a trio of researchers from Denmark.

"While we agree with the motivation that underlies their analysis -- there is a pressing need to understand the full climate impact of biofuels in general and stover removal in particular -- we believe that this is best achieved with efforts that are based on our full understanding of carbon turnover in agricultural soils, and not on models that unduly simplify important relationships," said the scientists associated with DOE's labs and research centers in their comments.

According to their letter, the model used for the study was based on data from a single site -- a highly productive irrigated no-till corn field in Nebraska -- that was not representative of the rest of the Corn Belt. That field's characteristics caused it to experience high losses of soil organic carbon that the study authors then translated to the rest of the country, they said.

DOE submitted an additional critical response to the study, but it was rejected by the scientific journal because it had too many similarities to the other letters. The department made it available online instead.

In their published letter, USDA scientists also faulted the study for using a "simplistic soil carbon model" that ignored soil moisture and soil texture and did not give companies a credit for electricity produced as a byproduct of the biofuel production process. They said the study failed to account for management practices that could reduce the rate of carbon loss associated with removing corn crop residues, such as no-till farming and covering fields with alternate crops during the winter.

The USDA letter also charged that residue removal rates used in the Liska study were unreasonable. The finding that cellulosic ethanol would result in 7 percent higher greenhouse gas emissions than gasoline was based on a scenario where 75 percent of the crop residue was collected and processed for biofuels production.

The companies that are opening big cellulosic ethanol plants in the Midwest this year -- POET-DSM Advanced Biofuels LLC, Abengoa Bioenergy and DuPont Co. -- are all collecting about a quarter of the crop waste left on farm fields after harvest from about a 30-mile radius around the plants.

"No one who has given serious thought to crop residues for biofuels would find their proposed across-the-board [75 percent] collection rate in the U.S. Corn Belt at all reasonable," the USDA comment says.

In their letter, the Denmark researchers faulted the five-year timeline of the study, arguing that the U.N. Intergovernmental Panel on Climate Change recommends a 20-year perspective for judging greenhouse gas impacts.

Liska and other authors of the study say the criticism is unfounded.

In their own letter to the scientific journal, they write that critics are ignoring the main finding of the study: that removing residue that normally sits on fields over wintertime increased carbon dioxide emissions at all removal rates. In other words, the carbon intensities remained the same, whether 1 or 6 tons of crop waste was removed from a field.

"At a 25 percent removal level, cellulosic ethanol can still be more carbon intense than gasoline," Liska wrote in a follow-up email. "Even at a 1 percent, 5 percent or 10 percent residue removal level, cellulosic ethanol can still be more carbon intense than gasoline."

And the University of Nebraska authors said that while the companies that are building up cellulosic ethanol plants this year are providing some energy for their own operations, there are currently no electricity exports or other co-products.

They also questioned whether farm management practices would make a difference. Liska pointed to several studies that have raised doubts about the ability of no-till farming to stem soil carbon losses.

"Cover crops can replace some of the lost carbon, but they are expensive to implement and are used in a small fraction of U.S. Corn Belt acres, but data are limited on this practice," Liska said in an email. "Biofuel co-products are probably the only other source of carbon that can be used to restore lost carbon after residue removal."

The time frame for analyzing cellulosic ethanol's performance needed to be short to take into account these realities, the authors wrote. The longer time frame called for by the critics of the study is "arbitrary" and "biases results in favor of biofuel producers."

"The question for [life-cycle analysis] is also not: how could these systems be in the future?" the authors wrote in their letter to the journal. "The question is, however: how are these systems performing now, and how are they going to perform in the near future?"

EPA:

New No. 2 trades retirement for political hot seat

Robin Bravender, E&E reporter

Published: Wednesday, October 29, 2014

Stan Meiburg had happily retired after his 36-year career at U.S. EPA. He was catching up on yardwork and home improvement projects at his house in Atlanta, spending time with his new wife, and considering teaching a college course next spring.

Then Gina McCarthy called.

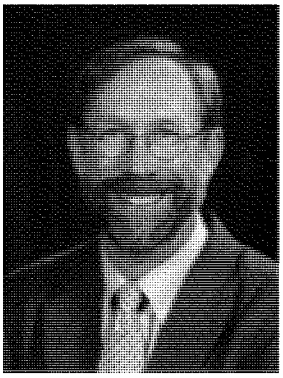
The EPA chief wanted to know whether Meiburg would return to the agency as her lieutenant and EPA's chief operating officer.

"I really was quite surprised when the administrator called and asked if I would be interested in doing this, and gave it some thought, because I was, in fact, quite happy being retired," Meiburg, 61, said in an interview last week. He had retired in May; McCarthy called a few months later.

The job offered perks: He would get to help drive the Obama administration's second-term climate change agenda and put a capstone on his decadeslong career in one of EPA's top slots. But it comes as EPA is in the thick of partisan battles on Capitol Hill and is grappling with steep budget cuts.

Eventually, he said yes. He pulled up stakes in Atlanta, where he had lived since 1996, when he became deputy administrator in the EPA Region 4 office. He ditched his yardwork and delayed plans to teach environmental health at Emory University.

Meiburg and his wife, Julie, are planning to rent out their Atlanta home after she retires from her job at Emory in December and moves to Washington, D.C. The couple had to find new homes for their two cats, which are older and wouldn't have adapted well to a cross-country move, Meiburg said.



Stan Meiburg ditched his retirement to return to EPA as deputy administrator. Photo courtesy of EPA.

He set up shop earlier this month in the headquarters office that had been inhabited for nearly five years by former Deputy Administrator Bob Perciasepe. Perciasepe left the post in August to take the helm of a climate nonprofit.

Perciasepe talked to Meiburg about the job before he stepped down.

"Gina and I were putting together a list of potential people, and he was sort of a long shot in a way, but we were looking for people who really know the agency and who have huge respect inside the agency, and those are two commodities that Stan brings to the table," Perciasepe said in a recent interview.

"The idea of getting a whole new person with two years left is not a choice that I think Gina wanted to make, so we really wanted to get somebody like that," he added. "And so she went ahead and called him and asked him, and he obviously must have thought about it quite a bit."

Meiburg was first contacted about the EPA job in late July, he said, shortly after Perciasepe had publicly announced his departure. Meiburg said his loyalty to the agency, respect for McCarthy and hopes that he'd be a valuable player ultimately drove him to take the job.

"You don't work for a place like EPA for 36 years and not develop a passion for the organization and its mission," he said.

Meiburg called McCarthy "an exceptional leader" who is also quite convincing. "If she reached out to me and said, 'Hey, look, would you be interested in coming back?' that was by itself very compelling, and she is, in fact, a very persuasive advocate."

As McCarthy urged him to take the job, Meiburg added, "I guess I came to the view that I might be able to do some good at this particular time in the agency's history and bring to bear some of the experiences over the 36-some years that I worked with EPA here to try to help the agency from this vantage point."

His decision to return was "surprising to a lot of people," said Peter Robertson, who was EPA chief of staff during the Clinton administration.

"I think once you get emotionally and intellectually wrapped around the idea that you're going to retire from this agency and you're ready to move on, it's hard to back away from that," he added. "I can't imagine there would be any job other than the deputy's job where Stan would have said, 'OK, I'll come back.'"

John Henry Hankinson Jr., EPA Region 4 chief during the Clinton administration, said, "I'm excited for him; I wonder why the heck he'd want to do it."

He added, "I think Stan would be just as happy to retire, but as long as there's a challenge in the agency that he would be best-suited to address, I guess he'll do it."

'Back to the future'

It's a homecoming of sorts for Meiburg.

He started his EPA career in Washington when he was 24 years old and living in Baltimore. His early jobs included working with states on clean air issues and serving in the early 1980s as executive assistant to Alvin Alm, who was EPA's deputy chief under then-Administrator Bill Ruckelshaus.

"One of the great joys for me is being here in this building in this office to think back on folks who have been here before, and that goes all the way back to Al Alm, who I had the greatest respect for and had the opportunity to work as his executive assistant back in 1984," Meiburg said. "And as I'm coming into this job, I think a lot about Al and some of the lessons I learned from him."

Meiburg's commute is similar, too. He's staying in the guest room of his stepdaughter and her husband in Columbia, Md., for now -- until his wife moves to the area and they get an apartment together.

"I get to ride the MARC train in, which for me is kind of back to the future, because I did that when I was living in Baltimore and started working here in 1977 to '84, so it's kind of nostalgic in that way," Meiburg said.

He moved to North Carolina in 1985 to work in EPA's Research Triangle Park facility in the Office of Air Quality Planning and Standards. Meiburg then moved to Dallas in 1990, spending a stint as director of the Region 6 office's air, pesticides and toxics division. He was promoted to deputy regional chief -- a career position -- in the Dallas office in 1995, and in 1996 was recruited by then-Region 4 Administrator Hankinson to be his deputy in the Atlanta office.

"He wanted to move over that way, and the regional administrator over there wanted to make a change, so it just worked out real well," Hankinson said in a recent interview. "He's everything you'd want. ... He was really bright, he was extremely well-organized, he worked really hard, he has a good way with people."

During the George W. Bush administration, when Jimmy Palmer was the head of the Region 4 office, Meiburg did a temporary stint at the Centers for Disease Control and Prevention in Atlanta, where he was EPA's national liaison to the organization.

"They worked out a setup for Stan where he went and worked with the CDC for a couple of years," Hankinson said. Meiburg "always seemed really interested in wanting to go over there and try that," he added.

Palmer said in an interview that the move was part of an initiative to move senior EPA officials to work temporarily in other agencies. He commended Meiburg's "distinguished career" at the agency and said he'll do well in the No. 2 post. "He knows the agency and he's well respected across the agency," Palmer added.

Meiburg spent much of the Obama administration holding the reins in EPA's Atlanta office.

He was acting regional administrator for nearly two years into Obama's first term before the administration appointed former prosecutor Gwen Keyes Fleming to take the political post in late 2010. But she moved to D.C. in May 2013 to become McCarthy's chief of staff, leaving Meiburg in charge again until former Greenville, Miss., Mayor Heather McTeer Toney was chosen to be Region 4 boss early this year (*Greenwire*, Jan. 14).

'Pretty ordinary'

Meiburg is used to moving around a lot.

He was born in Louisville, Ky., but his family moved to North Carolina when he was 2 years old, before transplanting again to Pennsylvania when he was 11 and to Rochester, N.Y., when he was 17. After his father, Albert Meiburg, received his doctorate in theology from Southern Baptist Theological Seminary in Louisville, he was hired for various teaching jobs around the country.

The younger Meiburg, whose full name is Albert Stanley Meiburg, was named after his father but has always gone by his middle name. "My father's name is Albert, and my grandfather's name was Albert," he said. "They called me Stan from the beginning to avoid confusion."

Meiburg has two children of his own. His son, Jonathan, is the frontman for the Austin, Texas-based indie rock band Shearwater. He's a bird expert who named his band after a group of seabirds and wrote a master's thesis on the striated caracara, a species of bird that lives only on islands off South America, he told *Scientific American* a few years ago.

Meiburg kids his son about the fact "that if you Google Meiburg, it's all him," he said.

When he worked with Hankinson, Meiburg and his son took a vacation to hike through New Zealand, Hankinson recalled. "He's a family man," Hankinson said of his former colleague.

Meiburg also has a daughter, Dorothy Meiburg Weller, a seventh-grade teacher in Austin. She and her husband have an "exceptionally charming" 18-month-old daughter, Meiburg said.

He's more comfortable talking about his family than about himself.

"I'm pretty ordinary," he said. As for extracurriculars, he called himself a "very poor golfer" who was very active in his church in Atlanta. He attended St. Bede's Episcopal Church in Atlanta, which "ended up being a significant source of things that I did outside the office."

How long will he stay?

He's largely steered clear of the politics as a career staffer at EPA.

But as EPA's second in command, he has now been thrown into the political mix -- and he'll likely have to head to Capitol Hill to answer for the agency's policies and practices in front of some staunch critics.

"I think he'll do real well," Hankinson said. "He's just real straightforward. He's a good public servant. ... He's not a political guy. ... He just likes to get the job done."

Meiburg skirted questions about whether he has a political affiliation. "I think I've worked effectively with folks in both parties, and I think I'll leave it at that," he said.

Since starting at EPA a few weeks ago, he has been entrenched in meetings and briefings, getting up to speed on the budget and other issues and learning McCarthy's style, he said.

"I think of myself as not really that dramatic a person, but hopefully, I can work hard and do things that are good for the agency and try to make things better for people here at EPA," he said. He said he hopes to improve conditions "for the average EPA employee, who deserves all the recognition we can possibly give them."

It's unclear how long Meiburg will be on the job. He hasn't been officially nominated to be EPA's deputy chief -- he's technically there in an acting capacity. As other key EPA nominees have been bogged down amid partisan fights in the Senate over EPA's policies, it's possible that he wouldn't win confirmation before the end of Obama's term even if he were the official pick.

"I think that decision is up to the administration and the Office of Presidential Personnel ... so it's probably best for me not to comment on that," he said. "I'm trying to be flexible."

WHITE HOUSE:

Think tank sues science office for documents on polar vortex

Kevin Bogardus, E&E reporter

Published: Wednesday, October 29, 2014

A conservative-leaning think tank is suing the White House's science office for documents related to a video it produced on the polar vortex.

In a complaint filed today at the U.S. District Court for the District of Columbia, the Competitive Enterprise Institute (CEI) is questioning the science behind "The Polar Vortex Explained in 2 Minutes," a video that features John Holdren, director of the White House Office of Science and Technology Policy (OSTP).

Holdren said in the video, which the White House posted online in January, that extreme weather like last winter's will happen again and again in the future due to climate change. Holdren has pointed to the video to explain the phenomenon when asked about unseasonably cold weather in the past (*E&ENews PM*, Jan. 29).

In April, CEI made a request to correct information presented in the video, saying "scientists and commentators" have questioned the claim that global warming is causing cold weather, according to its lawsuit. It also had questioned a blog post posted by the office. By June, OSTP had denied that request.

In addition, CEI sent in a Freedom of Information Act request to the science office for records behind the polar vortex video and the blog post. OSTP provided little in response to the think tank's public records

request, leading to CEI filing its lawsuit against the office today.

"For the agency to refuse to disclose documents related to the video in order to protect what it claims are internal deliberations is doubly ridiculous. Perhaps OSTP should give us a new video titled 'The Holdren Document Vortex Explained in 2 Hours,'" Sam Kazman, CEI's general counsel, said in a statement.

An OSTP spokeswoman declined to comment on the lawsuit.

NUCLEAR WASTE:

Lawyers win big in long-running Yucca Mountain turmoil -- documents

Published: Wednesday, October 29, 2014

Attorneys representing plaintiffs in a long-running case over the federal government's failure to open a nuclear waste repository at Yucca Mountain, Nev., have made more than $350,000 in fees and expenses, court records show.

The attorneys were forced to disclose the billings when some plaintiffs tried to require the federal government to pay the fees because they won their lawsuit against the Nuclear Regulatory Commission last year.

The fees were "a fairly large amount of money," said Marty Malsch, a nuclear energy attorney not involved with the case, "but maybe it could be justified. Once cases get complicated like this one would have been, it's pretty easy to drive up fees pretty quickly."

One attorney representing Nye County, Nev., charged $1,500 for his time briefing the Heritage Foundation on the case, and another lawyer who represented Aiken County, S.C., charged $37.50 for reading Google News alerts on Yucca Mountain and $45 to read a speech given by then-NRC Chairman Gregory Jaczko. Some of the billings were later revised.

The attorneys had argued the NRC unlawfully halted licensing work at Yucca Mountain in 2010. The ruling -- which was upheld by a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit, ordered the NRC to resume the licensing process.

The agency now says it is continuing its work on the project but will run out of money for the task in the next few months unless Congress gives it additional funding -- an unlikely outcome given the deep political disagreements over the project (Steve Tetreault, *Las Vegas Review-Journal*, Oct. 28). **-- SP**

NUCLEAR POWER:

Group asks for court review of Diablo Canyon plant

Published: Wednesday, October 29, 2014

The environmental group Friends of the Earth has asked a federal court to review whether California's Diablo Canyon nuclear plant is operating illegally and should be shut down.

The group has argued that the Nuclear Regulatory Commission violated its rules when it changed the

plant's operating license in an ongoing dispute over the threat posed by earthquake faults near the reactors.

The group yesterday filed its petition with the U.S. Court of Appeals for the District of Columbia Circuit.

The NRC and plant operator Pacific Gas and Electric Co. have said the plant is safe and fully complies with safety rules.

NRC spokeswoman Lara Uselding said the agency will review the court filing (Michael Blood, Associated Press, Oct. 28). **-- SP**

BUSINESS:

Wells Fargo gives $10M to accelerate clean-tech adoption

Katherine Ling, E&E reporter

Published: Wednesday, October 29, 2014

Wells Fargo & Co. yesterday announced a $10 million grant to be overseen by the National Renewable Energy Laboratory (NREL) to help clean-technology startups jump from the lab to the market.

Innovation Incubator (IN2) -- a first in the banking industry -- will focus the first of three rounds of funding on efficiency in commercial buildings, Wells Fargo said. Selected companies that the bank will announce early next year will receive up to $250,000 for business development, research and, importantly, testing and technical support at NREL.

Several of the technologies that show promise will then be able to deploy and test in Wells Fargo buildings, which number at more than 8,700 locations in 36 countries, the company said.

"The IN2 platform is designed to fill a gap that exists from early stage concept to production for emerging clean technologies," Ashley Grosh, vice president of environmental affairs at Wells Fargo, said in a statement. "Through our collaboration with NREL, we want to give opportunities to national labs, universities and regional accelerator programs, and entrepreneurs with great ideas for lighting, sensors and controls, space heating and cooling, windows, energy modeling, plug loads, and building envelope."

The hunger for such technology is rapidly increasing as rates of return on green buildings have grown substantially through higher rental rates and resale, creating a world market worth $260 billion, according to a new report from Lux Research. Green buildings now account for about 20 percent of new construction in the United States, Lux says.

"Green buildings are driven not by utility savings, but by upticks in rental income or resale value," Alex Herceg, an analyst at Lux Research and lead author of the report, said in a statement. "Those factors, along with government incentives, can make the financial case for green buildings, delivering predictable internal rates of return (IRRs) north of 5 percent," he added.

Technologies that will qualify for the first round of IN2 funding are energy efficiency, net-zero energy, water efficiency, lighting solutions, indoor environmental quality enhancement, waste reduction, materials efficiency, operations and maintenance optimization, and data center facilities management.

IN2 will consider more companies and clean-technology sectors "over time," according to the bank.

The incubator is funded by the Wells Fargo Foundation as part of its 2020 Environmental Commitment to provide $100 million to environmentally focused nonprofits and universities by 2020.

ENERGY EFFICIENCY:

Cree unveils new incandescent-replacement LED

Published: Wednesday, October 29, 2014

Cree Inc. this week introduced a lighter, longer-lasting light bulb that looks like a standard incandescent bulb.

The light-emitting diode, or LED, bulbs are made of shatter-proof glass and weigh less than 2 ounces. The new bulbs are estimated to last 25,000 hours, or 22 years on average. A feature missing from the bulbs from an older bulb the company already has on the market is the metal "heat sink" at the base of the bulb. The bulb cools itself by allowing air to flow through it, eliminating the need for the metal jacket that was intended to absorb heat in older models.

The new bulbs come in 11-watt models to replace 60-watt incandescent bulbs and 6-watt replacements for traditional 40-watt incandescent bulbs.

Industry experts predict that LED light bulbs will become more widely used when prices lower to around $5. Cree's new light bulbs will run around $8. The new models are slightly more efficient than compact florescent light bulbs and don't contain mercury (John Funk, Cleveland *Plain Dealer*, Oct. 28). **-- MH**

CHINA:

Ports act as major but hidden contributor to smog -- study

Published: Wednesday, October 29, 2014

China is forgetting an important factor in its fight to curb deadly air pollution, according to a Natural Resources Defense Council report.

The report said commercial shipping vessels are a significant source of air pollution that caused "an estimated 1.2 million premature deaths in China in 2010."

Most of the thousands of ships coming into and out of ports in China, home to seven of the world's 10 largest ports, are burning cheap bunker fuel.

"With ocean-going ships allowed to burn fuel with sulphur levels that are 100 to 3,500 times higher than permitted in on-road diesel, one container ship cruising along the coast of China emits as much diesel pollution as 500,000 new Chinese trucks in a single day," said the NRDC report.

The International Maritime Organization has implemented emissions restrictions in the United States and Europe but not in Asia. The NRDC report said fears it would discourage trade have derailed regulation.

Hong Kong and other port cities have taken measures to address the problem, but NRDC questioned how effective penalties and incentives would be as China lacks much of a national push to address the shipping aspect of its pollution problem (Reklev/Perry, Reuters, Oct. 29). **-- DTB**

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CLIMATEWIRE — Thu., October 30, 2014

READ FULL EDITION

1.PEOPLE:

Family planning could help the environment, but not in our lifetimes, researchers say

This week, a group of researchers promoted a different kind of global approach to addressing climate change: voluntary family planning.

2.RESOURCES:

NASA scientist raises alarm on global groundwater decline

Groundwater supplies beneath the world's driest regions -- where water is needed most -- are approaching the point of crisis, warns a commentary piece published yesterday in the scientific journal *Nature Climate Change*.

TODAY'S STORIES

3.STATES:
With close legislative races in Ore. and Wash., prospect of a 'green bloc' looms in the West

4.ENERGY EFFICIENCY:
LEDs are good but can do better, inventor says

5.TECHNOLOGY:
U.S. invests $10M in wave and tidal power tests

6.SCIENCE:
Is warming climate linked to rising conflicts? Scientists are conflicted

7.FORESTS:
Southern pine beetle detected in N.Y. for first time

8.AUSTRALIA:
Bank asked not to finance coal port near Great Barrier Reef

9.RESEARCH:
Atmospheric CO2 increased in 3 bursts after last ice age

10.NATIONS:
Australian government announces emission-reduction compromise

11.CITIES:
Mich. communities plan climate resilience

12.NATIONS:
Chile passes carbon tax

13.FLOODS:
Sri Lankan landslide kills 10; more than 100 feared dead

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ENERGYWIRE — Thu., October 30, 2014

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1.TRANSPORT:

Rail delays put East Coast refining 'in jeopardy' -- Delta subsidiary

Rail delays are chipping away at a crude "life line" for East Coast refiners, according to Monroe Energy LLC, a refining subsidiary of Delta Air Lines Inc.

TOP STORIES

2.EARTHQUAKES:

Amid quake swarm, Okla. officials shutter a well that was too deep

3.ELECTRICITY:

Wisconsin Energy willing to invest in new upper Mich. power plant, CEO says

4.UTILITIES:

Frustrations mount at Southern Co. as costly coal project dings earnings

5.ARCTIC:

BLM's move in Alaska reserve draws wide criticism

ELECTRICITY

6.ELECTRICITY:

La. utility owner touts sale structure in bid to satisfy regulators

7.ELECTRICITY:

N.Y. enviro group sues to halt 'zombie' plant's restart

8.UTILITIES:

Hawaii electric company works to protect distribution lines from lava's flow

OIL AND GAS

9.GAS EXPORTS:

'Almost impossible' scenarios in LNG pricing study would bring high customer costs

10.FINANCE:

Robust mergers and acquisitions could get even busier as oil prices fall -- report

11.PUBLIC OPINION:

Texas poll finds generational 'gulf' on energy views

12.GAS EXPORTS:

BG Group pulls back on Canadian project amid industry uncertainty

13.OFFSHORE DRILLING:

A Stampede of new oil is announced in the Gulf

14.PEOPLE:

Valero chairman leaves board as part of phased succession plan

15.OIL:

Wyo. commissioners reject tax break for Chesapeake flaring equipment

16.OIL:

U.S. shale boom brings refining giant back to life

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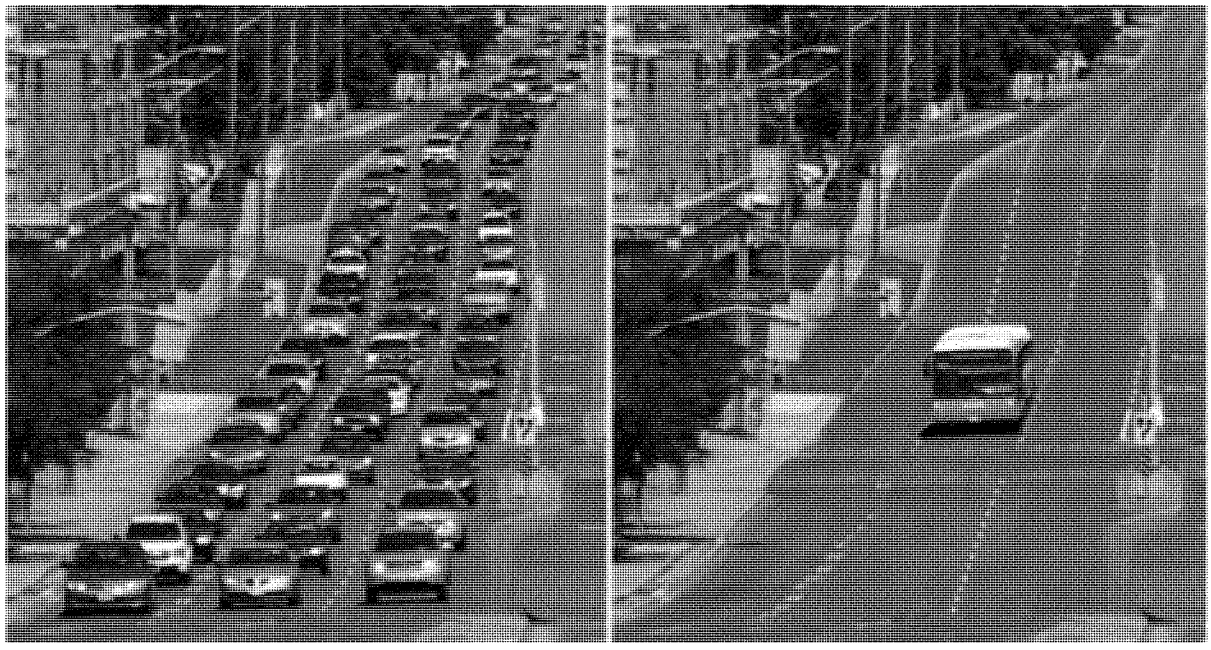

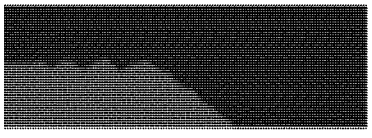

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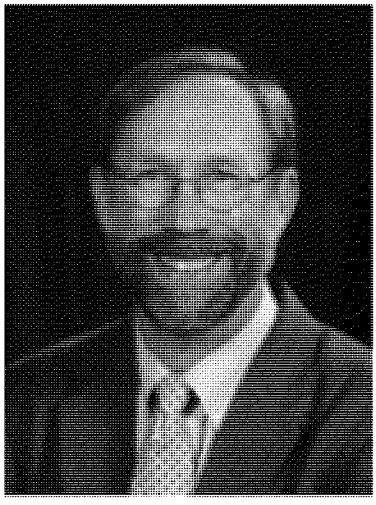

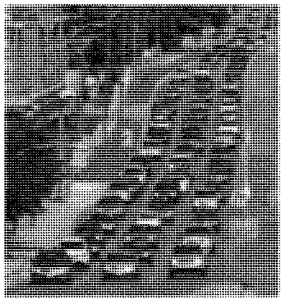

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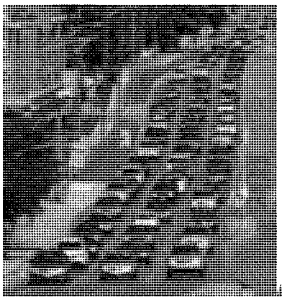
From: Turley, Jennifer
Sent: Wed 10/29/2014 3:18:58 PM
Subject: Air & Radiation Law News for October 29, 2014



Air & Radiation Law News

for October 29, 2014

Bloomberg BNA Daily Environment Report™

Climate Regulation

EPA Seeks Input on Power Plant Rule, Proposes Carbon Rule for Tribal Lands

The Environmental Protection Agency highlighted additional issues for comment in its proposed carbon dioxide standards for existing power plants Oct. 28 while also proposing similar emissions targets for four utilities on tribal lands....

Climate Regulation

EPA Works to Respond More Quickly To Industry Critiques of Power Plant Rule

The Environmental Protection Agency is trying to move more quickly to counter what it considers to be erroneous industry claims about the cost of its carbon dioxide regulations for power plants, a senior agency official said....

Coal Mining

OSM Determines Montana Mine Expansion Wouldn't Significantly Impact Environment

A proposed expansion of an underground coal mine in Montana wouldn't have significant environmental impacts, the federal coal mining regulator recently determined....

Emissions Trading

U.K., Germany See Good Chances Of Early European Union Carbon Market Fix

A European Union plan to introduce a mechanism to curb oversupply of carbon-dioxide emission permits has "good chances" of starting earlier than 2021, according to Germany and the U.K....

Energy

TransCanada Keystone XL Decision May Come Soon, Secretary of State Says

A decision on TransCanada Corp.'s long-delayed Keystone XL pipeline, designed to ship growing Canadian oil sands supplies to Gulf Coast refineries, may come soon, U.S. Secretary of State John Kerry said....

Enforcement

More Oversight Announced for Chinese Industrial Parks in Crackdown on Pollution

Chinese environmental officials will conduct greater oversight of industrial parks, long a source of air and water pollution but traditionally protected by local governments because of the tax revenue they generate....

International Climate

EU Environment Ministers Finalize Position On Climate Negotiations Ahead of Lima Talks

The European Union's outgoing Climate Action Commissioner Connie Hedegaard said Oct. 28 that for December's climate change summit in Lima, Peru, to be considered a success, there would need to be

progress on climate financing and...

Oil & Gas

As Oil Prices Fall, Mexico Must Compete Harder for Investors as Auction Looms

Mexico is weeks away from announcing the financial terms of its first private oil and gas auction in more than seven decades, but the decline in oil prices means the country faces tougher competition globally to attract investment dollars in...

Renewable Energy

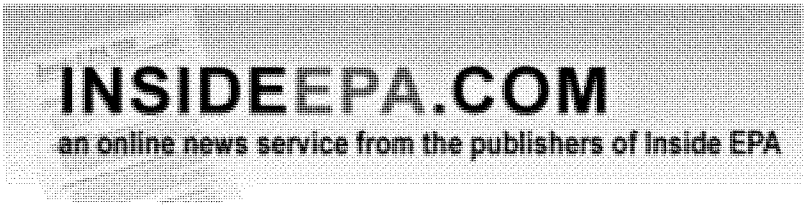
Companies Close Loan for Canada Wind Project

Pattern Energy Group LP, the closely held developer associated with Pattern Energy Group Inc., closed a C$580 million ($519 million) loan with Samsung C&T Corp.'s renewables unit for a wind farm in Ontario. Ten financial companies...

Science Policy

House Will Consider Bill Promoting Greater Science Transparency, Rep. McCarthy Says

The House will "soon" consider legislation requiring the Environmental Protection Agency to base regulatory actions and rulemakings on scientific information that is publicly available and replicable, Majority Leader Kevin...



Inside EPA **Environmental Policy Alert**, 10/29/2014

http://insideepa.com/newsletters/environmental-policy-report

Latest News

EPA Outlines Possible Changes To ESPS' Most Controversial Provisions

EPA is outlining new options for how to address several of the most controversial aspects of its proposed greenhouse gas (GHG) rule for existing utilities, including the proposed interim compliance goals, the role of new natural gas plants in setting targets and the possibility of using multiple years of power sector data to craft state-level targets.

Whitehouse Slated To Offer Carbon Tax Bill That Could Replace EPA Rules

NEW YORK -- Opening the door to a congressional debate on climate policy, Sen. Sheldon Whitehouse (D-RI) is poised to introduce a bill next month imposing a tax on carbon dioxide (CO_2) emissions set at about $40 per ton -- a bill he says could replace EPA's authority to regulate greenhouse gas (GHG) emissions under the Clean Air Act.

Greenwire

SUPREME COURT:

If the Clean Air Act's on the docket, Keisler's on the case

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, October 28, 2014

Peter Keisler might be the only lawyer who's argued five cases before the Supreme Court *and* has appeared in a TV soap commercial.

The commercial and some voiceovers on a PBS children's show came when Keisler was a teen actor.

"It quickly became clear to me that acting was a tough business and that I wasn't that good at it," he recalled in an interview. "Decent enough to land a few minor parts in small matters from time to time, but certainly not possessed of the talent to make a successful career out of it."

He's done OK in his second career choice. A former acting attorney general in George W. Bush's administration and nominee to a federal appeals court bench, Keisler has established himself as a go-to guy for industry on Clean Air Act cases at the Supreme Court.

In 2011, he won a case on whether power companies can be sued under federal common law for greenhouse gas emissions, arguing that the Clean Air Act pre-empts those claims. Last year, he lost a challenge to U.S. EPA's regime for air pollution that drifts across state lines and eked out what was debatably a win in the term's major case on an EPA greenhouse gas permitting program.

Not bad for a lawyer who just three years ago had little experience in environmental law. Keisler, a partner at Sidley Austin LLP, is a prime example of industry's shift to hiring seasoned Supreme Court practitioners to represent them.

Environmental lawyers like John Cruden, president of the nonpartisan Environmental Law Institute, praise Keisler's work in their field. Cruden calls him "one of the most effective advocates I have encountered."

"For a private practitioner to have three Supreme Court Clean Air Act arguments in a row is truly remarkable," said Cruden, who was nominated by President Obama to lead the Department of Justice's environmental division. "They were extremely important cases. It's a tribute to him that he is in demand that much."

Despite the importance of Keisler's cases, he doesn't make environmentalists mad.

Keisler is "unfailingly courteous and pleasant," said attorney Sean Donahue, who often represents environmental groups at the Supreme Court.

"His style is forceful without being snide or shrill," he added, "and he can convey a disarming moderation and balance even when taking positions that are quite aggressive."

Harvard Law School professor Richard Lazarus said Keisler is successful because of his ability to read the mood of the court both in his briefs and during oral arguments. Keisler, he said, delivers the argument that the justices will find most attractive.

"He knows how to go for a win," Lazarus said. "He has an instinct for the pragmatic, not the jugular. He pitches things to make them look reasonable.

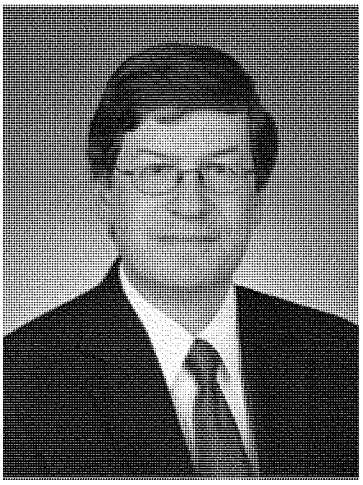
"He's not a true believer. He's not a flamethrower. He wants to win the case."

From child actor to Yale Law

Legal briefs are stacked on nearly every level surface in Keisler's office in downtown Washington, D.C. One wall features a large courtroom sketch of him at the Supreme Court's podium during a 2011 argument -- a gift from his wife. Framed handwritten notes hang on another, including one from former President George W. Bush (in Sharpie, illegible) and former Vice President Dick Cheney ("Thank you for your service").

In a conference room down the hall, Keisler, 54, sits with a foot in a walking cast from a tennis injury. He is trim, with wire-rimmed glasses and slightly shaggy brown hair, and wears a military-style watch.

He recalls growing up in Long Island, N.Y. His father was in advertising, and his mother became a preschool teacher. He has one older brother, a lawyer in London.



Former acting Attorney General Peter Keisler has argued the last three major Clean Air Act cases at the Supreme Court. Photo courtesy of Sidley Austin LLP.

As a child, he wanted to be an actor. And he succeeded, appearing in a commercial for Safeguard soap and doing voiceovers for PBS's "Big Blue Marble," a children's program that told stories of kids in different countries.

Keisler said he could quickly master foreign accents, so he made several appearances on the show.

As he headed to Yale University for his undergraduate and law degrees, Keisler continued to love acting and theater. He participated in several student productions, including playing Sansón Carrasco, the villain in the musical "Man of La Mancha."

He also wrote for and performed in Yale Law School's annual variety show, the "Law Revue."

Keisler, who spends most of his limited free time with his wife and three children in Chevy Chase, Md., still regularly goes to the theater. He enjoys even productions he doesn't think are well done -- as he did recently.

"I still thought, 'I love being here, watching people onstage performing something that's at least trying to provoke thought and evoke emotion,'" he said. "Even if a particular play turns out not to be very good, the atmosphere of the theater is something I always find thrilling and exciting."

Keisler thrived at Yale Law, which emphasizes the theoretical and philosophical principles of the justice system. Asked whether he approaches a case as an intellectual exercise, he said the law is more than a "logical exercise."

"Logic is certainly part of it -- law has its share of syllogisms and premises and conclusions," he said. "But the dominant elements of the law are about underlying values and about, in a practical way, how those values are affected by the application of different legal principles. If you can't talk about cases in terms of those values, then you're not really engaging with how the law works."

In law school, Keisler was a co-founder in 1982 of the Federalist Society, which promotes conservative and libertarian views at law schools. The group started because there was a feeling that law faculties in the late 1970s and 1980s were dominated by liberal perspectives, Keisler said, adding that he doesn't believe that's true anymore. He is no longer involved with the group.

Clerk for Bork

Keisler headed to Washington, D.C., immediately after law school and secured a clerkship with Judge Robert Bork, a conservative on the U.S. Court of Appeals for the District of Columbia Circuit. Bork was later nominated to the Supreme Court by President Reagan, only to see his appointment derailed by Senate Democrats in a bitter confirmation battle.

Decades later, Senate Democrats would highlight Keisler's clerkship for Bork in opposing his own nomination to the D.C. Circuit. After Democrats took back control of the Senate in 2006, Keisler's nomination was never taken up.

After the clerkship, Keisler worked in the Reagan administration on the nomination of Anthony Kennedy to the Supreme Court and, after his confirmation, clerked for the justice now considered the court's swing vote.

He then joined Sidley Austin before returning to the government during the George W. Bush

administration. There, he led the Justice Department's civil division, a role in which he was charged with defending government actions. He later ascended to other leadership posts, including acting attorney general.

To those who worked with him then, that experience trained Keisler well for handling complex environmental cases -- such as the greenhouse gas case last year in which he had to juggle multiple clients making different and at times contradictory arguments for overturning an EPA permitting program.

Cruden, another former DOJ attorney, said Keisler's government experience is what "makes him such an effective advocate."

"He has represented the federal government in countless cases, so he can see both sides of contentious issues," Cruden said.

Sambhav Sankar, who worked in the environmental division of DOJ while Keisler was there and is now at General Electric Co., said Keisler learned how to sift through a myriad of arguments and decide which is the best to present to a court.

"You are often seeing a million different ways that [a case] is coming before you, and you are synthesizing the view of the government," Sankar said, before, like most interviewed for this article, heaping effusive praise on Keisler's oral argument skills.

"He could sell ice to Eskimos," he said.

Big break

With five Supreme Court arguments on his resume, Keisler has little trouble pitching his expertise to clients.

It wasn't always that way, though, and Keisler recalled that he nabbed his first high-court argument by mistake in 2001.

The case, *National Cable and Telecommunications Association v. Gulf Power*, was an esoteric dispute about whether a federal statute that grants telecommunications companies access to power companies' utility poles for telephone and television cable wires also applies if they want to attach high-speed Internet lines.

Keisler's client, the cable industry, prevailed as the Supreme Court reversed a lower-court ruling that had let utilities restrict access, or at least force telecommunications firms to pay for it.

Right before the argument, Keisler's friend, sitting behind him in court, turned to the client, the National Cable and Telecommunications Association, and said, "Well, this is exciting. Peter's first Supreme Court argument."

To which their client responded incredulously, "Wait, this is Peter's *first* argument?"

Keisler insists he didn't mislead his client, but the seeming significant detail -- that he had never argued before the high court before -- didn't come up.

In retrospect, he said, it highlights why Supreme Court arguments are dominated by a select few lawyers.

"New people will always break in, because they have to. Every profession has to replenish itself," Keisler

said. "And I only got my first such opportunity -- apparently -- because the client didn't actually realize he was taking that type of chance on me."

Lazarus, the Harvard Law professor, noted that Keisler has since become part of a shift in the energy and electric industry toward hiring Supreme Court specialists when taking their cases to the high court.

The idea, he said, is modeled on the U.S. solicitor general's office, which represents the government's interests before the Supreme Court. The solicitor general, he said, would have a better sense of what will appeal to the justices than, say, U.S. EPA's general counsel.

About eight years ago, Lazarus said, industry interests shifted to that model and have been much more successful in getting the justices to take up cases.

In addition to Keisler, he noted that industry groups have hired lawyers including former Solicitor General Paul Clement; Carter Phillips, Keisler's colleague at Sidley; and Kathleen Sullivan of Quinn Emanuel Urquhart and Sullivan LLP.

"They know how to write to the court," Lazarus said. "And the clerks know them."

'Fraught situation' in GHG case

Keisler's highest-profile argument came last year in a challenge to an EPA permitting program for greenhouse gases. The logistics of the case -- including figuring out what, exactly, to argue -- were the most complicated he had encountered.

After EPA determined that greenhouse gases endanger public health, it issued auto tailpipe standards in 2010. The agency then said those standards triggered the inclusion of greenhouse gases in its Prevention of Significant Deterioration, or PSD, program. That permitting regime requires new or modified industrial facilities like power plants or chemical factories to install emission control technologies.

The case came to the Supreme Court after the D.C. Circuit upheld all of EPA's regulations after two days of lengthy arguments. Dozens of parties, including states, electric utilities, the chemical sector and the U.S. Chamber of Commerce, asked the Supreme Court to review various aspects of the regulations.

The justices granted review, but only to the narrow question of whether EPA properly concluded that the tailpipe standards forced the agency to automatically add greenhouse gases to the PSD program.

Keisler, whose client was the American Chemistry Council, thought it would be virtually impossible for one lawyer to argue on behalf of all the industry clients because they made different arguments, ranging from greenhouse gases shouldn't be covered by the Clean Air Act at all to limiting their inclusion in the PSD program to specific circumstances.

Keisler figured he would seek 10 minutes of argument time and present ACC's position: Greenhouse gas requirements could be included in PSD permits for facilities that already qualified for the regime because of emissions of other so-called conventional pollutants. Emissions of greenhouse gases only, the argument went, shouldn't qualify a facility for the program.

During discussions, a consensus emerged that one lawyer should argue on behalf of industry interests. They picked Keisler.

Keisler said he initially thought it was a "fraught situation."

"I thought it was potentially a no-win situation, because someone would likely end up feeling I had not done sufficient justice to his or her argument," he said.

At the arguments, the justices wasted little time asking Keisler about the various positions of the multiple parties and which he was advocating. Justice Sonia Sotomayor asked Keisler if he was pursuing ACC's argument from the D.C. Circuit or others.

"It's just that it's been hard enough to make two alternative arguments in this forum, and to add a third to it would be more than I think I could handle," Keisler responded, to laughter in the courtroom.

In June, the court in a 5-4 ruling trimmed the PSD program, throwing out EPA's "tailoring" rule, in which it rewrote the tonnage thresholds for greenhouse gases that qualify factories, power plants and industrial facilities to obtain the PSD permit.

It also held, as Keisler had argued since the D.C. Circuit, that facilities couldn't qualify for the PSD program solely because of greenhouse gas emissions (*Greenwire*, June 23).

To be sure, the ruling was narrow, and EPA called it a win because the first round of greenhouse gas regulations under the Clean Air Act had emerged -- after years of litigation -- largely unscathed. Under the Supreme Court's ruling, 83 percent of the country's greenhouse gases would be covered by the PSD program. Three percent more -- 86 percent -- would have been covered under EPA's position (*Greenwire*, June 24).

Keisler, however, called Justice Antonin Scalia's opinion "very favorable for our side." In particular, he pointed to language that could apply to recent proposals to set standards for greenhouse gases from new and existing power plants -- two rules that are sure to be challenged in court after EPA finalizes them next year.

"Even with respect to the points on which EPA won -- that EPA could apply [best available control technology, or BACT, requirements] to greenhouse gases -- the court was very careful to say there are going to be sharp limits on *how* EPA applies BACT," Keisler said.

He added the court appeared to indicate that it "is going to scrutinize very carefully and skeptically any future such claims by EPA that it has discovered new powers to regulate broad segments of the national economy based on a general, long-extent statute where the statute on its face doesn't suggest that Congress had intended to delegate that kind of power."

Lawyers who supported EPA in the case, however, have been quick to point out that many of the passages in Scalia's opinion that Keisler is pointing to were not directly applicable to the ruling in the case and, consequently, aren't part of the court's binding holding. They have also noted that a footnote in Scalia's opinion specifically said the opinion was not addressing Section 111 of the Clean Air Act, which EPA is relying on for the new climate rules.

Most EPA and court watchers expect the new standards to end up at the Supreme Court eventually, and you can expect Keisler -- who has a deep-seated appreciation of the court and its role in American democracy -- to be involved.

"There is no other branch of government which, at the very top, routinely functions by engaging the issues with people on both sides so directly and publicly," he said. "Every time I am a part of that process, I find it inspiring. Win or lose."

GEORGIA:

LCV adds Senate candidate to its 'Dirty Dozen'

Jennifer Yachnin, E&E reporter

Published: Tuesday, October 28, 2014

The League of Conservation Voters today named Georgia Republican Senate nominee David Perdue to its "Dirty Dozen" program, vowing to campaign against the businessman in the competitive open-seat fight to replace retiring Sen. Saxby Chambliss (R).

The LCV uses its Dirty Dozen program, which it has run since the late 1990s, to oppose 12 candidates each election cycle who oppose climate change and conservation legislation.

Perdue, who is competing against both Democrat Michelle Nunn and Libertarian Amanda Swafford, becomes the 11th candidate named to the program this cycle.

"David Perdue is a climate science denier who would undo vital public health and environmental safeguards. As Georgia's next Senator, Michelle Nunn would collaborate with Democrats and Republicans alike to grow investments in clean energy jobs that can't be outsourced," LCV Senior Vice President for Campaigns Daniel Weiss said in a statement. The LCV Action Fund endorsed Nunn's bid in September.

According to a new Public Policy Polling survey commissioned by the LCV, the Senate race is in a dead heat and could head to a runoff if no candidate claims a majority of the vote Nov. 4.

The survey of 771 likely voters gave both Nunn and Perdue 47 percent, while Swafford claimed 3 percent. The poll, conducted Thursday and Friday, had a 3.5-point margin of error.

COAL:

Industry groups launch get-out-the-vote initiative

Manuel Quiñones, E&E reporter

Published: Tuesday, October 28, 2014

The American Coalition for Clean Coal Electricity today announced it is launching a get-out-the-vote effort aimed at pressing the electorate to consider energy issues when picking candidates.

The group said the initiative would include social media and other digital elements, including a new video featuring NASCAR superstar Dale Earnhardt Jr. But there won't be any TV or radio ads.

"Protecting low-cost energy from coal isn't a partisan issue," says Earnhardt. "And everyone stands to lose if regulations are imposed that increase energy costs for families and business."

ACCCE has been an Earnhardt sponsor for several years, and it featured the NASCAR star in ads and campaign materials for the 2012 presidential election.

This time around, ACCCE spokeswoman Laura Sheehan said, "Energy issues stand to play a major role in November's midterm elections, and it's crucial that the leaders we choose believe in an energy agenda that recognizes coal as a critical part of our energy mix."

Separately, the National Mining Association has been reaching out to supporters through its Mine the Vote effort, including outlining key races and candidates the group is supporting.

NUCLEAR:

Majority of Americans see reactors as climate 'solution' -- industry poll

Hannah Northey, E&E reporter

Published: Tuesday, October 28, 2014

A majority of Americans associate nuclear power with solving climate change while ensuring the lights stay on, according to a new industry-backed poll.

Thirty-one percent of those surveyed said they associate nuclear power "a lot" with being a "climate change solution," while 31 percent said they see "a little" connection, according to a poll the Nuclear Energy Institute released today. Thirty-four percent of respondents said they do not associate nuclear power with solving climate change, and a remaining 5 percent said they did not know.

The survey by Chevy Chase, Md.-based Bisconti Research Inc. included 1,003 nationally representative U.S. adults who were interviewed by telephone -- land line and cellphone -- from Sept. 18 to Oct. 14. Bisconti reported a margin of error of 3 percentage points. Fifty-one percent of the respondents were female, and 76 percent were white.

Overall, 82 percent of those surveyed agreed the U.S. should take advantage of all "low-carbon energy sources," including nuclear, hydropower and renewables, according to the poll. When asked to choose which power sources provide the most electricity from that list, 33 percent chose nuclear power, 30 percent chose hydropower, 15 percent chose solar power and 9 percent chose wind.

More than 80 percent of those surveyed said the licenses for reactors should be renewed after they expire if the units comply with federal safety standards. And 72 percent of those surveyed said U.S. utilities should prepare now so nuclear power plants can be built if needed during the next decade.

When asked whether the United States should "definitely build more nuclear plants in the future," 27 percent of respondents said they strongly agreed, and 34 percent somewhat agreed.

That support is likely to play well with ongoing campaigns by the industry and Obama administration allies like former White House climate and energy adviser Carol Browner to tout the carbon-free nature of U.S. reactors, which are currently facing shutdowns tied to competition from cheap gas and waning demand for power.

Central to that position is the industry's push for U.S. EPA's proposed Clean Power Plan to give more credit for new nuclear units -- the first of which will come online in Georgia, South Carolina and Tennessee (*EnergyWire*, Oct. 20).

But the poll also revealed a large segment of the public feels ill-informed about nuclear energy topics, according to a memo attached to the poll.

"Although nuclear energy was named more than any other low-carbon electricity source as the top source

today and in 15 years, it is also true that two-thirds of Americans do not know that nuclear energy actually is the top low-carbon source of electricity," NEI wrote. "Although a majority associates nuclear energy to some extent with being a solution to climate change, many Americans are unaware of nuclear energy's role in the low-carbon energy mix."

CLIMATE:

Emissions drop puts E.U. on course to meet 2020 goals

Published: Tuesday, October 28, 2014

The European Union is inching closer to achieving its 2020 emissions-reduction goal.

Last year, emissions from E.U. countries dropped 2 percent, according to the European Environment Agency. The 28-nation group vowed to cut greenhouse gas emissions 20 percent by 2020, and to date, it has already cut 19 percent. Officials estimate the European Union will exceed its goal and emissions will be 21 percent to 24 percent lower than 1990 levels.

The European Union is also on track to meet a goal of attaining 20 percent of its energy from renewable resources, including wind, solar and hydropower, by 2020, as well as improving energy efficiency by 20 percent.

Nine countries -- Croatia, Cyprus, Czech Republic, Denmark, Greece, Hungary, Romania, Slovakia and Britain -- are on track to meet the targets. Spain and Germany, however, are not.

Last week, the European Union set climate and energy goals for 2030, including 40 percent emissions cuts, a 27 percent reliance on renewables and a 27 percent reduction in energy consumption.

"The current projections for 2030 indicate that further efforts are required at national and E.U. level to keep the E.U. on track toward its new 2030 targets," said the EEA (AP/*Houston Chronicle*, Oct. 28). **-- MH**

ENERGY STORAGE:

Company to spend $1B, hire thousands at new N.C. battery plant

Published: Tuesday, October 28, 2014

Swiss company Alevo is set to announce plans to add thousands of jobs in the United States today at a new North Carolina plant that will make batteries to store electricity for power grids.

The company says its technology solves many of the problems that have plagued efforts to develop large-scale batteries. It has spent $350 million on its North Carolina facility and plans to spend more than $1 billion by 2016, and it will employ nearly 2,500 workers.

The company has contracts to develop and commercialize the technology in China and Turkey but is seeking to grow its business in the United States.

"We have to look at doing this on a multiple-gigawatt scale to get some real benefit for the grid," said CEO Jostein Eikeland (Ed Crooks, *Financial Times*, Oct. 27). **-- SP**

OIL AND GAS:

Industry disruptions may offer clues on instability -- report

Published: Tuesday, October 28, 2014

Oil production disruptions may provide insight into political turmoil around the world, according to a new report published yesterday by Republicans on the Senate Energy and Natural Resources Committee.

"Losses in oil production often reflect instability," said Sen. Lisa Murkowski (R-Alaska). "Energy reporting clearly pointed to Iraq's deteriorating security years before the current collapse and provides us strategic warning of violence in other countries and regions."

The report examined unplanned oil production outages in member nations of the Organization of the Petroleum Exporting Countries and used Iraq as a case study. Outages in Iraq increased in the months prior to the capture of Mosul, Iraq, by the Islamic State group's forces in June, which included the bombing of a key pipeline in the region.

About 2 million barrels of oil per day is disrupted due to unplanned outages in OPEC nations. The report also examined politically volatile countries, such as Yemen, Libya and South Sudan, as hot spots for outages.

"Sustained levels of such outages in other countries may constitute a degree of strategic warning to policymakers that attention is required," said Murkowski, "and ultimately are a reminder that record-breaking increases in North American oil production can enhance national security and stabilize global markets" (Jennifer A. Dlouhy, *Houston Chronicle*, Oct. 27). **-- MH**

RENEWABLE ENERGY:

Wind, solar growth higher in developing nations -- study

Published: Tuesday, October 28, 2014

The growth rate of wind and solar energy in China, India and other developing countries is outpacing those in some of the world's richest and most developed countries.

It was previously thought that many poorer nations couldn't afford such renewable energy technologies and had to rely on coal-fired power plants and diesel generators.

But a Climatescope study conducted for a group of development agencies by Bloomberg New Energy Finance research firm found that new clean energy has grown an average of 19 percent since 2008 in 55 developing countries studied. That figure is higher than the average 13 percent growth among developed nations during the same period. The study did not include hydropower.

Many of the alternative energy technologies -- wind farms or solar plants -- can be quickly constructed and can better meet energy demand in the nations.

"These technologies are poised to make an immediate impact on energy supply and access in the developing world," said the report.

Although it's the world's largest greenhouse gas emitter, China is also the biggest manufacturer of wind

and solar equipment, accounting for six of the world's 10 largest solar panel producers and five of the top 10 wind turbine manufacturers, according to Bloomberg New Energy Finance (Pilita Clark, *Financial Times*, Oct. 28). -- **MH**

NATURAL GAS:

Optimistic CEO attempts to revive coalbed methane in Wyo.

Published: Tuesday, October 28, 2014

High Plains Gas Inc. CEO Ed Presley was unfazed even though none of his company's roughly 3,000 coalbed methane wells was producing in late September or that his company is at least $50 million in debt.

The Nov. 15 deadline given to High Plains by the state of Wyoming to either pay $6.8 million in idle bond funding or forfeit its wells doesn't scare him.

He has Gazmo.

Presley said he will be able to pay the state and disenchanted landowners with large profits from each well that is turned back and fitted with the technology.

Gazmo, which is designed to slash operation costs by eliminating the water usually brought to the surface with natural gas, works, Presley said, despite state officials' claims that it is commercially untested. He hasn't had success marketing the technology, he said, as larger companies "had blown their wad drilling these [coalbed methane] wells."

Wyoming has also made closing nonproducing wells a priority. None of the wells High Plains bought when the local coalbed methane industry collapsed was among the 1,200 ordered shuttered by Gov. Matt Mead (R) last year, but the 120 days the Wyoming Oil and Gas Conservation Commission gave the company to pay the bond is almost up.

"Based on what I've seen, I'm not hopeful," said state Oil and Gas Supervisor Mark Watson, who regularly meets with Presley. "I would like to see them pull it through. But they said they would have 15 [wells] online in August, and we still haven't seen anything."

Presley blamed the state cuts for infrastructure shortfalls hurting his company's prospects and comments made by doubtful regulators for "poisoning the well."

"We would take all legal measures available to us to make sure we don't lose these wells and our bonding," he said.

Some landowners are rooting for Presley, who impressed many with his plan at a recent public meeting; others still awaiting payments from the company for use of their land were less convinced.

"I told them point-blank they have to pay me everything [owed] before they do anything," said retiring state Sen. John Hines (R), who has multiple High Plains wells on his Campbell County property (Benjamin Storrow, *Casper* [Wyo.] *Star-Tribune*, Oct. 27). -- **DTB**

RAIL:

Amtrak creates 3-member panel to address Chicago congestion

Sean Reilly, E&E reporter

Published: Tuesday, October 28, 2014

A special three-member Amtrak panel will explore ways to reduce train tie-ups and improve service at its Chicago hub, the railroad said this morning.

Rail gridlock there "is causing unacceptable delays for Amtrak passengers while reducing revenues and driving up operating costs," Amtrak President and CEO Joe Boardman said in a news release announcing the "Chicago Gateway Initiative."

Among the forces contributing to congestion, which has also affected freight shipments, are an increase in crude-by-rail business, short-range construction projects that create temporary bottlenecks and underinvestment in critical long-term rail needs, according to the release.

The panel will examine potential operating changes and infrastructure spending that could speed traffic, with its final recommendations expected by May.

Members are former Surface Transportation Board Chairman Linda Morgan, now an attorney in private practice; former Rep. Jack Quinn (R-N.Y.), who headed the House Transportation and Infrastructure railroads subpanel during part of his tenure in Congress; and Amtrak board member Thomas Carper, who is no relation to the senator of the same name.

The panel plans to hold its first organizational meeting by late next month, Amtrak spokeswoman Christina Leeds said in an email. Asked whether the panel's meetings will be public, Leeds said that question will be among those discussed at the initial closed-door session as members “work out how they intend to go about” doing their job.

The announcement follows yesterday's release of fiscal 2014 results showing that ridership on Amtrak's long-distance network -- much of which centers around Chicago -- fell 4.5 percent in comparison with the preceding year as train punctuality worsened (*Greenwire*, Oct. 27).

Most Amtrak trains run on tracks owned by the freight railroads; those that operate in Chicago "are key to implementing recommended solutions" and will have the chance to participate in the panel's activities, the release said.

JAPAN:

First nuclear restart OK'd by plant town

Published: Tuesday, October 28, 2014

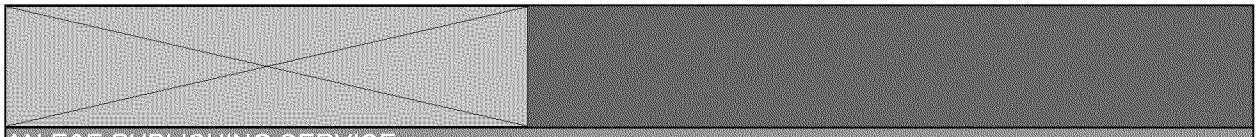
Satsumasendai's city assembly today approved the restart of the city's nuclear power station, which would become the first Japanese nuclear plant to resume operations since the 2011 Fukushima Daiichi catastrophe.

With 19 out of 26 assembly members voting yes, the city of 100,000 became the first to approve resuming nuclear production, with much of the Japanese public still opposed to Prime Minister Shinzo Abe's push to restart the country's nuclear industry.

The Kyushu Electric Power Co. plant's two reactors in the city, 600 miles southwest of Tokyo, have long provided subsidies and jobs for Satsumasendai, but opposition has been raised in neighboring communities.

More than half of the 30,000 residents in Ichikikushikino signed a petition earlier this year opposing the restart, which leaders have said puts them at equal risk in the event of a meltdown but brings none of the rewards.

Also today, a fire broke out at another Kyushu Electric nuclear plant, but Kyodo News reported no injuries or any release of radioactive materials (Mari Saito, Reuters, Oct. 28). **-- DTB**



AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Wed., October 29, 2014

READ FULL EDITION

1.POLICY:

China may be at a crossroads on the future of its ambitious coal gasification program

BEIJING -- It was first criticized by environmentalists. Then it was reined in by government officials. Now, China's coal-fueled synthetic natural gas industry faces another blow as a group of energy experts raise doubt over its economic viability.

2.RENEWABLE ENERGY:

A guide to the fast-developing off-grid world

A sweeping new report on clean energy development in 55 emerging economies suggests the United States and Europe may soon be eclipsed by countries from Asia, Latin America and Africa on several measures of clean energy adoption.

TODAY'S STORIES

3.RESEARCH:

A tool is designed to take some of the 'what ifs' out of clean energy policies

4.AFRICA:

Continent has vast energy resources, much of which is unused, exported or stolen

5.RISK:

African nations are among the most exposed to food security problems

6.NATIONS:

U.S. climate research is helpful as a diplomatic tool at U.S.-Brazil symposium

7.CARBON CAPTURE:

Southern Co.'s Kemper plant delayed for 3rd time this year as costs rise

8.TECHNOLOGY:

Swiss firm announces multimillion-dollar investment in N.C. energy storage battery plant

9.CULTURE:

Harvard science historian turns to science fiction to portray impacts of climate change

10.ARCTIC:

Alaska's glaciers go on major retreat

11.RESEARCH:

Funding approved for climate modeling supercomputer in U.K.

E&ETV'S ONPOINT

12.OIL:

Quartz correspondent LeVine talks pricing forecasts, geopolitics of production

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., October 29, 2014

READ FULL EDITION

1.ELECTRICITY:

Con Ed's plan for surging Brooklyn-Queens grid may lead the way to N.Y.'s 'Restructuring 2.0'

NEW YORK -- It's no secret New Yorkers have turned to Queens and Brooklyn in search of cheaper rents and a less hectic lifestyle than Manhattan. What is less well understood is how that shift will rapidly boost electricity demand and strain the power grid in an area that might best be described as a tangled cross-section of this city's growing outer boroughs.

TOP STORIES

2.SECURITY:
'Cumbersome' federal cyber-alert system needs to be streamlined, NSA chief says

3.UTILITIES:
1 coal-fired plant holds many cards for TVA's plans

4.LNG:
Transport by rail and ship could drive long-term gas growth -- analysts

ELECTRICITY

5.GRID:
Fake blackout highlights utilities' 'risk management problem'

6.ELECTRICITYE:
N.Y. energy regulators anticipate cheaper winter ahead

7.ELECTRICITY:
Philly won't sell gas utility after all

OIL AND GAS

8.EARNINGS:
BP's 3Q results reflect oil price's recent slide

9.EARTHQUAKES:
Texas regulators approve rules for waste injection

10.FINANCE:
Coal giant mulls spinning off its largest division

11.FINANCE:
Private investors raise $4B for new energy fund

12.LAW:
Okla. judge tosses suit over earthquake damages

13.NATURAL GAS:
Floating terminal arrives off Lithuania to aid nations dependent on Russia

E&ETV'S ONPOINT

14.OIL:
Quartz correspondent LeVine talks pricing forecasts, geopolitics of production

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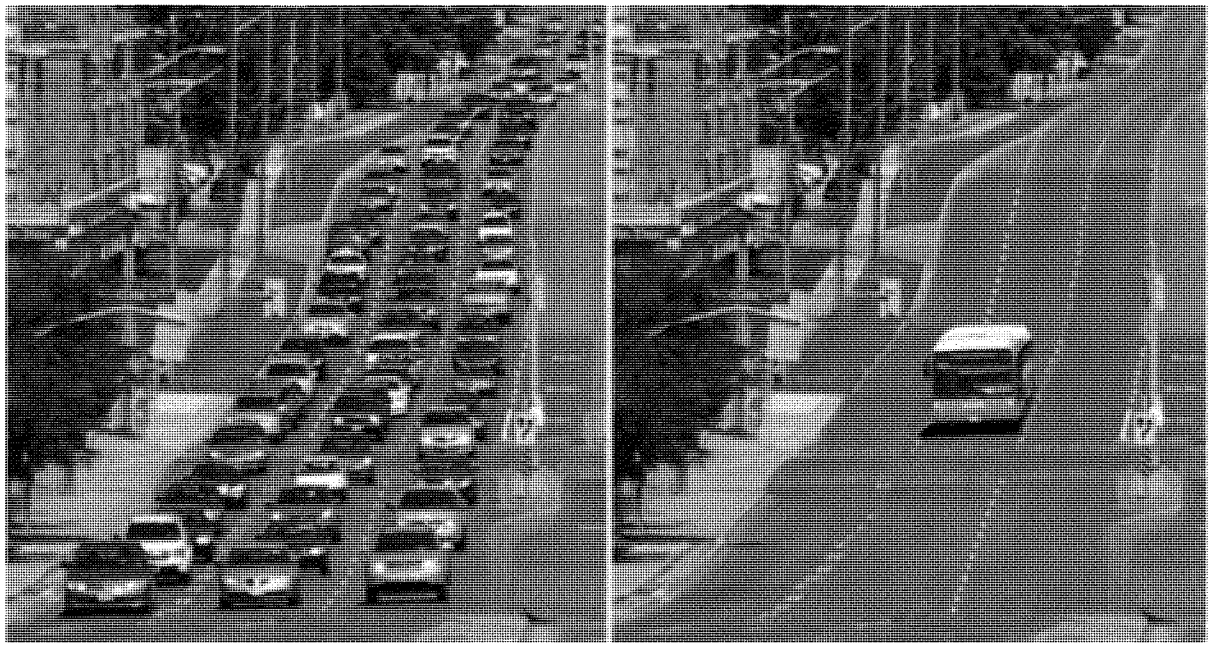

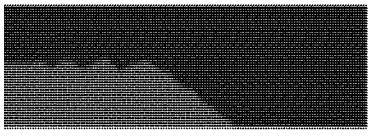

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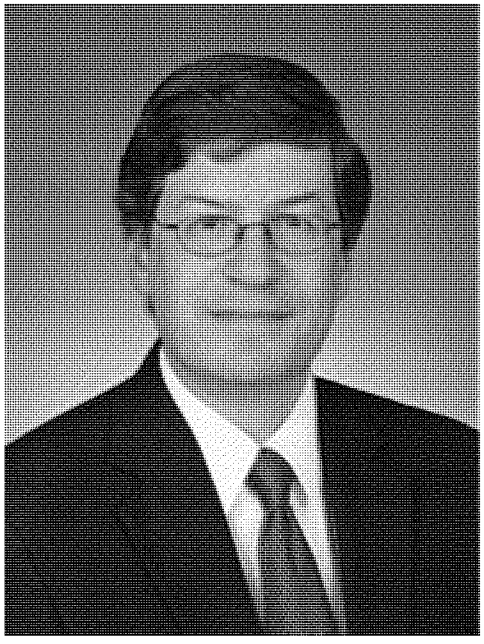

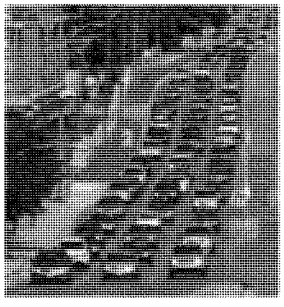

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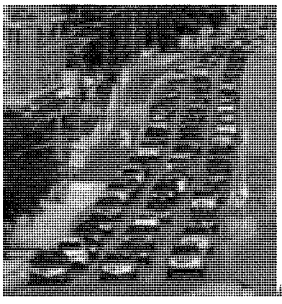
Subject: Air & Radiation Law News for October 28, 2014



Air & Radiation Law News

for October 28, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Beijing Tells Residents to Leave Town To Clear Air Ahead of APEC Summit

China's desire that blue skies and traffic-free streets greet world leaders at a summit in Beijing next week—after air pollution in the capital reached hazardous levels at least 10 days so far this month—is prompting the...

Climate Regulation

Sustained Lobbying Push on EPA Standards For Power Plants Continues, Records Show

At least 120 groups varying from public health advocacy associations to large publicly traded companies reported lobbying Congress during the third quarter of 2014 to express their views on the Environmental Protection Agency's proposed...

Energy

Keystone Opponents Energized by Drop In Crude Oil Prices, Effect on Production

Falling oil prices have energized opponents of the proposed Keystone XL pipeline....

Fuel Efficiency

China Could Link Taxes to Fuel Consumption To Push Efficient, Alternative Energy Cars

China is considering higher taxes on fuel and on the purchase of inefficient cars to encourage consumers to buy smaller-engine and alternative-energy vehicles, according to a report from an automotive publication under the state-run People's...

International Climate

Lack of Progress at Bonn Climate Talks Raises Stakes for December Lima Summit

Most of the central items on the agenda for the just-completed Bonn Climate Change Conference were left unresolved, further raising the stakes for the 20th Conference of the Parties summit in Lima, which will take place a year before a global...

Pipeline Safety

PHMSA Requests Renewal of Information Collections

The Pipeline and Hazardous Materials Safety Administration is requesting to renew two pipeline safety information collection requests on gas pipeline recordkeeping requirements and on customer-owned service lines. These information...

Radioactive Waste

Three States Petition D.C. Circuit to Review NRC Radioactive Waste Storage Rule

The attorneys general of New York, Connecticut and Vermont filed a petition with the U.S. Court of Appeals for the District of Columbia on Oct. 27, asking the court to review and vacate the Nuclear Regulatory Commission's recent rule for...

Regulatory Policy

Judge Denies EPA's Request to Clarify Jurisdiction in Jobs Review Lawsuit

A federal district judge has denied the Environmental Protection Agency's request to explain the court's jurisdiction to hear a lawsuit seeking an employment impact analysis of Clean Air Act regulations (Murray Energy Corp. v....

Renewable Energy

Solar Energy to Reach 'Grid Parity' by 2016 In Nearly All States, Deutsche Bank Predicts

Solar energy will be cost competitive with retail electricity prices in nearly all 50 states by 2016, Deutsche Bank said in a research note. ...

Vehicle Fuels

Small Refiners Sue EPA After Denial Of Exemption From Fuel Standard

Two petroleum refiners have sued the Environmental Protection Agency after it denied their request to extend small refiner exemptions from the renewable fuel standard (Lion Oil. Co. v. EPA, 8th Cir., No. 14-3405, 10/24/14; Sinclair Wyoming...

Inside EPA **Risk Policy Report**, 10/28/2014

http://insideepa.com/newsletters/risk-policy-report

Latest News

EPA Rejects Call To Speed Phaseout Of HCFC-22, Common GHG Refrigerant

EPA has rejected calls by an array of industry and environmental groups for the agency to phase out production and imports for HCFC-22, the most common hydrochlorofluorocarbon (HCFC) refrigerant and a potent greenhouse gas (GHG), more quickly than the five year years it had originally proposed, citing continued servicing needs.

Advocates Eye Petition For EPA Rulemaking To Codify 'Aggregation' Policy

Environmentalists plan to soon file a petition with EPA seeking a Clean Air Act rulemaking to codify the agency's contested "adjacency" definition that is part of the test for determining whether to combine, or "aggregate," emissions sources for air permitting, in order to revive the strict adjacency test an appellate court scrapped in 2012.

Industry Asks For 18-Month Stay Of Invalidated Comparable Fuels Rule

Despite opposition from environmentalists, the chemical industry is urging a federal appellate court to delay by 18 months the effect of a ruling that invalidated EPA's comparable fuels rule, contending the agency's proposed six-month delay fails to recognize "daunting challenges" facing facilities that have relied on the rule to burn certain waste material for fuel for more than 15 years.

State-Led Group's New Vapor Intrusion Guide May Reflect EPA Approach

An organization of state regulators has released long-delayed guidance for addressing vapor intrusion risk at petroleum-contaminated sites, a guide sources say largely reflects the approach EPA is expected to take in its guidance on assessing vapor risks at petroleum-contaminated sites, recently sent to the White House for review.

Greenwire

RAIL:

Amtrak ridership growth almost flat in fiscal 2014

Sean Reilly, E&E reporter

Published: Monday, October 27, 2014

Amtrak ridership edged up slightly to 30.9 million passengers in fiscal 2014, as gains on its busy Northeast Corridor were largely offset by declines on long-distance and state-supported routes, according to figures released this morning. Ticket revenues rose 4 percent to a record high of almost $2.2 billion in comparison with 2013, the railroad said.

For the Northeast Corridor, which runs from Washington, D.C., to Boston, ridership grew 3.3 percent from about 11.3 million to 11.6 million. But on about 30 state-supported routes, the passenger totals dipped from 14.8 million to 14.7 million, and on the 15 long-distance routes, many of which are struggling with severe punctuality problems, ridership dropped 4.5 percent from approximately 4.8 million to 4.5 million passengers. For Amtrak as a whole, the net result was an overall ridership increase of 0.2 percent.

It was a similar story for ticket revenue. On the Northeast Corridor, which accounted for more than half of the total, receipts surged more than 8 percent to almost $1.2 billion. But on the state-supported routes, ticket proceeds rose 1.8 percent to $486.6 million; on the long-distance routes, they fell almost 3 percent to $510.7 million, according to the numbers. For fiscal 2014, Amtrak was also budgeted to receive an almost $1.4 billion federal subsidy.

In a news release, Amtrak leaders, who have asked Congress to appropriate $1.6 billion for operating and capital expenses in fiscal 2015, repeated their call for stepped-up aid. Board Chairman Tony Coscia credited the railroad's workforce for achieving "strong ridership and revenue despite the challenges with aging infrastructure" and congestion on freight rail lines also used by Amtrak's long-distance trains.

"It is now time to leverage Amtrak's successes in increasing ridership and improving performance by making much-needed investments in our nation's passenger rail system," Coscia said. Added support is particularly needed on tracks, tunnels and bridges on the Northeast Corridor and in Chicago, added Joe Boardman, Amtrak's president and CEO. "Otherwise, we face a future with increased infrastructure-related service disruptions and delays that will hurt local and regional economies and drive passengers away."

But a reauthorization bill, H.R. 5449, approved last month by the House Transportation and Infrastructure Committee would keep Amtrak's base 2015 subsidy at roughly the previous year's level, with only small increases through 2018 (*Greenwire*, Sept. 17). The bipartisan measure would also create a $300 million yearly infrastructure grant program for the Northeast Corridor, conditioned on matching money from the states along the route, according to the National Association of Railroad Passengers, an advocacy group that backs increased Amtrak funding.

TRANSIT:

FTA splits $100M among 24 bus projects

Sean Reilly, E&E reporter

Published: Monday, October 27, 2014

Transit systems in San Diego; Detroit; and Louisville, Ky., are among two dozen that will split $100 million for bus projects, federal officials formally announced today.

In a *Federal Register* notice following up on an earlier news release, the Federal Transit Administration said that the winning projects were culled from 282 proposals seeking a total of $1.4 billion.

The money will be used to help "purchase, replace, or rehabilitate buses, bus facilities and bus-related equipment," the notice said.

The money comes from savings recovered from projects previously funded through SAFETEA-LU, the 2005 highway and transit funding law, as well as the Ladders of Opportunity program geared to connecting low-income and disadvantaged people with schools, jobs and health care, according to the agency. Award decisions were based on criteria laid out in an August notice of funding availability.

Of the $100 million total, almost $26 million will go to the city of Detroit to buy up to 50 hybrid and "clean diesel" buses, according to the release. The San Diego Metropolitan Transit System will receive about $18 million to buy buses running on compressed natural gas, and Louisville's River City Transit Authority, which also serves some Indiana residents, will get $8.7 million for general bus replacement.

The Central Florida Regional Transportation Authority in Orlando is in line for almost $9.4 million to build a bus transfer center and to replace up to 10 diesel buses with compressed natural gas vehicles, the release said. Other recipients include the Muckleshoot Indian Tribe in Washington state, the San Francisco Municipal Transportation Agency, and the Alaska Department of Transportation and Public Facilities.

ALTERNATIVE FUELS:

Car companies shift to hydrogen fuel cells

Published: Monday, October 27, 2014

Car companies are taking a gamble by introducing vehicles run on hydrogen fuel-cell technology.

Toyota Motor Corp., which is known for its gas-electric Prius hybrids, is planning to implement hydrogen fuel-cell technology instead of batteries in its next generation of green vehicles.

"Today, Toyota actually favors fuel cells over other zero-emission vehicles, like pure battery electric vehicles," said Craig Scott, Toyota's national manager of advanced technologies. "We would like to be still selling cars when there's no more gas. And no one is coming to our door asking us to build a new electric car."

Like electric cars, hydrogen fuel-cell cars are expensive, and so is the infrastructure to refuel them. Another hurdle for the pro-hydrogen fuel group is the lack of fueling stations available for the cars. Experts said that unless there's a proven demand for the vehicles, fuel station operators aren't willing to build the fueling infrastructure.

California has set a goal of having 1.5 million zero-emission cars on the road by 2025. The state subsidizes hydrogen cars by providing a $5,000 rebate to owners and a $2,500 rebate to those who buy electric cars. New fuel-cell buyers also qualify for a $4,000 federal rebate until the end of this year.

General Motors Co. and Ford Motor Co. are both in the process of developing hydrogen fuel-cell vehicles, as well (Charles Fleming, *Los Angeles Times*, Oct. 26). **-- MH**

AIR POLLUTION:

Smog chokes New Delhi after Diwali festival

Published: Monday, October 27, 2014

Levels of air pollution in New Delhi were 10 times the amount recommended by the World Health Organization following the celebrations of the Diwali festival last week.

Millions of Indians set off fireworks and firecrackers to celebrate the annual festival in the nation's capital.

Last Friday, the day after Diwali, the level of pollution was raised to "severe," according to a new air quality index that was introduced earlier this month as part of Prime Minister Narendra Modi's "Clean India" initiative. Officials said it would take more than a day for the air to clear.

In May, the WHO found that New Delhi's atmosphere is the most polluted in the world after studying

1,600 cities across 91 countries. Indian officials disputed the claim.

"Modi can ask but nobody listens on Diwali," said Riddhima Gill, a Delhi resident. "When you find your car with a layer of grime the next day, you know you're inhaling poison. Bursting crackers, the noise, the smog is all part of the so-called Diwali tradition. Modi's 'Clean India' can't change mindsets overnight" (*Malay Mail*, Oct. 26). **-- MH**

EMISSIONS:

EDF's Brownstein discusses future of methane regulations, state-level action

Published: Monday, October 27, 2014

With several states taking steps to address methane emissions from oil and natural gas systems, is a federal policy on methane needed? During today's OnPoint, Mark Brownstein, associate vice president and chief counsel of the U.S. Energy and Climate Program at the Environmental Defense Fund, explains why he believes U.S. EPA should move to regulate methane emissions under the Clean Air Act, despite a reported drop in emissions between 2012 and 2013.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Tue., October 28, 2014

READ FULL EDITION

1.SCIENCE:

Pending U.N. report states that lack of prompt action on climate change will lead to 'severe' and 'irreversible impacts' on planet

Continuing to pump greenhouse gases into the atmosphere will trigger "severe, pervasive and irreversible impacts for people, species and 27 ecosystems," concludes a landmark draft U.N. science report expected to be approved this week.

2.POLITICS:

Could a Republican Senate derail Obama's climate agenda?

With only a week to go before the 2014 midterm elections, polling from key battleground states indicates a small but widening advantage for Republicans. A six-seat net gain in the Senate would put both chambers of Congress under GOP control, uniting the two houses in opposition to many of the hallmark policies of the Obama presidency, including rules to curb carbon emissions from the nation's power sector.

TODAY'S STORIES

3.FOOD SECURITY:

As the globe's population grows, climate change contributes to loss of farmland -- report

4.SOLAR:

Price drop for photovoltaic arrays likely to continue -- DOE

5.BUSINESS:

'Economies of scale' trigger brisk bidding for big Minn. solar projects

6.FORESTS:
Drop in Amazon's 'greenness' raises concerns about its future as a carbon sink
7.TECHNOLOGY:
Cleaner materials may make lithium-ion batteries less toxic and safer
8.SUSTAINABILITY:
Agribusiness giant Bunge announces zero-deforestation commitment
9.PEOPLE:
Chatterjee to head U.S. Climate Action Network
10.CITIES:
San Diego-area mayors discuss climate plan, drought efforts
11.CALIFORNIA:
Law to reduce emissions may do little to prevent global warming
12.WEATHER:
Risk of severe Eurasian winters doubled with global warming
E&ETV'S ONPOINT
13.CAMPAIGN 2014:
LCV's Karpinski discusses final spending push ahead of midterms

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Tue., October 28, 2014

READ FULL EDITION

1.ELECTRICITY:
Clock ticking as Mich.'s Upper Peninsula aims to avoid rate shock
A relatively small coal-fired power plant on the southern shore of Lake Superior is at the center of a bitter dispute between Michigan and Wisconsin over who pays almost $100 million a year to keep it running. The battle has escalated in recent weeks, with interests in both states -- including utility regulators -- insisting that they pay no more than their fair share.

TOP STORIES
2.CAMPAIGN 2014:
'Trench fighting' in Texas town as frack ban comes down to the wire
3.TRANSPORT:
Railway's price hike takes aim at older crude-bearing cars
4.OFFSHORE DRILLING:
Citing court delays, Shell asks for 5 more years on Arctic leases
ELECTRICITY
5.SECURITY:
Weak spots persist in DOE's cyberdefenses -- inspector general
6.ELECTRICITY:
N.Y. utility says it is halfway to completing $1B 'hardening' blueprint
7.UTILITIES:

Mo.'s Ameren moves away from popular efficiency program

OIL AND GAS

8.NATURAL GAS:

La. ethane cracker will move ahead with higher $8.1B price tag

9.OFFSHORE DRILLING:

Gulf spill deposited oil in 'mosaic' pattern on ocean floor -- study

10.WORKFORCE:

Energy recruiter sets up shop in Japan

11.PIPELINES:

Methane line would cut through tourism-heavy Utah county

12.PUBLIC HEALTH:

Scientists explore whether fetal anomalies are tied to drilling

E&ETV'S ONPOINT

13.CAMPAIGN 2014:

LCV's Karpinski discusses final spending push ahead of midterms

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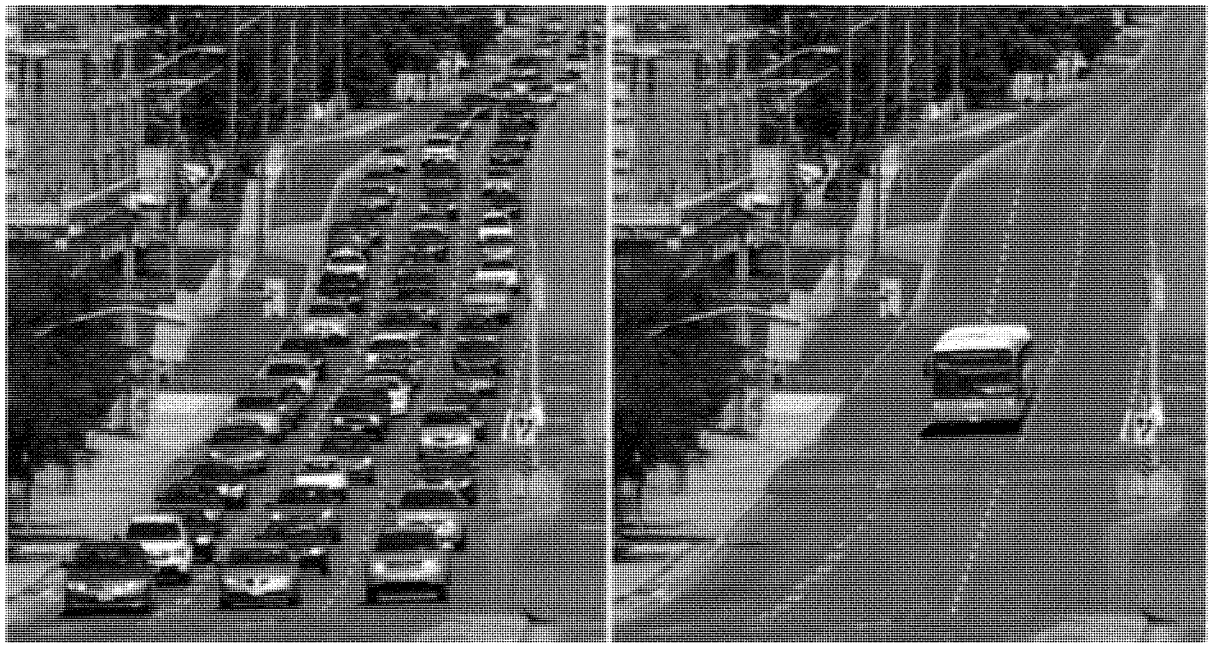

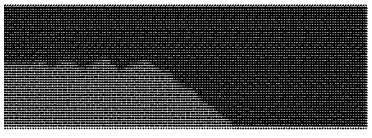

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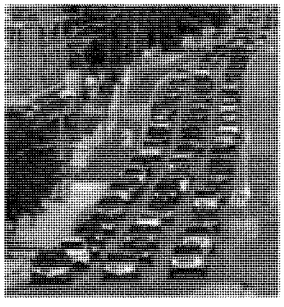

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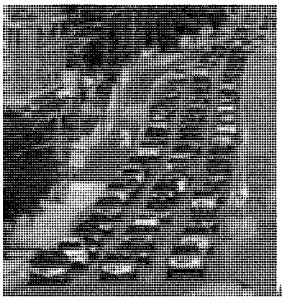
Subject: Air & Radiation Law News for October 23, 2014



Air & Radiation Law News

for October 23, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Court Sides With EPA Approval of Three States' Cap-and-Trade Regional Haze Plans

A federal appeals court has upheld the Environmental Protection Agency's decision allowing three Western states to adopt a regional cap-and-trade program to reduce regional haze, rejecting challenges filed by environmental groups...

Climate Change

Climate Envoys Seek Stronger Warning On Dangers in Key United Nations Report

The U.S. and European Union are pushing for a stronger explanation about the dangers of climate change and the consequences of failing to stem fossil fuel emissions in the United Nation's most extensive report on global warming....

Climate Change

Insurers Not Prepared for Risks Posed by Changing Climate, Ceres Analysis Says

Insurance companies show a "profound lack of preparedness" for addressing the risks climate change poses to their business, according to an analysis released Oct. 22 by sustainability advocacy group Ceres....

Climate Regulation

Energy Department Looks to Reduce Pipeline Methane Leaks Through Research, Regulation

The Energy Department wants to play an active role in accelerating the pipeline industry's methane leak reductions through research and, potentially, regulation, a senior Energy Department official said Oct. 22....

Climate Regulation

EPA Seeks Remand of Greenhouse Gas Permitting Rule From D.C. Circuit

The Environmental Protection Agency believes it can continue to apply greenhouse gas permitting requirements to large industrial sources under its existing tailoring rule and urged federal appellate judges not to vacate the regulation...

Climate Regulation

Pennsylvania Lawmakers Give Themselves Veto Power Over State Clean Power Plan

A bill (H.B. 2354) signed by Pennsylvania Gov. Tom Corbett (R) Oct. 22 adds a new layer of legislative oversight to the process of developing the state plan for meeting the Environmental Protection Agency's proposed carbon dioxide standards...

Congress

Republican Senate Would Pass House Energy Permitting Bills, Rep. McCarthy Says

A Republican-controlled Senate would likely approve House-passed bills to eliminate the need for presidential permits for cross-border energy projects like the Keystone XL pipeline and establish deadlines for federal agencies to approve...

Elections

Candidates Clash on Energy, Climate Issues At Heated New Hampshire Senate Debate

Incumbent Sen. Jeanne Shaheen (D) and Republican challenger Scott Brown clashed sharply on energy and climate change issues during their first debate Oct. 21 in New Hampshire's closely watched Senate contest. ...

Elections

Florida Amendment Would Designate Conservation Funding for 20 Years

Florida voters will decide Nov. 4 on a proposed state constitutional amendment to designate a third of the real estate document taxes collected for water and land conservation spending—amounting to about $650 million or just under...

Energy Efficiency

Massachusetts Ranked Most Energy Efficient

Massachusetts ranked as the most energy-efficient state for the fourth year in a row, according to a report by the nonprofit American Council for an Energy-Efficient Economy (ACEEE). The group also said in its State Energy Efficiency Scorecard...

Energy

Energy-Related Carbon Dioxide Emissions Increased 2.5 percent in 2013, EIA Says

U.S. energy-related carbon dioxide emissions increased 2.5 percent in 2013, as a result of colder weather, which led to an increase in residential and commercial energy demand for heating, the U.S. Energy Information Administration said....

Energy

New York Announces First Clean Energy Projects Funded Under New 'Green Bank'

New York Gov. Andrew M. Cuomo (D) announced the first programs that will be funded under the state's new "green bank" Oct. 22, providing $800 million in public and private funding over several years....

Energy

Stephen Burns Considered Possible Successor to NRC Chairman Macfarlane

Stephen Burns, a former general counsel at the Nuclear Regulatory Commission, is the apparent frontrunner to take over as NRC chairman following the surprise decision by Allison Macfarlane to leave the commission, according to a number of...

Hazmat Transport

FAA Fines Chinese Shipper Over Hazardous Liquids

The Federal Aviation Administration has proposed to fine a Chinese company $227,500 for improperly shipping a package containing a bottle of poisonous corrosive material and two bottles of a hazardous flammable liquid, the agency announced...

Hazmat Transport

Lawsuit Prompts California Distributor To Stop Unloading Crude From Railcars

A lawsuit filed by environmental advocates in September has led to an agreement with Interstate Oil Co. to stop unloading crude oil from railcars at its terminal in McClellan Park, Calif., early next month (Sierra Club v. Sacramento Metro....

Insurance

Damage From Fly Ash Spread at Golf Course Not Covered by Developer's Insurance Policy

Pollution exclusions absolve two insurers of having to pay defense costs in suits brought by over 400 plaintiffs alleging personal injury and property damage from the development of a golf course, the U.S. Court of Appeals for the Tenth Circuit held...

International Climate

Discussion of 2015 National Contributions Dominate Third Day of Bonn Climate Talks

The main negotiating track at the Bonn Climate Change Conference Oct. 22 focused on the arduous topic of how countries' voluntary "contributions" should be included in the global agreement to be finalized next year....

International Climate

EU Standing as Climate Leader Hinges on Plan Setting 2030 Emissions Target: Diplomat

European Council approval this week of 2030 targets to cut greenhouse gas emissions—considered likely but not a done deal—would give the bloc bragging rights as the first major player to offer cuts toward a 2015 global climate...

International Climate

Peru May Inject Cash Into Climate Fund To Spur Coming UN-Mandated Lima Talks

Peru, which will host this year's biggest climate summit, may pledge money for a United Nations fund to inject fresh momentum into international negotiations....

International Issues

European Parliament Confirms New EU Environment, Climate Commissioners

Members of the European Parliament Oct. 22 voted 423-209 with 67 abstentions to approve the new European Commissioners, or top officials who will propose and monitor the implementation of European Union legislation through 2019....

Natural Gas

British Columbia Bills Set Tax Rates, Emissions Benchmarks for LNG Industry

British Columbia's government has introduced legislation detailing emissions and tax frameworks the province's nascent liquefied natural gas industry has been awaiting in order to make investment decisions....

Natural Gas

FERC Urged Not to Stay Cove Point Decision

Dominion Resources told the Federal Energy Regulatory Commission it has every reason to stand by its approval of construction of a natural gas export terminal in Maryland and should reject environmental groups' petition for a stay of...

Renewable Energy

China Cuts Offshore Wind Outlook In First Miss of Renewable Energy Goal

China slashed its forecasts for offshore wind power by 60 percent, an acknowledgment that installations are being held up by the cost and complexity of the technology....

Renewable Energy

Japan Explores Ways to Increase Renewable Energy Overall, While Curbing Solar Reliance

Japan is exploring ways to increase the country's renewable energy projects overall while curbing the purchase of solar power, but its options may be limited. ...

Vehicle Fuels

Citizens Group Sues EPA Over Documents About Renewable Fuel Standard Meetings

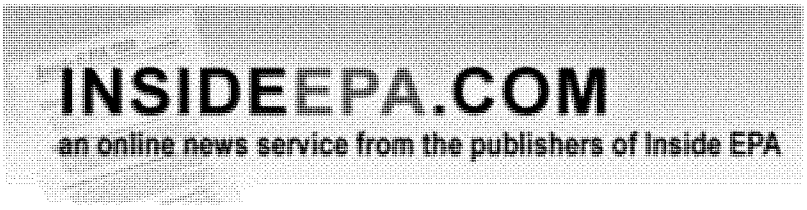
A citizens group sued the Environmental Protection Agency after it failed to provide additional documents about meetings with petroleum companies about the 2014 renewable fuel standard (Citizens for Responsibility and Ethics in Washington...

BNA INSIGHTS

Clean Air Act: New Developments That Are Redefining the Enforcement Landscape

In its own strategic plan, the Environmental Protection Agency anticipates a decline of more than 30

percent in federal inspections and evaluations during the next five years and also expects to bring 40 percent fewer civil judicial and administrative...



Inside EPA **Weekly Report**, 10/24/2014

http://insideepa.com/newsletters/inside-epa

Latest News

10th Circuit Boosts States' Authority To Use SO2 Trading In Haze Air Plans

The U.S. Court of Appeals for the 10th Circuit has rejected environmentalists' suit challenging EPA's approval of several western states' use of a sulfur dioxide (SO2) emissions trading program to satisfy regional haze air plan pollution control mandates, boosting states' authority to use cap-and-trade to meet their haze program requirements.

CSAPR Advocates Downplay Harms From D.C. Circuit Lifting Rule's Stay

Proponents of EPA's Cross-State Air Pollution Rule (CSAPR) are downplaying the harms to states or utilities if the U.S. Court of Appeals for the District of Columbia Circuit rules to lift a stay on implementing the rule, saying that either immediate reinstatement of the rule or a delayed implementation schedule would impose minimal harms.

D.C. Circuit Seeks Briefing On Jurisdiction Over States' Novel ESPS Suit

A federal appellate court has rejected a request by West Virginia and other states to expedite consideration of their novel lawsuit against EPA's proposed greenhouse gas (GHG) standards for existing power plants and is asking parties to submit briefs within the next month on whether the court has jurisdiction over the case.

Greenwire

NRC:

Leadership scramble starts as chairwoman steps down

Katherine Ling and Hannah Northey, E&E reporters

Published: Wednesday, October 22, 2014

The Nuclear Regulatory Commission chairwoman's announcement yesterday that she'd resign at year's end plunged the agency once more into uncertainty about its leadership and direction.

Chairwoman Allison Macfarlane plans to leave the NRC to direct the Center for International Science and Technology Policy at George Washington University, cutting short a five-year term slated to end June 30, 2018.

Her announcement followed the departures of two other commissioners earlier this year and a recent past history of infighting and political intrigue at the agency.

It's not clear who'll follow Macfarlane. The White House must designate a chairman from sitting commissioners. There are currently three on the panel, with a fourth to be sworn in next month.

The most likely person to be tapped, industry sources say, is the fourth member -- former NRC General Counsel Stephen Burns, whom the Senate confirmed last month to a full five-year term. He is scheduled to be sworn in Nov. 5, NRC spokesman Eliot Brenner said.

The next NRC leader must take the reins of an agency that has come under political pressure and scrutiny over concerns about nuclear safety since the 2011 disaster in Japan, an aging U.S. nuclear fleet and workforce, and, most of all, the country's legacy of radioactive waste and the fight over long-term storage at Yucca Mountain, Nev.

The Yucca Mountain, Nev., repository and its powerful critic, Senate Majority Leader Harry Reid (D-Nev.), will play a key role in the White House's decision for the next NRC chairman and the nominee for Macfarlane's position.

Reid was instrumental in placing former NRC Chairman Gregory Jaczko, his former staffer, at the head of the NRC to halt the review of the now-abandoned repository. Jaczko's time as chairman was tumultuous, marred by opposition to his management style from his fellow commissioners and staffers. He's blamed by many in the industry for politicizing what was once considered a technical, nonpolitical agency.

President Obama nominated Macfarlane in 2012 after Jaczko resigned, and the Senate confirmed her for a second term as chairwoman in June 2013.

Macfarlane, who has led NRC since 2012, said she was brought to the agency to "right the ship" after the tumultuous tenure of Jaczko and to ensure lessons from the Fukushima Daiichi nuclear disaster were implemented in the United States, and "with those key objectives accomplished," she would return to academia.

She was seen as a breath of fresh air after Jaczko's public spat with his former colleagues, two Republicans and two Democrats who complained to the White House about his management style and attempts to block information. Jaczko denied the allegations.

Sen. David Vitter (R-La.), ranking member on the Environment and Public Works Committee, which oversees the NRC, applauded Macfarlane's leadership, saying in a statement she "handled a tough leadership situation at the NRC with grace, even as she was pushed to undermine the industry and implement unnecessary regulations."

The Nuclear Energy Industry also commended Macfarlane for her service and "effectiveness in restoring collaboration and collegiality at the commission," Steve Kerekes, an NEI spokesman, said in an email.

But Macfarlane ran into conflict with Sen. Barbara Boxer (D-Calif.), chairwoman of the EPW panel. Among other things, Boxer criticized Macfarlane for not handing over information tied to the now-shuttered San Onofre nuclear plant in California.

Boxer and Sen. Ed Markey (D-Mass.) also recently criticized a rumored agency draft proposal that calls for the NRC's Office of General Counsel to recommend procedural changes to the Office of Investigations. The NRC denied that any such action was in the works (*E&ENews PM*, Oct. 9).

Paul Dickman, a government scientist and former senior official at NRC, said the political scrutiny and recent turmoil, plus the barrage of document requests and questions, were having a significant effect on morale at the agency and likely contributed to Macfarlane's decision to leave.

"It is intended to create a nuisance and a distraction, and it does," Dickman said. The turnover of leadership, along with senior staff leaving, is "a huge concern" for the agency and industry, he added.

"The technical strength and knowledge base on the commission and NRC is essential. Staff turnover is always expected, but stability is absolutely necessary," said Dickman, who is also on the board of the American Nuclear Society.

"A big concern we all have in the nuclear industry is that this is one of the technically weakest commissions we have ever had, and that does have an impact on staff actions and decisions," he said.

Chairman Burns?

The NRC has five seats on the commission. After Macfarlane leaves, two seats will be filled by Republicans and one by a Democrat. After being sworn in, Burns will fill a Democratic seat.

Kristine Svinicki, a Republican and former nuclear engineer and policy adviser in the Senate, is in her second term as a commissioner, which ends June 30, 2017.

William Ostendorff, also a Republican, is in his second term as commissioner, finishing in June 2016. He was the former director of the Committee on Science, Engineering and Public Policy and a director of the Board on Global Science and Technology at the National Academies.

The Democratic commissioner is Jeffery Baran, a former aide to Rep. Henry Waxman (D-Calif.), who is serving the remainder of former Commissioner Bill Magwood's term -- about a year. Baran was criticized by Republicans during the nomination process for his lack of regulatory experience.

Vitter said of both Baran and Burns during the confirmation process that although the nominees' "dedication to public service is clearly demonstrated, I question the potential of their contribution to the Nuclear Regulatory Commission." Vitter's criticism was shared by Sen. Jeff Sessions (R-Ala.), who said Baran didn't grasp the independent nature of the NRC and questioned Burns' legal advice to Jaczko.

Burns was general counsel under Jaczko and defended his decision to assume "emergency powers" after the Fukushima accident, which was the primary factor for the turmoil three years ago at the agency.

Burns was the head of legal affairs for the Organization for Economic Cooperation and Development, where he went after working as NRC general counsel from 2009 to 2012. He had been at the nuclear

agency since 1978 in the roles of deputy general counsel; associate general counsel for hearings, enforcement and administration; and executive assistant for then-NRC Chairman Kenneth Carr in the late 1980s (*E&E Daily*, July 23).

"Burns has been there a long time, has experience, but ... Jaczko's assumption of emergency powers after Fukushima was one of the most extreme abuses of power I've seen in government," Sessions said during the confirmation process. "This was the lawyer that advised him that he had the power to do it."

But other industry insiders agree Burns is the only current prospect with managerial experience and the likely Reid support necessary to be chosen by the White House for the top position.

Reid "is going to get his guy," said Mike McKenna, an energy lobbyist and GOP strategist. "And make no mistake, Burns is his guy."

EPA:

Deputy chief of staff stepping down

Robin Bravender, E&E reporter

Published: Wednesday, October 22, 2014

Arvin Ganesan, one of U.S. EPA chief Gina McCarthy's top advisers, is leaving the agency.

Ganesan, McCarthy's deputy chief of staff, who has been an EPA political official since early in the Obama administration, is leaving the agency to join an industry association that promotes "advanced" energy technologies.

PEOPLE

He'll be vice president for federal policy at Advanced Energy Economy, a relatively new Washington, D.C.-based trade group that promotes energy efficiency, natural gas electric generation, solar, wind, nuclear, electric vehicles, biofuels and other energy technologies with the stated goal of "making the global energy system more secure, clean and affordable." Members include some big-name companies like Microsoft, General Electric, Verizon and Philips.

"I'll be providing advice to the companies on how to engage with Congress and with the administration," Ganesan said yesterday in an interview.

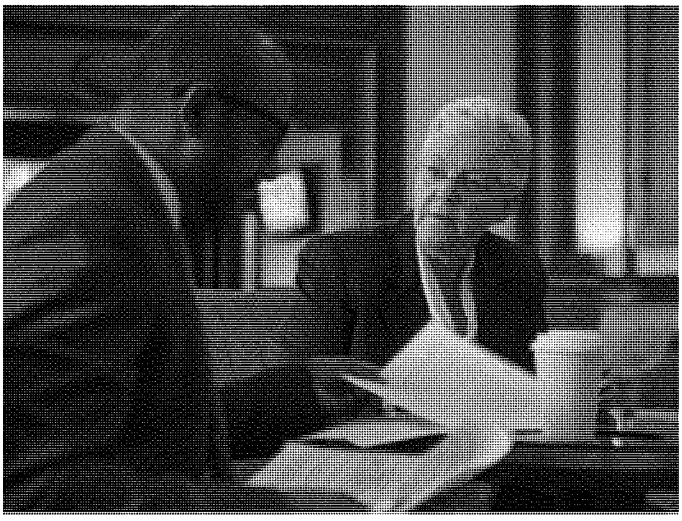
AEE CEO Graham Richard said today in a statement that Ganesan will be "a tremendous asset as we work with Congress and the administration to create a prosperous future powered by secure, clean, affordable energy."

Ganesan started at EPA in 2009 as deputy associate administrator for congressional affairs under David McIntosh, who then led the congressional affairs shop. When McIntosh left in 2011 to become a lobbyist at Siemens Corp., Ganesan was promoted to take his place. In July 2013, shortly after being confirmed as EPA chief, Gina McCarthy promoted Ganesan again to be her deputy chief of staff for policy.

Prior to joining EPA, Ganesan worked on Capitol Hill as a senior policy adviser to the late Sen. Frank

Lautenberg (D-N.J.). It was there that he first worked with former EPA chief Lisa Jackson, who was at the time commissioner of New Jersey's Department of Environmental Protection.

As McCarthy's deputy chief of staff, Ganesan's portfolio included managing science-related issues, several different water policy topics and climate adaptation matters. He worked extensively on an EPA proposal to specify which waters should get Clean Water Act protection, which he said is in capable hands at the agency.



Arvin Ganesan speaking with EPA Administrator Gina McCarthy as she prepared to give a speech earlier this year. Photo courtesy of U.S. EPA.

"I think that the administrator has made very clear her desire to clarify the scope of the Clean Water Act, and the rule is still in public comment right now," Ganesan said. "I feel very confident that the administrator's desire, as well as the talent in the agency -- including Ken Kopocis, who's the deputy administrator in the Office of Water -- will be able to see this rule through to the end."

Ganesan said he has "no doubt that EPA under Gina McCarthy's leadership will remain highly successful and important."

His last day at EPA is Oct. 31; he's slated to start at AEE on Nov. 4.

Tom Reynolds, associate administrator of EPA's public affairs office, said the agency hasn't yet selected a replacement for Ganesan. "The administrator is still reviewing that," he said. "There is a plethora of talented staff here at the agency. While we will miss Arvin deeply, we're pretty confident we're not going to miss a beat."

CLIMATE:

Senate-voting states don't like EPA power plant rule -- industry poll

Jean Chemnick, E&E reporter

Published: Wednesday, October 22, 2014

This story was updated at 2:28 p.m. EDT.

Voters in states with competitive Senate races this year are more wary of U.S. EPA's proposed Clean Power Plan than the national average, according to a new industry-backed poll.

The poll was released today by the Partnership for a Better Energy Future, a coalition of anti-regulatory industry groups led by the National Association of Manufacturers and U.S. Chamber of Commerce that was created early this year to oppose EPA's greenhouse gas rules.

It found that voters registered in 11 Senate battleground states were highly aware of EPA's proposal for existing power plant greenhouse gas emissions and responded negatively when presented with economic and reliability consequences that the poll said could follow from the draft.

The survey by Paragon Insights included 1,340 likely voters nationwide and broke out results for Arkansas, Colorado, Florida, Georgia, Iowa, Kentucky, Missouri, Montana, Pennsylvania, Tennessee and Virginia.

Voters were asked whether a series of "possible scenarios" would make them more or less likely to oppose the rule. Eight of the scenarios were negative or mostly negative, and one -- "the new regulations could allow for expansion of the green technology industry" -- was positive.

Forty-seven percent of voters nationwide said they opposed the regulations, but voters in many of the Senate battlegrounds expressed stronger opposition.

The coal states of Kentucky, Montana and Virginia had a substantial segment of voters who were likely to have heard at least something about the EPA draft -- 60 percent for Kentucky, 59 percent for Montana and 58 percent for Virginia, compared with a national average 55 percent.

Voters from Montana and Virginia had stronger reactions to the pollster's suggestion that the rule would result in "job losses in your state" -- 57 percent for Virginia and 60 percent in Montana. Fifty-two percent of respondents nationally said they would be less likely to support the rule if it resulted in job losses in their states. Interestingly, 50 percent of voters in Kentucky, where opposition to the EPA rule is a cornerstone of Senate Republican Leader Mitch McConnell's re-election campaign, said that knowledge would strengthen their opposition.

The U.S. Chamber and NAM touted the poll as yet more evidence that EPA's rule is not popular with voters.

"A self-inflicted wound like this threatens the comeback underway in the manufacturing sector and makes it harder for manufacturers to compete, expand and create jobs," said NAM CEO Jay Timmons.

"EPA's push to implement one of the most complicated and costliest rules in history is creating real concerns across the country that should not be ignored," said Karen Harbert, president and CEO of the chamber's Institute for 21st Century Energy.

But the Climate Action Campaign pointed to recent polling showing that the rule is popular with voters and blasted the industry partnership for conducting a "flawed" survey "designed to prop up the false notion that Americans want dirty air filled with carbon pollution."

"This is nothing more than a brazen push poll -- paid for by wealthy polluters," said Pete Altman, climate campaign director for the Natural Resources Defense Council. "And even so, they failed to produce a majority to oppose limits on carbon pollution."

The industry poll was conducted Oct. 3-9. It had a 2.7-point margin of error, though no information was

given about the partisan breakdown of the voters surveyed.

NEW HAMPSHIRE:

Shaheen, Brown clash over climate, nukes; both duck carbon tax talk

Nick Juliano, E&E reporter

Published: Wednesday, October 22, 2014

Sen. Jeanne Shaheen (D-N.H.) and Republican challenger Scott Brown tussled over nuclear power and climate change in the first televised debate of their campaign last night.

The tight race between Shaheen, who is fighting for her second term, and Brown, the former half-term Massachusetts senator, could determine which party controls the upper chamber next year, along with a handful of other close races. Discussion of energy and climate issues occupied a relatively small portion of the debate, which also touched on Ebola, the economy, immigration and health care policy, among other areas.

The two candidates mostly exchanged well-honed attacks. Brown accused Shaheen of "paving the way for a national energy tax," also the subject of a TV ad the campaign unveiled this week. Shaheen said Brown's top priority was voting for "subsidies for oil companies." The Brown attack is premised on Shaheen's 2013 vote for a nonbinding amendment to the budget resolution that would have directed revenues from a carbon tax be returned to the people. Shaheen was referring to a pair of votes Brown took against Democratic bills that would have eliminated a variety of tax incentives enjoyed by oil and gas drillers.

On climate change, the candidates staked out different views when asked whether they agreed with most scientists that human activity was to blame. Shaheen said it was "man-made, from burning fossil fuels," while Brown said, "I think it's a combination approach, man-made and natural."

Moderator Chuck Todd, the host of NBC's "Meet the Press," pressed the candidates on whether the government should ever put a price on carbon emissions to control climate change, at one point even noting that most energy producers assume such a fee will eventually be imposed.

"Oil companies are budgeting for it, should they be?" Todd asked in the midst of a protracted exchange on the issue.

Still, neither candidate would directly grapple with whether a carbon tax would ever be necessary. Shaheen reiterated her support for an "energy strategy" that would focus on energy efficiency and alternative sources while eliminating "subsidies for oil companies." Brown returned to his attack on Shaheen for supporting "cap and trade" and an "energy tax" that he said would harm the economy but would not say how he would deal with climate change.

"I'm not going to talk about whether we're going to do something in the future," Brown said. "We need to deal with these issues now."

Earlier, the two shared a terse exchange over nuclear power, when Brown said as part of a litany of criticisms that Shaheen "is against nuclear."

"No I'm not," Shaheen interjected. "Where did you get that?"

Brown said he was referring to her prior opposition to opening the Seabrook nuclear power station in the state, which entered operation in the 1990s.

New Hampshire Republicans also accused Shaheen of flip-flopping on nuclear power in her first run for the Senate in 2008, pointing to statements she made as a Democratic activist in the 1980s, when she was managing the campaign of an anti-nuclear candidate for governor, according to press reports from the time. Shaheen's campaign said at the time the statements were taken out of context and that she recognized nuclear power as part of the mix but that it should not be subsidized or expanded until waste is addressed.

In the debate last night, Brown, apparently relying on the same history, said Shaheen "made an effort to stop" the power plant. Shaheen responded that she was "not in office at the time," and her challenger moved on to another topic.

NORTH CAROLINA:

Tillis tacks slightly toward center on climate change

Daniel Bush, E&E reporter

Published: Wednesday, October 22, 2014

North Carolina Republican Senate nominee Thom Tillis shifted more toward the center on climate change yesterday, saying the argument is still out on the causes of global warming.

In an hourlong appearance on a local television news show, Tillis, the state House speaker, distanced himself from comments he made during a Republican primary debate that climate change doesn't exist.

"The reality is that climate does change over time," said Tillis, who is running against Sen. Kay Hagan (D) in one of the country's closest Senate races. "The argument is over to what extent human factors are involved and what can we do to influence it."

The news show was intended to be a debate between Tillis and Hagan, but Hagan declined to participate, leading event sponsor Time Warner Cable to recast the program as "A conversation with Thom Tillis" on topics ranging from energy to education and same-sex marriage.

While Tillis adopted a more moderate tone on climate change, he still went after Hagan and President Obama for environmental policies that he said have led to cuts in domestic energy production and jobs.

Approving the Keystone XL pipeline and offshore drilling projects would help turn the United States into an "energy superpower" capable of exporting energy to Western Europe and elsewhere, Tillis said.

"We have to look at anything we can do to reduce any human contributions to greenhouse gases, but this president is overreaching, and Sen. Hagan is supporting him," he added.

Tillis also criticized U.S. EPA's proposed power plant regulations, claiming that they would cost 600,000 jobs and "millions and billions of dollars" over time.

"I love being outdoors, I love clean air, I love clean water," said Tillis, who said he has a camping trip planned for after the election. "It's a matter of just how far you have to go to ensure that we have that clean and healthy environment."

Hagan's campaign released an online statement as soon as Tillis went off air claiming he couldn't "even win a debate with himself."

"It's clear Kay is the only candidate in this race who will put North Carolina's best interests first," said Hagan campaign spokeswoman Sadie Weiner.

The solo debate came as both candidates race to the finish line in the most expensive Senate race in the country. Outside groups have spent a combined $55 million attacking Hagan and Tillis, who remain locked in the polls with less than two weeks to go before next month's election.

In a boost for Hagan, the League of Conservation Voters Victory Fund today announced a new $4.2 million ad and get-out-the-vote campaign to help re-elect Hagan.

LCV's effort will include a $2.2 million voter outreach program and two new television ads highlighting Tillis' opposition to environmental protections and the support his campaign has received from outside groups linked to the oil magnates Charles and David Koch.

One of the ads slams Tillis for backing a bill in the state Legislature that environmentalists say won't do enough to hold Duke Energy Corp. accountable for a coal ash spill in the state earlier this year.

Last month, the environmental group named Tillis to its "Dirty Dozen" list of candidates with weak environmental records. The list also includes Republican Senate nominees Joni Ernst (Iowa) and Cory Gardner (Colo.).

AIR POLLUTION:

Appeals court backs EPA on regional haze program

Amanda Peterka, E&E reporter

Published: Wednesday, October 22, 2014

A federal court yesterday affirmed EPA's approval of a regional cap-and-trade program for sulfur dioxide emissions in the Colorado Plateau over objections by environmentalists.

The 10th U.S. Circuit Court of Appeals ruled that EPA acted within the bounds of the Clean Air Act when it found that the program would achieve necessary visibility improvements in nearby national parks and wildernesses.

A coalition that included WildEarth Guardians, the National Parks Conservation Association and the Sierra Club had challenged the program, arguing that it would allow regional coal-fired power plants to emit more SO2 than plants in other areas of the country.

"We conclude that the EPA's decision was neither arbitrary nor capricious," Circuit Judge Robert Bacharach wrote yesterday in an opinion rejecting the groups' petitions for review.

The lawsuit centered on a cap-and-trade program adopted by New Mexico, Utah, Wyoming, and New Mexico's Albuquerque and Bernalillo County to reduce regional SO2 emissions.

Through the program, polluters were given ceilings for SO2 emissions; if they cut pollution below those ceilings, they could trade the unused portions of their allocations with other emitters. The program established milestones for SO2 reductions through 2018.

A Grand Canyon Visibility Transport Commission mandated by Congress and established by EPA to assess regional haze pollution in the Grand Canyon region had recommended such a cap-and-trade program.

EPA in 2012 determined that the program satisfied Clean Air Act requirements for pollution sources to reduce pollutants linked to poor visibility at national parks and wildernesses. The agency approved the trading program in lieu of the installation of best available retrofit technology, or BART, finding that the plan would yield greater improvements in visibility.

In their lawsuit, environmentalists argued that EPA should not have approved the trading program. They said that it did not achieve greater visibility progress than would be achieved if EPA required the installation of control technologies at coal-fired power plants in the region. They also faulted the program for not encompassing all the states in the region and said that New Mexico did not properly analyze emissions from one of its coal plants.

The court rejected all the environmental groups' arguments.

Western utilities had intervened in the lawsuit on behalf of EPA, while the American Coalition for Clean Coal Electricity participated in a friend-of-the-court brief.

In a statement yesterday, the environmental groups said that the court's decision would allow eight of the oldest and dirtiest coal-fired power plants in the region to release as much as double the SO2 that other coal plants in the country are allowed to emit.

"Coal-fired power plants polluting the Colorado Plateau should be held to the same pollution control standards required elsewhere," Earthjustice attorney Jenny Harbine said in a statement. "There is no excuse for these plants to get a free pass to foul the air over our nation's treasured national parks and wilderness areas."

BIOFUELS:

Watchdog sues EPA over 2014 RFS documents

Amanda Peterka, E&E reporter

Published: Wednesday, October 22, 2014

A nonprofit legal watchdog yesterday launched a lawsuit against U.S. EPA accusing the agency of failing to respond to a request for documents related to the renewable fuel standard.

Citizens for Responsibility and Ethics in Washington had requested documents under the Freedom of Information Act tied to the agency's shaping of the 2014 mandates for renewable fuels. In a complaint filed yesterday in the U.S. District Court for the District of Columbia, the group said that EPA had failed to respond within the required 20 business days after it filed the request.

"By failing to release the records as plaintiff specifically requested, defendant violated the FOIA," the complaint says.

Last November, EPA for the first time proposed to roll back the nation's mandates for ethanol and advanced biofuel use in 2014, largely on the grounds that there's a technical limit to the amount of ethanol that can be used in gasoline (*Greenwire*, Nov. 15, 2013).

In May, CREW filed a Freedom of Information request with the agency seeking external and intra-agency communications records related to the proposed rule. The FOIA request was prompted by a Reuters article that detailed lobbying by the Carlyle Group and Delta Air Lines Inc. to reduce the RFS mandates.

In filing the request, CREW said it was concerned that the agency had allowed itself to be improperly influenced over the rule.

EPA denied CREW's plea that it expedite the request for records, saying in a June letter that the group had not demonstrated that swift action was needed. According to the complaint, CREW and EPA had a series of exchanges about the scope of the request that led to a Sept. 26 release of documents covering only the calendar year 2013. EPA told the group that it continued to work on the rest of the request but did not provide an expected date of completion.

In a statement today, CREW charged that EPA was allowing politics to shape the 2014 renewable fuel targets. CREW asked the court to compel EPA to "immediately" release the requested records.

"Is the EPA slow-walking its release of these documents because it does not want the public to learn how political the RFS has become?" CREW Executive Director Melanie Sloan asked in a statement. "The RFS should be based on sound energy policy, not politics. CREW's lawsuit will shed light on what really went on at the EPA."

CREW has also called on EPA's inspector general to launch an investigation into whether groups connected with Pennsylvania refineries improperly influenced the agency over the 2014 rule (*E&ENews PM*, May 22).

The final 2014 RFS rule has been at the White House for review since August. Industry observers believe that the agency will release it after the midterm elections.

EPA did not comment on the lawsuit but said it was still working on the FOIA request.

CARBON CAPTURE:

DOE-backed project turning Texas plant's CO2 into baking soda, bleach

Katherine Ling, E&E reporter

Published: Wednesday, October 22, 2014

Carbon emissions from a Texas cement plant are being captured and converted to baking soda and bleach under a new demonstration project funded by the Energy Department.

Skyonic Corp. unveiled its $125 million facility and technology yesterday for removing 300,000 tons of CO2 annually at the Capitol Aggregates cement plant in San Antonio and replacing additional carbon needed to make bleach and baking soda.

The commercial options for captured CO2 emissions have been focused mostly on injections to propel oil from depleted wells. Widening options for captured emissions is key to generating revenue for developing commercially viable CO2 technologies.

The Capitol SkyMine plant is expected to generate about $48 million in revenue and $28 million in annual earnings from its products and create 40 permanent full-time jobs, the company said.

DOE provided $28 million of the 2009 stimulus funds to help finance the $40 million technology and provide support for testing and modeling.

The technology has been designed to be retrofitted to existing coal-burning power plants, but it could also be used for cement, glass, steel and natural gas plants, DOE said.

Skyonic is also looking into using the captured carbon as a feedstock for algae, according to the agency.

"Today's announcement demonstrates the range and potential for carbon capture technologies," Energy Secretary Ernest Moniz said in a statement. "Through this partnership, the department has shown its commitment to finding innovative uses for carbon that can have a positive impact on the economy while also reducing carbon emissions."

The SkyMine process can capture up to 90 percent of CO2 emissions and has scrubbers that also remove sulfur oxides, nitrogen oxides, and mercury and other heavy metals, Skyonic said.

Skyonic CEO and founder Joe Jones said in a statement that the new technology was a "smart business decision that makes money."

"Our business partners can use this technology to meet emissions requirements, replace costly scrubbing technologies and increase revenues. Skyonic is proud to partner with Capitol Aggregates to launch Capitol SkyMine, which will transform greenhouse gases into profits and change the way we all look at emissions."

FINANCE:

N.Y. green bank steers $800M to 7 'clean energy' projects

Colin Sullivan, E&E reporter

Published: Wednesday, October 22, 2014

NEW YORK -- Gov. Andrew Cuomo (D) today revealed the first seven projects to be funded by his state's "green bank," totaling $800 million worth of private and public investments.

Though the deals are not yet closed, Cuomo announced the participants in and the developers of the first seven projects to be financed by the ambitious financing mechanism, which will seek to route more than $1 billion to the state's "clean energy" sector in the years ahead.

The green bank's initial public investment of $200 million in these projects has been matched by $600 million from a high-profile list of financial institutions, among them Bank of America Merrill Lynch, Citi, Deutsche Bank and First Niagara Bank.

The idea is to attract the private funds to projects that would otherwise have trouble accessing money to get the work off the ground. The first seven investments will fund a small-scale solar project in Lackawanna, N.Y., co-generation facilities in New York City and energy efficiency projects across the state, among others.

Rather than providing grants, the green bank seeks to set up mechanisms to ease market anxiety about

funding these sorts of unproved assets. The tools are set up by the New York State Energy Research and Development Authority (NYSERDA), which is run by former Goldman Sachs partner Richard Kauffman, and include such mechanisms as credit enhancement, loan loss reserves and loan bundling.

A NYSERDA memo on the projects announced today said the clean energy sector usually fails to attract capital due to federal policy uncertainty, insufficient performance data and the lack of publicly traded capital markets for their sectors.

Cuomo sought to emphasize in a news release that the money will be paid back to the state and the lending institutions at fair market rates.

"The state's contribution to these projects will support jobs and economic activity in our communities, and it is helping to grow the market for clean technology in New York by paving the way for more frequent and accessible funding going forward," he said in a statement that also claimed an annual reduction of 575,000 tons of carbon dioxide through the projects.

The announcement comes as Cuomo is set to square off tonight with Republican rival Rob Astorino, the Westchester County executive, in their last debate before next month's election. Cuomo is so far polling well ahead of Astorino and yesterday secured the endorsement of the New York League of Conservation Voters, which cited his work on the green bank (*E&ENews PM*, Oct. 21).

Cuomo's office says the deals announced today should be closed by the end of the year.

The seven projects include:

- A deal involving First Niagara, M&T Bank and BQ Energy to develop a 4-megawatt, ground-mounted solar energy project on the former Bethlehem Steel Mill site in Lackawanna. The site is also a brownfields cleanup project.

- Financing for Ameresco Inc. to develop commercial and industrial energy efficiency and distributed generation and "fill gaps" in financing for its projects.

- A Bank of America Merrill Lynch arrangement with the green bank to design better energy efficiency financing products.

- A deal with Citi to fund Renewable Funding LLC's "warehouse for energy efficiency loans" program, which expands availability of energy efficiency loans for homeowners.

- Funding for GreenCity Power, provided in part by Tulum Management, to back co-generation projects in New York City. GreenCity Power projects will focus on small-scale co-gen plants for hospitals, hotels and office buildings.

Click here for more details on all seven projects.

ELECTRICITY:

Backup grids ensure reliability at military bases

Published: Wednesday, October 22, 2014

Military bases across the country are working to develop their own power grids to protect themselves from

hackers, terrorists and natural disasters.

The Marine Corps Air Ground Combat Center in Twentynine Palms, Calif., is almost done building a system of small power plants, solar panels, batteries and diesel generators that will allow the base to operate even if there is a service interruption from Southern California Edison.

"A lot of bases want what we've got," said Gary Morrissett, the base's energy manager.

Military officials say they are more dependent than ever on a steady flow of electricity, because even bases in the United States need to be in constant connection with forces overseas. Concerns are also heightened in the aftermath of an attack that disabled a San Jose, Calif.-area electrical substation when unidentified shooters fired guns at 17 transformers.

"When I was a major in the first Gulf War, we went over there without computers or email," said Greg Bean, a retired Army colonel who is now the director of public works at Fort Bragg in North Carolina. "Now, if you lose a server, your operations almost cease" (Rebecca Smith, *Wall Street Journal*, Oct. 21). **-- SP**

SOLAR:

Utilities edge into market for rooftop panels

Published: Wednesday, October 22, 2014

Large utility companies are expanding into the residential solar market as they try competing with the industry they once viewed as a threat.

If the trend holds, utilities' financial resources and access to customers have the potential to greatly expand the use of solar energy, which by some estimates powers about 500,000 homes and businesses in the United States.

In Arizona, the state's largest utility has proposed putting solar panels on the homes of 3,000 customers in exchange for savings on their power bills.

Arizona Public Service proposed spending $70 million on the installations, and Tucson Electric Power proposed giving customers a fixed rate for electricity in exchange for letting the utility install rooftop solar panels.

Solar companies are fighting the utilities' shift in strategy. The Alliance for Solar Choice, an industry group, says utilities have an unfair advantage over their companies because state regulators guarantee them certain profit margins on the sale of electricity. That gives them a leg up to use those profits to invest in solar ventures, the group contends.

Still, the solar market has received millions in government support -- including a new deal with New York state to provide $750 million in infrastructure and equipment purchases for a SolarCity factory (Nichola Groom, Reuters, Oct. 22). **-- SP**

SOLAR:

Corporations offer employees PV perks

Published: Wednesday, October 22, 2014

A number of major companies are adding solar energy system discounts to their lists of employee benefits.

The Solar Community Initiative, announced today, will give more than 100,000 employees of Cisco Systems Inc., 3M Co., Kimberly-Clark Corp. and *National Geographic* substantially lower rates at which to buy or lease solar panels for their homes, with options for friends and family.

After offering deep discounts to its own employees last year, the World Wildlife Fund reached out to corporate partners with the program using cost-comparison site Geostellar, which benefits the virtual marketplace by helping drive down the high costs of solar operations.

Following up other corporate partnerships like the one between SolarCity Corp. and Honda Motor Co., the companies have already seen interest in the program, which reduces the average U.S. base cost of a solar system by almost 34 percent.

It also fits in smoothly with sustainability initiatives already in place.

"I get the emails: 'Why aren't we recycling this?' or 'Why don't we have 45,000 more electric vehicle charging stations?'" said Ali Ahmed, who manages energy and sustainability at Cisco. "So we had a really good feeling that our employees would engage and latch onto this kind of discount" (Diane Cardwell, *New York Times*, Oct. 22). **-- DTB**

AUTOS:

Ford to roll out all-aluminum truck in December

Published: Wednesday, October 22, 2014

In December, Ford will release a new F-150 that is the first high-volume vehicle with all-aluminum body panels, which experts say is a gamble.

Ford is advertising improvements in efficiency, performance, towing and hauling. But no company has ever attempted to manufacture an aluminum vehicle on such a grand scale. The company invested $1.4 billion into two factories that are producing the lightweight trucks. Previous models of F-150s have been bestsellers for the company.

Competitors such as General Motors and Ram are already cutting prices of their vehicles to attract disaffected Ford owners and new buyers.

One of the main issues against the new aluminum-built vehicles is that insurance and repair costs are unknown. Aluminum is difficult to manufacture at high quality.

"When you combine the enormous upfront cost to install new machinery with the added risk of a higher-cost material on your highest-volume vehicle, it's a risky proposition," said Andrew Lane, an analyst specializing in aluminum and steel at Morningstar Inc. "This is a milestone for the auto industry."

Auto brands such as Audi, Jaguar and Land Rover have used aluminum metals as the primary metal of cars, but these brands produce high-dollar luxury vehicles and are dwarfed in sales by Ford.

Last year, Ford sold 510,000 F-150 trucks, according to registration data from IHS Automotive. The new

2015 model will start at $26,615. The aluminum Range Rover, which starts at $84,225, sells an average of 12,000 vehicles per year.

"This is way too big to fail," said Dave Sullivan, an analyst at AutoPacific. "Obviously, Ford feels aluminum is the way to go. We just don't know if the quality will stay where it needs to."

The move isn't the first time Ford has taken a risk. In 2011, the company shocked many in the industry by introducing a turbocharged EcoBoost V-6 that had the power and towing capability of a V-8, but with noticeably better fuel economy (David Undercoffler, *Los Angeles Times*, Oct. 22). **-- MH**

CLIMATE:

U.S. adaptation plans show varied success in states

Published: Wednesday, October 22, 2014

A new online tool released by the Georgetown Climate Center measures progress states are making in implementing measures to address climate change. How are states balancing adaptation goals with economic growth? During today's OnPoint, Jessica Grannis, adaptation program manager at the Georgetown Climate Center, discusses the tool and accompanying research demonstrating mixed success among states.

Click here to watch today's OnPoint.

AN E&E PUBLISHING SERVICE

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Researcher probes saltwater intrusion into Calif.'s coastal groundwater supplies

MONTEREY, Calif. -- Here, in one of the most picturesque parts of California's long Pacific Coast, researchers are investigating what could be a large and contentious unknown: the groundwater that lies beneath the shoreline.

2.BUSINESS:

Companies begin to offer discounted solar energy as a worker benefit

For a handful of large U.S. companies and organizations, employee benefits are extending beyond the three-legged stool of health care, retirement and vacation to include clean energy delivered to employees' homes at little or no upfront cost.

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Energy efficiency grew across U.S. in 2013, despite some setbacks

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Energy security becomes a factor in E.U. emissions target talks

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DOE issues updates to emission, energy accounting tools for transportation sector

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Climate change boosts fire frequency, but Australia's PM calls the link 'hogwash'

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Portugal could block E.U. climate deal in push for energy connectivity

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Nonbinding E.U. clean energy targets could lead to job loss -- unions

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Pacific approaches El Niño conditions -- NOAA, Australian meteorology bureau

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Environmental Law and Policy Center's Learner urges lawmakers to move transportation policy to reduce emissions

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ENERGYWIRE — Thu., October 23, 2014

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1.OIL AND GAS:

Drilling's worker safety record bodes ill for public health

Worker safety is perhaps the only place where the oil and gas industry's safety record can be lined up next to other industries and compared. It's gotten better, but with a fatality rate that topped coal mining's in 2012, drilling stacks up badly. Public health and worker safety experts say that's a bad sign for people living amid frack tanks, rigs and truck traffic that come with the U.S. drilling boom.

TOP STORIES

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Analysts see upside to crude's price slide

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Cuomo pledges to 'let the scientists decide' on N.Y. fracking during final debate

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New chemical report just a retread of Halliburton loophole debate -- industry

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China takes less oil from Saudi Arabia as cheaper options emerge

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13. TRANSPORTATION:

Environmental Law and Policy Center's Learner urges lawmakers to move transportation policy to reduce emissions

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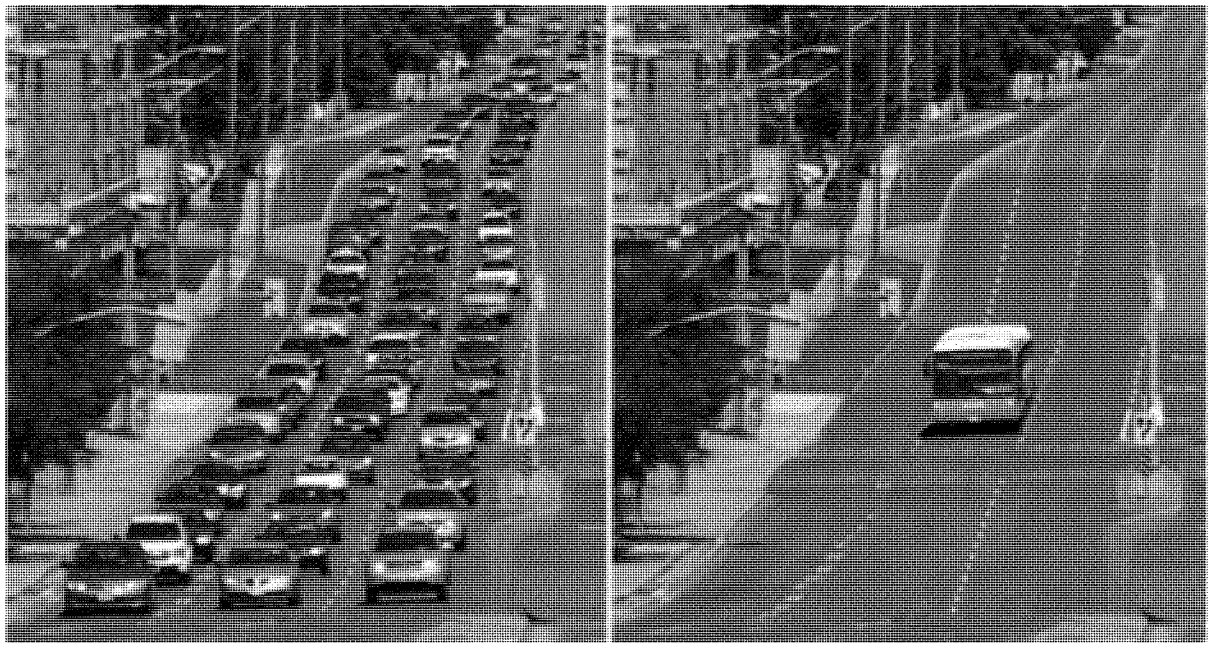

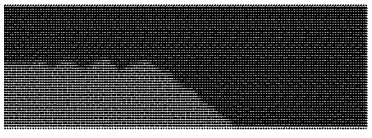

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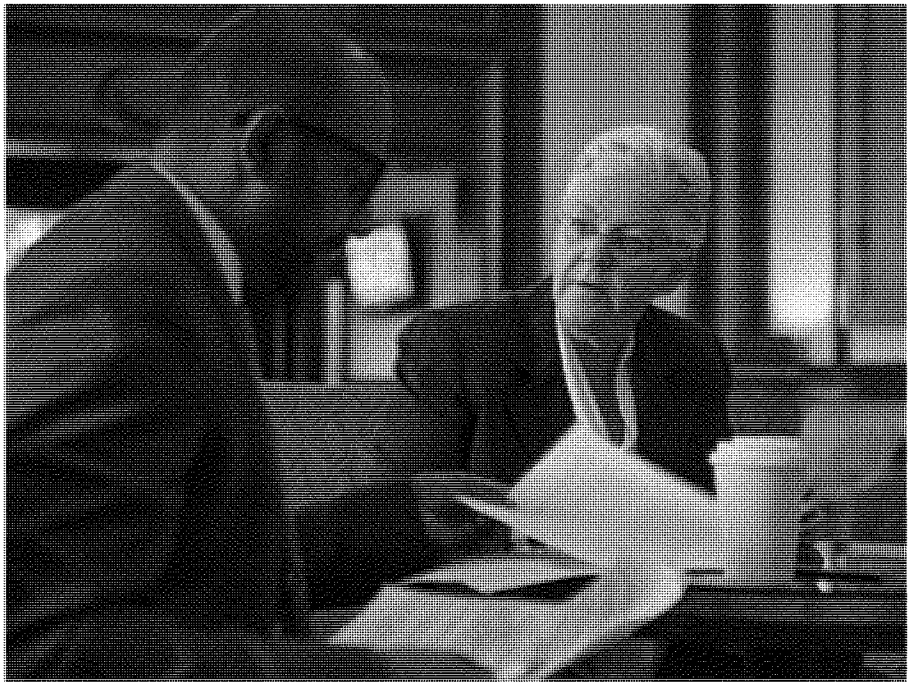

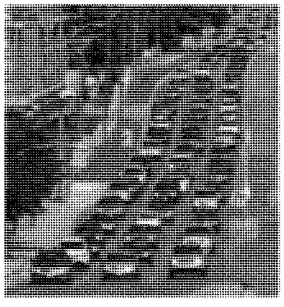

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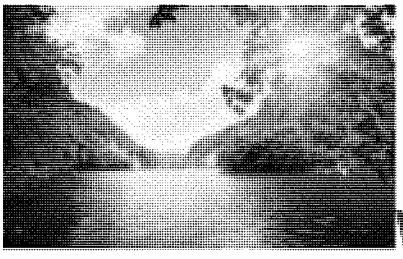
From: Turley, Jennifer
Sent: Thur 10/23/2014 2:44:51 PM
Subject: Water Law News for October 23, 2014



Water Law News

for October 23, 2014

Bloomberg BNA Daily Environment Report™

Drinking Water

Groups Call on EPA to Intervene In Wisconsin Groundwater Pollution Matter

Six Wisconsin environmental organizations Oct. 22 filed apetition for emergency action under the Safe Drinking Water Act (SDWA) with the Environmental Protection Agency, alleging the state has failed to protect public health in a rural...

Hazardous Waste

Bankrupt Oil Businesses Agree to Pay $16 Million for Newtown Creek Pollution

Two linked companies that ran oil and gasoline facilities adjacent to the Newtown Creek superfund site have agreed to pay more than $16 million toward the cleanup of the polluted New York City waterway, the Justice Department announced Oct....

Hydraulic Fracturing

Advocacy Groups Disappointed at Ruling By British Columbia Court on Water Approvals

British Columbia environmental groups are expressing disappointment after the province's Supreme Court upheld the government's practice of issuing repeated short-term water-use approvals for hydraulic fracturing and other...

Hydraulic Fracturing

Expanded Regulation, Risk Evaluation Urged By Environmental Groups Looking at Fracking

Environmental activists are increasing the frequency of their denunciations of hydraulic fracturing as an update of federal regulations for the process goes through interagency review....

Mining

Mountaintop Mining Harming Salamander Populations, Kentucky Research Shows

Conductivity pollution from mountaintop mines is significantly reducing salamander diversity in affected streams, according to new University of Kentucky research....

Water Infrastructure

California Advocacy Group's Lawsuit Seeks Upgrades to Wastewater Collection System

A California advocacy group has filed a lawsuit alleging the city of Laguna Beach is operating its wastewater collection system in violation of the Clean Water Act (California River Watch v. Laguna Beach, C.D. Cal., No. 8:14-cv-01659, 10/14/14)....

Water Pollution

Clean Water Act Has Helped Grow Nation's Economy, EPA Official Says

The Clean Water Act since its enactment four decades ago has helped grow, not hinder, the nation's economy, the Environmental Protection Agency's top water official said Oct. 22. ...

Water Pollution

Drug Found in Fish-Preying Osprey Doesn't Rule out Chronic Effects, Scientists Say

A study detecting low levels of pharmaceuticals in osprey, which feed on fish, cannot be extrapolated to mean that such chemicals have no long-term behavioral effects on aquatic environments, a U.S. Geological Survey scientist told Bloomberg...

Water Pollution

Pennsylvania Governor Signs Bill Ending Buffer Requirement for High-Quality Streams

Pennsylvania Gov. Tom Corbett (R) Oct. 22 signed legislation (H.B. 1565) eliminating the requirement for 150-foot buffers along the state's most pristine streams to control erosion and sedimentation....

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Inside EPA **Weekly Report**, 10/24/2014

http://insideepa.com/newsletters/inside-epa

Latest News

Advocates Push EPA Fracking Rules As 'Best' Policy Option Ahead Of 2016

Environmentalists are encouraging EPA to issue several major regulations related to hydraulic fracturing ahead of the 2016 presidential election, aiming to have President Obama sign off on controversial measures a GOP president might oppose such as methane, effluent and toxics disclosure rules for fracking.

Greenwire

EPA:

Deputy chief of staff stepping down

Robin Bravender, E&E reporter

Published: Wednesday, October 22, 2014

Arvin Ganesan, one of U.S. EPA chief Gina McCarthy's top advisers, is leaving the agency.

Ganesan, McCarthy's deputy chief of staff, who has been an EPA political official since early in the Obama administration, is leaving the agency to join an industry association that promotes "advanced" energy technologies.

PEOPLE

He'll be vice president for federal policy at Advanced Energy Economy, a relatively new Washington, D.C.-based trade group that promotes energy efficiency, natural gas electric generation, solar, wind, nuclear, electric vehicles, biofuels and other energy technologies with the stated goal of "making the global energy system more secure, clean and affordable." Members include some big-name companies like Microsoft, General Electric, Verizon and Philips.

"I'll be providing advice to the companies on how to engage with Congress and with the administration," Ganesan said yesterday in an interview.

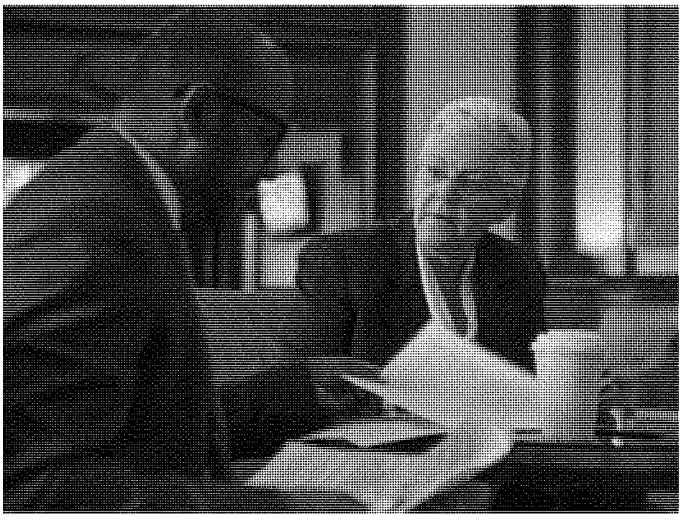
AEE CEO Graham Richard said today in a statement that Ganesan will be "a tremendous asset as we work with Congress and the administration to create a prosperous future powered by secure, clean, affordable energy."

Ganesan started at EPA in 2009 as deputy associate administrator for congressional affairs under David McIntosh, who then led the congressional affairs shop. When McIntosh left in 2011 to become a lobbyist

at Siemens Corp., Ganesan was promoted to take his place. In July 2013, shortly after being confirmed as EPA chief, Gina McCarthy promoted Ganesan again to be her deputy chief of staff for policy.

Prior to joining EPA, Ganesan worked on Capitol Hill as a senior policy adviser to the late Sen. Frank Lautenberg (D-N.J.). It was there that he first worked with former EPA chief Lisa Jackson, who was at the time commissioner of New Jersey's Department of Environmental Protection.

As McCarthy's deputy chief of staff, Ganesan's portfolio included managing science-related issues, several different water policy topics and climate adaptation matters. He worked extensively on an EPA proposal to specify which waters should get Clean Water Act protection, which he said is in capable hands at the agency.



Arvin Ganesan speaking with EPA Administrator Gina McCarthy as she prepared to give a speech earlier this year. Photo courtesy of U.S. EPA.

"I think that the administrator has made very clear her desire to clarify the scope of the Clean Water Act, and the rule is still in public comment right now," Ganesan said. "I feel very confident that the administrator's desire, as well as the talent in the agency -- including Ken Kopocis, who's the deputy administrator in the Office of Water -- will be able to see this rule through to the end."

Ganesan said he has "no doubt that EPA under Gina McCarthy's leadership will remain highly successful and important."

His last day at EPA is Oct. 31; he's slated to start at AEE on Nov. 4.

Tom Reynolds, associate administrator of EPA's public affairs office, said the agency hasn't yet selected a replacement for Ganesan. "The administrator is still reviewing that," he said. "There is a plethora of talented staff here at the agency. While we will miss Arvin deeply, we're pretty confident we're not going to miss a beat."

MINING:

Hot-button projects emerge as wedge issue in tight races

Manuel Quiñones, E&E reporter

Published: Wednesday, October 22, 2014

Alaska Democratic Sen. Mark Begich is highlighting his opposition to Pebble LP's contentious gold and copper mining project in his state's Bristol Bay watershed as a key issue in his bid for re-election.

Begich is among several candidates calling attention this year to hotly debated mining projects -- a strategy that analysts say is yielding mixed results.

Earlier this year Begich became the first member of his state's congressional delegation to come out against Pebble, calling it the wrong mine in the wrong place because of its potential harm to the thriving Bristol Bay salmon fishery.

Anti-Pebble advocates responded by airing ads thanking Begich. And group Alaska Conservation Voters launched a political action committee called Alaska Salmon PAC to boost the Democrat.

This summer the group Put Alaska First, a political action committee also backing Begich's re-election, hit Republican opponent Dan Sullivan on the issue. The group has spent upward of $8 million on the race, according to the nonpartisan Center for Responsive Politics.

"There's two things you need to know about Dan Sullivan -- he's not from Alaska and he supports the Pebble mine," Dillingham resident Mike Sparks says in the ad. "I do support mining and I do support fishing, but I won't trade one industry for the other. I just don't trust Dan Sullivan to make good decisions for Alaska."

Sullivan, Alaska's former attorney general and natural resources commissioner, has expressed concern about U.S. EPA's involvement in potentially limiting Pebble development, but he hasn't taken a strong position on the mine itself.

"I've never supported the project, ever, in my entire career," Sullivan said during a debate this month. "I support Alaskans making these kinds of decisions and not having the EPA pre-empt what is an Alaskan-focused process."

Pebble foes have long claimed to have public opinion on their side, particularly in the Bristol Bay region. "Pebble is less popular than opening [the Arctic National Wildlife Refuge], I'll tell you that," University of Alaska political scientist Forrest Nabors said in an interview.

Still, despite Begich's opposition to the mine, recent polls show the Democrat trailing Sullivan. Nabors thinks many Alaskans share Sullivan's opposition to federal intervention.

Case in point, Begich has also been campaigning against the federal government on development issues like Arctic drilling and has in the past suggested concerns with an EPA veto of Pebble.

Then there's Bill Walker, the Begich-endorsed independent candidate for governor, who opposes Pebble but doesn't cheer EPA's efforts at limiting the mine either.

"So it gets a little complicated for the Democrats and Begich to make a huge deal about that issue," Alaska political reporter Amanda Coyne said.

Also of note is Alaska millionaire Bob Gillam's more than $600 in donations to Sullivan, according to Federal Election Commission records. Gillam has been one of the state's most visible Pebble foes, helping bankroll ballot initiatives meant to block the mine.

'Pebble is dead'

Environmental opposition and possible EPA intervention aside, Pebble had been promising to submit the project for state and federal permitting. Then its main financial backers pulled out. Anglo American PLC gave up on the project last year. Rio Tinto PLC did so in April.

Pebble parent Northern Dynasty Minerals Ltd. is now looking for new partners to help develop what could become one of the world's largest open pit mines. Executives have at least three lawsuits against EPA over its intervention and failure to release documents. The project is moving forward, they say.

But Nabors said, "The Pebble mine, if I may take the temperature of the Alaska people generally, this is an unscientific impression, that in the minds of the Alaska people, Pebble is dead."

Coyne said Begich's position may have won him some voters but doesn't think there are many more undecided voters to sway. "The people know where Dan Sullivan stands on it," Coyne said. "The number of undecideds, they're pretty small at this point. I just don't think that it's going to change the public's mind at this point."

Nabors went further: "I don't think Sullivan would lose votes if he came out saying he's for development of Pebble mine. I don't think it's going to make that big of a difference."

He said Pebble "isn't even on the radar" in the governor's race between Walker and incumbent Republican Sean Parnell, who has joined the mining company in suing EPA over its involvement.

Nabors also called the Gillam-backed Bristol Bay Forever initiative the "bucktooth stepchild of ballot measures" because, for all the previous media attention and litigation, it has failed to generate significant buzz.

Bristol Bay Forever would essentially require legislative approval for Pebble. But it's being overshadowed by campaigns on ballot measures to legalize marijuana and raise the minimum wage.

Pebble spokesman Mike Heatwole said the company is not actively campaigning against the initiative. "It's our view that it won't stop the project if it passes, it is poor public policy, it politicizes permitting and it is unconstitutional" because it violates the principles of separation of powers.

Voters rejected a 2008 anti-Pebble ballot initiative in Alaska. In 2011, Lake and Peninsula Borough voters approved the Save Our Salmon initiative, but a state judge this year said it infringed on state prerogatives.

Minnesota

Mining is also an issue for candidates in Great Lakes states.

At least two Republican politicians are using PolyMet Mining Inc.'s copper, nickel and platinum mining project near Lake Superior in Minnesota, which could destroy 900 acres of wetland, as a wedge issue.

Republican investment banker Mike McFadden has made supporting PolyMet a top concern in his effort to unseat Democratic Sen. Al Franken. McFadden has used the long permitting process as evidence of the Obama administration's red tape.

"Whether it's the PolyMet mine in Minnesota or the Keystone pipeline," McFadden said when Republicans

gave him the chance to deliver the party's weekly address, "there are good-paying jobs waiting to be created if we just use more common sense in regulation."

The Minnesota Department of Natural Resources, the U.S. Army Corps of Engineers and the Forest Service this week released a long-awaited supplemental draft environmental impact statement for PolyMet. The company and regulators expect the final EIS to be out by early next year.

But McFadden thinks Franken should have worked harder to speed up permitting, and during a recent debate he said the Democrat was "connected at the hip of extreme environmentalists."

Franken defended his opposition to legislation to speed up Keystone XL, supporting instead the Obama administration's ongoing review of the project and chastising McFadden for, at one point, saying he would agree with using cheaper foreign steel to build the pipeline.

Franken also opted to back the ongoing reviews for PolyMet and said he was in touch with the company. "It's too important not to get this right," said the Democratic incumbent. "We need to get this right."

McFadden counts mining companies among his top supporters, including $500 from supplier Joy Global Inc. and $5,000 from coal company Murray Energy Corp.

But Franken is significantly ahead in polls and in the money race, with a $25 million war chest compared with McFadden's $4 million, in part thanks to the League of Conservation Voters.

In Minnesota's 8th District, home to PolyMet and other potential mining projects north of Duluth, Republican businessman Stewart Mills also wants speedier permitting for the mine.

"PolyMet is amazingly well thought out. The science, the engineering is there," Mills said during a debate with Rep. Rick Nolan (D), whom he's running against for the 8th District seat. "After nine years, there is no reason why we shouldn't be moving forward with it."

Nolan, who also supports the PolyMet mine, enough for some environmentalists in his district to regret backing him the last time around, is stressing the need to promote mining while protecting the environment.

The National Mining Association's MinePAC political action committee has given Nolan at least $4,500 since last year. The League of Conservation Voters Action Fund has given him $5,000.

Steven Schier, political science professor at Carleton College, says the PolyMet issue is also bleeding over to the governor's race and is making a difference in the Nolan-Mills contest.

He pointed to a SurveyUSA poll of 555 likely 8th District voters conducted between Oct. 9-12 that found Mills ahead of Nolan 47 percent to 39 percent. The survey also found that 56 percent of likely voters oppose the Affordable Care Act and 55 percent wanted PolyMet built.

The debate over mining around the Great Lakes will likely continue affecting local politics, with environmentalists asking the federal government to act against projects there just like Pebble.

Wis. Gov. Walker fighting for survival

In Wisconsin, the controversy surrounding a proposed iron ore mining project, another one greens are hoping to stop, could help unseat Republican Gov. Scott Walker.

Soon after taking office in 2011, Walker began pushing lawmakers to overhaul the state's mining laws. The company Gogebic Taconite LLC, backed by billionaire Chris Cline, was interested in developing a mine near Lake Superior but thought the state's laws were outdated and cumbersome.

The Legislature deadlocked on passing a reform bill in 2012, but last year lawmakers got it through the finish line thanks to GOP gains in the state Assembly.

Even though many Democrats and environmentalists opposed the bill, Walker saw it as popular with his conservative base and good for re-election. Now he's having to explain a recently revealed donation from Gogebic Taconite to the pro-business conservative group Wisconsin Club for Growth.

"What's going on? The mining company secretly funneled $700,000 to a group actively supporting Walker," says a new ad by the Wisconsin League of Conservation Voters. "The special prosecutor says there's an appearance of corruption. Scott Walker's dirty deal, we all pay the price."

Walker critics say the dark money, revealed as part of a broader probe into whether the governor coordinated with conservative groups ahead of his 2012 recall elections, explains why the company gained so much leverage.

Wisconsin Rep. Fred Clark (D) said earlier this year, "Now it makes sense." And Walker opponent Mary Burke, former Wisconsin commerce secretary, calls the donation an example of Walker's ties to "powerful special interests."

Walker has denied wrongdoing and denied knowing about the donation. With the mine still in permitting and hit with lower iron prices, Walker is focusing his campaign on other job creation successes and accusing the Burke campaign of plagiarizing parts of its jobs creation plan.

"Wisconsin's unemployment rate is down, job growth is up," Walker says in an ad. "And we're not going to stop until everyone who wants a job can find a job."

A Marquette University Law School poll conducted Oct. 9-12 had Walker and Burke tied, with each getting support from 47 percent of respondents. The survey queried 803 likely voters and had a 3.5-point margin of error.

Arizona

Beyond Alaska, Minnesota and Wisconsin, debates about mining laws or controversial projects are also ongoing in Michigan, Maine and particularly Arizona.

During the last election cycle, Arizona politicians discussed the Obama administration's uranium mining limits around Grand Canyon National Park.

This year controversy and permit delays surround Hudbay Minerals Inc.'s proposed Rosemont copper mine near Tucson and Rio Tinto's Resolution Copper project near Superior, Ariz.

Embattled Rep. Ann Kirkpatrick, a moderate Democrat, is touting bucking her party to join Rep. Paul Gosar (R) in support for a land swap to facilitate the development of the Resolution project.

Sen. John McCain (R-Ariz.) recently visited the site, promising to push for the land swap, which has been stuck in Congress for years. And candidates like Kirkpatrick opponent Andy Tobin (R) say Democrats are to blame.

Kirkpatrick served between 2009 and 2011, when Gosar unseated her. She came back in 2013, but Tobin may unseat her again, with at least two recent polls showing him in the lead.

NOAA:

Hydrologist faces federal indictment over theft of sensitive data

Emily Yehle, E&E reporter

Published: Wednesday, October 22, 2014

A hydrologist at the National Oceanic and Atmospheric Administration is accused of stealing sensitive data from the National Inventory of Dams, according to a recent federal indictment.

Xiafen "Sherry" Chen is charged with theft, knowingly accessing a protected government database and making false statements to authorities. But the indictment -- filed in the U.S. District Court for the Southern District of Ohio -- does not say why Chen allegedly took the files and what she meant to do with them.

In an email, NOAA spokeswoman Ciaran Clayton said the agency "detected a violation" and referred the case to the U.S. Attorney's Office. Chen still works at NOAA while officials determine whether administrative action "is warranted," Clayton said.

Chen -- who works at NOAA's National Weather Service -- accessed "critical national infrastructure" data in May 2012, according to the indictment. The information was kept in a database maintained by the Army Corps of Engineers.

FBI agents arrested Chen earlier this week while she was at work in Wilmington, Ohio, according to a news release from the U.S. Attorney's Office for the Southern District of Ohio. She faces up to 10 years in prison for stealing government property, five years for illegally accessing the database and another five years each for two counts of making false statements to federal agents. Each count also holds the possibility of a $250,000 fine.

In a separate incident last year, the Army Corps confirmed that the National Inventory of Dams had been hacked, with several publications pointing the finger at China. The database includes information on about 79,000 dams throughout the United States that are considered a "significant hazard" if they fail, according to the corps' website.

FLORIDA:

South Fla. officials mull secession to cope with sea-level rise

Published: Wednesday, October 22, 2014

Rising sea levels are elevating secession rhetoric in South Florida.

Earlier this month, the city of South Miami's commission passed a resolution advocating the creation of a 51st state.

Secession requires the approval of the entire Florida electorate and Congress, but the resolution drew a preliminary border on the northern edges of Pinellas, Hillsborough, Polk, Orange and Brevard counties.

The South Florida Water Management District begins in Orange County, including Orlando, which the commission hinted could become the new state's capital.

Vice Mayor Walter Harris, who proposed the measure that passed in a 3-2 vote Oct. 7, said lawmakers in Florida's capital were failing to address the concerns of the southern half of the state.

Mayor Philip Stoddard agreed. "It's very apparent that the attitude of the northern part of the state is that they would just love to saw the state in half and just let us float off into the Caribbean. They've made that abundantly clear every possible opportunity, and I would love to give them the opportunity to do that."

The dissenters argued the move set a dangerous example.

"I just want you guys to be careful because if you vote for this, you're setting a precedent that if other people in this city don't like our representation or feel we're not responsive to them, they might say, 'We want to break away from the city of South Miami,'" Commissioner Gabriel Edmond said.

Harris said environmental concerns would persist regardless of representation in Tallahassee.

"I don't care what people think -- it's not a matter of electing the right people," he said (Adrienne Cutway, South Florida *Sun-Sentinel*, Oct. 21). **-- DTB**

WATER POLLUTION:

Federal project to collect data on farm conservation practices

Annie Snider, E&E reporter

Published: Wednesday, October 22, 2014

The Obama administration launched a project today aimed at improving data collection on the politically combustible problem of water pollution from agricultural land.

At a meeting of a federal-state task force on water quality in the Mississippi River and Gulf of Mexico, the Agriculture and Interior departments forged a new partnership aimed at creating a clearer picture of how farmers' conservation practices affect water quality.

The project is aimed at integrating data collected by USDA's Natural Resources Conservation Service into the U.S. Geological Survey's water quality models that attempts to understand how rivers and streams receive and carry nutrients.

"On a voluntary basis, the agricultural community has put extensive effort into the management of nutrients and reducing runoff into waterways," Ann Mills, USDA's deputy undersecretary for natural resources and environment, said in a statement. "This collaboration will help evaluate the impact of farmers' conservation efforts on improving water quality."

The nation's waters are overloaded with nutrients that spawn algae outbreaks like the one that shut the Ohio city of Toledo's taps for a weekend in August. Excessive phosphorus and nitrogen also create so-called dead zones with levels of dissolved oxygen too low to support aquatic life. This year, the Gulf of Mexico dead zone -- fueled by nutrients from the Mississippi River -- grew to be the size of Connecticut.

When the Clean Water Act was enacted in 1972, the main concern was wastewater treatment plants. But as agencies have used the law to ratchet down on sewage treatment plants and industrial discharges, the

concern has shifted to pollution washing off farm fields and city streets -- so-called nonpoint sources that the federal government does not have the authority to regulate under the Clean Water Act. Instead, states and federal agencies attempt to incentivize farmers to take conservation measures, like planting cover crops, on a voluntary basis.

Agricultural sources are particularly difficult to get a handle on, both scientifically and politically.

While state and federal agencies, including USGS, monitor water quality across the country, there is often a lag time between when nutrient-reducing changes happen in the watershed and when their effects show up in water quality. There is also some concern that practices aimed at one environmental issue -- for instance, sequestering carbon -- could be having negative consequences for other environmental issues like water quality.

Moreover, farmers, who can to be nervous about lawsuits from environmental groups, are often reluctant to allow monitoring at the edges of their fields. Privacy has been a key point of concern, particularly after U.S. EPA released hundreds of pages of spreadsheets containing data on livestock operations in 29 states to environmental groups as part of a Freedom of Information Act request last year.

But the lack of data makes it hard for policymakers to know which practices they should be focusing time and money on.

The new project aims to capitalize on the trust that NRCS has built with farmers. The service, which has offices throughout agricultural regions that offer farmers resources for implementing conservation practices, is a regular point of contact for many farmers. A press release from the agencies emphasized that the project will not reveal private information about farms, ranches or forests.

The plan is for the agencies to develop conservation intensity data sets that show what benefits individual conservation actions bring to waters downstream. The products will provide a uniform representation of conservation practices that can be used at the local, regional and national scales, the agencies said.

"This agreement will allow NRCS and USGS to combine resource management capabilities with science, and will give us the information we need to prioritize the most effective conservation strategies so that we can improve the quality of streams throughout the Mississippi River Basin," Lori Caramanian, Interior deputy assistant secretary for water and science, said in the statement.

COAL:

Study links mountaintop mining to low salamander populations

Manuel Quiñones, E&E reporter

Published: Wednesday, October 22, 2014

Salamander populations were lower and less diverse in streams impacted by mountaintop-removal coal mining, according to a newly released study by University of Kentucky researchers.

The scientists, including University of Kentucky Department of Forestry graduate student Brenee Muncy and assistant professor Steven Price, studied salamander populations in eastern Kentucky streams.

They found higher "occupancy" in control streams compared with mining-impacted waterways. Plus, they found "species richness" was lower in affected streams compared to control waterways.

"Numerous mechanisms may be responsible for decreased occupancy and species richness at [mountaintop-removal-affected] streams, although water chemistry may be particularly important," said the study, to be published in the December edition of the journal *Biological Conservation*.

The researchers say they found elevated levels of conductivity in affected streams. Conductivity refers to the ability of waters to carry an electric charge, seen by many scientists as a barometer of environmental health.

The researchers also suggested that problems with salamanders could come from the loss of other species, which serve as food, and the destruction of streams, which divide populations.

"Our results indicate that [mountaintop mining and valley fill] operations lead to significant decreases in salamander occupancy and species richness," wrote the authors, who said the problem appeared to extend to reclaimed mining operations.

Alice Howell, an activist with the Sierra Club's Kentucky chapter, said in a statement, "This study adds to the vast body of scientific literature demonstrating that mountaintop removal coal mining is extremely dangerous for both humans and wildlife."

Environmental advocates last week pointed to another study linking dust particles collected near mountaintop-removal coal mining operations in West Virginia to cancer. Another from U.S. Geological Survey scientists said strip coal mining was likely reducing fish populations.

Luke Popovich, spokesman for the National Mining Association, said the trade group was reviewing the cancer study and the latest on salamanders. Popovich also took a jab at the Sierra Club's efforts at ending coal mining and power production.

"Comforting to see the Sierra Club, which is deaf and blind to the suffering of coal communities they are quickly impoverishing, is earnestly concerned about some living things, even if they are salamanders," he wrote.

Conductivity has been a topic of intense debate in recent years, with U.S. EPA pressuring state regulators to consider the issue when reviewing coal mine permits. A guidance to that effect survived federal litigation from NMA and state regulators.

But regulators and coal companies are not giving up their fight. Alpha Natural Resources Inc., for example, is appealing a West Virginia federal judge's ruling faulting the company for elevating conductivity near mining operations (*E&ENews PM*, Oct. 2).

LOUISIANA:

Festival merges voodoo, science to solve water woes

Published: Wednesday, October 22, 2014

Scientists banded with members of the voodoo religion to discuss water challenges at the annual Anba Dlo Halloween Festival in New Orleans on Saturday.

The event brought together representatives from Rand Corp., the global consultant group that assisted in developing Louisiana's coastal restoration master plan, as well as environmentalists, architects and policy specialists.

The discussions at the event revolved around how the area of southern Louisiana needs to develop new management plans to deal with water, which is an ever-growing problem for the region.

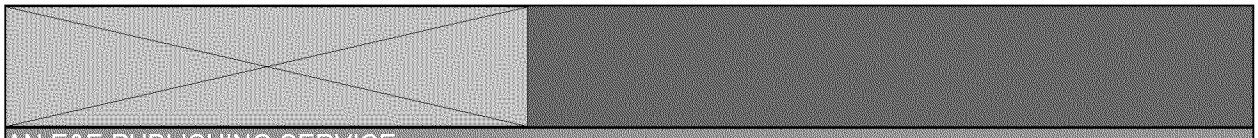
The name Anba Dlo comes from a Haitian dialect and translates to "beneath the waters." The event, which is in its seventh year, is held in the Bywater neighborhood of New Orleans, which was heavily affected by Hurricane Katrina.

"I've spoken at a lot of conferences around the country, and this festival is pretty unique," said Jordan Fischbach, a policy researcher at Rand. "But then, this is New Orleans."

Sallie Ann Glassman, one of the visionaries behind the festival, is an anti-poverty activist and high priestess in the Haitian religion of voodoo.

"As a priestess, it's my work to bring balance and healing and wholeness to the community, so this is absolutely in keeping with my work," Glassman said.

Much of the discussion, which drew around 100 people, revolved around how Louisiana could restore its coasts and included discussions about Katrina and the BP PLC Deepwater Horizon oil spill (Kathy Finn, Reuters, Oct. 21). **-- MH**



AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Thu., October 23, 2014

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Researcher probes saltwater intrusion into Calif.'s coastal groundwater supplies

MONTEREY, Calif. -- Here, in one of the most picturesque parts of California's long Pacific Coast, researchers are investigating what could be a large and contentious unknown: the groundwater that lies beneath the shoreline.

2.BUSINESS:

Companies begin to offer discounted solar energy as a worker benefit

For a handful of large U.S. companies and organizations, employee benefits are extending beyond the three-legged stool of health care, retirement and vacation to include clean energy delivered to employees' homes at little or no upfront cost.

TODAY'S STORIES

3.STATES:

Energy efficiency grew across U.S. in 2013, despite some setbacks

4.NEGOTIATIONS:

Energy security becomes a factor in E.U. emissions target talks

5.FORESTS:

Brazil protects 1.65M acres of Amazon forest

6.TRANSPORTATION:

DOE issues updates to emission, energy accounting tools for transportation sector

7.NATIONS:

Climate change boosts fire frequency, but Australia's PM calls the link 'hogwash'

8.NEGOTIATIONS:

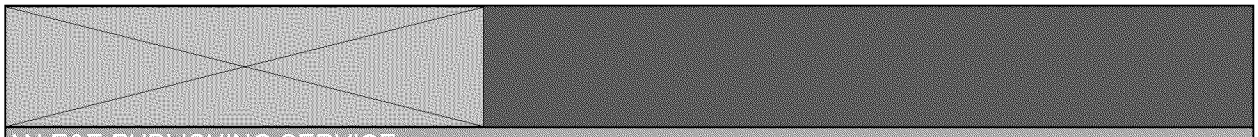
Portugal could block E.U. climate deal in push for energy connectivity

9.WORKFORCE:

Nonbinding E.U. clean energy targets could lead to job loss -- unions

10.WEATHER:
Pacific approaches El Niño conditions -- NOAA, Australian meteorology bureau
E&ETV'S ONPOINT

11.TRANSPORTATION:
Environmental Law and Policy Center's Learner urges lawmakers to move transportation policy to reduce emissions



AN E&E PUBLISHING SERVICE

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1.OIL AND GAS:
Drilling's worker safety record bodes ill for public health

Worker safety is perhaps the only place where the oil and gas industry's safety record can be lined up next to other industries and compared. It's gotten better, but with a fatality rate that topped coal mining's in 2012, drilling stacks up badly. Public health and worker safety experts say that's a bad sign for people living amid frack tanks, rigs and truck traffic that come with the U.S. drilling boom.

TOP STORIES

2.OIL:
Analysts see upside to crude's price slide

3.CAMPAIGN 2014:
Cuomo pledges to 'let the scientists decide' on N.Y. fracking during final debate

4.GRID:
Ill. regulators, utilities eye winter readiness in wake of polar vortex
ELECTRICITY

5.SOLAR:
Outside groups win big in Ga. initiative
OIL AND GAS

6.GAS EXPORTS:
B.C.'s LNG tax plan reflects global pricing pressures

7.OFFSHORE DRILLING:
BOEM moves to lease its portion of Cook Inlet

8.HYDRAULIC FRACTURING:
New chemical report just a retread of Halliburton loophole debate -- industry

9.PEOPLE:
Total appoints new 2 new leaders in wake of CEO's death

10.OIL MARKETS:
China takes less oil from Saudi Arabia as cheaper options emerge

11.RESEARCH:
University gets $58M to go after methane hydrates

12.TECHNOLOGY:
Texas business touts seismic data collection breakthrough

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Environmental Law and Policy Center's Learner urges lawmakers to move transportation policy to reduce emissions

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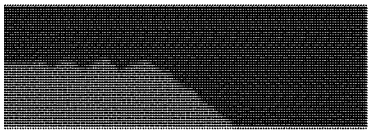

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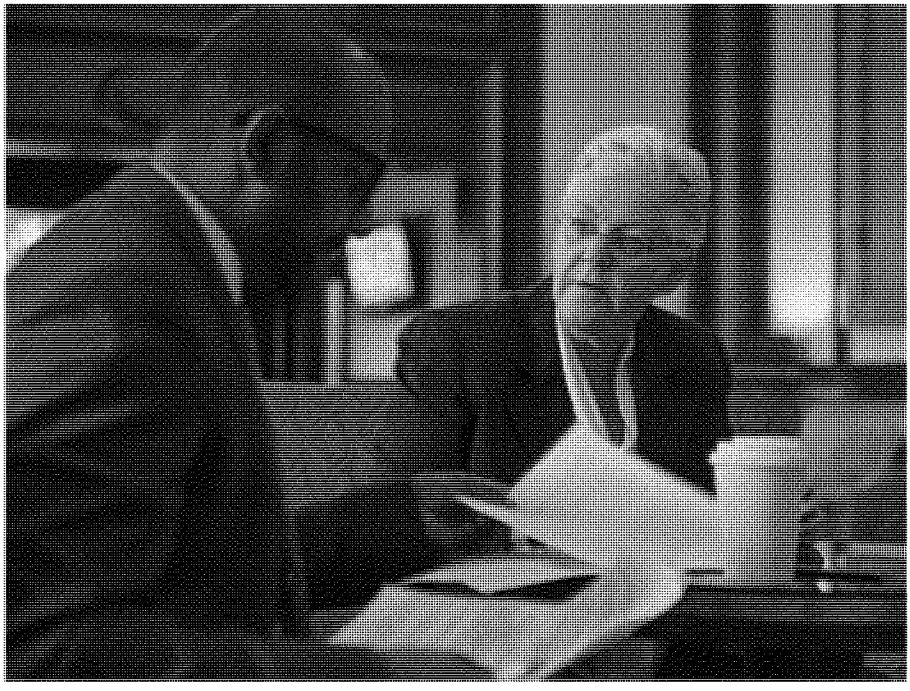

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From: Turley, Jennifer
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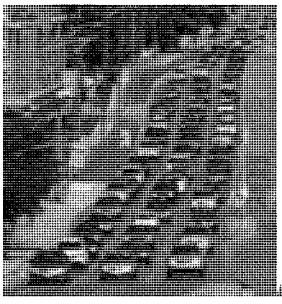
Subject: Air & Radiation Law News for October 22, 2014



Air & Radiation Law News

for October 22, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA's Nonattainment Designations Ignored Updated Ozone Data, Petitioners Say

The Environmental Protection Agency ignored updated air pollution data that could have revised the areas listed as violating the ozone air quality standard issued in 2008, states and environmental groups argued (Miss. Comm'n. on Envtl....

Climate Change

Billionaire Steyer Deploys Ark to Show Menace of Climate Change in Florida

As rising seas threaten Florida, Thomas Steyer is floating an $8.6 million campaign to save the state, opening 21 offices, dispatching more than 500 staffers and volunteers and deploying a rolling ark....

Elections

Green Groups Want to Support Republicans But Find Few Candidates to Endorse

Environmental advocates would like to support more Republican candidates for federal office, but the party's swing rightward, especially on environmental and energy issues, has made it more difficult to find acceptable candidates...

Hazmat Transport

Earthjustice Asks New York to Ban Bakken Crude Oil Shipments in Older Rail Cars

Earthjustice petitioned the New York state environment commissioner Oct. 21 to ban the receipt and storage of Bakken crude oil transported in older rail cars at the Port of Albany....

Hazmat Transport

PHMSA Issues More Ebola Waste Hazmat Permits

The Pipeline and Hazardous Materials Safety Administration has issued two more hazardous materials transport special permits for moving Ebola waste, with one of those permits open for other companies to apply to use. PHMSA approved special...

Hazmat Transport

Transport Industries Urge PHMSA to Clarify Definition of 'Fit' in Special Permit Proposal

The Pipeline and Hazardous Materials Safety Administration must clarify what it means for a carrier to be "fit" and make its determination method less subjective in its proposal to alter special permit and approval criteria, several...

International Climate

Bonn Climate Talks Turn to Discussion of Carbon Capture and Storage Technology

Carbon capture and storage, the technology that pumps greenhouse gases produced by burning fossil fuels beneath the surface of the earth, was at the center of negotiations at the Bonn Climate Change Conference Oct. 21, though much of the work...

International Climate

Report Says U.S., China Could Narrow Emissions Gap

China and the U.S. alone could go a long way toward closing the gap between current levels of greenhouse gas emissions and those needed to keep worldwide global warming below 2 degrees Celsius (3.6 degrees Fahrenheit), according to a report...

Pipeline Safety

Rules on Gas, Hazardous Liquid Pipelines Among Priorities of PHMSA Administrator

Timothy Butters told Transportation Secretary Anthony Foxx Oct. 21 that finalizing two pending rules on gas and hazardous liquid pipelines will be among his top priorities as the recently appointed acting administrator for the Pipeline...

Radioactive Waste

NRC Chairman Macfarlane to Leave Agency, Take Post at George Washington University

Allison Macfarlane, the chairman of the U.S. Nuclear Regulatory Commission for just over two years, will leave at the end of this year to return to teaching, taking a post at George Washington University....

Renewable Energy

LDK Solar Files for Bankruptcy In U.S. Court on China Solar Glut

LDK Solar Co., the Chinese solar- cell maker that defaulted on its bonds this year, filed for bankruptcy in the U.S. to help carry out restructurings already under way in Hong Kong and the Cayman Islands (In re LDK Solar Co., Bankr. D. Del., No....

Renewable Energy

Solar Consolidation Expected as Expiring Investment Tax Credit Drives Deals

Acquisitions in the solar industry will take off as manufacturers and developers prepare for the expiration of a tax credit that's helping drive a U.S. installation boom....

Renewable Energy

Solar Industry Launches Lobbying Effort As Tax Deadline Prompts Canceled Projects

Solar developers facing a 2016 deadline to complete projects in order to receive a key tax credit are beginning to cancel large projects, prompting the industry to launch an all-out push to extend the incentive....

Sustainability

Companies Advised to Better Explain Business Value of Sustainability Efforts

Companies should better communicate how their sustainability initiatives are creating business value, Daniel C. Esty, a professor of environmental law and policy at Yale Law School and former EPA official, said Oct. 21....

Vehicle Fuels

Biobased Diesel Companies Petition EPA For Rules Comparable to Traditional Diesel

Biodiesel fuel manufacturers submitted two petitions to the Environmental Protection Agency Oct. 21 asking it to give them the same exemption from reporting requirements as petroleum-based diesel manufacturers....

Vehicle Fuels

D.C. Circuit Rules Industry Groups Failed To Prove Standing in E15 Labeling Challenge

A federal appeals court on Oct. 21 dismissed an industry group challenge to a final Environmental Protection Agency regulation requiring warning labels on pumps selling gasoline containing 15 percent ethanol (E15), finding that the groups...

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Inside EPA **Clean Air Report**, 10/23/2014

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Latest News

Appellate Judges Query EPA's Approach To Ozone NAAQS Designations

Appellate judges at Oct. 21 oral arguments raised broad questions over EPA's policies for designating areas as either in attainment or nonattainment with the agency's 2008 ozone ambient air standard, and their eventual ruling could set a precedent on the validity of EPA's approaches, including the scope of which areas to label nonattainment.

EPA, Critics Clash On Remedy For GHG Permitting After High Court Ruling

EPA and its state and industry opponents are clashing over how the U.S. Court of Appeals for the District of Columbia Circuit should address litigation over the agency's greenhouse gas (GHG) permitting program in the wake of the Supreme Court's ruling narrowing the agency's permit policies.

D.C. Circuit Cites Lack Of Standing To Reject EPA E15 Misfueling Rule Suit

The U.S. Court of Appeals for the District of Columbia Circuit has rejected an oil and engine sector lawsuit that claimed EPA's rule to protect against misfueling of vehicles with ethanol blends up to 15 percent (E15) failed to ensure against misfueling, saying the industry groups lack standing to sue as they can show no harm from the rule.

EPA Expands List Of SNAP Alternatives To HFCs As Part Of Climate Plan

EPA is expanding its list of refrigerant chemicals that pose a lower global warming risk than those that are currently approved under its significant new alternative policies (SNAP) program.

Greenwire

AIR POLLUTION:

States, enviros slam ozone limits in contentious court hearing

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, October 21, 2014

U.S. EPA's 2012 designations for what parts of the country meet air quality standards for ozone came under fire in court today, with various states and environmental groups challenging the agency's classifications.

EPA in May 2012 finalized which areas meet its 2008 ozone standard of 75 parts per billion and which don't. Ozone is the main component of smog, and if the agency concludes an area is not meeting the standard, it must take extensive and expensive steps to cut emissions.

Various states, including Mississippi, Texas, Indiana, Delaware and Connecticut, challenged EPA's nonattainment designations, while environmental groups argued before the U.S. Court of Appeals for the District of Columbia Circuit that 15 counties deemed in attainment should have been found to be violating the standard.

The environmentalists, led by WildEarth Guardians, also contended that Utah's Uinta Basin -- home to oil and gas development and some of the worst ozone pollution in the country -- should not have been found to be "unclassifiable," as EPA concluded, based on monitoring results.

The consolidated cases resulted in unusually long arguments before a three-judge D.C. Circuit panel, with the judges taking issue with some of EPA's positions.

Chief Judge Merrick Garland, for example, seemed receptive to WildEarth Guardians' argument that EPA should have relied on monitors in the Uinta Basin to determine that area is in nonattainment.

In a 2007 settlement with Kerr-McGee, EPA required the Oklahoma-based energy company to install air monitors in the area, which lies in northeast Utah. However, EPA argued that it could not rely on data from those monitors to determine whether the area was in attainment for the 2008 standard, saying the data did not meet EPA's "quality assured and quality certified" standard.

Garland, a Democratic appointee, pointedly asked EPA's lawyer whether there are monitors in place now that EPA would find reliable.

"Will you consider a petition to redesignate" the area? he asked.

Judge Srikanth Srinivasan similarly questioned why EPA rejected the data.

"Is your argument that the data was poor quality?" asked Srinivasan, another Democratic appointee.

Garland also pressed Justice Department attorney Elizabeth Dawson, representing EPA, about the 15 counties that Sierra Club contends should have been found to be in nonattainment.

Sierra Club argues that for those counties, EPA inappropriately refused to consider more recent monitoring data only because it would have been more difficult as an administrative matter. The counties, which are in various states including Ohio, Michigan, Oklahoma and Wisconsin, are home to 10 million people, and for the Chicago area, EPA accepted the more recent monitoring data.

Garland asked Dawson whether "knowing there is nonattainment data and not taking it for administrative reasons" violates the Clean Air Act.

Dawson responded that EPA was pressed for time because it was under a court-ordered deadline to promulgate the designations.

EPA waited until "the latest time it could still accept that data and still promulgate its designations," she said.

Looming in the background of all the cases, however, is EPA's current work to promulgate a new ozone standard. The agency is expected to lower it to between 60 parts per billion and 70 ppb this year or next. That would trigger another round of designations for the whole country.

Cracking Wise

Much of the arguments also focused on a challenge from Wise County, Texas, to EPA's determination that it fails to meet the ozone standard.

Wise County, which lies near the Dallas-Fort Worth metroplex, is home to significant oil and natural gas development. Various energy companies, including Devon Energy Corp., Targa Resources Corp. and the Texas Pipeline Association, contended that EPA misapplied its multifactor test to find the county out of attainment.

Roger Martella of Sidley Austin LLP, representing the energy companies, argued that EPA largely relied on meteorological factors, specifically wind conditions, to find Wise County out of attainment.

However, he said that in other areas of the country, wind alone was not enough to push an area out of attainment.

"Meteorology has been inconsistently applied" across different regions of the country, he said.

Garland was quick to point out that the air monitor EPA relied on for its finding was only a half-mile from Wise County, and it demonstrated a violation of the air standard. In the other examples Martella cited, such as counties in Pennsylvania and New York, the air monitors were up to 50 miles away.

Martella countered that the distance doesn't matter as long as it is downwind of pollution.

Jessica O'Donnell, another Justice Department attorney representing EPA, said Martella's argument "misunderstands the nature of EPA's multifactor analysis."

Dallas-Fort Worth, she said, is "unique" because it has some of the most significant ozone and smog pollution in the country. Further, the monitor half a mile away from Wise County found ozone levels that were exceeding the standard by such amounts as 10 ppb.

Other challenges that were heard at the court included one from Indiana to EPA finding two of its counties to be in nonattainment. The state contends that the counties only exceeded the standard because of actions taken by Illinois that reduced car emissions testing and, consequently, increased pollution in the region.

Similarly, Delaware and Connecticut argued that EPA should have taken into account ozone pollution from states as far away as Indiana that drifts into their states and causes the violations.

And Mississippi argued that EPA failed to consider the most recent data before concluding that DeSoto County, just south of Memphis, Tenn., was in nonattainment.

A decision in *Mississippi Commission on Environmental Quality v. EPA* is expected by next summer.

NEWSMAKER:

'Simple sailor' at helm as U.S. leads Arctic Council

Jean Chemnick, E&E reporter

Published: Tuesday, October 21, 2014

The man at the helm of Secretary of State John Kerry's Arctic policy describes himself as a "simple sailor" who has seen firsthand the changes a shifting climate have made to the far north and is determined to protect the region.

In speeches last month at two Washington, D.C., think tanks, Adm. Robert Papp Jr. said the region had altered dramatically since he first crossed the Arctic Circle on July 7, 1976, as a young Coast Guard ensign in his first post. The Norwich, Conn., native and then-recent graduate of the U.S. Coast Guard Academy would go on to spend two years based out of Adak, Alaska, in the Aleutian Islands.

The Bering Strait was iced over in the autumn then, but when he returned to the region decades later in his career, he found it open. Melting ice from warmer temperatures had caused the Inupiat Eskimo village of Shishmaref to fall into the sea, and thawing permafrost is starting to work away on the foundations of buildings and threaten infrastructure in larger towns like Barrow, Alaska.

"I want to tell this story," Papp told an audience last month at the Center for American Progress.

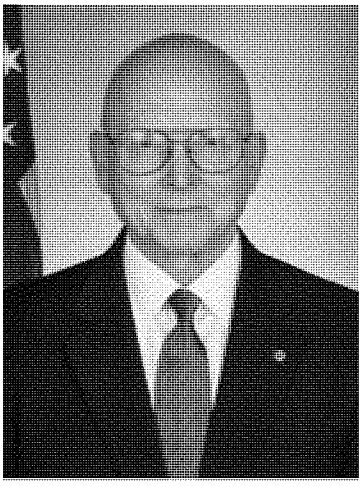
And that's what environmentalists hope he'll do as acting chairman of the Arctic Council, when the United States takes its turn at leading the eight-member body of Arctic nations beginning next year. Senior officials are meeting in Yellowknife, Northwest Territories, Canada, tomorrow and Thursday as the current Canadian chairmanship wraps up and the United States lays out its proposed agenda for 2015 through 2017.

Those who have been briefed say the United States tomorrow morning will lay out its priorities for the next two years, and those will include efforts to strengthen "the effectiveness" of the council, improve public diplomacy and make progress in the priority areas of climate change, stewardship of the Arctic marine environment and improving the economic and living conditions of the people of the Arctic.

U.S. Senior Arctic Official Julie Gourley, rather than Papp, will head the delegation this week, but the State Department said he will be fully briefed. Papp's appointment as U.S. special representative for the Arctic last July means that he will oversee all of the department's Arctic polices in addition to representing Kerry as chairman of the council.

The U.S. priorities appear to be in contrast to those of the outgoing Canadian chairmanship, which centered on working to advance the economic development of the Arctic, including shipping and petroleum development, which have increased as sea ice has receded.

More accessibility has also piqued interest in the Arctic Council among countries like China and India, which joined as observers last year with South Korea, Japan and Italy despite the fact that none has Arctic territory.



Adm. Robert Papp Jr. became U.S. special representative for the Arctic in July. Photo courtesy of the State Department.

But Cathleen Kelly, a senior fellow who works on energy issues at CAP, said that if the world focuses on the opportunities created by melting sea ice and not on the reasons the ice is melting, it will be ignoring "the elephant in the room."

"From my point of view, climate change is the key driver of the dramatic changes in the region, and even why we're there pursuing commercial interests in the first place," she said. "And to not talk about it really misses the key point. It's framing the entire conversation we're having in the Arctic."

But she predicted that the State Department under Kerry and his team -- including Papp -- will make the environment a higher priority than it was for Canada.

"There's definitely going to be a shift in the U.S. approach to the Arctic Council, with a much more central focus on climate change," she said.

A credible storyteller

The council's task force on short-lived climate forcers -- primarily black carbon and methane -- is putting the finishing touches on recommendations that will be considered next spring at a higher-level meeting of the council.

"We're going to work very hard to implement those," Papp said at the CAP event.

Black carbon causes snow and ice to melt more quickly by reducing the reflection of sunlight, and methane can be more than 80 times as climate-forcing as carbon dioxide emissions in the short term. And while emissions of both are global, the council affords a unique opportunity to discuss both problems; member and observer countries emit 60 percent of the world's black carbon and 42 percent of its methane. Discussions during the council meetings might help advance agreements in other venues, environmentalists said.

But the council has yet to weigh in on carbon emissions, though many have urged it to do so, noting that CO2 is responsible for the bulk of the world's long-term warming. A coalition of the council's permanent participants -- representing native populations in its countries -- wrote to the Canadian chairmanship last month asking the council to look at ways to limit CO2.

"We see no concrete initiatives by the Arctic Council member states to address the necessary and

ambitious cuts in emissions of carbon dioxide, as called for in the Kiruna Declaration," they said, referring to an agreement reached in May 2013 at the close of the Swedish chairmanship that named addressing climate change as a top priority.

The Arctic Council can be a forum for reaching binding agreements. That has happened twice before, when it formalized regional agreements on search and rescue and oil spill response. In theory, the body could produce binding accords on pollutants or bring a proposal to the U.N. Framework Convention on Climate Change when it meets in Paris next year to hash out a post-2020 global emissions agreement.

And environmentalists see the body as a prime opportunity to advance the discussion on climate change, drawing attention to a region of the world that is warming much faster than most and that has the potential to affect weather patterns and sea-level rise thousands of miles to its south.

"The fate of Greenland is the fate of Miami," said Rafe Pomerance, former U.S. deputy assistant secretary of State for environment and development and a member of the Polar Research Board of the National Academy of Sciences.

People in the Lower 48 states and around the world tend not to see how already-observable changes in the Arctic could affect them, he said. But it will be the role of the Arctic Council under the U.S. chairmanship to explain why it does, and that communications role might be something Papp can offer.

"He tells good stories and helpful anecdotes of having seen the changes happening in the Arctic, which I think lends some important credibility," Pomerance said of Papp. As the former commandant of the U.S. Coast Guard from 2010 until earlier this year, Papp led the branch of the armed services responsible for helping coastal communities deal with the loss of sea ice, and Papp is conversant about the effects warming has had in those communities over the last 40 years.

"So I think he's been a real world witness to change," Pomerance said.

In his addresses at CAP and the Center for Strategic and International Studies in September, Papp emphasized that while he is not a climate scientist, he is concerned with environmental protection.

"Every sailor is an environmentalist," he said at the CAP event. "Everyone who goes to sea wants to see clean water, respects the God-given resources that we have and wants to protect them."

He also praised the effects environmental regulation has had on improving the environment in recent decades. He said he remembered how polluted New York Harbor was before enactment of the Clean Water Act in 1972 and his surprise that people are now swimming in it in some areas.

"Man can make a difference in the environment," he said.

Bringing people together

In his words last month, Papp also highlighted the need for adaptation efforts to protect vulnerable local populations from the changes in their environment. Doing so would include implementing recommendations from a report on resilience, conducting an inventory of fresh water in areas affected by erosion and contamination, and the introduction of renewable pilot projects to reduce soot while also providing isolated communities with reliable sources of power.

But there is a tension in the Arctic between the need to preserve the region's natural beauty and way of life and the need for economic development -- often driven by oil and natural gas.

An Alaska state commission has written to the White House expressing concern that the Obama

administration plans to prioritize environmental issues above economic ones during its chairmanship (*EnergyWire*, Oct. 9). And even environmentalists concede that remote communities in Alaska and elsewhere rely on extractive industries to provide a hefty share of their livelihoods.

The U.S. chairmanship's concern for Arctic economies had led Papp and others to reference "sustainable development" as a top goal.

"Addressing these challenges and opportunities together in a considered manner is essential to the long-term success of the region," said Papp at the CSIS event.

And the council operates on consensus, meaning that while the United States will have a unique opportunity to propose an agenda during the next two years, members including Russia will have to buy into any new actions. Russia -- the world's third-largest producer of greenhouse gases -- has shown intense interest in new oil and gas opportunities in areas of the north that may also be contested by other Arctic counties. Russian companies also flare a lot of the natural gas they produce, contributing to global methane emissions.

But Papp said at the CAP event that he was "optimistic" that Russia would see its interest in working to limit methane.

And Roger Rufe, a former Coast Guard colleague of Papp's who also retired as an admiral and who now advises the Pew Charitable Trusts on Arctic change, called Papp a "skilled diplomat" who would bring to the job not only his knowledge of the region but also his negotiating chops.

"He knows how to bring people together," Rufe said.

BIOFUELS:

Coalition launches six-figure ad blitz in 3 states

Amanda Peterka, E&E reporter

Published: Tuesday, October 21, 2014

Supporters of the renewable fuel standard today launched a six-figure ad campaign supporting three incumbent Democrats and one Republican in midterm election battles.

The radio and television ads funded by the Fuels America coalition thank Minnesota Sen. Al Franken (D) and Reps. Collin Peterson (D-Minn.), Gary Peters (D-Mich.) and Lee Terry (R-Neb.) for their support of the RFS, through which U.S. EPA sets mandated levels of renewable fuels that refiners must blend in petroleum gasoline and diesel.

The ads tout domestic jobs tied to the biofuels industry and link renewable fuels to increased domestic energy security.

"Renewable fuels are cleaner and cost less, and keep our country safer," says the Peters ad, for example. "But Big Oil is fighting back. The Koch brothers are spending millions attacking [the RFS]."

Fuels America, which is made up of biofuel producers, agricultural groups and national security organizations, did not give a specific amount for the campaign but called it a "significant six-figure buy overall" and said each state individually amounts to a "substantial campaign."

The ad for Terry is a 30-second TV spot, while the rest are minutelong radio commercials.

Of the lawmakers the ads support, Franken holds a comfortable lead over his Republican challenger and businessman Mike McFadden.

Peters, who is running for the open seat of retiring Sen. Carl Levin (D) in Michigan, has retained a single-digit lead over opponent Terri Lynn Land in recent polls. Republicans view the seat as a top priority in their bid to flip the six seats needed to control the Senate, while Democrats view it as important to retaining their majority.

Terry, a vulnerable senior member of the House Energy and Commerce Committee, is seeking a ninth term in Congress and faces state Sen. Brad Ashford (D). While he has supported renewable fuels, Terry has also been a top congressional supporter of the Keystone XL pipeline.

Peterson, one of the last of the moderate Blue Dog Democrats, is seeking a 13th term and faces his toughest challenge yet against state Sen. Torrey Westrom (R).

MINNESOTA:

GOP ad hits Peterson for backing 2009 climate bill

Jennifer Yachnin, E&E reporter

Published: Tuesday, October 21, 2014

The National Republican Congressional Committee is out with a new television spot today attacking Minnesota Rep. Collin Peterson (D) over his 2009 vote in support of Democrats' energy and climate bill.

Peterson, whose 7th District seat is a perennial Republican target, faces a challenge from state Sen. Torrey Westrom (R) in November.

In its new 30-second ad the NRCC highlights Peterson's decision to back the 2009 energy bill, which Republicans referred to as a "national energy tax" for its efforts to cap carbon emissions.

"The problem with longtime congressmen is that they change," a narrator states as an image of a younger Peterson, first elected in 1990, appears on screen followed by a more current picture of the lawmaker.

"Collin Peterson stopped helping you and started taking perks for himself, and when Nancy Pelosi needed votes for her national energy tax, Peterson chose Pelosi," the ad continues. "He even admitted it would raise fuel prices and increase costs for agriculture. Peterson chose Pelosi. It would cost Minnesota jobs and squeeze the middle class, but Peterson chose Pelosi. Collin Peterson is just not for you anymore."

The ad relies on a 2009 press conference at which Peterson, then chairman of the House Agriculture Committee, announced he would support the climate bill after striking a deal with Rep. Henry Waxman (D-Calif.), who then led the Energy and Commerce panel.

Under that agreement the Agriculture Department, rather than U.S. EPA, would have managed offset programs to pay farmers and landowners for environmentally friendly projects.

A recent SurveyUSA poll conducted for Minneapolis-St. Paul ABC affiliate KSTP shows Peterson clinging to a narrow lead in his re-election bid.

The Democrat received 50 percent to Westrom's 41 percent among the poll's 545 likely voters. The Oct. 3-6 survey had a 4.3-point margin of error.

But an internal survey Westrom's campaign released last week put the race in a dead heat.

That poll, provided to the Minneapolis *Star-Tribune*, showed Westrom with 44 percent and Peterson with 43 percent. An additional 13 percent of voters remained undecided.

The Oct. 12-14 survey of 300 likely voters had a 5.8-point error margin.

NATURAL GAS:

No rehearing for N.Y. town opposed to FERC-approved compressor station

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, October 21, 2014

Federal judges yesterday denied a New York town's request to reconsider a ruling that upheld the Federal Energy Regulatory Commission's approval of a compression station.

Minisink, N.Y., residents had asked the U.S. Court of Appeals for the District of Columbia Circuit to revisit its August ruling upholding FERC's approval of Millennium Pipeline Co.'s application to build a compression station in the town, which is home to about 4,400 people and lies about 60 miles northwest of New York City.

FERC approved the 12,260-horsepower compression station in July 2012 to bolster Millennium's existing pipeline structure in New York and address increased demand in New York City and the region.

Minisink has steadfastly fought the project, which is now functional. It proposed an alternative that would keep the station out of the town. The so-called Wagoner Alternative called for the construction of a smaller, 5,000-horsepower station next to the existing Wagoner Meter Station, which is 7 miles northwest of Minisink in a less populated area.

In July 2012, FERC's commissioners voted 3-2 to approve Millennium's application, leading to the challenge in court.

The D.C. Circuit in August largely deferred to FERC's decision, saying FERC had satisfied its obligations under the law. Judge Robert Wilkins, a Democratic appointee, sympathized with the town's concerns but found that FERC had followed the law.

"Given the choice, almost no one would want natural gas infrastructure built on their block. 'Build it elsewhere,' most would say. The sentiment is understandable," Wilkins wrote in a 33-page opinion. "Though we respect the concerns they raise, we conclude that, as a legal matter, the Commission's decisions were both reasonable and reasonably explained" (*Greenwire*, Aug. 18).

The town asked the court for a rehearing of the same three-judge panel, or en banc, meaning before all of the circuit's judges. The court denied the requests, but in an unusual step, Wilkins responded to claims raised by the town that he lacked objectivity because of stock holdings in the natural gas industry.

Wilkins wrote in a short statement that such an accusation of "undue influence is baseless," nothing that the holdings are part of a diversified mutual fund.

"Energy investments make up a small portion of the fund," he said.

SCIENCE:

DOE lays undersea cables to Europe for 'ultra-fast' climate data

Katherine Ling, E&E reporter

Published: Tuesday, October 21, 2014

The Energy Department will build four high-speed trans-Atlantic links to European scientific hot spots to gain "ultra-fast" access to data, the agency announced today.

DOE's Energy Sciences Network's (ESnet) new undersea cables will provide a total capacity of 340 gigabits per second of data transmission to U.S. scientific labs and are scheduled to be finished January 2015, according to Lawrence Berkeley National Laboratory (LBNL), which manages ESnet. The program provides advanced networking capabilities and tools to support U.S. national laboratories, experimental facilities and supercomputing centers and is funded by DOE's Office of Science.

The first line, scheduled to be completed this month, will provide a direct feed to the Large Hadron Collider (LHC), the world's most powerful particle collider, located near Geneva, and will provide greater capability of analyzing LHC data in new ways, according to LBNL. The LHC is offline undergoing maintenance but will start again in the spring, at which point ESnet wants the links to already be online.

"Particle physicists have been pushing the boundaries of networking technology for decades, and they will make use of our new extension almost immediately," ESnet Director Greg Bell said in a statement. "Very soon, other data-intensive fields will benefit as well. We expect to see significant network traffic across the Atlantic from the astrophysics, materials science, genomics, and climate science communities."

The trans-Atlantic links will also connect to facilities in London and Amsterdam and will serve dozens of scientific collaborations, LBNL said.

Michael Ernst, a physicist at DOE's Brookhaven National Laboratory, said in a statement, "Having the new infrastructure in place will meet the increased need for dealing with LHC data and provide more agile access to that data in a much more dynamic fashion than LHC collaborators have had in the past." Brookhaven National Laboratory and Fermi National Accelerator Laboratory are the primary computing centers for U.S. collaboration on LHC-related experiments.

"As centralized hubs for handling LHC data, our reliability, performance, and expertise have been in demand by the whole collaboration and now we will be better able to serve the scientists' needs," Ernst said.

AIR POLLUTION:

Texas regulators push back against tougher ozone standards

Published: Tuesday, October 21, 2014

Texas' Commission on Environmental Quality is working hard to fight tougher federal ozone standards on air pollution, even as most of the scientific community contends a lower ozone limit would protect residents' health.

The agency has argued for months that ozone levels in cities aren't harmful to human health.

"I haven't seen the data that says lowering ozone will produce a health benefit. In fact, I've seen data that shows it might have a negative health benefit," said Michael Honeycutt, the agency's chief toxicologist.

EPA is required to propose a new standard by Dec. 1 and is expected to lower it from 75 parts per billion to 60 parts per billion. But more than 100 million people live in areas that wouldn't meet that standard, which a unanimous panel of scientists and doctors said earlier this year is needed to protect their health.

Honeycutt has said the other scientists are looking at flawed data, though most researchers disagree with him.

Several other scientists say Honeycutt's claims are misleading.

"If we could get people to be exposed to less ozone, that would be a good thing for public health," said Dan Cohan, an associate professor of environmental engineering at Rice University (Neena Satija, *Texas Tribune*, Oct. 21). **-- SP**

CHINA:

Smog chokes marathoners as officials try to reduce pollution before international forum

Published: Tuesday, October 21, 2014

Air quality levels the World Health Organization deems "hazardous" didn't stop 30,000 runners from competing in the Beijing Marathon, but they raised concerns about an upcoming international summit that includes President Obama and other world leaders.

Many runners wore face masks, and one Kenyan front-runner bowed out halfway through the 26-mile trudge through air even the Communist Party news source *People's Daily* said was "not suitable for outdoor activities."

While winds saved a recent soccer match between Argentina and Brazil, an event as important as November's Asia-Pacific Economic Cooperation forum to be held at Yanxi Lake, 31 miles northeast of Beijing, might bring out the smog-cutting tricks Chinese officials employed during the 2008 Olympics.

In August, six cities and the provinces surrounding the Chinese capital were ordered to suspend or reduce production by 30 percent at factories.

The government of Hebei Province announced last week 881 construction sites will sit idle, and Shandong provincial officials said they will shutter 112 projects during the APEC conference.

During the Nov. 3-12 conference, Beijing authorities will cut city traffic by 35 percent by forcing private vehicles off the road, and China's Cabinet gave local government officials a holiday Nov. 7-12.

The measures may work but won't get to the heart of the smog issue, Chinese environmentalist Zhao

Liang told Beijing-based *Pengpai News*. "The difference in Beijing's air quality during and after the 2008 Olympics was a good example," Zhao said. "This kind of special project to combat air pollution will not improve the city's air quality fundamentally" (Yang/Silbert, *Los Angeles Times*, Oct. 20). -- **DTB**

SOLAR:

DOE's Le, Solar Foundation's Luecke discuss falling technology prices, cost benefits for U.S. school districts

Published: Tuesday, October 21, 2014

With the cost of solar technology continuing to fall, what are the benefits to incorporating solar power in school districts throughout the United States? During today's OnPoint, Minh Le, director of the SunShot Initiative and the Solar Energy Technologies Office at the Department of Energy, and Andrea Luecke, president of the Solar Foundation, discuss new reporting on the financial benefits to U.S. school districts in incorporating solar energy technologies. Le and Luecke also discuss the rapid price evolution solar technology has undergone in the last two years.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Wed., October 22, 2014

READ FULL EDITION

1.EMISSIONS:

Researchers find record leaks of methane from oil shale boom areas

Oil and gas basins in North Dakota and East Texas leaked around 10 percent of natural gas they produced to the atmosphere between 2006 and 2011. Natural gas is composed primarily of methane, a potent greenhouse gas that exacerbates climate change. The leakage rate in the study is the largest reported so far for the energy industry, and it challenged the industry's and U.S. EPA's perception of operations as relatively clean.

2.RISK:

Most insurers, with $1T in coverage, still seem in denial about climate change

A majority of U.S. insurance companies neglect to consider the broad impacts that climate change might have on their business, from threatening investment portfolios to toppling homes, according to an analysis of the industry released today.

TODAY'S STORIES

3.POLITICS:

Steyer's super PAC donations pass the $50M mark for 2013-14

4.CAMPAIGN:

Scott, Crist clash about climate change on CNN in tight race

5.NEGOTIATIONS:

Report suggests that a 2015 global deal to replace the Kyoto Protocol is 'within reach'

6.EXTREME WEATHER:

Student storm chasers develop drones to probe killer tornadoes

7.CITIES:

NYC mayor claims Superstorm Sandy rebuild program is back on track

8.NATIONS:

Burden of Germany's shift to renewable energy falls on taxpayers, but energy rates are close to U.S. range

9.RENEWABLE ENERGY:

U.S. wind power industry feels a new breeze, may soon double

10.BUSINESS:

Will building boom help Miami withstand climate change?

11.ADVOCACY:

Businesses, local officials may be vital to global climate action -- former U.S. climate head

12.EMISSIONS TRADING:

Planning to offset transport pollution with permits, Denmark gets pushback

13.AGRICULTURE:

Climate pushes Haitian coffee growers to higher elevations

E&ETV'S ONPOINT

14.CLIMATE:

U.S. adaptation plans show varied success in states

AN E&E PUBLISHING SERVICE

ENERGYWIRE — Wed., October 22, 2014

READ FULL EDITION

1.CAMPAIGN 2014:

In the epicenter of energy's transformation, a Democrat pushes a message beyond coal

MORGANTOWN, W.Va. -- The infectious energy the Democratic candidate for West Virginia's open Senate seat, Natalie Tennant, brings to her campaign is mired in the politics of coal, where state Republicans characterize the presidency of Barack Obama as singularly responsible for Appalachia's declining coal fields and the nation's shifting energy portfolio. It's in this arena where Tennant faces an almost impossible uphill climb toward the Nov. 4 election. Ideas about expanding economic growth outside the coal business are overwhelmed by the deluge of debate about which candidate supports coal miners the most. The state has bled jobs in its southern coal-producing counties.

2.ELECTRICITY:

Grid operator bracing for loss of power to Mexico

With memories of rotating power outages still fresh in parts of Texas, the state's main grid operator is seeking to temper the effects of a generator's plan to send electricity to Mexico.

TOP STORIES

3.OIL:

Pricing forecasts get gloomier at some ratings agencies

4.TECHNOLOGY:

The artist's new muse -- the giant mirrored solar plant

5.ARCTIC:

Tight timeline awaits Shell even if regulatory puzzle falls in place

OIL AND GAS

6.BAKKEN SHALE:

N.Y. tells N.D.: Clean up your crude

7.EARTHQUAKES:

State officials still seeking solution to quakes, though some resist

8.TRANSPORT:

Local attitudes threaten crude-by-rail 'gold rush' -- train chief

9.LAW:

Energy-focused firm adds offshore capabilities with New Orleans branch

10.AIR POLLUTION:

Enviros release footage of emissions from Texas oil and gas sites

11.FINANCE:

Shell midstream group details IPO plans

ELECTRICITY

12.GRID:

Nev. PUC will probe smart meter fires

13.PEOPLE:

Struggling nuclear giant's chief steps down over health issues

14.RENEWABLES:

Mich. bill would treat wind farms like crops

E&ETV'S ONPOINT

15.CLIMATE:

U.S. adaptation plans show varied success in states

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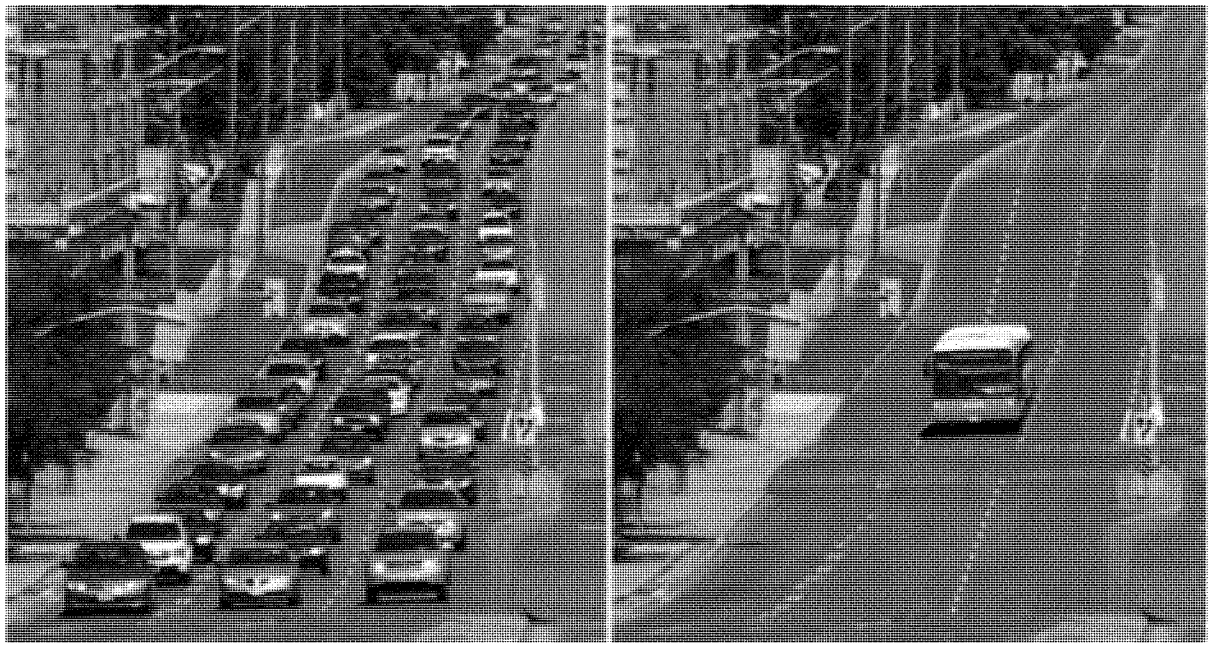

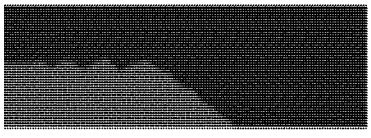

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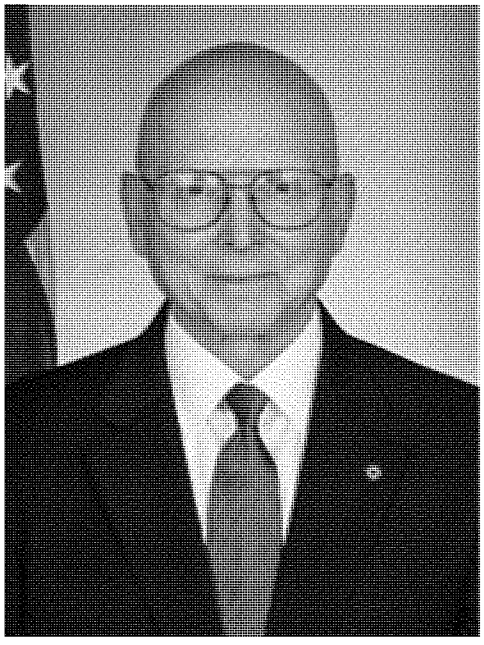

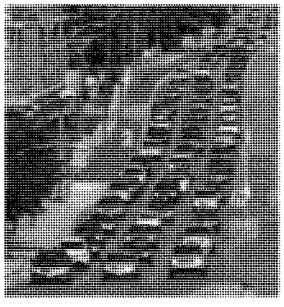

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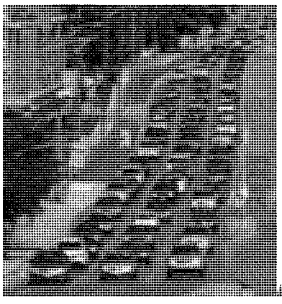

Air & Radiation Law News

for October 16, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Sued Over Failing to Find California Areas Missed PM-2.5 Attainment Deadlines

Environmental and public health advocates filed a lawsuit Oct. 15 in federal court to force the Environmental Protection Agency to find two California air basins missed their deadline to attain the 1997 clean air standards for fine particulates,...

Climate Change

Apple, CVS Among 187 Companies Worldwide Recognized for Cutting Carbon Footprints

Apple, Bank of America Merrill Lynch and CVS Health are among 187 companies worldwide that made it onto CDP's list of corporate climate leaders for 2014. ...

Climate Change

EU Expected to Formalize 40 Percent GHG Reduction Target at Bonn Talks, Sources Say

The European Union will unveil a target of reducing greenhouse gas emissions by 40 percent compared with 1990 levels by 2030 at next week's United Nations Framework Convention on Climate Change summit, which begins Oct. 20 in Bonn, EU and...

Climate Change

Highway Agency Offers Approach to Assess Facilities' Vulnerability, Adapt to Climate

A Federal Highway Administration study provides engineering methodologies for evaluating climate change vulnerabilities and adaptation measures at individual transportation facilities....

Climate Change

U.S. Hails New Zealand Plan to Make Cuts Nonbinding Under 2015 Global Climate Pact

The top U.S. climate negotiator Oct. 14 threw his support behind New Zealand's proposal for the 2015 global climate agreement that would require each nation to submit a broad "schedule" to cut greenhouse gas emissions but wouldn't...

Elections

Landrieu Discusses Risks of Climate Change, Seeks Distance From Obama on Energy Policy

Sen. Mary Landrieu (D-La.) said human activities contribute to climate change but sought to distance herself from the energy policies of President Barack Obama, who is deeply unpopular in Louisiana, during an Oct. 14 debate with her two chief...

Emissions Trading

Europe Carbon Permit Glut Poised to Double By 2020, Environmental Lobby Group Says

Europe's surplus of carbon permits may more than double by 2020, threatening to render the world's biggest emissions trading system irrelevant for the foreseeable future, according to environmental lobby

group Sandbag....

Environmental Reviews

Alberta Auditor General Calls Oil Sands Monitoring Report Late, Weak and Unclear

An annual report on a joint federal-provincial monitoring plan for Alberta's oil sands was late, weak, unclear and contained inaccuracies, Alberta Auditor General Merwan Saher said in a review....

EPA

EPA to Seek 200 Early Retirements, Buyouts In Specific Program Offices by January

The Environmental Protection Agency will seek to reduce its workforce by 200 through voluntary early retirements and buyouts in nine specific program offices by January 2015, according to a memorandum obtained by Bloomberg BNA Oct. 14. ...

Hazmat Transport

Railroads Enlist Lumberyards, Steel Companies to Fight Oil-Train Speed Limits

U.S. railroads are rallying customers, including lumber and steel executives, to fight a government safety proposal to slow trains hauling another commodity: crude oil....

Renewable Energy

B.C. Hydro Project Wins Environmental Approval

British Columbia's $7 billion (C$7.9 billion) Site C hydroelectric dam on the Peace River won environmental approval, paving the way for final decision later this year. The project proposed by provincially owned BC Hydro & Power...

Sustainability

DOE Issues Standards for Federal Agencies That Use Green Building Rating Systems

The Energy Department has laid out criteria that federal agencies must follow when using green building rating systems....

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Latest News

Dual Regulation Makes Modified Source GHG Rule Unlawful, Industry Warns

Industry groups and other opponents of EPA's proposed rule governing greenhouse gases (GHGs) at modified power plants -- which the agency has intended as a legal backstop in the event its new source rule is vacated -- say it is unlawful because the agency is proposing that such facilities would be regulated as both new and existing sources.

Court Poised To Hear Suit Over Bid For Giant Ozone 'Nonattainment' Area

The U.S. Court of Appeals for the District of Columbia Circuit will hear oral arguments Oct. 21 in a consolidated suit through which Delaware and Connecticut are seeking the first-time creation of a giant area designating several states as out of attainment with EPA's 2008 national ambient air quality standards (NAAQS) for ozone.

News Briefs

Lawmakers Back Bill Requiring Vote On Pennsylvania's ESPS Plan

Pennsylvania state senators have reversed course and approved legislation requiring regulators to seek legislative approval of any plan to comply with EPA's greenhouse gas (GHG) standards for existing power plants, sending the measure to Gov. Tom Corbett's (R) desk in the final hours of the legislative session. If signed by Corbett, the bill could complicate regulators' ability to craft a compliance plan and might also thwart efforts by some in the state to join the Regional Greenhouse Gas Initiative (RGGI) cap-and-trade program.

Court Approves Settlement In PM2.5 Air Plan Deadline Suit

A federal district court has approved a settlement between EPA and the Center for Biological Diversity (CBD) to resolve litigation the group filed claiming the agency had failed to take action on states' fine particulate matter (PM2.5) air plans, setting deadlines for EPA to either approve or reject all or part of several pending PM2.5 plans.

Greenwire

LOUISIANA:

Landrieu, Cassidy spar over energy issues in first Senate seat debate

Jennifer Yachnin, E&E reporter

Published: Wednesday, October 15, 2014

Louisiana Sen. Mary Landrieu (D) touted her support for the Pelican State's oil and gas industry as she urged voters to back her re-election bid while Rep. Bill Cassidy (R) said a Democratic majority would hurt the state's economy, as the duo faced off last night in their first public debate.

The hourlong session, held at Centenary College in Shreveport, La., also included retired Air Force Col. Rob Maness (R).

Louisiana's Senate seat is a top priority for both parties this cycle, as Republicans look to flip the six seats they need to claim a Senate majority next year. Despite an electorate that has shifted continuously to the right since her first election in 1996, Democrats believe Landrieu can win a fourth term.

But the Louisiana race is complicated by the state's unusual primary system, in which all candidates compete regardless of party on Election Day, and a winner is declared only if any individual receives more than 50 percent of the vote. Otherwise, the top two vote-getters advance to a December runoff.

Neither Landrieu nor Cassidy can claim a majority in the contest according to recent polls in the race, and the contest is expected to drag into December.

During the debate, Landrieu repeatedly pointed to her seniority in the Senate and her chairmanship of the Energy and Commerce Committee to argue that she is better positioned to help Louisiana voters.

"While President Obama is not on the ballot, the future of Louisiana is," Landrieu said in her closing remarks, adding that she would "get the job done when it comes to energy, building a middle class in our country and in Louisiana, supporting more domestic production, supporting the Keystone pipeline."

Throughout the debate, Cassidy sought to tie the incumbent to the Obama administration and argued that a Democratic majority in the Senate would not make those issues priorities.

"Her first vote is for Senator Harry Reid [D-Nev.]. Senator Harry Reid will never allow a pro-oil-and-gas jobs bill to come to the floor of the Senate, and she's already said that will be her first vote," Cassidy said.

Landrieu likewise attacked Cassidy throughout the debate, arguing that the Republican had voted against disaster aid for events like Superstorm Sandy in 2012.

"I've been the leader of disaster funding in the Congress, both for our recovery here in the Gulf Coast and

for help with Sandy as well as other disasters around the country," Landrieu said, arguing that Cassidy went against funding "for his own district" when Hurricane Isaac hit in 2012.

Cassidy said he did not oppose funding for disaster aid following Isaac but did object to earmarks included in a measure to assist New Jersey, New York and other states that year.

"I voted for Hurricane Sandy funding. ... What I didn't vote for was what was added on top of that which was not related," Cassidy said.

The candidates also split over the issue of climate change, as Landrieu endorsed the theory that human activity contributes to a rise in global temperatures, while both Republicans questioned its validity, pointing to the global warming "pause" as surface temperatures rose at a slower rate in the past 15 years.

But Landrieu also urged caution on responding to global warming, advocating for shielding her state's oil and gas industry while also protecting its coastline.

"I do believe our climate is changing, and I do believe that humans contribute; however, we have to be very careful about the policies that we promote," Landrieu said. "I'm a strong supporter of fossil fuels, natural gas particularly. ... We have to be careful about what we do, but we can build a strong energy future."

In his response, Cassidy pointed first to the climate pause before adding, "There might be climate change, but we're not seeing that reflected in temperatures."

He also argued that sea-level rise in the state is "relative," resulting from "other factors that cause the land to sink as much as water rising."

"If you want to preserve our coastline, I'm not sure climate change is the issue," he said.

Maness similarly argued that a climate pause suggests global warming is not occurring.

"I think we've got a lot more to learn about climate and what makes it change," Maness said, and went on to argue there are "much more urgent priorities" like establishing North American energy independence.

The candidates will meet in a second debate Oct. 29.

TECHNOLOGY:

Lockheed unveils plans for commercial fusion in 10 years

Katherine Ling, E&E reporter

Published: Wednesday, October 15, 2014

Lockheed Martin Corp. today announced it will develop a compact nuclear fusion reactor that could be ready within a decade.

Lockheed Martin's technology not only will shorten the infamous "30-years-away" timeline for commercial fusion but also will shrink the size of its reactor from the size of a building to the size of a large truck -- about 33 feet by 23 feet -- or 10 times smaller than current models, the company said.

"Our compact fusion concept combines several alternative magnetic confinement approaches, taking the best parts of each, and offers a 90 percent size reduction over previous concepts," Tom McGuire, compact fusion lead for Skunk Works' Revolutionary Technology Programs, said in a statement. "The smaller size will allow us to design, build and test the [compact fusion reactor] in less than a year."

Skunk Works is the advanced research and breakthrough technology division of Lockheed Martin, a top technology supplier for the nation's military complex.

Fusion is "the power of the stars" -- creating energy through high-speed collisions of atomic nuclei in a contained space that is a theoretically endless and emission-free cycle. The technology does not create the nuclear waste and proliferation issues of fission, the nuclear technology currently used in power plants, making it easier to offer to any nation.

Scientists have been working on fusion for more than 60 years but have not been able to reach the critical point where the technology can create more energy than is needed to start the process, enabling the ultimate goal of self-sustaining energy production.

The small size of the reactor will enable the company to design, build and test devices within a year, and the company expects to have a prototype within five years, McGuire said.

Lockheed Martin's technology is based on magnetic fusion, in which a magnetic field contains the reactions. The new reactor will be 100 megawatts, which is ideal for remote or mobile power, as opposed to typical electric power plants, which have an average 500 MW reactor.

In "10 years, we have great military vehicles; 20 years, we have clean power for the world," McGuire said in a video released as part of the announcement.

The company said the compact reactor could provide power for naval vessels and large airplanes, with an "unlimited range." One hundred megawatts is enough to power about 80,000 homes, and several units combined could power large cities, the company said.

"Basically, we use gas turbine infrastructure completely," McGuire said. "We partner with one of those companies, and we ship fusion-powered turbine plants around the world, and we expand that technology. Gas turbines are a huge improvement over other technologies in terms of climate change, but they are only a 50 percent improvement. We take it all the way."

Finding partners is important for the technology right now, the company said in an email.

"We are looking for partnership in the scientific community (government, academic and industry). We think it is important for the public and decision makers to understand the real promise that compact fusion has for our nation and the world as a near-term solution to our energy needs," said Heather Kelso, a company spokeswoman.

The financial details of the project are proprietary, but "a 100 MW system would only burn less than 20 [kilograms] of fuel in an entire year of operation. Small fusion reactors could generate significantly cheaper electricity than current technologies," the company said.

The smaller size of the reactor should certainly improve its price tag, but in 10 years, it will likely still face the low prices from natural gas that are undermining commercialization of many alternative technologies, unless there is a price on carbon emissions.

There are several other private companies currently developing commercial fusion reactors, although they do not have Lockheed Martin's resources. Its net sales for 2013 were $45.4 billion, according to the

company.

Andrew Holland, a senior fellow at the American Security Project, said Lockheed's participation in fusion technology is a significant step for the market.

"I think it is really important to see that we have this developing ecosystem of companies working on developing fusion from startup firms like General Fusion or Tri Alpha Energy to research firms with large budgets like Lockheed," he said.

"It is important for people to know that this isn't solely a government project."

In addition to General Atomics -- whose backers include Amazon founder Jeff Bezos -- and Tri Alpha, other serious contenders developing fusion reactors include Helion Energy and Lawrenceville Plasma Physics.

But Holland emphasized the continued importance of government research into fusion power because of the "long-term nature" of the technology.

"Notwithstanding this potential breakthrough, this is a long process, and the payoff is still a bit of a long ways down the road, and it is important for the government to sustain its R&D and probably, in fact, increase it because of the potential benefits," he said.

The United States has a few domestic energy fusion research projects and is also part of a multination effort known as the International Thermonuclear Experimental Reactor being built in the south of France to create a magnetic fusion experiment that will produce 500 MW of fusion power for 500 seconds but aims to be the basis of larger, centralized fusion-powered power plants.

The troubled project has encountered several delays and is several billion dollars over its original estimate of $20 billion (*Greenwire*, July 11).

FRANCE:

Long-awaited energy-transition legislation moves forward in Parliament

Published: Wednesday, October 15, 2014

The French transition away from nuclear energy inched toward completion yesterday as the lower house of Parliament passed a measure streamlining regulations to help expand wind, solar and other renewable production.

The frequently delayed bill, which caps France's nuclear power production and eliminates legal impediments to renewable energy projects, now moves to the Senate, before a final vote in the spring.

With France lagging behind other European nations' renewable energy production, the new system reduces the time frame in which anti-wind-power advocates can file legal challenges from six months to two months.

The plan, set to take effect in 2016, also offers incentives for renewable production during peak demand times. It gradually transitions away from the current tariff system that guaranteed a fixed selling price to a more market-driven subsidy system to help France meet E.U. climate change directives.

The law also removes nonrecyclable plastic bags from shops by 2016, bans plastic kitchenware by 2020 and introduces sanctions against "planned obsolescence," or intentionally limiting a product's life span (Michel Rose, Reuters, Oct. 14). **-- DTB**

ITALY:

Nation becomes first in Europe to require use of advanced biofuels

Published: Wednesday, October 15, 2014

Italy will require all cars and trucks to run on fuel that is mixed with advanced biofuels by 2018.

The fuel will be made out of waste to lessen the amount of land taken out of food production. By the 2018 deadline, the Italian government will require fuel suppliers to include 0.6 percent of advanced biofuel in gasoline and diesel.

The world's first commercial biofuels plant that turned straw into fuel opened last year in Crescentino near Turin, Italy. The goal of the plant is to produce 75 million liters (almost 20 million gallons) of bioethanol each year from straw and *Arundo donax*, an energy crop.

"We applaud the Italian government decision to establish a national mandate for advanced biofuels -- the very first of its kind in Europe," said Sebastian Søderberg, the vice president of biomass conversion at Novozymes, a company involved in the Crescentino plant. "After years of dithering and stalemate on biofuels policy in Europe, it is very encouraging that a large member state is ready to lead by example."

The issue of fuels made from crops has been contested across Europe. The European Union's Renewable Energy Directive, which was adopted in 2009, required that 10 percent of energy used within the transportation sector come from renewable energy sources. The European Union eventually reduced the amount to 5.75 percent due to concerns about the amount of land being converted from food production to grow crops necessary for biofuel production (Matt McGrath, BBC News, Oct. 14). **-- MH**

UNITED KINGDOM:

Geothermal test well aims to expand industry

Published: Wednesday, October 15, 2014

The United Kingdom has installed its first geothermal test well in 20 years in an effort to establish an additional renewable energy source.

The well was installed at the Rosemanowes Quarry near Falmouth in Cornwall, England, at a 1980s drill site that had been abandoned. The founders of the company that installed the well, Geothermal Engineering, poured £100,000 ($160,000) into the project, and an additional £800,000 ($1.3 million) of funding came from the Department of Energy and Climate Change.

The test was aimed at providing direct warmth rather than generating electricity, said Ryan Law, the managing director at Geothermal Engineering.

The majority of areas that drill for geothermal energy are near volcanic activity. The United Kingdom's geothermal industry is relatively new and undeveloped.

"Compared with other countries such as Iceland, New Zealand and Turkey, where active geological systems are present that generate large amounts of heat, the U.K. geothermal resource is largely undeveloped and the resource is considered to be lower grade," said a 2013 DECC report.

U.K. Energy Secretary Edward Davey said he is optimistic about the test well.

"We need a broad base of renewable energy in the U.K., and I am pleased to see that a deep geothermal heat project is finally producing energy," Davey said. "This nascent sector could make a real contribution to renewable heat supply in the U.K." (Michael Kavanagh, *Financial Times*, Oct. 15). **-- MH**

JAPAN:

Timing of nuclear restart remains uncertain

Published: Wednesday, October 15, 2014

Japanese Prime Minister Shinzo Abe continues to face an uphill climb in his unpopular bid to restart Japan's nuclear industry, which has idled since the Fukushima Daiichi nuclear disaster more than three years ago.

After ruling that the Kyushu Electric Power Co.'s Sendai plant met safety guidelines revamped after the Fukushima meltdown, the Nuclear Regulation Authority will finish up a series of public meetings Monday to explain the restart process to local residents in Satsumasendai, the township 600 miles southwest of Tokyo that is home to the two-reactor Sendai plant.

Without a legal framework in place to guide consultation, Abe's government has deferred to local authorities for final approval, but restart proponent Kagoshima Gov. Yuichiro Ito gave only prefecture governments and Satsumasendai, whose mayor also favors the restart, a say over the process.

"The current process is deeply unfair. ... If there was an accident, we face the same risks [as Satsumasendai] and none of the rewards," said Ichikikushikino Mayor Seiichi Tabata.

Earlier this year, more than half the 30,000 residents in Ichikikushikino, located a little over 3 miles from the Sendai plant, signed a petition opposing a restart.

Gov. Ito has refused to allow Ichikikushikino residents or the 50,000 people in nearby Hioki city a voice in the process.

An anti-nuclear prefectural assemblywoman said if Satsumasendai's City Council approves the restart, the prefecture won't vote until sometime after mid-December. But she said only eight of 49 lawmakers oppose the move.

Meanwhile, the Sendai plant still must pass an on-site safety inspection before reactors can go back online, which makes restart dates uncertain (Kentaro Hamada, Reuters, Oct. 15). **-- DTB**

POLICY:

Former State official Pomerance calls on White House to prioritize climate during Arctic Council chairmanship

Published: Wednesday, October 15, 2014

Next spring, the United States will assume chairmanship of the Arctic Council, an intergovernmental panel of eight nations bordering the Arctic. How is the U.S.'s chairmanship significant to the agenda established by the council? During today's OnPoint, Rafe Pomerance, former deputy assistant secretary of State for environment and development and a member of the Polar Research Board of the National Academy of Sciences, urges the State Department to prioritize climate action in its Arctic agenda. He also discusses his expectations for how the priorities of the U.S.'s chairmanship will differ from those of the current Canadian chairmanship.

Click here to watch today's OnPoint.

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CLIMATEWIRE — Thu., October 16, 2014

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1.RISK:

Lawyers allege insurance fraud is part of the big mess left by Superstorm Sandy

Five weeks after Superstorm Sandy, Deborah Ramey walked around her little house with an engineer, passing piles of sand that looked like snowbanks, 3-feet-high watermarks and leaning walls. Then he gave her the bittersweet news. Sandy's forceful floodwaters had undermined the house and collapsed part of its foundation. It was totaled. Months later, that finding was mysteriously reversed in a report filed with the court by the same engineering firm.

2.FORESTS:

The art of the deal: selling loggers on tree-saving practices that make money

SUNGAI NGIHIS, Indonesia -- In 2009, Bambang Wahyudi, a new recruit of the Nature Conservancy, solved a puzzle that made many conservationists scratch their heads: how to get timber producers to willingly switch to greener logging techniques.

TODAY'S STORIES

3.RESEARCH:
Natural gas's impact as a 'bridge fuel' has been oversold, report says

4.FOSSIL FUELS:
Major utility backs carbon capture and sequestration project on a gas-fired power plant

5.AUTOS:
With the youth leading the charge, Americans are driving less

6.BUSINESS:
SolarCity tries a new approach to investors

7.NEGOTIATIONS:
Experts take sides on new U.S. position on Paris talks

8.CHEMISTRY:
Solazyme wins a big prize with a tiny organism and dreams to change the oil industry

9.TECHNOLOGY:
New generation of more efficient lighting may eclipse LEDs

10.AGRICULTURE:
As rising temperatures force Australian agriculture to move, industries must adapt

11.PEOPLE:
Israel could see more African refugees due to climate change

12.BUSINESS:
Ikea executive ponders internal carbon fee

13.WEATHER:
Death toll mounts from Cyclone Hudhud in India

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14.FINANCE:
WRI's Bianco says U.S. can simultaneously achieve emissions reductions and economic growth

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ENERGYWIRE — Thu., October 16, 2014

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1.GRID:
Exploring the 'insecure by design' blind spot in industrial systems

While cyberattackers and defenders duel for advantage in ever-more-complex digital battlegrounds, a set of basic vulnerabilities affecting power grids, factories and pipelines has gone largely unaddressed. A vast number of sensors and other remote controllers that send vital data to control rooms -- and receive instructions in return -- weren't built with cybersecurity in mind.

TOP STORIES

2.NATURAL GAS:
U.S. petrochemical boom likely to face strong global headwinds

3.FINANCE:
SolarCity aims to broaden investor pool with 'solar bonds'

4.TRANSPORT:
Plummeting oil prices may push more Bakken crude onto rails

ELECTRICITY

5.ELECTRICITY:
Power complaints in Texas rise after years of decreases -- study

6.GRID:
As hardware gets 'smarter,' human element is key -- DOE study

OIL AND GAS

7.CLIMATE:
Study finds emissions savings from natural gas may have been overstated

8.PEOPLE:
Statoil CEO leaves for BG Group

9.ARCTIC:
Discovery in Norway's Barents Sea 'could be a game-changer'

10.OIL:
Billionaire airs his 'astonishment' over Saudi price reaction

11.WYOMING:
Drilling applications soar in Laramie County

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12.FINANCE:

WRI's Bianco says U.S. can simultaneously achieve emissions reductions and economic growth

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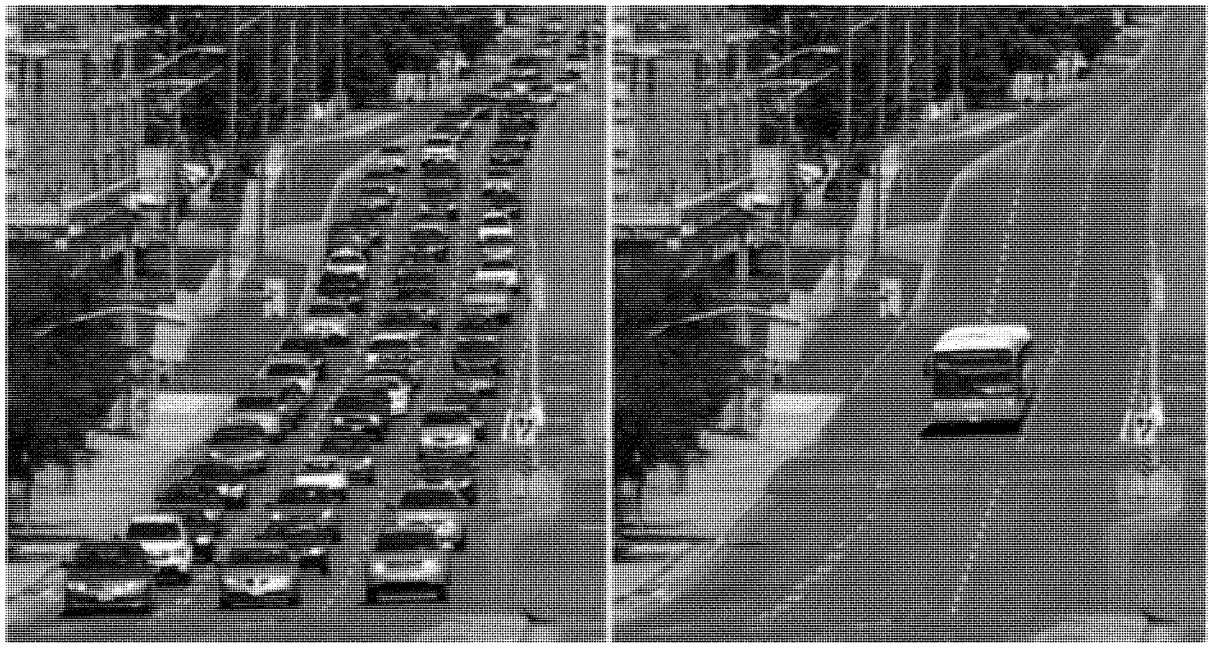

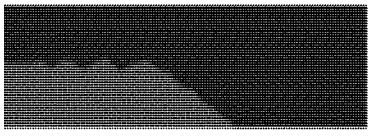

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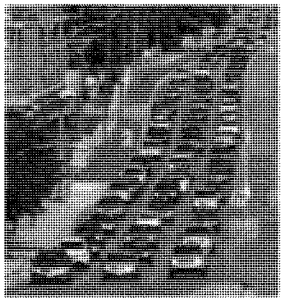

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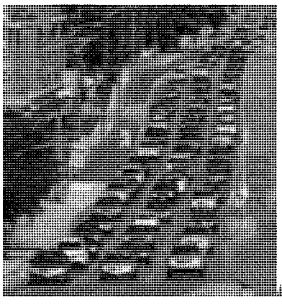


Air & Radiation Law News

for October 9, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

D.C. Circuit Asked to Reconsider Decision Upholding EPA Sulfur, Nitrogen Standards

Three environmental groups have asked a federal appeals court to reconsider a lawsuit challenging the Environmental Protection Agency's secondary national ambient air quality standards for sulfur dioxide and nitrogen dioxide because...

Air Pollution

Lawsuits Filed Challenging EPA Emissions Plan for Power Plant Near Grand Canyon

A federal appeals court has been asked to review the Environmental Protection Agency's source-specific federal implementation plan to reduce nitrogen oxides emissions from the Navajo Generating Station, a 2,250-megawatt power plant...

Air Pollution

Sierra Club Notifies American Electric Power Of Intent to Sue Over Ohio Plant's Emissions

The Sierra Club intends to file a citizen lawsuit against American Electric Power for alleged Clean Air Act violations at the utility's largest coal-fired power plant in Ohio....

Air Pollution

White House Reviewing EPA Ozone Proposal In Advance of Dec. 1 Deadline for Issuance

The White House Office of Management and Budget is now reviewing an Environmental Protection Agency proposal on whether to review or retain the national ambient air quality standard for ozone, according to the OMB website....

Climate Change

Groups Want Interior, Agriculture to Account For Carbon Costs in Minerals Management

A coalition of environmental groups called on the Interior and Agriculture departments to account for the costs of climate change in managing public lands and minerals. ...

Climate Policy

White House Looks to Promote Resilience In Natural Resources, Green Infrastructure

The Obama administration announced Oct. 8 a series of executive actions and public- and private-sector efforts to promote resilience to climate change through natural resource management and investments in green infrastructure....

Climate Regulation

Canada's Finalized Vehicle GHG Emissions Standards Align With Those of U.S.

The Canadian government has published final regulations to cut greenhouse gas emissions from passenger automobiles and light trucks in the 2017–2025 model years and maintain alignment of

Canadian standards with those in the U.S....

Climate Regulation

Climate Change Not 'Yes or No' Question, Says McConnell, Who Vows Vote on Rules

Senate Minority Leader Mitch McConnell (R-Ky.), locked in a close re-election battle, said the existence of climate change is "not a yes or no question" and vowed to hold votes to roll back Environmental Protection Agency regulations...

Climate Science

Sullivan Says View From Space Inspired Work on 'Environmental Intelligence' at NOAA

For Kathryn Sullivan, the first American woman to walk in space, seeing the Earth from between her boots was more than just a "cool view."...

Elections

Democratic Senate Candidates Seek Distance From Obama on Key Energy Policies

Several Democrats in competitive Senate races sought to distance themselves from President Barack Obama in Oct. 7 debates on environmental and energy issues ranging from the Environmental Protection Agency's carbon dioxide emissions...

Elections

Keystone, Exports Top Republican Agenda But Senate Gridlock Expected to Continue

Republicans have vowed to make the Keystone XL oil pipeline and energy exports among the first order of business if they win the Senate in the November midterm elections, but many Hill watchers think a closely divided chamber will result in continued...

Emissions Trading

California Air Board Report Calls For Invalidation of 231,154 Offset Credits

California air quality officials released a report Oct. 8 calling for the invalidation of 231,154 offset credits issued for the destruction of ozone-depleting substances, which are potent greenhouse gases, under the state's cap-and-trade...

Energy

European Commission OKs $26 Billion Subsidy Plan for New U.K. Nuclear Plant

The future for nuclear power in the European Union received an important boost when the European Commission approved Oct. 8 subsidies for approximately half of a new $53 billion station the U.K. says is needed to meet electricity supply shortages...

Energy

FERC Staff Issues Favorable Review For Cheniere's Corpus Christi LNG Project

The Federal Energy Regulatory Commission issued a staff report recommending approval of Cheniere Energy's proposed liquefied natural gas export terminal to be built on the Texas Gulf Coast....

Energy

IEA Urges Stronger Market Policies For Financing Efficiency Improvements

The global market for energy efficiency was worth as much as $360 billion in 2012 and appears upward bound, but stronger financing policies are needed to pay for faster efficiency gains that give the world a chance of achieving climate goals,...

Fuel Efficiency

EPA Chief Welcomes Report Showing Gains In Vehicle Fuel Efficiency, Reduced Emissions

The fuel efficiency of light-duty vehicles sold in the U.S. in model year 2013 reached a new high, according to a report released Oct. 8 by the Environmental Protection Agency....

Hazmat Transport

Pennsylvania Orders Release of Railroad Oil Shipment Reports, Deemed Public Records

The Pennsylvania Office of Open Records has ordered the public release within 30 days of records filed with state emergency management officials regarding the movement of rail cars carrying crude oil through Pennsylvania....

Hazmat Transport

Senators Warn of Potential Fuel Shortages, Press Agencies to Implement Heating Law

Sens. John Thune (R-S.D.) and Amy Klobuchar (D-Minn.) told federal officials they must implement a recently passed home heating law quickly to ensure state governors and federal agencies are prepared to address potential energy shortages...

International Climate

EU Governments Consider Funding To Aid Clean Energy in 2030 Climate Deal

European Union governments are considering the use of carbon-permit funds to help finance clean technologies and spur poorer nations toward a low-carbon economy under a planned deal on 2030 climate and energy policies....

International Climate

Lima Talks Must Deliver Draft of Global Deal For 2015 Talks to Succeed, de Boer Says

The 190-plus nations negotiating a 2015 climate deal must conclude December talks in Lima with a "manageable" draft text that focuses world leaders on just the four key issues still dividing developed and developing countries, the...

Natural Gas

Alaska Delegation Seeks Expedited Approval for LNG Project, Pipeline

The Energy Department should "expeditiously approve" a liquefied natural gas export license for an Alaska project that has been decades in the making, the state's congressional delegation said in a letter. ...

Renewable Energy

$500 Million Ethanol Investment Will Pay Off, DuPont Official Says, Rejecting Activist's View

A DuPont Co. official said a $500 million bet on producing ethanol from corn crop waste, singled out by activist investor Nelson Peltz as lavish, will pay off as companies such as Procter & Gamble Co. add to demand for renewable chemicals...

Inside EPA **Weekly Report**, 10/10/2014

http://insideepa.com/newsletters/inside-epa

Union Eyes Complaint To Force EPA Talks On Buyouts' Workload Impacts

EPA union officials are threatening to file an unfair labor practice (ULP) complaint to force negotiations with EPA over how to reallocate workloads to its remaining employees following a pending round of staff buyouts, as EPA moves ahead with plans to offer the buyouts to a wide range of staff...

Court's Rehearing Of NOx-SOx NAAQS Suit May Hinge On Pilot Study Fight

A federal appeals court's pending decision on whether to grant advocates' request to rehear its ruling backing EPA's decision against setting a novel joint nitrogen oxides (NOx) and sulfur oxides (SOx) air standard could hinge on whether the court agrees with environmentalists that EPA's...

Amid Compliance Fears, EPA Downplays Slow Growth In Vehicle Efficiency

EPA is downplaying concerns that automakers have been slowing improvements in vehicles' fuel economy -- a key measure of their greenhouse gas (GHG) emissions -- amid fears from environmentalists that manufacturers may not be able to comply with the administration's GHG and fuel economy targets...

EPA Said To Favor Alternate Approach In Setting ESPS' Renewable Goals

EPA is believed to be leaning toward an alternative approach for calculating the renewable energy portion

of state greenhouse gas (GHG) targets under its proposed standards for existing utilities, according to one state regulator, a move that could strengthen goals in Midwest states due to the...

News Briefs

CEQ Resiliency Plan Aims To Boost Carbon Sequestration

The White House Council on Environmental Quality (CEQ) has released a long-promised plan for improving resiliency of natural resources to climate change, a document that includes calls for EPA and other agencies to improve their projections of greenhouse gas (GHG) emissions and carbon sequestration on agriculture and forest lands, and to advance their understanding of coastal carbon ecosystems and the impacts of sea-level rise.

Advocates Back EPA Plan To Scrap SIPs' Affirmative Defense

Environmentalists are backing EPA's supplemental proposal to remove from several states' air quality plans affirmative defense provisions that shield industry from liability for some emissions limit violations due to facility malfunctions, arguing that the rule will help reduce such violations and improve overall air quality.

Greenwire

MOTOR VEHICLES:

Average fuel economy hit record in 2013 -- EPA

Sean Reilly, E&E reporter

Published: Wednesday, October 8, 2014

Average vehicle fuel economy reached a record 24.1 mpg for the 2013 fleet, up 0.5 mpg from the preceding year, U.S. EPA said this afternoon.

In a news release, EPA attributed the improvement to automakers' "rapid adoption" of turbochargers and other innovations. Among individual manufacturers, Nissan led both in reducing greenhouse gas emissions and in average fuel economy improvement.

"We are thrilled to see that manufacturers continue to innovate and are bringing technologies to improve fuel economy online even faster than anticipated," EPA Administrator Gina McCarthy said in the release. "Consumers now have many more choices when shopping for vehicles with higher fuel economy and lower emissions compared to just five years ago."

EPA released the data in connection with its latest report on trends in fuel efficiency, carbon dioxide and automotive technology for cars and light trucks.

Taking a more critical view was Dan Becker, director of the Safe Climate Campaign, an environmental advocacy group.

The figures cited by EPA reflected standard discounting of actual test data, Becker said in a phone interview.

According to the test data, fuel economy for the 2013 fleet was 30.6 mpg, Becker said, and is projected to rise slightly to 30.7 mpg for 2014 cars and light trucks.

In a separate news release, he said, "Automakers should be embarrassed to put in such an appalling, flat-line performance, especially on the president's signature environmental achievement."

CLIMATE:

Judge rejects Neb.'s challenge of EPA power plant rules

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, October 8, 2014

A federal judge has dismissed Nebraska's challenge to U.S. EPA's proposed greenhouse gas standards for new or modified power plants.

Judge John Gerrard of the federal district court in Nebraska said the state's challenge was premature because EPA has yet to finalize the limits.

"The state has jumped the gun," Gerrard wrote.

Nebraska's case was the first of what is expected to be several challenges to EPA's new efforts to address climate change by regulating new and existing power plants.

The state claimed EPA's proposal violated the Energy Policy Act of 2005. The agency justified the Clean Air Act's requirement that carbon capture and sequestration had been "adequately demonstrated" by relying largely on facilities where the government funded the use of the technology through that 2005 law.

Gerrard said "the federal government cannot subsidize construction of facilities with the Energy Policy Act and then claim that the facilities for which it paid demonstrate, for Clean Air Act purposes, that the technology is viable."

However, Gerrard added that Nebraska's challenge was a long way from ripe for judicial review because EPA has not finalized the standards. The agency is expected to finish the rule either this year or next.

In particular, Gerrard noted that EPA is still reviewing public comments on the subject of Nebraska's challenge -- carbon capture and sequestration.

"All of this goes to show that the EPA is still in the process of considering the very aspect of the Proposed Rule that the State insists is final," Gerrard said.

Gerrard also said that when EPA finalizes the rule, challenges should be brought in the U.S. Court of Appeals for the District of Columbia Circuit, not his district court.

A separate lawsuit brought by Murray Energy Corp. and other industry groups challenging EPA's proposed standards for existing plants is still pending at the D.C. Circuit (*Greenwire*, Sept. 19).

Click here for the court's order.

GRID:

Regional operator floats 'trial balloon' on demand response

Hannah Northey, E&E reporter

Published: Wednesday, October 8, 2014

The grid operator in the Mid-Atlantic and Midwest staked a trail for demand response today that it says might avoid litigation expected in the wake of a federal appeals court's torpedoing of a key federal electricity-saving program.

PJM Interconnection outlined a new framework that it called a "trial balloon" for the participation of demand response in power markets. The proposal was released in a white paper yesterday.

"We believe that structure creates a path to continue demand response participation in these markets," Andrew Ott, PJM's executive vice president for markets, told stakeholders and reporters today.

Demand response refers to agreements by large industrial and commercial utility customers to cut back on electricity use to ease pressure on the grid during times of peak power demand or to respond to economic signals from a competitive wholesale market.

Under PJM's proposal, competitive retail service providers and load-serving entities would be able to participate in the demand response markets directly through PJM's capacity markets. A third of PJM's demand response is currently derived from load-serving entities, Ott said.

PJM, he said, still "sees a role" for third-party providers and aggregators -- companies like EnerNOC Inc. and Viridity Energy Inc., for example -- that were blindsided when the court scrapped the federal program.

"I think that vital role will continue, we'll work with the states and competitive providers within the states," Ott said.

But PJM, the nation's largest wholesale electricity market, acknowledged the proposal is one of many being circulated in response to the appeals court's scrapping last May of the Federal Energy Regulatory Commission's rule that provided incentives for electricity users to consume less power.

The court held that FERC had overstepped its authority under the Federal Power Act. The ruling was welcomed among industry groups -- notably the Electric Power Supply Association and Edison Electric Institute -- that have for years argued that FERC's Order 745 goes "too far" and tramples states' exclusive authority to regulate retail markets.

FERC's request for a rehearing has since been denied, and the agency is now mulling whether to take its concerns to the Supreme Court.

Vincent Duane, PJM's general counsel, said the court left many questions unanswered and the grid operator has since received several "clever, creative and reasonable" proposals for how to manage demand response.

Duane said the proposal that PJM has floated would ensure that demand response transactions maintain wholesale character, which would comply with the court's decision. It would also treat DR as a demand resource, not supply.

"Some may say it's conservative, but the concern for us -- and it's really the major point I want to underscore -- is that we ensure we proceed on solid legal footing to" prevent litigation and uncertainty in the markets, Duane said.

It's unacceptable for PJM, he said, to pursue untested approaches that might be challenged through FERC or the courts, and run the risk of being remanded in coming years.

PJM is interested in seeing whether the plan gains traction or gets support, Duane said, adding that the grid operator needs to make decisions before its 2015 auction, or even before incremental markets in February.

"We'd love to see a path get some support that would allow us to present it to [FERC]," he said.

PJM also filed its proposal in a FERC docket that stems from Akron, Ohio-based FirstEnergy Corp.'s request to remove "all PJM Tariff provisions that allow or require demand response to be included in the PJM capacity market."

PJM officials said they "purposefully" filed the plan there because they cannot otherwise discuss the issue with FERC with FirstEnergy's request pending.

FirstEnergy is one of the nation's largest investor-owned electric companies, with 10 regulated distribution companies operating in the Mid-Atlantic and Midwest. It also has nearly 18,000 MW of generating capacity, nearly all of it in the PJM market, which serves 13 states and the District of Columbia.

In its filing with FERC, FirstEnergy said the auction results "must be considered void and legally invalid because the inclusion of demand response in the auction parameters was unlawful."

If a path forward for demand response isn't firmed up by the year's end, PJM will have to take a hard look at the "undesirable" option of suspending demand response in the wholesale markets, Duane said. Or the grid operator could propose a path forward to thwart uncertainty going into 2015, he said.

COLORADO:

Gardner rejects human-caused climate change during Senate seat debate

Jennifer Yachnin, E&E reporter

Published: Wednesday, October 8, 2014

DENVER -- Colorado Republican Senate nominee Cory Gardner said last night he does not believe human activity is contributing to climate change, rejecting the concept during a public debate with Colorado Sen. Mark Udall (D).

The House lawmaker is locked in a tight battle with Udall over the Colorado Senate seat, a top target for both parties this cycle as Democrats seek to retain their majority and the GOP looks to flip the six seats it needs to take over the upper chamber next year.

Gardner dismissed the idea that people contribute to climate change during a feisty exchange with moderators from *The Denver Post*, which sponsored the event.

During a portion of the debate in which both candidates were asked to give one-word answers to a series of yes-or-no questions, Gardner refused to do so when asked: "Do you believe humans are contributing significantly to climate change?"

"Well, I've said all along climate is changing," Gardner said, before being interrupted by moderators and told to respond either "yes" or "no."

But Gardner continued: "This is an important issue, and I don't think you can say yes or no." After being interrupted by moderators again, he concluded: "I believe the climate is changing. I disagree to the extent that it's been in the news that man is causing it."

Following another exchange with moderators about the format of the question, Gardner argued that the candidates "ought to be able to provide an answer."

"This is a serious debate. We're both running for the United States Senate. This is a serious issue, and I don't think we should shortchange serious issues with yes-or-no answers without being able to talk about them now," he said.

But *Denver Post* political editor Chuck Plunkett dismissed Gardner's complaint, responding: "These yes-or-no questions are meant to be answered yes or no, because they should come from a core belief that you would hold."

Moderators then asked the same question to Udall, who responded only: "Yes."

Among the other yes-or-no queries candidates responded to were questions on the death penalty and same-sex marriage, as well as their support for construction of the Keystone XL pipeline.

"If the science is completed, yes," Udall said. Gardner prompted laughter from the audience when he responded: "The science is completed. Yes."

Gardner returned the debate to climate change when candidates were allowed to briefly respond to any of the yes-or-no questions.

"These are very important issues ... that many simply cannot be described as yes or no," Gardner said. "I disagree to the extent that man is causing it, and I refuse to destroy our economy like Senator Udall would in order to pursue some radical ideas that his top supporters like [billionaire environmental activist] Tom Steyer are in favor of."

Although the debate did not include discussion of issues like a carbon tax or U.S. EPA's proposed rules to reduce carbon emissions from existing power plants, Gardner slammed Udall over those issues at a debate Monday sponsored by the Denver Metro Chamber of Commerce (*Greenwire*, Oct. 7).

Udall responded: "What's radical is Congressman Gardner's continuing denial that climate change is occurring. We have pre-eminent scientists in this state, we're seeing the effects in our farm economy and our ski industry."

Much of the debate otherwise focused on issues that have dominated the campaign -- including health care and abortion rights -- with moderators acknowledging some have nicknamed the Democrat "Mark Uterus" for his focus on the latter -- as well as efforts by Gardner to link Udall to President Obama, while Udall sought to frame Gardner as too conservative for a statewide office.

WEST VIRGINIA:

Capito clarifies her views on climate change

Manuel Quiñones, E&E reporter

Published: Wednesday, October 8, 2014

Clarification appended.

West Virginia Rep. Shelley Moore Capito (R) appeared to question the science behind climate change during last night's debate against West Virginia Secretary of State Natalie Tennant (D).

Supporting the Mountain State's coal industry and opposing the Obama administration's climate agenda have been at the center of their campaigns to replace retiring Sen. Jay Rockefeller (D).

When moderator Hoppy Kercheval went beyond Obama administration rulemaking and asked about scientist research on climate change, Capito said, "I don't necessarily think the climate is changing, no."

But spokeswoman Amy Graham said Capito later clarified her comments to reporters. "Is the climate changing? Yes it's changing, it changes all the time, we heard it raining out there," she told reporters outside the debate, including from *The Charleston Gazette*. "I'm sure humans are contributing to it."

Capito, who is endorsed by the West Virginia Coal Association, also blamed the Obama administration and Democratic climate policies for "every single mining job that's lost."

Even though Appalachia has lost thousands of jobs in recent years, analysts say market conditions, including competition from natural gas, are to blame for many of the layoffs.

Addressing the same issues, Tennant said West Virginians shouldn't have to choose between jobs and the environment.

"I know that we have the technology that can meet the demands. That's why I have challenged the president, challenged the EPA," she said, echoing many coal industry supporters in saying President Obama's proposals and policies affecting the industry are too harsh.

"The coal miners endorsed me because they trust me to help save their jobs," said Tennant, touting her endorsement by the United Mine Workers of America. "I will stand up for the coal miners. Congresswoman Capito has not stood up for the coal miners."

Tennant accused Capito of wanting to cut mine safety funding by voting for austere GOP budgets. Tennant also questioned Capito for not backing a Democratic-backed mine safety bill.

Capito said she was "alarmed" by recent reports showing an increase in black lung disease and touted backing past mine safety efforts. And in response to the 2010 Upper Big Branch explosion, which killed 29 miners in West Virginia, Capito floated a mine safety bill meant to attract Republicans.

"I'll stand strong on my record of defending West Virginia coal," said Capito. "My opponent has supported the president that's putting West Virginians our of jobs."

Capito wasted little time bringing up Obama, who is deeply unpopular in West Virginia despite the state's Democratic roots. The Republican said she would fight the "obstructionism of [Senate Democratic Leader] Harry Reid, the agenda of President Obama."

Tennant responded, "I'm here to tell you that this race is about West Virginia, not President Obama, not Harry Reid. I don't answer to a party, I answer to the people of West Virginia."

"Darn tootin' we need a Washington that works for us," she added.

Polls have consistently shown Capito ahead in the race and in fundraising. Both Tennant and Capito declared total victory after the debate.

The same thematic dynamic is going on in neighboring Kentucky between Senate Republican Leader Mitch McConnell and Kentucky Secretary of State Alison Lundergan Grimes. But the two are in a much tighter race compared with the contest between Capito and Tennant.

The group Crossroads GPS, which does not disclose donors and is tied to GOP strategist Karl Rove, is airing a new ad saying, "On the issues that count, Alison Grimes works for Obama, not Kentucky."

Grimes is this week campaigning near eastern Kentucky coal fields to press her jobs case against McConnell and tout her independence from party leaders.

Clarification: *Because of incorrect information from a campaign aide, an earlier version of this story included incorrect information about Rep. Shelley Moore Capito's views on human impacts on climate change.*

VIRGINIA:

Warner, Gillespie tangle on climate rules, KXL pipeline, party orthodoxy

Nick Juliano, E&E reporter

Published: Wednesday, October 8, 2014

Fighting for votes in an increasingly purple Virginia, both Senate candidates used a debate last night to distance themselves from their party's most extreme wings on energy and climate policy.

Sen. Mark Warner (D-Va.) touted his support for the Keystone XL pipeline, offshore oil drilling and liquefied natural gas exports; he also, perhaps inadvertently, dipped his toe into the emerging debate over whether to sell U.S. crude oil overseas. Meanwhile, Republican challenger Ed Gillespie offered a firmer endorsement of climate science than most Republicans have been willing to make in recent years even as he continued to attack the Obama administration's approach to the threat.

Warner is fighting for a second term, and most recent polls show him holding a comfortable lead over Gillespie, the former adviser to President George W. Bush, Republican National Committee chairman and Washington, D.C., lobbyist.

Last night's debate offered the candidates an opportunity to hone and rehash the attacks they have been making throughout the campaign. Gillespie claimed Warner votes with President Obama too often and is doing nothing to stop U.S. EPA rules targeting the coal industry. Warner, meanwhile, dismissed Gillespie on the basis of his past as a "partisan warrior" and the fact that his lobbying firm once represented the disgraced energy company Enron Corp. and fought higher fuel efficiency rules.

The debate also offered the candidates an opportunity to distinguish themselves as individuals. Warner,

for example, pointed to his support for offshore drilling along the Virginia coast, so long as the state gets a share of the royalties, as well as for the Keystone XL pipeline. "Matter of fact, I've even been protested against in Harrisonburg because of that support," he said.

Gillespie said Warner voted against efforts to approve KXL or expand offshore drilling, but the incumbent either dismissed those as "procedural" votes or said offshore drilling would not come with sufficient revenue sharing.

In 2012, Warner voted against a failed amendment from Sen. John Hoeven (R-N.D.) that would have added KXL-approval language to a larger highway bill and won support from 11 other Democrats, but he also voted against an amendment to that same bill that would have banned exports of oil shipped through the Alberta-to-Texas pipeline. Last year, during a series of nonbinding budget amendment votes, he voted for both a pro-KXL amendment from Hoeven and a countermeasure from Sen. Barbara Boxer (D-Calif.), an ardent KXL opponent, that would not have directly rejected the line but was seen as trying to establish enough roadblocks to make its construction impossible (*Greenwire*, March 25).

In the midst of a rather garbled defense of his KXL vote, Warner also appeared to offer some early support for exporting U.S. crude oil, an issue that is expected to gain prominence in Washington energy policy debates over the next year.

"On Keystone, I believe we ought to wait till we got the science proven. The science from the EPA came back said, 'Let's build it,'" he said. "Let's make sure that we export this kind of oil as well as natural gas, which would absolutely free up Europe's dependence on Russian oil and gas. These are all things where I think we can make changes and, frankly, strengthen America."

A spokesman in Warner's Senate office, Kevin Hall, said today that the senator misspoke and does not have a position on oil exports but that he has called for expedited exports of liquefied natural gas alongside other senators from both parties.

Both supporters and opponents of crude oil exports said privately that Warner would be likely to support the export push, given his moderate profile on energy issues.

He is sure to be courted as attention to the crude export debate intensifies, but legislation is not expected to move in Congress for at least another year or two if not longer, said Robert Dillon, a spokesman for Sen. Lisa Murkowski (R-Alaska), who has led calls for the Obama administration to lift the export ban. There hasn't been any direct outreach between Murkowski's and Warner's offices, Dillon said, but in the meantime, it's encouraging to see senators taking their time before announcing a decision.

"It means they either support it or they're honestly taking a look at it and trying to understand it," Dillon said. "That's a good thing."

EPA rules

At several points, Gillespie tried to tie Warner to Obama and policies such as the EPA climate change and air pollution rules expected to lead some coal-fired power plants to shut down. Warner repeatedly dodged questions on whether he supported the EPA rules. Instead, the incumbent noted he joined colleagues in asking EPA to extend the comment period on the rule, "to get the facts right. Let's let the science dictate." The agency last month agreed to keep accepting comments through Dec. 1.

Still, Gillespie did not deny the reality of climate change or its connection to human industrial activity. But he did dismiss the Obama administration's approach as too expensive without putting forward any alternative of his own.

"I believe there's ample evidence that supports that there is climate change occurring and that man contributes to it," he said, before dismissing the EPA greenhouse gas rules for existing power plants as too costly to the coal industry.

"Senator Warner took a very tough stance to say we should -- extend the comment period past the election," Gillespie mocked, drawing laughter from the crowd. "I can tell you right now I don't think we should close one-third to 50 percent of our coal-fired plants."

Gillespie's acknowledgement of humans' contribution to climate change goes further than many of his colleagues have been willing to go, although a growing number of Republicans are declaring themselves agnostics on the science rather than outright denying the link between industrial greenhouse gas emissions and rising temperatures (*ClimateWire*, Oct. 7).

Still, environmentalists don't seem impressed.

"For Ed Gillespie to acknowledge the climate crisis in one breath and then distort the solutions to that crisis in the next breath is like seeing a house on fire and refusing to call 911," said Melissa Williams, Sierra Club political director, in an emailed statement today.

AIR POLLUTION:

Enviros seek rehearing in acid rain case, claim EPA misled judges

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, October 8, 2014

Environmental groups yesterday asked a federal appeals court to reconsider its ruling upholding U.S. EPA's decision against tightening air standards for pollutants that contribute to acid rain, contending that it relied on an agency study that EPA is not actually conducting.

In May, the U.S. Court of Appeals for the District of Columbia Circuit sided with the agency in a challenge to its decision not to strengthen air standards for nitrogen oxides and sulfur dioxides. The pollutants contribute to acid rain, which threatens aquatic wildlife and vegetation.

EPA's scientific advisers recommended tightening the so-called secondary standards. But EPA demurred, finding that the effects of acid rain on various different bodies were too complex, so issuing the new standards was too difficult.

The three-judge panel deferred to EPA's decision, but it at least partly based its ruling on the agency's assurances it is conducting a new pilot study to further understand the issue (*Greenwire*, May 27).

Environmental groups, led by the Center for Biological Diversity, contend that the study is not ongoing as EPA indicated. They cite an email obtained through a Freedom of Information Act request from an EPA staffer to a press officer, seeking a response to a reporter's question.

"The pilot study was not funded because of the 2013 sequestration," the email says. "EPA is beginning the next review of the ... secondary standards. We have not yet determined whether the pilot is still the best approach in light of the new science and data that is available since the last review."

In their petition for rehearing, the environmentalists claim the statement shows EPA had defunded the study before the case's October 2013 oral arguments because sequestration had already taken effect

then.

"To the contrary, at oral argument, EPA's counsel expressly cited the pilot study as a basis for upholding the agency's action," the groups wrote. "EPA's withdrawal of its commitment to the pilot study eliminates a key basis for the Panel's decision to uphold the agency's action."

The court will likely decide whether to reconsider the case in the next couple of months.

Click here for the environmental groups' petition.

PEOPLE:

Race car driver puts clean energy on fast track

Matt Herbert, E&E reporter

Published: Wednesday, October 8, 2014

In a sport that relies heavily on energy consumption, one race car driver is revving up the push to promote cleaner energy.

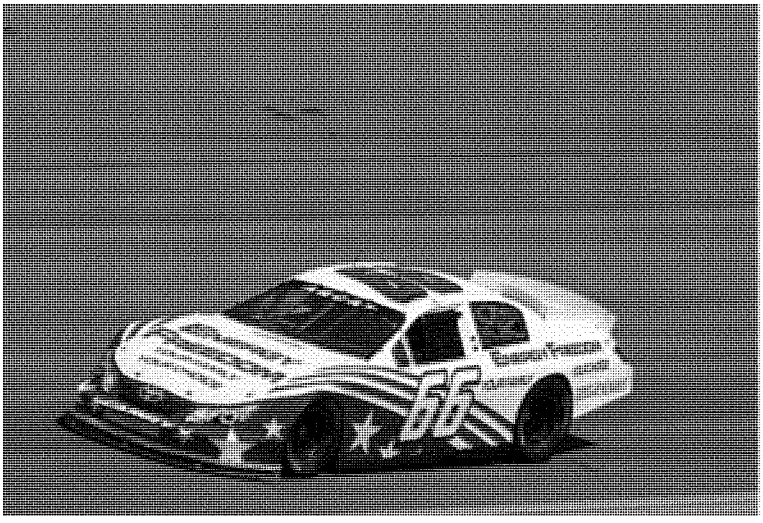
Self-proclaimed "vegan hippie chick with a race car" Leilani Münter is encouraging fans to be more energy-efficient. Last week, Münter debuted a new car at the ARCA 98.9 race at the Kansas Speedway in Kansas City, Kan., to promote the use of clean energy on and off the track. Her car sports the slogan "Energy Freedom: Your Family, Your Choice."

"Freedom, independence and self-sufficiency are at the heart of who we are as a nation," Münter said in an interview. "It is a family value. That's why so many American families support the idea of energy freedom."

She added, "Moms and dads, teachers and firefighters across the country are putting solar panels on their roofs, tapping into wind energy and driving hybrids and electric vehicles, because energy freedom means economic freedom and healthier lives."

Rules and regulations require stock cars participating in the race to run on fuel with a 13 percent ethanol mix. But Münter's pit box is powered by a ZeroBase portable solar power system. The system is a quieter, cleaner and more cost-effective option than the standard diesel generator, Münter said.

Off the racetrack, Münter drives an electric Tesla and has installed solar panels on the roof of her Charlotte, N.C., home. She has installed two rainwater collection systems, has a worm composting system and grows her own vegetables.



Münter promoted clean energy with her "Energy Freedom: Your Family, Your Choice" car at the ARCA 98.9 race at the Kansas Speedway on Oct. 3. Photo by Alex Krohn.

Münter's interest in environmental issues came after watching former Vice President Al Gore's 2006 film "An Inconvenient Truth." A biology graduate from the University of California, San Diego, Münter said she was inspired to make a change in her life and wanted to spread the message about climate change but wasn't sure how. After she posted information about the topics on her website, fans began a heated discussion on climate change in NASCAR forums that linked back to her site.

Then Münter had an epiphany.

"This is how I can do it: I bring the message to the race stands," she recalled. "I'm a 200-mile-an-hour billboard in front of 75 million fans."

After Münter began publicly speaking out about climate change and other environmental issues, members of the environmental community were skeptical. She said many doubted her intent and believed in the stereotype that race car fans don't care about climate change and renewable energy. She disputed that stereotype and persisted in her efforts.

"I've received many positive responses from fans," said Münter. "They care about clean air, clean water and a healthy future for kids. I think discussing these issues is the most important conversation to have, and [fans] have really embraced it."

Although most fans responded positively toward her advocacy, many behind-the-scenes business personnel weren't as supportive, she said.

"Marketing people told me to shut up about it and told me I was risking my career by talking about all these environmental and political things," said Münter. "They said I was going to alienate sponsors and hurt my career."

Münter began being more selective in choosing her sponsors. She wouldn't agree to drive in a car sponsored by a fossil fuel, meat, dairy or animal testing company. Due to her "pickiness," Münter lost out on certain sponsorship deals and ended up not racing for a few years. But she's content with her decision.

"I feel just as strongly about these environmental issues, and I'm not willing to compromise that," said

Münter. "I'm happy with that decision. Had I signed with them, I wouldn't have been happy with that, because I would have sold myself out."

Even though Münter did alienate sponsors with her activism, she also found companies that shared her opinions. In 2007, SMART Papers, a company that produced print, label and packaging paper, sponsored Münter because it liked her pro-environment message.

And Münter said that she has privately received support from fellow race car drivers but that so far, none has joined her push to promote renewable energy.

"They're just protecting their racing careers, and I understand that," she said. "Race car drivers can't race without sponsors. A lot of the companies sponsoring the sport are not companies that get behind what I'm promoting."

Asked whether she fears that her passion and activism could end her career, Münter said the possibility has crossed her mind but added, "I'm going to try to stay in the race car as long as I can so I can spread my message."

Energy freedom

The red, white and blue car Münter drove in the ARCA race Friday was sponsored by an anonymous person who she said shares her passion for renewable energy.

"We wanted the red, white and blue car because this country was basically founded on freedom and independence and being self-sufficient," said Münter. "Energy freedom is the right of every American family. Across this country, I have met so many families who have chosen cleaner energy and gained new freedom over their lives because they own and control the energy they use, and they are saving money."

Münter invited the Eller family of Greensburg, Kan., to Friday's race to further advocate for clean and renewable energy. A deadly tornado leveled most of the town of fewer than 1,000 in 2007. During the rebuilding process, the town focused on energy efficiency. Today, the entire town is powered by renewable energy and has one of the highest per-capita numbers of structures certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design, or LEED, program in the world.

Münter said being energy independent is important but also cost-effective. Many of the homes in Greensburg are powered by solar panels, saving families money on monthly utilities.

In addition to her support of clean energy, Münter is an advocate for other environmental issues, from the cleanup of the BP PLC Deepwater Horizon oil spill in the Gulf of Mexico to animal rights. Last month, she participated in the climate march in New York City.

Münter said she's just as much an activist as she is a race car driver.

"I can't reach all the people without my car; I'm only reaching them with the car," said Münter. "If I quit, I'll just be replaced by another driver that isn't promoting clean energy, and the message wouldn't be heard."

SOLAR:

SolarCity offers loans in move that could propel market

Published: Wednesday, October 8, 2014

In a move that industry analysts hope will accelerate the rooftop solar market, SolarCity Corp. will begin offering loans to homeowners for solar systems.

An option for homeowners who sign up for the loans is to pay the company back based only on the power produced by the panels.

Popularity of solar panels has increased in recent years in part because companies allow for the panels to be installed for little or no money down. Typically, the solar company owns the system and homeowners can either lease the panels or sign an agreement to pay for the power over a 20-year period. Two-thirds of all solar systems were installed under those types of plans, said Shayle Kann, senior vice president of GTM Research.

The loans are being offered at 4.5 percent over 30 years. Customers won't pay a fixed amount every month but rather will pay based on how much power is produced by the panels. The more the panels produce, the faster customers pay off their loans. If the panels produce less, customers pay less and, in theory, will not have to pay off their loans in full.

Lyndon Rive, CEO of SolarCity, said customers wanted to own the solar panels but have previously signed up for a lease to avoid high upfront costs. Rive also said better financing and estimations of panel power creation and cheaper means of installation have contributed to the company's offering the loan program (AP/*Fuel Fix*, Oct. 8). **-- MH**

NRC:

IG report faults inspectors' review of crippled Calif. plant

Hannah Northey, E&E reporter

Published: Wednesday, October 8, 2014

Federal nuclear inspectors failed to identify red flags five years ago when evaluating -- and eventually approving -- an equipment swap at two reactors in California that later proved to be faulty and forced the plant's closure, according to a federal watchdog.

Nuclear Regulatory Commission Inspector General Hubert Bell, in a 55-page report released yesterday, questioned why inspectors out of the agency's Texas-based regional office -- which oversees reactors in the West -- approved Southern California Edison's (SCE) replacement of massive steam generators at the San Onofre nuclear plant without first changing its license.

SCE installed the steam generators in 2010 and 2011 at the plant using the commission's frequently used 50.59 process, which allowed the utility to skip a lengthy license amendment on the grounds that the units were similar enough to the old model.

The equipment played a central role when control room operators at San Onofre in 2012 discovered a radioactive leak that eventually shuttered the plant. The leak was found to be tied to unexpected wear of tubes carrying radioactive water in the steam generators in Units 2 and 3, triggering more than a year of investigation, the plant's closure, and political scrutiny from Sen. Barbara Boxer (D-Calif.), chairwoman of the Senate Environment and Public Works Committee, which oversees NRC.

Bell found that the NRC inspectors had "missed an opportunity" during a triennial review to probe deeper

into SCE's use of the 50.59 process, adding that some experts have since questioned why the utility was allowed to install the new steam generators without a license change.

Ultimately, Bell concluded, "there is no assurance that NRC reached the correct conclusion in its 2009 inspection that [the San Onofre plant] did not need a license amendment for its steam generator replacement."

A number of interviews the IG conducted for the report reflect skepticism about the equipment that was installed, confusion and a desire for more training about the agency's complex licensing process and what projects qualify for 50.59 treatment.

The former deputy administrator for Region IV in the report told the IG that the steam generator's design, as built, was "fundamentally flawed" and "would not have been approved under any conditions." He also said that "in hindsight," he believed SCE should have asked to make a license change before swapping the equipment.

Separately, a branch chief said during an interview with the IG that there's a need to improve training and guidance on requests to use the 50.59 process, which would otherwise be more closely reviewed. Some senior managers, however, said that they supported the NRC inspection approach despite its shortcomings.

Scott Burnell, a spokesman for NRC, said the agency had just received the report and was studying it. Burnell said the commission is still conducting a lessons-learned project at the San Onofre plant, including a closer look at the licensing process surrounding the steam generators.

"We'll understand the lessons from San Onofre, apply any appropriate fixes, and clearly explain the results to all interested parties," he said in an email. "Insights from the OIG investigation and the SONGS lessons-learned review will both contribute to identifying appropriate improvements."

SCE in a statement said it could not comment until the company management reviewed the IG report. The company in the past has blamed Tokyo-based companies for installing faulty replacement generators and is currently in the process of decommissioning the plant.

Boxer applauded the IG's finding, saying she plans to hold an NRC oversight hearing in December.

"When Southern California Edison decided to completely replace their steam generators in order to increase their profit margin, they failed to apply for an amended license as they are required to do, and NRC stood by and did nothing," she said in a statement.

HIGHWAYS:

Agency seeks input on congestion, air quality reporting

Sean Reilly, E&E reporter

Published: Wednesday, October 8, 2014

The Federal Highway Administration is seeking public feedback on continuation of a long-standing congressional requirement for states to file yearly reports on their handling of the Congestion Mitigation and Air Quality Improvement (CMAQ) Program.

In a *Federal Register* notice today, the agency, part of the Transportation Department, asks for comments

on ways to enhance the quality and usefulness of the information collected in the reports, along with suggestions on how to minimize the reporting burden. The agency estimates that each report currently takes about 125 hours to prepare. Today's notice is part of a requested information collection renewal under the Paperwork Reduction Act; the deadline for comments is Dec. 8.

For fiscal 2014, the CMAQ program's budget was about $2.2 billion. In MAP-21 (short for "Moving Ahead for Progress in the 21st Century Act"), the 2012 transportation policy and funding law, lawmakers reauthorized a provision instructing states to report each year on their CMAQ spending, including a description of the projects funded through the program and the expected air quality benefits. The requirement has been in place since the early 1990s, according to a highway administration spokesman.

RAIL:

Derailed Canadian train leaks petroleum, ignites blaze

Published: Wednesday, October 8, 2014

Witnesses reported at least 100-foot flames above the ground in the Canadian province of Saskatchewan yesterday after a freight train carrying flammable materials derailed and caught fire.

Hazardous materials crews and Canadian Transportation Safety Board investigators have been dispatched to the site, near the small community of Clair, to determine what caused 26 cars to leave the track.

Canadian National Railway Co. spokesman Jim Feeny said the fire was caused by leaks from two cars carrying petroleum distillates, products often made into diesel fuel, kerosene, heating oil and jet fuel. He said the train was made up of 60 empty cars and 40 others, including six carrying dangerous cargo.

The train, which originated in Winnipeg, Manitoba, was bound for Saskatoon, Saskatchewan, when it derailed. The resulting fire forced about 50 people to evacuate.

Railways bulging with oil train traffic have been under increasing scrutiny in both Canada and the United States after 47 people were killed last year when a runaway oil train carrying crude from North Dakota's Bakken Shale region exploded in a Quebec town near the international border.

After learning of yesterday's derailment, Canadian Transport Minister Lisa Raitt maintained that her government has done "tremendous work on rail safety" (Associated Press, Oct. 7). **-- DTB**

UNITED KINGDOM:

E.U. approves Hinkley Point nuclear plant

Published: Wednesday, October 8, 2014

The European Commission yesterday approved a controversial nuclear power plant at Hinkley Point in the United Kingdom.

The project, run by the French company EDF, aims to provide 7 percent of the United Kingdom's electricity from the plant, located in Somerset in southwest England.

Critics said they fear the approval will enable a new generation of subsidized nuclear plants across

Europe.

Early on, the European Commission raised doubts and said the project could potentially cause £17.6 billion ($28.3 billion) in wasteful and illegal public subsidies. Britain responded by creating amendments to introduce stricter profit clawback clauses to the contract, which would limit excess upside for private investors during the plant's life span, which is estimated to be 60 years or more.

Some countries weren't as supportive. Austria's Johannes Hahn, the regional policy commissioner, objected to the plan in Vienna, and his country is preparing to file legal action against the project.

For the electricity output from the nuclear power station, the U.K. government has agreed to pay EDF £92.50 per megawatt-hour, which is estimated to be twice the current wholesale price of power. That price will increase to £279 per MWh in 2058, the last year of the contract.

Although the commission has reached an agreement, many are still skeptical of the deal.

"There can be no doubt that the generous terms being offered by the U.K. government to EDF on Hinkley C amounts to illegal state aid under E.U. rules," said Molly Scott Cato, a Green Party member of the U.K. Parliament (Barker/Clark, *Financial Times*, Oct. 8). **-- MH**

AN E&E PUBLISHING SERVICE

CLIMATEWIRE — Thu., October 9, 2014

READ FULL EDITION

1.FOOD SECURITY:

Climate change disrupts Arabian Sea with little-known, voracious plankton

Dead zones, or marine ares with levels of dissolved oxygen so low few things can exist, are become increasingly common as climate changes and soaring pollution from human populations combine to put record stress on waterways. This trend is alarming in most places, because marine life provides revenue and food security, but in some instances the changes are natural.

2.ENERGY EFFICIENCY:

Global market for energy efficiency worth $310B and accelerating -- IEA

For a variety of reasons -- whether it be mitigating climate change, enhancing security, increasing economic incentives or even improving the health of indoor living -- countries around the world have been investing in ways to boost energy efficiency. Worldwide, that market of cutting back on energy waste is growing and is now worth at least $310 billion, reports the International Energy Agency.

TODAY'S STORIES

3.ANTARCTICA:

South Pole sets record with freeze; North Pole comes close -- with melting

4.RESOURCES:

White House releases agenda to prepare U.S. lands and waters for climate change

5.TRANSPORTATION:

U.S. fuel economy data show some gains for climate, but hard work is ahead

6.ENERGY:

Making power technologies more efficient may lead to heavier use of energy -- study

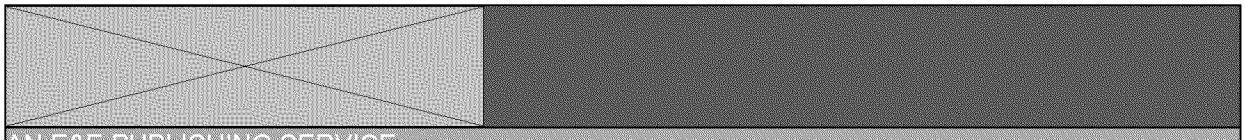
7.HEALTH:

Record West Nile virus outbreak in Calif. shows links to drought, heat

8.RENEWABLES:

Army on track to meet renewable energy goals -- officials

9.CARBON MARKETS:
Calif. may invalidate some offset credits for violating EPA rules
10.ADAPTATION:
Many national wildlife refuges lack plans for dealing with climate change
11.DROUGHT:
Drought creates ideal wine-producing conditions in Northern Calif.
12.BUSINESS:
Global corporations set up website for young people to talk about climate
13.NEGOTIATIONS:
U.K. a leader in 2030 climate target talks
14.NATIONS:
Australia's environment minister had better sources on climate impacts than Wikipedia



AN E&E PUBLISHING SERVICE

ENERGYWIRE — Thu., October 9, 2014

READ FULL EDITION

1.GRID:
Mid-Atlantic operator offers bid to salvage demand response

The operator of the nation's largest wholesale electricity market, in an attempt to salvage its ability to use demand-response programs to help shape its power needs now and in the future, is floating a "trial balloon" that has already stirred up an unprecedented level of stakeholder interest.

TOP STORIES

2.UTILITIES:
Advocates fear TVA's short-term goals hamper solar's long game in Tenn.
3.ADVOCACY:
Outside money pours into fracking-ban fight in Texas
4.ELECTRICITY:
At SXSW Eco, 'bridge' years seen on path to power future

ELECTRICITY

5.RENEWABLES:
Army touts progress in its energy security mission
6.EFFICIENCY:
Texas earns poor marks in analysis of energy use
7.ELECTRICITY:
Texas commercial efficiency program makes strides

OIL AND GAS

8.TRANSPORT:
Feds require crude-by-rail transparency as railroads grapple with delays
9.BUSINESS:

Private-equity giant jumps into enhanced oil recovery

10. GAS EXPORTS:

2nd Cheniere project gets environmental nod from FERC

11. POLICY:

Alaska group wants resource development to be White House's top Arctic priority

12. CALIFORNIA:

Rail helps state capitalize on domestic shale

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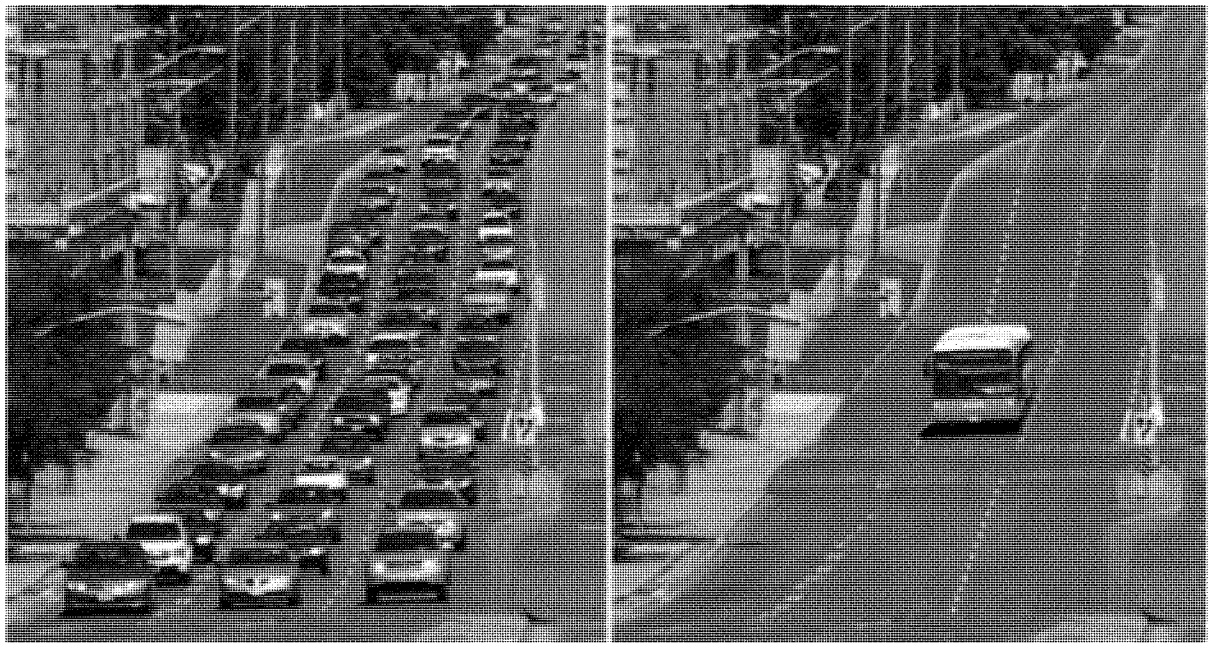

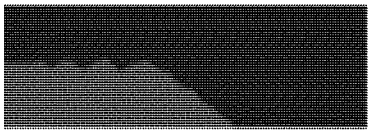

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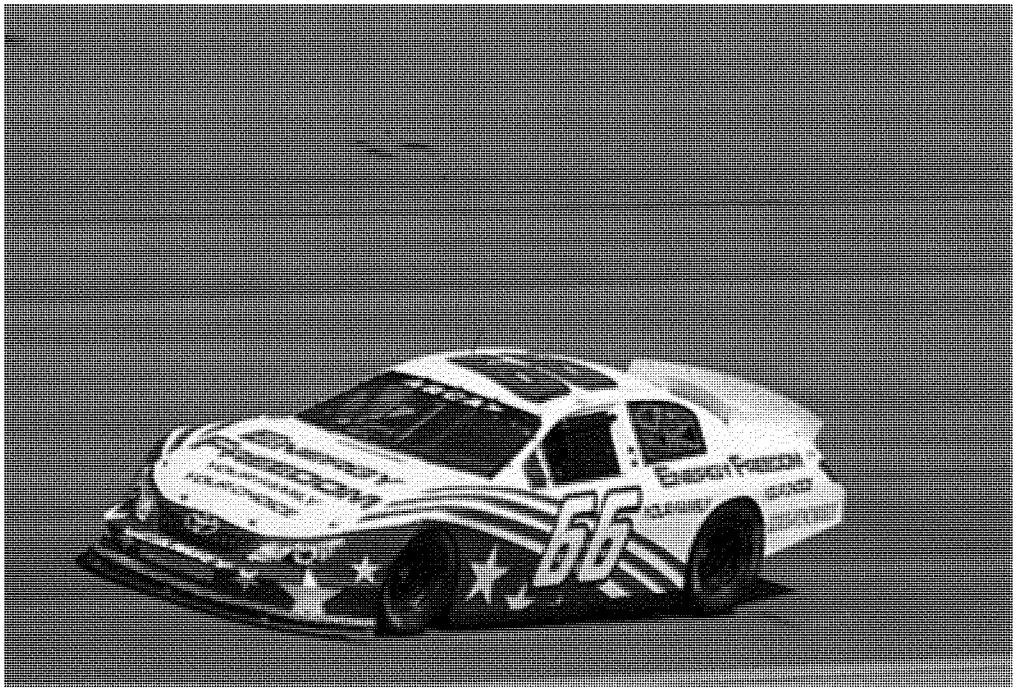
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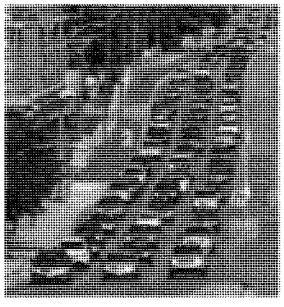

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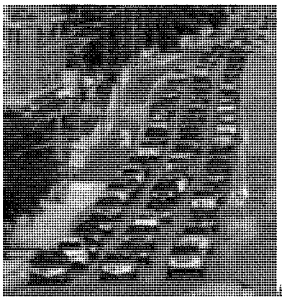


Air & Radiation Law News

for September 30, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

North Carolina Sues EPA After Petition On Particulate Matter Increments Denied

North Carolina sued the Environmental Protection Agency after it denied a petition to reconsider aspects of its air pollution increments and significant impact levels when states permit facilities that emit fine particulate matter (North...

Climate Change

Canada Publishes Climate Change Standard For New Buildings in Changing Permafrost

Canada has tightened the standards for new buildings in its northernmost regions, noting that climate change is making construction on permafrost more complicated....

Climate Change

DOE's Poneman: Climate Change Ranks With Nuclear Weapons as Major Threat

Climate change and nuclear weapons proliferation are the two greatest "existential threats" facing the U.S. and the world today, the outgoing deputy energy secretary said....

Climate Science

Report Ties Heat Waves to Climate Change, But Link Not as Clear for Droughts, Storms

Human-caused climate change clearly increased the severity and likelihood of 2013 heat waves in Australia and other parts of the world, according to an annual report published in the Bulletin of the American Meteorological Society Sept....

Corporate Responsibility

Occidental Petroleum Latest to Leave ALEC; Shareholder Group Had Challenged Funding

Occidental Petroleum Corp., one of the largest U.S. oil producers, plans to leave the American Legislative Exchange Council (ALEC) lobbying group, according to a letter from the Houston-based company released by an activist investor group....

Energy

India-U.S. Energy Talks Follow Climate Snub; Summit With Modi to Focus on Investment

Last week, India poured cold water on international efforts to fight global warming. This week, the nation's top officials will be in Washington to talk about how they can work with the U.S. on the issue....

Energy

Projects From Solar Energy to Subways Benefit From Canadian Green Bond Market

A Canadian developer of solar farms will join Ontario this week selling bonds to take advantage of the market for environmentally conscious investing that is forecast to reach $40 billion globally this year....

Enforcement

Giles Says EPA Seeks Better Communication Among States Through Compliance Program

The Environmental Protection Agency is looking to strengthen communication among states through its Next Generation Compliance efforts, a senior EPA enforcement official said Sept. 29....

Enforcement

Internal Compliance Could Fill International, U.S. Regulatory Gaps, DOJ Nominee Says

Companies are filling gaps in international and federal environmental rules by studying unregulated areas and implementing their own affirmative compliance standards, John Cruden, the nominee to head the Justice Department's Environment...

International Climate

Envoy Says U.S. to Push Arctic Council to Act On Black Carbon, Methane Starting in 2015

The new U.S. envoy to the Arctic Council vowed Sept. 29 to press member nations for actions on black carbon and methane—two short-lived but powerful greenhouse gases—when the U.S. assumes a two-year chairmanship of the body in...

Mining

Partly Blaming EPA Rules, Coal Company Closes Three West Virginia Surface Mines

Alpha Natural Resources, the nation's second-largest coal company, is idling three West Virginia surface mines, blaming the declining market for coal as well as environmental regulations....

Mining

White House OMB Completes Review Of Proposal on Uranium Mill Tailings

The White House Office of Management and Budget returned a proposal Sept. 26 to the Environmental Protection Agency regarding health and environmental protections for uranium and thorium mill tailings

and uranium in-situ leach processing...

Natural Resources

Colorado Area Receives Funds for Conservation

The Colorado Natural Resources Damages Trustees has awarded $17.4 million in funding for 10 conservation projects in the Rocky Mountain Arsenal National Wildlife Refuge area. The award, announced Sept. 26 by Colorado Attorney General John...

Radioactive Waste

NRC Urged to Stop Licensing Reactors
Until It Has Assurance on Waste Repository

Seventeen environmental groups filed a petition with the Nuclear Regulatory Commission Sept. 29 asking it to suspend all licensing activities at 23 nuclear reactors at 14 sites across the U.S....

Renewable Energy

IEA Says Solar Energy Could Become
Largest Global Power Source by 2050

Solar power might become the world's largest source of electricity by 2050 as falling costs boost installations, according to the International Energy Agency....

Renewable Energy

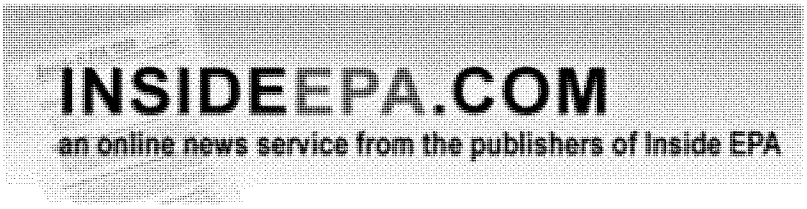
New York City to Install Solar Projects
At Public School Sites, Mayor Announces

Solar energy systems will be installed at 24 New York City public school sites as a first step toward a goal of generating 100 megawatts of new solar power at city-owned buildings by 2025, Mayor Bill de Blasio (D) announced Sept. 29....

Sustainability

Candidate for Top EU Environment Post
Puts Focus on Sustainability, Protections

The main objectives of the European Union's environmental policy in the next five years should be to ensure that economic growth is environmentally sustainable, that natural capital and biodiversity are protected, and that environmental...



Inside EPA's **Risk Policy Report**, 09/30/2014

http://insideepa.com/newsletters/risk-policy-report

EPA Seeks To Ease Air Monitoring Requirements For Overburdened States

EPA is proposing to streamline and simplify its air quality monitoring requirements in order to help reduce burdens for states that are struggling to meet the mandates due to shrinking budgets, a move that could make it easier for states to comply with agency rules that require the creation of new monitoring networks for various pollutants.

Pennsylvania Hearing Highlights Brewing Battle Over ESPS' 'Building Blocks'

HARRISBURG, PA -- Pennsylvania industry and environmentalists are clashing over the four building blocks that EPA developed to set states' emissions targets, and for potential compliance strategies, under its greenhouse gas (GHG) standard for existing power plants -- highlighting the emerging battle on the issue in states around the country.

Greenwire

SUPREME COURT:

Stakes high for agencies as justices weigh key rulemaking tool

Jeremy P. Jacobs, E&E reporter

Published: Monday, September 29, 2014

When the Supreme Court returns this week, its docket will be missing the high-profile environmental cases that dominated last term.

There are no challenges to President Obama's greenhouse gas program for addressing climate change,

nor is there anything on U.S. EPA's effort to clamp down on air pollution that drifts across state lines.

"The Supreme Court had its fill of environmental cases last term," said Thomas Lorenzen, a former Department of Justice environmental attorney now at Dorsey & Whitney LLP.

But what it lacks in traditional environmental litigation it makes up for with personality and cases that -- while not directly environmental -- could set important precedents for EPA and other agencies. And the court could still grant a multistate challenge to a major EPA air rule for later this term.

Consider *Yates v. United States*, which centers on the search of commercial fisherman John Yates' boat in the Gulf of Mexico.

Regulators suspected that some of Yates' 3,000-fish catch was under the 20-inch harvesting minimum for red grouper, which are protected for conservation. After measuring them, they found 72 were too small.

The next day, they found just 69 undersized fish.

Three years later, the Department of Justice charged Yates with destruction of evidence for the three fish. It did so using an "anti-shredding" provision of the Sarbanes-Oxley Act of 2002, a white-collar statute that was enacted following the Enron energy scandal.

Under the law, a suspect who "knowingly alters, destroys, mutilates, conceals, covers up, falsifies or makes a false entry in any record, document or tangible object" can be prosecuted.

DOJ claimed that Yates had destroyed a "tangible object," and the 11th U.S. Circuit Court of Appeals agreed. It sentenced Yates to 30 days in prison. The justices, in November, will weigh whether that term can apply to fish (*Greenwire*, April 28).

After *Yates*, environmental lawyers will most closely watch a pair of cases involving Department of Labor minimum wage and overtime policies.

The cases stem from the department's decision in 2010 to change its interpretation of an exemption for employees whose primary duty is selling financial products.

After previously saying mortgage bankers qualified for the exemption -- meaning employers don't need to adhere to the minimum wage and overtime requirements -- the department reversed itself.

The department issued its change in policy in an "interpretive rule" without a notice-and-comment period. The Mortgage Bankers Association challenged the department, and the U.S. Court of Appeals for the District of Columbia Circuit agreed.

When "an agency has given its regulation a definitive interpretation, and later significantly revises that interpretation, the agency has in effect amended its rule, something it may not accomplish [under the Administrative Procedure Act] without notice and comment," the D.C. Circuit ruled.

The ruling poses a problem for EPA, which has increasingly used interpretative rules to set policy, said William Buzbee, an environmental law professor at Georgetown Law School.

"Because of the legislative gridlock [on Capitol Hill], EPA has been making more by law interpreting existing law," he said, "because [of], frankly, the need for a lot of questions to be answered."

The ruling immediately poses a problem for EPA's "Waters of the United States" regulatory proposal,

which seeks to establish what streams, bogs, marshes and other wetlands qualify for federal protections. After issuing the proposal in March, EPA also carved out more than 50 agricultural exemptions in an interpretive rule (*Greenwire*, April 4).

Solicitor General Donald Verrilli, in asking the Supreme Court to take the cases, *Perez v. Mortgage Bankers Association* and *Nickols v. Mortgage Bankers Association*, said the D.C. Circuit ruling would significantly hamstring agencies.

"An agency thus must now undertake notice-and-comment rulemaking simply to explain to the public that the agency has corrected or revised its previous legal interpretation of a regulation in some significant way -- even if no one has ever relied on the prior interpretation," Verrilli wrote.

Buzbee said the practical effect would be to "ossify the process" for interpretive rules. The justices will hear arguments in the case at the beginning of December.

Water disputes

The Supreme Court will also wade into a long-standing water use dispute between Kansas and Nebraska.

Kansas claims Nebraska is violating an interstate compact that governs the Republican River, which runs from northeast Colorado and along the Nebraska-Kansas border before flowing south in the Missouri River.

The state alleges that Nebraska is taking more water than it is allocated from the Bostwick Division Project, a Bureau of Reclamation facility straddling the two states' border. The dispute dates back to the 1980s, and centers on Nebraska installing new groundwater pumps for agricultural irrigation.

Kansas v. Nebraska and Colorado marks the second time in two terms that the Supreme Court has grappled with interstate water compact issues, after visiting a Texas-Oklahoma dispute last year (*Greenwire*, June 13, 2013). (Colorado is included in the case only because it is also part of the compact.)

The justices are also set to consider whether to review another -- between Texas and New Mexico -- this week.

Other cases on the docket include *OneOK Inc. v. Learjet Inc.*, in which the justices will consider whether natural gas sellers who engaged in market manipulation during the 2000-02 California energy crisis are shielded from state-level antitrust lawsuits by federal law. The San Francisco-based 9th U.S. Circuit Court of Appeals held that they are not protected by the federal statute (*Greenwire*, July 1).

The court will also consider two cases brought against federal agencies that deal with legal deadlines for filing lawsuits. Both *United States v. Wong* -- an immigration deportation case -- and *United States v. June* -- a wrongful death suit -- raise the question of whether the statute of limitations on a Federal Tort Claims Act case against the government can be extended for various uncontrollable circumstances. Parties use the statute to file lawsuits against many agencies, including the Interior and Defense departments, for a variety of reasons, including environmental damage.

In both cases, the 9th Circuit held that the legal deadline for filing the suit could be extended, or equitably tolled (*Greenwire*, July 10).

Why the dearth of enviro cases?

But none of those are the type of blockbuster environmental cases that have marked the recent Supreme Court terms, leading some to speculate that the justices may be tired of them.

Richard Lazarus, the prominent Harvard environmental law professor, counted four high-profile environmental cases last spring in which industry asked the court for review and the justices declined to take them up -- including a challenge to EPA's unusual decision to rescind a Clean Water Act permit for a West Virginia strip-mining project years after the Army Corps of Engineers issued it (*Greenwire*, March 24).

In all of those cases, major industry players, including the U.S. Chamber of Commerce, urged the court to reverse a lower-court ruling that they claimed would have a major effect on the economy. The court also declined to review a challenge to California's low-carbon fuel standard, a case that some court watchers expected it to grant (*Greenwire*, June 30).

Lazarus said the justices may be beginning to see through industry's dire warnings.

"My guess is, in part, that in the short term, industry has cried wolf too many times," Lazarus said. "It gets a little old."

Roger Martella, the former EPA general counsel, now at Sidley Austin LLP, said the lack of environmental cases may have more to do with timing. In the last year or so, the Obama EPA hasn't produced as many major rulemakings, so there have been fewer high-profile cases that would be Supreme Court-worthy.

"My view on the Supreme Court is that it tends to be cyclical on when we see a lot of environmental cases," he said.

The most significant recent rules from EPA are still in the proposal stage. Those regulations -- its greenhouse gas standards for new as well as existing plants, and its waters of the United States rule -- are sure to generate lawsuits that could reach the Supreme Court.

"The court took a heavy docket of air cases last term, and everyone expects the government's attempt to define the waters of the United States to produce a major case down the road," said Willy Jay, a former Department of Justice attorney now at Goodwin Procter LLP.

And there is still room on the docket for the court to grant a major environmental case this term. More than 20 states and several utilities have asked the Supreme Court to review EPA's air standards for mercury and other hazardous pollutants -- a major regulation from Obama's first term.

The U.S. Court of Appeals for the District of Columbia Circuit upheld the rules in a 2-1 ruling in April. The justices will consider whether to take up the case later this year (*Greenwire*, July 15).

Absent that, though, Vermont Law School environmental professor Pat Parenteau said, this year's term is a "dud."

"It's the first time in a while that we don't have a blockbuster environmental case on the docket," he said.

CLIMATE:

Historic Calif. drought linked to global warming -- study

Anne C. Mulkern, E&E reporter

Published: Monday, September 29, 2014

Conditions contributing to the historic drought in California are "very likely" linked to human-caused climate change, Stanford University scientists said in a study released today, one of the first to positively tie dry conditions to global warming.

A "persistent region of high atmospheric pressure hovering over the Pacific Ocean" that diverted storms away from the Golden State was much more likely to form amid greenhouse gas concentrations seen in recent years, according to the new research led by Stanford climate scientist Noah Diffenbaugh.

The school said the research, published today as a supplement to this month's issue of the *Bulletin of the American Meteorological Society*, "is one of the most comprehensive studies to investigate the link between climate change and California's ongoing drought."

"Our research finds that extreme atmospheric high pressure in this region -- which is strongly linked to unusually low precipitation in California -- is much more likely to occur today than prior to the human emission of greenhouse gases that began during the Industrial Revolution in the 1800s," Diffenbaugh, associate professor of environmental earth system science at Stanford, said in a statement.

California's drought, called unprecedented, is hitting all parts of the state. It's affecting agriculture and forcing residents to stop watering lawns and has led to severe water shortages in some communities.

The lack of precipitation has triggered a dangerous increase in wildfires and incidents of air pollution across the state, the study says.

A July report from the University of California, Davis, said the water shortage "would result in direct and indirect agricultural losses of at least $2.2 billion, and lead to the loss of more than 17,000 seasonal and part-time jobs in 2014 alone."

The immediate cause of the drought is a "blocking ridge" over the northeastern Pacific Ocean, the Stanford study says. The ridge has prevented winter storms from reaching California during the 2013 and 2014 rainy seasons, the school said. Blocking ridges are "regions of high atmospheric pressure that disrupt typical wind patterns in the atmosphere," it says.

"Winds respond to the spatial distribution of atmospheric pressure," said Daniel Swain, graduate student in Diffenbaugh's lab and lead author of the study. "We have seen this amazingly persistent region of high pressure over the northeastern Pacific for many months now, which has substantially altered atmospheric flow and kept California largely dry."

Swain coined the term "Ridiculously Resilient Ridge," or Triple R. Blocking ridges occur periodically, Stanford said, but the Triple R "was exceptional for both its size and longevity."

The researchers compare Triple R to "a large boulder that has tumbled into a narrow stream." It diverted to the north the flow of high-speed air currents known as the jet stream, causing Pacific storms to bypass the entire West Coast, including Oregon and Washington.

As a result, the study says, "rain and snow that would normally fall on the West Coast were instead re-routed to Alaska and as far north as the Arctic Circle."

"At its peak in January 2014, the Triple R extended from the subtropical Pacific between California and Hawaii to the coast of the Arctic Ocean north of Alaska," Swain said.

To determine the climate connection, the Stanford researchers looked at how often the Triple R occurred in the 20th-century historical record. They found that the combined persistence and intensity of the Triple R in 2013 "was unrivaled by any event since 1948," when comprehensive information about the

circulation of the atmosphere is first available.

The team also found that "extreme geopotential heights" associated with the Triple R in 2013 were at least three times as likely to occur in the present climate versus the one before the Industrial Revolution.

"The idea is what we're seeing is much more likely to have been produced in the globally changed climate modeling" than in the previous one, said John Harrington Jr., professor of geography and climatology at Kansas State University, who reviewed the research.

Harrington added that the Stanford research was groundbreaking because "we did not test for that specific activity" of the blocking ridge before.

Reporter Annie Snider contributed.

SOLAR:

Expiring federal tax credit may have doomed massive Calif. project

Scott Streater, E&E reporter

Published: Monday, September 29, 2014

Efforts to develop commercial-scale solar power on public lands in the California desert took a major hit late last week when proponents of the Palen Solar Electric Generating System project unexpectedly withdrew their application to build the first phase of the project.

One of the main reasons a representative of BrightSource Energy Inc. and Abengoa SA has cited publicly for withdrawing the application late Friday with the California Energy Commission (CEC) is the looming expiration of an investment tax credit that benefits mostly solar projects, a prospect that could spell trouble for other large-scale renewables projects.

Projects that are completed and producing electricity by the end of 2016 can qualify for the credit that's worth 30 percent of a project's costs -- a major component in securing the financing needed to build the more than $2 billion Palen project. After 2016, the ITC reverts to 10 percent of a project's costs.

Palen earlier this month received preliminary approval from CEC for the first 250-megawatt phase of the concentrating solar power plant in Southern California's Chuckwalla Valley. But it would not have been able under the current permitting timeline to complete the 28-month construction of the plant's first phase until 2017, meaning it could not qualify for the 30 percent investment tax credit.

CEC and the Bureau of Land Management are both analyzing the Palen project, the first 250 MW phase of which would cover about 1,900 acres of BLM land in Riverside County and employ a 750-foot-tall power tower and 85,000 heliostat mirrors that would move with the sun, heat water and create steam to drive electric generators.

Joe Desmond, BrightSource Energy's senior vice president of marketing and government affairs, told *The Desert Sun* on Friday that uncertainty about the investment tax credit would have made it difficult to secure financing for the project.

Desmond declined to discuss details with *Greenwire* about the sudden decision to step away from the Palen project.

The investment tax credit was not mentioned in a formal, two-paragraph notice of withdrawal the project backers filed late Friday with CEC.

Instead, Desmond issued a statement Friday on behalf of BrightSource Energy and Abengoa that stated: "After carefully reviewing the proposed decision recommending approval of one tower, we determined it would be in the best interest of all parties to bring forward a project that would better meet the needs of the market and energy consumers."

Congress has been working to address the expiring ITC in recent weeks.

Reps. Earl Blumenauer of Oregon, Dave Loebsack of Iowa and 16 other Democrats earlier this month filed H.R. 5559, which would reinstate more than a dozen expired clean energy tax breaks and expand the eligibility of projects for the investment tax credit to those that are under construction, but not completed, by the end of 2016 (*E&ENews PM*, Sept. 19).

Desmond also said the companies wanted to withdraw the state permit application now because they did not want CEC or BLM, which is currently conducting a supplemental environmental impact statement (EIS) for the project, to devote more time and energy to the Palen project.

CEC this month granted initial approval of the first phase of the project, with Commissioners Karen Douglas and David Hochschild issuing a proposed decision recommending approval of the first phase of the project (*Greenwire*, Sept. 16).

CEC was scheduled at an Oct. 29 business meeting to approve the first phase of the Palen project.

Lori Sinsley, a CEC spokeswoman, said the agency has stopped working on the Palen application to amend an already approved version of the project to allow the companies to switch from the original solar trough technology to the power tower format.

Dana Wilson, a BLM spokeswoman, said the Palen project developers have not notified the agency that they are withdrawing the application.

Wilson said BLM had notified the project proponents that the agency would wait to complete its review of the Palen project until after CEC issued a decision to approve the project, "so work on the processing of their application is already on hold."

But she added that she could not say BLM considers the project to be dead "because we haven't received formal notification from the company. Our determination on the status will depend on that," she said.

Environmental concerns

Whatever the reasons, environmental groups say they're pleased that the project is not proceeding.

"We applaud and support the company's decision to withdraw the Palen project," Ileene Anderson, a senior scientist and public lands desert director with the Center for Biological Diversity in Los Angeles, said today in a statement.

"They recognize that the site is a problem especially for birds because it lies in the crossroads of two highly used migratory pathways in the California deserts, as well as very rare terrestrial reptiles including the iconic desert tortoise," Anderson said. "They must recognize the value of leaving intact desert in place."

David Lamfrom, California desert program associate director for the National Parks Conservation Association in Barstow, Calif., said NPCA "is relieved and thankful" that the Palen project developers have withdrawn the project application.

NPCA has been concerned about the project's location near the Joshua Tree National Park and in the middle of what Lamfrom calls the Pacific Flyway traversed by thousands of migrating birds.

Among other things, the project has raised concerns that birds flying between the heliostat mirrors and the power tower could be burned, leading to significant injury or death -- a phenomenon referred to as "solar flux." The problem has been observed at the Ivanpah Solar Electric Generating System, also developed by BrightSource Energy, in neighboring San Bernardino County.

The CEC commissioners' proposed decision to approve the revised Palen project earlier this month acknowledged the project "would very likely result in significant and unmitigable impacts to biological resources, mainly due to the Solar Power Tower Technology's introduction of solar flux danger to avian species."

Lamfrom said these concerns are enough to warrant not approving the Palen project, particularly after the Interior Department and CEC last week unveiled the draft Desert Renewable Energy Conservation Plan, which is designed to manage development of renewable energy projects across a vast swath of public and private lands in the Southern California desert to guide projected solar, wind and geothermal development over the next three decades (*E&ENews PM*, Sept. 23).

BrightSource Energy's Desmond, as he has before, downplayed the impacts of solar flux in a brief interview and said concerns about impacts to birds did not play a role the Palen project backers' decision to withdraw the application to CEC.

Desmond has cited avian mortality numbers at the nearby Ivanpah power plant, which is much larger than the first phase of the Palen project. Ivanpah recorded 321 avian deaths between January and June of this year, with about 133 related to solar flux. That pales in comparison with the millions of birds killed each year by cats and from crashing into communications towers and buildings (*E&ENews PM*, Aug. 20).

"We are committed to bringing projects to the market that follow sound and responsible environmental measures to ensure all impacts are avoided, minimized or compensated for properly," Desmond said in a statement.

Surprising end

Still, the withdrawal of the latest Palen project proposal marks a sudden end to a project that once was slated to be one of the world's largest solar power plants.

The $2 billion project, which would have produced enough electricity to power roughly 170,000 homes and businesses, was left for dead in 2012 when the original project proponent, Solar Trust of America LLC, went bankrupt just months after BLM had issued a final EIS for the project in May 2011.

BrightSource Energy purchased the rights to the Palen project at a 2012 bankruptcy auction, and BLM last year prepared a draft supplemental EIS analyzing the cumulative environmental and visual impacts of the newest proposal, submitted to BLM by the company in February 2013.

Assuming both phases of the project were built, the revised project proposal would have covered the original 5,200-acre right-of-way area but disturbed only about 3,700 acres -- far less than Solar Trust of America's original 2008 proposal, resulting in fewer impacts to federally protected Mojave desert tortoises, according to BLM.

The new project also proposed changing the technology in the original proposal to a concentrating solar thermal power tower similar to the Ivanpah plant. Solar Trust of America had planned to use trough-shaped mirrors to heat a fluid-filled pipe that would heat water to produce steam that would run electricity-producing generators.

The project backers could always revise their application to go back to the original solar trough proposal, as CEC itself has recommended.

"It's a good site for solar development, I can tell you that," Desmond said in an interview.

But Desmond in the statement issued late Friday also indicated the companies strongly back the power tower technology format.

"We believe concentrating solar power, and specifically tower technology with thermal energy storage, can play a key role in helping California achieve its clean energy goals by providing the necessary flexibility needed to help maintain grid reliability," the statement said.

"We appreciate the Energy Commission's hard work and thorough evaluation of the relevant issues and we look forward to working with them in the future."

CLIMATE:

States seeking technical advice on aspects of EPA power plant proposal

Jean Chemnick, E&E reporter

Published: Monday, September 29, 2014

Senior U.S. EPA personnel spent much of the summer briefing states about the agency's proposal to limit greenhouse gas emissions from existing power plants, according to new entries posted to the draft rule's docket.

Officials from Montana, North Dakota, Virginia, California, New Hampshire and Nevada participated in meetings and telephone calls with EPA personnel to answer technical questions on the draft rule, according to entries posted Wednesday and Friday. Utilities, cities including Denver, and foreign countries including Denmark and Germany were also briefed.

EPA was represented in several of the meetings by regional staff, though Office of Air and Radiation Senior Counsel Joe Goffman represented the agency at a July 17 briefing that drew participants from 14 Western states and a handful of other stakeholders.

States that have expressed significant concerns about the rule were represented in many of these briefings, but EPA Administrator Gina McCarthy told reporters last week that they tended to focus more on policy and technical details than on anti-regulatory rhetoric.

"I think the public discussion might be a little different than the roll-up-the-sleeves, technical discussions we're having around these rules," she said during a round table at EPA headquarters.

States and others are currently writing comments on the draft to be submitted to EPA by Dec. 1. Many

states are expected to make the case that they deserve less stringent carbon intensity targets than the draft rule assigns them.

The rule is due to be finalized next June -- a deadline McCarthy says the agency is still "working towards," despite extending its public comment deadline. Once it is final, states will have a year to write an implementation plan to comply with those state targets, though they may apply for an extension.

McCarthy warned last week that states should take the plan-writing process seriously, and should consider alternate ways of reaching their targets should their first plan fall short (*Greenwire*, Sept. 26).

The reduction requirements will be federally enforceable, she cautioned. And states may not have an opportunity later on to scrap their plans and rewrite them if a new governor is elected who disagrees with a past administration's position.

"The way that it works is they don't get that easily changed," she said. "Once the plans come in and they're approved, those are the plans, and it takes a specific agency action to allow that plan to be changed."

IOWA:

Senate candidates clash over regs, climate in first debate

Amanda Peterka, E&E reporter

Published: Monday, September 29, 2014

Democratic Rep. Bruce Braley and Republican Joni Ernst yesterday clashed over climate change, environmental regulations and outside spending in a combative first debate.

The two differed over whether climate change was caused by humans and whether the country should build the Keystone XL pipeline, while Ernst hit Braley over his support for regulations that could affect farmers.

In a tense exchange near the end of the debate at Simpson College in Indianola, Iowa, Ernst charged that Braley was being funded in his campaign by a "California billionaire extreme environmentalist," referring to Tom Steyer and his political action committee that's focused on climate change. Steyer has named the Iowa race as one in which he intends to invest heavily. Braley, meanwhile, accused Ernst of being in the pocket of the Koch brothers.

"You're not running against these other people. You're running against me," Ernst, a state senator and former lieutenant colonel in the Iowa National Guard, shot back. "I am a mother, I am a soldier and I am an independent leader. You are being funded by Tom Steyer, who is a California billionaire extreme environmentalist. So remember please that you are running against me."

The two are vying for Iowa's first open Senate seat since 1984, that of retiring Democratic Sen. Tom Harkin, who was in yesterday's debate audience of about 300 people. The race is one of the most contentious in the country as Republicans seek to win enough seats to flip the Senate.

The debate came one day after *The Des Moines Register* released poll results finding Ernst leading Braley 44 percent to 38 percent, outside of the margin of error of 4.2 percentage points. The poll also showed Ernst ahead by double digits among independents.

The debate highlighted the vast divide between the two candidates on environmental issues. Ernst wants to abolish U.S. EPA and give full discretion to states on how to best protect natural resources, while Braley expressed a willingness to work with the agency to determine what's best for Iowa.

In response to a question from the moderators, Ernst defended herself as an environmentalist who "recycles everything" and drives a hybrid car. She said she believes the climate is changing but said that she could not say for certain whether humans are the cause.

"I don't know the science behind climate change. I can't say one way or another what is the direct impact from, whether it's man-made or not," she said. "I've heard arguments from both sides, but I do believe in protecting our environment."

Braley said that Ernst's answer showed the "significant difference" between the two candidates on environmental issues and that climate change is an economic issue for farmers.

"Iowans want to have a strong robust agricultural economy, and they want clean air, clean water, and they want to be able to hunt and fish and hike and bike," he said. "And if you don't accept that this is a real problem, which it sounds like Senator Ernst doesn't -- many Iowan companies believe it strongly and think that if we don't do something, it will harm our economy."

But Ernst criticized Braley for supporting "job killing" environmental regulations such as cap and trade, which she said would add to Iowans' utility bills.

She also slammed the three-term congressman for recently opposing a House measure that would have put the brakes on an EPA plan to expand the scope of waters in the United States that receive automatic Clean Water Act protections. The Obama administration's proposal, which aims to clean up a regulatory quagmire created by two muddled Supreme Court decisions, has riled farmers who call it a federal land grab.

Braley defended his vote against the bill, arguing that he instead voted for an amendment that would have addressed EPA's authority to regulate ditches and ponds on farmlands and not affected the rest of the administration's proposal.

"What we didn't vote for was throwing everything out and going back to square one, because Iowa farmers have been waiting for guidance under the Clean Water Act," he said.

Support for RFS

Braley also offered an explanation for his flip-flop on the Keystone XL pipeline. The congressman's backtracking on support for the pipeline has been the subject of recent television ads funded by the conservative political action committee American Crossroads.

Braley said he voted in favor of the pipeline in committee when it was first brought before Congress based on what he believed were the "benefits" it would provide. But he said that the promises made about the pipeline didn't stack up for him when the pipeline came up for a vote on the House floor.

"There was no assurance that the oil was going to be sold here in the United States, and there was no guarantee that it was going to create a significant number of jobs that were going to benefit Iowa," Braley said.

The congressman also reiterated his "clear, strong and unequivocal" support for the renewable fuel standard, the federal policy mandating that the country blend corn ethanol and advanced biofuels into petroleum fuel. He challenged Ernst's support for the renewable fuel standard, accusing the Republican

of telling the Koch brothers at "their secret meetings" that she was philosophically opposed to the standard.

For her part, Ernst said that she supports the RFS and will continue to support it until the renewable fuels industry is on "equal footing" with the oil industry.

"If you look at all the subsidies that are going out there to oil and many other sectors out there within the energy industry, our RFS needs to be on equal footing," she said. "And so I am someone who will continue to support the RFS."

Despite his support for the RFS and an endorsement by the Iowa Corn Growers Association, Braley has struggled to win support in farm country after a gaffe earlier this year in which he dismissed Iowa's senior senator, Republican Chuck Grassley, as a farmer with no law experience.

The Des Moines Register poll released yesterday found that Ernst has a nearly 4-to-1 lead over Braley among rural voters, or 58 percent to 15 percent. In the poll, two-thirds of likely rural voters said they were upset about the Grassley remark. The poll of 546 likely voters was conducted Sept. 21-24.

Braley, a trial lawyer, defended his rural Iowa upbringing in a small farm town near the end of the debate in response to a jab by Ernst that he left his "rural roots" behind when he went to Washington, D.C.

"I have never forgotten where I came from," Braley said, adding that the first person he would take advice from if elected to the Senate would be Grassley.

NRC:

Groups plan lawsuit to freeze licensing over waste policy

Hannah Northey, E&E reporter

Published: Monday, September 29, 2014

Environmental groups asked the Nuclear Regulatory Commission today to freeze final licensing decisions for almost a quarter of the country's nuclear fleet until the commission fixes what they are calling a flawed waste policy decision, warning that a lawsuit is the next step.

Spearheaded by Beyond Nuclear and the Sierra Club, the groups petitioned the NRC to stop final licensing decisions for 23 reactors at 14 sites until the commission fixes a lengthy and high-profile waste rule that was finalized in August.

The groups argue that because they live within 50 miles of reactors under consideration, they have standing in the case.

The NRC, they said, cannot under the Atomic Energy Act continue licensing reactors without reviewing the "continued storage" rule, arguing that the standard does not ensure "spent fuel can be safely disposed of in a geologic repository at some point in the future."

The nuclear commission this summer approved a rule that accepts the premise that radioactive waste generated from reactors producing electricity can be stored safely for up to 60 years after a plant is closed -- or indefinitely if a permanent repository isn't built. That finding will be used in licensing decisions going forward.

The NRC revised the rule after the U.S. Court of Appeals for the District of Columbia Circuit found the agency -- in its prior rule -- violated the National Environmental Policy Act for failing to adequately consider the implications of storing spent fuel at reactors for years after operations had ceased (*Greenwire*, June 8, 2012).

The commission had also failed to consider the risk of leaks or fires in the pools where fuel rods are stored, the court said.

The NRC issued a generic environmental impact statement along with its rule that found geologic disposal is technically feasible and likely to be available in the short-term scenario -- or 60 years after a reactor is closed.

The groups today charged the NRC failed to satisfy a court's concerns and did not provide "reasonable assurance that the hundreds of tons of highly radioactive spent fuel that will be generated during any reactor's 40-year license term or 20-year license renewal term can be safely disposed of in a repository."

"NRC has long acknowledged that before licensing a reactor, the Atomic Energy Act requires it to make Waste Confidence findings that spent fuel can be safely disposed of in a geologic repository at some point in the future," Diane Curran, an attorney at Harmon, Curran, Spielberg & Eisenberg LLP, who filed the petition, said in a statement.

"The NRC even said it would not license a reactor if it could not make such a finding. Yet, the NRC has now arbitrarily dropped those findings from its regulations, claiming they are not necessary," Curran said.

The NRC said it had received and is reviewing the petition.

TRANSPORTATION:

Long-term highway bill possible in next Congress -- Boehner

Sean Reilly, E&E reporter

Published: Monday, September 29, 2014

House Speaker John Boehner (R-Ohio) predicted yesterday that Congress could approve a long-term transportation funding bill in the final two years of President Obama's administration.

Both he and Obama ran for office "to do something" for the country, Boehner said in an interview on the ABC Sunday talk show "This Week."

"And it's up to us to see where the common ground is," he told host George Stephanopoulos. "But tax reform, a big highway bill, certainly are in the realm of doable."

To date, lawmakers have made little headway in fashioning a replacement for MAP-21 (short for "Moving Ahead for Progress in the 21st Century"), the current highway and transit law that was originally set to expire tomorrow. Last month, Obama signed an extension -- coupled with an almost $11 billion bailout of the Highway Trust Fund -- to keep federal dollars flowing through next May.

The bill was opposed by some congressional Democrats, who argued that the best chance to approve a six-year transportation measure before 2017 is in the lame-duck session set to begin the week after the Nov. 4 elections. But the measure's sponsor, House Ways and Means Chairman Dave Camp (R-Mich.), dubbed that approach a "ploy" to push through a hike in the 18.4-cent-per-gallon federal gas tax,

unchanged since 1993.

The trust fund, heavily reliant on flagging fuel tax receipts, will need at least $130 billion in general Treasury revenues over the next decade to maintain existing spending levels, according to the Congressional Budget Office. While Camp, who is retiring at year's end, said in July that he will hold a hearing on "a long-term solution" for the trust fund's finances, none has so far been scheduled. A committee spokeswoman would not say for the record last week whether Camp will seek to pursue the hearing during the lame-duck session.

EPA:

Watchdogs urge agency to pay whistleblower bounties

Robin Bravender, E&E reporter

Published: Monday, September 29, 2014

Buried in the Clean Air Act is a provision that allows the U.S. EPA administrator to shell out up to $10,000 to whistleblowers whose tips help authorities track down lawbreakers.

But the EPA bounty has been rarely used since it was written into law in 1990, and government watchdogs are prodding the agency to use the awards to crack down on those who violate environmental laws.

"EPA hands out citizen awards for all sorts of volunteerism but not for helping catch polluters," said Jeff Ruch, executive director of Public Employees for Environmental Responsibility (PEER).

The Clean Air Act states that the EPA administrator may pay an award up to $10,000 "to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty" for Clean Air Act violations. Government employees aren't eligible for the awards.

PEER recently asked EPA to hand over documents detailing how often the agency had offered the bounties since 1991, but the agency provided only a 1996 internal manual detailing how the awards could work. Any remaining records had been destroyed in 2012 after they were kept for 10 years, EPA told PEER, indicating that the awards haven't been used in more than a decade.

EPA has doled out awards from its operating funds occasionally, spokeswoman Liz Purchia said last week in an email.

"There have been a small number of instances since 1990 where EPA has done this," she said, declining to provide specific examples.

However, she said, the agency doesn't typically think that's the best way to use its cash. "Generally, we believe our agency's funds are best spent on our daily work to remedy pollution problems and protect public health."

EPA's budget saw a big boost in 2010, when the agency received more than $10 billion -- the highest amount since it was formed in 1970. But the budget has since dipped well below that, hovering around $8 billion annually in recent years as the agency has trimmed its staff and looked for ways to save cash.

Amid the budget squeeze, EPA conducted fewer inspections and pursued fewer civil and criminal cases in 2013, spurring a sharp drop in the amount of pollution reduced through enforcement actions, according

to data released earlier this year (*Greenwire*, Feb. 10).

Meanwhile, the agency has said it would focus its resources on bigger, "more complex" cases while cutting back on the number of in-person inspections and investigations.

PEER's Ruch said the new awards could help the agency boost its enforcement numbers.

"Enforcement has gone out of vogue at EPA, and agencies more concerned with enforcement are doing things like rewards for informants who bring them convictions," he said. Ruch cited a recent speech by Attorney General Eric Holder in which the outgoing Cabinet member touted financial incentives for whistleblowers.

Environmental whistleblowers could also get awards outside of EPA's budget. The agency refers criminal cases to the Justice Department for prosecution, Purchia said, and, "if warranted, the court may pay whistleblowers from penalties levied against the polluter."

TOXICS:

Cleanup begins in aftermath of L.A. port fire

Published: Monday, September 29, 2014

Authorities at the Port of Los Angeles are cleaning up the aftermath of a fire that burned a large part of the wharf and sent toxic gases and smoke into neighborhoods.

The blaze -- the largest in decades at the port -- began the night of Sept. 22 and wasn't fully extinguished until Wednesday afternoon.

The fire sent wood fragments into the harbor and spewed toxic chemicals into the air.

South Coast Air Quality Management District officials said naphthalene and benzene were released when the treated wood burned, prompting air quality advisories for 24 cities in Los Angeles and Orange counties and school evacuations in areas close to the fire.

Levels of naphthalene tested inside a smoldering building last week were so high they couldn't be read by a portable air testing device.

Authorities also were unable to determine whether a health risk existed from the chemical because state and federal authorities had no data on a recommended limit for short-term exposure to it (Tony Barboza, *Los Angeles Times*, Sept. 27). **-- SP**

SOLAR:

Small startup leads race to build sun-powered drones

Published: Monday, September 29, 2014

A small startup company in the Boston area is confident that it is leading in the race to build the first solar-powered drone that could remain airborne for long periods of time.

The ideal cruising altitude of the drones at 60,000 feet has lots of sunlight and is higher than the storm systems that could disrupt the flight of the light aircraft. The weather up there is too cold for many batteries, though, and the team faces challenges building an insulated system warmed by waste heat from the electric motors.

"There were other efforts to produce an aircraft like this, but it was a little before its time a decade ago," said Chris Bailey, co-founder and CEO of Global Flight Systems. "Now the technology that's necessary for it has developed to the point where we can actually make it a reality."

The solar-powered drone could be put to work providing Internet connection services and conducting surveillance.

The company has already built a model that completed a 27-hour test flight in July, and now Bailey hopes to launch a bigger model this fall with a 44-foot wingspan. His goal is to work up to a 150-foot wingspan, the Eos 150, that will be large enough to carry up to 100 pounds of equipment like radios or cameras.

Bailey thinks he could generate more than $1.7 billion a year by 2021 just on aerial imaging alone and by competing with traditional satellite providers. Imaging satellites cost more than half-a-billion dollars plus the cost of launching them into orbit, while Global Flight Systems plans to sell Eos 150s for $1.2 million.

One of Bailey's main competitors in the solar unmanned drone business -- Google -- has shown interest as well.

"[Google representatives] have seen the progress we've made in such a short time," he said. "They've realized we may have intellectual resources they don't have" (Hiwartha Bray, *Boston Globe*, Sept. 29). **– JL**

JAPAN:

36 dead following volcanic eruption at popular hiking destination

Published: Monday, September 29, 2014

Thirty-six people are presumed dead today as toxic gas and ash from a still-erupting volcano in Japan hampers the search for bodies that remain near the summit of the popular climbing destination west of Tokyo.

Rescue operations were called off today, leaving 24 bodies unrecovered atop Mount Ontake, a 10,062-foot peak that erupted around noon Saturday.

A combination of toxic gases, falling rocks and ash blanketing the area was blamed for the deaths.

Japan's Fire and Disaster Management Agency said 59 others were injured, 27 seriously. The agency is still trying to determine if any more people remain missing.

The timing of the eruption also stranded hundreds more hiking the mountain on a sunny fall day, including about 40 people trapped overnight. They were rescued yesterday, some via helicopter.

Saturday's eruption marked the first modern deaths due to volcanic activity on Mount Ontake. No one died in a previous eruption in 1979 (Emily Wang, Associated Press, Sept. 29). **-- DTB**

CHINA:

Faced with skeptics, Tesla struggles to expand reach

Published: Monday, September 29, 2014

Tesla Motors Inc. must convince Chinese skeptics of the potential benefits of installing chargers while unrolling its grand plan for expansion into the Asian country.

In a country where much of the population lives in apartments rather than houses, the personal garage is scarce and the installation of home Tesla chargers is significantly more complicated.

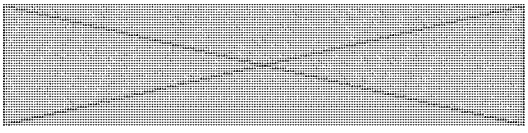
The team of contractors that installs new charging stations at Tesla owners' homes in Beijing has to deal with anxious garage workers and dubious building managers in the process of expanding the reach of the electric car.

Shawn Gao, the man in charge of Tesla installations in the country, said the process was "really very hard" in China.

"The technical part is not the big issue," he said. "Getting approval from property management companies is."

The problem is a contributing factor in Tesla falling far short of sales targets in China. The company has sold 70,000 cars in the country compared with a goal of half a million by 2015.

But things could be improving. New rules in Beijing require around 20 percent of parking lots in new buildings to be capable of housing-charging units (Colum Murphy, *Wall Street Journal*, Sept. 28). **-- JL**



CLIMATEWIRE — Tue., September 30, 2014

READ FULL EDITION

1.RENEWABLE ENERGY:

IEA estimates solar could dominate energy sources by 2050

More than a quarter of the world's electricity demand could be met with solar power by midcentury, surpassing generation from any other single source, including coal, natural gas, oil, wind, hydro and nuclear, the International Energy Agency has determined.

2.EXTREME WEATHER:

Scientists find human-caused link to heat wave, but ties to drought and heavy rains elude them

Blistering heat waves recorded around the globe in 2013 were linked to human-caused global warming, according to a broad survey of studies on extreme weather events published yesterday.

TODAY'S STORIES

3.TECHNOLOGY:

At the world's largest fusion experiment, nations and atoms collide

4.FOSSIL FUELS:

World's first coal carbon capture project set for startup this week

5.WATER:
Report shows utilities have major room to improve efficiency and create products
6.NATIONS:
Obama and Modi look for common ground on climate change
7.ADAPTATION:
As temperatures rise in coming decades, climate 'refugees' have few options
8.DROUGHT:
Brutal 9-month drought hits Brazil's biggest city, slows national economy
9.NEW YORK:
State agencies are required to plan for extreme weather under new law
10.UNITED KINGDOM:
U.K. may have more onshore wind turbines than it needs to meet E.U. targets

ENERGYWIRE — Tue., September 30, 2014

READ FULL EDITION

1.GRID:
New Western real-time market aims to smooth bumps in renewable generation

A new market for electricity is starting this week aimed at integrating renewables onto the power grid in seven Western states.

TOP STORIES

2.ELECTRICITY:
IEA says solar could be world's leading power source by 2050 -- if policies cooperate
3.WIND:
Ill. set to consider $1.8B Clean Line transmission project
4.LAW:
Dispute over mineral rights heats up in Ohio

ELECTRICITY

5.ELECTRICITY:
Texas committee hears of 'severe threat' from EPA carbon plan
6.FLORIDA:
Duke's nuclear tab prompts bill on utility oversight

OIL AND GAS

7.EARTHQUAKES:
EPA, researchers and trade groups all push for changes in Texas regulations
8.BUSINESS:
Canadian gas giant goes big into oily Permian Basin
9.TEXAS:
Oil and gas output surged past 2.6M barrels a day in July -- regulators
10.PEOPLE:
McClendon appoints another former Chesapeake employee for natural gas startup
11.PEOPLE:
Texas energy law firm expands into La. with new hires
12.MARCELLUS SHALE:

3rd site eyed for ethane cracker

13. OIL EXPORTS:

Gasoline prices loom over political positions on exports

14. WEST VIRGINIA:

Drillers step up for a crack at gas below Ohio River

15. PEOPLE:

'Obligation to speak out' drives Breitling CEO

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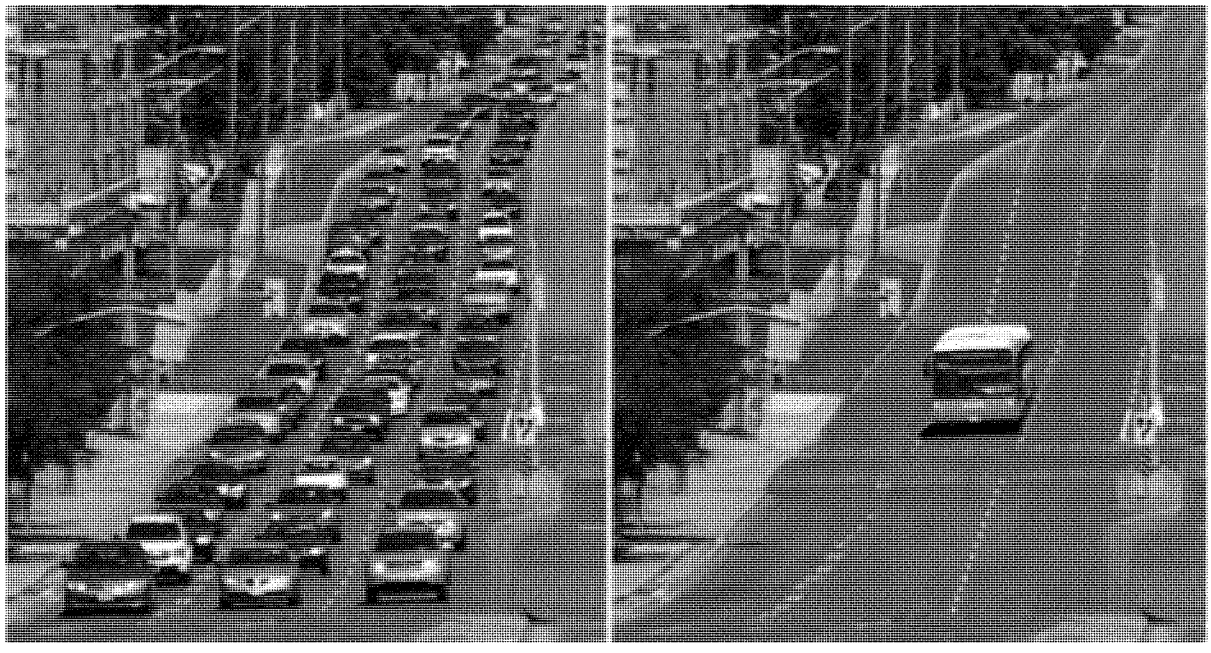

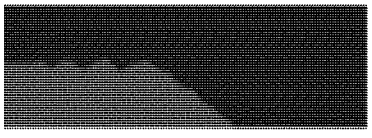

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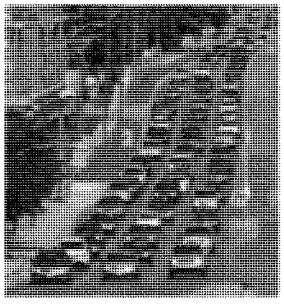

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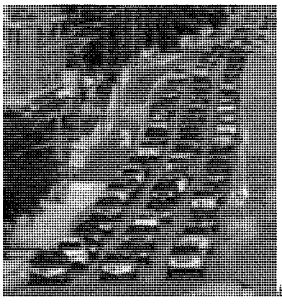


Air & Radiation Law News

for September 24, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

OMB Reviewing Proposed Implementation Requirements for Fine Particle Standards

The White House Office of Management and Budget is reviewing an Environmental Protection Agency proposal that would establish requirements for states as they implement the 2012 national ambient air quality standards for fine particulate...

Air Pollution

St. Mary's Cement Asks Court to Vacate EPA Emissions Limits on Michigan Plant

St. Mary's Cement Inc. asked a federal appeals court to vacate emissions limits the Environmental Protection Agency placed on the company's Charlevoix, Mich., plant, saying the agency exceeded its authority under the Clean Air...

Climate Change

Experts Say Smart Technology Can Be Force in Fight Against Climate Change

Industry leaders in the information and communication technology sectors are working on ways to help businesses and governments adapt to and mitigate climate change, according to speakers at the 4th Green Standards Week Sept. 22 in Beijing....

Climate Change

Greenhouse Gas Study Shows China Passes Europe for First Time in Per-Capita Emissions

China surpassed the European Union in pollution levels per capita for the first time last year, propelling the greenhouse gases that cause global warming to a record....

Climate Regulation

DOE Participation in EPA Power Plant Proposal Probed by House Committee

The House Energy and Commerce Committee is seeking records of discussions between the Energy Department and the Environmental Protection Agency relating to proposed carbon dioxide performance standards for new power plants....

Climate Regulation

Texas, Wyoming, Utilities Seek Rehearing In Greenhouse Gas Permitting Lawsuits

Texas, Wyoming and several utility groups asked federal appellate judges to rehear arguments in lawsuits challenging Environmental Protection Agency rules that require states to update air pollution plans to address greenhouse gases...

Energy

Terminating Demand-Response Program Would Raise Prices, Threaten Grid: FERC

The Federal Energy Regulatory Commission (FERC) asked a federal appeals court to grant a stay of its

ruling invalidating one of the commission's top priorities, the demand-response compensation program (Elec. Power Supply Ass'n...

International Climate

China to Seek to Cap Emissions
As Soon as Possible, Senior Official Says

China will seek to cap its carbon dioxide emissions as soon as possible, a senior member of the country's leadership said, signaling his government's willingness to take concrete steps to curb climate change....

International Climate

Effort Aims to Reduce Methane From
Oil, Gas Sector; Palm Oil Initiative Announced

As world leaders met for a one-day summit in New York City on Sept. 23 to push for global action on climate change, the private sector along with the U.S. and other governments rolled out partnerships to curb highly potent but short-lived greenhouse...

International Climate

Global Coalition of Mayors Pledges
Emissions Cuts Beyond National Goals

A coalition of more than 200 mayors representing an aggregate population of 400 million people has signed a Compact of Mayors pledging to accelerate reductions of greenhouse gas emissions and prepare for the impacts of climate change, sponsors...

International Climate

Industrialized Nations Must Bear Brunt
Of Climate Deal, Developing Nations Say

Leaders from many developing nations pledged their support for a 2015 global climate deal at the United Nations Sept. 23 but said it must allow for their continued economic expansion and put much of the burden on the U.S. and other large emitters...

International Climate

Obama Executive Actions on Climate Change

Emphasize Resiliency in International Work

President Barack Obama announced another set of executive actions aimed at addressing the increased risks of climate change by incorporating climate resilience into all international development work, providing new data to developing...

International Climate

Obama Urges World Leaders to Act in
Fighting Climate Change 'While We Still Can'

President Barack Obama urged world leaders at a United Nations summit to reach a global agreement to combat climate change "while we still can."...

International Climate

Statoil, Sinopec Among Global Companies
To Commit to Putting Price on Carbon

Statoil, Sinopec and Nestlé are among more than 30 companies globally that are committing to use carbon pricing in long-term business decisions. ...

International Climate

UN Summit Pledges, Commitments Advance
Progress Toward 2015 Agreement, Ban Says

Financial pledges and commitments made by governments, businesses, investors and lenders at the United Nations Climate Summit are helping to advance progress toward agreement on a new global climate treaty in Paris in December 2015, UN Secretary-General...

Renewable Energy

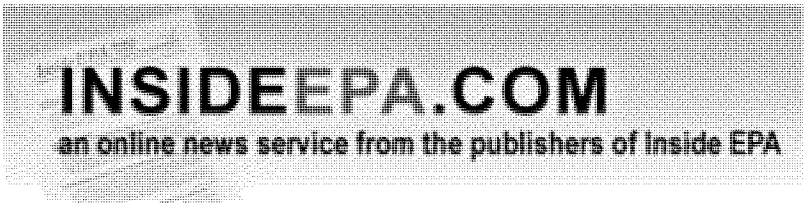
Draft Desert Renewable Energy Plan
Would Streamline Development in California

Interior Secretary Sally Jewell and California Natural Resources Secretary John Laird teamed up Sept. 23 to release a draft plan to guide and streamline development of renewable energy projects on 22.5 million acres in the California desert....

Renewable Energy

Ukraine Crisis Should Accelerate EU Shift To Clean Energy, CEO of Fuel Refiner Says

Europe's concern about its reliance on Russian fossil fuels may spur governments to prioritize alternative energy, the head of Neste Oil Oyj said....



Inside EPA's **Clean Air Report**, 09/25/2014

http://insideepa.com/Clean-Air-Report/Clean-Air-Report-09/25/2014/menu-id-68.html

'Clean' Utilities Cite DR Ruling To Bolster Suit Over EPA Generator Air Rule

"Clean" utilities that generate much of their power from lower-emission sources such as natural gas are citing an appellate court's ruling scrapping the Federal Energy Regulatory Commission's (FERC) policy on compensating demand response (DR) resources as boosting their suit over an EPA air rule for generators used in DR programs.

Obama Gives EPA Power Plant GHG Rule Central Role In Climate Talks

President Obama says EPA's proposed rule regulating greenhouse gases (GHGs) at existing power plants will play a central role in the United States' commitments in upcoming international talks to curb the emissions, underscoring the rule's significance even before it is slated to be finalized next June.

EPA Urged To Drop Under-Construction Nuclear From ESPS's GHG Targets

Georgia regulators are formally asking EPA to ease the state's greenhouse gas (GHG) emissions targets by exempting electricity generation from the state's under-construction nuclear units from the agency's calculations, a move that would set a precedent for two other states -- Tennessee and South Carolina -- with nuclear units under development.

News Briefs

Appeals Court Denies Comparable Fuels Rule Rehearing

A federal appeals court has rejected a request by the chemical industry to reconsider its June 27 ruling to vacate an EPA rule that excluded . . .

Parties To GHG Permit Suit Seek Extension After Talks Fail

EPA and dozens of groups that are parties to the remanded suit challenging the agency's greenhouse gas (GHG) permit program are asking the U.S. Court . . .

EPA Sends PM2.5 Implementation Rule For OMB Review

EPA has sent for White House Office of Management & Budget (OMB) review its proposed rule outlining requirements for states implementing the agency's 2012 fine . . .

Greenwire

CLIMATE:

Obama promises U.S. leadership on warming in U.N. address

Lisa Friedman, E&E reporter

Published: Tuesday, September 23, 2014

This story was updated at 2:50 p.m. EDT.

UNITED NATIONS -- President Obama today declared the United States is "stepping up to the plate on climate change," claiming America has cut more carbon emissions than any other nation on Earth over the past eight years.

Speaking before world leaders convened by U.N. Secretary-General Ban Ki-moon for the first-ever heads of state summit on global warming, Obama declared unequivocal support for a new international agreement. He repeatedly said the United States will lead but called on other major emitters, particularly China, to march in lock step.

"The two largest emitters in the world have a special responsibility to lead," he said. "It's what big nations have to do.

"Let me be honest," he added. "None of this is without controversy. In each of our countries, there are interests that will be resistant to action." But he repeated, "We have to lead."

Obama didn't pledge specific new emission targets, nor did he announce new funding for vulnerable countries. He did promise the United States would announce new carbon cuts for the years after 2020 early next year, and he unveiled a new partnership to help poor countries prepare for weather-related disasters.

Environmentalists gave the speech mixed reviews.

Bill McKibben, co-founder of the activist group 350.org, mocked Obama's baseball analogy, saying America "dropped down to a bunt single when we're behind by 10 runs in the ninth inning."

"If the president really wants collective ambition," McKibben said, "he's got to show a little can-do spirit."

But Jennifer Morgan, climate and energy director of the World Resources Institute, called Obama's comments encouraging. "Strong signals that the U.S. is de-carbonizing its economy will set the stage for a successful outcome at the climate negotiations next year," she said.

Today's summit arrived against the backdrop of airstrikes in Syria and a deadly Ebola virus ripping across Africa, yet dozens of world leaders today called on one another to give climate change a top spot on the global agenda.

"I've been shouting for so long over climate change that I've lost my voice," said a hoarse President Anote Tong of the Pacific island nation of Kiribati. "As sensible people, we need to start taking the right measures ... actions that will guarantee that the future of our people would be secure."

More than 120 heads of state are slated to take the stage by day's end. The biggest concrete pledges so far have come from France and South Korea, which pledged $1 billion and $100 million, respectively, to the global-warming-focused Green Climate Fund, and more financial pledges were expected from European and Nordic countries.

But from Japan to Indonesia, few leaders of big polluting nations declared their countries would undertake specific new emissions cuts. Instead they touted work they have already done and promised to work together toward a new international climate deal in 2015.

"The costs involved with tackling climate change are high, but the benefits are worth the effort," said Brazilian President Dilma Rousseff, who added that her country has cut deforestation 79 percent.

Countries are expected to ink a new global climate agreement in Paris in 2015 that will go into effect after 2020. Unlike the current Kyoto Protocol that only demands carbon cuts from industrialized countries, this deal is expected to require cuts from all big emitters -- including China and India -- and countries have loosely promised to announce those targets early next year.

By early afternoon, leaders from China, Japan, South Korea and the European Union announced they, like the U.S., would put forward emission targets by early next year.

On the sidelines of the leaders' speeches, dozens of deals were in the making. A coalition of 200 mayors launched the Compact of Mayors, which said it will be the largest effort to date to enact carbon cuts in cities, which account for 70 percent of global emissions.

Environmental groups announced a major new partnership with oil and gas companies to reduce methane emissions, with the United States pledging $15 million to a new World Bank pilot auction. And companies, indigenous groups and nonprofits unveiled the first global timeline to slow and end deforestation.

Secretary-General Ban, who opened the summit saying, "We are not here to talk, we are here to make history," at the midway point called the gathering "unprecedented."

French President François Hollande said countries and companies must take the pledges from the summit and turn them into actions on the ground.

"We can't just limit ourselves to words, expressions of regret and exercises in stocktaking," Hollande said.

Meanwhile at home, critics slammed Obama for talking climate as terrorism and other threats loom.

"Concerns about national security threats, our still-fragile domestic and global economies and health crises spanning the globe are mounting. Yet, our president has chosen to go 'all in' on climate change, an issue of little salience to the American people and certainly the global community, as demonstrated by the absence of key nations from today's U.N. climate meeting," Laura Sheehan, senior vice president for communications at the American Coalition for Clean Coal Electricity, said in a statement.

COAL:

Executive predicts doom for industry, rails against 'King Obama'

Manuel Quiñones, E&E reporter

Published: Tuesday, September 23, 2014

Robert Murray, head of privately held coal company Murray Energy Corp., yesterday predicted years of woes for his industry and issued a rallying cry against the Obama administration.

Murray, a controversial figure within the coal industry, was a keynote speaker at the Platts Coal Marketing Days in Pittsburgh this week. He said more mining company bankruptcies could be on the horizon.

"Some companies have been totally erased by bankruptcy or significant liquidity problems, and other probable coal company financial failures have been identified by us," Murray said during his remarks, obtained in written form by *Greenwire*.

Competition from cheap natural gas and other market conditions have contributed to Patriot Coal Corp. and James River Coal Co. seeking bankruptcy protection. Alpha Natural Resources Inc. and Arch Coal Inc. have been in the red for numerous quarters.

But Murray thinks the blame lies with the "insane, regal administration of King Obama," plus what he sees as liberal elites bent on destroying the coal industry. Murray has long questioned the human cause of climate change.

"In the late 1980s, environmental alarmists and liberal politicians and elitists attempted to scare us with the terrible consequences of 'acid rain,'" Murray said. "Today, their platform is 'global warming.'"

The coal executive added, "The efforts to wreak the total destruction of the United States coal industry by President Barack Obama, his appointed Cabinet bureaucrats and his supporters in the U.S. House and Senate are rapidly accelerating."

Beyond U.S. EPA proposals to tackle climate change, Murray also criticized Obama administration efforts at boosting Clean Water Act regulations and preventing black lung disease among miners. He echoed other executives in calling White House actions overly burdensome with little to no effect.

Murray accused Obama of wanting to control the energy industry. "How better to wrest control of our country!" he said. "There must be a change in control of the United States Senate on November 4!"

Murray also said he felt threatened by the Obama administration, enough to hire former CIA agents for security, and compared the current White House to the Gestapo and the SS during Nazi Germany, according to the *Pittsburgh Post-Gazette*.

"They're trying to silence me, but I won't be silenced," he said, according to the newspaper. "They use the power of the government to silence me, but that won't happen."

The Obama administration recognizes that some of its rulemakings will hurt coal mining, including its 2011 guidelines for controlling mercury emissions from power plants and its proposal to reduce carbon emissions from existing power plants (*Greenwire*, June 2).

However, EPA has denied its goal is to kill coal mining. The agency has also predicted coal power production would remain an important part of the U.S. energy portfolio for years to come.

Despite his dire predictions for the industry as a whole, Murray said that when it comes to his own company's operations, which grew after his recent acquisition of several Consol Energy Inc. mines, they are "immune" from the Obama administration's agenda.

Even though Murray has blamed the White House for having to lay off workers and is involved in several lawsuits against the administration, he said the strategic location of company mines made them resilient.

"Murray Energy has the best seams of coal, utilizes the very productive longwall mining method and is connected to base-loaded, scrubbed power plants with water and truck transportation," he said.

"These power plants can never be serviced adequately by natural gas due to price and supply volatility, lack of storage and the impossibility of getting adequate pipeline capacity to the plants."

Debate over coal's future

Yesterday, the London-based Carbon Tracker Initiative, a group of environmentally minded financial analysts, released a study saying slackening demand could erode the coal industry's financial underpinnings (*ClimateWire*, Sept. 23). It's the latest in a string

of such reports.

"The world's coal industry is playing musical chairs with demand -- every time the music stops another piece of the market is being taken away," CTI research director James Leaton said.

Murray likewise said that "contrary to some recent public coal companies' statements, there is absolutely nothing on the horizon that makes us think positively about coal demand and prices through 2015, and perhaps beyond, depending on interim events, in both the domestic and international coal markets."

But National Mining Association spokesman Luke Popovich dismissed the CTI study as being "in defiance of economic reality for the biggest developing countries." He wrote in an email, "Anyone who takes financial advice from enviro activists would buy a watch from a man on a bus."

As for Murray's remarks, Popovich said that in the near term, "I think our industry is in broad agreement with Bob's outlook for a more modest rebound in demand than might be expected at this stage in a post-recession environment."

Popovich cited "anemic" demand for electricity and steel at home and abroad, plus weak economic recovery and new regulations. But he said NMA did not agree with long-term pessimism.

Sterne Agee Group Inc. analyst Michael Dudas, in a newly released analysis, cited "excess supply" in international coal markets, plus weather and rail bottleneck problems. But he said higher natural gas prices would continue helping coal.

"While pricing attempts to bottom, user [coal] inventories remain modest and natural gas prices could further aid inventory draws," he said, also noting mining company attempts to shed costs, including through layoffs. "Recent sentiment appears overly pessimistic."

In its latest outlook, the U.S. Energy Information Administration said it expected coal use to increase this year but drop in 2015, largely because of plant retirements resulting from the EPA mercury rule. While coal imports are up, the agency said, 2014 exports will be lower than 2013 shipments abroad.

This month China, the world's top coal importer, said it would ban lower-quality, high-sulfur coals. And the CTI report said China's coal demand could peak by 2016. This week BHP Billiton Ltd. said it would cut 700 metallurgical coal jobs in Australia because of sluggish prices.

But U.S. mining companies are already looking beyond China to Japan, South Korea and India, which may not become a large importer of U.S. coal but may increase overall global demand.

In a report released earlier this year, energy giant BP PLC said coal's share of world energy consumption topped 30 percent in 2013, the highest level since 1970.

Last week Peabody Energy Corp., which has operations in Australia, said it was not worried about new rules in China. And today it said it planned to report higher-than-expected earnings before interest, taxes, depreciation and amortization for the third

quarter of the year.

"Our operations are performing well as we experienced higher-than-expected results from the western United States, improved performance from Australian metallurgical coal mines and continued cost reductions across the platform," said CEO Greg Boyce.

RENEWABLE ENERGY:

Interior set to unveil 'much needed' development plan for S. Calif. desert

Scott Streater, E&E reporter

Published: Tuesday, September 23, 2014

The Interior Department is expected today to release a draft plan to manage large-scale renewable energy projects across the California desert, a move that academicians, industry representatives and conservation groups say should finally provide the regulatory structure to balance development with natural resource protection.

Interior Secretary Sally Jewell is scheduled this afternoon to unveil the draft Desert Renewable Energy Conservation Plan (DRECP) during a visit to the AES Wind Energy Generation Facility in North Palm Springs, Calif.

The DRECP, which will cover 22.5 million acres of federal, state and private lands in the Mojave and Colorado deserts in Southern California, is intended to identify areas suitable for development where the permitting process will be streamlined to expedite solar, wind, geothermal and transmission projects while minimizing impacts to threatened and endangered species such as the desert tortoise, Mohave ground squirrel, arroyo toad and burrowing owl.

The plan is also expected to establish permit conditions and other environmental safeguards for these "covered species" within the massive planning area.

The Bureau of Land Management, California Energy Commission, Fish and Wildlife Service, and California Fish and Wildlife Department have been working collaboratively for nearly five years to develop the draft conservation plan.

In advance of today's expected announcement from Jewell, a group of scientists, renewable energy leaders and conservation groups told reporters during a conference call yesterday that the draft desert conservation plan is a major opportunity for the Obama administration to set a permanent course for the responsible development of commercial-scale projects in the California desert, and perhaps serve as a nationwide model for renewables development in the coming decades.

They also said the plan is long overdue, noting that since 2009, BLM has approved 22 large-scale solar, wind and geothermal power projects in California that have disturbed or when built will disturb thousands of acres of desert land.

"The scope and extent of renewable energy development in the desert just calls out for a coordinated, multijurisdictional plan," said Frank Davis, director of the National

Center for Ecological Analysis and Synthesis in Santa Barbara, Calif.

Glenn Stewart, a professor emeritus of zoology and environmental science at California State Polytechnic University, Pomona, and a member of the Desert Tortoise Council board of directors, echoed Davis' statement.

"The Desert Renewable Energy Conservation Plan is very much needed with the Obama administration's current emphasis on placing massive projects on public lands over the last five years," Stewart said. "There's been little effort to minimize the impacts of these projects on desert biological resources, including threatened species like the desert tortoise."

Combating climate change

Kim Delfino, California program director for Defenders of Wildlife in Sacramento, said the expected release of the DRECP also represents an opportunity for the public to get involved with federal and state regulators to help shape the future of the California desert.

"We are looking forward to the fact that at least now we can see what they've been planning over the last couple of years, and hopefully work out the issues so that we have a successful plan by the end of the Obama administration," Delfino said during the conference call.

Mark Tholke, vice president of EDF Renewable Energy's Western region, said the company will be looking for a conservation plan "that accelerates development of properly sited projects" across the desert. Developing clean, green energy resources is critical to slowing the impacts of a warming climate, he said.

"Our company recognizes the importance of smart planning for the siting of renewable energy project development," Tholke said during the call. "Given the potential impacts of climate change, I think many of us feel a real urgency to get as many of these projects up and running as possible, as soon as possible."

Other groups issued statements yesterday supporting the overall effort to develop the DRECP.

"There's no doubt that we need to immediately transition to renewable energy, but it has to be done right," Ileene Anderson, a senior scientist and public lands desert director with the Center for Biological Diversity in Los Angeles, said in a statement.

The Center for Biological Diversity last month notified the Interior Department that it plans to sue over what it calls the department's failure to protect an endangered bird from threats posed by commercial-scale solar power projects in the California and Arizona deserts (*Greenwire*, Aug. 22).

Anderson said the group is hopeful that federal and state regulators focus the DRECP toward steering development in the California desert to already-disturbed lands.

"We can ramp up renewable energy and preserve California's wildlife and pristine ecosystems by steering any new large-scale development to already degraded and disturbed lands and near existing transmission lines," Anderson said. "We hope this new desert planning process will help get us there."

POLITICS:

Vets group marches into ad war for green causes, candidates

Jennifer Yachnin, E&E reporter

Published: Tuesday, September 23, 2014

Among the third-party groups jamming the airwaves this cycle, one political nonprofit has sponsored ads to promote the renewable fuel standard, slammed tax breaks for fossil fuel producers and criticized a candidate backing the sprawling Pebble mine project in Alaska.

But it's not an environmental organization behind these ads. It's a veterans group.

While the political nonprofit VoteVets.org frames its mission as providing a voice for military service members -- on topics like national security or veterans' care -- it has also found a niche in promoting environmental causes.

"Our veterans are getting killed overseas because of our dependence on foreign oil," Iraq War veteran Jon Soltz, VoteVets chairman and co-founder, said in an interview. "Energy is very prominent because of how it affects our military policy. It's always been an issue that we wanted to work on."

The progressive group first delved into energy issues in the 2010 cycle when it pushed the Senate to secure a climate bill, an effort that ultimately failed.

But its new strategy included an $11 million ad campaign collaboration with the League of Conservation Voters, Sierra Club and Service Employees International Union.

Although VoteVets.org is not required to disclose its donors, the nonpartisan Center for Responsive Politics reports the organization also received more than $4.5 million in support from a variety of environmental groups that cycle, including the Sierra Club, Partnership Action Fund and Alliance for Climate Protection.

Soltz said his group continues to work with environmental allies, including billionaire California activist Tom Steyer's NextGen Climate Action, but he would not reveal whether it continues to receive financial support.

"We don't disclose our donors. We work with a lot of environmental groups. We're with a lot of unions. We work with a lot of private individuals," Soltz said, pointing to the group's 450,000 online donors.

Soltz did reveal that the group will likely pump about $5 million into various campaigns this cycle -- only some of its spending qualifies as required reporting under federal election law -- including about $1 million in the Alaska Senate race; $600,000 in the Kentucky Senate contest; and $1 million combined in races in Hawaii, Massachusetts and Montana.

The progressive group is also backing 14 candidates or incumbents, all Democrats, in federal races this cycle via its political action committee.

"We're going to play in the top four, five, six races," Soltz said.

While some of VoteVets.org's work is focused on its core issues, such as its attacks on Senate Minority Leader Mitch McConnell (R-Ky.) over veterans' health care in ads airing in Kentucky, the group is focused on environmental issues in races in Alaska and Iowa.

In the Alaska Senate race, the veterans group has launched a series of spots criticizing Republican nominee Dan Sullivan, including a $675,000 ad buy taking aim at Sullivan's support for the proposed Pebble mine in the Bristol Bay watershed.

"In the Navy, I repaired boats to serve my country. Now I fish off them to earn a living," Navy veteran John Christensen states in a 30-second spot released earlier this month.

"But Dan Sullivan would put my job and thousands of others at risk by allowing this," Christensen, a commercial fisherman in Port Heiden, Alaska, states as a series of explosions are shown. "Sullivan supports letting a foreign company build the Pebble mine. Even a small leak could kill thousands of Alaska jobs. That may not matter much to someone from Ohio like Dan Sullivan, but it would be a disaster for an Alaskan family like mine."

Sullivan, a former Alaska Natural Resources Department commissioner and former state attorney general, has faced repeated criticisms over his residency status during the campaign, from fellow Republicans in his primary bid and now from Democrats and third-party groups.

But while VoteVets.org appears to have sided with Sen. Mark Begich (D) as he fights for a second term -- the Alaska Senate race is a top target for Republicans as the party looks to pick up six seats this cycle -- don't expect an endorsement from the group's PAC anytime soon. The PAC backs only former service members, and Begich is not a veteran.

VoteVets.org will likewise assist Iowa Rep. Bruce Braley (D) in his bid to succeed retiring Sen. Tom Harkin (D), although its PAC is not expected to endorse the Democratic lawmaker outright.

The veterans group will invest $600,000 in a canvassing operation to help turn out votes for Braley as he battles Republican state Sen. Joni Ernst for the Senate seat.

The group also promoted Braley's bid with a July ad that touted the Democrat's support for the renewable fuel standard.

"You cannot be a senator from Iowa if you do not support that," Soltz said. In an interview, he called the use of ethanol in fuels imperative, adding that "oil money lines the pockets of terrorists and gets our troops killed."

SENATE:

Key committees facing postelection leadership changes

Daniel Bush, E&E reporter

Published: Tuesday, September 23, 2014

Senate Republicans say they're focused on the task of taking control of the upper chamber this fall. But GOP members are also eyeing top committee spots in a potential power shuffle next year that could reshape policy on key energy and environmental issues.

Republicans need to pick up at least six seats to gain a majority in the Senate, where Democrats up for re-election have struggled to distance themselves from an unpopular President Obama.

If that happens, Republicans would lead the Senate Energy and Natural Resources Committee and the Environment and Public Works Committee, high-profile posts that help set the agenda on everything from climate change to crude oil exports.

Energy and Natural Resources Chairwoman Mary Landrieu (D-La.) assumed the gavel in February, after Sen. Ron Wyden (D-Ore.) moved over to be chairman of the Finance Committee.

Landrieu is a strong supporter of the Keystone XL pipeline and expanded offshore energy development in Louisiana.

But her support for the energy industry has still left her vulnerable to attacks from her leading Republican challenger in Louisiana, Rep. Bill Cassidy. Cassidy held a lead of 44 percent to 41 percent over Landrieu in a Rasmussen Reports poll of likely voters taken earlier this month.

Landrieu dismissed any talk of a GOP takeover in a brief interview last week.

"I don't think the Senate is going to change. I believe I'll remain the chair of the Energy Committee," Landrieu said.

If Landrieu holds on, that could spell trouble for Republican efforts to retake the Senate -- and the Louisiana race probably won't be resolved until December, given the quirks of the Pelican State political calendar. But regardless of the outcome of her race, a GOP takeover would mean the ENR Committee's gavel would pass to ranking member Lisa Murkowski (R-Alaska).

Murkowski said that leading ENR has been a goal of hers since at least early 2013, when she put out a white paper titled "Energy 20/20: A Vision for America's Energy Future."

"I'm always thinking ahead. That's why I wrote [the report] last year," Murkowski told *Greenwire*.

The report calls for the approval of KXL and more offshore energy development. It recommends opening the Arctic National Wildlife Refuge to oil and gas production and fast-tracking energy-related "projects of national importance."

At the same time, the report supports increased research to address climate change and develop energy storage technology to make wind and solar power more efficient.

Murkowski has also been a vocal proponent of ending the nation's ban on crude oil exports. As ENR's chairwoman, Murkowski said she would focus on the issue "to get people thinking about it so that when we get to that point we can do something."

If Republicans gain control of the Senate and Landrieu is re-elected, she would presumably take the ranking member spot.

But if Democrats hold onto the Senate and Landrieu stays on as chairwoman, Murkowski -- who is up for re-election in 2016 -- would lose her ranking member spot.

Under GOP rules, Senate Republicans can only serve six years as ranking member and six years as chairman of any given committee. The years do not have to be consecutive and can be spread out over the course of a GOP member's career in the Senate.

Because Murkowski's term as the ENR Committee's ranking member is set to expire, Sen. John Barrasso of Wyoming would take over the panel's top GOP spot in the event that Democrats hold onto the Senate.

But Barrasso is also in line to be ranking member on the Environment and Public Works Committee. Should Democrats retain their majority, he would have to choose between the two posts.

Barrasso said he isn't focused on the committee musical chairs contest at the moment.

"My goal is to work between now and the election to make sure that Lisa Murkowski chairs the committee," Barrasso said in an interview.

Uncertainty at EPW

On the Environment and Public Works panel, Chairwoman Barbara Boxer (D-Calif.) would keep the gavel if Democrats don't lose their Senate majority. Unlike the GOP, the Democratic Party does not have term limits for top committee spots in the Senate.

Going forward, the Republican leadership on EPW could depend on the outcome of ranking member David Vitter's (R-La.) race for governor in 2015 and on Sen. James Inhofe's (R-Okla.) plans.

If Democrats retain the majority, Vitter will likely keep his ranking member slot next year while campaigning for governor.

Inhofe is the ranking member of the Armed Services Committee. But he also served as EPW chairman for four years and is eligible to lead that panel for two more years.

So if Republicans win control of the Senate, Sen. John McCain (R-Ariz.) would likely take charge of the Armed Services Committee and Inhofe would move over to EPW for a two-year stint as chairman, a Senate aide said.

Inhofe spokeswoman Donelle Harder said he would be "honored" to lead either committee.

If Vitter loses the 2015 gubernatorial election and Democrats retain their Senate majority, Vitter and Inhofe would likely keep their current posts.

If Republicans take over the Senate, Vitter could challenge Inhofe for control of the EPW Committee, forcing a leadership vote by the panel's GOP members.

But a Senate aide said that scenario is unlikely, because Senate Republicans who have first dibs on a top committee spot are rarely challenged by members with less seniority. A protracted internecine battle in Washington, D.C., probably isn't in Vitter's interests as he charts his statewide campaign back home.

Once the dust settles, a Republican takeover of the Senate would likely bring Inhofe back as chairman of EPW, setting up a high-profile showdown with Boxer over climate change.

Inhofe led the panel before Boxer replaced him when Democrats retook control of the Senate in 2007. Inhofe is a prominent climate denier, while Boxer, the co-chairwoman of the Senate Climate Action Task Force, has made fighting climate change a top priority.

The task force blasted climate change deniers in a letter to environmental supporters just last week, previewing the line of attack that Boxer and other Democrats would use if Inhofe takes over EPW.

"Climate change is real," the letter said. "Climate change deniers need to pull their heads out of the sand and stop obstructing efforts to address" the issue.

More potential shakeups

The midterms could also reshape several other Senate committees with jurisdiction over agriculture, science and the budget-making process.

Sen. Debbie Stabenow (D-Mich.), the chairwoman of the Senate Agriculture, Nutrition and Forestry Committee, would lose the gavel if Republicans take back the upper chamber.

Sen. Thad Cochran (R-Miss.), the panel's ranking member, is in line to lead the committee in the event of a GOP takeover, but he first has to win re-election and beat back a long-shot lawsuit over his contested primary victory earlier this year.

State Sen. Chris McDaniel (R), Cochran's tea party-backed primary opponent, has asked the Mississippi Supreme Court to reverse a lower court ruling that upheld the results of their June 24 primary runoff.

In a court filing last week, McDaniel's attorneys claimed that Cochran's runoff win should be tossed out because he improperly courted Democrats who don't typically vote for GOP candidates.

Both sides are scheduled to make oral arguments in court early next month. While the case moves forward, the state is also preparing to hold a general election in November

between Cochran and former Rep. Travis Childers (D).

Cochran is best known for bringing national defense and infrastructure funding home to Mississippi. But he has also worked on several farm bills and helped create wetlands and wildlife refuges throughout the state.

Senate Commerce, Science and Transportation Chairman Jay Rockefeller (D-W.Va.) is retiring at the end of this year, creating an opening for the panel's top spot.

If Republicans win the Senate, ranking member John Thune (R-S.D.) would assume the gavel, and Sen. Bill Nelson (D-Fla.) would likely take over as ranking member.

Boxer, who also sits on the panel, has seniority over Nelson, but she's expected to keep a leadership spot on the EPW Committee regardless of how the midterms play out.

If Democrats retain the majority, Nelson would become the committee's chairman and Thune would stay on as ranking member.

Rep. Shelley Moore Capito (R-W.Va.) and West Virginia Secretary of State Natalie Tennant (D) are vying to replace Rockefeller in a race that has centered on the coal industry and the Obama administration's proposed power plant rules. Capito is favored and her victory would help Republicans regain control of the Senate.

The top two members on the Senate Appropriations Committee would change posts or stay in their current roles, depending on which way voters lean this fall.

If Democrats don't lose the Senate, Chairwoman Barbara Mikulski (D-Md.) would hold onto the gavel. Mikulski took over the committee in late 2012, after the death of Sen. Daniel Inouye (D-Hawaii).

Mikulski would be replaced by ranking member Richard Shelby (R-Ala.) if Republicans win back the Senate. Both veteran lawmakers are up for re-election in 2016.

CLIMATE:

Inhofe says Obama might try to bypass Senate on emissions treaty

Jean Chemnick, E&E reporter

Published: Tuesday, September 23, 2014

The Senate's top climate change skeptic said yesterday that President Obama seems poised to bypass the Senate and commit the United States to a binding international treaty on global warming.

In a letter to Obama ahead of the president's scheduled remarks at the U.N. Climate Summit, Sen. James Inhofe (R-Okla.) charged that the administration appeared ready to agree to commit to emission-reduction targets without seeking similar deals from other countries or waiting for Senate ratification.

"This is deeply troubling," Inhofe wrote, noting that the Constitution bars the executive branch from entering into a treaty without the Senate's consent.

The absence at today's summit of top leaders from five major emitting countries -- China, India, Russia, Germany and Australia -- shows Obama would be going solo on an emission pledge, Inhofe said. Furthermore, he said, Australia has recently abandoned its carbon tax and Canada has moved away from its commitments under the Kyoto Protocol.

"Recognizing this, is it worthwhile to lead the nation down a path of intense economic pain to solve a global problem if no other industrialized nations will follow?" Inhofe asked.

Climate negotiators hope today's gathering in New York is a step along the path to a global agreement to be finalized at the end of next year in Paris. The United States has insisted that such an agreement bind all major emitters equally; that condition has been a major point of contention with China and India.

Secretary of State John Kerry reiterated the message yesterday during his remarks at the Climate Week opening ceremony in New York City, touting U.S. progress in controlling emissions but pledging that the United States would work with China and India to lay the groundwork for an agreement (*Greenwire*, Sept. 22).

"The United States is not able ... to do this alone," Kerry said.

The agreement to draw down emissions after 2020 is likely to be built in a way that allows the United States to comply without formal Senate ratification -- a very high hurdle in the current political climate. But the United States has taken a similar path in complying with other treaties -- the Law of the Sea is an example -- without Senate ratification.

Administration officials -- including Kerry, U.S. EPA Administrator Gina McCarthy, Treasury Secretary Jacob Lew and White House Office of Management and Budget Director Shaun Donovan -- have made speeches this week and last arguing that the cost of efforts to draw down carbon dioxide is manageable, but the cost of runaway warming may not be.

CLIMATE:

Google severs ties with ALEC over group's stance on warming

Published: Tuesday, September 23, 2014

Google Inc. failed to look up a political group's stance on climate change before funding it on an unrelated issue, according to the search company's chairman.

Eric Schmidt said Google paid the American Legislative Exchange Council for an unrelated lobbying campaign, which had nothing to do with climate change, though the group opposes U.S. action on climate change.

"The people who oppose it are really hurting our children and grandchildren and making the world a much worse place," Schmidt said on NPR's "The Diane Rehm Show" yesterday. "We should not be aligned with such people. They are just literally lying."

Google said it would not be renewing its membership with ALEC at the end of the year.

Microsoft Corp. has also withdrawn from ALEC, saying its affiliation with an organization "which is actively fighting policies that promote renewable energy was incongruous."

ALEC has pushed to repeal state initiatives on renewable energy use, and some of its other endeavors include supporting Florida's "stand your ground" law after Trayvon Martin was killed by a gunshot by a neighborhood watch volunteer.

ALEC's chief executive, Lisa Nelson, said "it is unfortunate to learn Google has ended its membership in the American Legislative Exchange Council as a result of public pressure from left-leaning individuals and organizations who intentionally confuse free market policy perspectives for climate change denial."

ALEC has also written model legislation calling for research into the possible benefits of climate change (Snyder/Womack, Bloomberg, Sept. 23). **-- JL**

CLIMATE:

Texas, utilities contend Supreme Court GHG ruling overrules lower court decision, request rehearing

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, September 23, 2014

Texas, Wyoming and utility groups yesterday asked a federal appeals court to reconsider its ruling in favor of a U.S. EPA decision to force the states to regulate greenhouse gas emissions, claiming a Supreme Court ruling has since overruled it.

In two cases, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the states and utility groups were not harmed by EPA forcing them to add greenhouse gases to their permitting program for stationary sources.

The Clean Air Act, a divided panel held, contained a "self-executing" provision that mandated the inclusion of the gases in each state's Prevention of Significant Deterioration (PSD) compliance plan.

Consequently, the states' challenge was to the law itself, not EPA's action, and therefore they lacked standing to bring it (*Greenwire*, July 25, 2013).

Texas, Wyoming and groups including the Utility Air Regulatory Group are now claiming that finding -- that the inclusion of greenhouse gases in PSD program was automatically triggered when EPA regulated greenhouse gases from mobile sources -- was overruled by the Supreme Court in June.

In *Utility Air Regulatory Group v. EPA*, the Supreme Court trimmed EPA's permitting authority under the PSD program. The court held that PSD permits could require facilities to install control technologies to limit greenhouse gas emissions only if the facilities already qualified for the PSD program for emissions of other more conventional pollutants.

Emissions of greenhouse gases alone, the court ruled, did not qualify a source for the PSD permitting regime (*Greenwire*, June 23).

Texas, Wyoming and the utilities are now contending that holding directly conflicts with the D.C. Circuit finding that the Clean Air Act is "self-executing" with regard to including pollutants in the PSD program.

The D.C. Circuit, a petition from the SIP/FIP Advocacy Group reads, found "sources emitting 'major' amounts of greenhouse gases are automatically subject to PSD permitting under the Act. ... That holding has been specifically rejected and reversed by the U.S. Supreme Court."

Texas and Wyoming, in their petition to the court, said the Supreme Court found that EPA's interpretation "was not even a permissible construction of the statute."

The large and complex cases hinged on EPA's efforts to implement its first regulations to reduce greenhouse gas emissions in 2010. The agency quickly set out to make sure that states with Clean Air Act permitting authority had the capability to adequately account for greenhouse gas emissions.

That December, EPA gave those states a short deadline to submit their revised plans for review, a process known as a SIP Call. The agency signed off on most states' new plans, but Texas -- a frequent critic of EPA's climate policies -- refused to make any changes, claiming greenhouse gases should not be regulated under the Clean Air Act. Wyoming similarly did not comply.

Both states contended that EPA was attempting to strong-arm states into complying with its climate policies.

The multiple petitions ask the D.C. Circuit for a rehearing of the same three-judge panel or en banc, meaning before all 11 of the circuit's judges.

The D.C. Circuit rarely grants rehearing requests but is more likely to do so if it views the ruling as inconsistent with its own precedent or that of the Supreme Court.

Click here for the petition from Texas, Wyoming and industry groups.

Click here for the petition from the SIP/FIP Advocacy Group.

GRID:

FERC weighs Supreme Court petition on demand-response ruling

Hannah Northey, E&E reporter

Published: Tuesday, September 23, 2014

The Federal Energy Regulatory Commission is urging a federal appeals court to not invalidate a high-profile rule for electricity-saving programs until the agency decides whether to ask the Supreme Court to intervene.

David Morenoff, FERC's general counsel, asked the U.S. Court of Appeals for the District of Columbia Circuit yesterday to not finalize its 2-1 ruling that vacates Order 745, which requires grid operators to pay customers and demand-response providers the market value of unused electricity.

The split three-judge panel found FERC exceeded its authority in directing that demand-response providers such as factories or commercial buildings receive full market prices when they curtail electricity use. Demand-response programs are retail market actions, and those are the province of state regulators, not FERC, the judges ruled.

The court's mandate is scheduled to take effect tomorrow, but FERC wants until Dec. 16 to decide on taking the case to the Supreme Court.

FERC argued that the appeals court's May decision should not immediately become effective because it "presents a substantial legal question and raises significant implications for wholesale electricity market stability and grid reliability."

The Supreme Court receives thousands of petitions to review lower court rulings every year and takes up fewer than a hundred. So the odds of the high court granting review of this case, should FERC or another group request it, are low.

The same federal appeals court last week rejected FERC's request to rehear the case en banc, meaning it would be heard before all of the court's judges. The court rarely grants such requests (*EnergyWire*, Sept. 18). That decision was applauded by the Electric Power Supply Association, American Public Power Association, Edison Electric Institute and other power groups that believe FERC lacked jurisdiction over retail markets and the order was not justified.

Even so, the justices have historically given petitions from federal agencies closer scrutiny. It takes the votes of four justices to grant review of a case.

FERC isn't the only concerned party considering an appeal to the Supreme Court.

The demand-response decision has for months triggered widespread speculation about the expectations of electricity market prices and profits, the potential for lengthy legal battles, and concerns that the industry could have a harder time complying with U.S. EPA's greenhouse gas rules (*EnergyWire*, June 26).

Yesterday, lawyers representing demand-response companies such as EnerNOC Inc., Viridity Energy Inc., Wal-Mart Stores Inc., steel producers and the American Forest & Paper Association also asked the court for more time -- 90 days -- to consider whether to seek the Supreme Court's review.

The court's decision to kill the rule, they warned, raises legitimate legal questions and

could tie grid operators' hands during emergencies and possibly trigger "devastating" reliability problems for the U.S. electric grid. They pointed to grid operators' use of tens of thousands of megawatts of demand response to avoid blackouts during this winter's subarctic freeze in January and the prior summer's excessive heat.

"Were the mandate to issue prior to the Supreme Court's decision on the Intervenors Supporting Respondent's petition for a writ of certiorari, events such as the Polar Vortex and heat wave of the summer of 2013 could have adverse impacts on grid reliability because there would not be sufficient resources to meet system demand," they wrote.

John Moore, a senior attorney for the Natural Resources Defense Council's Sustainable FERC Project, said his group strongly supports the petitions, adding that the court's ruling has major potentially negative implications for wholesale electricity market stability, resource adequacy and grid reliability.

"Demand response is vital to balancing supply and demand, reducing prices, and reducing the need for more expensive, often-dirtier power," Moore wrote in an email.

Power groups opposed to FERC's request disagreed.

John Shelk, the Electric Power Supply Association's president and CEO, said a stay is not warranted, adding that FERC's request would only add to market uncertainty. "A stay delays focusing on the practical next steps to shape that orderly transition," Shelk wrote in an email.

Reporter Jeremy Jacobs contributed.

TREASURY:

Lew warns of high costs of warming inaction

Jean Chemnick, E&E reporter

Published: Tuesday, September 23, 2014

When it comes to climate change, doing nothing will cost more than taking action, Treasury Secretary Jacob Lew argued yesterday.

His speech echoed a theme emphasized by top administration officials in the run-up to President Obama's address to the U.N. Climate Summit today in New York City.

"As an economic matter, the cost of inaction or delay is far greater than the cost of action," Lew said at an event hosted by the Hamilton Project of the Brookings Institution in Washington, D.C.

He reeled off arguments meant to pre-empt Republican charges that actions to curb emissions will be expensive. Man-made climate change will mean more damage from weather events and resource scarcity, sea-level rise, and stress to crops and forests, Lew said. He cited the Council of Economic Advisers' warning that a 3-degree-Celsius temperature increase over preindustrial levels could mean a loss of 1 percent of the world's global economic output each year. That would mean that the need for more

public spending on rescue, recovery and health care would coincide with less tax revenue from the world's climate change-damaged economies.

Climate change is already making demands on the U.S. Treasury, Lew said. The National Flood Insurance Program has had to borrow $24 billion from the Treasury Department because of payouts resulting from an unprecedented number of expensive storms that have occurred over the past nine years, and infrastructure around the country is in need of repair sooner and more frequently because of changing weather patterns.

These and other costs will compete for limited federal funding -- including for Republican priorities like defense, he said. That consideration should bring sometime climate critics to the table, he argued.

"If we fail to make changes now, it will be much more costly to deal with the problem later, and some options may be foreclosed entirely," Lew said. He called for an approach that used market forces to "balance the cost of reducing emissions with what the latest science tells us we need to do to keep temperature increases below dangerous levels."

His speech echoed themes that White House Office of Management and Budget Director Shaun Donovan sounded Friday, when he warned that climate change would have budgetary implications (*Greenwire*, Sept. 19). Both speeches also touted the economic upside of spurring investment in renewable energy, efficiency and other domestic industries.

Lew also reiterated that the United States and other developed nations cannot be solely responsible for emissions cuts under the new international agreement that will take effect in 2020. China is already showing a new willingness to act on emissions, he said, in part because of internal pressure from its citizens, and in part because it sees the United States taking "very substantial" steps toward reining in greenhouse gases, including Clean Air Act rules to curb power plant emissions and new fuel efficiency standards for vehicles.

"I think we have to lead by taking action where we take burdens on ourselves," he said, predicting that major developing emitters like China and India would follow suit.

But Adele Morris, a Brookings Institution scholar who attended the event, said other countries would respond more to a policy like an economywide carbon tax than to U.S. EPA's proposal for emissions from existing power plants. The administration has not publicly thrown its weight behind a carbon tax, sticking to the message that it is promulgating Clean Air Act rules because Congress failed to enact a climate change law. Lew did not mention the policy option yesterday, though he did briefly mention other possible changes to the U.S. tax code.

"Understandably, the administration was stung by the defeat of cap-and-trade legislation and sees little percentage in throwing support behind the idea only to make it impossible for Republicans to embrace it," said Morris, who has authored several reports about how a carbon excise tax could be constructed.

But she argued that a levy on emissions would be more efficient than the Clean Power Plan and other EPA efforts to regulate heat-trapping emissions under existing law. And such a policy would be "far more influential in the international negotiations" because it would be easier to understand, more comprehensive and could be adopted more

quickly.

"The administration is doing the best it can with the authority it has. But well-designed alternative legislation would be far superior economically, environmentally and diplomatically," she said.

NATURAL GAS:

State Dept. lends support for international methane reduction

Jean Chemnick, E&E reporter

Published: Tuesday, September 23, 2014

Secretary of State John Kerry announced plans yesterday to help fund a new World Bank auction pilot program to curb methane emissions.

Kerry pledged $15 million in kick-start funds for the initiative, which the bank launched Sept. 15 and which will seek to fund projects around the world to address emissions of the potent greenhouse gas.

The initiative will pay developers a guaranteed price for each ton of methane that their projects help avoid.

"These developers, we hope, will be much more inclined to cut methane from livestock, landfills, waste treatment facilities, because they'll be able to do so with the confidence that they're going to be able to get an adequate if not better return on their investment," Kerry said yesterday during the opening ceremony of New York's Climate Week.

The World Bank hopes to find a total of $100 million to support the program. The State Department pledge came as President Obama prepares to address the U.N. Climate Summit today in New York City. It also comes as U.S. EPA continues to weigh options for limiting methane from oil and natural gas development, transportation and storage within the United States -- including possible regulation.

BIOFUELS:

Boosting RFS targets wouldn't significantly raise gas prices -- study

Amanda Peterka, E&E reporter

Published: Tuesday, September 23, 2014

Increasing the ethanol mandate beyond the volume proposed by the Obama administration would not significantly affect the price of gasoline sold in the United States, according to a new study from Iowa State University.

The study found that increasing the corn ethanol mandate to 13.67 billion gallons from the 13.01 billion target that U.S. EPA proposed for this year would have no effect on gas prices. That's because increasing the mandate to that level would not result in higher prices for the ethanol credits that refiners use to show compliance with the mandate.

Increasing the RFS from that point to 14 billion gallons would increase the total price of gasoline by a cent per gallon, the study found.

"Many in the oil industry have used the specter of higher pump prices to argue against increased mandates," Iowa State economists Sébastien Pouliot and Bruce Babcock found. "These findings show that concern about the consumer price of fuel do not justify a reduction in feasible ethanol mandates."

The study examines the dynamics of both E10, or gasoline containing 10 percent ethanol, and E85, or gasoline containing up to 85 percent ethanol, in various market situations. About 95 percent of the gasoline sold at gas stations around the country is E10, while E85 is sold in limited quantities for use in flex-fuel vehicles.

It comes as the White House Office of Management and Budget is wrapping up a review of the final EPA rule setting the 2014 renewable fuel mandates. EPA proposed slashing the mandate for ethanol on the basis of the blend wall, or the 10 percent ethanol saturation limit in the market. According to industry observers, EPA is considering increasing the target to 13.6 billion gallons based on increased gasoline demand and higher predictions of E85 use compared to when it first released the proposal last November.

According to the new Iowa State study, at the market-clearing ethanol volume of 13.67 billion gallons, the price of E10 would be $3.55 per gallon, while the price of E85 would be $3.12 a gallon. Increasing the mandate above that point would only slightly increase the price of E10 but would lead to a dramatic drop in the price of E85, the study found.

The finding that E10 prices won't be affected much by an expanded ethanol mandate contrasts with the results of a recent Congressional Budget Office study that predicted E10 prices would increase by between 4 and 9 percent if the mandate increases. That study, however, assumed biofuel targets would increase as scheduled in the 2007 statute that created the renewable fuel standard, rather than be lowered by EPA (*Greenwire*, June 27).

The Iowa State study also identified 14.18 billion gallons as the physical limit to the amount of ethanol that can be used in the market today. The number is higher than the blend wall limit that critics of the ethanol industry have identified but below the level that Congress thought the industry would reach in 2014 when it passed the renewable fuel standard into law.

"The market does not have the capacity to comply with a 14.2 billion gallon mandate given the production costs for E10 and E85 and the physical limit on the distribution of E85," the study says.

Ethanol trade group Renewable Fuels Association said it hoped "OMB and EPA pay close attention" to the new study in finalizing the 2014 targets for ethanol and advanced biofuels. Corn ethanol trade groups like RFA have called on the administration to raise their mandate to 14.4 billion gallons, the full level written by

Congress into the 2007 renewable fuel standard.

EPA:

Agency circulates plans to trim workforce by January

Robin Bravender, E&E reporter

Published: Tuesday, September 23, 2014

Chemists in Chicago, engineers in Cincinnati and security specialists in Washington, D.C., are among the U.S. EPA staffers who could get incentives to leave their jobs by early next year.

The agency has begun to release its preliminary plans for buyouts to EPA regional offices and program offices at D.C. headquarters with an eye toward trimming its current workforce of 15,433 to 15,000 employees by 2015.

EPA last week sent notices to employees alerting them of which plans it has proposed to target in various offices, including the Office of Administration and Resources Management and at the agency's Chicago-based Region 5 office, according to documents circulated yesterday by an EPA union official.

The agency still hasn't released official details about the timing of the buyouts or specific positions it will be targeting, but other offices are also expected to receive offers. Agency officials wrote to employees last week that EPA was still waiting for the Office of Personnel Management and the White House budget office to sign off on their proposals before they can start making offers.

EPA spokeswoman Liz Purchia yesterday said the agency is in discussions "and can't discuss the details of any possible voluntary retirement proposals."

According to the draft plans sent to employees, the next round of buyouts will require staffers to depart the agency by Jan. 9. Employees who are considering applying were urged to seek retirement and financial counseling now so they will be prepared to make the decisions.

In the Office of Administration and Resources Management, the agency said it plans to make 227 positions eligible for buyouts or early retirements with a maximum of 112 employees to receive offers. The targeted jobs include positions in Washington, Cincinnati and Research Triangle Park in North Carolina. In the Office of Administration, 69 positions could be targeted, and 72 staffers at the Office of Acquisition Management would be eligible under the proposal.

At the Chicago office, 107 posts would be targeted under the plan, with offers given to a maximum of 51 employees. The eligible positions would include GS-12 and GS-13 environmental protection specialists in the enforcement branch and the information technology section of the Superfund division; GS-12 and GS-13 life scientists; and equal employment specialists and managers.

According to the email sent to employees, the purpose of sending EPA's proposal out early was to provide staffers with details "so that you can be well-informed and have

the opportunity for longer term planning should your position be one that is being considered in our proposal."

John O'Grady, president of the American Federation of Government Employees Local 704 chapter representing workers in the Region 5 office, said union officials haven't been kept informed about the agency's plans.

"Despite all of their highfalutin talk about wanting to work with the unions and involve us in decisions prior to the final decision being made," he wrote yesterday in an email, "management once again left us totally in the dark as to what they were planning to do with respect to this buy out."

He said the agency has refused to agree to local-level bargaining on issues such as how work would be reassigned after the buyouts, the impact on employee performance agreements and how the agency will fill the new vacancies. He also said the plans appear to target certain individuals, rather than job categories.

"This buy out appears both like a 'purge' as well as a going away present for some of management's favorites," he wrote yesterday in an email to the press.

This would mark the second round of EPA buyouts and early retirements offered since earlier this year, when EPA trimmed about 540 staffers through the first round of offers (*E&ENews PM*, March 19).

Under the buyouts, employees were offered a lump sum of up to $25,000 to leave -- the maximum amount allowed by the Office of Personnel Management. Certain employees could also retire early and immediately receive annuity payments.

MONGOLIA:

Climate change bludgeons descendants of Genghis Khan's empire

Published: Tuesday, September 23, 2014

When he established one of the largest empires the world has ever known in the early 13th century, Genghis Khan gave all the credit to the god Tengri -- the Eternal Blue Sky.

At the time, a once-in-a-millenium 15-year stretch of plentiful rain and mild temperatures allowed the Mongol Empire to flourish. Khan's descendants, who are no longer warriors, still rely on grasslands for their livelihoods. But they face different weather extremes.

Climate change is fueling conditions that a 2009 report warns "may lead to the end of the Mongolian traditional way of animal husbandry as we know it."

Hot and dry summers are ridden with wildfires and sandstorms as Mongolia's average summer temperatures have increased. Winters have become colder, with extreme winter events called dzuds occurring more frequently. A 2010 dzud killed 8.8 million head of livestock -- equivalent to 4.4 percent of the country's economic output.

"I don't know why the weather has become unusual, but I'm very worried about it," said Urgamaltsetsg Suvita, a Gobi Desert herder who lost her 1,000-animal flock in 2010. "Winter is no longer winter."

Many of the still-shamanistic rural Mongolians, who University of Oxford geographer Troy Sternberg said believe that "the earth and sky are connected," blame the mining industry for disrupting the natural order of things.

They might not be far off; some studies indicate the rise of mining in Mongolia, coupled with overgrazing in pursuit of lucrative cashmere contracts, has degraded 70 percent of Mongolia's grassland.

Changing weather has led to rapid urbanization in Mongolia -- 180,000 people moved to the capital, Ulan Bator, after the 1999-to-2002 dzuds alone -- but cities have struggled to deal with the influx (Rachel Nuwer, *New York Times*, Sept. 22). **-- DTB**

RUSSIA:

Nuclear deal could bring 8 new reactors to South Africa

Published: Tuesday, September 23, 2014

Russia has signed a nuclear agreement with South Africa that will allow the construction of up to eight nuclear reactors at a cost as high as $100 billion.

The move is the latest African deal secured by Russia. The nation also landed a spy satellite deal with South Africa and a planned $3 billion platinum mine in Zimbabwe.

If the reactors are built, they will be the first Russian nuclear plants in Africa.

South African President Jacob Zuma visited Moscow last month on a six-day trip, which prompted speculation he was negotiating the nuclear agreement.

The deal would allow for as much as 9,600 megawatts of electricity from the proposed reactors, helping Zuma deliver a "radical transformation" of the country's energy sector, which he has said is needed to promote industrial growth and greater reliability in the nation's energy market.

"South Africa today, as never before, is interested in the massive development of nuclear power, which is an important driver for the national economy growth," South African Energy Minister Tina Joemat-Pettersson said (Geoffrey York, Toronto *Globe and Mail*, Sept. 22). **-- SP**

SOLAR:

Washington initiative promotes low-income solar installations

Published: Tuesday, September 23, 2014

How can solar energy job training in low-income communities help strengthen the clean energy economy? During today's OnPoint, Greg Dotson, vice president for energy policy at the Center for American Progress, and Erica Mackie, co-founder and CEO at GRID Alternatives, discuss a new program launched in Washington, D.C. focused on expanding solar installations and job training to low-income communities. They address the policies that could expand the program to the mainstream and explain the benefits of solar energy to rural and low-income communities.

Click here to watch today's OnPoint.

ClimateWire

CLIMATEWIRE — Wed., September 24, 2014

READ FULL EDITION

1. NEGOTIATIONS:
The world's 2 largest greenhouse gas emitters use U.N. summit to pledge climate actions

UNITED NATIONS -- President Obama and Chinese Vice Premier Zhang Gaoli told a landmark global warming summit yesterday that their countries stand ready to make serious new commitments to tackling climate change.

2. RISK:
Insurers, after White House meeting, emerged worried about more 'extreme weather' events

Five insurance trade groups are promoting stronger building decisions to help counter a sharp rise in losses from extreme weather, prompted by a meeting on climate change between senior White House officials and industry leaders in June.

TODAY'S STORIES

3. FORESTS:
Dozens of nations, others pledge to end deforestation by 2030

4. AGRICULTURE:
N.J. company aims to slash biofuel emissions in deal with food giant

5. EMISSIONS:
Food industry announces plan to cut HFCs and massive climate footprint

6. FINANCE:
Bank of America announces $10B initiative to speed up investment in clean energy

7. ENERGY:
Natural gas usage will do little to curb emissions -- study

8. GRID:
New cost-benefit framework needed to assess value of distributed energy -- report

9. REGULATION:
Major Calif. utilities get protest over proposed rates that may penalize solar users

10. HEALTH:
Studies show how illness could soar with higher average temperatures

11.POLITICS:
Eyeing massive Western deposits, Colo.'s Polis asks Obama to consider climate impacts of oil shale
12.COAL:
Central Appalachian coal production slows, as cheaper Colombian imports increase
13.AGRICULTURE:
Scientists search for crops of the future
14.SCIENCE:
Arctic sea ice shrinks to 6th-lowest all-time level
15.WEATHER:
West Coast warming tied to naturally shifting winds, not greenhouse gases

ENERGYWIRE

ENERGYWIRE — Wed., September 24, 2014

READ FULL EDITION

1.FINANCE:
Large holders of mineral rights learn 'it's good to own dirt'

Last November, the chairman, president and CEO of Anadarko Petroleum Corp. shared a bit of the wisdom that he's earned over his career. "I don't want to say we would never do it," Al Walker said on a call with analysts. "But a wise person in the oil and gas business told me one time there is one thing you never do, and you never sell mineral interests." That was then. This year, the operative phrase appears to be "never say never."

TOP STORIES

2.CLIMATE:
Exelon says 'at risk' designation in EPA rule is little help
3.COLORADO:
Fort Collins to fight for fracking ban in appeal
4.EAGLE FORD SHALE:
Resilient Texas field poised to overtake Bakken in oil production - report

ELECTRICITY

5.ELECTRICITY:
Texas should end handouts to wind power -- comptroller
6.ELECTRICITY:
Better demand forecasts could save Mid-Atlantic states over $1B - report

OIL AND GAS

7.LAW:
N.M. high court rules for royalty owners in battle with driller
8.BAKKEN SHALE:
N.D. asks if industry can improve oil safety without expensive new plants

9.EPA:
Enviros petition agency to halt surface disposal of drilling wastewater
10.WORKFORCE:
Supply chain jobs to jump 45% by 2025 -- study
11.OIL:
Lawsuit challenges approval of crude transport plan into Calif.
12.CLIMATE:
Energy companies sign on to cut methane emissions
13.EARTHQUAKES:
Texas waste-disposal plan gets EPA praise
14.AGENCIES:
EIA working to better define condensates
15.OIL BY RAIL:
Canada mulls insurance fund to aid railways

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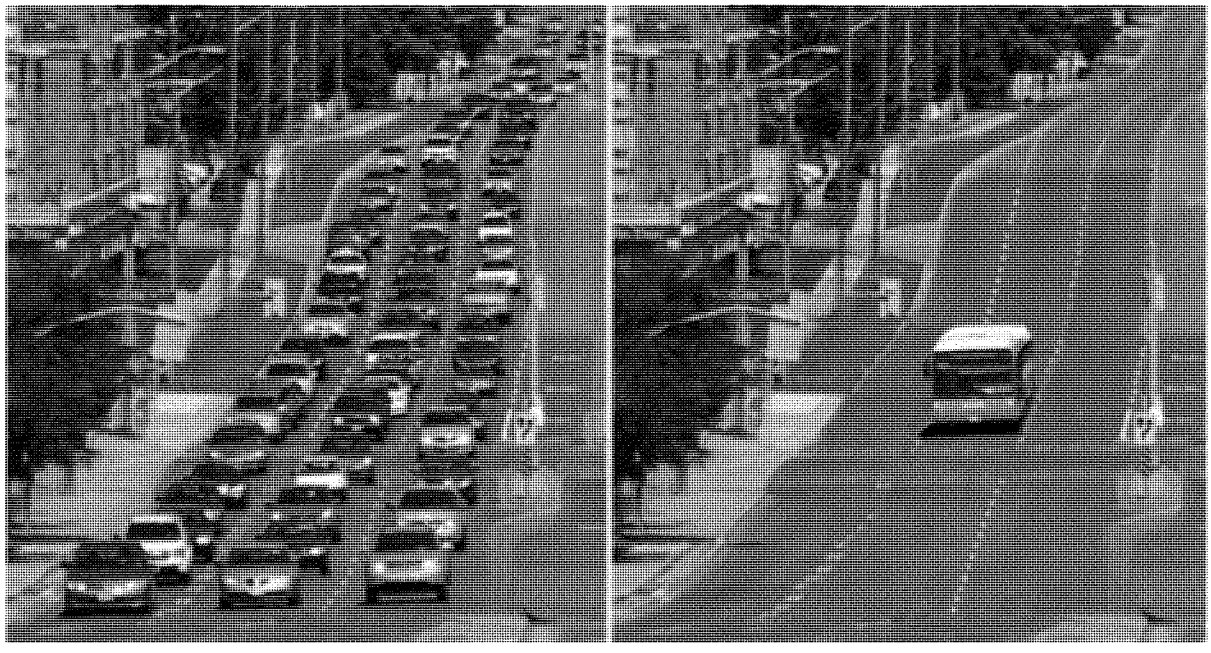

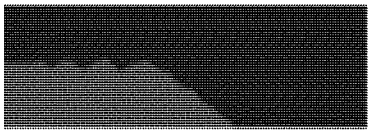

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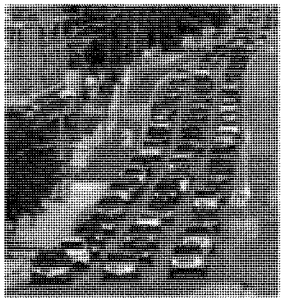

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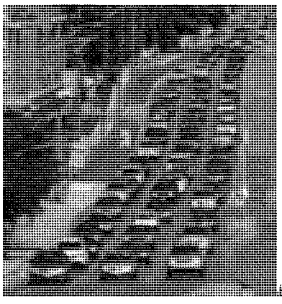

Air & Radiation Law News

for September 23, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

California Bills to Promote Clean Cars, Fix Pipeline Leaks Signed by Governor

California Gov. Jerry Brown (D) signed over a dozen environment and energy bills Sept. 19-21, including measures to accelerate the availability of zero-emission vehicles, find and fix leaks in natural gas pipelines and improve management...

Air Pollution

EPA Diesel Grant Funding Available to Ports

The Environmental Protection Agency is making up to $5 million in grants available for projects targeting diesel emissions at ports. The agency, in a Sept. 22 news release, said it anticipates funding up to five clean diesel projects aimed...

Climate Change

Google Quits Conservative Political Group; Chairman Says ALEC Is Wrong on Climate

Google Inc. Chairman Eric Schmidt said the world's biggest Internet search company made a mistake in funding a political group that opposes U.S. action on climate change....

Climate Change

New York City Mayor Sets Commitment To Reduce Emissions 80 Percent by 2050

New York Mayor Bill de Blasio (D) announced Sept. 21 that the city is committing to an 80 percent reduction in greenhouse gas emissions from 2005 levels by 2050, releasing a broad plan to improve energy efficiency in buildings....

Climate Policy

New Legal Framework Needed to Address Climate Justice Issues, Report Concludes

A new international dispute resolution structure for climate change issues is needed to adequately protect human rights of the world's most vulnerable populations, according to a report from the International Bar Association. ...

Hazmat Transport

Menendez Bill Would Increase Training For Rail Transport of Hazardous Materials

Railroad carriers transporting hazardous materials would be required to conduct more training and would be subject to civil penalties for safety violations under a recently introduced bill by Sen. Robert Menendez (D-N.J.)....

International Climate

Cities, Other Sub-National Governments Seek Signing Rights to Climate Treaties

International climate treaties should be opened up to cities, states, provinces and other sub-national units of government to sign alongside national governments, the chairman of an international coalition of cities

said Sept. 22....

International Climate

Companies Join Investors to Pledge Action
On Climate Change as World Leaders Meet

While U.S. President Barack Obama and more than 100 other world leaders will meet in a summit devoted to climate change, the most tangible action on global warming this week may come from investors and companies....

International Climate

Higher Taxes, Other Trade-offs Loom Unless
U.S. Acts on Climate, Treasury Secretary Says

Treasury Secretary Jacob Lew said Sept. 22 that continued inaction on climate change will force "hard trade-offs" between higher taxes and larger deficits in the future as increasing global temperatures and rising sea level strain...

International Climate

Kerry Touts Economic, Moral, Security
Reasons for Greater Climate Action

Existing international efforts to address climate change are "not meeting the challenge" but a "small window of time" remains to avoid the worst impacts if countries intensify their responses to the problem, Secretary...

International Climate

Rise of Carbon Markets Drives Interest
In Linking Them, Speakers on Climate Say

The rise of carbon markets across the world is driving increased interest from companies and governments to link those markets together, representatives from companies and a Harvard University researcher said Sept. 22....

Nanotechnology

Multiple Grouping Systems for Nanomaterials

Seen as Necessary, OECD Officials Say

Government agencies are likely to need a selection of optional ways they could group manufactured nanomaterials for testing or other purposes, officials from the Organization for Economic Cooperation and Development (OECD) and U.S. Environmental...

Sustainability

Companies Including Ikea, Mars Lead Effort
To Reach 100 Percent Renewable Energy

Ikea Group, Mars Inc. and about a dozen other companies are launching a campaign to convince other businesses to join them in being powered entirely by renewable energy....

Vehicle Fuels

Renewable Fuel Standard Opponents
Urge OMB Not to Increase Requirements

Opponents of the Renewable Fuel Standard ranging from environmentalists to gasoline refiners urged the Obama administration not to increase the Environmental Protection Agency's 2014 Renewable Fuel Standard requirements at a White...

Delaware Law Expands Hazardous Chemical Scope

Legislation (S.B. 199) signed by Delaware Gov. Jack Markell (D) amends the state's Extremely Hazardous Substances Risk Management Act to bring it in line with changes to the federal Clean Air Act Amendments and Risk Management Plan rule....

Inside EPA's **Risk Policy Report**, 09/23/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-09/23/2014/menu-id-130.html

Iowa Suit Appeal Marks Next Bid For High Court Bar On 'Nuisance' Air Cases

Grain producers are urging the Supreme Court to overturn an Iowa high court ruling finding that the Clean Air Act does not preempt state law "nuisance" suits against polluters, marking the second attempt by opponents of nuisance air suits for the Supreme Court to take up the issue and rule definitively that the air law preempts the state claims.

News Briefs

Group's NOAA FOIA Request Expands GHG Risk Finding Fight

A free-market group is expanding its bid to invalidate EPA's greenhouse gas (GHG) endangerment finding by filing a Freedom of Information Act (FOIA) request with . . .

Greenwire

CLIMATE:

In historic shift, Rockefeller fund pledges to divest from fossil fuels

Jean Chemnick, E&E reporter

Published: Monday, September 22, 2014

The movement to divest from fossil fuels has picked up a significant and historically unlikely convert: the Rockefeller Brothers Fund.

The $860 million philanthropic fund, which draws its capital from John D. Rockefeller's Standard Oil fortune, announced this morning that it would gradually shift its assets away from oil, gas and coal and toward other interests that are more aligned with its concern about climate change.

The family fund will start by immediately divesting from coal and oil sands development in the final months of 2014, noting that these industries are among the most carbon-intensive.

"We are working to eliminate the Fund's exposure to these energy sources as quickly as possible," the fund said in a statement on its website.

It does acknowledge that a fraction of 1 percent of its portfolio might remain invested in those industries due to "some commingled investment funds and investments in highly diversified energy companies."

The fund will simultaneously look for ways to drop its other fossil fuels investments, it said.

The announcement comes as businesses and private foundations line up to offer new commitments ahead of the U.N. leadership forum on climate change in New York City. The event will draw President Obama and 120 other heads of state to begin laying the groundwork for a new agreement on emissions by the end of next year.

But while it remains unclear what new national pledges that world leaders will bring with them to the Big

Apple, private-sector advocates are working to make "Climate Week" a turning point in the global effort on warming -- beginning with a massive climate march in Manhattan yesterday and continuing with announcements like the one by RBF.

Organizers say 50,000 students were among the more than 300,000 participants in yesterday's march. Many made divestment from fossil fuels by college endowments a major rallying cry.

"We will use our financial power to make colleges and universities divest from fossil fuels," Maura Cowley, director of the youth-led Energy Action Coalition, said in a statement before the march. "And we will use our bodies and risk arrest to stop business as usual for fossil fuel profiteers on Wall Street."

Advocates from a variety of faith traditions including Archbishop Desmond Tutu also used the gathering as a platform to call for congregations to divest from fossil fuels. In a statement released before the summit, a group of theologians organized by Divest & Reinvest Now! implored religious communities to shift their assets away from carbon-intensive industries.

"Our religious traditions share values regarding the ethical use of financial resources," said representatives from Christian, Muslim, Jewish, Hindu and other traditions. "When an industry continually, over years, causes massive harm while intractably resisting calls for change, faith communities have moved beyond education, engagement and advocacy to divestment."

But a few fossil fuels companies and other industry groups are planning announcements of their own this week aimed at limiting their output of greenhouse gas emissions, especially when it comes to pollutants like methane and hydrofluorocarbons, which are much more climate-forcing in the short term than carbon dioxide.

The Climate and Clean Air Coalition, an international public-private partnership to limit short-lived climate pollutants, will make an announcement tomorrow that includes industry commitments on methane. The six oil and natural gas companies that will participate in the coalition's new voluntary initiative will agree to track and manage leakage throughout their operations, develop implementation plans and share information on leakage with the coalition. CCAC declined to say which companies would participate, but *The Washington Post* reported today that Southwestern Energy Co. would be among them.

The U.S. coolants industry is also planning to release new global commitments this week against the backdrop of the summit, following up on a White House announcement last week of new steps the federal government and industry will take to limit production and use of heat-trapping HFCs (*Greenwire*, Sept. 16).

CLIMATE:

Kerry urges world leaders to set 'ambitious goals' for emissions treaty

Lisa Friedman, E&E reporter

Published: Monday, September 22, 2014

NEW YORK -- Secretary of State John Kerry made a clarion call to action on climate change this morning, saying nations must recognize that cutting carbon can bring economic benefits.

Kerry's comments at the opening of Climate Week events here were his second in as many days pledging that the United States is moving ahead domestically and pushing others to do more. He touted the

Obama administration's plans to regulate power plant emissions and claimed the United States has done more to cut carbon in the past five years than in the past 20 combined.

"It doesn't cost more to deal with climate change. It costs more to ignore it and put our head in the sand and continue down this road of obfuscation and avoidance. And we need to make it clear to the people of this country," Kerry said.

More than 120 heads of state will convene at the United Nations tomorrow for a first-of-its-kind summit aimed at setting the stage for a new global agreement. Expected to be inked in Paris in 2015, the deal calls on all major emitters to cut carbon after 2020. Countries have been asked to announce those new targets by early next year.

Kerry today pledged that the United States will be ready and said the country and China are working closely to prepare for Paris.

"If together we can state ambitious goals for the next year, our hope is that it will act as a major incentive for next year," he said.

Kerry, who has been working on climate issues for more than 20 years and pushed unsuccessfully for climate legislation when he served in the Senate, said the key to making Paris a success is for countries to work together.

"The 2015 U.N. agreement is not going to be the final step toward solving climate change, but I've got news for you. It's going to be the most important one, perhaps since Kyoto," he said.

Tomorrow's summit has attracted hundreds of businesses announcing new moves to cut deforestation in their supply chains, boost renewable energy and measure carbon emissions.

In one of the morning's biggest announcements, Russia and China embraced putting a price on carbon as a key strategy in reducing the threat of climate change. The major climate polluters joined about 80 other national and local governments from South Africa to Tokyo as well as more than 1,000 companies including Nokia and Shell Oil Co.

"Today we see real momentum," World Bank President Jim Kim said. "Governments representing almost half of the world's population and 52 percent of global GDP have thrown their weight behind a price on carbon as a necessary, if insufficient, solution to climate change and a step on the path to low carbon growth."

Ray Johnson, senior vice president of Lockheed Martin Corp., called climate change a "clear and present danger" and called for more investments in clean technology.

"We need to take this threat seriously, and we need to start determining solutions now," he said.

KEYSTONE XL:

With climate march as backdrop, GOP focuses on pipeline

Manuel Quiñones, E&E reporter

Published: Monday, September 22, 2014

Updated at 4:18 p.m. EDT.

Calls by congressional Republicans for President Obama to approve the transboundary Keystone XL oil pipeline only intensified this week as protesters descended on New York City to press for action on climate change.

House Speaker John Boehner (R-Ohio) took to Twitter this weekend to push for KXL as more than 300,000 activists rallied in New York yesterday, many of them with anti-pipeline views.

One Boehner tweet said, "Wake up, Mr. President. We need the #KeystoneXL pipeline." Another said, "#KeystoneXL would move up to 830,000 barrels of oil per day ... about half the amount we import from the Middle East."

On Friday, pipeline supporters, mainly Republicans, marked the sixth anniversary of TransCanada Corp. requesting approval to pipe oil across the U.S.-Canada border.

Even though climate activists say the pipeline would boost greenhouse gas emissions, backers say oil shipments are already increasing by rail.

Rep. Cory Gardner (R-Colo.), who is running for Senate, focused on KXL during the weekly Republican radio address aired throughout the country over the weekend.

"Thanks to the president's inaction, we are no closer to building the pipeline today than we were six years ago," Gardner said. "As a result, thousands of Americans are missing out on the good-paying jobs the pipeline would create."

Obama used his own weekly message to the American people to talk about terrorism in the Middle East. The president is scheduled to speak this week at the United Nations Climate Summit.

Center for Biological Diversity campaigner Valerie Love was one of many environmentalists who this weekend rallied against KXL and the oil sands fuel it would carry.

"Tar sands is exactly the kind of energy that is pushing the planet toward climate catastrophe," she said. "It's long past time for President Obama to reject tar sands and other fossil fuel projects that only dig us deeper into the climate crisis."

BIOFUELS:

Groups say Obama's RFS plan hurts climate legacy more than 'worst enemies'

Amanda Peterka, E&E reporter

Published: Monday, September 22, 2014

As Climate Week kicks off, biofuels producers are calling out President Obama for proposing to scale back the nation's renewable fuel requirements.

In a print ad yesterday, trade groups representing advanced biofuels producers said the Obama administration's proposal would run contrary to its goals of reducing carbon dioxide emissions. The U.S. EPA proposal, which is in the final stages of review at the White House, calls for decreases in both corn ethanol and second-generation biofuels that refiners have to blend this year in petroleum gasoline and diesel.

It would represent the first decrease in the yearly mandates for the fuels since Congress passed the renewable fuel standard in 2007. EPA based the reductions on the blend wall, the term used to describe a 10 percent limit to the amount of ethanol that the oil industry says can be used in existing fuel infrastructure, and a slower-than-expected ramp-up in the domestic advanced biofuels industry.

"Your administration is proposing to change the RFS rules in the middle of the game with a brand new methodological approach that allows oil companies to avoid their obligations under the law by simply refusing to distribute renewable fuel to consumers," the ad says in an open letter to Obama. "You will have inadvertently done more to damage your climate legacy than your worst enemies."

The one-page ad ran yesterday in *The New York Times* as more than 310,000 protesters marched in New York City to demand that global leaders take action on climate change. Tomorrow, more than 120 world leaders, including Obama, will convene at the United Nations for a summit on climate change.

The Advanced Ethanol Council and Biotechnology Industry Organization signed and funded the ad. Advanced biofuels producers that are part of both trade groups have written Obama directly with a similar message (*E&ENews PM*, Sept. 9).

EPA Administrator Gina McCarthy has said the numerical targets for biofuels would be higher in the final rule because of higher gasoline demand since the proposal was first released last November. But advanced biofuels producers say they're disappointed because the administration is still basing the rule off the idea of a limit to the amount of biofuel that can be used in gasoline and diesel.

They are calling on the administration to not only raise its targets but also use the standard to push past the blend wall. In the ad, producers threatened to take their business overseas if the basis for the targets is not changed in the final rule.

"America will fail to lead the charge if your administration lets oil companies off the hook," the ad says. "And papering over the problem by increasing the RFS targets this year will not prevent the exodus of investment to China and Brazil."

Separately, a group of renewable fuel standard foes today are meeting with the White House Office of Management and Budget as it wraps up its review of the final rule. The group, which includes the oil and livestock industry along with environmentalists, is planning to call on the administration to retain its proposed cuts in biofuels for this year.

CALIFORNIA:

Bill accelerating push to 1M electric cars becomes law

Anne C. Mulkern, E&E reporter

Published: Monday, September 22, 2014

Legislation aimed at putting 1 million electric and other nonpolluting vehicles on California roads by 2023 is now law.

Gov. Jerry Brown (D) signed S.B. 1275, from Sen. Kevin de León (D), yesterday. Dubbed the Charge Ahead California Initiative, it puts in place a number of levers to expand adoption of zero-emission vehicles, or ZEVs. Those include battery electric and hydrogen fuel-cell vehicles.

The new law also provides incentives to increase the availability of ZEVs in low-income communities. It suggests an income cap for popular state rebates available to ZEV buyers in order to stretch funding that previously has run out.

"If you like the idea of driving on a cleaner fuel that's the cost equivalent of dollar-a-gallon gasoline, today is a good day," Max Baumhefner, an attorney in the Natural Resources Defense Council's Clean Vehicles and Fuels program, said in a blog post after Brown signed the bill.

"Electric cars are dismissed by skeptics as toys for the rich, but the reality is many models are surprisingly affordable, with post-incentive prices under $20,000," he added. "After accounting for the fact that driving on electricity is about four times cheaper than gasoline, that's a pretty attractive alternative to cars that run on oil."

Currently, there are about 100,000 ZEVs in California, a milestone reached late last month (*Greenwire*, Sept. 9). That's 0.04 percent of the 24 million passenger vehicles registered in the Golden State. Electric vehicles in California represent about 40 percent of the total in the nation, according to the state and green groups.

To hit the 1 million by 2023 goal, the bill requires the state Air Resources Board (ARB) to develop a plan to meet the measure's goals. It also orders new paths to help lower-income residents qualify for loans and kick-starts a pilot program for car sharing that would use ZEVs.

The legislation encourages incentives for cities and landlords to install electric vehicle charging equipment. Lack of access to chargers is seen as an obstacle to putting many drivers in plug-in cars.

Cap-and-trade revenue will be used

Backers estimated that policies that the bill plans to roll out will cost about $200 million yearly. Funding would come from proceeds generated by an auction of environmental permits under California's cap-and-trade program for carbon emissions. That economywide system requires some business to submit "allowances" covering their greenhouse gas pollution. They buy those at the auctions.

Cap and trade is scheduled to expand in January to wrap in motor fuels, forcing oil refiners to secure permits for emissions tied to all gas and diesel purchases in the state, about 17 billion gallons annually. Once that happens, the program is slated to generate $5 billion annually for the state.

The California Taxpayers Association opposed the measure, largely because of the use of cap-and-trade funds.

Backers, however, hope that the framework the initiative puts in place could spread to the rest of the country. California has an agreement with eight other states to work toward getting 3.3 million electric vehicles on roads by 2025.

Brown also signed several other bills related to ZEVs. They included:

- S.B. 1204, from Democratic Sens. Ricardo Lara and Fran Pavley. A companion bill to Charge Ahead, it funds the development and the commercial deployment of zero- and near-zero-emission trucks and buses, and off-highway vehicle and equipment technologies.

- A.B. 1721, from Assemblyman Eric Linder (R). It allows ZEVs to travel for free or at reduced rates in high-occupancy toll lanes.

- A.B. 2013, from Assemblyman Al Muratsuchi (D). It increases to 70,000 the number of advanced-technology partial zero-emission vehicles that may be allowed in high-occupancy vehicle lanes, regardless of occupancy level.

- A.B. 2565, also from Muratsuchi. It requires commercial and residential property owners to approve installation of an electric vehicle charging station by renters.

WEST VIRGINIA:

Coal industry group backs Rahall opponent

Manuel Quiñones, E&E reporter

Published: Monday, September 22, 2014

The West Virginia Coal Association, an influential force in Mountain State politics, has decided to endorse Republican Evan Jenkins in his bid to unseat longtime Democratic Rep. Nick Rahall.

The future of coal, Obama administration rulemaking and miner safety have become key talking points in the competitive race. That's why the Jenkins campaign called the coal group's endorsement decision a "blow" to Rahall's campaign

"I am honored to have earned the trust and confidence of West Virginia's coal producers, which provide jobs to thousands of hard-working folks in this district," Jenkins, a state senator, said in a statement this morning.

Even though Rahall has also been a strong supporter of his state's coal industry, some pro-coal advocates complain the incumbent Democrat hasn't voted for more House Republican measures aimed at rolling back Obama administration rulemaking.

Jenkins added, "Their support of my campaign is a rejection of Nick Rahall's partnership with Barack Obama in his War on Coal. In Congress, I will work every day to grow and protect coal jobs."

The West Virginia Coal Association has endorsed both Democrats and Republicans in recent years. In 2012, for example, the group backed Sen. Joe Manchin (D) and Gov. Earl Ray Tomblin (D), both of whom won re-election.

But the group has long had doubts about Rahall. In 2010 it backed Rahall opponent Elliott "Spike" Maynard, who had connections with former Massey Energy Co. CEO Don Blankenship.

Rahall last week celebrated the National Rifle Association's endorsement, which is also key in West Virginia politics. And when it comes to coal and miners, he enjoys the backing of the United Mine Workers of America.

"Representative Nick Rahall always has been and always will be a proven champion for West Virginia's coal jobs and is leading the charge against the EPA in Washington so that we can protect our way of life," said campaign manager Sam Raymond, "and that's why he's proud to have once again earned the backing of groups like the United Mine Workers of America."

Both Rahall and Jenkins have collected contributions connected to the coal mining industry. Rahall, for example, has received at least $1,500 from Arch Coal Inc. and $3,500 from the National Mining Association's CoalPAC. Murray Energy Corp. recently gave Jenkins $4,000.

Beyond the Rahall-Jenkins race, the West Virginia Coal Association is also backing Rep. Shelley Moore Capito (R) in her bid to replace retiring Sen. Jay Rockefeller (D).

In neighboring Kentucky, Senate Minority Leader Mitch McConnell (R) and Secretary of State Alison Lundergan Grimes (D) are continuing to fight for the pro-coal vote.

Last week, Bill Bissett, president of the Kentucky Coal Association, said a GOP-controlled Senate would help elevate pro-coal issues on Capitol Hill. The Kentucky coal group does not endorse candidates.

Cecil Roberts, president of the UMWA, which is backing Grimes, took a shot at McConnell for raising money with former Florida Gov. Jeb Bush (R). Both Bush and former Labor Secretary Elaine Chao, McConnell's wife, are on the board of Bloomberg Philanthropies, which has donated money to anti-coal interests.

TEXAS:

GOP hits freshman Dem over KXL opposition in new ad

Jennifer Yachnin, E&E reporter

Published: Monday, September 22, 2014

The National Republican Congressional Committee is up with a new television spot hitting freshman Rep. Pete Gallego (D) over his opposition to the Keystone XL pipeline as it aims to flip the suburban San Antonio district in November.

The 30-second ad, which launched Friday, urges voters to oust Gallego but does not identify his opponent, former CIA officer Will Hurd (R).

Instead, the ad, which will air on broadcast and cable stations in the San Antonio market, hits Gallego over a pair of votes he cast in his first term, including a June vote against a measure to expand oil and gas drillers' access to the outer continental shelf.

"Just days before Congressman Gallego got elected, experts made a prediction: 117,000 new jobs for South Texas. Engineering jobs, trucking jobs, waitress jobs, office jobs, maybe your next job," a narrator states in the ad, referring to a 2012 University of Texas, San Antonio, study that predicted the Eagle Ford Shale could support up to 117,000 full-time jobs by 2021.

"But Barack Obama is slamming the brakes on our energy economy. And Congressman Gallego is helping him do it," the ad continues. "Gallego voted against drilling on government land, against the Keystone pipeline. Gallego needs to go."

Gallego, who defeated then-Rep. Quico Canseco (R) to win his first term in 2012, claims a slight advantage in his re-election bid.

The Cook Political Report rates the race as "lean Democratic," one rank up from its most competitive designation, "tossup."

In the 2012 race, Gallego took 50 percent to Canseco's 46 percent, while a libertarian candidate captured 3 percent of the vote. In the same cycle, President Obama received 51 percent to GOP presidential nominee Mitt Romney's 48 percent.

Gallego, who received the League of Conservation Voters Action Fund's endorsement last week, also leads in the money chase, with $814,000 in the bank at the end of June (*E&E Daily*, Sept. 18). He had raised $1.7 million at that time.

Hurd reported $150,000 in his campaign coffers at the end of June after raising $719,000 for his bid.

SOLAR:

Company looks to keep sun-powered generators running at night with new innovation

Published: Monday, September 22, 2014

A solar thermal energy company in Israel says it has discovered a way to keep solar plants operating at full capacity both night and day with a more efficient way to store heat from the sun.

Avi Brenmiller, the founder of Brenmiller Energy Ltd., said the company will have a 1.5-megawatt site in the Negev desert connected to the national power grid by next year followed by several 10- to 20-megawatt pilots abroad.

He said the price of solar power produced will compete with fossil-fueled plants.

"A couple of years from now, not later than that, we will be putting full-size commercial plants to work. Because the basic technology we use here is a bankable technology ... I'm sure that banks will not hesitate to finance such projects," he said.

Brenmiller's innovation involves a cementlike medium to store the energy produced by the sun that can later be tapped overnight or on cloudy days to produce steam that powers the electricity generator (Ari Rabinovitch, Reuters, Sept. 22). **-- JL**

ELECTRIC VEHICLES:

Harley-Davidson seeks young riders for greener bikes

Published: Monday, September 22, 2014

Motorcycle maker Harley-Davidson Inc. is on a 30-day tour drumming up interest in a quieter model -- the planned electric motorcycle -- among environmentally conscious young consumers.

CEO Keith Wandell said the electric motorcycle the company is considering building will help Harley-Davidson reach younger customers, who may be awed by quiet electric vehicles like the Tesla Motors' Model S sedan but lack big budgets for the cars. The company is seeking to expand its reach beyond its traditional customers, who are typically wealthy, middle-aged white men.

The company is also using social media to promote the new bikes, which are known as Project Livewire. The bikes are expected to have a range of 53 miles before the batteries run out of power.

"You're going to get guys saying it's not a true Harley-Davidson -- it's not air-cooled, it doesn't make a lot of noise and it doesn't fall apart," said Ben Myburgh, a 25-year-old thinking about purchasing one of the

bikes. "But you have to embrace the future at some point" (Mark Clothier, Bloomberg, Sept. 22). **-- SP**

AIR POLLUTION:

Industry takes aim at proposed update to landfill standards

Amanda Peterka, E&E reporter

Published: Monday, September 22, 2014

The waste industry says U.S. EPA is underestimating the impacts of a proposed update to landfill air standards and failed to allow for enough time to comment on the complex proposal.

Under the proposed standards, new and modified landfills would be required to put in place technology to capture two-thirds of their emitted methane and toxic air pollutants by 2023. EPA has said that 17 new landfills would fall under the proposed update and that 11 of those would have to install new pollution controls.

But industry says the agency has failed to take into account the fact that new landfills are rarely constructed and that the standards would be more commonly applied to modifications at existing sites. The nation's largest waste company, Waste Management Inc., said it plans to expand more than 20 of its 262 landfills in the near future and that those expansions would likely require it to install new pollution controls under the standards.

"Thus, one company alone has more than doubled the agency's estimate of the affected universe of sites," Waste Management said in a comment dated Sept. 15 and posted in the federal docket Friday. "We are concerned and perplexed that EPA only analyzed regulatory costs for new sites, and thus gravely misrepresented the number of facilities affected by the proposal as well as attendant costs."

EPA issued the proposed standards in July to update 18-year-old requirements for new and modified landfills. The rule addresses both methane -- a potent greenhouse gas -- and non-methane emissions such as volatile organic compounds that can contribute to ozone formation and health problems.

The trigger for the new standards would come after a landfill's emissions reach 40 metric tons of non-methane organic compounds a year, lower than the 50-metric-ton threshold set in the 1996 regulations. Once they reach that point, landfills would have 30 months to install a gas collection system, route the gas to a flare or burn it in an enclosed combustion device.

"The EPA expects that the avoided emissions will result in improvements in air quality and reduce health effects associated with exposure to air pollution related emissions, and result in climate co-benefits due to reductions of the methane component of landfill gas," the agency said (*E&ENews PM*, July 1).

EPA says new sites that open in 2014 or later with a capacity of 2.5 million metric tons will be subject to the proposed rule. But in its comments, the waste industry said the agency did not quantify the costs for updating existing landfills that are planned for expansion or modification in the near future.

"The industry believes that many existing landfills will fall under the new rule due to modifications at their sites," wrote the National Waste & Recycling Association and the Solid Waste Association of North America, the waste industry's two major trade groups, in a Sept. 15 comment.

The industry called on EPA to re-evaluate the impacts of the proposed rule, taking into account existing landfills that will be required to comply. It says the rule would likely cost more than the $100 million mark

that triggers a full regulatory impact analysis by the agency.

EPA estimated that the rule would collectively cost the nation's landfills $471,000 a year by 2023.

The waste industry also admonished EPA for denying several requests to lengthen the 60-day public comment period on the proposed rule, arguing that it did not leave enough time to shape reactions to the proposal or to EPA's call for comments on whether it should update emissions guidelines for existing landfills.

Waste Management said it received by letter a denial to its comment period extension request on the afternoon of Friday, Sept. 12, just three days before the comment period was scheduled to end. The agency's deadlines in the rulemaking are "counterproductive" and serve to "truncate" the industry's ability to respond to the proposal, the company said.

"As one of the industry leaders within the regulated source category, it is incumbent upon WM to undertake a comprehensive and thoughtful approach to providing comments to EPA," the company said. "While we have endeavored to do so here despite the inadequate time provided, we believe that we could have provided more useful and complete information and data to the agency if given more time."

Waste Management still submitted a 248-page comment on the proposed rule. In all, EPA received 73 comments on the proposal, among them several by environmentalists.

While environmental groups expressed support for the changes proposed by EPA, they said in their comments that the agency's rule was too weak to stem air pollution from landfills. While landfills reduced methane emissions by more than 30 percent between 1990 and 2012, they are still the nation's third-largest source of man-made methane emissions.

EPA's proposed new standards "fail to secure vital and highly cost-effective reductions in the full suite of harmful pollution emitted by landfills," the Environmental Defense Fund said in a letter dated Sept. 15.

It was a lawsuit by the Environmental Defense Fund over the agency's delay in reviewing the 1996 standards that triggered EPA's update.

EDF said it opposed EPA's proposed definition for which types of modifications would fall under the proposed update. Expansions of existing landfills that do not result in a change in the facility's permitted design capacity would be exempt under the proposal; as a result, existing sources could potentially add new waste and increase emissions without technically being considered modified, EDF said.

According to environmental groups, the proposed standards also understate the global warming potential of methane and therefore did not fully quantify the benefits of emissions reductions from methane.

AIR POLLUTION:

EPA offers $5M to improve air quality at ports

Amanda Peterka, E&E reporter

Published: Monday, September 22, 2014

U.S. EPA today said it plans to make up to $5 million in grants available for projects to reduce diesel emissions at ports.

The agency will administer the grants under the Diesel Emissions Reduction Act, a program established by Congress in 2005 to reduce emissions from diesel engines. Diesel engines emit nitrogen oxides and particulate matter that are linked to adverse health effects such as asthma, lung and heart diseases, and other respiratory problems.

EPA said it anticipated awarding the funding to two or three recipients in urban port areas with poor air quality. Port authorities and other governmental agencies will be allowed to request up to $2 million in funding.

"Communities surrounding ports often face serious air quality and other environmental challenges," said Janet McCabe, acting assistant administrator for the Office of Air and Radiation, in a statement. "By working with fleet owners to replace or update older equipment with cleaner technologies, we can find collaborative solutions that foster both economic growth and improve public health."

This action is the second time EPA has used the Diesel Emissions Reduction Act program to focus on air pollution at ports.

ClimateWire

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CLIMATEWIRE — Tue., September 23, 2014

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Lobsters pack up and move north

Climate changes have made scientists speculate about the possible future shift in range of many species, but in the ocean waters off the southern coast of New England, one major ocean species isn't waiting for further changes -- it's already packed up and headed north, primarily for Canada.

2.POLICY:

Global business leaders back carbon price at N.Y. summit

Business leaders from Apple to Lockheed Martin threw down the gauntlet on climate change yesterday, declaring that the private sector must start taking green growth seriously.

3.HEALTH:

Climate change could cause 250K more annual deaths by midcentury -- WHO

The World Health Organization predicts that an additional 250,000 people will die annually between 2030 and 2050 from conditions caused or exacerbated by climate change, the Geneva-based agency reported yesterday in an update of climate mortality estimates.

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catastrophic cyber-caused blackouts.

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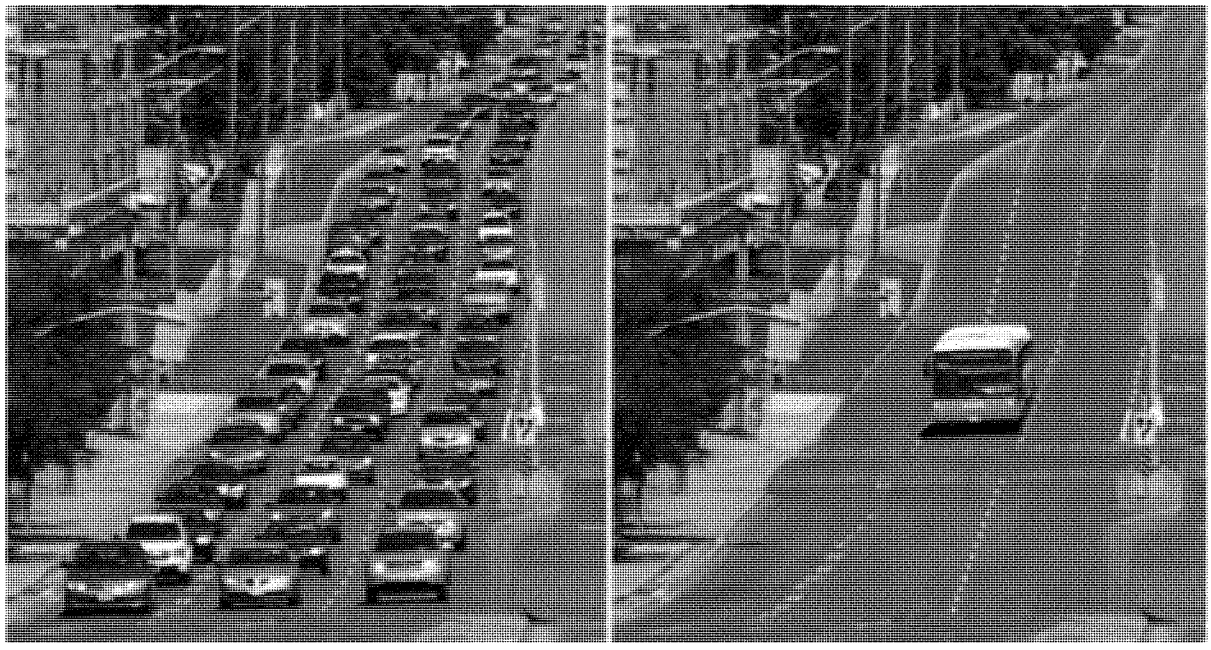

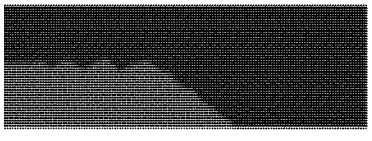

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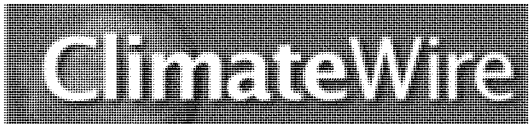
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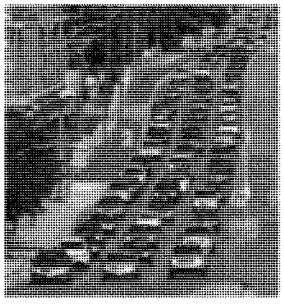

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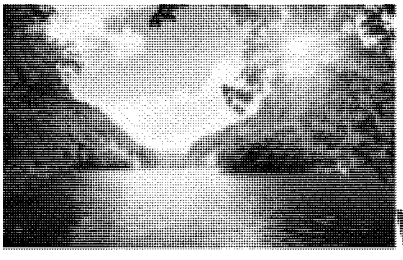
Subject: Water Law News for September 22, 2014



Water Law News

for September 22, 2014

Bloomberg BNA Daily Environment Report™

Maritime Affairs

Japan Vows to Restart Whaling in Defiance
Of Resolution Passed to Limit 'Research'

Japan plans to renew its hunt of whales near Antarctica even after the International Whaling Commission passed a resolution to limit the use of the scientific-research exception to the international ban on whaling....

Mining

Discharge Permit Questions Certified
For Fourth Circuit Review in Coal Case

A federal district court in West Virginia took the rare step of granting a motion for immediate appeal to the court of appeals the question of whether coal companies that hold discharge permits must meet all applicable water quality standards,...

Oil & Gas

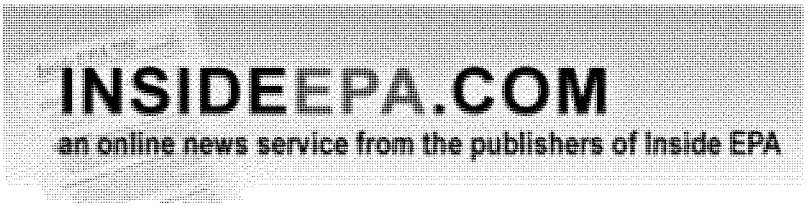
Ruling in Deepwater Horizon Case Backs
CSB Authority to Investigate Offshore Rigs

A federal appeals court backed the Chemical Safety and Hazard Investigation Board's authority to investigate offshore incidents, holding Sept. 18 that the agency has authority to subpoena Transocean Deepwater Drilling Inc. for documents...

Water Pollution

Judge Dismisses Lawsuit Seeking Update
To Washington's Fish-Consumption Rules

A federal judge dismissed a suit brought by a coalition of Washington state environmental groups alleging the Environmental Protection Agency violated the Clean Water Act by failing to ensure that the state base its water quality standards...



Inside EPA's **Water Policy Report**, 09/22/2014

http://insideepa.com/Water-Policy-Report/Water-Policy-Report-09/22/2014/menu-id-127.html

District Court Ruling Boosts EPA Efforts To Limit CWA Determinations

A federal district court's dismissal of litigation seeking to force EPA to promulgate water quality criteria for Washington state strengthens EPA's rationale in a proposed rule to limit the types of agency communication that qualify as a formal "determination" that a state's existing water quality rules do not meet Clean Water Act (CWA) standards -- finding the agency's authority to preemptively promulgate criteria is discretionary and rests solely with the administrator.

5th Circuit Ruling Expands Chemical Safety Board's Offshore Jurisdiction

The U.S. Court of Appeals for the 5th Circuit in a 2-1 ruling has backed a lower court decision giving the Chemical Safety & Hazard Investigation Board's (CSB) authority to investigate the 2010 Deepwater Horizon oil spill, expanding CSB's jurisdiction from traditional land-based releases to also include releases from offshore facilities.

Environmentalists' Coal Ash Suits Seek To Force Cleanups At Legacy Sites

Environmentalists are seeking to use new Clean Water Act (CWA) citizen suits that would force cleanups at older coal ash storage sites, including those linked to the recent Duke Energy spill in North Carolina, to set a high bar for future regulation of the waste, and are promising further suits unless states mandate remediation at "legacy" sites deemed likely to spill.

Absent EPA Action, Environmentalists Push State Fracking Waste Bans

Environmentalists are urging states to consider bans on treatment, disposal or storage of hydraulic fracturing wastewater or solid waste absent an EPA decision to re-examine a decades-old determination exempting such waste from Resource Conservation & Recovery Act (RCRA) hazardous waste rules -- but some observers say such efforts could face constitutional challenges.

News Briefs

Industry Urges 9th Circuit To Rehear CWA Permit 'Shield' Suit

Coal sector groups are urging the U.S. Court of Appeals for the 9th Circuit to reconsider its ruling narrowing a Clean Water Act (CWA) general . . .

Greenwire

KEYSTONE XL:

Pipeline costs may skyrocket

Manuel Quiñones, E&E reporter

Published: Friday, September 19, 2014

Costs to develop the transboundary Keystone XL oil pipeline could skyrocket from $5.4 billion to potentially around $10 billion, TransCanada Corp. has confirmed after reports this morning.

The news comes as TransCanada and its backers mark six years since the company asked U.S. regulators to allow KXL to cross the border with Canada. Executives point to delays for the bulk of the cost overruns.

"It is worth noting that increased project costs mean higher costs for refiners and consumers," said spokesman Shawn Howard, "and those costs will likely be passed on to all of us as consumers."

TransCanada CEO Russ Girling made similar statements on Capitol Hill this week. He said costs in South Dakota, where the company has to refresh an existing permit, have increased from $900 million to $1.9 billion (*E&ENews PM*, Sept. 16).

Today, TransCanada executive Alex Pourbaix said in a letter, "As a result of the delays, American companies who are helping us build this pipeline have had to make some tough choices and so have we. Some people have had their hours reduced, been re-assigned or in some cases, have been laid off."

House Republicans, before leaving for the fall campaigns, passed legislation that would allow KXL to move forward without the president's approval. Senate Republicans say they will do the same if they take over the upper chamber.

WETLANDS:

Iowa senator proposes refuge to protect section of Prairie Pothole region

Scott Streater, E&E reporter

Published: Friday, September 19, 2014

This story was updated at 2:30 p.m. EDT.

Iowa Sen. Tom Harkin (D) this week filed legislation to establish a new national wildlife refuge to protect a section of wetlands that is part of the international Prairie Pothole region, where millions of ducks, geese and migratory birds find sanctuary in the shallow wetlands that stretch from Montana to portions of Minnesota and Iowa.

Harkin's S. 2845 would establish the Southern Prairie Potholes National Wildlife Refuge and authorize the secretary of the Interior to purchase up to 23,500 acres of mostly private lands in northern Iowa from willing sellers.

The proposed national wildlife refuge would include about 2,100 acres of federal and state lands that make up the Dunbar Slough wetlands complex, which is prized by hunters and anglers. Preservation of the area "will significantly enhance opportunities for outdoor recreation in this region, including waterfowl and upland hunting, wildlife viewing, and hiking," the bill states.

Northern Iowa is on the southernmost end of North America's Prairie Pothole region, which also encompasses parts of Alberta, Manitoba and Saskatchewan. Because of the location of the proposed

Southern Prairie Potholes at the edge of the multistate Prairie Pothole region, "the restoration and preservation of the area is critical to providing wildlife habitat across the full extent" of the region, according to the bill.

"The area's got a lot of value," said Desiree Sorenson-Groves, vice president of government affairs for the National Wildlife Refuge Association. "The prairie potholes are facing a lot of threats from climate change. This would be very positive for the Prairie Pothole region."

But it's not clear what chance the bill, referred this week to the Committee on Environment and Public Works, has of ever passing.

Harkin is retiring in January after 30 years in the Senate, and his bill has no co-sponsors. What's more, Congress has already left town and won't return until after November's midterm elections.

"I was excited to introduce this legislation, with the support of major conservation groups to further protect and expand the wildlife habitat in the Prairie Potholes region of Iowa," Harkin said in a statement. "These areas provide terrific outdoor recreation opportunities for hunting, hiking, and wildlife viewing and serve as critical nesting grounds for waterfowl and other species."

There is, however, little debate about the importance of the massive prairie potholes. Roughly three-quarters of North American waterfowl depend on the Prairie Pothole region's vast wetlands and grasslands.

The region's unique topography -- prairie grassland pocked with shallow depressions that collect and store water -- was formed more than 10,000 years ago when glaciers from the last ice age receded, scouring the landscape and leaving behind large indentations, or "potholes."

An estimated 75 percent of all North American waterfowl, and nearly half of all migratory bird species on the continent, use the region's fertile grasslands for breeding, nesting and resting during spring and fall migrations, earning it the nickname of "America's Duck Factory."

But studies show the prairie potholes are rapidly shrinking. Ducks Unlimited has ranked the Prairie Pothole region and the Great Plains as the most important and threatened waterfowl habitat in North America.

The Fish and Wildlife Service recently reported that thousands of acres of wetlands in the Prairie Pothole region across the Upper Midwest and Great Plains are being plowed over each year for agriculture, oil and gas, and other development (*E&ENews PM*, July 1).

Nancy Stoner, acting assistant administrator for U.S. EPA's Office of Water, said at the time the report was released that the declines represent "alarming losses" that signal the need to expand "private, state and federal efforts to conserve Pothole wetlands."

Part of the reason for the decline in recent years is increased demand for corn to meet federal mandates for ethanol.

Indeed, Harkin's bill notes that the 23,500 acres he has proposed for national wildlife refuge designation "offer a substantial oasis of both wetland and grassland habitat at the southwestern boundary of the most heavily cropped region in Iowa."

The Fish and Wildlife Service, which manages the more than 560 national wildlife refuges that provide protection for more than 380 threatened or endangered plants and animals, explored protecting the general area included in Harkin's bill in the 1990s, though the idea did not advance, said Sorenson-

Groves, the National Wildlife Refuge Association official.

Iowa nominated the southern pothole area for protection a few years ago as part of the White House's America's Great Outdoors initiative, a member of Harkin's staff said.

The Great Outdoors initiative unveiled in 2011 urged greater funding for conservation programs, closer collaboration between federal and local agencies, new service opportunities for youth in nature, and incentives for private landowners to conserve their lands (*E&ENews PM*, Feb. 16, 2011).

The "restoration and preservation of the Southern Prairie Potholes area will benefit hundreds of birds, mammals, butterflies, reptiles, and amphibians that have been classified as species of greatest conservation need, including the endangered Blanding's turtle," the bill states.

If the area is approved and added to the National Wildlife Refuge System, the priority public uses of the refuge would be "hunting, fishing, wildlife observation and photography, and environmental education and interpretation," the bill states.

GULF SPILL:

Appeals court OKs safety board's probe of rig owner

Published: Friday, September 19, 2014

A federal appellate court has ruled that the U.S. Chemical Safety and Hazard Investigation Board has the right to examine the role of the owner of the Deepwater Horizon oil rig in the 2010 Gulf of Mexico oil spill disaster.

Transocean Deepwater Drilling Corp. had challenged the safety board's authority to conduct the investigation, but the 5th U.S. Circuit Court of Appeals ruled 2-1 upholding an initial ruling giving CSB the green light.

The safety agency's investigation has continued despite the appeals court review. The board issued a report in June that found multiple failures and improper testing of the rig's blowout preventer were factors in the explosion that killed 11 workers and caused the worst offshore oil spill in U.S. history.

The report found fault both with Transocean and with BP PLC (AP/*Fuel Fix*, Sept. 18). **-- JL**

CHESAPEAKE BAY:

Enviros say CAFOs are polluting Va.'s waters

Tiffany Stecker, E&E reporter

Published: Friday, September 19, 2014

Six environmental groups filed a petition with U.S. EPA yesterday to strip Virginia's Department of Environmental Quality of the ability to issue national water quality permits, saying the commonwealth has failed to properly permit concentrated animal feeding operations (CAFOs).

The Environmental Integrity Project, the Assateague Coastal Trust, Virginia Eastern Shorekeeper, Potomac Riverkeeper, Shenandoah Riverkeeper and Waterkeepers Chesapeake say in their petition that

only two National Pollutant Discharge Elimination System (NPDES) permits for swine operations have been drafted and reviewed by EPA. As many as 85 CAFOs are awaiting permits, a nearly five-year wait since a general permit expired in 2010.

"We have a situation in which if you don't force the issue, things can linger for a long time," said Eric Schaeffer, executive director of the Environmental Integrity Project.

CAFOs are defined as farms with more than 1,000 heads of cattle, 2,500 large hogs or 30,000 laying hens or broilers. They have the potential to release large amounts of manure when rain runs through the farms and into local waterways. Manure is rich in nitrogen and phosphorus, which can promote damaging algae blooms in bays and lakes. Unlike other agricultural businesses like row crops, they are considered a "point source" under clean water laws and require a permit to operate.

In addition, the petition calls on EPA to ensure that existing permits are being enforced. Virginia DEQ has proposed that permits be reviewed without considering parts of a CAFO's nutrient management plan, a plan to reduce manure runoff. Parts of the plan would not be subject to the public's scrutiny, states the petition. The DEQ's inspection program is not in line with federal standards, the petition adds.

Schaeffer said the petition is meant to provide an incentive for EPA and Virginia to either negotiate a schedule for issuing the permits or encourage the commonwealth to hurry the process on its own.

As of 2010, Virginia had 116 large CAFOs out of nearly 900 animal feeding operations, according to the petition. Virginia's waters are in the Chesapeake Bay watershed, a region that has struggled to improve its water quality for decades.

According to the Clean Water Act, facilities are required to show that they adequately store manure, properly manage animal carcasses, don't allow livestock to stand and defecate in streams, and legally dispose of chemicals.

The petitioners are unrealistic in their request to hand over permitting control to EPA, said Wilmer Stoneman, associate director of government relations for the Virginia Farm Bureau.

EPA "just doesn't have the staff to do it," he said, explaining that the state's Department of Environmental Quality is closer to farmers and better equipped to handle the process.

The number of CAFOs in Virginia is not enough to justify a hard-line push to permitting, Stoneman added.

"They are significant, but there are not a great deal of [them]," he said.

WATER POLLUTION:

Crest to remove microbeads from toothpaste

Published: Friday, September 19, 2014

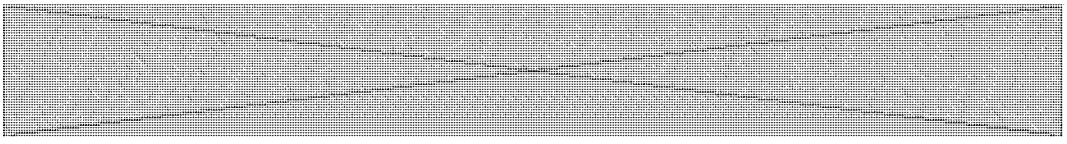
Toothpaste brand Crest will no longer put tiny bits of plastic in its products.

The polyethylene specks, known as microbeads, are found in a variety of cosmetic products and are often used as scrubbing agents and to add color, according to Crest manufacturer Procter & Gamble.

While the American Dental Association says it hasn't found evidence that microbeads pose a health risk, they have come under growing scrutiny this year for their potential to contaminate the environment.

While it might be a problem if an object -- such as a tiny microbead -- were to become lodged under a person's gums, it could be removed by brushing and flossing, said University of California, Los Angeles, School of Dentistry professor Edmond Hewlett.

The particles have been banned in Illinois, and lawmakers have proposed banning them at the federal level, as well (Lauren Raab, *Los Angeles Times*, Sept. 18). **-- SP**



CLIMATEWIRE — Mon., September 22, 2014

READ FULL EDITION

1.ADVOCACY:

Marchers jam New York in massive call for climate action

NEW YORK -- Secretary of State John Kerry yesterday called climate change a "grave threat" that deserves as much attention as terrorism and the Ebola virus, as hundreds of thousands of climate protesters jammed the streets demanding that governments take action.

2.SCIENCE:

World could surpass 2 C temperature rise in 30 years, researchers say

Human activities added 1,430 gigatons of carbon to the atmosphere from 1870 to 2013. That's 45 percent of the total carbon budget the world has to maintain a rise in global temperatures below 2 degrees Celsius. At this rate of emissions, the world will hit its carbon quota in the next three decades.

TODAY'S STORIES

3.RISK:

World has suffered $490B in damage since the last climate summit

4.WEATHER:

Peak storm season now comes earlier in the heart of 'Tornado Alley'

5.CLEAN ENERGY:

Responding to Fukushima fallout, Germany and Japan explore different paths

6.FINANCE:

Calif. pension fund vows to increase clean energy investments 150%, calls for price on carbon emissions

7.CITIES:

NYC to target buildings in bid to cut emissions by 80% by 2050

8.NATIONS:

Climate change threatens to undo international development gains -- experts say

9.CHINA:

Nation remains hazy on policy to rein in emissions

10.CITIES:

Indian coastal city prepares for brunt of climate costs

11.FORESTS:

Endangered trees could find better homes with assisted migration

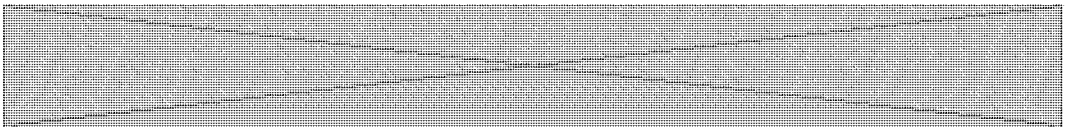
12.POLITICS:

U.N. hired PR firm that won't refuse clients that oppose CO2 regulations

E&ETV'S ONPOINT

13.POLITICS:

House Energy and Commerce's Latta talks postelection energy politics



ENERGYWIRE — Mon., September 22, 2014

READ FULL EDITION

1.UTILITIES:

Charting solar's spotty rise in the Sunshine State

Solar advocates use Florida's "Sunshine State" motto as an example of irony. The utilities and policymakers probably wish the phrase never existed.

TOP STORIES

2.CLIMATE:

Grid operator says EPA rule poses reliability concerns

3.OIL AND GAS:

Exxon Mobil takes a direct hit from Russia sanctions

4.UTILITIES:

Calif. AG urged to look at 'collusion' between PG&E, regulator

ELECTRICITY

5.UTILITIES:

BPA must explain why it won't recover illegal subsidies -- court

6.SECURITY:
Attack mysteries linger as a 'yeti' slumbers
7.NEW YORK:
ISO finds room to grow in distributed generation market through combined heat and power
8.ELECTRICITY:
ComEd customers will pocket $46.2M in smart grid refunds
OIL AND GAS
9.MARCELLUS SHALE:
Hotel 'bonanza' dies down as gas boom runs its course -- study
10EXPLORATION:
Continental Resources unveils Okla. play, increased spending
11.NORTH DAKOTA:
Republicans pitch $800M plan for oil-boom impacts
12.WATER:
Energy companies get inventive to save drilling fluids

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House Energy and Commerce's Latta talks postelection energy politics

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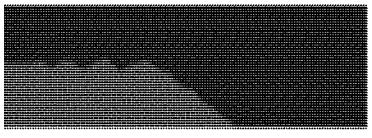

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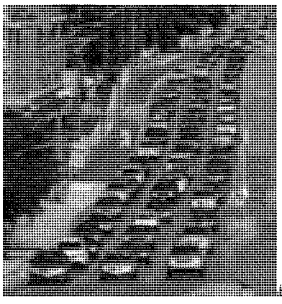

Air & Radiation Law News

for September 19, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

California Court Temporarily Blocks Los Angeles Area from Removing Tank Sludge

A California Superior Court in Los Angeles has temporarily blocked Ridgeline Energy Services Inc. from removing sludge from storage tanks at its wastewater treatment facility in Santa Fe Springs until the company can demonstrate the project...

Budget

New York Board Probing $511 Million Tappan Zee Loan After EPA Denial

A New York oversight board is investigating the agency that approved a $511 million loan for a new Tappan Zee Bridge, which was rejected almost entirely by the Environmental Protection Agency....

Climate Change

$1.9 Billion in Federal Funds Available For Storm Resiliency Projects in New York

New York will receive $1.9 billion from the Department of Transportation's Federal Transit Administration for storm resiliency projects, Gov. Andrew M. Cuomo (D) announced Sept. 17....

Climate Change

EPA Extends Comment Period on HFC Proposal

The Environmental Protection Agency is extending the comment period on a proposal (RIN 2060-AS18) to limit the use of several hydrofluorocarbons with high global warming potential that are currently listed as acceptable alternatives to...

Climate Regulation

Environmental Groups Press Obama to Issue Strong Methane Regulations This Fall

Sixteen environmental advocacy groups called for strong national standards aimed at cutting emissions of methane from new and existing oil and gas operations this fall in a Sept. 18 letter to President Barack Obama. ...

Climate Regulation

EPA Power Plant Rule 'Workable' But Needs Improvement, Utilities Say

An Environmental Protection Agency proposal to regulate carbon dioxide from existing power plants is "workable" but needs improvement, energy executives said at a Sept. 18 forum....

Congress

Sen. Whitehouse Says Republican Senate Would be 'Brutal' for Environmental Policy

Sen. Sheldon Whitehouse (D-R.I.) told Bloomberg BNA a Republican-controlled Senate would be "brutal" to environmental policy in the U.S. and could again risk a government shutdown over policy riders in appropriations legislation....

Corporate Responsibility

SEC Sued Over Delay in Issuing Rule On Resource Extraction Disclosure

Oxfam America Inc. Sept. 18 filed a lawsuit in the U.S. District Court for the District of Massachusetts to compel the Securities and Exchange Commission to issue a resource extraction disclosure rule (Oxfam Am. Inc. v. SEC, D. Mass., No. 14-cv-13648,...

Emissions Trading

California, Quebec Set for Joint Allowance Auction

The California Air Resources Board and Quebec Ministry of Sustainable Development, Environment and the Fight Against Climate Change announced Sept. 18 that their first joint auction of greenhouse gas emissions allowances will be held Nov....

Energy

British Columbia Establishes $120 Million In Infrastructure Credits Aimed at LNGs

British Columbia said Sept. 17 that $120 million (US $109 million) in infrastructure royalty credits will assist in moving forward more than a dozen proposed liquefied natural gas projects in the province....

Energy

FERC Affirms Commission Order Approving Cheniere's Sabine Pass LNG Export Addition

The Federal Energy Regulatory Commission at a Sept. 18 meeting denied a Sierra Club request for a rehearing of a commission order approving an expansion of Cheniere Energy's Sabine Pass liquefied natural gas export terminal in Louisiana...

Energy

House Passes Measures to Speed Approval Of Keystone XL, Block EPA Power Plant Rules

The House Sept. 18 passed energy and deregulatory bills that would approve the Keystone XL pipeline, block power plant carbon pollution limits and repeal the medical device tax. ...

Energy

White House Spotlights Solar, Big Energy Efficiency Standards

The White House Sept. 18 announced a series of public and private sector commitments and executive actions to advance solar deployment and promote energy efficiency, which could save businesses billions of dollars in energy costs....

Enforcement

Range Resources to Pay $4.2 Million For Pennsylvania Impoundment Violations

Range Resources-Appalachia LLC will pay a civil penalty of $4.15 million, the largest against an oil and gas development company operating in Pennsylvania, under a settlement that resolves environmental violations at six impoundments...

International Climate

Kerry to Urge Foreign Ministers to Make Climate Higher Priority Among Global Issues

Secretary of State John Kerry will meet with his foreign minister counterparts Sept. 21 to push them to make global climate change a top-tier issue, just days before world leaders are to arrive in New York to pledge more ambitious action on the...

International Climate

U.S. Says 2025 Emissions Reduction Pledges Would Prod More Ambition in Climate Accord

The post-2020 global climate deal to be concluded in Paris next year should include near-term pledges to cut greenhouse gases by 2025 to prod nations to be as ambitious as possible in addressing climate change, the U.S. has said....

International Climate

UN's Ban, 120 World Leaders to Meet To Address Greenhouse Gas Reductions

United Nations Secretary-General Ban Ki-moon's strategy to forge a global climate agreement by 2015 will enter a new phase next week when more than 120 world leaders meet in New York to discuss greenhouse gas cuts....

International Climate

UN Climate Summit Expected to Show Growing Momentum for Carbon Pricing

The growing global momentum for carbon pricing in both the public and private sectors will be on full display next week at a United Nations leaders summit on climate change....

Natural Gas

Senate Panel Approves Ukraine Aid Bill Without Barrasso's LNG Exports Amendment

The Senate Foreign Relations Committee approved a bill that would impose sanctions on Russian energy companies but would not authorize liquefied natural gas exports to Ukraine and other World Trade Organization countries....

Regulatory Policy

Supreme Court Case Will Determine Scope of Agencies' Interpretative Powers

While there are no well-defined environmental or energy law issues currently on the Supreme Court's 2014-2015 docket, legal panelists agreed Sept. 18 that one case presents a key administrative law issue that will have ramifications...

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Inside EPA's **Weekly Report**, 09/19/2014

http://insideepa.com/Inside-EPA/Inside-EPA-09/19/2014/menu-id-67.html

EPA Plans Guides To Ease Hurdles On ESPS Rate Conversions, Efficiency

A top air office official is pledging to take steps to ease states' compliance with EPA's greenhouse gas (GHG) standards for existing power plants, with the agency slated to release guidance on how to translate its rate-based GHG targets to mass-based measures, as well as a policy for verifying reductions from energy efficiency programs.

In Reversal, Chamber, NAM Seek To Ease GHG Limits For New Gas Plants

The U.S. Chamber of Commerce and National Association of Manufacturers (NAM) are backing away from their earlier support for EPA's proposed greenhouse gas (GHG) standards for new natural gas combined-cycle (NGCC) units, filing late comments that seek to align the two groups with other industry interests that are also seeking to ease the limits.

ECOS Urges EPA, Congress To Reverse 'Inequitable' Funding To States

SANTA FE, NM -- The Environmental Council of the States (ECOS) has approved a resolution that urges EPA and Congress to reverse what the group of state environmental regulators sees as "inequitable apportionment" of federal funding to states that are struggling to find the resources to implement a growing number of EPA rules.

News Briefs

Environmentalists Cite ESPS In Push For Direct Methane Limits

Environmentalists say that anticipated temporary increases in reliance on natural gas due to the agency's pending greenhouse gas (GHG) rules for existing power plants shows . . .

GOP Lawmakers Aim To Block Stricter EPA Ozone NAAQS

House and Senate Republicans have introduced legislation that would prohibit EPA from tightening its existing ozone air standard until 85 percent of counties exceeding the . . .

Greenwire

NEWSMAKER:

Legendary EPA boss Ruckelshaus stays in political picture

Robin Bravender, E&E reporter

Published: Thursday, September 18, 2014

SEATTLE -- Bill Ruckelshaus isn't afraid of chest-pounding politicians.

He's famous for standing up to Richard Nixon. In October 1973, then-Deputy Attorney General Ruckelshaus resigned after refusing the president's order to fire the Watergate special prosecutor in an episode known as the Saturday Night Massacre.

And now, the legendary two-time U.S. EPA chief speaks freely about his disdain for his longtime political home, the Republican Party, what he sees as a pathetic Congress, and the reluctance of U.S. pols and policymakers to act decisively on global warming.

Ruckelshaus, 82, left Washington, D.C., decades ago after his second EPA stint during the Reagan administration. Now he lives here in the other Washington, where he's farther from politics but remains an active player in environmental policy.

This summer, Ruckelshaus returned to Capitol Hill with three other former Republican EPA chiefs to testify in a Senate hearing on an Obama administration rule proposal that would clamp down on power plants' greenhouse gas emissions.

"That was a wonderful experience," he said sarcastically of his trip during a recent interview in his office here.

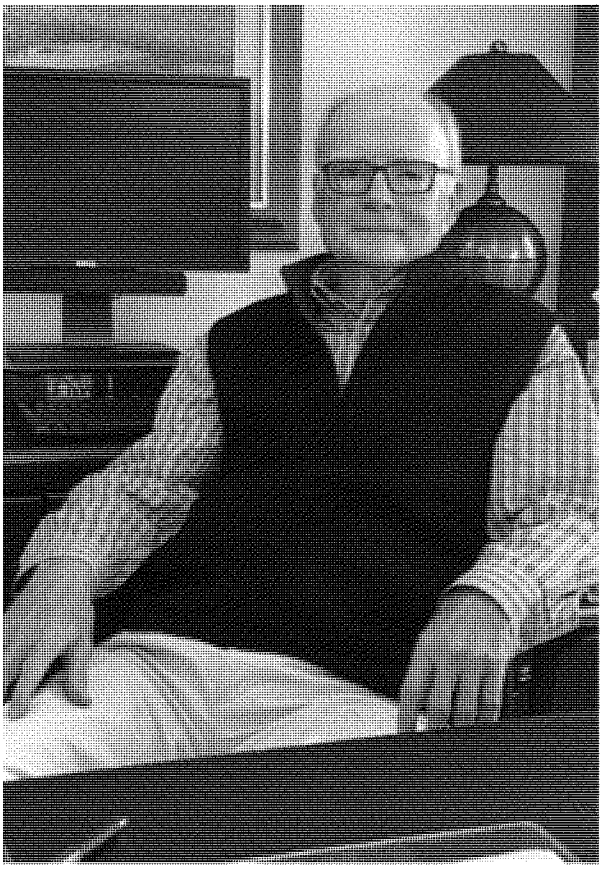
"The issue is just so polarized. The Republicans on that committee -- it's a completely ideological position they take," he said, referring to the Senate Environment and Public Works panel. "The experience of testifying in Congress all came back with a rush."

Lawmakers, he said, enter hearings to make a statement if they think it'll get press coverage. "And then they leave," he said. "They don't pay any attention to what anybody says. That's not just true of the Republicans. It's true of both sides."

Congress now is "really different" from what it was during the early 1970s when landmark environmental laws were enacted, Ruckelshaus said.

"The overlap philosophically between the two parties was quite extensive" on environmental issues, he said. "We had what we now call liberal Republicans. There really were liberal Republicans in the Senate, very conservative Democrats, particularly in the House but also in the Senate. So there was a lot of overlap, and there wasn't a lot of early debate ... over the environment."

Ruckelshaus comes from a long line of Republicans, with a father and grandfather who were both active in GOP politics. But although he served in both the Nixon and Reagan administrations, Ruckelshaus said he's drifted from the Grand Old Party.



Former two-time EPA boss Bill Ruckelshaus has stayed involved in the environmental policy world. Photo by Robin Bravender.

Asked whether he still considers himself a Republican, he replied, "Not really. My family has been for centuries."

There are now three components to the GOP, he said: people who don't want to tax and don't want any government, the religious right, and militarists on foreign policy.

"I don't agree with any of them," he said.

But Ruckelshaus -- who endorsed Barack Obama prior to the 2008 presidential election and said he'd consider voting for Hillary Clinton if she runs in 2016 -- isn't pledging his allegiance to the Democrats.

"I don't like what they do either, in many cases," he said. "Actually, it's more parties that are turning me off. Instead of saying, 'I'm trying to figure out what the right solution to the problem is,' they operate through ideology.

"The Republicans are much worse about it than the Democrats are now, no question about it. But when one party starts doing that, it almost forces the other party into it. It's very hard to take a reasoned, let's sit down see if we can't compromise on something, if one side just refuses to do it," he said. "So it tends to empower the parts of the other party that are just as ideological on the other side."

'Manhattan Project' for global warming

As environmental problems go, Ruckelshaus considers climate change the "most complex by far that we've ever faced," dubbing it a "quiet crisis."

"I don't see anything right on the horizon that's going to cause us to react sensibly," he said. "Somehow you need to develop a way of talking about it that convinces people that while it's a quiet crisis, nevertheless it is something we ought to be paying attention to and there are things that we can do to greatly diminish the amount of carbon we put in the air."

Ultimately, he said, he doesn't think the problem can be solved without convincing developing countries that there are cost-competitive fossil fuel alternatives that can fuel their growth and prosperity.

Ruckelshaus' suggestion: "I think at the national level, we should have a really aggressive research program that we have nothing like right now. The Manhattan Project or the get-to-the-moon project."

He doesn't care which agency winds up in charge. "I'd run it out of the White House, myself. Just get some czar over there to ride herd on it -- do it very visibly so that everybody can see and people will say, 'Well, the private sector will rise to that challenge.'"

If the United States successfully developed the technology needed to transition away from carbon-intensive energy, he said, "we would benefit economically from it enormously, but there's just not much support for that kind of program at a congressional level."

Obama "gets in and out of the issue," Ruckelshaus said. "What can he do? He's got these crises that occur all the time, he can't talk about something that nobody's interested in."

Still, "there's no doubt in my mind if [Obama] had a Congress at all receptive to doing something about this problem, he would work very hard to work with them to try to solve it," he said.

"He's got one House that is just adamantly opposed to doing anything about it, and the Senate takes 60 votes to get anything done, and the Republicans just don't want to do anything about it."

The other Washington

Ruckelshaus works out of a big, comfortable office at the Madrona Venture Group, housed on the 34th floor of the Wells Fargo Center in downtown Seattle's bustling business district. He's got a stunning view of the city and of the Puget Sound.

He's a strategic director at the investment company, which pledges to fund "innovative technology companies" in areas like consumer technology, enterprise software and digital media, primarily in the Northwest. The company counts investments in Amazon.com, Classmates.com, Farecast.com and other companies among its successes.

The office features modern furnishings, big picture windows and a hip vibe. On a recent Friday, one visitor standing in the lobby with his arm in a sling was discussing how he injured it during a rock climbing accident.

Ruckelshaus is one of three strategic directors. The other two are Jack Creighton, former president and CEO of Weyerhaeuser Co. (where Ruckelshaus also worked) and Gerald Grinstein, former CEO of Delta Air Lines Inc. "There are three of us here who are about the same age who are strategic directors, and they don't bother us unless they have to," Ruckelshaus joked.

Nonetheless, he keeps a busy schedule.

He recently retired from a number of corporate boards (including Weyerhaeuser, Nordstrom Inc. and Monsanto Co.). But he's still on the board of directors at the World Resources Institute, and he's chairman of the Meridian Institute -- a nonprofit that aims to find collaborative solutions to public policy problems -- and the William D. Ruckelshaus Center, another collaborative problem-solving program at the University of Washington and Washington State University.

Ruckelshaus and his wife, Jill -- an Indiana native like him -- have five children and 12 grandchildren. They live east of Seattle on the opposite side of Lake Washington in the town of Medina.

On a sunny Friday last month, Ruckelshaus and his family were planning a weekend trip to the San Juan Islands near Seattle with Philip Angell, who was Ruckelshaus' chief of staff during his second stint as EPA administrator.

These days, Ruckelshaus doesn't travel as much as he used to. "I find traveling not the most pleasant thing in the world. If I need to fly somewhere, I'll get depressed two days ahead of time thinking about going through the airport," he said.

He's a history buff who reads a lot in his spare time. Years ago, he decided to read a biography of every U.S. president chronologically. It took him about three years -- with some bios taking longer than others.

"Rutherford B. Hayes doesn't take a long time," he said. "If you want to go to sleep early, that's a good way to do it."

His favorite is Robert Caro's four-volume series on Lyndon Johnson. The series has taken Caro decades to write. With a fifth volume still due out, Ruckelshaus joked that he's getting anxious because Caro is 78 years old.

He said he ran into Caro in New York a few months ago.

"I'm going to be dead before you finish with these books," a chuckling Ruckelshaus said he told Caro. "So are you."

ENERGY POLICY:

White House rolls out executive actions to promote solar, efficiency

Robin Bravender, E&E reporter

Published: Thursday, September 18, 2014

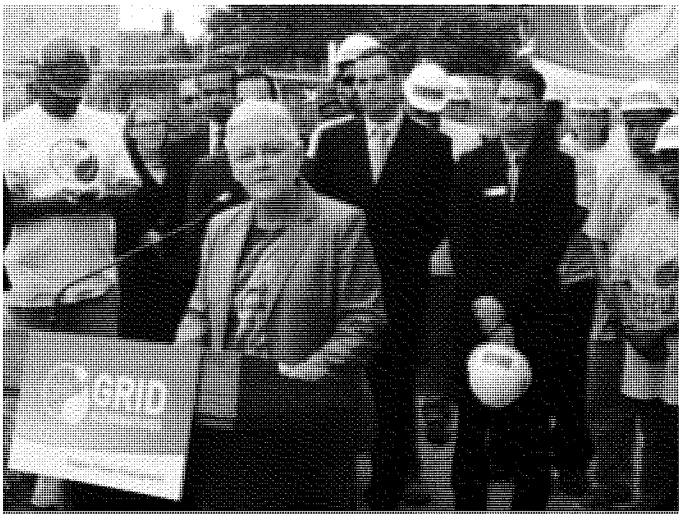
Top Obama administration officials touted a new program to install solar power in low-income Washington, D.C., homes today as the White House announced a new suite of executive actions to advance solar deployment and boost energy efficiency.

U.S. EPA chief Gina McCarthy joined Housing and Urban Development Secretary Julián Castro, Council on Environmental Quality acting Chairman Mike Boots, and White House energy and climate adviser Dan Utech in the Ivy City neighborhood of northeast D.C. this morning to view new solar installations by the nonprofit GRID Alternatives on affordable homes developed by Habitat for Humanity.

The officials were flanked by workers in hard hats as they applauded the project and tied it to the administration's climate change policies.

"The challenge of climate change requires work like this," McCarthy said. "It requires creative thinking, it requires joining what is essentially all of us in our efforts to fight climate change, which is not only one of the greatest public health challenges of our time, but it also is one of the greatest economic challenges of our time."

She lauded the project's efforts to extend renewable energy across the population.



EPA chief Gina McCarthy and other officials touted solar power at an event today in Washington, D.C. Photo by Robin Bravender.

"The real goal here, and I think of the president, is to make sure that as we're moving towards this energy transition that nobody is left behind in that transition," she said.

She put in a plug for EPA's draft rule to curb greenhouse gas emissions from power plants, a contentious policy that's central to President Obama's plans to tackle climate change through the executive branch during the remainder of his term.

The solar installation project "demonstrates that the work we're doing on our Clean Power Plan to ask states to think about new ways of delivering electricity in ways that are sustainable and affordable, that this gives them a vision of what they might invest in to really bring this home in a creative way, so that we're making sure that the values of energy efficiency and renewable energy aren't just accrued to those who have money to put in, but can be accrued to everyone."

Executive actions

The White House also announced this morning a series of executive actions aimed at advancing solar power and promoting energy efficiency.

All told, the administration said the actions announced today will slash carbon dioxide emissions by nearly 300 million metric tons through 2030 -- the equivalent of taking more than 60 million cars off the road for a year.

Those actions include a new Energy Department solar training network, a pilot project to train veterans at up to three military bases this fall.

DOE announced a proposed energy efficiency standard for commercial air conditioners that could save

consumers nearly $10 billion on energy bills through 2030, the White House said, and could have the largest savings of any efficiency standard issued by DOE to date.

DOE also issued a final determination on commercial building codes today after preliminarily affirming in May that the industry's latest commercial building code offers more energy savings than the previous standard.

The Agriculture Department also today announced $68 million in 540 renewable energy and energy efficiency projects nationwide, including 240 solar projects. Funding will come through the Rural Energy for America Program that offers financial assistance to farmers, ranchers and rural small businesses to install renewable energy projects and boost energy efficiency, the White House said.

The administration also announced new private- and public-sector commitments across the country to advance solar power and improve energy efficiency.

"The president is committed to advancing clean energy in this country and to creating opportunity for hardworking Americans," Utech said today at the event. He called solar power "a vital part of our energy strategy, our economic strategy and our strategy for cutting pollution, and I think we've made great progress in the last few years."

HOUSE:

Waxman hands reins of climate caucus to fellow Californian

Jean Chemnick, E&E reporter

Published: Thursday, September 18, 2014

Rep. Henry Waxman (D-Calif.) presided over his final meeting as co-chairman of one congressional climate caucus today and announced his successor to lead another one.

The career-long advocate for climate action said a fellow Californian, Rep. Alan Lowenthal (D), would take the helm of the Safe Climate Caucus when Waxman retires in January. The announcement came at Waxman's final meeting of the Bicameral Climate Task Force, a group he launched last year with Sen. Sheldon Whitehouse (D-R.I.).

Both caucuses have the mission of keeping climate change on the congressional agenda despite a Republican House majority that opposes legislation to curb emissions, and Waxman said he hoped that work would continue.

"To those who will be in Congress after I'm gone and for those who are on the outside talking about these issues, don't give up," he charged. "Keep fighting, because it's just too important."

The House caucus -- which is made up of 40 Democrats, gives floor speeches and writes letters to spotlight issues linked to warming. The House-Senate task force holds hearings like today's focused on the role of fossil fuel companies in spreading doubt about the science of man-made warming. It also tries to press the Obama administration to do all it can to address climate change using its existing legal authority.

Waxman's successor on the task force has not yet been named.

Today's meeting brought together academics and pro-regulation watchdogs to highlight the support

industries have provided to think tanks and advocacy groups that promote climate skepticism.

Witnesses drew parallels between climate skeptics' messaging and previous industry campaigns to sow dissent about the role tobacco plays in causing cancer, the health effects of exposure to lead in gasoline and paint, and other public health issues.

A veteran of many of these struggles over the course of his 40 years in Congress, Waxman said they showed that attitudes could shift on climate change, as well.

"It took time, it took struggle and it took people who were willing to stand up and fight, and despite all the obstacles, the American people eventually got a fuller understanding of what was going on, and their representatives got to a point where they'd do things," he said.

Lowenthal, a senior member of the House Natural Resources Committee, has co-sponsored legislation to permanently prohibit oil and gas drilling off the shore of California and in the Arctic National Wildlife Refuge in Alaska. He has also supported strengthening the Clean Air Act to allow for new restrictions on emissions from oil and natural gas development.

Witnesses at today's bicameral task force hearing included Harvard University professor Naomi Oreskes, who co-wrote "Merchants of Doubt: How a Handful of Scientists Obscured the Truth on Issues from Tobacco Smoke to Global Warming"; Columbia University professor David Rosner and City University of New York professor Gerald Markowitz, co-authors of "Lead Wars: The Politics of Science and the Fate of America's Children"; and Shauna Theel, climate and energy program director at Media Matters.

ENERGY POLICY:

GOP senators warn 'energy insecurity' level is rising

Daniel Bush, E&E reporter

Published: Thursday, September 18, 2014

Rising energy costs could push hundreds of thousands of American households into poverty, according to a report on "energy insecurity" released today by Republican Sens. Lisa Murkowski of Alaska and Tim Scott of South Carolina.

About 7 million U.S. residents already spend more than 10 percent of their income on home energy, and 65 percent of all Americans are forced to spend extra money on heating and electricity that could go toward groceries and other bills, according to the report, titled "Plenty at Stake: Indicators of American Energy Insecurity."

If home energy prices continue to rise, 870,000 people could be pushed below the poverty line, the report found.

Residential electricity prices through the first six months of this year were up 3.2 percent nationally since 2009 and 11.2 percent in New England, the report said. It noted that the spike was in part due to last winter's polar vortex.

In Murkowski's home state of Alaska, heating oil costs in Fairbanks have increased 66 percent over the last seven years, the report said.

"American families should not be forced to choose between affording groceries and heating their home,"

Scott said. "As we look at ways to help those in need, energy costs have to be at the top of the list."

The term "energy insecurity" is a measure of the number of people who can't afford their energy bills, or who have to pay for energy by cutting down on other costs, according to the report.

ENERGY MARKETS:

CFTC ups regulatory threshold for trading with public utilities

Amanda Peterka, E&E reporter

Published: Thursday, September 18, 2014

Federal regulators agreed yesterday to raise the regulatory threshold for entities that trade with government-owned utilities, a move that supporters say will help prevent unpredictable swings in energy prices.

The Commodity Futures Trading Commission voted unanimously to approve a final rule that raises the threshold of financial activity for public power utilities from $25 million to $8 billion. Any entity engaging in financial activity with public power utilities can do so up to that point without having to comply with reporting requirements.

"These are the companies responsible for keeping the lights on in communities across our country, for heating and cooling our homes, and powering the kitchen appliances we use every day to feed our families," CFTC Chairman Timothy Massad said. "To do their job, they must manage the risk of their own fuel costs, and to do that, they must be able to access the energy commodity markets."

The rule stems from the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, a broad financial reform bill that called on CFTC to oversee the derivatives market, a financial market that had previously gone unregulated.

Energy companies use the market to set future prices and hedge against volatility, weather and variations in energy availability. Public power utilities often engage in activity with natural gas distributors, investor-owned utilities and independent electric power generators.

CFTC initially wrapped up public power utilities into a special regulatory category for government-owned entities, charitable organizations and pension funds. The agency set the threshold for financial activity for those entities at $25 million.

Public power utilities said that CFTC's initial rule put them at a disadvantage to investor-owned utilities and rural electric cooperatives, as well as diminished the pool of entities willing to engage with them in trades.

CFTC stalled the $25 million threshold for public power utilities through a series of agency guidances. The House earlier this year also passed language in a CFTC reauthorization bill that would have increased the threshold.

But government-owned utilities said that third parties were still hesitant to enter into transactions. They've long called on the agency to make the action final in the form of a rule.

The NFP Electric Coalition -- composed of the American Public Power Association, Bonneville Power Administration, Large Public Power Council and National Rural Electric Cooperative Association --

applauded the agency's vote yesterday.

"Utility special entities must be able transact with a broad array of potential counterparties as they hedge or mitigate ongoing commercial risks of electric operations," the coalition said in a statement this morning. "Hedging the everyday operational risks of electric operations is a core competency of all electric utilities. The reasoned, common sense, and pragmatic regulatory relief is wholly appropriate."

NUCLEAR POWER:

Plant orders stall in developing world

Published: Thursday, September 18, 2014

Around 25 countries are thinking about increasing their use of nuclear energy, but few are ordering the facilities, companies say.

Much of the slow growth is thought to stem from uncertainty brought about by the 2011 Fukushima Daiichi accident.

"It's not so much growth in the developed countries, but we're seeing a lot of other countries that are wanting to develop nuclear. We're finding money in places we didn't even know existed," said Danny Roderick, the chief executive of Toshiba-owned nuclear reactor maker Westinghouse.

The World Nuclear Association said Bangladesh, Turkey and Jordan, among other countries, are thinking about building nuclear plants in the next decade, and about 160 reactors are expected to begin operating. But nuclear companies have lost other potential plants, and Germany has opted to phase out the technology.

Today, most of the new reactors being built are in Eastern Europe or Asia. Persistent cost overruns have been a concern, as well, the nuclear group said in an annual report on the state of the industry (Schaps/Chestney, Reuters, Sept. 18). **-- SP**

TRANSPORTATION:

Fewer highways needed as driving trends change -- report

Sean Reilly, E&E reporter

Published: Thursday, September 18, 2014

State and federal policymakers should reconsider all plans for new highways and highway expansions in light of trends toward less driving, an advocacy group says in a new report that singles out 11 projects around the country as particularly questionable.

"Americans' driving habits have changed; government transportation spending habits have not," the U.S. Public Interest Research Group, a network of state consumer organizations, says in the report released today. Overall, motorists drive no more than in 2005, while the average "vehicle miles traveled" per driver is also declining, it says.

From 2009 to 2011, however, states spent more than $20 billion annually on building new roads or expanding existing ones, according to other research cited in the study. Had that money instead been

channeled toward repairs, states could have halved the amount of road surfaces in poor condition during that time, the U.S. PIRG report says.

Of the 11 projects cited -- carrying a cumulative estimated price tag of more than $12 billion -- among the most potentially expensive are a viaduct replacement in Seattle; a proposed expansion of an existing federal highway linking Phoenix and Las Vegas; and the Illiana Expressway, a proposed toll road in Indiana and Illinois now in the study phase.

Although the 11 are not necessarily the worst in the country, the report says, they are representative of the heavy potential costs, both in terms of dollars and effects on communities, "of proceeding with disruptive projects that may no longer have a compelling transportation rationale."

The report also recommends more spending on mass transit, road pricing and technological steps to reduce traffic congestion during peak driving times, and a re-evaluation of forecasting models to better account for changing transportation and housing choices among younger people.

ELECTRIC VEHICLES:

As coal use drops, EVs up their green credentials

Published: Thursday, September 18, 2014

Electric cars have long been knocked for the carbon footprint behind their power, but they now speed past hybrids in environmentally friendly terms in many places across the changing American energy grid, according to a new report.

The new analysis from the Union of Concerned Scientists found that the country's gradual transition away from coal-fired power plants, under pressure from federal regulation and abundant natural gas supplies, has reduced the amount of greenhouse gases emitted to power an electric car as electric technology steadily improves.

"If we want to reduce transportation pollution and oil use, a big part of the answer is to be like Bob Dylan and go electric," Don Anair, research director for the group's clean vehicles program said in a statement.

According to a Government Accountability Office study released Tuesday, about 13 percent of the nation's coal-generating capacity has been or will be retired in the next decade (*E&ENews PM*, Sept. 15).

Meanwhile, electric vehicles are going farther while using less power than ever before. The Nissan Leaf's energy efficiency jumped 12 percent from its previous rating.

"Just as making gasoline vehicles more efficient reduces fuel consumption and lowers emissions, making [electric vehicles] that consume less electricity for every mile they drive is lowering the carbon footprint of driving on electricity," Anair said in a blog post.

The report listed New York's electric cars as the cleanest -- their operation results in essentially the same amount of emissions as a 112 mpg gasoline engine. Texas also was one of the best-performing states at 50 mpg.

The worst-performing areas were Colorado and eastern Wyoming, at 34 mpg (Rhiannon Meyers, *Fuel Fix*, Sept. 17). **-- DTB**

FINLAND:

Greens quit ruling coalition after government gives OK to new nuclear reactor

Published: Thursday, September 18, 2014

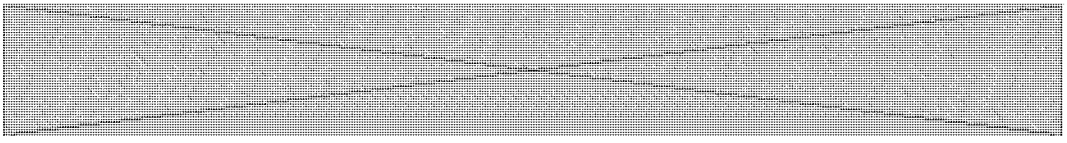
Finnish Green League party members have quit the ruling coalition after it decided to support an updated application from Fennovoima Ltd. to build a nuclear reactor in the country's north.

The permit vote for the 1,200-megawatt plant is likely to pass Parliament because most members from the four biggest parties support the project.

The Russian-Finnish group that plans to build the reactor already won approval for the plant in 2010 but needed a new vote due to changes in the planned reactor size and supplier.

Ville Niinistö, the Green leader and environmental minister, said his party's 10 ministers would resign from the ruling coalition, leaving it with a narrow majority of 102 against the opposition's 98.

Another decision regarding an extension for a permit for a troubled Olkiluoto nuclear site run by Finnish company Teollisuuden Voima Oyj was delayed for later voting due to a request from the second-largest party in the ruling coalition (Jussi Rosendahl, Reuters, Sept. 18). **-- JL**



ClimateWire -- Fri., September 19, 2014 -- **Read the full edition**

1. FINANCE: University of Calif. punts on fossil fuel divestment but adopts sustainable principles

The University of California board of regents voted yesterday to adopt recommendations from a university task force on environmentally sustainable investing but declined to divest fossil fuels from its $91 billion portfolio, frustrating students who have pushed the university to sever ties from coal, oil and natural gas firms.

2. RENEWABLE ENERGY: U.S. schools quickly climbing learning curve in solar power

America's K-12 schools are among the fastest adopters of solar power in the United States, with an estimated 3,000 new solar installations coming online between 2008 and 2012, a fivefold increase, according to a new study from the Solar Foundation and the Solar Energy Industries Association.

TODAY'S STORIES

3. **NEGOTIATIONS:** U.S. prepares for record gathering of world leaders on climate change

4. **MARKETS:** As climate risks grow, current policies keep investments to deal with them flat, groups assert

5. **TECHNOLOGY:** 'Flood' of used EV batteries could help Calif. store more renewable energy -- study

6. **NATIONS:** American power plants put out more carbon than India -- report

7. **CARBON TRADING:** Calif., Quebec will link cap-and-trade systems in November auction

8. **STATES:** Fla.'s climate scientists send another letter to Gov. Scott as race heats up

9. **PEOPLE:** U.S. climate negotiator's chief of staff takes OPIC job

10. **SCIENCE:** NASA launches 3 programs to study climate change effects in Alaska, Arctic

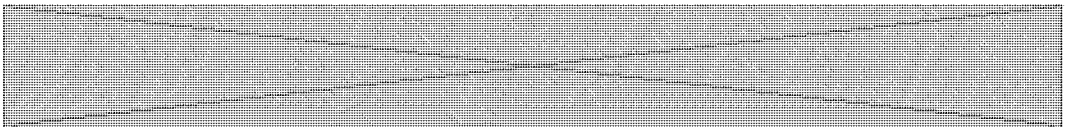
11. **NEGOTIATIONS:** Ban to 'link arms' with climate marchers this weekend

12. **EMISSIONS:** E.U. officials propose investment funds for carbon reductions from eastern bloc

13. **NATIONS:** Austrian Alps at risk from climate change

E&ETV's The Cutting Edge

14. **NEGOTIATIONS:** *ClimateWire*'s Friedman previews N.Y. climate summit meeting



EnergyWire -- Fri., September 19, 2014 -- **Read the full edition**

1. SECURITY: Hackers use old-school techniques to infiltrate energy outfits

The strange phone calls trickled into the undisclosed NRG Energy Inc. plant over two days in mid-March. Four separate people -- three men and one woman -- called NRG personnel in two departments seeking access to personal computer passwords and IP addresses. They likely claimed to be from tech support, but their true identities and whereabouts are unknown. Such simple attempts to gain unauthorized network access seem quaint in today's age of advanced cyberweapons and computer-savvy gangs of hackers. But why bother combing through zeros and ones when a cold call often does the trick?

TOP STORIES

2. **UTILITIES:** Solar groups see 'radical' shift in net-metering debate

3. **MARCELLUS SHALE:** Range Resources agrees to record fine for Pa. frack pond violations

4. **MARCELLUS SHALE:** Chevron Appalachia is first driller to earn sustainability certification

ELECTRICITY

5. **POWER MARKETS:** ISO New England agrees to vet proposed electricity imports

6. **ELECTRICITY:** Group compares Texas to Egypt in carbon emissions debate

OIL AND GAS

7. **NATURAL GAS:** Ukraine conflict keeps gas 'steppingstone' in spotlight

8. **LAW:** End of the road for Chesapeake royalties case in Texas

9. **PEOPLE:** Ag commissioner named president of Texas Oil and Gas Association

10. **ENERGY FRONTIERS:** Eni announces 2 major crude discoveries

11. **PEOPLE:** Continental Resources appoints new operations chief after predecessor's abrupt exit

12. **BUSINESS:** Shareholders reject Cheniere compensation strategy

13. **ILLINOIS:** Legislators seek extension on fracking rules

14. **ALASKA:** Residents are poised to receive $1,900 checks from permanent fund

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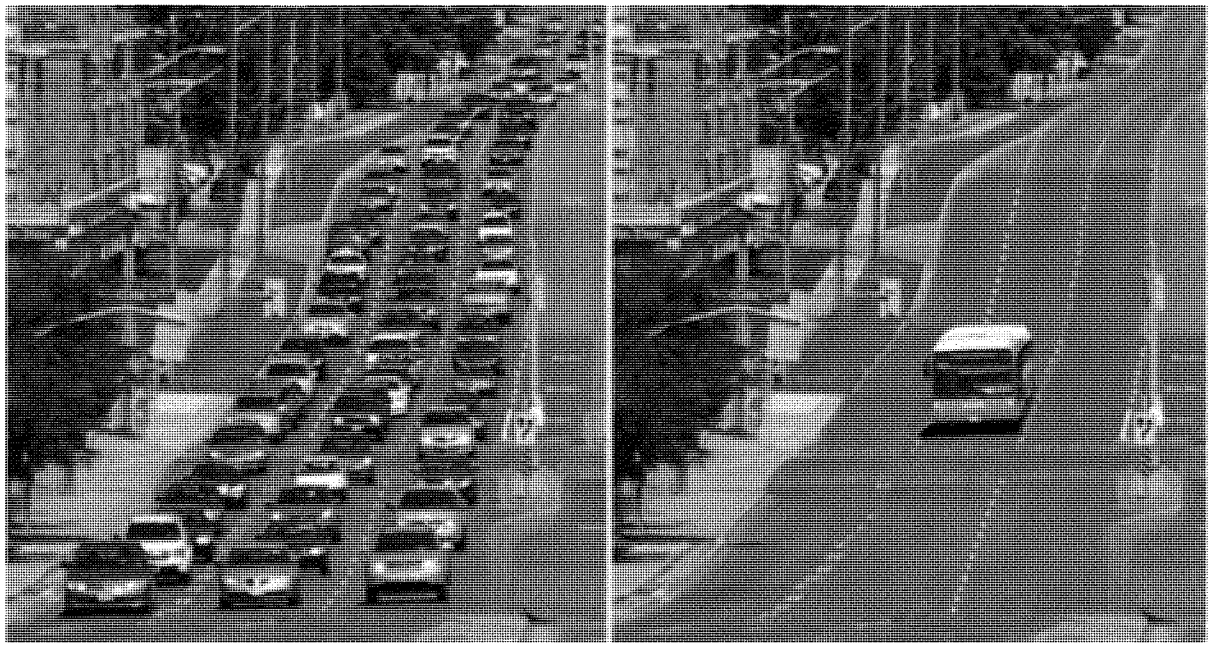

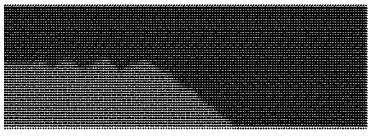

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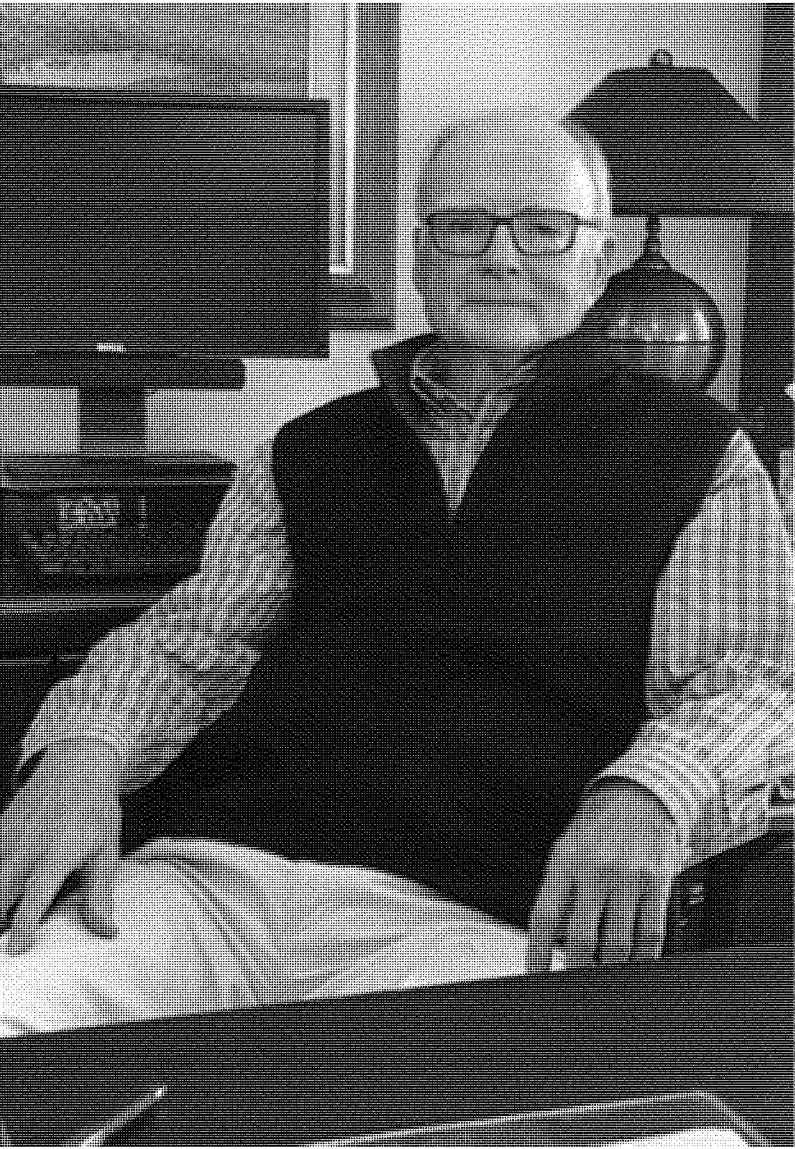
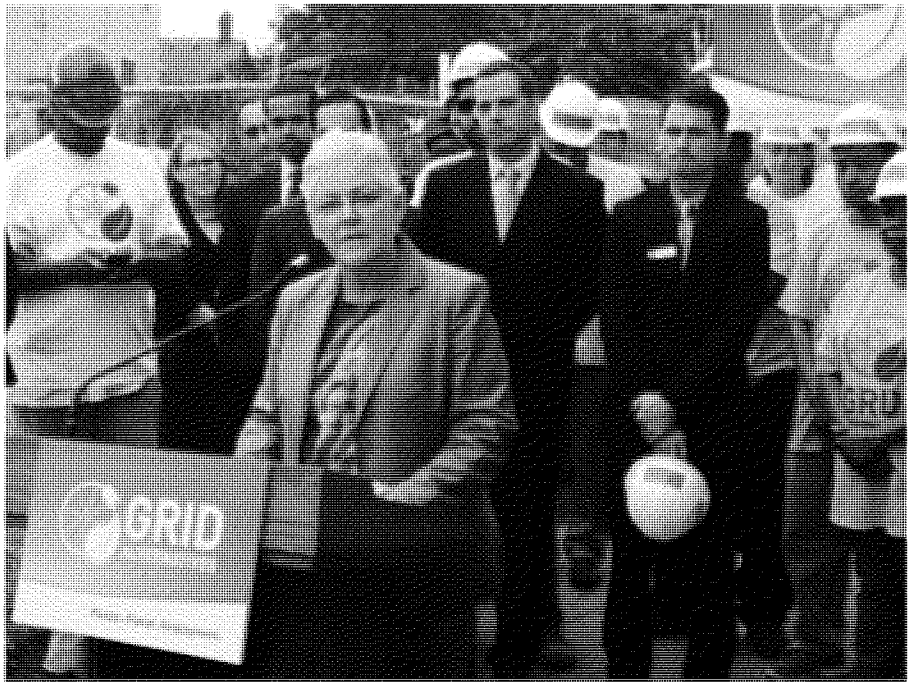
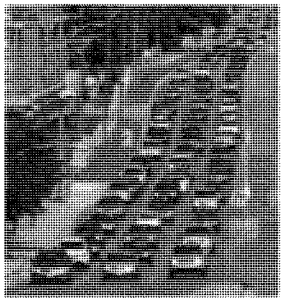
Greenwire




GRID



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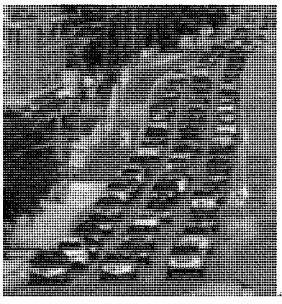
Subject: Air & Radiation Law News for June 20, 2014



Air & Radiation Law News

for June 20, 2014

Bloomberg BNA Daily Environment Report™

Budget

White House Veto Threat Leads Democrats To Cancel Energy, Water Funding Bill Markup

Senate Democrats cancelled the markup of an energy and water spending bill scheduled for June 19 after the White House indicated it would veto the legislation if an amendment to halt the Environmental Protection Agency's power plant rule...

Climate Change

EPA Official Defends Power Plant Proposal As House Republicans Question Legality

The Environmental Protection Agency's top air official told a House subcommittee June 19 that the agency has the legal authority under a little-used section of the Clean Air Act to issue a proposed rule to curb carbon dioxide emissions...

Emissions Trading

Last of Seven Chinese Pilot Emissions Trading Programs Begins in Chongqing

The last of China's seven carbon emissions trading pilot programs began June 19 in Chongqing, a major city in the southwestern part of the country....

Energy

Canada Pipeline Plans Turn to Energy East As Northern Gateway Project Bogged Down

Chances are good that an oil pipeline to Canada's east coast will beat to market Enbridge Inc.'s Northern Gateway project, even with its approval this week by Prime Minister Stephen Harper's government....

Energy

Expanded Drilling, Natural Gas Exports, Keystone Permitting on House Agenda

The House is scheduled to vote the week of June 23 on a trio of energy bills that would expand oil and natural gas drilling, expedite the review of applications to export liquefied natural gas and speed the review of the Keystone XL pipeline....

Energy

Group Sues Interior Department Over 'Eagle Kill' Rule for Wind Energy Companies

The American Bird Conservancy (ABC) has sued the Interior Department over the department's final rule allowing operators of wind farms to receive permits to kill or otherwise harm eagles for up to 30 years (Shearwater v. Ashe, N.D. Cal.,...

Energy

Sempra Energy Wins Final U.S. Approval For Cameron LNG Export Project in Louisiana

Sempra Energy won final U.S. approval to build an export terminal for liquefied natural gas, becoming the second such facility to win government approval....

Sustainability

Fortune 100 Companies Report $1.1 Billion In Savings From Energy, Climate Efforts

Fifty-three of the 100 largest public and privately held companies in the U.S. have reported collective savings of $1.1 billion annually from their efforts to reduce greenhouse gas emissions and source more renewable energy, according to...

CORRECTION

An article in the June 18 report on Rep. Kevin McCarthy (R-Calif.) incorrectly identified the year in which he was elected to Congress. McCarthy was elected in 2006 (117 DEN A-12, 6/18/14). The online version has been corrected....

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Ruling Limiting Federal Role In Power Markets Hinders ESPS, Says Upton

Rep. Fred Upton (R-MI), chairman of the energy panel, says a recent appellate ruling limiting federal energy regulators' role in shaping state and region retail power markets poses a significant hurdle for EPA's proposed utility climate rule, arguing that the rule similarly tries to exceed federal authority by forcing changes to energy markets.

EPA Vows To Weigh Lawmakers' Requests To Revise Utility Climate ESPS

EPA's acting air chief says the agency will consider House lawmakers' requests to make several key revisions to its proposed existing utility climate rule, including recalculating the rule's greenhouse gas (GHG) reduction targets and creating a "safety valve" that could allow utilities to operate out of compliance if necessary for grid reliability.

GHG Rider Forces Delay Of FY15 Budget Bill, Driving Shutdown Fears

Senate Democrats have dropped plans to approve a fiscal year 2015 funding bill due to fears that senators critical of EPA's climate program had sufficient support to include a rider in the bill blocking the agency rules, raising the prospect of another government shutdown if lawmakers reach an impasse on the riders in FY15 appropriations bills.

RGGI States Likely Need Additional GHG Cuts To Meet EPA's Climate ESPS

States participating in the Regional Greenhouse Gas Initiative (RGGI) climate cap-and-trade program will likely have to plan for additional greenhouse gas (GHG) cuts beyond the program's planned 2020 emissions cap in order to comply with EPA's GHG rule for existing power plants which creates a 2030 deadline for states to reduce emissions.

Latest Blogs

Delaware Denies Support For House Air Permitting Bill

Delaware's air chief is rejecting GOP claims that the state is supportive of a pending House bill to streamline the Clean Air Act permit process, . . .

Greenwire

GRID:

Regulators OK novel plan for 'real time' power sharing in the West

Hannah Northey, E&E reporter

Published: Thursday, June 19, 2014

Federal energy regulators today signed off on a politically popular plan that allows California's grid manager to launch a voluntary "real time" energy market and share its electricity resources with five Western states.

The Federal Energy Regulatory Commission unanimously voted to conditionally accept the California Independent System Operator's (ISO) proposal -- as made through tariff revisions -- to design an energy imbalance market, or EIM, which pools energy resources in parts of Oregon, Washington, Utah, Wyoming and Idaho.

State grid operators have proposed to launch the market on Oct. 1.

FERC acting Chairwoman Cheryl LaFleur said the market represents an "exciting" milestone that allows a large region to receive benefits of belonging to a market, to enhance reliability and to handle growing renewable resources. FERC Commissioner John Norris agreed and said the energy landscape is changing quickly in the West with a surge of wind and solar, adding that it reflects a belief the system can be operated more efficiently.

"More people will hopefully join this," Norris said.

FERC Commissioner Philip Moeller said the commission will be "watching it closely up until it goes live in October, we obviously want it to be successful."

FERC Commissioner Tony Clark noted that one "caution sign" to watch for is the states' greenhouse gas regulations that are being promulgated and their ability to restrain interstate trade. States are also

implementing clean energy goals at various levels. Clark said such policies can "segment the market in ways they may not otherwise be segmented" and should at least be a "yield sign."

FERC said the program will allow participants to buy and sell five-minute, real-time energy to meet demand through a market-driven regime built into California's existing real-time market. California ISO and PacifiCorp in the past released a report that found the market could result in benefits of up to $129 million a year from efficiency and integration of renewables.

The decision signifies a big win for Senate Majority Leader Harry Reid (D-Nev.), Nevada Gov. Brian Sandoval (R) and California Gov. Jerry Brown (D), who in recent months have pushed FERC to approve the plan. Reid has in recent weeks expressed his deepening interest in FERC and controlling who leads the agency.

Reid told FERC in a letter earlier this year that the proposed market would offer an automated, regional and far more efficient method of meeting real-time energy needs than the manual operations currently at play. His home state of Nevada is hoping to share its supply of solar and geothermal power, and the market would make available a larger pool of real-time green energy to meet demand.

Reid noted in the letter that Nevada's top power provider -- NV Energy Inc. -- released a study looking at linking with the ISO. It examined the potential for building transmission facilities between the two systems and sharing conventional and renewable-generated electricity. The company found that participating in the market would benefit customers in Nevada and California, prompting the utility to seek approval from Nevada state regulators to join, a step that Reid later hailed as "terrific."

NV Energy is the biggest authority in the state with its subsidiaries providing power to 85 percent of Nevada.

Sandoval and Brown said in separate letters to FERC that the market would help grid managers in Nevada and five other states optimize renewable energy resources, balance power supplies, enhance grid reliability and reduce power costs for customers partaking in larger pools of geographically diverse energy resources.

California ISO's board of directors signed off on the design of the market last year, noting that the market wasn't "new" but instead a set of rules and procedures that allows the creation of the market through existing market designs (*Greenwire*, Nov. 8, 2013).

The market arrives as California is managing an influx of green energy to its grid. The state's renewable portfolio standard requires that one-third of all power come from clean sources by 2020. The state's demand for green energy accounts for two-thirds of all renewable energy thirst in the Western Interconnection, which includes 11 states, some of Texas and parts of Canada and Mexico.

Part of the EIM arrangement includes the option of using renewable power from other states.

California ISO has said such an option is helpful because the sun rises earlier in the east and sets later in the west, meaning solar power is available longer. The ISO has also said grid operators -- as more wind and solar are brought online -- need to hold additional flexible generation, like natural gas-generated power, in reserve because green energy availability varies with the weather.

The EIM initially is with PacifiCorp, which supplies power to more than 1.8 million customers in parts of six states. The company operates as Pacific Power in Oregon, Washington and Northern California and as Rocky Mountain Power in Utah, Wyoming and Idaho, the ISO said.

CLIMATE:

Regional markets take center stage as states weigh EPA proposal

Jean Chemnick, E&E reporter

Published: Thursday, June 19, 2014

The nine Northeastern states that participate in the Regional Greenhouse Gas Initiative hailed U.S. EPA's proposed carbon rule for existing power plants that would let them comply through their interstate cap-and-trade emissions system.

But RGGI members are now studying the rule's fine print to see how EPA emission targets line up with reductions they're already making and whether responsibilities are fairly divided across all 50 states.

"I'm really excited that they've not only allowed RGGI to participate, but they've recognized that a regional approach would be the most cost-effective possible," RGGI Commissioner Kelly Speakes-Backman said in an interview.

The June 2 proposal makes clear that EPA would likely approve a state implementation plan that takes a regional approach to compliance. It allows states to petition for a two-year extension on the 2016 deadline to submit plans if they intend to join a regional compact.

And it justifies its assumption that many states can achieve emission reductions through conversions of coal-fired power plants to natural gas, zero-carbon energy deployments and demand-side efficiency. Independent system operators (ISOs) and regional transmission organizations (RTOs) already manage many regional power markets and can add cutting carbon to their already wide-ranging priorities.

"One of the things we like about this EPA rule is that it allows regional markets to work," Speakes-Backman said. "It follows the natural path of electricity itself."

But while the proposal validates RGGI's approach, Speakes-Backman said that member states are still asking questions.

One issue is the process by which EPA's proposed rate-based standard for each state could be converted to mass carbon budgets to allow states to participate in a cap-and-trade program. The draft allows for this conversion, but Speakes-Backman said RGGI members were still trying to understand how it would be calculated and hoped to schedule a call with EPA staff to facilitate that.

Another concern is whether EPA's requirements can be satisfied with emission reductions that RGGI states already have in the pipeline. The compact has already trimmed emissions 40 percent since 2005 and expects to cut them by 50 percent compared with that year by 2020. But EPA proposes additional cuts for the nine states -- locking them in to emissions rates that are lower than the national average. And while Speakes-Backman said those targets were likely in line with what the compact would have achieved anyway in future years, its analysts are still assessing that.

Those questions are likely to dominate RGGI states' comments to EPA, but there's also a third: Does the rule require all regions to do their fair share of the work of reducing emissions?

"If they're giving some states a pass and other states a harder goal, then yes, I think it does matter," Speakes-Backman said. "But it's not our focus right now. Our focus right now is to make sure that each of our states individually and as a region can comply."

David Cash, commissioner of the Massachusetts Department of Environmental Protection, said RGGI states were also working to understand whether and how EPA gave them credit for that combined 40 percent reduction since 2005. The agency claims not to have used any base line for state reductions, but those who track the rule say it has in effect tapped 2012 as the year from which emissions reduction measures would be credited.

"It's unclear at this point how much of the emissions reductions that we've already gotten will be counted, and we're still digging in to that and not sure where that's going to land," Cash said. "To the extent that we think we have not gotten credit, then our comments will reflect that."

Western govs weigh regional program

RGGI officials have billed their cap-and-trade program as a "plug and play" model that other states could either join or borrow from to set up their own regional programs.

Speakes-Backman said that she had not personally been involved in any discussions about new members, but states have reached out in the past.

"I do know that we've had a lot of inquiry over the years, and especially leading up to the EPA guidelines being issued," she said. "We've had a lot of conversations with states wondering how we did it."

Membership has advantages, according to a report by the Boston-based Analyses Group that estimated the program yielded $1.6 billion in net economic benefits to participating states from 2009 to 2011.

And an expanded program could provide existing members with new, cheaper opportunities for reduction and compliance, Cash said.

"Certainly there are benefits from more states joining, expanding the region under which a market-based system would operate," he said.

RGGI states are not the only ones that are taking stock of the proposal or looking at ways they might comply regionally. But it is not clear that more politically conservative, fossil fuels-driven states to their west and south would reach for the same kind of cap-and-trade program New England and the Mid-Atlantic have chosen.

Former Colorado Gov. Bill Ritter (D), who now heads the Center for a New Energy Economy at Colorado State University, said in a brief interview that he plans to initiate talks with Western governors about possible regional approaches to compliance. These would start with stakeholder meetings during EPA's public comment period, which ends Oct. 16.

He declined to give details or name possible participants, but he said the integrated nature of the Western power grid makes a regional program practical.

Ritter said he expects states to air their frequently cited concerns about EPA's authority to regulate carbon dioxide under the Clean Air Act when they submit comments this summer and fall. But he said they'd also have their air agencies and executive branch offices assess how EPA arrived at its targets for their state and ask it to correct any inaccuracies.

States should ultimately write implementation plans that are approvable by EPA, rather than inviting the agency to impose a federal rule, he said.

"I could make a very good case that states -- even states that have concerns or want to move forward cautiously -- that it's still to their benefit to be at the table for implementation plans," he said, adding that in

the West those should be regional.

Call for a model interstate trading rule

While EPA's rule envisions a regional approach to multistate cooperation, Conrad Schneider of the nonprofit Clean Air Task Force said that is not the only -- or even the best -- way to go.

"If everybody in a region has the same resources, that's not a great place to trade with each other," he said.

States might benefit from finding more distant trading partners with substantially different power mixes and reduction opportunities. For example, if the Great Plains states lack underutilized natural gas capacity to offset their coal use -- a shift that is one of the "building blocks" of the EPA draft -- they might prefer to buy allowances from another region that has that resource rather than make reductions in another way at home or among their neighbors.

"What's really needed is a model interstate trading rule that states could easily join that would facilitate least-cost compliance," Schneider said. EPA has so far declined to provide a model rule.

But the National Association of Clean Air Agencies is working on a proposal that it hopes will fill that purpose.

"It will address rate-based and mass-based scenarios, with and without trading," NACAA Executive Director Bill Becker said. "It will cover a range of scenarios that different states will choose."

COAL:

Murray sues to block EPA power plant rule

Manuel Quiñones, E&E reporter

Published: Thursday, June 19, 2014

Murray Energy Corp., one of the country's largest coal companies, yesterday took a pre-emptive strike against U.S. EPA's proposed rules to control greenhouse gas emissions from existing power plants.

Murray is asking the U.S. Court of Appeals for the District of Columbia Circuit to stop the agency from moving forward with its proposal, which this week was published in the *Federal Register*, kicking off the public comment period.

Courts generally take issue with litigation filed against an agency before its action is final. And EPA has said comments may lead to changes with its proposal.

"This Court is ultimately tasked with judicially reviewing EPA's mandate. In the ordinary course, that review would follow EPA's final promulgation of the mandate," Murray's filing says. "But as the stakes are so high, and delay will waste enormous amounts of industry, state, and federal resources and result in increased coal fired power plant retirements that cannot be later remedied, this petition requests an extraordinary writ in aid of this Court's undoubted jurisdiction over EPA's mandate."

Murray, like other rule opponents, argues that EPA cannot regulate existing power plants under Section 111(d) if it has already decided to regulate those same plants under a different section.

Murray claims that EPA's 2012 standards for power plants under Section 112 preclude its new proposal because it requires states to figure out how they will meet emission reduction goals.

"The Clean Air Act expressly prohibits EPA from mandating state-by-state standards for existing sources that are already subject to national standards: EPA's authority is limited to mandating standards for emissions that are not 'from a source category which is regulated under section 112' of the Act," the complaint says.

EPA did take the issue into account and addressed it in the proposed rule and in a separate legal memorandum, calling it a drafting error when Congress approved the Clean Air Act Amendments.

"The two versions conflict with each other and thus are ambiguous," the proposal says. "Under these circumstances, the EPA may reasonably construe the provision to authorize the regulation of GHGs under CAA section 111(d)."

And the agency's legal memo says "the Section 112 exclusion in section 111(d) does not apply to [greenhouse gases], and 111(d) does not preclude the EPA from establishing guidelines covering GHGs from [electric generating units]."

Murray CEO Robert Murray has been among the president's toughest critics and has blamed the White House for coal's current troubles.

Company attorney Gary Broadbent said about the proposal, "This is clearly an illegal attempt by the Obama EPA to impose irrational and destructive cap-and-tax mandates, which Congress and the American people have consistently rejected."

In March, Murray Energy sued EPA in U.S. District Court for the Northern District of West Virginia against what it calls the agency's war on coal, hoping to force it to take more consideration of job loss impacts of its actions (*Greenwire*, March 24).

Murray, along with the National Mining Association, is also challenging Mine Safety and Health Administration rules dealing with black lung disease and selecting mines for increased scrutiny.

EPA:

House Republicans call new carbon rule a 'power grab'

Jean Chemnick, E&E reporter

Published: Thursday, June 19, 2014

U.S. EPA is attempting to seize control of the nation's power grid with its new proposal for existing power plant carbon dioxide emissions, GOP House Energy and Commerce Committee members charged today.

Republican members of the Energy and Power Subcommittee grilled EPA acting air chief Janet McCabe about the legal foundation of her agency's June 2 draft, which they said would compel the retirement of numerous coal-fired power plants and undermine the reliability of power supply.

Chairman Ed Whitfield called the rule "a power grab" by an agency with no legal jurisdiction over the grid.

"All of this regulatory control would be coming from an agency that has no energy-policy-setting authority whatsoever, no energy-planning expertise, and no real accountability should things go badly for the citizens of these states," the Kentucky Republican said in his opening remarks.

The draft would set state carbon intensity targets that would compel states to find emissions reductions that go beyond simple heat-rate improvements at individual plants -- a "systemwide" approach that industry has promised to challenge in court.

Full committee Chairman Fred Upton (R-Mich.) said the rule was a bid by EPA to usurp the authority the Federal Power Act delegates to state governments and public utility commissions. The Federal Energy Regulatory Commission and Energy Department lack the authority to regulate electricity generation and intrastate transmission, he said, and EPA has no authority to set energy policy.

But McCabe said the draft is not an energy plan, but "a rule done within the four corners of [Clean Air Act Section] 111(d), which uses the best system of emissions reductions [BSER] to reduce emissions."

BSER in this case is based on actions states and utilities have already taken that have proved to reduce the sector's greenhouse gas output, she added.

The proposal cites possible reduction opportunities that EPA argues are available to states via heat-rate improvements at their coal-fired power plants, greater utilization of combined-cycle natural gas plants, zero-carbon energy and demand-side efficiency. But while those assumptions support the rule's emissions standards, McCabe said, they do not dictate to states how they should be met.

Energy policy is "absolutely left to states," she said. "And we know that states will pick and choose what makes most sense to them." She added that EPA had consulted with state and federal authorities, including FERC, on matters of grid reliability.

Republicans countered that emissions requirements are mandates, because they will constrain what states can do to comply.

They also took aim at EPA's authority to regulate greenhouse gases from power plants under Section 111(d) of the Clean Air Act, given that the agency has already used Section 112 of the law to regulate hazardous emissions from the same sources.

The argument stems from a drafting error in the Clean Air Act Amendments of 1990 and has been frequently cited by opponents of the new proposal to argue that EPA must abandon its regulatory efforts (*Greenwire*, Oct. 24, 2013).

Rep. Morgan Griffith (R-Va.) charged that the rule is based on a convenient misreading of the statute.

"You're saying that a scrivener's error in the conforming amendments should trump the law of the United States," he said.

This question is also the basis of one of the first legal challenges to be brought against the rule by Murray Energy Corp. (*see related story*).

GOP committee members said the administration's aim in writing the rule did not appear to be combating climate change. Instead, they said, President Obama appeared to be concerned with pleasing the international community and with scoring political points.

Rep. Mike Pompeo (R-Kan.) asked McCabe for details about meetings she and EPA Administrator Gina McCarthy had with White House adviser John Podesta, who has coordinated administration messaging

around climate change. McCabe said she had met with Podesta infrequently and assumed that McCarthy had met with him more often.

Pompeo said Podesta's involvement proves that the rule is "about politics."

"That's why Mr. Podesta's over at EPA working this. It's not about law," he said.

CAMPAIGN 2014:

Miner's wife slams Rahall in ad

Manuel Quiñones, E&E reporter

Published: Thursday, June 19, 2014

A new television ad accuses West Virginia Democratic Rep. Nick Rahall of orchestrating a war against his state's coal industry and miners.

"Nick Rahall, shame on you. You have sold West Virginia out," says Mount Nebo resident and coal miner's wife Christina Underwood. "Families are suffering because of you. Nick Rahall let coal mining families down."

Americans for Prosperity, a group tied to billionaire donors Charles and David Koch, started running the ad this week statewide and is spending more than $400,000. The group is among those looking to unseat Rahall in November.

Even though Rahall is a strong supporter of the coal industry and opposes Obama administration proposals to deal with climate change, he voted against the Republican-backed "Regulations from the Executive in Need of Scrutiny Act," which would have rolled back the administration's rulemaking power.

Underwood, whose husband has been laid off three times, said in the ad, "Nick Rahall did not stand up to Obama and the EPA. He isn't doing the job he's supposed to be doing."

Rahall is one of the lawmakers backing legislation to prevent U.S. EPA from promulgating its proposal to control greenhouse gases from existing power plants.

"The EPA needs to get their head out of the clouds and come back down to Earth where the rest of us must live and work," he said in a statement. "We don't need more regulation to solve our energy challenges -- we need more innovation."

Today Rahall's campaign released an ad of its own blasting Republican opponent state Sen. Evan Jenkins, accusing him of following "billionaire financial backers." Rahall's ad says, "When money talks, Evan Jenkins listens." It also suggests Jenkins wants to privatize Medicare.

On the Senate floor this morning, Senate Majority Leader Harry Reid (R-Nev.) repeated his accusations that the Koch brothers, who once donated to Rahall, are corrupting U.S. politics through secret money.

"The truth is," Reid said, "the Koch brothers are concealing their massive fundraising because Americans overwhelmingly oppose the purchase of our country."

WIND:

Bird group sues Interior over extension of eagle 'take' permits to 30 years

Scott Streater, E&E reporter

Published: Thursday, June 19, 2014

A leading bird conservation group today filed a federal lawsuit against the Obama administration challenging a rule for wind and other energy projects that permits injuring, killing or disturbing bald eagles for up to 30 years.

The American Bird Conservancy filed the lawsuit against the Interior Department and the Fish and Wildlife Service in the U.S. District Court for the Northern District of California in San Francisco. The suit challenges the new rule allowing Fish and Wildlife to grant programmatic incidental take permits to wind farms, transmission projects and other long-term energy operations for a much longer period than the previous five-year term.

ABC asserts the revised eagle "take" rule announced in December 2013 and implemented earlier this year is riddled with violations of federal law, including the National Environmental Policy Act, the Endangered Species Act, and the Bald and Golden Eagle Protection Act, according to the 23-page complaint filed on behalf of ABC by the Washington, D.C.-based public interest law firm Meyer Glitzenstein & Crystal.

ABC sent a formal notice of intent to sue in April to Interior Secretary Sally Jewell and FWS Director Dan Ashe saying the group planned to take legal action against Interior and Fish and Wildlife over the revised rule (*E&ENews PM*, April 30).

ABC states in the complaint, which names Jewell and Ashe as defendants, that the rule "was adopted in flagrant violation of the National Environmental Policy Act because the Service did not prepare any document analyzing the environmental impacts of the rule change, as required by NEPA and its implementing regulations."

In addition, the rule "subverts the basic eagle protection purposes of [the Bald and Golden Eagle Protection Act] and eliminates crucial procedural and other safeguards for eagle populations without any adequate explanation," according to the complaint.

The group is asking the court to throw out the revised eagle take rule and require Fish and Wildlife to perform the necessary NEPA analysis in the form of an environmental impact statement or an environmental assessment of the rule's impacts on eagle populations.

Fish and Wildlife's decision not to do this initially, "we think, is illegal and not a particularly wise move from a policy standpoint," said Eric Glitzenstein, one of the lead attorneys representing ABC with Meyer Glitzenstein & Crystal.

Gavin Shire, a Fish and Wildlife spokesman in Arlington, Va., said the service does not comment on pending litigation. But the service has said the rule revision represented an administrative change that did not require a full NEPA analysis.

The American Wind Energy Association has argued that the industry takes enormous steps to protect birds, more so than other industries, and that when it comes to eagles, it has been unfairly singled out. AWEA has pointed to studies that show eagle populations over the last 40 years have stabilized and that

the wind power industry conducts more pre- and post-construction studies to guard against impacts to eagles and other sensitive avian species than any other energy sector.

The wind industry says such incidental take permits give it more regulatory certainty while allowing it to incorporate measures that help protect eagles. And the industry has argued that it makes no sense not to have an eagle permitting system that covers the typical 30-year life of an operating commercial-scale wind farm.

But the lawsuit comes as Fish and Wildlife is expected to announce tomorrow that it plans to conduct further environmental analysis of the eagle take process as part of its ongoing effort to review and revise policies for managing eagles as wind power continues to expand across the country.

A Fish and Wildlife spokeswoman confirmed that the service will hold five informational meetings across the country later this summer but would not discuss the effort in detail until after tomorrow's announcement.

Michael Hutchins, national coordinator of ABC's Bird Smart Wind Energy Campaign, said that the group wants more information about the public hearings and additional review but that those things do not lessen the need for today's lawsuit.

"This is a post-hoc effort to go back and do NEPA after the fact," Hutchins said in an interview. "This kind of indicates to me that they know there's a weakness" in the revised eagle take rule.

The Fish and Wildlife rule at issue in the lawsuit amended an eagle permitting program established in 2009 that initially allowed the five-year take permits only if disturbing, harming or killing eagles was unavoidable.

The take permits are to be issued only to applicants that commit to strict adaptive-management measures that include site-specific steps to reduce impacts to eagles. Fish and Wildlife would review the permits and the conservation measures every five years.

But Hutchins said the five-year reviews of the permits would be part of an internal process that would not involve public participation.

He also noted that the 2009 rule establishing the five-year take permits was promulgated after Fish and Wildlife conducted an environmental assessment.

"Obviously, we are worried about populations of eagles over a 30-year period when inadequate science has been used to show that this rule will not result in a significant loss of eagles," Hutchins said. "There's much uncertainty here because they did not go through the NEPA analysis and engage the public to begin with.

"These birds don't belong to the wind energy industry; they belong to the American public and are held in trust for future generations," he added.

TRANSMISSION:

FERC adopts new policy for expanding grid

Hannah Northey and Peter Behr, E&E reporters

Published: Thursday, June 19, 2014

The Federal Energy Regulatory Commission adopted a new policy today for determining returns on equity for transmission projects, with commissioners citing the need to expand the grid to meet reliability challenges including coal plant retirements and a surge of renewables.

"We are going through a big change in resources in this country," acting Chairwoman Cheryl LaFleur said. "We're going to be needing a lot of transmission."

Commissioner Philip Moeller added, "There's almost universal recognition that we need more transmission in this country."

The challenge was to increase the return on investment on projects to encourage them without forcing consumers to pay too much, Moeller said.

The commission's decision today to adopt a revised discounted return on equity methodology came in response to a federal judge's initial decision last year to reduce the return of transmission owners' investments from 11.14 percent to 9.7 percent in New England states like Connecticut, Maine, New Hampshire, Vermont and Rhode Island (*Greenwire*, Aug. 9, 2013).

The new methodology follows the policy applied to returns on natural gas and oil pipelines. However, FERC will seek comment on whether growth in the gross domestic product is the appropriate measure of long-term growth to use in the formula. The pipeline proceedings use the GDP measure.

In the New England case, the new formula using GDP creates a "reasonable range" of returns between 9.39 percent and 11.74 percent, with a halfway point of 10.57 percent.

"This does reflect a dramatic increase," said Commissioner John Norris, who dissented in part. "There will certainly be celebrations" in utility board rooms, he said, adding, "They got what they asked for."

Moeller said the new policy wasn't a "win for the utilities."

FERC today said the case will serve as a precedent in five separate complaints over return on equity that are pending before the commission.

DOE:

$100M provided for clean energy 'grand challenges'

Katherine Ling, E&E reporter

Published: Thursday, June 19, 2014

The Department of Energy announced $100 million yesterday for 32 projects aimed at advancing basic research for clean energy "grand challenges" led by teams of the nation's leading scientists.

This is the second round of funding for the Energy Frontier Research Centers (EFRCs), which were established in 2009 with $777 million over five years for 46 projects.

The current round of funding feeds 32 projects -- 10 new and 22 renewed from the first selection -- with between $2 million and $4 million per year per center for up to four fiscal years, DOE said.

The department now plans to open applications for EFRC applications every two years, the agency said.

Universities lead more than two-thirds of the winning proposals, while DOE's national labs will head up eight others and only one will be led by a nonprofit organization, the Carnegie Institution of Washington based in the nation's capital, according to DOE. Projects include creating new solar materials through data analysis, advanced catalysts to lower the cost of biofuels, energy materials inspired by biological systems and geologic structures for carbon dioxide storage.

EFRC projects have so far created 280 U.S. and 180 foreign patent applications; 100 unpatented invention disclosures; 5,400 peer-reviewed publications; and 70 technology licenses, according to DOE.

A midterm review of the EFRCs in 2012 found that the centers had met or exceeded all of their milestones and a recent report by the Secretary of Energy Advisory Board described the EFRCs and a complimentary breakthrough-technology-focused DOE program -- the Advanced Research Projects Agency-Energy (ARPA-E) -- as "disciplined" and "focused not on absolutely proving the initial hypothesis but on the work required to answer key scientific and technical questions along the path of discovery to validate or invalidate the hypothesis" (*E&ENews PM*, March 28).

ARPA-E today had its own awards announcement of $33 million in project funding for 13 new projects that focus on advanced fuel cells to help support distributed electric systems. These fuel cells are being developed to be made of low cost materials, operate at medium temperatures and have a more energy efficient conversion process to help integrate solar, wind and other intermittent generation on to the grid, ARPA-E said.

Congress has been scrutinizing ARPA-E, EFRCs and the other research centers recently, however, as they look to tighten the federal government's budget. A recent House report that accompanied its fiscal 2015 budget said there is a "proliferation of centers across many Departmental programs consuming program budgets and preventing prioritization of funds towards other higher-priority activities."

It added, "Addressing this problem requires greater transparency, evaluation, and prioritization to ensure that only highly-effective centers closely aligned to program missions are funded" (*E&E Daily*, June 18).

The fiscal 2015 energy and water budget that cleared the full House Appropriations Committee yesterday included $100 million for EFRCs and $280 million for ARPA-E, steady with this year's budget.

The Senate Appropriations Committee cancelled its fiscal 2015 energy and water bill markup set for today and has not revealed detailed spending levels, although a summary noted $280 million in funding for ARPA-E (*Greenwire*, June 17).

PEOPLE:

Ethanol company names former Valero executive to its board

Amanda Peterka, E&E reporter

Published: Thursday, June 19, 2014

The nation's fourth largest ethanol producer today appointed a former Valero Energy Corp. executive to its board of directors.

Green Plains Inc. said in a statement that Gene Edwards would be a "solid addition" to the board because of his experience in the oil and gas industry and in managerial positions.

PEOPLE

Edwards spent 32 years at Valero before retiring in April. He most recently served as executive vice president and chief development officer at the oil giant.

"We believe that Gene will positively contribute to our continued growth strategy and our focus on building long-term shareholder value," said Todd Becker, Green Plains president and CEO, in the statement.

Edwards began his career at Valero as an analyst in planning and economics. Throughout his career, he worked in various planning and economics, refinery operations, business development and marketing positions.

According to the statement, Edwards played a key role in Valero's entry into the ethanol business. Valero was the first traditional refiner to begin production of ethanol and currently is the nation's third-largest producer with 11 ethanol refineries.

Edwards has a bachelor's degree in chemical engineering from Tulane University and a master's degree in business administration from the University of Texas, San Antonio.

CHEMICALS:

Eating broccoli could help cells purge pollutants

Published: Thursday, June 19, 2014

A recent clinical trial has suggested that compounds in vegetables like broccoli and kale may cause cells to purge themselves of certain air pollutants.

The randomized control trial of about 300 Chinese adults found drinking a liquid containing broccoli sprouts each day for three months increased the participants' secretion of benzene and acrolein through their urine. Both are common harmful chemicals found in fumes at gas stations and cigarette smoke, among other sources.

Scientists are investigating whether a compound called glucoraphanin can have a protective effect against these toxins. They suspect chewing or swallowing vegetables containing glucoraphanin might provoke another compound to stir enzymes into clearing pollutants from the body.

"We thought the pathway might respond initially and then the [compounds] would wear out their welcome, and the body would tune out," said Thomas Kensler, a researcher at Johns Hopkins University and the University of Pittsburgh School of Medicine and an author of the study. "But the effect was just as vigorous at the beginning as at the end, which suggests that over one's lifetime, you could enhance this preventative activity in the body."

The study was published this month in the journal *Cancer Prevention Research* (Eliza Barclay, NPR, June 18). **-- SP**

CAMPAIGN 2014:

LCV's Karpinski discusses impact of EPA proposal on midterm

prospects

Published: Thursday, June 19, 2014

How does U.S. EPA's proposed rule for existing power plants play with voters ahead of this year's midterm elections? During today's OnPoint, Gene Karpinski, president of the League of Conservation Voters, explains which states' races he believes will see the greatest impact from the proposal. He also discusses how tea party candidates are affecting the environmental agenda.

Click here to watch today's OnPoint.

ClimateWire -- Fri., June 20, 2014 -- **Read the full edition**

1. ADAPTATION: Dry, yet storm-battered Cuba tries to feed itself amid climate extremes

SANTO DOMINGO, Cuba -- A battered Soviet-era Moskvitch car made its way down a dirt road in the National Research Institute on Tropical Roots and Tubers' (INIVIT) 200-acre compound. The sun shone brightly through the windshield, and, though the windows were completely rolled down, the air inside the car grew stuffy and hot. It's not what you'd expect in western Cuba in April. According to official numbers, the average rainfall for the month of March at the institute is 63 millimeters, but this year saw 4.8 millimeters. Additionally, there was an increase in average maximum temperature of 1.5 degrees Celsius compared with the long-term March average. But despite the abnormal weather, the crops at the INIVIT seemed to be thriving.

TODAY'S STORIES

2. **STATES:** New siting provision could bring hard times for Ohio wind power

3. **SCIENCE:** Climate patterns unlikely to ease Calif. drought -- NOAA

4. **TRANSPORTATION:** Re-routing planes to avoid making contrails could benefit the climate -- study

5. **TECHNOLOGY:** Engineers design robot that finds water and methane leaks

6. **FORESTS:** Scientists take aim at Wyden's logging bill in new study, citing climate concerns

7. **BUSINESS:** Boston company makes big solar bet in coal-reliant Utah

8. **ELECTRIC VEHICLES:** Calif. gives money for charging stations in push for more plug-ins on roads

9. **CARBON CAPTURE:** U.S., Canadian companies partner, hoping to profit off new CO2 regulations

10. **RENEWABLE ENERGY:** Germany's solar power may drop to lowest capacity since 2008

11. **ADAPTATION:** Canada needs to prepare for climate disasters, not react to them -- expert

12. **TRANSPORTATION:** Harley-Davidson to reveal electric motorcycle

13. **ADAPTATION:** Discovery could help genetically modify trees to survive climate change

E&ETV's The Cutting Edge

14. **UTILITIES:** *EnergyWire*'s Kuckro gives behind-the-scenes look at industry discussions on EPA rule

EnergyWire -- Fri., June 20, 2014 -- **Read the full edition**

1. GRID: Southern Co. CEO relishes role as chairman of industry's cyber brain trust

Southern Co. CEO Tom Fanning has a message for officials who warn that there is a key group of electrical substations that could be taken down and cripple the United States: "They don't know what they're talking about."

TOP STORIES

2. **LAW:** Cheniere may be hornets' nest for Obama adviser

3. **NUCLEAR:** First new reactors in 30 years back on track after delays, utility says

4. **LNG:** FERC approves second gas export terminal without analyzing upstream impacts

ELECTRICITY

5. **GRID:** FERC tackles electricity pricing issues that cloud reliability

6. **UTILITIES:** Coal stocks still scant after harsh winter

7. **ELECTRICITY:** N.M. energy company moves natural gas plant forward

8. **UTILITIES:** Pepco subsidiary vows better service with merger

OIL AND GAS

9. **INTERIOR:** Tribes stand to reap millions from change in oil royalty rules

10. **OIL MARKETS:** Broad uncertainty has kept Iraq disruptions in check -- so far

11. **PEOPLE:** 2 Enbridge execs step up to fill role of retiring CFO

12. **TRANSPORT:** N.D. officials test oil-by-rail disaster preparedness

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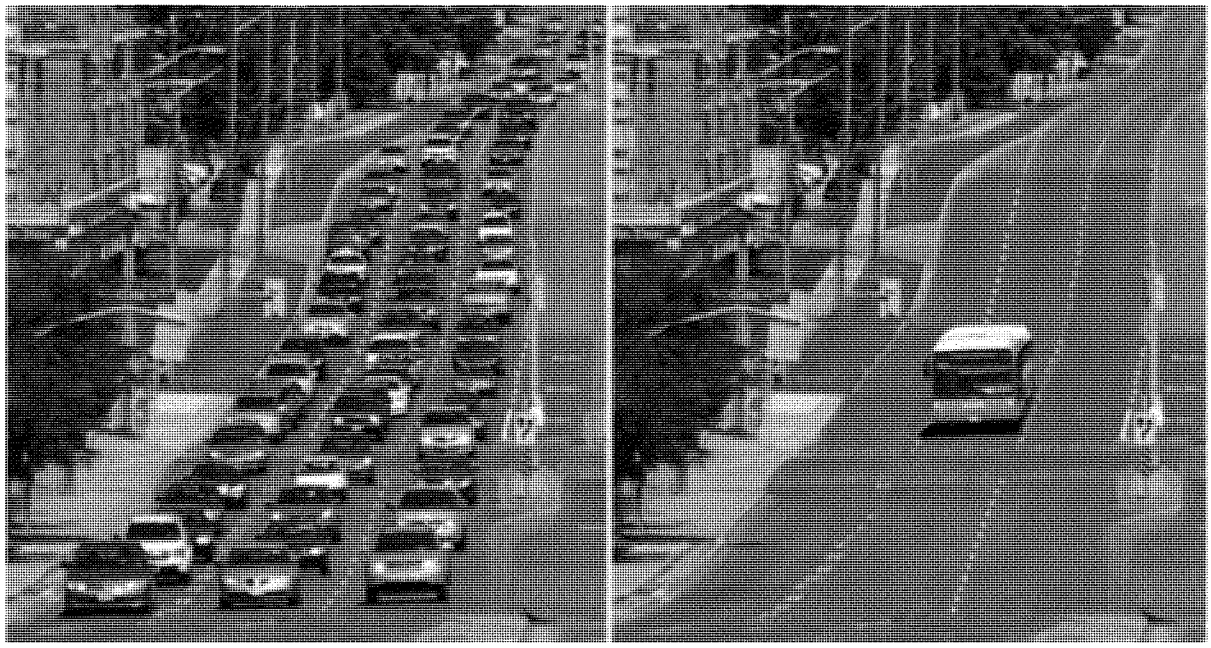

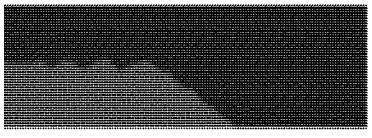

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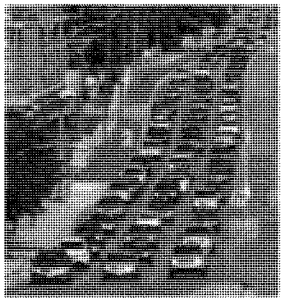

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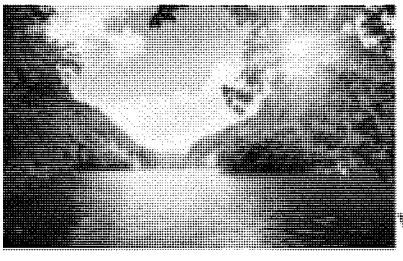
From: Turley, Jennifer
Sent: Mon 6/2/2014 2:26:54 PM
Subject: Water Law News for June 2, 2014



Water Law News

for June 2, 2014

Bloomberg BNA **Daily Environment Report™**

Drilling

California Senate Rejects Measure to Halt Fracking, Other Well-Stimulation Activities

A bill seeking a moratorium on hydraulic fracturing, acidizing and other types of oil and gas well-stimulation activities failed in the California Senate May 29, after falling short of the 21 votes needed to move the measure to the Assembly....

Drilling

Interior Awards First Offshore Leases
Under U.S.-Mexico Maritime Boundary Pact

The Interior Department has awarded the first three oil and gas leases in the western Gulf of Mexico under a U.S.-Mexico transboundary agreement that will make available disputed areas to increased energy production....

Drilling

North Carolina Lawmakers Pave Way
For Hydraulic Fracturing Permits in 2015

North Carolina could allow hydraulic fracturing in 2015 under a bill (S.B. 786) approved by the state Legislature May 29....

Drilling

Texas Report on Methane in Water Wells
Suggests Pollution From Natural Sources

A Texas regulator looking into complaints about pollutants in nine water wells released a report May 28 indicating the methane and other contamination in those wells is more likely naturally occurring than a result of gas drilling and production...

Energy

Fracking Said to Draw U.S. Investment
Away From Renewable Energy Sources

President Barack Obama says natural gas can be a bridge from coal to a cleaner energy future. Investors are showing it's more likely a bridge to nowhere....

Oil Spills

Canada Must Prepare for Oil Spill Response
As It Considers Northern Gateway Proposal
An oil barge sailing into Chatham Sound near the Canadian port of Prince Rupert, 30 miles south of Alaska, runs aground and spills heavy oil into the Pacific Ocean....

Water Pollution

OMB Begins Review of EPA Proposed Rule
To Manage Discharges of Dental Amalgam

The White House Office of Management and Budget has begun reviewing an Environmental Protection Agency proposed rule that would regulate discharges of mercury amalgam from dental offices to publicly owned sewer systems. ...

Water Resources

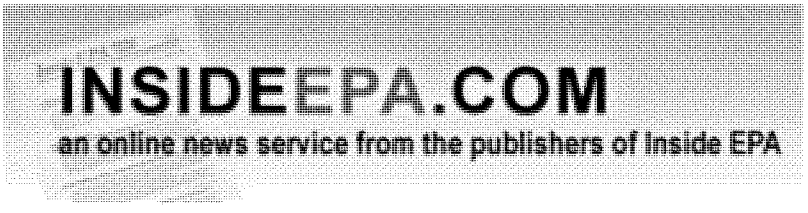
California Delta Project Gets Extension
On Comments, Agreement on Implementation

California and federal officials announced May 30 they would extend by about six weeks the public review period for the draft Bay Delta Conservation Plan, the ambitious proposal to retool the hub of the state's water infrastructure and...

Wetlands

Federal Court Rules for Corps of Engineers
In Alaska Railroad Extension Permit Dispute

The U.S. Army Corps of Engineers did not act arbitrarily and capriciously in issuing a Clean Water Act dredge-and-fill permit to an Alaska railroad to construct a rail extension through wetlands, a federal court ruled (Cook Inletkeeper v....



Inside EPA's **Water Policy Report**, 06/02/2014

http://insideepa.com/Water-Policy-Report/Water-Policy-Report-06/02/2014/menu-id-127.html

Greenwire

OIL SANDS:

Shaheen granted greens' wish for study of Canadian crude spills

Elana Schor, E&E reporter

Published: Friday, May 30, 2014

Sen. Jeanne Shaheen (D-N.H.), one of the GOP's top targets for defeat this Election Day, authored a provision in last year's massive government funding bill that requires the Obama administration to study whether spills of Canadian oil sands crude are harder to fight than conventional fuel.

The Transportation Department study of Canadian crude's behavior during spills, now in the early stages at the National Academy of Sciences (NAS), is a long-standing goal of greens working against Keystone XL and other oil sands projects -- including a potential pipeline reversal that would run through Shaheen's home state. Environmentalists fumed when an NAS report released last year only examined oil sands crude's pipeline safety risks, not whether the controversial fuel presents unique cleanup challenges.

Given recent struggles to sop up spilled oil sands crude from Michigan's Kalamazoo River and the Arkansas town of Mayflower, "regulators have done the public an injustice by excluding an evaluation of the health and environmental risks of tar sands spills in our rivers and communities" from the initial NAS study, Anthony Swift of the Natural Resources Defense Council wrote last year.

Shaheen's office confirmed today that the Senate Appropriations Committee member added language into the committee report accompanying the fiscal 2014 funding bill that expands last year's study to include "whether the spill properties [of oil sands crude] differ sufficiently from those of other liquid petroleum products to warrant modifications of spill response plans, spill preparedness or cleanup regulations."

Shaheen's likely re-election challenger, ex-Sen. Scott Brown (R), already is seeking to use KXL as a wedge issue in the campaign. Yet Brown faced his own political headaches over the pipeline earlier this month amid reports that he called sitting senators to discuss Democratic leaders' offer of a vote on KXL if Republicans forswore a filibuster of a bipartisan energy efficiency bill crafted by Shaheen (*Greenwire*, May 14).

Soon after Brown's involvement in the efficiency bill vote became public, Republicans blocked the measure to protest their inability to vote on hot-button energy issues beyond KXL.

Shaheen's delegation-mate, Sen. Kelly Ayotte (R-N.H.), joined her last month in a letter urging the State Department to provide a complete environmental review if the Portland Montreal Pipeline's owners opt to convert it into a Canadian crude conduit (*Greenwire*, April 23).

ENERGY POLICY:

EIA offers short menu of options for ducking crude shut-in

Elana Schor, E&E reporter

Published: Friday, May 30, 2014

Easing the nation's crude export limits are one of only a few options to manage the growing U.S. production of -- and evaporating imports of -- light crude oil, the Energy Information Administration (EIA) said yesterday in the first of a closely watched series of reports on the boom in domestic shale fuel.

Requested by the Senate Energy and Natural Resources Committee's bipartisan leadership, the EIA report puts a number on what many oil-market watchers have already identified: 96 percent of the record-setting rise in U.S. crude production between 2011 and last year came from ultra-light, sweet grades of oil. As imports of those ultra-light crudes fall, averaging just 100,000 barrels per day as of early this year, EIA pointed to a short but vital menu of options to avoid a shut-in of oil production.

"Continued shifts in the refinery input mix, which can be enabled by investments to relieve constraints associated with running lighter crudes at refineries that were optimized to run heavier ones," could prove helpful, EIA wrote, as could the addition of refinery technology that would "convert light crude into a mix of heavier fractions."

The third option is one that both committee Chairwoman Mary Landrieu (D-La.) and top Republican Sen. Lisa Murkowski of Alaska are ready to consider: "continued increases in crude oil exports, which will depend in part on the extent of any relaxation of current export restrictions."

Murkowski hailed EIA's conclusions as bolstering her case for a swift relaxation of current export limits. "The growing mismatch between the type of oil that is increasingly being produced in the middle of the country and our ability to refine it is causing distortions in the market," she said in a statement.

But Republican leaders have not yet coalesced around a single approach to the export ban, and House Energy and Commerce Chairman Fred Upton (R-Mich.) said earlier this year that he is still weighing the issue. Two industry-backed studies released yesterday stand to raise the ban's profile for environmental groups that sharply oppose any letup in the ban (*Greenwire*, May 29).

Click here to read EIA's new report.

OIL AND GAS:

Bid for Calif. fracking moratorium dies on state Senate floor

Debra Kahn, E&E reporter

Published: Friday, May 30, 2014

California legislation that would have established a moratorium on hydraulic fracturing and other forms of petroleum-well stimulation failed in the state Senate yesterday.

S.B. 1132, by state Sen. Holly Mitchell (D), would have banned all well-stimulation treatments until the state completes a study on their environmental effects.

The final Senate vote was 16-16, short of the 21 votes needed to send the bill to the Assembly. An earlier vote Wednesday was 18-16 in favor of the moratorium.

Another bid for a moratorium by Mitchell met a similar fate last year, dying on the Assembly floor (*EnergyWire*, May 31, 2013).

Mitchell vowed this week the issue would resurface.

"We have the momentum. This issue's gone viral nationally, and it's just a matter of time before the dangers of fracking prompt people to put it on pause until its safety can be established," she said Wednesday.

Catherine Reheis-Boyd, president of Western States Petroleum Association, a trade group for the oil and gas industry, on Twitter said she was "grateful common sense prevailed."

In a blog post, she wrote the bill's defeat "clears a path for a concerted and collaborative effort to fully implement new statewide regulations embodied in Senate Bill 4." That legislation from Sen. Fran Pavley (D), which passed last year, would direct California's Division of Oil, Gas and Geothermal Resources, DOGGR, to roll out regulations imposing restrictions on fracking and other well stimulation methods.

"The SB 4 regulations put into place a robust set of monitoring, disclosure, testing, land use and research requirements that ensure hydraulic fracturing in California is conducted safely and without harm to the environment," Reheis-Boyd said. "There is still much to be done to finalize these new regulations and the petroleum industry is going to be a constructive partner in getting them accomplished."

Environmental groups have said that those regulations -- what's been outlined in a draft proposal -- fall short of protecting land, air and water. They said yesterday they would continue campaigning for Gov. Jerry Brown (D) to use his executive authority to curtail hydraulic fracturing.

Greens also criticized four Democratic lawmakers -- state Sens. Lou Correa, Cathleen Galgiani, Ed Hernandez and Norma Torres -- for opposing the bill. Five other Democrats -- Marty Block, Jerry Hill, Ben Hueso, Ricardo Lara and Richard Roth -- abstained from the final vote.

"It's profoundly disappointing that a handful of shamelessly unprincipled Democrats sold out their constituents to the oil industry by blocking a moratorium on fracking," said Zack Malitz, campaign manager for the group Credo.

"Today's setback says more about the deep pockets of Big Oil than it does about the priorities of California voters, 68 percent of whom have indicated they support a moratorium," said Kathryn Phillips, director of Sierra Club California.

Clean Water Action said that the defeat of the bill most hurts residents of Kern County, "where an estimated 80 percent of fracking and other oil drilling occurs in California. At least 22 different communities lie within [5] miles of oil and gas drilling in Kern County, including many directly adjacent to and surrounded by drilling operations, exposing thousands of residents to health threatening air pollution that has been linked to low birth weights, respiratory illness and cancer," the green group said in a statement.

"Kern County already experiences some of the worst water and air quality in the country, with hundreds of thousands of Central Valley residents lacking access to reliably clean drinking water and an asthma rate three times the national average," Clean Water Action organizer Rosanna Esparza, a Bakersfield resident, said in the statement. "It's time that our elected officials stand up for the health of the San

Joaquin Valley. This vote shows that they continue to fail at protecting our most at-risk communities."

WSPA's Reheis-Boyd in her blog post said that regulations under S.B. 4 will help protect water.

"We are working with the State Water Resources Control Board and regional water boards to develop groundwater monitoring criteria and planning required by SB 4," she said. "Once finalized, these new requirements will give us the data necessary to demonstrate hydraulic fracturing and other well stimulation technologies are not adversely impacting California's precious water supplies."

She added that "as Governor Brown has noted, close to a third of the new wells drilled in California are hydraulically fractured as a way to improve their productivity. These wells are an important part of California's ongoing, conventional oil production that supplies 37 percent of our daily petroleum needs."

Reporter Anne C. Mulkern contributed.

OFFSHORE DRILLING:

Experts, 'Veep' actor urge Interior to halt planned seismic air-gun surveys

Joshua Learn, E&E reporter

Published: Friday, May 30, 2014

Critics of the Interior Department's plan to allow the use of seismic air guns to search for oil and gas beneath the Atlantic seafloor enlisted a bit of star power yesterday from actor Reid Scott of the HBO comedy show "Veep."

"The federal government wants to turn the Atlantic Ocean into a blast zone," Scott said at a briefing held by Oceana. "This has the potential to harm everything in its path, including fisheries and marine life such as dolphins, sea turtles and the already endangered North Atlantic right whale."

Air guns shoot powerful blasts that Scott said are "100,000 times louder than that of a jet engine." The resulting seismic vibrations can reveal the size and location of subsea oil and gas deposits that can be reached by offshore drilling.

The comment period ended May 7 for the Bureau of Ocean Energy Management's plan to permit seismic surveying in the Atlantic, and the new rules could pass any time after June 7. Seismic testing is permitted in the Gulf of Mexico but banned off the California coast and hasn't occurred off the Atlantic coast since the 1980s.

Oceana wants the government to wait until a federal report comes out on the Marine Mammal Acoustic Guidelines, a larger set of regulations that examine the overall effects of different sounds on ocean species.

"The problem is, they haven't really considered all the information, they haven't considered all the science," said Jacqueline Savitz, vice president of the U.S. oceans division of Oceana and one of the speakers at the briefing.

In February, more than 100 scientists also asked the Obama administration to wait for the guidelines before approving seismic surveys in the Atlantic (*Greenwire*, Feb. 21).

Savitz said the air gun blasts will happen every 10 seconds, 24 hours a day, for weeks at a time. "It's impossible to even imagine the magnitude of these sounds."

According to an Oceana release, seismic air guns are "loud enough to kill small organisms like fish eggs and larvae at close ranges and can disrupt the behavior of large animals like whales and dolphins from up to 100 miles away."

Douglas Nowacek, a professor at Duke University's marine laboratory and one of the speakers at the event, said the sounds travel farther than higher-frequency noises and share the same frequency that right whales use to communicate.

Federal regulations say exposure to sounds of more than 180 decibels counts as enough to seriously injure or kill marine life, and anything over 160 decibels counts as a disturbance to behavior like mating, feeding or communication. Oceana says the air guns will produce 190 decibels, or 250 in water.

BOEM's environmental review anticipates major disruptions to marine animals, including nearly 30,000 injuries and millions of disruptions a year to dolphins and up to two injuries and several hundred disturbances a year to the critically endangered right whale. Those estimates are conservative, the agency said (*Greenwire*, May 8).

A draft of the National Marine Fisheries Service's new disturbance guidelines is expected to come out in early 2015. Sara Young, an Oceana marine scientist, said that while the threshold for serious injuries or deaths may be increased -- meaning a lower estimation of right whale injuries or deaths -- the threshold for disturbances might be lowered, resulting in a much higher number of predicted disturbances.

The offshore oil and gas industry thinks Interior's Atlantic plan is too restrictive. Groups including the American Petroleum Institute, the International Association of Geophysical Contractors and the National Ocean Industries Association sent a letter earlier this month criticizing BOEM's plan as based on "an unsupported, unobserved, and unrealistic scenario where [seismic] activities are projected unrealistically to result in thousands of incidental takes of marine mammals." The letter said even BOEM acknowledged that those kinds of numbers were unlikely.

"From this fundamentally flawed and inaccurate approach, the [proposal] develops and analyzes unrealistic mitigation measures to address the effects of a 'worst case' hypothetical scenario," they wrote.

But Scott pointed out that because individual companies doing the testing will hold onto information about oil deposits, multiple companies will survey the same areas. Oceana recommends making seismic testing data public to limit the number of tests.

Another recommendation is the use of marine vibroseis -- a technology that uses a less harmful hum but hasn't been deployed commercially (*E&ENews PM*, April 16, 2013).

Savitz pointed out that some localities and fishery groups, including the Mid-Atlantic Fisheries Management Council, have also come out against seismic testing because of potential impacts on fishing and tourism. And Scott said in an interview that the fight over air guns "speaks to a larger and broader energy issue about how we get ourselves off oil."

At the event, he said seismic testing will be only be the beginning of problems such as eventual oil drilling that will also be harmful to marine environments. "Wherever we have drilled, we have spilled."

DROUGHT:

Thousands in Sacramento Valley ordered to stop pumping from streams

Published: Friday, May 30, 2014

California's State Water Resources Control Board has ordered more than 2,600 water agencies and users to stop pumping water from streams in the Sacramento Valley as drought continues to plague the area.

Wednesday's order, the first such response since 1977, affects 2,648 farms, water agencies, cities and other property owners with "junior" water rights in the Sacramento River as well as tributaries such as the Feather, American and Yuba rivers.

While most of the users are farmers and large irrigation districts, urban water providers such as the city of Sacramento were also included. The city and many others have access to other water supplies, however. Sacramento has junior rights in the Sacramento River but "senior" water rights -- meaning they were bestowed before 1914 -- in the American River (*Greenwire*, May 27).

"There's no question there are going to be some areas in the Sacramento Valley that are going to suffer without water this year," said David Guy, president of the Northern California Water Association, a group representing Sacramento Valley property owners and irrigation ditches.

The order is meant to preserve water for senior rights holders, wildlife and "critical health and safety purposes," which can include drinking water for humans. Water board authorities said they could make exceptions for urban areas with junior water rights and no other source of water (Matt Weiser, *Sacramento Bee*, May 29). **-- JL**

FISHERIES:

Court upholds Md. menhaden catch limits

Published: Friday, May 30, 2014

Maryland officials hailed a state circuit court ruling Wednesday as a "victory for the health of the Chesapeake Bay" after a judge rejected claims that restrictions on catching menhaden were unconstitutional.

The state last year approved commercial restrictions on the ecologically important fish after the Atlantic States Marine Fisheries Commission voted in December 2012 to reduce the catch by 20 percent all along the East Coast. But watermen in Maryland sued over the limits, fearing damage to their livelihoods. Judge David Mitchell ruled in favor of the state's action in Dorchester Circuit Court.

The fish is an important food source for other fish, birds and marine mammals, but fisherman catch it to use as bait and as an ingredient in animal feed and health supplements (Timothy Wheeler, *Baltimore Sun*, May 29). **-- DTB**

WATER POLICY:

EPA to appeal decision sending transfer rule back to agency

Jeremy P. Jacobs, E&E reporter

Published: Friday, May 30, 2014

U.S. EPA yesterday said it will appeal a federal district court ruling that sent its controversial water transfer rule back to the agency for reconsideration.

Court watchers on both sides of the case had been anxiously waiting to see if EPA would appeal the ruling from the U.S. District Court for the Southern District of New York.

In March, that court sent the George W. Bush-era water transfer rule back to the agency, holding that its "justification doesn't hold water."

The 2008 rule exempted government transfers between bodies of water from obtaining federal discharge permits under the Clean Water Act, as long as those transfers don't involve industrial, municipal or commercial use.

Municipalities that rely on sophisticated pumping systems to provide water to their residents, such as South Florida and New York City, strongly support the rule, noting that the permuting process would be costly.

Environmentalists have long criticized it, however. They claim it adds dirty water to public drinking water supplies.

The Sierra Club and Friends of the Everglades, among others, brought the current lawsuit. U.S. District Judge Kenneth Karas sided with their arguments in a lengthy and abstruse opinion that has left several involved in the case wondering how far EPA would have to go to comply with it.

EPA had justified the rule by saying that the transfers don't constitute adding pollutants to "navigable waters" -- those covered by the Clean Water Act -- because water being moved from one navigable body to another navigable body via pipes or canals retained the "status" of navigability. Therefore, EPA said, the transfers don't require permits under the Clean Water Act.

But Karas held that the rule broadened the definition of "navigable" beyond Supreme Court precedent (*Greenwire*, March 31).

The ruling put EPA in a difficult spot because the Obama administration has signaled it doesn't entirely agree with the policy. But the water office has been busy drafting a new, broader waters policy.

Eleven Western states and the Southern Florida Water Management District have already announced their intent to appeal the ruling (*Greenwire*, May 28).

Some environmental attorneys speculated that EPA may want to participate in the appeal because the case could end up at the Supreme Court.

The Western Governors' Association applauded EPA's decision to further pursue the case.

"Western states rely on thousands of intrastate and regional transfers to move billions of gallons of water to satisfy domestic, agricultural and industrial needs," Executive Director Jim Ogsbury said in a statement. "Requiring NPDES permits for these transfers will be prohibitively expensive and could curtail certain transfers, with little if any water quality benefits."

MINING:

SEC asks appeals court to reconsider 'conflict minerals' ruling

Jeremy P. Jacobs, E&E reporter

Published: Friday, May 30, 2014

The Securities and Exchange Commission yesterday asked federal judges to reconsider their decision striking down a rule requiring companies to disclose whether minerals in their products were mined in conflict-ridden central Africa.

In April, the U.S. Court of Appeals for the District of Columbia Circuit upheld most of the SEC's "conflict minerals" rule, which the commission promulgated under the 2010 Dodd-Frank Wall Street reform legislation.

The rule seeks to crack down on the use of gold, tantalum, tin and tungsten that armed militias sell to fund their operations in the Democratic Republic of the Congo.

But the D.C. Circuit struck down one important aspect of the rule -- a requirement that companies state on their websites that components of their goods "may have originated" in the DRC.

The court held that such a provision violates the First Amendment by forcing companies to make disclosures.

"By compelling an issuer to confess blood on its hands, the statute interferes with that exercise of the freedom of speech under the First Amendment," wrote Senior Judge Arthur Raymond Randolph, a Republican appointee (*Greenwire*, April 14).

The SEC, along with humanitarian groups, asked the D.C. Circuit for a panel or en banc rehearing, meaning before all of the circuit's judges.

Specifically, they want the case to be reheard after the D.C. Circuit decides another case it is considering en banc. That case involves a challenge to a Department of Agriculture rule requiring food packaging labels to include the country of origin for the meat in the product.

In the conflict minerals ruling, Judge Srikanth Srinivasan, a Democratic appointee, had suggested putting the free-speech issues on hold pending the meat labeling case.

The SEC said that case "may affect the important constitutional questions addressed by the panel's First Amendment ruling in this case."

COAL:

Ore. delays export terminal decision

Manuel Quiñones, E&E reporter

Published: Friday, May 30, 2014

The Oregon Department of State Lands, a key agency reviewing a coal export terminal proposal along the Columbia River, has agreed to delay its decision on the issue.

Last month, Oregon Gov. John Kitzhaber (D) expressed opposition to coal exports from his state and said he expected the Lands Department to make a decision by the end of May.

Today, however, the department released a statement saying it had agreed with Ambre Energy Ltd.'s deadline extension request. The new date for a decision is Aug. 18.

"The main reason for this is because the Department needs further information regarding fisheries affected by the proposed terminal, as well as other information to complete our analysis of the project," spokeswoman Julie Curtis wrote in an announcement.

Curtis said the agency would gather additional information until June 30. The company will then have until Aug. 1 to respond to any questions. The agency will not accept any new public comments; it has already received more than 25,000.

OIL AND GAS:

Cow blamed for natural gas condensate spill

Published: Friday, May 30, 2014

North Dakota regulators are prodding energy companies to better secure their facilities after a natural gas condensate spill was linked to a wandering, grazing culprit.

Environmental Health Chief Dave Glatt yesterday said a cow likely caused the spill, which released roughly 20 barrels of condensate, the liquid byproduct of natural gas refinement, from a pipeline owned by a subsidiary of Oneok Inc., based in Tulsa, Okla.

"They just get rubbing along those valves and they open up," Glatt said. "Sometimes they need to scratch their backs and they open those valves."

It might even have been deliberate, Glatt joked.

"They like oil, and they eat that stuff up," he said. "Sometimes they can be the dumbest animals in the world, and sometimes you kind of wonder."

The incident happened near Sully Creek, a tributary of the Little Missouri River, in the western part of the state.

Glatt said owners of pipelines and refineries in North Dakota were warned before to bovine-proof their equipment after a similar cow-related spill several years ago.

"I do know that this isn't the first time it's happened," Glatt said. "They need to make sure their valves are locked."

State officials said cleanup is underway and absorbent booms are being used in the creek as a precaution (AP/*Wahpeton* [N.D.] *Daily News*, May 30). **-- DTB**

WATER POLLUTION:

Feds halt W.Va. project funding over potential 'irregularities'

Manuel Quiñones, E&E reporter

Published: Friday, May 30, 2014

This story was updated at 2:10 p.m. EDT.

The federal Office of Surface Mining Reclamation and Enforcement is halting funding for six water supply projects in West Virginia, citing potential legal "irregularities" in the application process.

The projects at issue are meant to address problems stemming from abandoned coal mines. But OSMRE says officials in the state have yet to prove that they qualify for Abandoned Mine Land (AML) funding under the Surface Mining Control and Reclamation Act.

"The discovery of these legal eligibility deficiencies and OSMRE's obligation to ensure the law is followed have made it necessary to review other proposed projects in an effort to make sure Federal AML funds are spent in a manner that complies with Federal law," said a statement from the agency.

"While OSMRE understands the crucial need for these types of projects," the statement added, "it is necessary to examine the application documents for each proposed project to determine whether the project meets the legal requirements and is eligible for AML funding."

OSMRE said the state had yet to prove that the projects, mainly new water lines, were necessary to remedy the impact of pre-SMCRA mining, as required by law.

"OSMRE has not and will not commit to funding AML projects until it determines whether the State followed the law and ensured that each project meets the legal requirements for funding," said the agency.

Separately, OSMRE said yesterday that it was looking into 29 other water line projects in West Virginia. "If a project qualifies and funding is available, OSMRE will provide the appropriate approvals," the agency said.

The West Virginia Department of Environmental Protection said it was working with the federal agency "to provide additional data related to six waterline projects identified by [OSMRE] as not meeting funding eligibility requirements."

DEP also said in a statement that it's "waiting for the federal agency to specify what additional information is needed for another 29 projects."

DRINKING WATER:

American Indian leaders want seat on state water panel

Published: Friday, May 30, 2014

American Indian tribes in North Dakota, facing a lack of quality drinking water on reservations, are calling for a seat on the State Water Commission.

Tribal leaders appealed to state lawmakers yesterday after learning that their request for a $2 million water pipeline for the Fort Berthold Reservation in western North Dakota was rejected -- despite the fact that the state has earned more than $500 million in taxes from oil wells on the reservation.

"The money that the state is getting, [it] doesn't seem to want to reinvest it back directly to the tribes, and so it's a huge issue for us," said Mark Fox, the Three Affiliated Tribes' director of water development.

The commission last year handed out $515 million for water supply, flood control and irrigation projects across the state. The board also allocates grants through its Resources Trust Fund, but the money is not directly available to tribal nations.

By law, the commission consists of the governor, state agriculture commissioner and seven state-appointed members. Fox said a tribal representative should be appointed by Gov. Jack Dalrymple (R) or mandated to sit on the commission through legislation.

The state said the issue would be a top priority when the North Dakota Indian Affairs Commission meets this summer.

"It's very, very important," said Scott Davis, the commission's executive director. "Water is just going to get more contentious in the future" (Mike Nowatzki, Fargo *Forum*, May 29). **-- DB**

AGRICULTURE:

System turns cows' manure into their drinking water

Published: Friday, May 30, 2014

Michigan State University says a system for pulling drinkable water from manure is on route to commercial application this year.

The school said yesterday that the system, which uses ultrafiltration, air stripping and reverse osmosis to make water clean enough for cattle, will help with animal operations in dry areas.

The technology, an add-on to an anaerobic digester, could be a valuable way to conserve resources and protect the environment, said Steve Safferman, a professor of biosystems working on the project.

"If you have 1,000 cows on your operation, they produce about 10 million gallons of manure a year," Safferman said in a statement. "Here in Michigan, we have a tendency to take water for granted. But out West, for example, where drought remains an issue, the accessibility of clean water could make the difference between a farm remaining viable or going out of business."

Manure is about 90 percent water. Safferman said it also "contains large amounts of nutrients, carbon and pathogens that can have an environmental impact if not properly managed" (AP/*Detroit News*, May 29). **-- JL**

LOUISIANA:

House approves bill to stop coastal restoration suit

Published: Friday, May 30, 2014

The Louisiana House approved a bill yesterday seeking to void a lawsuit by a New Orleans-area levee board seeking payment for coastal restoration from 97 oil and gas companies.

The state Senate already approved a similar measure, but the bill must now return to that chamber for consideration of changes clarifying that the measure is intended to stop the lawsuit.

Gov. Bobby Jindal (R) has already said he supports the bill.

The Southeast Louisiana Flood Protection Authority-East filed suit against the oil and gas companies, seeking compensation for their role in damaging the state's coast and vulnerable wetlands. Almost immediately, the powerful industry's allies pushed back, calling it an attack on a key industry and a bonanza for trial lawyers (*Greenwire*, April 16).

The bill would specify that levee boards are not permitted to bring legal challenges about management of the state's coastal areas, providing a legal argument for the companies to seek dismissal of the suit (AP/New Orleans *Times-Picayune*, May 29). **-- SP**

NEW YORK:

State tracks imperiled sturgeons near massive bridge project

Published: Friday, May 30, 2014

New York is monitoring the health of Atlantic and shortnose sturgeons in the Hudson River to make sure the state's overhaul of the Tappan Zee Bridge doesn't hurt the imperiled fish species.

Researchers have planted battery-powered transmitting devices in sturgeons to track their movement in the river. Officials said construction noise from the $3.9 billion bridge project could threaten sturgeons that spawn there. The region's Atlantic and shortnose sturgeon populations are slowly recovering from a long period of overfishing.

"A hammer hitting a pile [underwater] produces noise like a bell. Fish have air pockets to maintain buoyancy, and the sound can hit them as if they were punching bags and cause bruising and hemorrhaging and internal injuries," said Justin Krebs, a fish ecologist who is consulting the New York State Thruway Authority on the bridge overhaul.

The bridge deal requires contractors to minimize noise during the summer spawning season (Joseph Berger, *New York Times*, May 29). **-- DB**

ClimateWire -- Mon., June 2, 2014 -- **Read the full edition**

1. POLITICS: Angst on the campaign trail as climate change becomes a key issue

U.S. Rep. Gary Peters is locked in one of the nation's closest Senate races, and he's gambling that climate change will help him win it. But he's not rushing to support the landmark carbon standard being released today by the White House.

2. REGULATION: EPA power plant rule will shoot for 30% reductions -- sources

U.S. EPA will seek to cut up to 30 percent of cutting carbon dioxide from existing power plants before 2030. EPA Administrator Gina McCarthy will propose today the first-ever limits on greenhouse gases from the nation's power plants under Section 111(d) of the Clean Air Act, the most significant move to date in the Obama administration's effort to curb climate change.

3. NEGOTIATIONS: Observers cautiously optimistic that aggressive new EPA

power plant rule may help 2015 deal

The Obama administration's proposed power plant regulations out today are a "welcome development" for the global climate change negotiations, U.N. Framework Convention on Climate Change Executive Secretary Christiana Figueres will say in a statement today.

TODAY'S STORIES

4. **ADAPTATION:** Navy, Va. officials focus on protecting region with massive base from sea-level rise

5. **BIOFUELS:** Dueling studies highlight focus on climate impacts of renewable fuel standard

6. **STATES:** Albany insider doubts effects of EPA climate rule will be 'pervasive' in N.Y.

7. **RESEARCH:** Durable design solves critical problem in making fuel from water

8. **NATIONS:** Upcoming election could impact Indonesia's rainforest protection program -- panel

9. **ADAPTATION:** NYC implements programs to protect water supply from storms

10. **SCIENCE:** Denier groups 'isolate' climate scientists, IPCC working group co-chairman says

11. **NATIONS:** Filipino response to Haiyan slow and muddled -- local authorities

12. **TRANSPORTATION:** Volkswagen to unveil first electric car in U.S.

E&ETV's OnPoint

13. **CLIMATE:** Mass. environment Commissioner Cash talks economic impacts of EPA climate rule

EnergyWire -- Mon., June 2, 2014 -- **Read the full edition**

1. TECHNOLOGY: Can Calif. rule in energy storage?

California, land of Google Inc., Apple Inc. and Hollywood, wants to add one more to the roster of industries it dominates. This time it's energy storage, an absolutely enormous emerging market where it has quietly been developing a substantial lead.

TOP STORIES

2. **CLIMATE:** Days before new carbon rules, Kan. coal plant gets the green light

3. **LNG:** Md. export project wins key permit as experts assess impact of DOE revisions

4. **KEYSTONE XL:** PHMSA cites local power over pipelines in TransCanada letter

ELECTRICITY

5. **ELECTRICITY:** N.Y. 'zombie' plant caught up in Texas litigation over facility ownership

OIL AND GAS

6. **OFFSHORE DRILLING:** Industry fights 'false sense of security' as hurricane season starts

7. **COURTS:** Mich. AG says Chesapeake should stand trial in lease-rigging case

8. **SPILLS:** Coast Guard launches hearings on Houston Ship Channel wreck

9. **OFFSHORE DRILLING:** $10B Canary Islands oil project gets green light from Spain

10. **BUSINESS:** Cheniere proposes stock increase for higher staff pay

11. **OIL AND GAS:** Colo. firms experiment with walls around work sites

12. **OFFSHORE DRILLING:** For safety's sake, ex-senator seeks exception to Cuban embargo

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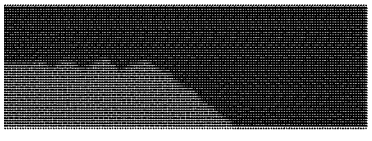

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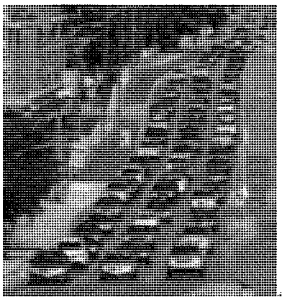
Subject: Air & Radiation Law News for May 23, 2014



Air & Radiation Law News

for May 23, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

Carbon Pricing Mechanisms Proposed as Way To Deal With EPA Power Plant Standards

Market-based carbon pricing mechanisms could emerge as one of the most effective ways for states and industry to comply with the Environmental Protection Agency's upcoming carbon limits for existing power plants....

Climate Change

Democrats Urge Reassessment of Regulation For Power Plants; Legislative Push Continues

Seven Senate Democrats asked President Barack Obama to reassess the Environmental Protection Agency's approach to its proposed regulation of carbon dioxide emissions for new power plants, as efforts continue to get a Senate vote on...

Climate Change

EU to Consider Proposals on Measuring, Monitoring Emissions From Trucks, Buses

The European Commission May 21 said it would publish in 2015 legislative proposals to require the manufacturers of trucks, buses and other heavy-duty vehicles sold in the European Union to measure and report fuel consumption and carbon dioxide...

Climate Change

McCarthy Touts Collaborative Effort In Developing Power Plant Emissions Rule

The Environmental Protection Agency has written its proposed rule to limit carbon dioxide emissions from existing power plants with collaboration in mind and will continue listening to interested parties, EPA Administrator Gina McCarthy...

Climate Change

Senators Request 120-Day Comment Period For EPA Regulation on Existing Power Plants

A bipartisan group of 47 senators asked the Environmental Protection Agency to provide a 120-day comment period for its forthcoming carbon pollution guidelines for existing power plants in order to provide sufficient time for interested...

Climate Change

Utility Greenhouse Gas Rule Divides Industry As Companies See Uneven Impacts of Limits

The Obama administration's upcoming greenhouse gas rules are gaining acceptance from an unlikely quarter—power companies—and splitting the energy industry's normally unified opposition to new emission limits....

Energy

Citizens Group Seeks Probe of Lobbying By Industry on Renewable Fuel Standard

A citizens group is asking the Environmental Protection Agency's inspector general to investigate whether a proposal to reduce the 2014 renewable fuel blending mandate was improperly influenced by the petroleum industry....

Energy

House Backs Defense Authorization Bill With Biofuel Procurement Restrictions

The military would be restricted in its ability to purchase and procure biofuels under Defense Department authorization legislation that was approved by the House May 22. ...

Energy

TransCanada to File Brief Supporting Nebraska Law for Keystone XL Oil Pipeline

TransCanada Corp. plans to file a friend-of-the-court brief in support of the Nebraska attorney general's effort to uphold the validity of a state pipeline siting law that is crucial for the Keystone XL oil sands pipeline (Thompson v....

Ozone Depletion

EPA to Allow Venting of Three Refrigerants That Are Not Considered Ozone Depleters

The Environmental Protection Agency will allow the venting of three refrigerant substitutes that are not expected to pose any harm to the environment....

Regulatory Policy

EPA Seeks White House Input on Risk Plan

A request for information seeking input on how to improve the Environmental Protection Agency's risk management plan rule was sent to the White House Office of Management and Budget for review May 22. Under Section 112(r)(7) of the Clean...

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CASAC Urges EPA To Clarify Role Of 'Copollutants' In NO2 NAAQS Review

Members of EPA's Clean Air Scientific Advisory Committee (CASAC) are urging EPA as part of its nitrogen dioxide (NO2) national ambient air quality standard (NAAQS) review to better clarify how it plans to address the issue of how "copollutants" -- emissions of other air pollution -- might affect findings on NO2's health effects.

High Court Weighs Suits Over EPA Power To Reject States' Haze Air Plans

Supreme Court justices at their May 22 conference will decide whether to hear a set of cases brought by states that are seeking to overturn appellate rulings backing EPA's power to reject portions of state air quality plans that the agency found failed to comply with its regional haze program, decisions that critics say were "overly deferential" to EPA.

Ohio Bill May Pose Hurdle For State's EPA Climate ESPS Compliance Plan

Pending legislation in Ohio to "freeze" state energy efficiency and renewable energy standards for two years could pose a major hurdle for the state in crafting its compliance plan for EPA's pending greenhouse gas (GHG) rule for existing utilities because the plan will likely aim to credit GHG cuts from efficiency, a state official says.

Greenwire

BIOFUELS:

Obama admin standing its ground on biodiesel rollback -- industry group

Amanda Peterka, E&E reporter

Published: Thursday, May 22, 2014

The Obama administration is apparently backing the reduced biodiesel target proposed by U.S. EPA last November, according to an industry group closely tracking the issue.

In a letter to President Obama yesterday, National Biodiesel Board CEO Joe Jobe said his group sees "indications" EPA plans to hold the target at 1.28 billion gallons, well below last year's actual production of that fuel. On the other hand, he wrote, the administration seems poised to back a small increase in total advanced biofuels that refiners must use this year.

National Biodiesel Board spokesman Ben Evans said in an email today the group has heard from "several people with knowledge of the decision-making process" that EPA would maintain the proposed biodiesel target.

EPA did not respond to a request for comment.

For months, the biodiesel industry and its supporters have been pushing the administration to raise the target both for biodiesel and advanced biofuels. Just last week, several Democratic senators pushed the administration to raise its proposed mandates, calling EPA's proposal a "mistake" and the "wrong call" (*E&E Daily*, May 15).

A final decision to keep the biodiesel mandate at 1.28 billion gallons, even while increasing the advanced biofuel target, would have "lasting, damaging consequences," Jobe told Obama.

A survey released last week found that the majority of U.S. biodiesel producers have already slowed production and delayed expansion plans this year because of the proposal and expiration of the industry's $1-a-gallon tax credit (*Greenwire*, May 14).

"I am confident that if finalized, this EPA proposal will increase the use of carbon-based fuels, reverse the trend of using more climate-friendly, clean-burning fuels, and ultimately jeopardize the legacy of this administration," Jobe wrote Obama.

EPA's proposal released last November would reduce refiners' biofuels requirements this year by 16 percent compared with the level set by the 2007 statute that created the renewable fuel standard.

For biodiesel -- an advanced biofuel made from soybean oil, animal fats and used cooking grease -- EPA has proposed to require at least 1.28 billion gallons of biodiesel be used in 2014 and 2015, below the industry's actual production last year of nearly 1.8 billion gallons (*E&ENews PM*, Nov. 15, 2013).

EPA wrote in its rule proposal that it assumed the industry tax credit would expire at the beginning of this year and that biodiesel volumes wouldn't far exceed 1.28 billion gallons, the standard it set in 2013 for biodiesel production. The White House also repeatedly raised concerns about the expiration of the tax credit during an interagency review (*Greenwire*, Jan. 6).

EPA has received thousands of comments on the rule and is expected to send a final version to the White House Office of Management and Budget for review as early as this week.

Biofuels supporters have generally been publicly confident that EPA would raise its proposed targets in the final rule, as EPA Administrator Gina McCarthy has acknowledged in multiple public appearances that her agency may have gotten the proposal wrong.

But not everybody has shared the optimism.

"I was told no one will like this rule," Advanced Biofuels Association President Michael McAdams said at a recent industry conference about meetings he's had with the White House and EPA.

If EPA raises the proposed advanced biofuels target of 2.2 billion gallons and does not raise the biodiesel target, Jobe wrote that the rule would lead to a "significant retreat" in biodiesel production. It would also lead to more imports of Brazilian sugar cane ethanol, which EPA has approved as an advanced biofuel, to fill the gap, he said.

"This decision would have lasting, damaging consequences for the jobs and economic activity supported by the U.S. biodiesel industry, while undermining your efforts to boost U.S. energy security through clean,

domestic energy production," Jobe wrote.

To be sure, the final numbers will likely not be known until EPA releases its final rule, likely in early summer. Advanced biofuels producers have also called on EPA to adjust its methodology and have hinted at legal action should EPA not make big changes to the rule.

DEFENSE:

House passes authorization bill with energy, enviro riders

Annie Snider, E&E reporter

Published: Thursday, May 22, 2014

The House has approved a more than $600 billion defense authorization bill that includes a number of controversial energy and environmental provisions, putting the chamber on a collision course with the Democratic-controlled Senate.

The measure, passed 325-98 early this afternoon, would repeal a 2007 ban on the purchase of carbon-intensive fuel for the military and impose restrictions on the purchase of biofuels. House lawmakers also approved an amendment from Rep. David McKinley (R-W.Va.) that would block funding for climate change studies, including the National Climate Assessment and the Intergovernmental Panel on Climate Change's fifth assessment report.

The chamber rejected an amendment from Rep. John Garamendi (D-Calif.) to give the Defense Department a larger role in the Obama administration's crackdown on illegal wildlife trafficking.

The administration has threatened to veto the House's measure, largely over its approval of costly weapons systems that the Pentagon has said it does not need. White House advisers also objected to the alternative energy provisions in their statement of administration policy.

The Senate Armed Services Committee is expected to take up work on its defense authorization bill in the coming weeks. After a major battle over the Pentagon's biofuels program in 2012, the Senate appears to have cemented support for the effort. Last year, an attempt by Sen. James Inhofe (R-Okla.) to include a handful of alternative energy amendments was voted down during committee markup and the House's provisions were stripped during conference.

AIR POLLUTION:

Health groups urge EPA science panel to endorse tougher ozone limits

Amanda Peterka, E&E reporter

Published: Thursday, May 22, 2014

Public health advocates are calling on a U.S. EPA science advisory panel to recommend tighter ozone limits at a key meeting next week.

In a letter circulated yesterday, public health organizations urged the Clean Air Scientific Advisory

Committee to endorse a range for the ozone standard that won't exceed 60 parts per billion. The 20-member panel assesses scientific backing for national air quality standards.

Setting a standard at higher limits "would risk that range be considered safe and acceptable not only for healthy adults, but also to those large at-risk populations," the advocates wrote. "Such a range would not, could not provide adequate protection to their health."

EPA is considering whether to lower the standard set in 2008 that limits ozone to no more than 75 ppb. A lower standard could lead to cleaner air but also raise regulatory costs for industry and risk putting states into noncompliance.

The health groups say that in recent years, science has shown adverse health effects have occurred with ozone concentrations higher than 60 ppb, including reduced lung function and inflammation.

EPA's most recent draft policy assessment called for setting a standard between 60 and 70 ppb but did not take into account new evidence of linkages between ozone and adverse health effects, the groups said. The White House put the EPA proposal on the back burner in 2011.

"Since the primary ozone standard directly affects the patients our members treat and the health risks our organizations seek to reduce, we urge you to advise EPA of the need for a much lower, more protective range," the groups wrote.

The letter dated Monday was signed by the American Lung Association, the American Public Health Association, the American Thoracic Society, the Trust for America's Health, the Asthma and Allergy Foundation of America, Health Care Without Harm and the National Association of County and City Health Officials.

In a draft posted online earlier this month and based on the 2011 EPA assessment, CASAC Chairman Christopher Frey proposed that the lower bound for the ozone standard be 60 ppb. The committee, though, has yet to decide on an upper limit and the letter had yet to be reviewed or approved by the entire committee (*Greenwire*, May 12).

At the teleconference meeting next Wednesday, the committee is expected to finalize the range.

Earlier this week, Sen. David Vitter (R-La.) called on EPA to delay the teleconference, arguing that the committee is at risk of relying on incorrect data in health assessments that inform the standard (*E&E Daily*, May 20). Industry and GOP critics have said that lowering the standard to 60 ppb would lead to adverse economic impacts.

EPA is under a court deadline to produce a draft ozone rule by Dec. 1 and finalize it by Oct. 1, 2015. EPA Administrator Gina McCarthy will make the final determination on the standard.

BIOFUELS:

New D.C. ad push aims to spur support for RFS

Amanda Peterka, E&E reporter

Published: Thursday, May 22, 2014

Biofuels supporters this week launched a Memorial Day ad campaign in Washington, D.C., to rally support for the renewable fuel standard.

The ads, which connect renewable fuels to lower gas prices, will play this week on a local radio station and on gasoline station monitors inside the Beltway, according to Fuels America, a coalition of biofuels, agriculture and national security interests that support the federal biofuels mandate.

The campaign urges the public to tell the Obama administration to support the mandate, through which U.S. EPA sets yearly requirements for refiners to use ethanol and advanced biofuels.

It comes as EPA is in the final stages of considering a rule that would lower the targets for the first time this year, largely on concerns expressed by the oil industry over a lack of adequate renewable fuel infrastructure.

Fuels America did not disclose details about the cost of the campaign.

NATURAL GAS:

Senate passes measure to prevent severe propane shortages

Hannah Northey, E&E reporter

Published: Thursday, May 22, 2014

The Senate yesterday passed bipartisan legislation by unanimous consent on a voice vote to relax regulations for transporting home heating fuels, which were severely constrained this past winter as temperatures plunged across the Midwest and East Coast.

The upper chamber approved legislation from Sen. John Thune (R-S.D.), S. 2086, which would allow governors greater flexibility to declare emergencies when fuels are pinched, and would direct the Federal Motor Carrier Safety Administration (FMCSA) to extend emergency rules allowing the increased transportation of heating oil, natural gas and propane until May 31.

The bill also would require the Energy Information Administration to notify states if certain petroleum reserves fall below historical averages.

The bill, which has bipartisan co-sponsors, including Sen. Amy Klobuchar (D-Minn.), now moves to the House.

"With the extreme cold temperatures and record propane prices that South Dakota and many areas of the country faced this winter, the last thing we should do is make it harder for governors and fuel distributors to address these home heating fuel shortages when they arise," Thune said in a statement.

The FMCSA this winter extended state emergency orders for almost 40 states plagued with fuel shortages, allowing vehicle operators to continue transporting the fuel despite federal regulations that limit their hours of service.

The propane shortages that struck the Midwest this winter have garnered increasing attention on Capitol Hill, where discussions have touched on the country's ongoing export debate.

The nation's top propane trade association earlier this month told a Senate panel that the federal government should investigate what role propane exports played in massive price spikes and supply bottlenecks that plagued the Midwest and Northeast this winter (*E&E Daily*, May 2).

AIR POLLUTION:

Enviros sue EPA over Texas ozone woes

Published: Thursday, May 22, 2014

A persistent ozone problem in urban areas of North Texas has led the Sierra Club to sue U.S. EPA, saying it failed to enforce pollution regulations.

When the Dallas-Fort Worth area failed to meet federal standards last June, a 1997 rule required the region's violation status to increase from "serious" to "severe," a change that would mandate tighter pollution controls.

But the Sierra Club said EPA hasn't acted. After "active negotiations" with the agency failed, the Sierra Club filed suit Tuesday in U.S. District Court for the District of Columbia, calling on the court to force EPA to act.

"While we recognize that the Environmental Protection Agency has many priorities, nothing is more important than protecting our children from the dangers of smog and the asthma attacks that it can trigger," said Neil Carman, clean air director of the Sierra Club's statewide Lone Star Chapter.

The Texas Commission on Environmental Quality said the suit is a distraction and pointed out that EPA passed tougher restrictions in 2008. The 2008 and 1997 standards create overlapping requirements in some metro areas, including Dallas-Fort Worth.

"[The] TCEQ is currently focusing on the more stringent 2008 ozone standard rather than a prior standard that [the] EPA has replaced and partially revoked and proposed to fully revoke," the state agency said in a statement.

But for now, the older standard remains in effect, and environmental groups want EPA to help clean up Texas' air after the failure of state agencies.

"Asking [Gov.] Rick Perry to enforce the Clean Air Act in 2014 is like asking Wall Street tycoons to care about low-income families," said Jim Schermbeck, director of the North Texas group Downwinders at Risk. "That's why 6 million residents need the EPA to do its job and guarantee North Texas safe and legal air" (Randy Lee Loftis, *Dallas Morning News*, May 21). **-- DTB**

AIR POLLUTION:

Carnival retooling more engines to cut cruise emissions

Published: Thursday, May 22, 2014

More than 70 ships in the world's largest fleet of cruise liners will have their engines altered to reduce air pollution.

Carnival announced last year it would install scrubbers on up to 32 of its vessels' massive diesel engines to cut down on sulfur dioxide and soot, but it upped that number today, bringing its investment to $400 million.

At port, the ships will connect to the electrical grid instead of idling.

The company reached an agreement last year with U.S. EPA to reduce its maritime emissions.

Vessels' emissions at sea were largely unregulated until 2010, when the International Maritime Organization created buffer zones along the U.S. coastline that required foreign-flagged ships to reduce pollution.

Carnival executives don't expect customers to notice the difference on the altered ships; filters will be located in the engine room, and prices won't be affected. The company plans to use the technology in 70 percent of its fleet.

"This is based on our confidence coming out of the first projects we've had installing the technology," Carnival Corp. spokesman Tom Dow said (Tamara Lush, Associated Press, May 22). **– DTB**

PEOPLE:

Exelon president, CEO will lead nuclear trade group

Hannah Northey, E&E reporter

Published: Thursday, May 22, 2014

The Nuclear Energy Institute this week tapped Exelon Corp. President and CEO Christopher Crane to lead its board of directors.

Crane, whose company operates the nation's largest fleet of nuclear reactors, has taken a lead role in calling for federal and state fixes to position nuclear power as a means to curbing carbon emissions.

PEOPLE

Crane is replacing John Young, president and CEO of Energy Future Holdings Corp. Members of the board typically serve three-year terms.

Last week, Crane told an audience at Resources for the Future in Washington, D.C., that states implementing U.S. EPA's forthcoming regulations on carbon emissions should adopt new "clean energy" standards that include nuclear power alongside renewable energy sources (*EnergyWire*, May 14).

Crane also said Exelon would continue to lobby on behalf of its portfolio of generation assets, facing advocates for wind and solar power and other energy options.

At a speech this week at NEI's annual conference in Scottsdale, Ariz., Crane touched on the industry's need in coming months and years to ease the burden of "myriad" new regulations and industry actions, ensure strong leadership at the Nuclear Regulatory Commission, and promote the value of nuclear power in competitive markets where some reactors are under severe economic pressure.

"As the electric industry moves toward one of the most transformative periods in its history, it is our responsibility to ensure that nuclear energy continues to play a profound role in our diverse portfolio of electricity sources," Crane said in a release.

Crane also called on the White House to nominate George Apostolakis, a current NRC commissioner whose term expires next month, for a second term at the agency. The administration should also nominate a "knowledgeable, sound replacement" for NRC Commissioner Bill Magwood, who is leaving the agency this August to lead the Nuclear Energy Agency in Paris, Crane said.

NEI also tapped Donald Brandt, president and CEO of Phoenix-based Pinnacle West Capital Corp. and Arizona Public Service Co., as the board's vice chairman.

MICHIGAN:

Fire causes hazmat situation at garage next to fuel terminal

Published: Thursday, May 22, 2014

Officials declared a hazardous materials situation in southwest Detroit after a two-alarm fire broke out this morning in a two-story maintenance garage in a commercial complex where diesel fuels, oils and other petroleum products are stored.

Firefighters worked to contain the fire to a single building to keep it away from the Sunoco Inc. terminal next to the garage where tanker trucks destined for local gas stations fill their tanks with gasoline.

"The wind can shift at any time; you know, the wind is a big factor in these big fires where, if the wind shifts and blows right onto them, they could heat up enough to breach and cause a major, major problem," Detroit Fire Chief Gary Fisher said.

Tony Fenton, who planned to test the air quality at the plant, said Sunoco has safeguards against fire. "They have isolation valves and everything. There's foam underneath the loading racks and everything else, so if there was any sign of flame, it would drop tons of foam to prevent that from going anywhere.

"But at the end of the day, you don't want fire near these tanks with 40,000 gallons of fuel in them," Fenton said (CBS Detroit, May 22). **-- JL**

JAPAN:

Court rules against nuclear plant restart, setting back nation's efforts

Published: Thursday, May 22, 2014

Japan's bid to end its nationwide nuclear freeze suffered a blow yesterday when a court ruled against restarting a power plant that has been shut down since the Fukushima Daiichi disaster.

The Fukui District Court's decision to block the restart of the Ohi nuclear power plant isn't final under Japanese law.

But the ruling will make it harder for the government and nuclear industry to bounce back from the 2011 Fukushima Daiichi power plant meltdown. All of the country's nuclear power stations have been idle since then as the government seeks to strengthen its safety regulations.

"From the perspective of protecting personal rights and health from radioactive substances, this leaves doubts about whether safety technology and equipment will be sufficient" to safely operate the Ohi plant, the court wrote in its ruling.

The plant, about 300 miles west of Tokyo, supplies electricity to manufacturers in the region. Kansai Electric Power Co., the plant's operator, called the decision "regrettable."

Nuclear power opponents cheered the ruling.

"This is a landmark ruling, one that gives voice to many residents who live near nuclear plants, who have previously had no voice," said Harumi Kondaiji, a Tsuruga City official (Saito/Sheldrick, Reuters, May 21). -- **DB**

ClimateWire -- Fri., May 23, 2014 -- **Read the full edition**

1. REGULATION: China's ambitious cap-and-trade plan rolls down a long, bumpy runway

BEIJING -- China has made progress in its carbon trading pilot programs but still has a long way to go, government officials and industry players believe.

2. BUSINESS: Shareholder resolutions gain ground on 'stranded assets' issue

Questions about oil and gas companies risking billions of dollars in stranded petroleum assets under potential new carbon regulations remained a hot topic this week, as three of the world's leading energy companies responded to shareholder pressure to address such concerns.

TODAY'S STORIES

3. **RENEWABLE ENERGY:** For the first time, hydropower accounts for less than 50% of U.S. renewable energy

4. **EXTREME WEATHER:** Agency projects normal-to-below-normal hurricane season and helps cities predict storm surges

5. **ENERGY STORAGE:** First grid-scale battery of its kind unveiled at Calif. farm

6. **FOOD SECURITY:** Reducing wasted food and empowering more women as farmers may be keys to future harvests

7. **EMISSIONS:** European cities see prosperity in lower emissions, renovation and connectivity

8. **FISHERIES:** Company hopes to convert natural gas into fish food

9. **WATER:** Managers see freshwater shortages as part of a new normal for changed climate

10. **OCEANS:** Sea-level rise forces NASA to retreat

11. **AGRICULTURE:** Coca-Cola, Pepsi struggle to surveil sugar supply chains

12. **FORESTS:** Study says carbon loss from tropical forests 'underestimated'

13. **ADAPTATION:** Green spaces could keep city temperatures level until 2050

EnergyWire -- Fri., May 23, 2014 -- **Read the full edition**

1. ELECTRICITY: N.Y. energy czar sheds more light on 'Restructuring 2.0'

ALBANY, N.Y. -- New York's energy czar this week peeked out from the shadows of state government to explain and justify Gov. Andrew Cuomo's (D) plans for sweeping regulatory changes aimed at the state's sprawling electric grid.

TOP STORIES

2. **RENEWABLES:** Ill. amendment seeks to jump-start state's solar market

3. **OFFSHORE DRILLING:** Safety systems attempt to catch up with ever-harsher work conditions

4. **NATURAL GAS:** Industry must stand up to 'anti-energy' rhetoric -- Atmos chairman

ELECTRICITY

5. **ELECTRICITY:** Coal down, costs up -- DOE forecasts

6. **BUSINESS:** N.D. utility making big plans for natural gas

7. **ELECTRICITY:** Fire at Colo. power plant adds new element to decommissioning discussion

OIL AND GAS

8. **OIL AND GAS:** $2.8B Hess sale stretches beyond gasoline stations

9. **REGULATION:** Texas commissioners side with oil industry over brackish water

10. **TECHNOLOGY:** Energy entrepreneurs look for a 'Surge' of investors

11. **ARCTIC:** Coast Guard gets ready for summer without drillers

12. **GAS EXPORTS:** Dow exec warns of policy-driven price spikes for homeowners

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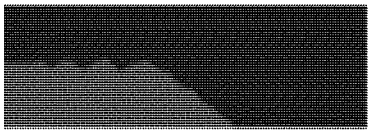

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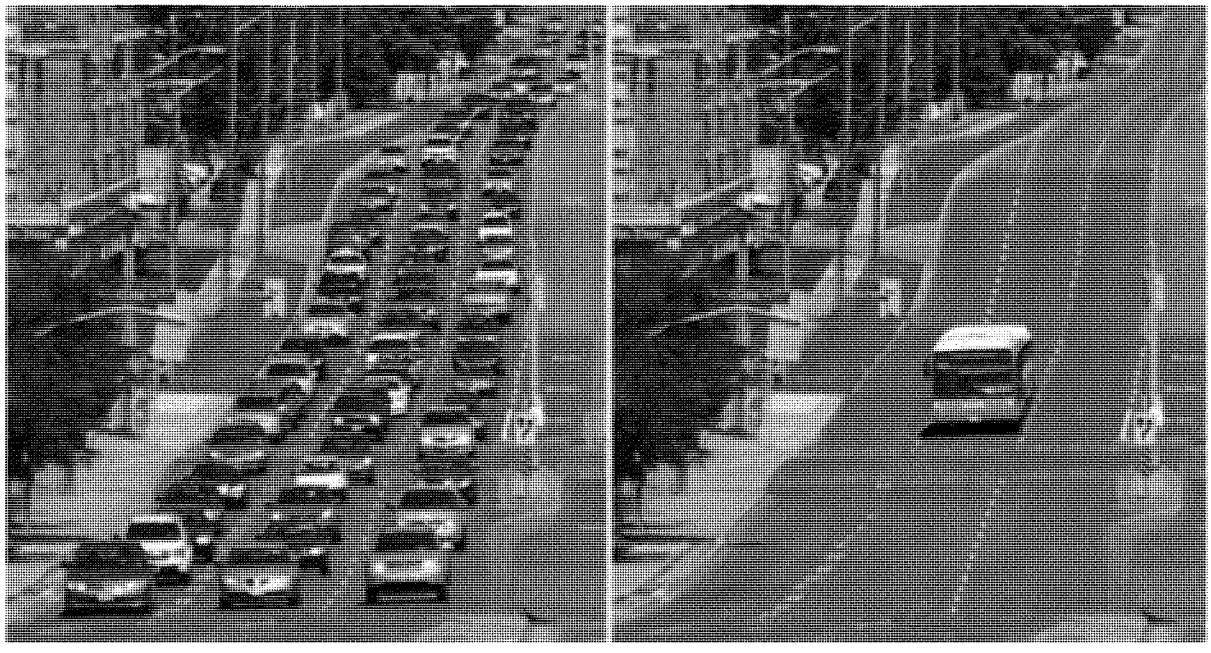
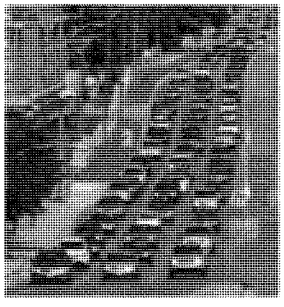


PEOPLE



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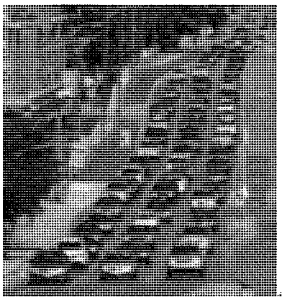
From: Turley, Jennifer
Sent: Thur 5/22/2014 3:12:55 PM
Subject: Air & Radiation Law News for May 22, 2014



Air & Radiation Law News

for May 22, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA OKs San Joaquin Valley Air Plan, Lifts Sanctions

The Environmental Protection Agency is issuing a final rule May 22 approving revised contingency measures California submitted to correct deficiencies in its plan to bring the San Joaquin Valley into attainment with the 1997 federal 24-hour...

Air Pollution

Health Groups Say EPA Advisory Panel Should Recommend Lower Ozone Standard

A coalition of national health organizations urged a federal advisory committee to recommend the Environmental Protection Agency set a new ozone air quality standard no higher than 60 parts per billion....

Air Pollution

OECD: Air Pollution-Related Deaths, Illness Cost Big Economies $3.5 Trillion Annually

Air pollution costs the world's biggest economies some $3.5 trillion a year in premature deaths and illnesses, and the costs will rise without more regulatory action to limit vehicle emissions, especially from diesel fuel, says the Organization...

Air Pollution

Sierra Club Asks Court to Compel EPA For 'Honest' Classification of Dallas Air

Citing levels of smog as "among the highest in the country," the Sierra Club has asked a federal court to compel the Environmental Protection Agency to take action to enforce the Clean Air Act in Texas to protect the health of residents...

Air Pollution

Waxman Says House Permitting Bill Would Weaken Air Quality Protections

Draft legislation intended to expedite the approval of preconstruction permits issued under the Clean Air Act contains provisions that would weaken air quality protections, according to House Energy and Commerce Committee ranking member...

Climate Change

Moniz Says Boost in Energy Efficiency Needed to Address Climate Change

An "enormous contribution" from energy efficiency will be needed for an effective solution to climate change, Energy Secretary Ernest Moniz said May 21, as the Obama administration moved forward with administrative actions to...

Climate Change

UN Green Climate Fund Aims to Raise $100 Billion Annually for Poor Countries

The United Nations' Green Climate Fund announced details May 21 of how it plans to raise as much as

$100 billion a year to help poor countries adapt to climate change....

Emissions Trading

California CO Emissions Allowances Sell Out at Auction for $11.50 Each, CARB Says

California sold all 16.95 million carbon allowances at its latest auction for $11.50 each, in line with analysts' expectations....

Energy

Iowa Governor Signs Legislation Extending Tax Credits for Retailers of Alternative Fuels

Iowa Gov. Terry Branstad signed legislation that both extends and increases the tax credits offered to retailers of alternative fuels in the state....

Energy

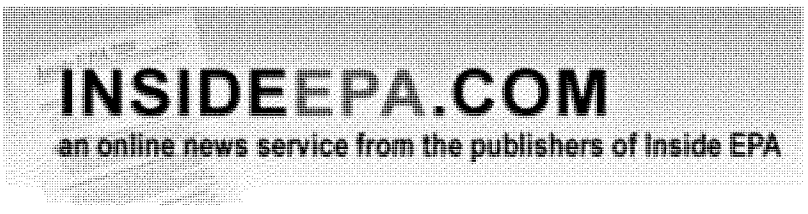
Sixth Circuit Decision on Cellulosic Ethanol Plant Clarifies Standing in NEPA Lawsuits

The Energy Department conducted an adequate environmental review of a cellulosic ethanol plant proposed to be built in Michigan, federal appellate judges said in a May 21 opinion (Klein v. EPA, 6th Cir., No. 13-01165, 5/21/14)....

Hazmat Transport

Minnesota Governor Signs Bill Requiring Rails To Pay for Emergency Training, Preparedness

Minnesota Gov. Mark Dayton (DFL) has signed legislation that will require railroads operating in the state to pay an annual fee to help the state prepare for rail accidents....



Inside EPA's **Weekly Report**, 05/23/2014

http://insideepa.com/Inside-EPA/Inside-EPA-05/23/2014/menu-id-67.html

Remaining Suits Pose Hurdles For CSAPR But Observers Doubt Impacts

A handful of pending lawsuits over EPA's implementation of its Cross-State Air Pollution Rule (CSAPR) pose lingering legal hurdles to the agency's ability to revive the regulation after the Supreme Court upheld the rule, but legal observers doubt the suits pose the risk of undoing the entire 28-state air quality trading program.

Whitfield Weighs Using House Bill To Boost States' Air Permit 'Sovereignty'

Rep. Ed Whitfield (R-KY), chair of the energy committee's power panel, is weighing possible revisions to a draft bill that would speed the Clean Air Act permitting process in order to boost states' "sovereignty" in deciding how to write air permits for industrial facilities in the absence of EPA guidance on implementing federal air standards.

9th Circuit Queries Standing, Mootness In Suit Over Nevada Haze Air Plan

A three-judge panel of the U.S. Court of Appeals for the 9th Circuit raised questions at recent oral arguments over whether environmentalists have legal standing to pursue their suit claiming Nevada's haze emissions-reduction plan is too weak, and whether pending utility closures in the state will moot some of the advocates' claims.

Latest Blogs

Lawmakers Seek Regulatory Review Commission

Hoping to spur action on a stalled Senate companion before the end of the year, a bipartisan group of House lawmakers has introduced legislation that . . .

EPA Rejects Part Of South Dakota's GHG Permit Plan

EPA has rejected part of a South Dakota air quality state implementation plan (SIP) that would automatically revoke federal greenhouse gas (GHG) permitting requirements for . . .

Greenwire

CLIMATE:

States pressing EPA for efficiency credits in power plant regs -- Moniz

Hannah Northey, E&E reporter

Published: Wednesday, May 21, 2014

States are urging the Obama administration to get them credit for energy efficiency programs in U.S. EPA's carbon-curbing regulations for existing power plants.

EPA will rely on states to craft plans to comply with the proposed rule that would set standards for carbon dioxide emissions under Section 111(d) of the Clean Air Act.

Energy Secretary Ernest Moniz told reporters today at the 2014 Energy Efficiency Global Forum in Washington, D.C., that EPA Administrator Gina McCarthy is offering states as much flexibility as possible, and states are playing up efficiency programs.

"She's certainly hearing from the states that efficiency would be an effective tool," Moniz said.

During an online forum earlier in the week, McCarthy said that President Obama had tentatively decided to introduce the existing power plant proposal himself on June 2. The rule is the centerpiece of Obama's Climate Action Plan unveiled last year, and environmentalists have urged the administration to do everything it can to ensure it delivers serious reductions -- including by improving demand-side energy efficiency.

The administration has homed in on regulation and administrative measures to bolster efficiency -- and curb greenhouse gas emissions -- amid gridlock on Capitol Hill.

Moniz noted that the White House in recent weeks has announced billions of dollars in new spending and standards for energy efficiency and support for the solar industry. The administration is also offering clean energy incentives for real estate investors and homeowners and private-sector commitments to installing and financing renewables.

"I cannot see a credible resolution for our climate change challenges without an enormous contribution from the demand side," he said. "We can't get there on our supply side [alone]."

Moniz acknowledged that the focus on such mechanisms is critical in light of tough sledding for bipartisan efficiency bills on Capitol Hill.

Moniz pointed to the stalled efficiency legislation from Sens. Jeanne Shaheen (D-N.H.) and Rob Portman (R-Ohio), which failed to make it to the Senate floor, tripped up by amendments and attempts to link the passage of the bill to other proposals like the Keystone XL pipeline (*ClimateWire*, May 21).

The Shaheen-Portman bill, Moniz said, appeared to have broad bipartisan support but "no pathway to implementation."

In the House, Moniz said, a bipartisan energy efficiency measure that Republican Rep. Cory Gardner of Colorado and Democratic Rep. Peter Welch of Vermont introduced would also ultimately need bicameral support. Gardner and Welch's bill would encourage federal agencies to use energy savings contracts to attract private-sector investments in efficiency improvements at government buildings and schools (*Greenwire*, April 30).

"We'll just have move with as many administrative tools as we can," Moniz said, adding that the administration hopes to garner funding for efficiency despite budgetary constraints.

Moniz's comments at the conference coincided with the Alliance to Save Energy's launch of its "Energy

2030 on the Road" campaign aimed at doubling U.S. energy productivity by 2030 -- namely through state and local outreach.

Nicole Steele, the alliance's director of policy and state relations, said the group -- including businesses like Dow Chemical Co., universities, and a number of environmental and nonprofit groups -- is focused on federal pathways for boosting efficiency, but the new messaging campaign will focus on getting as many state and local governments as possible to support the goal of doubling efficiency.

A portion of the group's work, Steele said, will be to ensure that states can tap into energy efficiency to comply with EPA's 111(d) -- and that will be a "next step" after EPA releases its rule.

"Using energy efficiency has an emissions reduction tool is a specific recommendation within Energy 2030," she said.

Reporter Jean Chemnick contributed.

AIR POLLUTION:

GOP bill to ease manufacturing permitting sparks heated debate

Daniel Lippman, E&E reporter

Published: Wednesday, May 21, 2014

Industry today came out in strong support of a proposed Republican House bill that could make it easier for new manufacturing facilities to get air permits and would require U.S. EPA to provide more public information on how long it takes for such permits to be issued.

But environmentalists, Democrats and a Delaware environmental official opposed the bill, saying it would worsen air quality and hurt public health.

At a hearing of the Energy and Commerce Subcommittee on Energy and Power, Chairman Ed Whitfield (R-Ky.) said the issue was particularly important now because of the U.S. energy boom, which has provided cheap natural gas to power factories in the country.

But he said the "manufacturing renaissance" was not guaranteed and could be derailed partly because of the "cumbersome permitting process" that companies have to go through.

If enacted, the bill would require a so-called permitting dashboard, require "guidance" to be given on permitting needs and require the EPA administrator to update Congress every year on how the agency is expediting the permitting process.

Lorraine Gershman, director of regulatory and technical affairs at the American Chemistry Council, testified that the 177 chemical industry projects in the works valued at $112 billion face problems in a "lengthy and complex" environmental regulatory process.

"Problems include uncertainty as to the schedule for obtaining a final preconstruction permit, a requirement that companies use emission modeling programs that cannot adequately accommodate site-specific data," she said, suggesting that the proposed bill could help ameliorate the problems.

But Democrats on the committee pushed back against the proposed legislation, saying it was unneeded and would harm public health.

Subcommittee ranking member Bobby Rush (D-Ill.) said the bill would create an "additional burden and adds additional responsibilities on the U.S. EPA, at the time Congress has been steadily slashing funding for EPA."

He also said it appeared the bill would exempt new facilities in certain cases from complying with new ambient air quality standards and added that most of these facilities are regulated by states and not EPA.

John Walke, clean air director of the Natural Resources Defense Council, said the bill would create loopholes, more red tape and even "unintended burdens" on industry, the opposite of the Whitfield's intentions. He warned that the bill "would grant amnesty" from health standards and "would allow preconstruction permitting to proceed in violation of national health standards if EPA" did not issue additional guidelines for implementation of its air regulations.

Collin O'Mara, Delaware's secretary of the environment and energy, said that although more transparency from EPA was a good idea, his state had shown that it was able to issue air permits to new manufacturing sources in a timely fashion, undercutting a main purpose of the bill.

Click here to read a draft of the legislation.

COAL:

Enviro group threatens to sue Interior over rulemaking petition

Manuel Quiñones, E&E reporter

Published: Wednesday, May 21, 2014

This story was updated at 4:19 p.m. EDT.

The group WildEarth Guardians, active in fighting coal mining in Western states, is threatening to sue the Interior Department's Office of Surface Mining for not responding to a rulemaking petition.

The February petition asked OSM, the country's top coal mining regulator, to write new rules to improve National Environmental Policy Act coal mining reviews.

In a notice of intent to sue (NOI) last week, WildEarth Guardians said OSM failed to respond to the petition within 90 days as required by the Surface Mining Control and Reclamation Act.

"Guardians' petition was submitted in light of a number of examples of OSM failing to review and recommend approval of mining plans in accordance with NEPA," said the group, which also has outstanding federal lawsuits against OSM on the issue.

"As the petition documented," the notice said, "this is of great concern in light of the significant environmental impacts of coal mining, including air impacts, water impacts, greenhouse gas impacts, land impacts and fish and wildlife impacts."

In a letter last week, OSM told WildEarth Guardians that the agency was "still reviewing the factual, legal and technical justification for rule-making set forth in your petition" and that it won't be able to meet the 90-day deadline.

"In light of the complexity of the issues raised in the petition, the extent of analysis required to address these issues fully, and severe staffing constraints both in [the Office of Surface Mining Reclamation and Enforcement] and the Department of the Interior's Office of the Solicitor," OSM said, "we will need additional time to complete our review."

Coal skeptics have in recent years increased their focus on OSM in attempts to increase federal scrutiny of mining. The NEPA petition is one of several pending.

Environmental groups in West Virginia and Illinois have asked OSM to take over their states' regulatory programs, accusing local officials of lax oversight.

WildEarth Guardians is also petitioning the agency to write new rules to protect sage grouse habitats and to reduce nitrogen oxide gas emissions from coal mine-related blasting.

OSM is working on several rules, including one to protect waterways from coal mining and another to govern the use of coal ash in mine reclamation.

BIOFUELS:

Couple takes ethanol plant to court over fire risk

Published: Wednesday, May 21, 2014

An Iowa couple is suing a cellulosic ethanol plant after a field containing thousands of bales of corn stover caught fire earlier this year across the road from 42 acres of land the couple owns.

Burdell and Barbara Clark, who want to retire on the land near Nevada, Iowa, say the storage area threatens their property and is likely to catch fire again.

In the suit filed in Story County District Court against DuPont Danisco, the Clarks contend DuPont acted recklessly in storing "highly combustible corn stover" near their home. They want the company to move the material and compensate them for property damage they say was caused by the fire.

"Firefighters can't put these fires out. They've got to just let them burn," said Burdell Clark, who said the fire smoldered for more than a week. "It was a forest wildfire that never moved."

DuPont is building a $225 million plant using corn stover to make cellulosic ethanol and said in a statement that it is "conducting extensive investigations to determine if additional safeguards are required at our stover storage locations to further ensure the safety of our employees, emergency responders and the community" (Donnelle Eller, *Des Moines Register*, May 21). **-- SP**

ETHANOL:

Industry seeks access to Chinese market

Amanda Peterka, E&E reporter

Published: Wednesday, May 21, 2014

Ethanol industry trade groups and companies say they're making inroads in opening up Chinese markets to U.S. ethanol imports.

A group of U.S. ethanol proponents and businesses returned last week from what they called a fruitful trade mission designed to explore opportunities and challenges to exporting U.S. ethanol into the Chinese market.

After meeting with Chinese officials, as well as large Chinese petroleum companies, U.S. producers say they're closer to tapping that country's 30-billion-gallon-a-year gasoline market.

"We believe that there are greater possibilities to export ethanol to China than many of us thought prior to going on the trip," said Jim Miller, vice president and chief economist at ethanol trade group Growth Energy.

U.S. ethanol exports have recently expanded due to a lowering in domestic corn prices, which has brought the price of U.S. ethanol down to the cheapest in the world. U.S. ethanol producers are also increasingly eyeing new markets for their product because wrangling over the federal renewable fuel standard at home has made future use in the United States less certain.

A new European Union tariff on ethanol imports from the United States has made the European market less desirable and spurred more exports to new and emerging markets (*Greenwire*, Feb. 21).

China is one of several markets that the industry is hoping to open. By law, China currently does not allow imports of foreign ethanol. Other barriers stand in the way of a robust ethanol trade with the nation, including Chinese concerns over using food crops to make fuel.

The recent trade mission from May 5 to May 13 to China was supported by the Agriculture Department's Foreign Agricultural Service. In the first part of the trip, ethanol trade groups, U.S. officials, representatives from several state departments of agriculture and more than 20 agribusinesses traveled to northeast China to view agricultural practices, according to Miller.

Back in Beijing, U.S. ethanol representatives, U.S. officials, National Farmers Union President Roger Johnson and the China country director for the U.S. Grains Council met with Chinese energy and trade officials and China's two largest petroleum companies.

In a press call yesterday, trade mission members said they came away from the meetings optimistic about future potential trade opportunities.

"There's a fairly sizable potential export market," Johnson said. But he added, "It's going to take a little bit of work to break into that market."

The ethanol trade groups said they believed their major competition in China would be domestic Chinese production of ethanol and other oxygenates.

In China, methyl tertiary-butyl ether is still commonly used as an oxygenate in fuel, whereas MTBE use has almost ceased in recent years in the United States because of concerns over groundwater contamination. Ethanol has largely replaced MTBE as an oxygenate in gasoline in the United States; the large majority of U.S. gasoline contains about 10 percent ethanol.

China "should certainly consider ethanol as their fuel oxygenate of choice," said Kelly Davis, director of regulatory affairs at the Renewable Fuels Association, who participated in the trade mission.

BIOFUELS:

Tyson sells off half-ownership in renewable diesel venture

Amanda Peterka, E&E reporter

Published: Wednesday, May 21, 2014

Tyson Foods Inc. is selling its 50 percent stake in a $150 million renewable diesel plant in Louisiana.

In a statement today, Tyson said that selling its stake in Dynamic Fuels LLC, a joint venture with Syntroleum Corp., would provide the company with capital "to redeploy into other opportunities."

Renewable Energy Group Inc., the nation's largest biodiesel producer, has agreed to acquire the food giant's stake for $18 million in cash at closing and up to $35 million in future payments. REG, which acquired Syntroleum last year, has also agreed to fund $12 million of Dynamic's indebtedness to Tyson at the time of closing.

"It gives us the opportunity to further expand our production capacity into new product lines, while growing our overall advanced biofuel manufacturing capability, and bringing on other renewable chemical applications," Renewable Energy Group President and CEO Dan Oh said in a statement.

Dynamic Fuels has built a biorefinery in Geismar, La., capable of producing 75 million gallons a year of renewable diesel made from animal byproducts such as beef tallow and pork and chicken fat. The company received $100 million in bonds through the Louisiana Public Facilities Authority for its construction.

While the plant is complete, operations were idled in late 2012 for maintenance and upgrades; according to a recent Securities and Exchange filing, the plant remained idle throughout all of last year.

"The plant has experienced mechanical difficulties, pre-treatment system performance issues and hydrogen supply disruptions, which have contributed to plant down time and higher than expected operational costs," Tyson said in the SEC filing.

As of the end of fiscal 2013, the plant had incurred net operating losses of approximately $38 million.

AUTOS:

Toyota says new chip will boost hybrids' fuel economy

Published: Wednesday, May 21, 2014

Toyota Motor Corp. says it will start using a new computer chip that will boost fuel efficiency up to 10 percent in its gas-electric hybrid vehicles.

The chip, developed by Toyota and parts maker Denso Corp., uses a new semiconductor design that reduces power loss and allows for smaller hybrid technology parts, the company said.

That will make it possible to increase fuel efficiency in future Toyota hybrids and also extend the technology to additional vehicle models, according to the automaker.

"A key way to improve fuel efficiency is to improve power semiconductor efficiency," said Toyota engineer Kimimori Hamada (Yoko Kubota, Reuters/*Chicago Tribune*, May 20). **-- SP**

AIR POLLUTION:

Mich. denies company's petcoke storage request

Published: Wednesday, May 21, 2014

State regulators have turned down a request from a storage company to keep petroleum coke in River Rouge, Mich., along the Detroit River.

Michigan's Department of Environmental Quality rejected the application from Detroit Bulk Storage Co. to keep the material, also known as petcoke, a byproduct of oil refining, at its facility. The company faced outrage from local residents last year when petcoke stored at another property in the city was seen blowing away from the site. The company eventually removed the material (*Greenwire*, March 3).

"Given this operator's history, and the fact that they're proposing to essentially do the same thing in a different spot, the DEQ is moving to deny this permit application," spokesman Brad Wurfel said.

The company couldn't be reached for comment (James Lynch, *Detroit News*, May 21). **-- SP**

GRID:

Large Public Power group's Gaines says higher rates expected from EPA climate rule

Published: Wednesday, May 21, 2014

What can utilities do to better embrace the business model evolution facing the industry? During today's OnPoint, William Gaines, chairman of the Large Public Power Council and CEO of Tacoma Public Utilities, discusses the challenges facing public electric utilities as U.S. EPA prepares to announce its new standards for existing power plants. He also talks about new physical security and cybersecurity efforts.

Click here to watch today's OnPoint.

ClimateWire -- Thu., May 22, 2014 -- **Read the full edition**

1. WILDFIRES: More homes are in the line of fire, but whose responsibility are they?

With everyone from the Forest Service to the governor of California warning of increasingly severe wildfires, one might think residents of Western wildlands would be pulling up stakes and moving to safety. The assumption would be wrong.

TODAY'S STORIES

2. **EMISSIONS:** EPA stays mum, denounces speculation on power plant rule

3. **POLITICS:** Dems sound an alarm on the climate impasse, say 'Shh' to hear it

4. **PUBLIC OPINION:** Public interest in climate change declining, but unaffected by recent scandals --

study

5. **RENEWABLE ENERGY:** Utilities 'freaked out' by solar growth, but leaders say energy revolution is near

6. **RESEARCH:** Glacial melt pouring iron into the ocean -- study

7. **TRANSPORTATION:** Air pollution is a $1.7T health problem, OECD finds

8. **SCIENCE:** Australia's grassland, not Amazon rainforest, explains 2011's massive land-based carbon sink -- study

9. **FINANCE:** Green Climate Fund a big step closer to reality

10. **RENEWABLE ENERGY:** DOE announces $10M for research on chemical solar thermal energy storage

11. **FORESTS:** New $215M fund to conserve portions of Brazil's Amazon rainforest

12. **HIMALAYAS:** American climate scientist rescued after falling into crevasse

13. **NATIONS:** Bosnia, Serbia seek international aid after flooding causes billions in damage

14. **SCIENCE:** World hits another record heat level

EnergyWire -- Thu., May 22, 2014 -- **Read the full edition**

1. SECURITY: Homeland Security reports new cyberattack on U.S. utility

An unnamed U.S. utility was recently breached by cyberattackers who gained access to the utility's operational control system, an agency within the Department of Homeland Security reported this week.

TOP STORIES

2. **OIL AND GAS:** 'Artificial' constraints are hampering North American market -- TransCanada CEO

3. **RENEWABLES:** S.C. solar bill is praised, panned as it inches toward passage

4. **CALIFORNIA:** Deflated Monterey Shale estimate puts wrinkle in fracking debate

ELECTRICITY

5. **SECURITY:** House hearing warns of state-backed cyberthreat

6. **TECHNOLOGY:** In annual races, sun provides the power and students do the rest

7. **PEOPLE:** After replacing its CEO, Calpine makes additional changes to executive staff

OIL AND GAS

8. **OIL:** Refining group calls for broad approach as producers seek crude exports

9. **NEW YORK:** Cuomo will OK fracking early next year, Senate energy leader says

10. **LNG:** Hybrid export project on tap in Louisiana

11. **OIL AND GAS:** Shell sheds Eagle Ford assets for $639M

12. **OIL:** Under pressure, N.Y. agency delays action on proposed Albany heating facility

13. **LNG:** Hitachi launches gas-transport venture with Vancouver office

14. **MARKETS:** Russia's Gazprom nets $400B supply deal with China

15. **POLITICS:** Christie replaces 2 more pipeline opponents on N.J. commission

16. **HYDRAULIC FRACTURING:** Mineral rights ownership adds to fracking worries in N.C.

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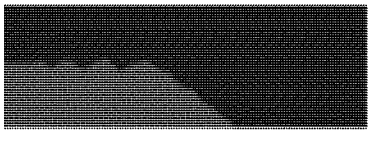

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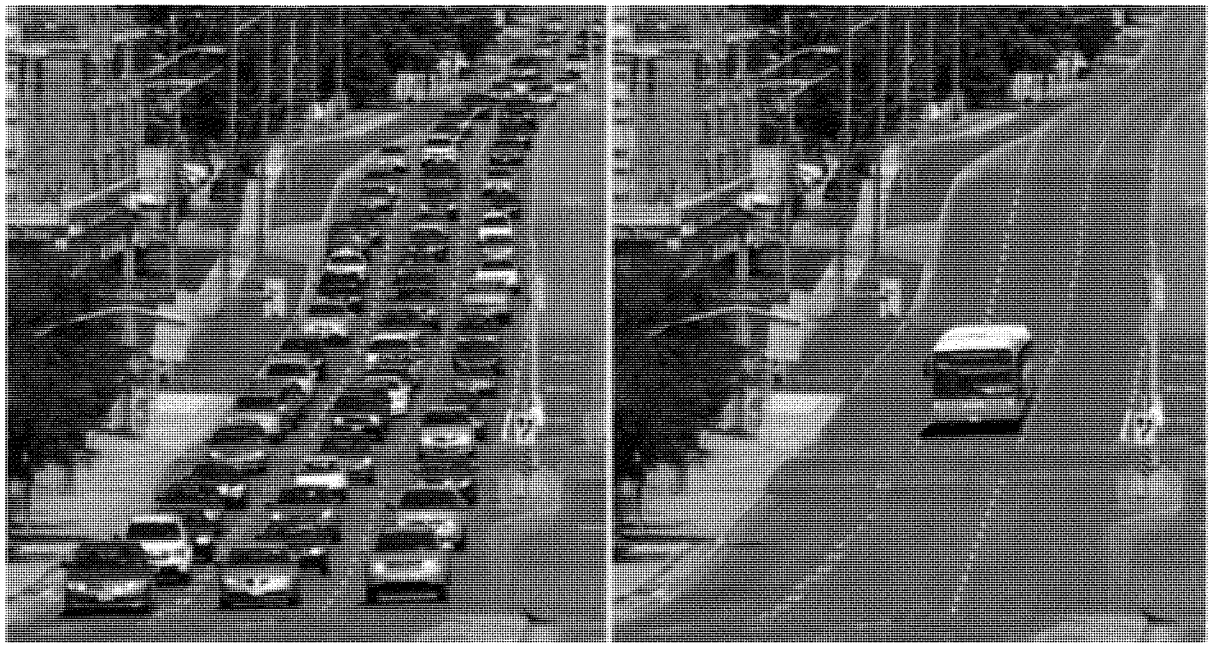

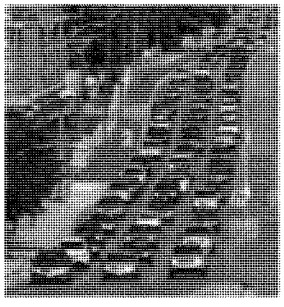

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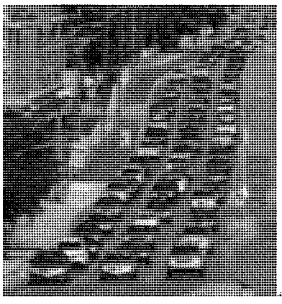


Air & Radiation Law News

for May 21, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA to Decide by July 31 on Permit Challenge To Coal-Fired Power Plants in Pennsylvania

The Environmental Protection Agency has agreed to act by July 31 on Sierra Club petitions identifying alleged deficiencies in Clean Air Act operating permits issued by Pennsylvania regulators to two coal-fired power plants, under a proposed...

Climate Change

Bill to Require Utility Climate Adaptation Proposed by New York Attorney General

New York Attorney General Eric T. Schneiderman (D) has proposed legislation to require that New York's electricity and gas utilities assess their vulnerability to the impacts of climate change and prepare a plan for adapting to severe...

Climate Change

EPA Official Says Better Understanding Needed of Recent Methane Emissions Data

The Environmental Protection Agency needs a better understanding of "top-down" data on methane emissions from the oil and natural gas industry before the agency can determine whether it needs to alter its estimates of national methane...

Climate Change

Mexico Touts New Climate Change Program; Environmentalists Question Its Effectiveness

Mexico has instituted a new climate change program that the government says will move it toward an ambitious plan to cut greenhouse gases by 30 percent by 2020....

Climate Change

Oklahoma Attorney General Says EPA Should Defer to States in Power Plant Rule

The Environmental Protection Agency should recognize the primacy of states to establish achievable emissions standards for existing power plants when it proposes carbon dioxide standards in June, Oklahoma Attorney General Scott Pruitt...

Climate Change

Vancouver Wants Canada to Consider Effects Of Climate Change Before Approving Pipeline

In what may be the first request of its kind in Canada, the city of Vancouver is asking the National Energy Board to factor in the economic impacts of climate change when deciding whether to approve Kinder Morgan's Trans Mountain pipeline...

Energy

India's Solar, Wind Sectors Expect Growth As Modi Takes Regional Programs National

India's renewable energy sector is expecting strong growth under Prime Minister-elect Narendra Modi,

who, as three-time chief minister of the state of Gujarat, oversaw massive expansion in solar power and wind power capacity in his...

International Issues

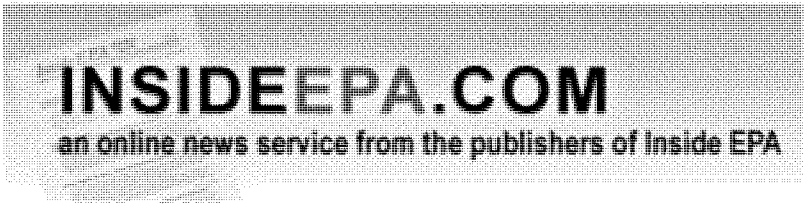
European Companies Weigh Airbus-Style Solar Collaboration to Beat China on Cost

A group of European solar companies may build one of the world's biggest solar panel factories in an effort to beat Chinese competitors on cost in a plan reminiscent of the region's creation of Airbus....

International Issues

Solarworld May File Claim for Damages After China Economic Espionage Allegation

Solarworld AG, Germany's biggest solar panel maker, is looking into possible damage claims after its U.S. unit allegedly became the target of Chinese economic espionage....



Inside EPA's **Clean Air Report**, 05/22/2014

http://insideepa.com/Clean-Air-Report/Clean-Air-Report-05/22/2014/menu-id-68.html

EPA Doubts Studies Claiming Higher Methane Levels Than Agency Estimates

An EPA climate official is questioning the recent "top down" aerial monitoring studies that suggest that the agency's annual greenhouse gas (GHG) inventory estimates may significantly undercount methane emissions from the oil and gas sector, saying the studies are too premature for EPA to determine whether to re-examine its own estimates.

States, Environmentalists Criticize House Bill To Speed Air Permit Process

States and environmentalists are criticizing a draft House bill that aims to accelerate the Clean Air Act

permitting process, saying it includes a provision that could allow industrial facilities to avoid stricter emissions limits indefinitely if EPA fails to issue implementation guidance for its ambient air standards concurrently with the standards.

Greenwire

CLIMATE:

Reported 25% GHG cut from power plant rule not enough -- enviros

Jean Chemnick, E&E reporter

Published: Tuesday, May 20, 2014

The Obama administration has a lot riding on next month's proposal for existing power plants.

U.S. EPA's much-anticipated Clean Air Act rule would limit emissions from a sector responsible for 40 percent of the nation's carbon dioxide pollution and is President Obama's most significant tool for achieving the economywide emissions reduction pledges he made in Copenhagen, Denmark, nearly five years ago.

Which is why environmentalists who track the issue say they are skeptical of Bloomberg's reports last week that the proposed rule now being reviewed at the White House would shave 25 percent from today's power sector emissions by 2029. The Friday report, attributed to "two people familiar with the discussions," sketched the outline of a rule that would achieve this level of reduction in two phases; between 2019 and 2024 it would require "only limited reductions at the plants," followed by "deeper cuts" between 2024 and 2029 leading to the 25 percent goal.

But experts say these reduction targets appear to be improbably modest for an administration that devoted considerable political capital to combating climate change in its second term.

The U.S. utility sector cut its CO2 emissions by 15 percent between 2005 and 2012, according to EPA's 2014 inventory of emissions and sinks -- a shift spurred mostly by historically low natural gas prices with the economic downturn and other factors playing a minor role. Even without new EPA rules, the sector is likely to shed an additional 5 to 7 percent of its emissions by 2020.

So if EPA proposes a rule on June 2 that sets a goal of 25 percent by 2029, it would seem to barely codify reductions that market conditions are already delivering.

And it would not go far toward helping the administration meet its Copenhagen reduction targets of 17 percent compared with 2005 levels by 2020 or set the United States on a path to make deeper reductions later in the century. That is because the utility sector has decarbonized much more quickly than the economy overall -- which has shed 10 percent of its emissions since 2005.

A recent article by former EPA senior policy counsel Robert Sussman published in the University of Virginia's *Virginia Environmental Law Journal* said that if the United States is to meet those international commitments, the EPA rule for existing power plants must spur additional reductions of 8 to 10 percent over and above business as usual for a total reduction of 30 percent by 2020.

Daniel Weiss, senior fellow at the Center for American Progress, said last week that the administration

had made its commitment to the Copenhagen targets clear. It would be very unlikely, he said, to set targets in its marquee existing power plant rule that would not allow the country to achieve them.

"I anticipate that the final rule will enable the United States to meet President Obama's 2020 climate pollution reduction goal," he said in an interview.

But he added that the June proposal may differ significantly from the rule the agency finalizes in June 2015.

"This rulemaking process, unlike many, is not going to be a rubber stamp of an all-but-final rule," he said. "The comment period for the proposal will be a truly consultative process with utilities, states, public health organizations, labor unions and other essential stakeholders."

EPA Administrator Gina McCarthy and her senior staff responsible for the rulemaking -- acting air chief Janet McCabe and air and radiation senior counsel Joe Goffman -- have all said that stakeholder discussions will continue well after the June 2 proposal. They have also hinted that the draft might solicit feedback on more than one option for meeting the rule's reduction goals.

The open nature of the proposal process might mean that EPA has yet to model the rule's contribution to economywide emissions, but it would be likely to do that before finalizing the standard.

The Bloomberg article does not specify what year would serve as the benchmark for any reductions. Most states in their comments to EPA ahead of the proposal have suggested 2005 as a base line -- and have urged the agency to credit them for any reductions made after that date.

But if the agency picks 2012, 2013 or 2014 as a base line -- or some average of recent years -- the 25 percent reduction target suddenly becomes much more stringent. This is because the sector would not receive credit for the approximately 15 percent in cuts it has made in the last decade, and the reductions required would all be additional. Using these later years as a benchmark would also increase the role the rule could play in helping the United States achieve Obama's Copenhagen targets -- a commitment the president and senior staff have reaffirmed in numerous public statements since 2009.

Sussman put it this way: "If the base line is 2013 emissions, a 25 percent reduction goal is a bigger challenge and would in fact push the envelope. But it's still consistent with the forces that are transforming the electricity sector and may be realistic given the long lead time."

Other aspects of *Bloomberg*'s report appear to track with what "many people have been talking about," Sussman said. It would not be surprising, he said, if the agency adopted a two-phase framework for the rule, "which puts the industry on a glide path toward progressively deeper emission cuts but allows substantial lead-time for the biggest reductions."

And while the report appears to indicate that EPA will adopt a rule that requires only on-site reductions at power plants during a first phase, Sussman predicted the agency would likely look for steeper, systemwide reduction opportunities as the years progress.

Coal and utility advocates have generally urged EPA to promulgate a rule that requires only "inside the fence line" reductions, but environmentalists have urged the agency to draw on demand-side efficiency, renewable energy and other opportunities to achieve deeper cuts.

Robert Wyman, a partner at Latham & Watkins LLP who represents the National Climate Coalition, which draws its membership from industry, said it seemed possible that EPA had adopted some aspects of his group's proposal to the agency in December.

The coalition has asked EPA to require only on-site reductions in the first years of the rule but adds that it could later broaden the rule to require systemwide reductions if EPA helps develop the protocols and the compliance infrastructure that would make those measures possible and cost-effective.

"We think that the program can be dynamic or hybrid," he said.

Several regulatory experts said they would expect EPA to give industry certainty about what would be expected of it several years into the future.

Thomas Lorenzen, a partner with Dorsey & Whitney who previously defended EPA rules at the Department of Justice, said that he had heard rumors that EPA is planning a two-tiered approach to the rule.

The rule might also contain some provisions aimed at encouraging states that can make reductions early to do so -- perhaps by allowing them to bank or sell credits for those reductions.

But Lorenzen said EPA might really by eyeing a rule that only requires the utility sector to limit emissions by 25 percent compared with 2005 levels -- even though it could be met through retirements and fuel shifts that are already in the pipeline.

"You could declare that number and kind of declare a victory," he said. "And it's hard to see environmentalists complaining about a 25 percent reduction."

CLIMATE:

Lower consumption isn't the answer to cutting GHGs -- Lisa Jackson

Anne C. Mulkern, E&E reporter

Published: Tuesday, May 20, 2014

LAGUNA NIGUEL, Calif. -- Selling fewer products isn't the solution to the environmental problems associated with consumption, former EPA head turned Apple Inc. executive Lisa Jackson said here yesterday.

Jackson, Apple's vice president of environmental initiatives, told the *Fortune* Brainstorm Green conference that there are better routes to reducing a company's carbon footprint.

"If all of us as sustainability professionals have to resort to make and sell less stuff as the answer to the problem, than we are suffering from an extraordinary lack of imagination and innovation," Jackson said. "We're not advocating for less people to have access to our products. That's not the answer we're looking for. What we're looking for is understanding the whole puzzle.

"People much younger than me ... don't necessarily feel like they need access to so many things," she said.

Jackson, who joined the Cupertino, Calif.-based company about a year ago after leaving the EPA administrator post, was one of several executives talking about sustainability measures at the yearly event. It brings together business leaders, environmental advocates and some in government roles.

Jackson's statement came after Rick Ridgeway, vice president of environmental initiatives at Patagonia Inc., asked Jackson how she's addressing the fact that Apple's carbon emissions are rising, even as the

company has shrunk the output tied to individual products.

Over an eight-year period, Ridgeway said, there's been a near one-third reduction in Apple's carbon footprint on a per-product basis. But the overall footprint of the technology giant "has displaced that benefit and actually has grown and grown with your own growth," he said.

"That's because everybody is buying more and more Apple products," Ridgeway said. "That's because affluence is growing and it's offsetting all those incremental benefits that you're getting from reducing on the product level the footprint of your products."

In a follow-up, Adam Lashinsky, senior editor at large at *Fortune*, told Jackson "you also are unwilling to apologize for this accusation that Apple designs its products for obsolescence."

Jackson answered that "it's not true" that Apple wants its products to wear out so people will buy more.

"We do run probably the best recycling collections of anyone in our sector," Jackson said. That said, she added, "we don't collect a lot of our product" because people are still using older models, whose software still functions.

Greenpeace has praised Apple for its improvements but also criticized it for using suppliers in China with cloudy environmental records, Lashinsky said.

Jackson responded that Apple is willing to talk about its carbon emissions. The company puts the information on its website, she said, and includes everything from the manufacturer through usage.

"If you don't measure it or monitor and understand it, you can't do anything about it," Jackson said.

The company recently looked into emissions tied to the use of aluminum, she said, and found that because it had been using an industry average, "we were really underestimating emissions."

If it had stuck with that industry average, Apple's total carbon pollution reported would have fallen last year, she said, but instead it rose.

"It starts with honesty and transparency with what we're learning about our supply chain," Jackson said.

CLIMATE:

Action on warming likely in short term, some Republicans say

Anne C. Mulkern, E&E reporter

Published: Tuesday, May 20, 2014

LAGUNA NIGUEL, Calif. -- Action on climate is more likely in Washington, D.C., as people and businesses begin to demand change and the military cites risks, two Republicans said here yesterday.

Christine Todd Whitman, former governor of New Jersey and head of U.S. EPA under President George W. Bush, and Bob Inglis, former congressman from South Carolina, said they see the politics of climate change beginning to shift.

"The two things that really drive Republicans are fiscal growth, economic growth and national security,"

Whitman said at the *Fortune* Brainstorm Green Conference, a gathering of businesses, environmentalists and state and federal officials. "Climate change runs smack headlong into both of those."

The military has been doing exercises, Whitman said, looking at how their missions will change because of instability around the world in places like sub-Saharan Africa because of droughts and people unable to earn a living because of climate change.

"You have the joint chiefs stating things about the national security imperative of climate change," Whitman said.

Whitman, Inglis and Fred Krupp, president of the Environmental Defense Fund, spoke on a panel titled "How can corporate America help build a bipartisan movement to price carbon emissions before it's too late?"

Many companies are asking for regulation, Whitman said. Multinational companies already deal with rules in other countries and "need to harmonize," she said.

"They feel very strongly that it's coming at some point," Whitman said. "They say, just do it now so we know what the rules are."

As well, she said, a national energy policy might help companies avoid having to deal with 50 different state regulations.

Extreme weather events like the drought and the recent brush fires in California also are persuading the public that warming has changed the climate, Whitman said.

'Talking solutions rather than scapegoats'

Inglis, who lost his re-election bid in a 2010 Republican primary after saying he thought climate change is real, said the recession that started in 2008 gave birth to the tea party and led to a populist rejection of many things, including science.

As that recession lifts, he said, and when President Obama leaves the White House, there will be changes in attitudes.

"Republicans really will need to be talking solution rather than scapegoats," Inglis said. "So I expect the politics here to change and rather quickly -- probably by January" heading into the 2016 presidential election cycle."

"It will become apparent that you must move toward a solution here," he said, adding, "The country will take unsustainable over unoffered. ... There will be a felt need on climate. The question for us as conservatives is will we be there with a solution?"

Krupp said that he is happy with recent events including Obama's move to have EPA regulate emissions from existing power plants.

With that action, Krupp said, there will be oversight of 40 percent of America's carbon dioxide emissions.

If the nation's fleet of power plants were a foreign country "it would rank second in the world for emissions behind only China," Krupp said. "This is huge, and it's happening now. I think in a lot of ways the world is moving forward."

Moderator Brian Dumaine, *Fortune*'s senior editor at large and co-chairman of Brainstorm GREEN, asked given that the Obama administration action on climate is happening through EPA, "What's to keep a Republican president from dismantling" it in the future?

Krupp said that polls show that among voters under 30 years old, 85 percent want controls on carbon. If a political party wants to have a future, he said, leaders would see numbers like that and know they need to make changes.

But Whitman said that she is a "little less sanguine" about change via the administration.

Any time EPA promulgates regulations, there is a lawsuit, she said, and that can take years to resolve. Having the agency act on climate also puts a "bigger and bigger target on the agency."

Congress "can starve EPA," Whitman said. "They can make it very hard for EPA to do the work it needs to do."

COAL:

Mining group rolls out ads in key states ahead of EPA climate rule

Manuel Quiñones, E&E reporter

Published: Tuesday, May 20, 2014

The National Mining Association will start airing radio and online ads in key states this week ahead of President Obama's planned June 2 rollout of greenhouse gas curbs for existing power plants.

NMA's emphasis is on the rule raising electric costs.

One ad asks, "Ready for 80-percent higher electric bills?" It goes on to say, "That's the price of Obama's extreme new power plant rules."

NMA spokesman Luke Popovich said the ads would run through June in Indiana, Missouri, Montana, North Carolina, Ohio, Pennsylvania and Virginia.

Some previous pro-coal ads, especially during election campaigns, have focused on the pressure placed on miners and coal-mining communities by increased federal oversight of the coal industry.

"This is not about coal," Popovich said today. "It's about a regressive tax that falls on everybody, in particular those in these states," he said, referring to higher power prices.

NMA says EPA's proposal to require carbon capture and sequestration technology for new coal-fired power plants will cripple coal power production, raising prices and harming reliability.

But EPA sees little impact from its rulemaking. It says many plant closures, for example, are the product of competition from natural gas.

Similarly EPA Administrator Gina McCarthy said this week that the upcoming proposal for existing plants would not add significantly to power costs or hurt electric reliability.

Groups that back Obama's regulatory push take issue with pro-coal ads, saying they exaggerate regulatory costs and play down the rules' public health and environmental benefits.

But Popovich said NMA doesn't trust the administration's assurances. He pointed at the ongoing spate of power plant retirements and the power crunch during the so-called Polar Vortex this winter.

"There's a better balance solution," NMA ads say. "Stand up for affordable reliable electricity."

Environmentalists cheered news this week that Obama himself would unveil the power plant proposal. They say the effort will benefit from his ability to command the country's attention (*Greenwire*, May 19).

But pro-coal groups have been stepping up their advocacy efforts ahead of the rule. NMA has for months been boosting its multimedia offerings and social media engagement and pushing its Count on Coal website.

"We think this is an area where we have underperformed, and we now want to reach out through these venues as well," Popovich said. "And we are having very good success, in a number of platforms."

While the American Coalition for Clean Coal Electricity -- increasingly branding itself as America's Power -- doesn't have plans to run ads in advance of the president's announcement, the group plans to be vocal after its release, spokeswoman Laura Sheehan said.

BIOFUELS:

Research envisions turning woody waste into asset for cellulosic producers

Amanda Peterka, E&E reporter

Published: Tuesday, May 20, 2014

A pesky polymer that stands in the way of the sugars needed to make plant-based fuels might yet become a valuable asset for biofuels companies.

At issue is whether lignin, the complex polymer that gives plants their structure, could be the basis for carbon fiber, a lightweight but strong substance growing in popularity as transportation industries seek greater efficiencies.

Lignin leftovers from biofuels processes could one day show up in airplane seats, car doors and even golf clubs, say researchers from the Oak Ridge National Laboratory, National Renewable Energy Laboratory and the Georgia Institute of Technology.

"We've learned a lot of basic science about the role that lignin plays in plants and how it interacts with other components that the plant also synthesizes," said Paul Gilna, director at Oak Ridge's BioEnergy Science Center. "That information can be put to use -- instead of getting away from it, how do we make it useful?"

Until now, lignin has been mostly viewed as a hindrance in biofuels production, and most science has revolved around how to make it easier to extract sugars from its grip. Biofuels companies have burned off -- or plan to burn off -- excess lignin at the end of production processes for power and because there's been nothing better to do with it.

But scientists who have studied lignin for years say it's time to think about lignin for its own potential value, rather than as a waste product that needs to be addressed in biofuel production.

In a paper published last week in *Science*, researchers laid out their vision for the future of lignin and biofuels production. The industry is at a "tipping point," they said, with three major cellulosic biofuel companies planning to bring plants online this year.

"Our first desire was to crawl. The next desire was to stand up and walk, and then to run," said Art Ragauskas, the article's lead author and a researcher at Georgia Tech. "Clearly if you're a cellulosic ethanol company, the first desire is to make ethanol at a competitive price. Now you have this bioprocess stream. The next question is what do you do with that?"

Ragauskas has been studying lignin since the early 1990s. The concept of burning off lignin came from the pulp and paper industry, he said, which has been using the excess plant material for years as a source of heat and electricity.

But biofuel plants don't require as much lignin for power as pulp and paper mills. In general, plants generate 60 percent more lignin than is needed to meet internal energy uses. The lignin that goes through a biofuels process also comes out the other end with fewer chemical changes than in a pulp and paper mill, opening up the potential for new uses.

Researchers see carbon fiber as one of the most exciting potential uses for lignin. Carbon fiber, a strong and lightweight material made of carbon atoms, is most commonly used in the aircraft and sporting goods industries.

Until now, the market for carbon fiber has been restricted partly because of the cost. The global market is still less than 100,000 tons a year, compared to the steel market of 1.5 billion tons a year. Put another way, if Ford had made its F150 out of carbon fiber, the automaker would use up the world's total supply of carbon fiber.

But the market has the potential to grow as automakers and airlines seek lighter-weight materials to increase efficiency. And lignin could one day make carbon fiber cheaper.

While lignin will never be the basis for any structural elements in a plane or car, lignin-based carbon fiber could work well in interior spaces and in applications that are not directly essential for safety, said Cliff Eberle, a mechanical engineer at Oak Ridge.

"I do not think you'll ever see a lignin carbon fiber ever used in the primary structure in an aircraft," Eberle said.

Where it could potentially be used instead, he said, are "seats, luggage bins, luggage carts, clips, lots of stuff."

Next: genetic engineering

The roadmap published in *Science* identifies genetic engineering as one of the most important tools going forward for creating useful lignin.

The goal of research is to create forms of lignin that can be easily broken down in the front end of the biofuels process yet that are engineered for valuable uses at the back end.

"We're looking at: Can you even do plant genetics that will allow you to tailor the lignin either by selecting existing plants or designing plants," Eberle said. "Can you have designer trees that will give you the lignin you want?"

Gilna said that Oak Ridge has seen increased interest from industry over the last few years in its research into lignin.

POET-DSM Advanced Biofuels, a joint venture spearheaded by the nation's largest ethanol producer, is actively looking at alternatives for its lignin, according to Steve Hartig, the company's general manager for licensing.

POET-DSM is planning to open one of the nation's first large-scale cellulosic ethanol plants, a 25-million-gallon plant in Iowa that will use corn residues collected from nearby fields, within a few weeks. It will at first burn the lignin off to produce power for both the cellulosic facility and a co-located conventional ethanol plant, Hartig said.

"If we look over time, burning it is not a bad thing to do, but we're certainly aggressive in assessing technologies for other ways to do it," Hartig said.

Hartig said that the company is eyeing carbon fiber and various petrochemical feedstocks. But carbon fiber applications would have to be driven by greater demand from industries such as the aviation and automobile sectors themselves, he said, given that about one month's worth of lignin from POET-DSM's plant would about equal the whole world's current demand for carbon fiber.

DuPont also plans to open a large-scale cellulosic ethanol plant in Iowa before the end of the year and, like POET-DSM, plans to burn off lignin for energy. Jan Koninckx, global business director for biofuels at DuPont, said that that company had always had a plan to develop more value from lignin.

But DuPont is first aiming for agricultural uses, such as mulch, potting soil, disposable potting plants and fertilizer components, Koninckx said. DuPont hopes to roll out those products within the next few years, he said.

"They're products that we make out of the agricultural residue that is left on the field today that is not used. All the same positives that we shared with people about cellulosic ethanol apply just the same to this," he said. "They're renewable, fully sustainable and made out of carbon that was in the sky."

CLIMATE:

N.Y. AG wants to force utilities, by law, to prepare for risks

Colin Sullivan, E&E reporter

Published: Tuesday, May 20, 2014

NEW YORK -- New York Attorney General Eric Schneiderman last night floated a plan that would get tough with electric and natural gas utilities here by forcing them to prepare for climate change and major storms, whether they like it or not.

The Democrat used the occasion of the New York League of Conservation Voters' 25th anniversary gala to say he will push legislation in the state Legislature to make sure utilities understand and are prepared for climate risks.

This would force utilities to assess their vulnerability, submit that assessment for public review and comment, and then come up with a blueprint for how they intend to deal with it.

The increasingly visible attorney general cited President Obama's National Climate Assessment in

remarks delivered at the LCV event, citing the report's nod to more frequent storms, rising sea levels and New York City's exposure to both as a low-lying metropolis.

He also addressed the utilities' performance during and after Hurricane Irene and Superstorm Sandy, calling them ill-equipped to cope with the storm surges and water inundation seen during both storms.

"New Yorkers learned the hard way after Sandy and Irene that many of our utility providers are unprepared for a future of more extreme weather," Schneiderman said.

He then singled out Consolidated Edison Inc., whose executives were at the event, for using "outdated historical weather data" to prepare for Sandy, which caused an explosion and fire in a downtown substation that left much of the city in darkness for days.

"They were looking backward when they should be looking forward," he said.

He later added that ConEd deserves credit for taking such weather events more seriously in the aftermath of Sandy, spending billions to shore up its infrastructure, but he argued for the legislation to ensure that utilities keep climate at the top of their radar.

An explanation of the legislation to come from the Attorney General's Office referenced "critical weaknesses" exposed by Sandy as well as "collateral damage to the economy caused when essential services like electricity and gas go down."

The statement said nearly 2 million New Yorkers went through electricity outages when Sandy hit, disrupting hospitals, drinking water operations and sewage treatment plants. Extended power outages, the document said, caused between $30 billion and $50 billion in lost economic activity.

The legislation came about following a ConEd rate case at the New York Public Service Commission in which the utility argued for an 8 percent rate bump to pay for hardening of its infrastructure. The PSC approved the case but not the requested rate increase, instead spreading out the costs through reallocation of revenues (*ClimateWire*, Feb. 21).

ConEd's resiliency plan calls for spending an initial $1 billion over four years to protect electric, gas and steam systems from sea-level rise and storm surges, with the clear suggestion added that all of it will cost more eventually.

That decision also requires a study of leaking methane from gas distribution systems to address its potency as a greenhouse gas, an internal ConEd analysis of how it might expand microgrids and an expansion of ConEd's oil-to-gas conversion efforts.

Schneiderman essentially said he wants to use that decision as a template for the rest of the Empire State's core energy systems, forcing the other investor-owned utilities and the Long Island Power Authority to conduct such climate assessments every five years.

The utilities would have to submit this examination to the state in the form of a "climate change impact statement" that would be subject to the PSC's standard public comment process.

NUCLEAR WASTE:

57 barrels present 'substantial' threat -- N.M. environment secretary

Published: Tuesday, May 20, 2014

New Mexico authorities say 57 barrels of nuclear waste from Los Alamos National Laboratory present an "imminent" and "substantial" threat to public health and the environment. The barrels are packed with a kind of kitty litter that has been linked to a radiation leak at a federal nuclear waste dump in the state.

Ryan Flynn, secretary of the state's Environment Department, formally ordered the lab to submit a two-day plan for securing the waste drums, which are probably mostly stored at an outdoor site at the Los Alamos site or a temporary storage site in West Texas.

Flynn's order said the barrels contain kitty litter and nitrate salts, which may have reacted together to cause a radioactive leak that affected 22 workers at the Waste Isolation Pilot Plant near Carlsbad, N.M., in February. The order said at least two of the dangerous barrels are at WIPP.

Los Alamos was busy finishing the transfer of thousands of waste barrels to the underground dump when the leak occurred, and it halted operations. Some of the waste drums were then transported to the temporary storage area in Texas, but all transfers ended when investigations pointed to a Los Alamos container as the likely culprit in the radioactive release.

WIPP is the only permanent repository of low-level radioactive waste for the U.S. government from federal facilities like Los Alamos (Jeri Clausing, Associated Press, May 18). **-- JL**

ClimateWire -- Wed., May 21, 2014 -- **Read the full edition**

1. NEGOTIATIONS: U.N. summit takes shape but plans for 'bold pledges' remain elusive

Four months away from a U.N. super-summit on climate change, world leaders remain stymied about how to fulfill Secretary-General Ban Ki-moon's demand that they bring "bold pledges" to the high-level meeting.

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E&ETV's OnPoint

13. **GRID:** Large Public Power group's Gaines says higher rates expected from EPA climate rule

EnergyWire -- Wed., May 21, 2014 -- **Read the full edition**

1. GRID: When will smart meters' day come?

The smart meter -- the grid device with the identity crisis -- finds its multiple personalities under examination this week at a conference of utility operators, regulators and technology vendors.

TOP STORIES

2. **CLIMATE:** EPA still unsure about industry's methane emissions -- director

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4. **EAGLE FORD SHALE:** Industry initiative helps communities embrace boom-time opportunities

ELECTRICITY

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6. **UTILITIES:** Virgin Islands builds renewable portfolio with new payment system

7. **ELECTRICITY:** 'Zombie' plant will not burn coal after all, owners say

8. **POLICY:** Ohio poised to loosen renewable energy standards in nationwide first

OIL AND GAS

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10. **KEYSTONE XL:** TransCanada wins move to back Neb. AG in route dispute

11. **CLIMATE:** DOE leadership role discussed at White House methane round table

12. **OFFSHORE DRILLING:** Norwegian firm wants to harness wind power to enhance oil recovery

13. **WORKFORCE:** Texas oil patch lures upstart millennials

14. **REFINING:** Shale boom could bring early end to Calif. coker

15. WORK FORCE: Oil field services giant settles racial discrimination suit

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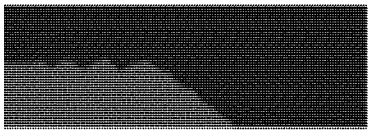

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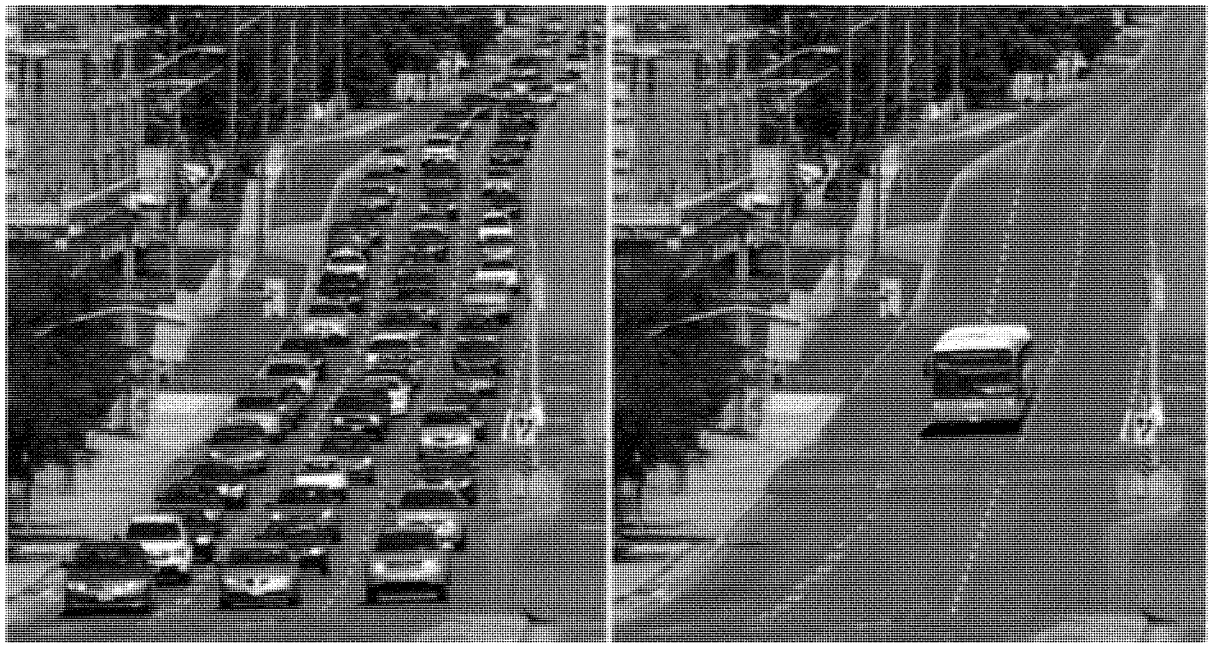

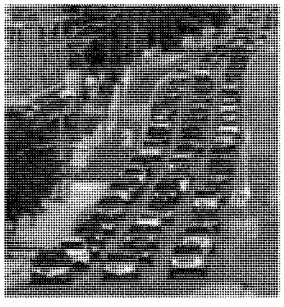

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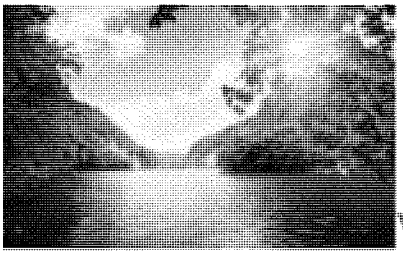

Water Law News

for May 21, 2014

Bloomberg BNA **Daily Environment Report™**

Drilling

Fish and Wildlife to Delay Regulations
For Oil, Gas Development in National Refuges

The U.S. Fish and Wildlife Service is delaying proposed regulations for the private development of oil and natural gas within the National Wildlife Refuge System, rules opposed by House Republicans and the oil and gas industry. ...

Enforcement

Jordanian Shipping Company Pleads Guilty To Violating Ship Pollution Prevention Act

A Jordan-based shipping company pleaded guilty May 20 in federal court to one count of violating the Act to Prevent Pollution from Ships, the Justice Department and U.S. Coast Guard said in a statement (United States v. Arab Ship Mgmt. Ltd.,...

Oil Spills

BP Faces Billions in Spill Payments After Rehearing of Panel Ruling Denied

BP Plc faces billions of dollars in additional payments after failing to convince a federal appeals court May 19 to reconsider arguments that it is being forced to pay claims not directly related to the 2010 Gulf of Mexico oil spill (In re Deepwater...

Pipeline Safety

PHMSA Has Met 50 Percent of Mandates In 2011 Law, Quarterman Tells House Panel

The Pipeline and Hazardous Materials Safety Administration has completed 50 percent of its mandates, such as finalizing rulemakings and studies, under the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 that expires...

Water Pollution

Environmental Groups Plan to Sue EPA, Claim Cooling Water Intake Rule Is Reckless

Environmental advocates plan to sue the Environmental Protection Agency over its final cooling water intake rule, calling it "reckless" and saying it doesn't comply with the Clean Water Act, an attorney for the groups said May...

Water Resources

Federal Appeals Court Upholds Interior's Analysis of Southern California Water Pact

The U.S. Court of Appeals for the Ninth Circuit let stand a lower court ruling validating the Interior Department's environmental review of a 2003 water transfer agreement reached between the federal government and Southern California...

Water Resources

House Votes to Approve Compromise Advancing Water Infrastructure Legislation

The House agreed to the conference report on the Water Resources Reform and Development Act (H.R. 3080) on a 412-4 vote May 20....

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Softened NEPA Deadlines In Army Corps Bill Win Environmentalists' Praise

The House-Senate deal authorizing Army Corps of Engineers waterways projects softens deadlines for reviewing the projects' environmental impacts, a move that is drawing praise from environmentalists who have touted the changes as a drastic improvement over the versions of the legislation that passed Congress in 2013.

Greenwire

UTILITIES:

Enviro lawsuit likely over 'largely worthless' cooling water rule

Annie Snider, E&E reporter

Published: Tuesday, May 20, 2014

Environmental groups are strongly considering taking U.S. EPA back to court over a final cooling water rule the agency released yesterday that greens contend will do little to protect the billions of fish, larvae and other species vacuumed into power plants and factories each year.

"We will have to review it and discuss it, but I think there is a very strong likelihood that we will be back in court to challenge the rule," Reed Super, the attorney representing Waterkeeper Alliance and other environmental groups, said on a call with reporters this morning. "It doesn't come close to what we believe the Clean Water Act requires."

The regulation is aimed at reducing the number of aquatic organisms that get sucked into cooling water intakes and killed by being pinned against screens -- called "impingement" -- or boiled in extremely hot water -- called "entrainment." It applies to facilities that withdraw at least 2 million gallons of water per day. EPA estimates that's about 1,065 facilities, 544 of which are power plants.

The electric utility industry, which is facing a suite of new and looming environmental regulations from U.S. EPA, lobbied hard on the regulation, contending that it had the potential to make plants, particularly nuclear plants, uneconomical; create grid reliability issues; and threaten the administration's climate goals.

The rule released yesterday would require covered plants to pick from one of seven options for reducing impingement -- an increase in flexibility over the proposed rule, which would have given facilities two options for meeting the requirement.

The entrainment provisions, which environmental groups are most focused on, would apply only to facilities that withdraw very large amounts of water -- 125 million gallons or more per day. Under the rule, plants will have to conduct studies to help their permitting authority determine what types of technologies to reduce impacts would make sense for the plant. Ultimately, the decisions would be site-specific and made by the local permitting agency.

Greens say this amounts to essentially the status quo and that local permitting agencies don't have the wherewithal to set the necessary requirements.

"EPA also acknowledges that these losses 'have immediate and direct effects on the population size and age distribution of affected species and may cascade through the food web,'" said Steve Fleischli, director of the Natural Resources Defense Council's water program. "Despite these known impacts, EPA has promulgated a largely worthless rule that will do almost nothing to protect our waterways and our fisheries from power plants."

Environmentalists were particularly flabbergasted by a provision in the rule that they say would allow states to give facilities credit for reductions in impacts that happened because of plant retirements as much as 10 years ago.

Industry groups said yesterday that they are still reading the rule but welcomed the approach EPA had taken in crafting it.

"The electric power industry has worked for years to educate and inform policymakers of the potential impacts of this regulation on customers and the need for a flexible and cost-effective final rule," Electric Edison Institute President Tom Kuhn said in a statement. "Based upon our initial review of the rule, we are pleased that EPA has avoided imposing a categorical one-size-fits-all approach to compliance; has embraced significant elements of flexibility; and has acknowledged the importance of weighing costs with environmental protection."

One of the areas of greatest concern to industry was whether upgrades of existing plants would trigger the requirement already on the books for new facilities to install closed-cycle cooling. In White House

meetings as the rule was undergoing final review, industry representatives argued that such a requirement would disincentivize upgrades that would bring an environmental benefit and could cause reliability problems (*Greenwire*, Feb. 11).

The final rule released yesterday would not require new units at existing facilities to install closed-cycle cooling, but instead would allow the operator to reduce intake flow to a commensurate level with what closed-cycle cooling would use or to demonstrate that it has sufficiently reduced entrainment.

The timeline for implementing the new requirements is not clear. Facilities are given up to 39 months -- more than three years -- to complete the studies required under the rule. State permitting agencies are then given time to review them, set new requirements, and develop a timeline for installation.

"EPA recognizes that it will take facilities time to upgrade existing technologies, and install new technologies, and that there are limits on the number of facilities that can be simultaneously offline to install control technology and still supply goods and services to orderly, functioning markets," the agency said in the rule. "It is appropriate for the Director to take this into account when establishing a deadline for compliance."

ARMY CORPS:

Budget office estimates WRRDA to cost $12.3B over a decade

Annie Snider, E&E reporter

Published: Tuesday, May 20, 2014

The "Water Resources Reform and Development Act" slated for a final House vote this afternoon rings in at $12.3 billion, congressional budgeteers announced this morning.

The conference report for the bill would cost $5.4 billion in the first five years of implementation and $6.9 billion in the next half decade, the Congressional Budget Office estimated. That's about how much the Senate's version of the bill totaled and more than $4 billion higher than the legislation passed by the House.

The conference report is scheduled for a House vote this afternoon under a suspension of the rules, which requires a two-thirds approval to pass. Leaders have said they are confident the measure will more than attain that level of support, despite opposition from fiscal conservative groups that have opposed the measure throughout the process.

Those groups have been registering their opposition leading up to today's vote.

Heritage Action for America issued a key vote alert against the bill yesterday afternoon, arguing that it "fails to address the root problems of poor prioritization, outdated analysis, and a sprawling mission, which plague the Corps."

And Taxpayers for Common Sense said in its analysis that the measure "fails to deliver on its 'reform' moniker."

But the measure -- one of the few pieces of legislation likely to make it through both chambers of Congress in advance of this year's midterm elections -- has the strong backing of business groups.

The National Association of Manufacturers also named today's WRRDA vote a key vote, urging support.

"Our nation needs investments and a modern infrastructure that keep us globally competitive and manufacturers will continue to champion investments and improvements to our nation's infrastructure that help manufacturers compete and create jobs," the group wrote in a letter to members.

BEACHES:

Spain's 16th-century conquest reshaped Peru's coast -- study

Joshua Learn, E&E reporter

Published: Tuesday, May 20, 2014

The Spanish conquest of Peru in the 16th century spurred long-term shoreline changes that may still be affecting the area today, according to new research.

A cross-disciplinary study combining archaeology with geology reveals the long-term impacts humans can have on the environment through something as simple as tossing shells in a heap for hundreds of years.

"We can think about that implication from these ancient records for how we presently use and alter the shoreline and the potential for how this might help us understand or predict future changes in the face of rising sea level and global climate change," said Daniel Belknap, one of the study's authors, in a phone interview.

Belknap, a geologist at the University of Maine's School of Earth and Climate Sciences, found in the study, published yesterday in the journal *Proceedings of the National Academy of Sciences*, that the stabilizing effect these shell middens had on sand dunes over the centuries ended when the Spanish conquest led to the decline or displacement of coastal populations to the interior of Peru.

"The extirpation of the native population very much changed the way the coastal system worked," Belknap said.

Up until the early 16th century, he said, people had been living along the coast of the Chira Beach-Ridge Plain in northwestern Peru for around 5,000 years, depositing the remains of fishing expeditions on the beach.

"They were harvesting these shellfish, smoking some, trading them inland, and left the shells behind," Belknap said. "It was more economical to do that. They made these immense piles of shells that extended for kilometers down the coast."

But as the shell middens grew, basketful by basketful, over the centuries, they were swallowed up by sand from beach dunes, which the shells in turn worked to stabilize.

"Coastlines are very sensitive and dynamic, and humans can have immense effects on it," Belknap said.

Through radiocarbon dating, Belknap and the other researchers found the most recent middens dated back to 1547 (with a margin of error of 87 years) -- a time when the Spanish conquest destroyed villages. The result, he said, was an impact that's visible not only in the people and culture over the centuries, but also on the landscape.

"The well-developed beach ridges are only there because the shell middens were keeping the sand from blowing inland," he said.

"There's big debates about how long we should really consider human effects," he said of the shifting shorelines and effects on the environment.

"It's clear that humans have had an impact on the environment for a long time, and here we're documenting at least 5,000 years on the coast."

Belknap said the destabilizing of the beaches in Peru also probably had secondary effects over the past 500 years, as looser sand was blown inland. "This may have had an effect on the flooding inland and transportation along the shore especially during El Niño times," he said.

But despite the stabilizing effect the shells could have had on the sand dunes in Peru, Belknap stops short of recommending it as a strategy in other areas. Accumulating so much shell material is impractical, and planting things like dune grasses could be a more effective way to stabilize shorelines.

"The dunes that were stabilized by dune grasses were less affected than Hurricane Sandy than dunes that hadn't," he pointed out about the New Jersey shoreline, which was hit by the storm in 2012.

But overall, the research shows the effect humans can have on the environment. "It maybe provides a cautionary tale to how sensitive coasts are to changes," Belknap said.

GULF SPILL:

Appeals court deals setback to BP's quest to limit settlement payments

Published: Tuesday, May 20, 2014

The 5th U.S. Circuit Court of Appeals has rejected BP PLC's request to review the Deepwater Horizon settlement over allegations of improper payments, leaving the Supreme Court as the company's last option as it seeks to limit its liability.

The appeals court ruling yesterday was a serious setback for BP as it seeks to rein in settlement awards related to the 2010 Gulf oil spill that have far exceeded the $7.8 billion the company originally estimated it would spend.

Eight of 13 judges agreed with previous rulings that rejected BP's claims and declined to order the entire appeals court to review the case.

Two judges, led by Edith Clement, dissented and wrote that the ruling against BP made the court "party to this fraud" and would "funnel BP's cash into the pockets of undeserving non-victims" of the spill.

BP said in a statement it was "disappointed" by the ruling and would study what to do next (Ed Crooks, *Financial Times*, May 20). **-- SP**

WATER POLLUTION:

National refuge caught in recycled-water war

Published: Tuesday, May 20, 2014

A fight over recycled water means a Colorado wildlife refuge will again have to use millions of gallons of drinking water to fill its lakes.

The Rocky Mountain Arsenal National Wildlife Refuge draws about 82 million gallons of Denver drinking water a year to fill three lakes that were once toxic. It wants to replace some of that with recycled water, but the state Department of Public Health and Environment last week reaffirmed that the refuge must first apply for permission to use water that is less clean.

The refuge's water use must also undergo a U.S. EPA review, the state said.

The refuge, on the site of a former nerve gas and pesticides plant, underwent a $2.1 billion cleanup and uses stored water to irrigate land for bison.

"This refuge needs water, and using recycled water to fulfill a portion of our needs is a wise choice for the future," said Dave Lucas, who manages the refuge.

Recycled water "meets our needs and allows millions and millions of gallons of drinking water to be put to better use by Denver residents," Lucas added.

Earlier this month, the state Water Quality Control panel voted 5-4 to require the refuge to undergo a "necessity of degradation demonstration" review. The Fish and Wildlife Service said the additional monitoring would cost $10,000 to $15,000 a year.

Lucas said approving a switch to recycled water could take months, if not longer.

"We're probably not going to irrigate this summer, which is bad for habitat restoration. [Or] we will have to drain down the lakes to irrigate," he said (Bruce Finley, *Denver Post*, May 20). **-- DB**

CHEMICALS:

EPA could fine Ala. county $50K over violations at sewer plant

Published: Tuesday, May 20, 2014

U.S. EPA cited an Alabama county for improperly managing chemicals at one of its sewage treatment plants, which could lead to fines of up to $50,000.

EPA issued the citation after an audit conducted last year of Jefferson County's risk management program found violations in how the county manages chlorine and sulfur dioxide at its Village Creek sewage treatment plant.

While the county hasn't acknowledged the "potential" violations, officials confirmed they were in settlement talks with EPA.

"We responded very aggressively to anything that was cited as potential violations, and we believe we are now in full compliance with all the risk management program guidelines and rules," said David Denard, the director of the county's Environmental Services Department (Barnett Wright, *Birmingham News*, May 19). **-- SP**

WASHINGTON:

Workers clearing landslide debris walk off job over safety concerns

Published: Tuesday, May 20, 2014

Some workers clearing mud from the road buried in the Oso, Wash., landslide that killed 41 people and left two missing have walked off the job due to safety concerns.

Several people quit Sunday and others walked out yesterday as workers called for slowing down operations to improve safety and allow them time to look for human remains or personal effects in the debris, *The Herald* of Everett reported.

The exact number of workers who walked out wasn't clear as of last night.

State Transportation Department spokesman Travis Phelps, who confirmed the walkout, said safety complaints are immediately investigated.

Workers said they were told to keep going during bad weather and when footing was poor. Rhonda Cook, a spotter who also worked in the debris field during recovery efforts, told *The Herald* that people were "sinking up to their waist and their thighs trying to navigate their way."

She said the spotters look forward to opening the road as quickly as possible but feel a responsibility to do the work correctly out of respect for the affected families.

The highway clearing has been conducted so far without injuries or accidents, Phelps said (AP/*Seattle Post-Intelligencer*, May 19). **-- JL**

NORTH CAROLINA:

Tanker spills 3,000 gallons of sewage at rush hour

Published: Tuesday, May 20, 2014

A tanker truck spilled about 3,000 gallons of treated sewage onto a highway east of Charlotte, N.C., late last week during rush hour.

The truck crashed while trying to negotiate a left turn, and the impact punctured the sewage tank.

Wearing full-body suits, the Gastonia Fire Department's hazardous materials team had the leak patched within about 10 minutes. According to a statement, the workers were able to keep the sewage from contaminating the public water system.

It wasn't clear yesterday whether the driver of the truck, who was treated for nonlife-threatening injuries, had been cited for speeding (Cleve R. Wootson Jr., *Charlotte Observer*, May 19). **-- DTB**

ClimateWire -- Wed., May 21, 2014 -- **Read the full edition**

1. NEGOTIATIONS: U.N. summit takes shape but plans for 'bold pledges' remain elusive

Four months away from a U.N. super-summit on climate change, world leaders remain stymied about how to fulfill Secretary-General Ban Ki-moon's demand that they bring "bold pledges" to the high-level meeting.

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10. **POLITICS:** Calif. governor pushes climate issues into the limelight

11. **SPORTS:** NFL teams getting greener with new stadiums

12. **WEATHER:** El Niño this year could make political climate uncomfortable for GOP

E&ETV's OnPoint

13. **GRID:** Large Public Power group's Gaines says higher rates expected from EPA climate rule

EnergyWire -- Wed., May 21, 2014 -- **Read the full edition**

1. GRID: When will smart meters' day come?

The smart meter -- the grid device with the identity crisis -- finds its multiple personalities under examination this week at a conference of utility operators, regulators and technology vendors.

TOP STORIES

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3. **EARTHQUAKES:** Ohio pushes other oil-producing states on seismic rules

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ELECTRICITY

5. **CLIMATE:** Electricity market structure will make carbon-cutting difficult -- report

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7. **ELECTRICITY:** 'Zombie' plant will not burn coal after all, owners say

8. **POLICY:** Ohio poised to loosen renewable energy standards in nationwide first

OIL AND GAS

9. **TRANSPORT:** Challenging regulators, industry-backed study claims Bakken oil is not more flammable than other crudes

10. **KEYSTONE XL:** TransCanada wins move to back Neb. AG in route dispute

11. **CLIMATE:** DOE leadership role discussed at White House methane round table

12. **OFFSHORE DRILLING:** Norwegian firm wants to harness wind power to enhance oil recovery

13. **WORKFORCE:** Texas oil patch lures upstart millennials

14. **REFINING:** Shale boom could bring early end to Calif. coker

15. WORK FORCE: Oil field services giant settles racial discrimination suit

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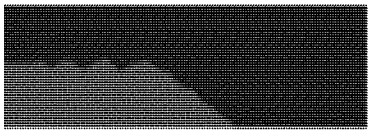

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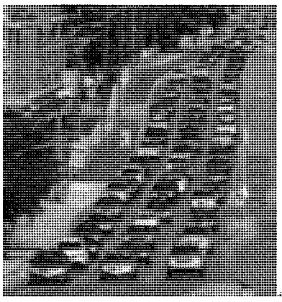


Air & Radiation Law News

for May 16, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Beijing Moves to Cut Air Pollution Could Force Some Industry Out of China's Capital

Beijing municipal environmental protection authorities are vowing to push heavy polluting companies out of the city in an effort to deal with severe air pollution....

Air Pollution

Current Air Quality Standards for Lead Are Adequate, EPA Assessment Says

The Environmental Protection Agency should consider retaining its current air quality standards for lead, according to a final policy assessment released May 13....

Air Pollution

EPA Issues Final Quality Assurance Rule

The Environmental Protection Agency May 16 will issue a final rule establishing quality assurance and quality control procedures for continuous opacity monitoring systems. Those monitoring systems are used to demonstrate a facility's...

Air Pollution

EPA Proposal Targets Reduction in Toxic Air Pollution From Petroleum Refineries

Air toxics emissions from petroleum refinery flaring and other operations would be limited under proposed standards announced by the Environmental Protection Agency....

Air Pollution

Pennsylvania Governor Signs Bill Mandating Repeal of Summer Low-Volatility Gas Mandate

Legislation (S.B. 1037) signed by Pennsylvania Gov. Tom Corbett (R) May 14 will eventually result in the repeal of regulations requiring the sale of more expensive low-volatility gasoline in seven southwestern Pennsylvania counties every...

Climate Change

Carbon Capture to Be Viable 'Turnkey' Commercial Technology by 2030, DOE Says

Carbon capture and sequestration will be a viable "turnkey" commercial technology by 2030, the head of the Energy Department's clean coal program said May 15. ...

Climate Change

Climate Change to Hit Sovereign Ratings, One of Top Global Economic Risks, S&P Says

Global warming will harm sovereign creditworthiness around the world this century, with poorer nations the worst hit, Standard & Poor's Ratings Services said....

Climate Change

Coal Export Foes in U.S. Look To Clean Up Asia's Backyard

Bowie Resource Partners LLC wanted to export coal from the port of Oakland, Calif., promising thousands of construction jobs and a $3 million-a-year payroll in a city whose unemployment rate is almost double the national average....

Climate Change

EU States Seen Coalescing Into Three Blocs Ahead of June Talks on Climate, Energy Goals

European Union member states are coalescing into three groups in the ongoing discussions about a climate and energy framework for the bloc through 2030, Greece's environment minister said May 14....

Climate Change

German Environment Minister: EU Carbon Permit Prices Will Rebound

Carbon-permit prices in the European Union's emissions trading system will rebound once policy makers agree on a "sustainable" overhaul of the market, according to German Environment Minister Barbara Hendricks....

Energy

Canadian Tax Programs for Oil, Gas Sector Not Subsidies, Analysis Says

The Canadian government's taxation programs to support the oil and gas industry are largely not subsidies, and the two remaining programs that could be considered subsidies are being phased out, according to an analysis by the Montreal...

Energy

FERC Issues Favorable Environmental Review For Dominion Cove Point LNG Export Terminal

The staff of the Federal Energy Regulatory Commission May 15 issued a favorable final environmental assessment for the proposed Dominion Cove Point liquefied natural gas export terminal in southern

Maryland....

Energy

Florida Governor Approves Nuclear Plant;
Appeal Expected on Everglades Power Lines

Florida Gov. Rick Scott (R) and his Cabinet have approved the siting request for a nuclear power plant expansion and construction of transmission lines in Miami-Dade County....

Energy

Georgia Power, U.S. Army Energy Initiative
Slate 90 Megawatts of Solar Power by 2016

Georgia Power Co., the largest U.S. utility company owned by Southern Co., will build and operate three 30-megawatt solar projects at U.S. Army bases in Georgia....

Energy

Mexican Energy Reforms Look
To Establish Clean Energy Certificates

Recently proposed legislation in Mexico contains broad-reaching energy reforms for the oil and gas industry, but it also includes provisions intended to help bolster investment in the country's renewable energy sector. ...

Energy

New Mexico Power Plant Comment Period Extended

The Office of Surface Mining Reclamation and Enforcement is extending the comment period for a draft environmental impact statement for the Four Corners Power Plant and Navajo Mine Energy Project in northwestern New Mexico, according to...

Energy

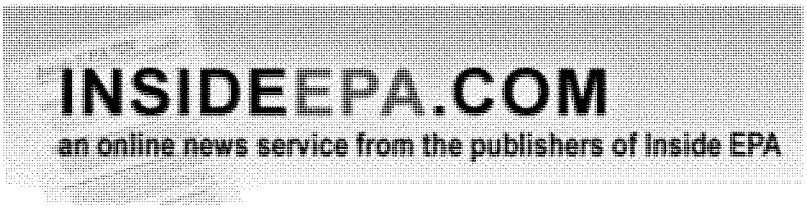
Renewable Tax Credit, Energy Incentives
In Limbo After Senate Procedural Vote Fails

Legislation that would have extended the renewable energy production tax credit and several other expired energy provisions failed to clear a procedural vote in the Senate May 15, putting the fate of billions of dollars in energy tax incentives...

Mining

D.C. Circuit: Challenge Against Coal Fee As Violation of Export Clause Is 'Untimely'

The U.S. Court of Appeals for the D.C. Circuit has dismissed a lawsuit by a coal company that alleged an Interior Department fee on coal produced violated the U.S. Constitution's Export Clause, calling the challenge to the fee "untimely"...



EPA Proposes Tougher Refinery Emissions Standards, Ending Exemptions

EPA May 15 issued a suite of proposed refinery emissions rules that would significantly strengthen current requirements, lowering emissions limits, ending exemptions from emissions limits for periods of startup, shutdown and malfunction (SSM) and introducing mandatory fenceline monitoring for air toxics for the first time.

D.C. Circuit Grants EPA Bid For Limited Remand Of Combustion Air Rules

The U.S. Court of Appeals for the District of Columbia Circuit has granted EPA's bid for a limited remand of parts of its contested package of combustion air rules, giving the agency 60 days to better justify its use of a statistical tool used to set some standards and remanding other parts to EPA for further notice-and-comment considerations.

EPA NSPS Spurs Fears Over Technology Precedent For Non-Utility Sectors

Non-utility industry groups fear that EPA's proposal to require novel carbon capture and sequestration (CCS) technology for new coal-fired power plants as part of its utility climate rule sets a negative precedent that, if upheld following an expected legal challenge, would allow the agency to impose similar "stretch" technologies on other industry sectors.

Obama Plan To Accelerate Infrastructure Permits Prompts Mixed Response

President Obama's plans to streamline environmental and other reviews for permitting transportation infrastructure projects are prompting a mixed response, with the road building sector and

environmentalists praising the move, while House GOP lawmakers say it falls short of their push to end the lengthy permitting process.

Latest Blogs

EPA Urged To Resolve Climate NSPS, ESPS Overlap

A nonpartisan think tank is urging EPA to resolve a potential overlap between its proposed new source performance standard (NSPS) to cut future utilities' greenhouse . . .

GOP Targets Climate Change Health Study

Republican senators are questioning EPA about the agency's ongoing research effort into the human health impacts of climate change and how the results may drive . . .

Greenwire

OIL SANDS:

Beyond Keystone XL, more pipelines with more problems

Elana Schor, E&E reporter

Published: Thursday, May 15, 2014

Among the new conclusions the Obama administration added to the 1,000-plus pages of its final Keystone XL environmental review, one particular sentence carried a subtle but unmistakable air of portent.

Observing that limited transportation options have depressed the price of heavy Canadian crude in recent years, the administration outlined several projects that America's neighbor to the north has pursued to open up new export markets for its ample oil sands fuel resources. Then, after repeating a warning from its draft KXL review about "significant opposition" to those pipelines, the State Department bureaucratically underlined the thought.

"Nonetheless, all of the proposed pipeline projects within Canada have faced stringent political opposition and substantial regulatory uncertainty," State wrote.

As the federal review of KXL drags through its fifth year, the contours of the lobbying battle over the pipeline are little-changed since a 2011 White House sit-in first pulled it from obscurity to totemic status for a resurgent environmental movement. But even in the growing shadow of their famous cousin, other pipelines proposed to boost oil sands crude are inching along more slowly than first anticipated and facing resistance on multiple fronts.

"What's happening with Keystone is the new normal," Michael Whatley, executive vice president at the industry group Consumer Energy Alliance, said in an interview. "As the opposition groups bring more scrutiny to these projects, it's not surprising that regulators are going to bring more scrutiny."

American Petroleum Institute senior manager Cindy Schild likened the rise of anti-pipeline campaigns to the not-in-my-backyard local push-back against refinery construction that has stalled new domestic crude

processing facilities since the 1970s.

But Schild marveled at the nation's heightened awareness of KXL relative to other pending pipelines that, collectively, would carry nearly triple the well-known project's daily volume of heavy crude out of the remote Alberta oil sands.

"We have five other major pipelines being proposed, but everybody knows the name of one?" she said in an interview. "That, to me, is amazing."

New and expanded pipelines are an economic inevitability in a market that sold more oil and gas to the United States in January than the entire Organization of Petroleum Exporting Countries. But the challenges on tap for six major non-KXL oil sands pipelines suggest that greens are embracing the continent wide game of "Whac-A-Mole" seen by many in their ranks as essential to slowing the development of global fossil fuel resources.

The Canadian Association of Petroleum Producers' vice president for oil sands and markets, Greg Stringham, said in an interview that his industry is "looking at a portfolio of transportation options, rather than looking at one specific solution."

Noting that Prime Minister Stephen Harper's government this week revamped its marine spill response framework in preparation for more tanker traffic, Stringham added that "it's not an either-or -- we know we're going to have to continue to expand in all directions."

If activists succeed in defeating or delaying enough of the pipelines proposed to help Canadian producers meet their goals, the State Department pointed to a possible damper on short-term production in its January KXL review. In the long term, however, the administration predicted that rail would rise to meet oil sands crude shipment needs even if all major pipelines were blocked.

Analysts at State projected that a "completely constrained" pipeline scenario would require U.S. and Canadian refineries to take between 1.2 million and 1.5 million barrels per day (bpd) of crude by train in order to meet Energy Information Administration projections for the oil sands. Railways are prepared to ramp up and carry those volumes, the administration said.

Total Canadian oil-by-rail exports reached 146,000 barrels per day on average in the fourth quarter of last year, nearly double the level from the final quarter of 2012, according to that country's National Energy Board (NEB).

One of the six biggest new or expanded oil sands crude pipeline proposals stands to see its fate settled within a month. The other five remain in varying stages of U.S. or Canadian permit applications or, in one case, still in the conceptual phase.

Northern Gateway

Harper's government has vowed to meet a June deadline for ruling on the Northern Gateway, a $7.4 billion bid to run up to 525,000 bpd of oil sands crude west to British Columbia for export by tanker to fuel-thirsty markets in Asia and beyond.

In addition to this week's Canadian marine transportation reforms, including the end of a ban on the use of dispersant chemicals on waterborne oil, Natural Resources Minister Greg Rickford yesterday announced new pipeline safety standards that would apply to any future approval of Gateway. The government vowed to give NEB stronger inspection and audit powers as well as the authority to force repayment from oil companies for spill cleanup costs.

But those conciliatory moves are unlikely to soften the anti-Gateway clamor directed at its sponsor, Enbridge Inc., from conservationists and aboriginal First Nations set against the prospect of more emissions-intensive oil sands running through British Columbia's pristine landscapes.

Some First Nations have filed legal challenges to the thumbs-up from a Harper-designed joint review panel that imposed more than 200 conditions on Enbridge (*EnergyWire*, Dec. 20, 2013). Offers of a partial ownership stake have failed to sway more than half of the First Nations whose land Gateway would cross on its way to the British Columbia port city of Kitimat, the Canadian Broadcasting Co. reported this month.

The Obama administration noted in its KXL review that Gateway, which could eventually rise to carry 800,000 bpd, "may be operational by '2017+.'"

Trans Mountain expansion

Soon after it finishes work on the controversial Gateway, NEB will begin formally vetting the proposed twinning of Trans Mountain, another oil sands pipeline to Canada's west coast that is operated by Kinder Morgan Energy Partners LP.

Trans Mountain would grow in capacity from 300,000 bpd to 890,000 bpd by 2017 under Kinder Morgan's plan, which NEB must pass on to Harper's Cabinet with a recommendation by July 2015. The regulator granted 400 "intervenors" a possible role in public hearings on the project scheduled to start in January -- a major increase in interest since its 2009 hearings on Keystone XL drew 29 intervenors.

Forest Ethics, a Canadian green group that also operates on the U.S. West Coast, this month filed a constitutional challenge to NEB's process that accuses the government of suppressing public participation by establishing new, higher hurdles before Canadians can comment on pipeline applications.

A First Nations group launched a legal challenge against the project this month, though it remains to be seen whether aboriginal objections to Trans Mountain will reach the current pitch of opposition to Gateway.

Energy East

TransCanada Corp. is in the earliest stages of amassing public support for an $11 billion conversion of a natural gas line to ship crude west to Canadian refineries that tend to rely on light or synthetic oil. The export potential of Energy East, however, would increase due to a new marine terminal set for New Brunswick.

Double the length of KXL and also predicated on hundreds of miles of new pipeline, the project is the subject of NEB open houses in eastern provinces this month aimed at informing locals of their roles in the permitting process. During that time, TransCanada CEO Russ Girling told investors recently, the company plans to keep talking up the pipeline's potential to displace Canadian imports of foreign crude, "something that benefits us all from coast to coast to coast."

Energy East's still-nascent process allows TransCanada to apply lessons learned from the public relations hurdles it confronted on KXL and those facing Enbridge, its rival, on Gateway. But climate activists also see the eastern line as an opportunity to mobilize a new group of critics against the heavy crude that is an average of 17 percent more emissions-intensive than conventional oil.

"It's going to be a big battle because it's within Canada," said Oil Change International's campaigns director, David Turnbull, regarding Energy East in an interview. "There is already a lot of work being done to sort of lift that project up into the public's consciousness."

Portland Montreal Pipe Line

NEB's go-ahead to reverse two portions of an Enbridge pipeline that previously ran west through Ontario leaves the twin Portland Montreal Pipe Line as an open thoroughfare for oil sands crude to reach U.S. East Coast ports -- if its operator pursues a reversal that for two years it has steadfastly declined to confirm is under consideration.

Most observers expect PMPL, as it is known, to eventually seek approval to carry an estimated 300,000 bpd from Montreal through New Hampshire, Vermont and Maine, a trio of independent and conservationist states where activists have no intention of accepting heavy fuel without a fight.

Republican Sens. Susan Collins of Maine and Kelly Ayotte of New Hampshire already have joined Democratic colleagues in pressing the State Department for a presidential permitting review before PMPL can change directions (*Greenwire*, April 23). If the issue flares up later this fall, Sen. Jeanne Shaheen (D-N.H.) could seize on local skepticism to push back against the pro-KXL pressure she is getting from her new GOP challenger, former Massachusetts Sen. Scott Brown.

Alberta Clipper expansion

Nothing underscores the unpredictable pipeline politics wrought by KXL like the Alberta Clipper, a 1,000-mile oil sands crude link between Alberta and Wisconsin. In 2009, the Clipper coasted to the same presidential permit that TransCanada's famous project is still seeking, but sponsor Enbridge is already working much harder on approval to expand the pipeline from 450,000 bpd to 800,000 bpd.

The Minnesota Public Utilities Commission last year unanimously agreed on a 120,000-bpd expansion of the line, achieved solely through building new pump stations, but the second phase of that state-level review is drawing even more heat from conservationists. Some of those same green groups also are fighting Enbridge's permit application at the State Department, where a draft environmental impact statement (EIS) on the expansion is expected within the next several months.

"Even though we had planned for this process to take longer," Enbridge CEO Al Monaco said of the Clipper delays on a conference call with investors this month, "the contingency we have wasn't enough."

The company now aims to see approval for the expanded pipeline next summer as opposed to this summer. But in the meantime, its executives say they have alternate plans to stay on track for the 120,000-bpd oil bump that would have comprised the first phase of the new Clipper.

Enbridge's Line 3

Replacing Line 3, a nearly 50-year-old Alberta-to-Wisconsin pipeline, with new steel capable of shipping oil sands crude at a cost of $7 billion marks the largest single investment by a company that brings more oil to America every day than Saudi Arabia, according to U.S. Energy Information Administration records.

Enbridge's behemoth status among pipeline operators, however, means that national green groups already are vowing to force the State Department to conduct a KXL-style presidential permit review before the company is permitted to install a new 3-foot-wide pipeline to carry 370,000 more bpd through the climate-conscious Midwest.

State is staying mum on whether it plans to require a new application for Line 3, but the project -- originally eyed for a 2017 completion -- is running into some of the same headwinds as the Clipper (*EnergyWire*, March 5).

Paul Blackburn, an attorney and independent consultant who is currently helping greens contest the Clipper expansion, credited the so-far successful fight to delay KXL with directing more energy toward other anti-pipeline efforts.

"If it wasn't for the Keystone XL campaign, they probably would have steamed right ahead," Blackburn said in an interview. He also observed that the KXL battle could hurt as well as help, predicting that "some industry players are benefiting from counter-messaging about a delay" on TransCanada's ubiquitous marquee project.

Highway program reauthorization sails through Senate EPW panel

Sean Reilly, E&E reporter

Published: Thursday, May 15, 2014

The Senate Environment and Public Works Committee approved a six-year reauthorization of the federal-aid highway program this morning in the first step of what is likely to be a grueling trek toward final passage of a surface transportation funding bill.

The unanimous voice vote came less than 20 minutes into the markup of the legislation, which was introduced late Monday and would keep highway spending at current levels with adjustments for inflation. Folded into the bill was a package of uncontroversial amendments, including one by Sen. Bernie Sanders (I-Vt.) that would require the Transportation Department to map out a national network of electric vehicle corridors and recharging stations, and another by Sen. Jeff Sessions (R-Ala.) that would limit highway spending from the Highway Trust Fund if the account is at risk of falling below certain benchmarks.

"This is a historic day," EPW Chairwoman Barbara Boxer (D-Calif.) said after the vote. "I never remember a transportation bill that went through this way without any controversial amendments offered." Not in the committee-approved bill was a proposed amendment by Sen. Ben Cardin (D-Md.) aimed at better protecting watersheds from highway construction runoff; Cardin voiced disappointment at the outcome.

"This is not a partisan issue," he said. "It's dealing with common sense to protect our infrastructure and protect our community."

But the panel's top Republican, Sen. David Vitter of Louisiana, noted the real challenge lies in the bailiwick of the Senate Finance Committee, which must find a way to pay for the final bill as trust fund revenues chronically fall short of spending demands. The measure approved today would run from fiscal 2015 through 2020; it does not address a threatened shortfall in the trust fund's highway account that could occur late this summer.

In a statement, Pete Ruane, the head of the American Road and Transportation Builders Association, commended the committee, saying the influential lobby was particularly pleased at provisions that would create a dedicated funding source for freight transportation needs and shed more light on how federal highway and bridge funds are spent.

But Ruane urged House and Senate leaders, along with the respective tax committees, "to get serious" about addressing the trust fund's money woes.

"As this process moves forward, Congress needs to be clear there is nothing fiscally responsible about investment levels that fail to improve the conditions of the nation's roads and bridges, or allow traffic congestion to get worse," Ruane said. "Furthermore, it is totally irresponsible to repeatedly march the Highway Trust Fund to the brink of insolvency."

Terry O'Sullivan, general president of the Laborers' International Union of North America, also praised the committee vote but said in a separate statement that "there is no excuse for further delay" in finding a long-term funding fix.

"Another short-term patch, simply duct-taping the roads and bridges we all rely on, must be off the table," O'Sullivan said.

EPW staff had been up until 3 this morning putting the bill together, Boxer said. It would replace a key part of MAP-21, the existing surface transportation law that expires at the end of September.

Also having a piece of the action are the Senate Banking, Housing and Urban Affairs Committee, which is in charge of transit programs, and the Senate Commerce, Science and Transportation Committee, whose jurisdiction includes transportation safety programs. A Commerce subcommittee has a reauthorization hearing scheduled for this afternoon; the Banking Committee has thus far not taken any overt steps toward reauthorization. In the House, Transportation and Infrastructure Chairman Bill Shuster (R-Pa.) has said he would like to wrap up work on his committee's version of a surface transportation bill by early summer.

The EPW-approved measure would retain the core structure from MAP-21, authorizing a total of $242.7 billion for the federal-aid highway program over its six-year life span. It would carve out $400 million per year for a competitive grant program aimed at projects of "national or regional significance," according to the text of the legislation and a committee summary.

The proposed freight initiative would channel money to all states on a formula basis to improve the movement of goods, according to a committee summary. The freight program's yearly price tag would start at $400 million in 2015 and gradually rise to $2 billion by 2020, according to the bill. On a related front, the Transportation Department would have three years to come up with a "National Freight Strategic Plan."

In other areas, the bill would continue funding for the popular Transportation Infrastructure Finance and Innovation Act (TIFIA) credit assistance program at the current level of $1 billion per year, provide for more openness in how transportation projects are selected and funded, build on efforts to speed up project delivery while protecting public health and the environment, and authorize a new American Transportation Awards program to reward state and local governments that bring in projects ahead of schedule and under budget, according to the summary. It would be up to congressional appropriators, however, to find money to pay for the proposed grants program.

CARBON CAPTURE:

Heitkamp lobbies for bill boosting commercial availability

Manuel Quiñones and Jean Chemnick, E&E reporters

Published: Thursday, May 15, 2014

Sen. Heidi Heitkamp (D-N.D.) today said she was working on "recruiting" other lawmakers to support her bill to boost the commercial availability of carbon capture and sequestration.

Provisions in Heitkamp's legislation, S. 2152, which she introduced last month, would expand Department of Energy research and flexibility for loan guarantees, among other issues (*Greenwire*, March 24).

"We have been recruiting people from all sides," Heitkamp said during a carbon capture discussion on Capitol Hill this morning. "The future of coal is in carbon capture and sequestration."

Heitkamp said she didn't think the legislation would see much action this year. "We'll obviously be ready for the next Congress," she said.

Heitkamp lamented the legislative landscape in Congress, especially after the recent failure of the Shaheen-Portman energy efficiency bill (*E&E Daily*, May 13). "What happened in the Senate this week is really, really troubling for an energy future in this country," said Heitkamp, one of the Senate's moderate, pro-coal lawmakers.

Heitkamp appeared to take issue with U.S. EPA's proposal to require carbon capture for all new coal-fired power plants. She sees a future for the technology, "but we can't do it on an expedited schedule that doesn't give us a glide path."

Earlier this month Sen. Jay Rockefeller (D-W.Va.) introduced two separate bills to boost research funding and tax incentives for carbon capture, plus encourage the use of CO2 for enhanced oil recovery (*E&ENews PM*, May 5).

DOE's clean coal chief Julio Friedmann, who just yesterday pressed the coal industry into working with the Obama administration on climate standards, expressed optimism today about CCS.

Even though power plants with CCS are expensive now, he sees signs of the technology getting cheaper as more large-scale projects move forward. He says the second generation of plants has the potential to cut the costs in half.

"By 2030, CCS will be a viable turnkey operation," Friedmann said. "You don't get the fifth symphony until you write the first symphony."

'Creative tension'

The coal industry and many within the utility sector have opposed EPA's proposal, arguing that it will end development of clean coal technologies by shifting generation even further toward natural gas.

In comments to the agency and statements to the press, industry advocates including some who have a stake in CCS development have said repeatedly that EPA's Clean Air Act rule has the potential to kill CCS. And many have characterized the rule as another front in the administration's "war on coal."

But Karl Moor, senior vice president and chief environmental counsel at Southern Co., said at today's forum that the administration appeared to be sincere in supporting an "all of the above" energy strategy. He cast the conflict over CCS as part of a larger "creative tension" between regulating agencies and the power sector.

"Environmental ambitions for the next set of regulatory programs always stress the industry," he said.

When EPA required the use of scrubbers to limit sulfur emissions linked to acid rain and selective catalytic reduction (SCR) to limit nitrogen oxides, the industry also protested and told EPA it would need additional time to comply, he noted.

"CO2 is another rub point," Moor said. "Do we love perfectly the administration's ambition with regard to environmental regulation? No. Is there anything wrong with that? No."

While Moor acknowledged that building the nation's first commercial CCS power plant has been challenging and expensive, he said Southern expected to recover its shareholders' costs by taking advantage of commercial opportunities to sell the technology abroad and through other means.

Friedmann said EPA's proposal would help CCS develop by giving utilities certainty that they would need to limit CO2 in the future, and that investing in the technology would pay off. Enhanced oil recovery, the sale of urea from power plants and other opportunities would also help offset the cost of CO2 storage, he said.

But he and other panelists acknowledged that complementary policies would be needed to help make CCS cost-effective. He proposed that states take a look at converting their existing renewable energy standards to clean energy standards, granting credit for CCS projects and nuclear energy.

Kurt Waltzer, Clean Air Task Force's managing director, said on the panel that EPA's proposed New Source Performance Standard would "create a virtuous cycle," encouraging the development of new plants that in turn would bring down the cost of technology. But he said additional policies and incentives would be needed.

"We are supportive of the administration's proposed standards, but I think everyone would acknowledge they are a step," he said. "They are not the end of the discussion."

NATURAL GAS:

FERC advances allegations against BP

Hannah Northey, E&E reporter

Published: Thursday, May 15, 2014

The Federal Energy Regulatory Commission today rejected BP's jurisdictional arguments and said an administrative law judge will hear the commission's allegations that BP gamed gas markets in 2008.

FERC's Office of Enforcement is accusing BP of violating the Natural Gas Act by manipulating gas markets at the Houston Ship Channel in late 2008. The agency is threatening to fine the oil giant $28 million in civil penalties and force it to disgorge $800,000 in unjust profits, plus interest.

BP contends the allegations are based on "insinuation and speculation."

"The FERC Enforcement Staff's allegations are without merit and we look forward to the hearing," Scott Dean, a spokesman for BP, said in a statement today. "We stand by what we previously disclosed publicly in February 2011 -- that BP natural gas traders did not engage in any market manipulation in late 2008 as alleged by FERC Enforcement Staff."

FERC maintains that BP's "Texas team" at its Southeast Gas Trading desk traded physical natural gas at the Houston Ship Channel to increase the value of BP's financial position.

The team, FERC says, used BP's "transportation capacity between Katy [Texas] and HSC, made repeated early uneconomic sales at HSC, and took steps to increase BP's market concentration at HSC as part of a manipulative scheme."

BP argues that the natural gas being traded was "intrastate" and didn't fall under the commission's oversight. FERC says the gas affected markets under its jurisdiction.

It's unclear how the case will proceed. FERC and BP could settle the case, or the full commission could issue a final order -- a decision that BP could fight in a federal appeals court.

AIR POLLUTION:

Tenn. man pleads guilty to conspiracy after mishandling asbestos

Daniel Lippman, E&E reporter

Published: Thursday, May 15, 2014

A Tennessee man pleaded guilty yesterday to conspiring to violate the Clean Air Act when he was the owner of a salvage and demolition company that handled asbestos.

Mark Sawyer admitted guilt before U.S. District Court Judge Ronnie Greer in the Eastern District of Tennessee on one criminal felony count for violating the act's "work practice standards" when he and four other co-defendants did not properly wet, strip, bag and dispose of asbestos.

The Justice Department called it "a multi-year scheme in which substantial amounts of regulated asbestos containing materials were improperly removed from" parts of the bankrupt Liberty Fibers rayon plant or were illegally left at the plant, in Morristown, Tenn., during demolition. Rayon is used in a number of medical products, clothing and home furnishings.

Sawyer faces up to five years behind bars and a fine of up to $250,000 but terms for people who plead guilty are often much reduced from the maximum sentence.

DOJ noted in a statement that asbestos can cause lung cancer, asbestosis and the often-fatal cancer mesothelioma. Handling the materials improperly can easily lead to exposure.

Special agents from U.S. EPA's Criminal Investigation Division investigated the case.

Attorneys representing Sawyer did not immediately respond to a request for comment.

OIL AND GAS:

Methane from drilling on public lands could fuel all L.A. homes -- report

Phil Taylor, E&E reporter

Published: Thursday, May 15, 2014

Oil and gas companies flare or vent enough methane from federal lands each year to supply all the homes in Los Angeles, according to a new report from a left-leaning government watchdog group.

The report from the Bozeman, Mont.-based Western Values Project estimated that the escaped gas could have resulted in $64 million in royalty payments to federal and state taxpayers.

And if the price of natural gas increases over the next decade, as predicted by government analysts,

taxpayers could lose out on nearly $800 million from vented or flared methane, the WVP report said. Methane is a key ingredient in natural gas.

The findings come as the Bureau of Land Management explores ways to update rules that determine how much methane -- a greenhouse gas far more potent than carbon dioxide -- companies may vent or flare from roughly 36 million acres of leases on federal lands.

"This level of waste has cost national, state and local budgets hundreds of millions of dollars in the past several years, and unless action is taken, the problem will only get worse," said a statement by WVP's Director Ross Lane.

The report's methodology was simple.

In 2010, the Government Accountability Office released a report citing U.S. EPA estimates that 4.2 percent of natural gas produced on public lands is vented or flared. Data from the Western Regional Air Partnership, which consists of EPA, federal land managers, states, tribes and local air agencies, suggest the level of methane emissions at up to 5 percent, according to GAO.

That figure has also been cited by a top BLM official.

Those percentages were multiplied by the total amount of gas for which companies paid royalties in 2013 to the Interior Department's Office of Natural Resources Revenue, which was approximately 2.7 billion mcf (thousand cubic feet).

That comes to between 112 million mcf and 133 million mcf of natural gas that was vented or flared, according to WVP.

To figure out how many homes that could supply, WVP used the American Gas Association's estimate that 1 million mcf could meet the household needs of 10,000 to 11,000 homes annually. Using U.S. Census data, WVP calculated that 1.5 million homes represents a likely population of 3.8 million, about the size of Los Angeles.

The report's release was timed to coincide with the BLM's fourth listening session in Washington, D.C., today to discuss updates to 34-year-old regulations governing the oil and gas industry's venting and flaring of methane. The effort, which has also included listening sessions in Colorado, New Mexico and North Dakota, seeks to limit the escape of public minerals while maximizing royalties for taxpayers, and it could have the co-benefit of curbing climate change (*Greenwire*, March 20).

Estimates of how much natural gas escapes into the atmosphere during the production process vary widely, as do estimates of how much of it could be economically captured.

The GAO report that WVP cited found that operators could economically capture about 40 percent of their flared or vented natural gas on federal lands with off-the-shelf technologies (*Greenwire*, Dec. 1, 2010).

Technologies including smart automated plungers, expanded use of reduced emissions completions, vapor recovery devices and low-bleed pneumatic devices could economically capture about 50 billion cubic feet of gas annually, GAO said.

That's a little under half the amount of vented or flared methane estimated in the WVP study.

WVP recommended that BLM implement a rule rewarding companies that take progressive measures to rein in emissions, which could also spur innovation and lower the cost of capturing the wayward gas.

But Kathleen Sgamma, vice president of government and public affairs for the Western Energy Alliance, said the report mistakenly suggests that all of the gas that is vented or flared could be economically captured.

"I have never heard anyone doubt the oil and natural gas industry's sincerity in trying to make a profit," Sgamma said. "Do you think that if there was money to be made from natural gas that is now vented and flared, that we wouldn't be doing everything possible to capture that and make money?"

She called the WVP's methodology "simplistic" and said much of the vented and flared methane is occurring in oil-rich places like North Dakota, where there are fewer economic incentives to capture the gas and, at times, regulatory hurdles in acquiring rights of way across federal and Indian jurisdictions for gas infrastructure like pipelines.

The industry is working hard to lower emissions, but if it were forced to halt oil production due to burdensome BLM regulations, it could lose an important revenue stream that will help pay for needed gas infrastructure, she said.

Even if BLM required companies to capture all of the methane that WVP estimated is vented or flared, the $64 million in royalties would be small compared to overall federal royalty collections for dry natural gas, which exceeded $1 billion in 2013 according to ONRR.

Collections for oil totaled more than $1.4 billion.

ENERGY POLICY:

FERC debates impact of wind PTC, transmission on nuclear fleet

Hannah Northey, E&E reporter

Published: Thursday, May 15, 2014

Members of the Federal Energy Regulatory Commission today disagreed about just how large an effect wind production tax credits are having on the U.S. nuclear fleet.

Commissioner John Norris said the wind production tax credits that have drawn the ire of nuclear giant Exelon Corp. are a "distraction" that is not productive to the larger conversation about what's challenging nuclear units.

"I have concluded that negative pricing is having a very small impact on the nuclear fleet," Norris said at the commission's monthly meeting in Washington, D.C. "It certainly would not pass a 'but for' test. That is to say, I do not believe that 'but for' negative pricing, the currently troubled nuclear units would be economic."

Norris said the focus of negative pricing has revealed a different problem that needs to be addressed -- the need for more transmission to relieve bottlenecks where nuclear and wind energy are both adversely affected.

"It appears that negative pricing occurs in transmission-constrained generation pockets," he said, adding that FERC's efforts like Order 1000 and planning activities will help ease those constraints.

Norris said his comments today constituted an "update" to his statement last month that American Wind

Energy Association presented "compelling" information that wind production tax credits are not a major factor in making nuclear power uneconomical (*Greenwire*, April 17).

Commissioner Philip Moeller decided to keep the debate rolling.

"I don't think negative pricing is a distraction, but an important part of the debate," Moeller said. "Just a production incentive, whether it's good for society or not, does heave impacts on competitive markets. I would hope that's still part of this discussion."

The fate of the wind PTC has been a thorny issue in the energy industry, with utility Exelon arguing that the PTC allows wind power producers to sell into competitive markets at negative prices, undercutting its fleet of nuclear reactors.

Moeller in the past has expressed concern about the effect of the wind PTC on energy markets and said the "debate is ongoing."

AWEA released a report in March that asserted Exelon had overstated the extent to which negative pricing occurs and said those situations can be blamed on factors other than the PTC, such as transmission bottlenecks. The association also argued that wind's ability to reduce electricity prices is a boon for consumers.

Exelon has questioned the premise of the AWEA study, saying it relied on day-ahead prices in the markets it studied rather than using real-time price data where negative pricing was more visible. Exelon officials have also said they support efforts to promote wind energy, as long as such incentives do not undercut the value of nuclear, which provides baseload electricity without carbon dioxide emissions.

NUCLEAR ENERGY:

N.J. reactor to stay shut down after inspectors find broken parts

Published: Thursday, May 15, 2014

The operator of New Jersey's Salem Unit 2 nuclear reactor will need more time to make repairs before restarting operations after discovering problems at the plant.

PSEG Nuclear spokesman Joe Delmar said yesterday the company was pushing back the planned restart to allow "additional internal inspections of the coolant pumps and make any repairs as needed."

The company found eight thumb-sized broken bolt heads during an inspection of the plant, which has been offline for refueling since April 14 and was supposed to restart in mid-May.

The bolt tops, each about 1 inch in diameter and 3 inches long, probably come from one of the reactor coolant pump's impeller vanes, said Nuclear Regulatory Commission spokesman Neil Sheehan (Jeff Montgomery, Wilmington [Del.] *News Journal*, May 14). -- **SP**

TEXAS:

State offers $2,500 incentive for buying alternative-fuel vehicles

Published: Thursday, May 15, 2014

Texas' environmental watchdogs this week announced incentives up to $2,500 for drivers who buy alternative-fuel vehicles.

The program will offer up to $7.7 million in incentives for leasing or buying light-duty vehicles that run on electricity, compressed natural gas or propane. Previous incentives from the Texas Commission on Environmental Quality applied only to medium- or heavy-duty vehicles.

The funds, which will be offered until June 2015, are part of the Texas Emissions Reduction Plan, passed by the Legislature last year. The incentives will conclude earlier, though, if the money runs out.

While the program only partially balances the higher cost of alternative-fuel vehicles, the manager of TCEQ's grant section said the money can be combined with other state and federal grants (Ryan Holeywell, *Fuel Fix*, May 14). **-- JL**

TURKEY:

Anger, death toll rising after disaster

Published: Thursday, May 15, 2014

Mourning has turned to angry protest and strikes in Turkish cities as the toll from the deadliest mine accident in the country's history continues to mount.

The state-run Anatolia news agency reported 282 miners have been confirmed dead as the catastrophic fire that broke out Tuesday in a Soma mine continues to burn. Energy Minister Taner Yildiz said that as of this morning, no one had been pulled out alive in the past 12 hours. About 150 miners are still unaccounted for. Most of the deaths, Yildiz said, were the result of carbon monoxide poisoning.

The families of the missing continue to hold a grief-stricken vigil, but for a second day, demonstrations broke out in Istanbul, Ankara and other cities over dangerous working conditions for miners across Turkey. A major labor group also called a strike in response.

Prime Minister Recep Tayyip Erdogan received a hostile welcome when he arrived in Soma yesterday, after likening the disaster to incidents in other countries, some of them more than a hundred years ago, and saying such accidents were "the nature of the work."

Erdogan, who experts say is positioning himself for a presidential run in August, has promised a thorough investigation, but critics have questioned the cozy relationship between mine operators and government officials.

The accident came two weeks after Erdogan's Justice and Development Party, known by its Turkish initials AKP, rejected calls for an examination of safety practices in the Soma mines.

"The government and the ruling party ... ignored the warnings about the Soma mines," Murat Yetkin wrote in a commentary for today's *Hurriyet* newspaper. The miners "paid the price with their lives" (Laura King, *Los Angeles Times*, May 15). **-- DTB**

UNITED KINGDOM:

Government conducts secret gassing tests at empty badger dens

Published: Thursday, May 15, 2014

The British government has been conducting secret tests to gas badger dens -- called setts -- since last summer in the wake of failed pilot badger cull programs, according to documents acquired by the London *Guardian* today.

The ongoing tests, at an undisclosed location, are trying to see how poisonous carbon monoxide and nitrogen oxide flow through uninhabited badger setts. No badgers have been involved yet in the trials.

The recent failed culls were meant to help stop the spread of tuberculosis that led to the slaughter of more than 26,000 cattle in England in 2013. The program failed to reach kill quotas and was abandoned after an independent panel deemed the cull inhumane (*Greenwire*, April 3).

Secretary of State for Environment, Food and Rural Affairs Owen Paterson told Parliament in October that while gassing was under consideration, "we will not use it unless it is proven to be safe, humane and effective." However, his department in 2005 issued a report that found "there are no currently available poisons that would be effective without causing deaths that would be considered markedly inhumane and/or significant risks to non-target wildlife" (Damian Carrington, London *Guardian*, May 15). **-- JL**

ClimateWire -- Fri., May 16, 2014 -- **Read the full edition**

1. DROUGHT: Wildfires come hard and fast to Southern Calif.

SAN DIEGO -- Parts of San Diego County resembled an inferno yesterday as nine fires roared along the edges of suburbs and through the countryside. In the afternoon, thick, black smoke spiraled into the air above San Marcos, 40 miles northeast of San Diego International Airport, while firefighters battled a spate of new flare-ups in the chaparral-covered hillsides below.

2. EMISSIONS: Absent climate policies, widespread use of natural gas is unlikely to curb greenhouse gases -- study

An oft-heard comment about America's natural gas boom is that it has led to a reduction of greenhouse gas emissions. Insofar as natural gas replaces coal in electricity generation, this claim is probably true. But step back and look globally and into the future, and widespread use of natural gas fails to significantly alter the world's current global warming trajectory, a new study finds.

TODAY'S STORIES

3. **POLICY:** BLM hearing sparks a debate on the agency's role in regulating methane

4. **CALIFORNIA:** State plans to double down in fight against climate change

5. **STATES:** Okla. could reject new teaching standards due to climate change science

6. **WEATHER:** As El Niño potential increases, summer outlook warms for West Coast -- NOAA

7. **WEATHER:** Below-average 2014 hurricane season forecast for Atlantic Basin

8. **FORESTS:** Scientists pledge to study Amazon's carbon sink potential if CO2 levels increase 30%

9. **NATIONS:** Asia and Africa to collaborate on climate change research

10. **SCIENCE:** Climate change could rid Ariz. of Joshua trees

E&ETV's The Cutting Edge

11. **CAMPAIGN 2014:** *E&E Daily*'s Quiñones talks role of energy politics in McConnell re-election bid

EnergyWire -- Fri., May 16, 2014 -- **Read the full edition**

1. ELECTRICITY: Georgia Power plan would install solar arrays on 3 Army bases

Georgia Power and the Army jointly released plans to install large solar arrays at three military bases yesterday in what officials say could be a model for other states.

TOP STORIES

2. **HYDRAULIC FRACTURING:** N.C. bill would make it a felony to disclose fracking chemicals

3. **MARCELLUS SHALE:** Coalition loses key funder as it hits certification milestone

4. **SOLAR:** Mo. utilities face consumer complaints over rebates

ELECTRICITY

5. **TRANSMISSION:** Landowners' tussle with utility heads to Texas commission

6. **SECURITY:** Cyber experts ponder best practices to create 'more trustworthy products'

7. **NUCLEAR:** Steep price tag for small reactors adds to industry's 'long list of problems'

8. **ELECTRICITY:** Texas megaproject demonstrates new viability of solar power

9. **ELECTRICITY:** Ohio's capital looks to negotiate energy prices through bulk buy program

10. **UTILITIES:** Boulder moves closer to forming city-run power provider

OIL AND GAS

11. **AIR POLLUTION:** Industry blasts EPA refinery proposal as another costly rule

12. **OIL BOOM:** Permian Basin leads U.S. oil fields in rig growth -- EIA

13. **GAS EXPORTS:** FERC's Dominion review sets stage for court fight

14. **CLIMATE:** Industry group questions BLM's ability to regulate methane

15. **CAMPAIGN 2014:** Alaska lieutenant governor hopeful: 'I'd probably invade ANWR'

16. **OIL MARKETS:** OPEC output unlikely to match demand in second half of 2014 -- IEA

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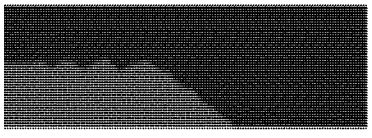

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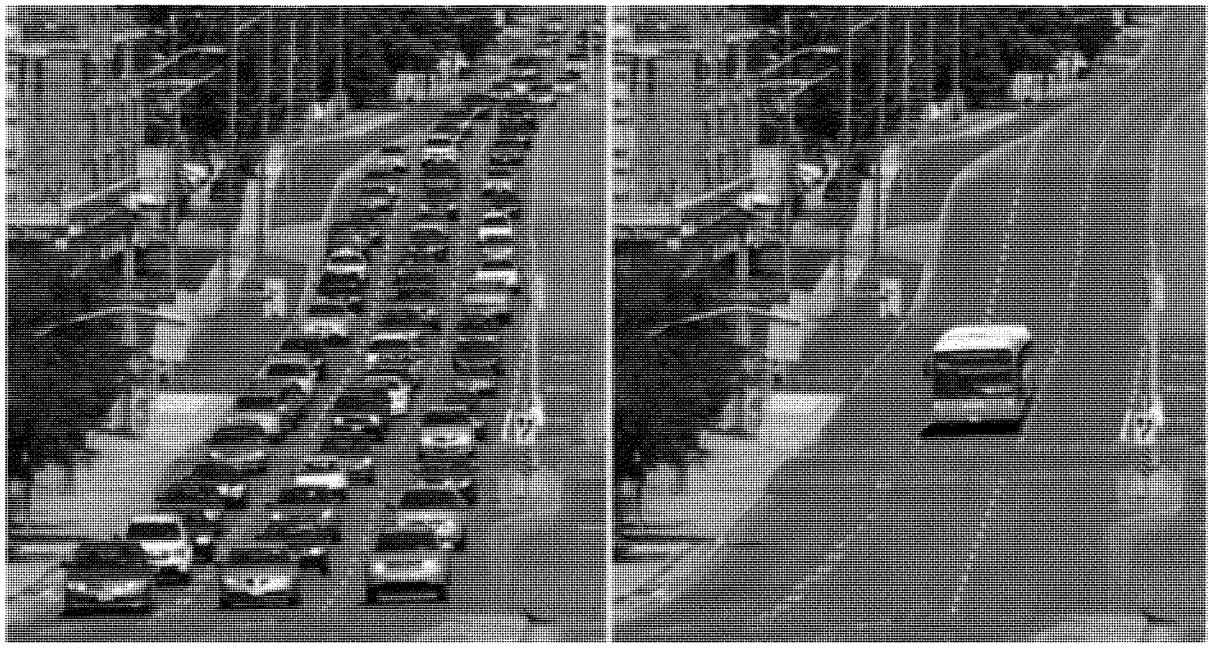

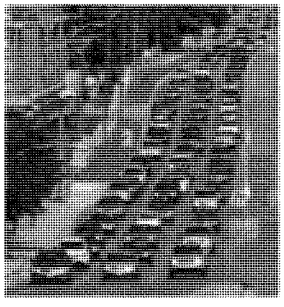

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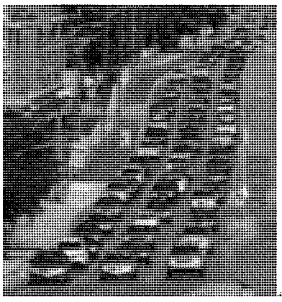

Air & Radiation Law News

for May 12, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Stricter Air Quality Limits for Fine Particles Upheld by D.C. Circuit in Industry Challenge

A federal appeals court May 9 upheld the Environmental Protection Agency's decision to tighten air quality standards for fine particulate matter (Nat'l Ass'n of Mfrs. v. EPA, D.C. Cir., No. 13-1069, 5/9/14)....

Climate Change

U.S. Negotiator Says Climate Strategies Needed for Countries' Adaptation Efforts

Climate change negotiators are becoming increasingly aware of the need to help affected countries cope with the impact of fluctuating weather patterns, a senior Obama administration official said May 9....

Energy

Clarified Real Estate Investment Trust Rules Expected to Extend Financing to Renewables

The Obama administration announced May 9 that it will "shortly clarify" how rules for Real Estate Investment Trusts (REITs) relate to renewable energy property, a move that is expected to extend the financing mechanism to renewables,...

Energy

Cleanest Fossil Fuel Fast Becoming Wall Street's Bet on Climate Change

Wall Street's idea of investing in climate change means investors are piling into natural gas, the least-polluting fossil fuel....

Energy

Keystone Pipeline Foes Using Delay To Fight South Dakota Permit Renewal

The latest Keystone delay has created a new opening for foes of the pipeline, this time in South Dakota....

Energy

Obama Outlines Executive Actions To Promote Solar Power, Energy Efficiency

A new goal of $2 billion in energy efficiency upgrades to federal building was among a range of energy initiatives announced by President Obama May 9 in a speech outlining executive actions the administration is taking to promote energy efficiency...

Energy

Upton Predicts Republican Senate Takeover, No Obama Decision on Keystone This Year

Rep. Fred Upton (R-Mich.) told Bloomberg BNA May 9 he is confident Republicans will control both the House and Senate following the November congressional elections and predicted President Barack Obama will not make a final decision on the...

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State Regulators Reach Deal On Efficiency Principles For EPA Utility ESPS

State utility, energy and air regulators have reached a major agreement on energy efficiency principles they will pitch for EPA to include in its pending existing source performance standards (ESPS) to cut power plants' greenhouse gases (GHGs), which may help ease implementation of the rule among the various affected state agencies.

D.C. Circuit Upholds PM NAAQS, Granting EPA Broad Scientific Deference

The U.S. Court of Appeals for the District of Columbia Circuit, in a unanimous ruling, has rejected industry groups' lawsuits attacking EPA's 2012 decision to strengthen its fine particulate matter (PM2.5) air standards, echoing prior decisions by granting the agency significant deference on the science it uses to set its ambient air limits.

Greenwire

AIR POLLUTION:

Judges back EPA on soot standard in another big win for agency

Daniel Lippman, E&E reporter

Published: Friday, May 9, 2014

A federal appellate court rejected a broad industry challenge today to U.S. EPA's air standard for fine particles, ruling that the agency acted reasonably and has "substantial discretion" when setting pollution limits.

The National Association of Manufacturers, U.S. Chamber of Commerce and other industry groups had sought to vacate EPA's decision more than a year ago to tighten the National Ambient Air Quality Standard for fine particles, or soot, from 15 micrograms per cubic meter averaged over a year to 12 micrograms.

The ruling by U.S. Court of Appeals for the District of Columbia Circuit Judge Brett Kavanaugh, a Republican appointee who has previously criticized EPA air rules, said the petitioners "simply have not identified any way in which EPA jumped the rails of reasonableness in examining the science" that led to a more stringent standard.

The decision in *National Association of Manufacturers v. EPA and Gina McCarthy* was telegraphed by the three judges who voiced skepticism of industry's position during oral arguments in February (*Greenwire*, Feb. 20).

EPA justified making the standard more stringent by pointing to a number of scientific studies that linked exposure to the particles, which come from tailpipes, power plants, drilling operations and boilers, to a variety of cardiovascular ailments (*Greenwire*, Dec. 14, 2012).

But industry groups claimed they submitted their own studies that suggested retaining the 15-microgram standard was sufficient.

Kavanaugh said that EPA had "offered reasoned explanations for how it approached and weighted" the scientific evidence that concluded that a tighter standard was required.

Industry had also challenged EPA's new requirement that states install air monitors near heavy traffic roads in urban areas and said that this monitoring would lead to standards for soot that's too stringent.

But the court agreed with EPA that if the agency ignored these areas, it would be abdicating its responsibility to measure air quality accurately and give at-risk people living in those areas the proper protection.

Industry slammed the ruling, the latest in a recent string of victories for EPA and environmentalists.

"We're disappointed in today's ruling that only further ads to the thousands of regulations facing manufacturers," said NAM senior vice president and general counsel, Linda Kelly, in a statement. "The court's decision also underscores the difficulty manufacturers face in pushing back against a powerful and often overreaching EPA. The Manufacturers' Center for Legal Action is reviewing the decision and considering future options."

Environmental groups applauded the ruling, saying it upheld EPA's authority to make the air cleaner.

"The national air quality standards for particulate pollution that were affirmed by the court today provide a bedrock scientific foundation to ensure healthier longer lives for our families," Environmental Defense Fund attorney Peter Zalzal said in a statement.

"Soot is an extremely dangerous, and sometimes deadly, pollutant that causes heart attacks and asthma attacks. The sooner our nation can work together to reduce the amount of particulate pollution in our air, the sooner those afflicted by this dangerous pollutant can breathe easier."

The Natural Resources Defense Council noted in a statement the standards would lead to $4 billion to $9.1 billion in health benefits once they're implemented.

"This is, literally, a life-saving ruling for thousands upon thousands of Americans who would die prematurely from lung and heart problems caused by these tiny particles," said John Walke, NRDC's clean air director.

Click here for the ruling.

CLIMATE:

New Colo. group aims to get Latinos politically engaged 'en la lucha'

Jennifer Yachnin, E&E reporter

Published: Friday, May 9, 2014

DENVER -- The offices of Conservation Colorado's newest effort are nondescript: a single-story beige office building located off the city's busy Federal Boulevard.

But inside it's a celebration -- there are plentiful nibbles and even face-painting as a few dozen people mill about -- to mark the launch of a new grass-roots program yesterday aimed at engaging the Centennial State's Latino population on the issue of climate change.

Conservation Colorado, a state affiliate of the national League of Conservation Voters, unveiled its new outreach program, Protégete: Our Air, Our Health.

Protégete Director Dulce Saenz, who noted the name translates to "protect yourself," said the group plans to utilize phone banking, letter-writing campaigns and nonpartisan get-out-the-vote efforts to increase awareness about climate change.

"Latinos are among the most affected by poor air quality, suffering higher rates of chronic ailments like asthma. Yet there are few avenues where Latino families engage in public policy debates on the root causes of air pollution and climate change," Saenz said in a brief speech marking the office's opening.

Handmade signs on the office's walls encourage visitors to sign up for phone-banking shifts and declare personal environmental goals, such as giving up plastic bags or eating less fast food.

"Together as community leaders, organizers and volunteers we will mobilize to ensure that decisionmakers and polluters hear from the Latino community on our readiness to fight for common-sense steps that lead to cleaner air, healthier communities and a stronger future," Saenz added.

While the group's launch comes on the heels of the release earlier this week of the National Climate Assessment and efforts by the Obama administration to use the scientific report as an educational tool (*Greenwire*, May 6), Saenz said plans for the Colorado group had been underway for some time.

During the event, speakers including Denver City Councilman Paul Lopez and community activist Sophia Solano offered anecdotes about their own experiences with pollution and conservation efforts -- suggesting that while many Latinos are concerned about the environment, they may not have considered how to pressure their elected officials on the issues.

"Today we have a chance to unite our voices, our experiences, our knowledge and to say, 'Yes, Latinos understand climate change. Yes, we want to change it,'" Solano said, adding in Spanish that Latino voters need to tell U.S. EPA that they are "in the fight."

She added, "We have a chance to say to the Environmental Protection Agency, 'EPA escucha, estamos en la lucha.'"

COAL:

Reid objects to 2 House-passed bills targeting EPA, Interior rules

Manuel Quiñones and Jean Chemnick, E&E reporters

Published: Friday, May 9, 2014

Senate Majority Leader Harry Reid yesterday blocked the movement in the Senate of House-passed legislation to prevent regulations affecting coal mines and power plants.

The two bills came up for a procedural second reading in the Senate yesterday -- H.R. 3826 against U.S. EPA's proposed limits on new power plants' emissions of greenhouse gases and H.R. 2824 against the federal Office of Surface Mining's forthcoming Stream Protection Rule.

"I object to further proceedings with respect to these bills," the Nevada Democrat said during the beginning of the Senate session yesterday.

By objecting to the bills after their second reading, Reid effectively prevented them from moving to a committee for consideration. Instead, the bills now remain on the Senate calendar, where they are not guaranteed action.

H.R. 2824, sponsored by Rep. Bill Johnson (R-Ohio), would call on states to implement a George W. Bush-era rule governing strip coal mines. Critics of OSM's pending standards worry they will kill coal mining jobs.

H.R. 3826, a collaboration between influential pro-coal lawmakers Rep. Ed Whitfield (R-Ky.) and Sen. Joe Manchin (D-W.Va.), would prevent EPA from finalizing its September proposal to require carbon capture and storage technology for all new coal-fired power plants and would make rules for existing power plants contingent on congressional approval.

Although it easily passed the House in March, the power plant bill faces a much tougher climb in the Democrat-controlled Senate. Manchin spokeswoman Katie Longo said in an email that Manchin is "continuing to work with his colleagues on both sides of the aisle on this issue." His Senate co-sponsor on the measure is Sen. John Hoeven (R-N.D.).

Whitfield and Manchin object most strongly to EPA's proposed requirement that all new coal-fired power plants use partial CCS technology to limit emissions -- a mandate that they say amounts to a ban on new coal-fired units. The public comment period for the rule ends today, and stakeholders are rushing to weigh in before it closes.

The Sierra Club submitted a petition calling on the agency to promulgate the "strongest possible safeguards against industrial carbon pollution from new coal and gas-burning power plants."

The proposed standard is easily achievable by combined-cycle natural gas units, and the Sierra Club asks EPA to "strengthen" it. But the mass comment expresses strong support for the CCS mandate "to clean up dangerous carbon pollution from new coal power plants."

The Pennsylvania Coal Alliance, among numerous other groups, urged EPA to scrap the CCS mandate, which it said relied on a technology that does not meet the Clean Air Act's requirements and would be a death blow to coal and the communities that depend on it.

"Essentially, the proposed rule is a deeply flawed policy that fails to appreciate the magnitude of harm that will be done to the coal industry, the national and state economies, coal utility workers and electric ratepayers with its enactment," PCA said.

Last year Reid also objected when Senate Minority Leader Mitch McConnell (R-Ky.) tried to bring up a different bill for floor consideration to block the greenhouse gas rules and streamline coal mining permits (*Greenwire*, Sept. 19, 2013).

RENEWABLE ENERGY:

Boston investor group helps low-income areas harness the sun

Dylan Brown, E&E reporter

Published: Friday, May 9, 2014

One had the roof, the other the cash. Both wanted to bring solar power out of the suburbs and into underserved areas.

Before the Greater Boston Food Bank teamed up with investment group Boston Community Capital to put 1,154 photovoltaic panels atop its roof, investing in solar was just out of reach, food bank Chief Financial Officer David Noymer said.

"We knew we had a large, new, flat roof ... a solar-friendly roof," he said. But "it's a tough hurdle to take donors' money, which they've donated for the purposes of serving those in need ... and in turn buy solar panels with it."

The federal government offers some incentives for solar development, but BCC President Elyse Cherry said nonprofits, public entities and other tax-exempt organizations struggle to use subsidies based on tax breaks.

"A lot of what happens in solar finance really happens on the tax side of the equation rather than spending side of the equation," Cherry said. "If what you are going to do is finance through tax credit, then you have to have a taxpaying entity."

With roughly $22 million invested in solar panels primarily where low-income people live and work, BCC has attracted the White House's attention as it pushes to expand America's solar capacity. President Obama today recognized Cherry as one of 10 solar "champions of change" at a California event she attended (*E&E Daily*, May 9).

Cherry said BCC entered the field after watching investment in green technology go to wealthier areas.

"Our concern was to be sure the communities we serve and we care about weren't left behind," she said. "So often, lower-income communities are characterized as not being part of the solution."

The plan had to be cost-effective, but BCC provided the link between its list of high-rolling investors -- JPMorgan Chase & Co., the MacArthur Foundation and more -- and entities like the food bank and the Cambridge Housing Authority.

"They get a return on their investment, and in return we're able to structure transactions that promote the use of solar in low-income communities," Cherry said.

From there, it was a matter of finding roofs ready for panels and organizations willing to put in the leg work to research and implement an array like the fully optimized roof at the Greater Boston Food Bank.

BCC has financed 17,618 solar panels, spread as far away as Pittsville on the western border with New York. Those panels provide enough electricity to power around 500 homes and serve as a buffer against rising energy costs. Two-thirds of its panels serve low-income areas, Cherry said.

At the food bank, Noymer said the panels power things like a freezer responsible for helping store the 40

million meals a year the food bank hands out in nine western Massachusetts counties. They offset about 10 percent of the bank's total annual electricity costs, in the range of $30,000.

"This is not chump change lost in the rounding, this is real," he said, translating that amount to 100,000 extra meals.

Noymer said he would recommend solar to any organization, private or nonprofit.

"It's a great way to utilize an otherwise underutilized asset -- meaning a roof," he said. "It reduces the carbon footprint, and it's great for the environment, and it makes economic sense."

However, Cherry said BCC's Massachusetts model will be difficult to export to other states.

"Every source of energy is subsidized in the U.S., doesn't matter if it's fossil fuel or solar, but the sources of subsidy for solar are as much state-driven as they are federally driven," she said.

Even in Massachusetts, regulations have impeded BCC, now one of the largest nonutility solar owners in the state. The group has reached its net meter cap -- the amount of power a company is allowed to sell back to private or state utilities -- and has to wait until legislative changes are made.

That kind of uncertainty pervades the entire industry, Cherry said.

"The future is really anybody's guess. We participate in those policy conversations, but it's a changing area," she said. "Technology's changing, and the regulatory framework is changing."

NUCLEAR WASTE:

N.M. dump might need 3 years to fully reopen

Published: Friday, May 9, 2014

The chief of the cleanup operation at an underground nuclear waste facility in New Mexico said recovery efforts could take up to three years.

Jim Blankenhorn, the Waste Isolation Pilot Plant's recovery manager, said full operations probably won't resume earlier than 18 months from now.

Meanwhile, workers are still investigating the causes of a radiation leak that stopped normal operations after some workers were exposed at the plant near Carlsbad, N.M.

Officials continued to point to the possibility of a chemical reaction in waste drums that came from Los Alamos National Laboratory.

"If we find a problem with this waste stream, it's a chemistry problem," Blankenhorn said. He said the Los Alamos lab has "some of the best scientists in the world. It would be up to them to develop a path forward to give us treated, safe waste."

The Los Alamos lab is straining to meet a deadline to remove plutonium-contaminated waste before wildfire season starts. A fire in 2011 came close to the edges of the lab's property (Susan Montoya Bryan, Associated Press, May 8). **-- JL**

COAL:

Peabody hopes to win over hometown with billboards of blue skies, children

Published: Friday, May 9, 2014

St. Louis-based Peabody Energy Corp. has launched a new local marketing campaign this week playing up the positive benefits of coal.

The campaign notes that coal generates around three-quarters of the St. Louis region's electricity and contributes to Missouri's having some of the cheapest energy costs in the nation.

Some of the billboards recently erected in the area show pictures of children playing under blue skies, declaring: "Today's Coal. Blue Skies. Life Empowered."

"You forget how clean the air has become, and yet we use far more coal than we did in the late 1960s," said Vic Svec, Peabody's senior vice president of global investor and corporate relations.

Peabody has taken novel approaches to advertising itself in the past, including a campaign to promote coal to reduce "energy poverty" and raise the standard of living in developing countries (*E&ENews PM*, Feb. 26).

Despite the efforts, Peabody has faced protests from environmentalists, even in its hometown. A group of demonstrators have protested on the campus of Washington University in St. Louis seeking to have Peabody CEO Greg Boyce removed from the school's board of trustees (Jacob Barker, *St. Louis Post-Dispatch*, May 9).

Yesterday, 12 demonstrators were arrested when they tried to enter the Ritz-Carlton hotel in Clayton, Mo., where the company was holding its annual shareholder meeting. They were among a group of about 50 that stood across the street saying, "Coal is not the future, keep it in the ground" (*EnergyWire*, May 9).

The company said in a statement after the arrests, "Peabody Energy's Annual Meeting is for the benefit of our shareholders and should not be a forum for organizations to advance their own agendas or to perpetuate myths about coal" (*St. Louis Post-Dispatch*, May 8). **-- SP**

WYOMING:

State rejects science standards teaching about climate change

Published: Friday, May 9, 2014

The nation's top coal-producing state recently became the first to reject new K-12 science standards, largely over concerns about children being taught the validity of climate change.

Wyoming Board of Education President Ron Micheli said the board is looking into whether "we can't get some standards that are Wyoming standards and standards we all can be proud of" after rejecting the Next Generation Science Standards proposed by national education groups.

Amy Edmonds of the Wyoming Liberty Group supported the move, saying teaching "one view of what is not settled science about global warming" is just one of the problems with the standards.

"I think Wyoming can do far better," Edmonds said.

Others see the decision to opt out of the standards that 12 other states have already adopted as a blow to science education in Wyoming.

"The science standards are acknowledged to be the best to prepare our kids for the future, and they are evidence-based, peer-reviewed, etc. Why would we want anything less for Wyoming?" said Marguerite Herman, a proponent of the standards.

Wyoming provides power plants across the country with around 40 percent of the nation's coal, bringing in $1 billion of tax revenue in 2012 and supporting nearly 7,000 jobs in the state. Burning coal for electricity generates carbon dioxide, which most scientists recognize as a major contributor to global warming.

"Wyoming is certainly unique in having legislators and the governor making comments about perceived impacts on the fossil fuel industry of kids learning climate science, and unique in acting on that one objection to prohibit consideration of the package of standards, of which climate science is a small component," said John Friedrich, a member of the national organization Climate Parents, which supports the standards (Bob Moen, AP/*Houston Chronicle*, May 8). **-- DTB**

ClimateWire -- Mon., May 12, 2014 -- **Read the full edition**

1. WILDFIRES: Southwest struggles to adapt to year-round fire season

Last week was Wildfire Awareness Week in California, a time when firefighters and forest managers travel up and down the state talking about fire risk and public safety. Usually that would mean wildfire conditions were just picking up, with higher temperatures drying out fuels nurtured by winter rain and snowpack. That's not the case this year, though. For much of the Golden State, last year's fire season never really ended.

2. SCIENCE: Researchers find a way to use GPS to calculate mountain snowpack

Anyone who has ever lugged a pallet of water down to the basement in preparation for the latest extreme weather event knows that water is heavy. How heavy? About 8.3 pounds per gallon. Now, scientists have developed a way to use water's weight to measure just how much of it is sitting up in snow-covered mountains in the western United States.

TODAY'S STORIES

3. **BUSINESS:** Major utility trims CO2 footprint 21% with energy efficiency, coal plant closures

4. **EMISSIONS:** China may begin to reduce coal consumption by 2020 -- report

5. **TRANSPORTATION:** Fossil fuels may dominate sector through 2040

6. **NATIONS:** China is rushing to cultivate domestic innovation in clean energy, experts say

7. **REGULATION:** Oil and gas companies ask EPA to exempt cogeneration from power plant rule

8. **REGULATION:** From termites to turbines, interest groups pile on in last-minute EPA power plant rule filings

9. **FINANCE:** Mass. lawmakers weigh fossil fuel divestment

10. **NATIONS:** Germany's clean energy peaks at a record 27%

11. **RISK:** Lloyd's of London urges insurers to calculate for climate change

12. **ARCTIC:** Vital ice roads to northern communities are melting

E&ETV's OnPoint

13. **FINANCE:** NRDC's Lehner discusses new stock market index for climate-conscious investing

EnergyWire -- Mon., May 12, 2014 -- **Read the full edition**

1. OIL AND GAS: Spills up 18 percent in U.S. in 2013

The number of spills reported at oil and gas production sites shot up nearly 18 percent last year, even as the rate of drilling activity leveled off.

TOP STORIES

2. **GRID:** EPA rules to curb GHGs from existing plants pose no reliability threat -- report

3. **TECHNOLOGY:** $1.5B in financing possible for colossal energy tower on U.S.-Mexico border

4. **BUSINESS:** Some oil and gas firms overhaul compensation strategies for top brass

ELECTRICITY

5. **GRID:** Months later, PJM considers 'lessons learned' from extreme cold

6. **UTILITIES:** Coal generators worry about future with expected rules

OIL AND GAS

7. **COURTS:** Chesapeake faces second antitrust charge in Mich.

8. **POLITICS:** On Alaska oil tax, 'what does Sarah think?'

9. **POLITICS:** Colo. mulls special legislative session over 'draconian' ballot measures

10. **FINANCE:** Wall Street responds to climate change with natural gas investments

11. **EARTHQUAKES:** Temblors are yet another natural disaster to fear in Okla.

E&ETV's The Cutting Edge

12. **FERC:** *E&E Daily*'s Northey discusses confirmation hurdles for Obama's pick to lead agency

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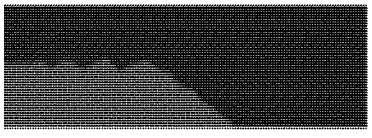

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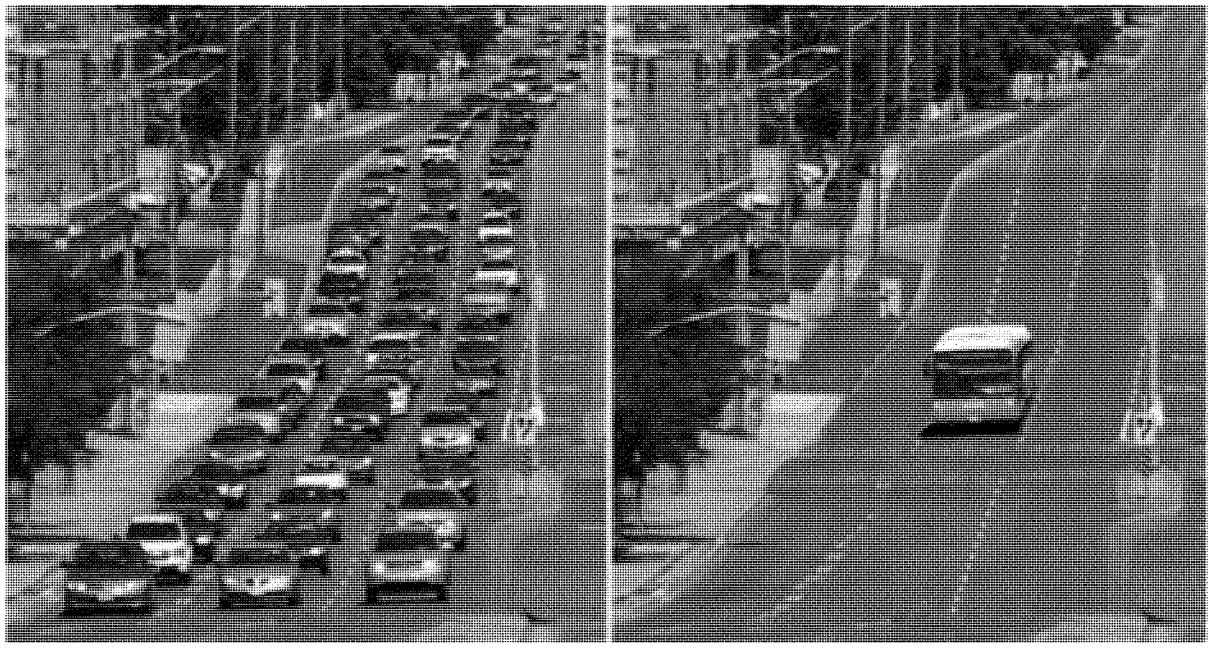

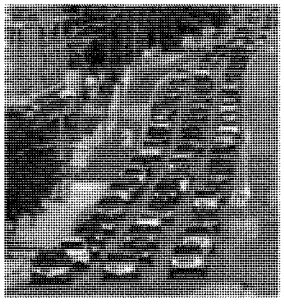

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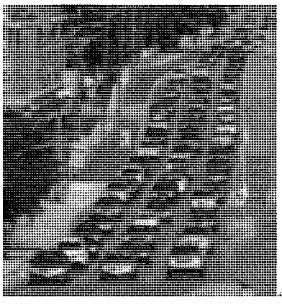

Air & Radiation Law News

for May 8, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Canada Considers Measures to Reduce VOC Emissions from Asphalt Use

Environment Canada is conducting a public consultation on a draft code of practice for the asphalt industry that aims to reduce emissions of volatile organic compounds from asphalt used for road construction, maintenance and repairs....

Air Pollution

EPA Will Object to Parts of Permits For Five Georgia Power Plants

The Environmental Protection Agency has agreed to object to parts of state-issued operating permits for five power plants owned by Georgia Power, according to an order to be published May 8 in the Federal Register....

Air Pollution

Proposed Wood Heater Emissions Standards Not Cost-Effective, Industry Group Says

A trade association representing manufacturers and distributors of wood and pellet stoves said the Environmental Protection Agency's proposed emissions standards for new wood stoves and heaters aren't cost-effective and fail...

Climate Change

Administration Relying on Inaccurate Methane Data, Cornell Researchers Say

The Environmental Protection Agency significantly underestimates the amount and potency of methane emissions, which understates the climate impact of hydraulic fracturing, two Cornell University researchers said May 7....

Climate Change

Climate Report: Industry Sees Costly Rules; Scientists, Others See Costs of Not Acting

President Barack Obama's choreographed rollout of a dire new climate report is sending a signal to the fossil-fuel industry: Look out....

Climate Change

EU Greenhouse Gas Emissions Fall Overall In 2013, but Rise in Some Major Economies

Estimated greenhouse gas emissions from the burning of fossil fuels in the European Union were down 2.5 percent in 2013 compared to the previous year, according to preliminary figures published May 7 by the European Commission's statistical...

Climate Change

OECD Warns About Economic Impact Of Climate Change, Supports Binding Pact

Top officials from the world's advanced economies released a statement committing themselves to work

toward achieving an international legally binding instrument to fight climate change, to take effect in 2020....

Energy

Canadian Oil-by-Rail Exports Jump
83 Percent in Last Quarter of 2013

Canadian exports of crude oil by rail jumped 83 percent in the last quarter of 2013 compared with the same period the year before, Canada's National Energy Board said May 5....

Energy

Department of Energy Selects Three
Offshore Wind Project for Agency Funding

The Energy Department announced May 7 it has selected three offshore wind demonstration projects to receive up to $47 million each over the next four years....

Energy

Mexico to Establish New Environmental
Protection Agency as it Opens Oil, Gas Sector
Mexico's announcement last week detailing plans to open its state-run oil and gas resources to private international investment includes the establishment of a new environmental protection agency. ...

Energy

Reid Blocks Republican Amendments,
Likely Killing Energy, Keystone Bills

Senate Majority Leader Harry Reid (D-Nev.) procedurally blocked Republicans from offering amendments to an energy efficiency bill May 7, a move that likely spells defeat for the legislation and would prevent a vote on another bill that would...

Energy

Senate Republicans Seek Electoral Gains
With Energy Changes, But Reid Bars Way

Senate Republicans want to vote on energy proposals that could bolster their party's candidates in the

November election....

Hazmat Transport

Transportation Secretary Issues Safety Alert, Emergency Order on Bakken Crude by Rail

Transportation Secretary Anthony Foxx issued a safety alert and an emergency order May 7 promoting safer transportation of Bakken crude oil through the use of voluntary rail tank car standards and by requiring route notifications. ...

Radioactive Waste

House Republicans Push Macfarlane to Wrap Up Licensing Process for Yucca Mountain

House Republicans pressed the Nuclear Regulatory Commission at a hearing to complete the licensing process for the Yucca Mountain nuclear waste storage project and to seek additional funding to comply with a federal court mandate....

Inside EPA's **Weekly Report**, 05/09/2014

http://insideepa.com/Inside-EPA/Inside-EPA-05/09/2014/menu-id-67.html

GOP Eyes Senate Takeover To Push Broad Oversight Of EPA Regulations

Republican senators are looking to a potential takeover of the upper chamber following the November elections in order to launch broad oversight of EPA air, water, climate and other policies, after failing to get responses to a slew of letters to the agency that criticized the regulations for exceeding EPA's powers and congressional intent.

Latest Blogs

EPA Plans To Reduce Air Monitor Speciation Network

EPA is planning to end funding for some "low-value" emissions monitoring sites that are part of its Chemical Speciation Network (CSN) used to assess the . . .

Greenwire

RENEWABLE ENERGY:

Metal-hungry clean tech aims to shrink its carbon footprint by powering mines

Katherine Ling, E&E reporter

Published: Wednesday, May 7, 2014

Third of three stories on the traditional energy industry's embrace of clean technology. Click here for the first story and here for the second.

Clean technology has a dirty secret.

"If you want clean tech, you need mines," said Kerry-Ann Adamson, a former research director with Navigant Research who now owns her own consulting firm.

"If you haven't got mines, you are not going to get a battery," she added. "If you don't have platinum, you are not going to get a fuel cell."

Renewable energy may soon be able to help clean up its own carbon footprint. Mines often rely on diesel fuel to power their equipment because it can be transported long distances and is reliable -- necessary prerequisites for sites as diverse as the tundra of Canada and the deserts of Africa.

But diesel also has a volatile price that on average has been on the rise recently and does not look likely to drop.

Like oil and gas companies or any other industry relying on petroleum, mining is "in pain," as Adamson puts it, because of the expense of diesel. They are all looking for solutions to help lower costs, but renewable energy offers significant challenges because of its reputation as unreliable (*Greenwire*, May 5).

That's starting to change with some mining companies committing to boost their renewable energy portfolio and with innovative financing models opening new doors.

A wind turbine helps power Rio Tinto's Diavik diamond mine located in a frozen lake bed 220 kilometers south of the Arctic Circle in Canada's Northwest Territories. Photo courtesy of Rio Tinto.

A recent Navigant Research report found the portion of energy consumption in the mining industry supplied by renewable energy will grow from less than 0.1 percent to at least 5 percent -- and possibly up to 8 percent -- by 2022. The report says wind power will account for the largest capacity at nearly 516 megawatts, followed by solar power at 493 MW out of a total 1,438 MW of renewable energy capacity for mining operations worldwide.

Adamson, the lead author of the report, described the use of clean technology in extractive industries as still only a "potential phenomenon."

"It is two sectors -- the mining industry and renewable industry -- trying to figure out how they are going to dance together, and they haven't worked out the tune yet," she said. "Both sides are very keen on working together, but there is a real cultural gap between the two."

Mining companies want full turnkey power solutions and want to be sold electrons, not technology, she said. For instance, they don't want just solar panels, but solar panels with energy storage or with natural gas or diesel backup that offers 100 percent reliability.

"Renewable energy companies traditionally have not talked that language," she said. "They need to stop being technology providers and start being electron sellers."

Mining companies also don't want to grapple with the cost of transmission and initial capital needed for renewable energy, according to Ross Beaty, founder and chairman of Pan American Silver Corp., the world's second largest silver mining company, and founder and executive chairman of Alterra Power Corp., a renewable energy developer based in Vancouver, British Columbia.

"The challenge is that renewable power is higher capital cost than a diesel plant or a gas plant today but has much lower operating costs," Beaty said in an interview with the Canadian Clean Energy Conferences. "If your renewable energy solution has similar or lower all-in costs as those for a conventional power plant, then every mining company in the world will want to use it."

A growing partnership

Mining and renewable energy companies are starting to work through these issues using traditional

business and financing structures in new and creative ways.

"Renewable energy cost structures have reduced to the point that, particularly for isolated mines, in some cases, they have become more economic than diesel-fired generators," Scott Fraser, director of power projects at Barrick Gold Corp., told the first Renewable Energy and Mining Summit in Toronto, hosted by the Canadian Clean Energy Conferences last fall. A second summit is scheduled for Johannesburg next month and a third conference set for Toronto later in the year.

North American mining company Teck Resources Ltd. has committed to increase its renewable energy portfolio to 30 MW by 2015 and to 100 MW by 2030. Teck, based in Vancouver, is a majority owner of a hydroelectric dam in British Columbia and a partner with Suncor Energy Inc. in the Wintering Hills Wind Power Farm in Alberta.

Other major mining companies have pilot projects including a wind project by Rio Tinto PLC at the Diavik diamond mine in the Canadian Northwest Territories and a solar project powering chromium ore mining for Cronimet Mining-Power Solutions in South Africa.

Tempe, Ariz.-based solar manufacturer First Solar Inc. told Bloomberg last month it is aiming to deliver 200 MW over three years of hybrid solar-diesel systems in Western Australia, the Northern Territory and South Australia, although it declined to name its clients.

One particular solar project lauded by advocates is the Codelco copper mine in Chile, which is structured more like a traditional utility contract. The Chilean-Danish consortium of Energía Llaima and Sunmark Solutions A/S offered to finance, operate and assume the risk for the more than $26 million needed to develop the Pampa Elvira Solar plant if Codelco signed an agreement to purchase a set amount of energy each year with the rest being sold to the grid.

The purchase power agreement (PPA) model could be a "real game-changer," Adamson said. It could significantly push her report's current "conservative" forecast for renewable energy use by mines to much higher levels because it opens the door to new investors and funding, she said.

Large financing organizations like the World Bank are willing to look at these large PPA projects, whereas financing projects for renewable-powered mining operations are too small for their focus, Adamson said.

Another continent away, a mining company created its own solution. Windiga Energy Inc., an independent power producer focusing on West Africa, is actually a spinoff from SEMAFO Inc., a Canadian gold mining company.

Windiga realized it could build a 20 MW utility-scale solar power plant to supply 8 MW of power for one of its mines in Burkina Faso and sell the rest to the country's state-owned utility. Windiga has two other projects looking at waste to energy and biomass from bamboo to provide power to the grid, including the mining company that will be the main customer.

Windiga is co-owned by a subsidiary of Dundee Corp., which is a producer of oil and natural gas, another area of the traditional energy sector that is adopting more renewable energy to power field operations (*Greenwire*, May 6).

Larger clean technology companies like Schneider Electric SA, General Electric Co., Siemens AG, ABB Ltd. and SunEdison LLC are also partnering with smaller firms and starting to offer their renewable energy technology and experience with large contracts to mining companies, further cementing the reputation of clean technology as an industry the mining sector can work with.

"In the early days of renewables, it was all R&D and experimentation. Many of the projects were what I'd

call 'shipwrecks of good intention,'" Alan Langworthy, ABB's global business integration manager, said in an interview with *Energy and Mines*. Now that the technology has matured, "you can install and maintain renewable equipment just as you'd install the diesel genset or any other piece of proven generation technology," he said.

Still, Nathanael Greene, director of the renewable energy policy program at the Natural Resources Defense Council, cautions that the potential for "greenwashing," or using a few renewable energy projects as a public relations campaign instead of seriously cutting carbon emissions, is palpable in this industry.

"Slapping a solar panel on a coal mine doesn't make coal sustainable. Having Exxon throwing hundreds of millions at solar or wind doesn't make Exxon sustainable," he said.

Just because a company "invests a little bit of money on some renewable energy technology doesn't mean that we should ignore the rest of the impacts of where the real heart of their money is at," Greene said.

CLIMATE:

'Enormous public health problem' looms as rising CO2 saps crops' nutritional value -- study

Joshua Learn, E&E reporter

Published: Wednesday, May 7, 2014

Increased levels of carbon dioxide may pose one of the most dangerous threats to humans by 2050 by significantly reducing the nutritional value of major global crops like wheat and rice.

A new study released today in the journal *Nature* led by Samuel Myers, a research scientist at the Harvard School of Public Health, shows that about 2 billion people already deficient in zinc and iron will fare worse as CO2 levels rise.

"It's an enormous public health problem that we don't hear a lot of in the developing world," Myers said in a phone interview.

Myers' team examined 41 different strains of six crops in seven locations on three continents and over six different growing seasons in a study he said was "more than 10 times larger" than previous research that was criticized for examining the effects of CO2 only in closed environments.

"We really have the statistical power to resolve the questions," Myers said.

The team found that C3 crops like rice and wheat that are the most affected by fluctuating CO2 levels have reduced zinc, iron and protein levels when exposed to higher CO2 levels while other edible plants like soy and field peas had reduced zinc and iron.

"C3 crops represent most of what people eat," Myers said. A release for the study said that the team estimated 2 billion to 3 billion people in the world get 70 percent or more of their zinc and iron from these C3 crops -- especially in the developing world.

Iron deficiency causes anemia as well as impaired cognitive development.

"It's particularly an issue with women who are pregnant," said Mike Satre, a nutrition instructor at University of California, Davis who was not involved in the research.

The U.N. World Food Programme's website says that iron deficiency is the "most prevalent form of malnutrition worldwide" with symptoms of deficiency that include tiredness and lethargy. "Lack of iron in large segments of the population severely damages a country's productivity," the website says.

Zinc deficiency "contributes to growth failure and weakened immunity in young children" and has possible links to diarrhea and pneumonia that results in 800,000 annual deaths, the website says.

Satre said that combining iron deficiencies with shortages of zinc or protein could exacerbate the problem. "If it gets worse then that's going to have an influence on numerous cultures, countries and geographic regions," he said.

The study comes only days after researchers in Hawaii measured the amount of CO2 past 400 parts per million for the entire month of April 2014 for the first time in hundreds of years (*ClimateWire*, May 2).

Myers was careful to distinguish rising CO2 numbers -- which he said rested around 280 ppm in pre-industrial times -- from disputes on climate change that rely on more variable temperature and precipitation measurements.

"People conflate this research with climate change research," he said. "You don't have to believe in the greenhouse effect to recognize that this is a big problem. There is no debate that carbon dioxide is rising since pre-industrial times."

But there is some hope ahead. Myers said that in some of the 18 different strains of rice that the team examined, a number of them had less zinc and iron reductions than the others. Myers believes this means that there may be a basis for breeding certain strands of more nutritional rice in the future.

"That might be one of the things we can do in response to this problem," Myers said.

The team found that other crops like corn or sorghum didn't show decreased levels of zinc and iron despite rising CO2, which Myers said could suggest that populations which rely more on these crops will be less vulnerable to higher CO2 levels in the future.

His team is already working on another analysis that looks at what the effects of different nutrient deficiencies will be on different areas of the world. Once they've pinpointed the areas most at risk, it could lead to targeted intervention.

But without this kind of intervention, he fears global nutrition may deteriorate.

"There's a very big concern," he said, "that rising health problems are going to get worse."

NRC:

Lawmakers question budget proposal, fee boost amid reactor closures

Hannah Northey, E&E reporter

Published: Wednesday, May 7, 2014

Clarification appended.

House members today questioned the Nuclear Regulatory Commission's request for a budget boost in fiscal 2015, even though U.S. reactors are closing and efforts to develop small modular reactors are facing challenges.

The abandoned Yucca Mountain project in Nevada also surfaced as a thorny issue at a House Energy and Commerce subpanel hearing.

NRC Chairwoman Allison Macfarlane defended the NRC's request for more than $1 billion in fiscal 2015 -- an increase of $3.6 million from the 2014 enacted budget -- before the Energy and Power Subcommittee, pointing to anomalies related to the sequestration and a "correction" in fee collection.

The NRC, notably, is dependent on the budgetary process despite collecting fees from industrial users. The commission receives funding through congressional appropriations, then recovers about 90 percent of that amount through reactor fees and returns it to the Treasury.

Macfarlane said the NRC's workload has increased despite nuclear plant closures in Wisconsin, California and Florida -- the agency is now overseeing the decommissioning of plants and construction of new reactors in the Southeast, working on the Energy Department's Yucca Mountain application and implementing safety upgrades tied to the 2011 disaster in Japan. A number of these complex jobs require specialists that are in "short supply," she added.

She also said the agency has cut costs and reduced its footprint by consolidating its headquarters in Rockville, Md.

But Republicans blasted the NRC's "failure" to request money to further advance the DOE's application to build a waste repository under Yucca Mountain. Macfarlane and her colleagues said the NRC is trying to estimate costs tied to the review.

Bipartisan subcommittee members also persisted with questions about why, amid a rash of plant closures, the NRC is seeking a budgetary boost and more workers.

Rep. John Shimkus (R-Ill.), the subcommittee's chairman, said an NRC budget that hovered around $600 million a decade ago has ballooned, even though the agency is overseeing a smaller number of licensing actions -- resulting in higher fees for licensees. "As the size of our nuclear industry shrinks, the NRC cannot pretend that it needs more regulators to oversee fewer plants," Shimkus said. "This is another pattern that is not sustainable."

Macfarlane acknowledged the industry is slowing. Whereas the agency once had 18 new reactor license applications, there are now eight, she said. Developers of small modular reactors have also cited challenges, she added. The NRC has not yet received a design application from small modular reactor developer NuScale, she said, and Babcock & Wilcox Co. is reportedly cutting spending on its joint venture to develop the small units.

"We and the industry did not foresee this coming," she said.

NRC Commissioner Bill Magwood, who is leaving the agency this summer, agreed the industry has seen a great slowdown and said he would be interested in legislative solutions to modernize the NRC's process for setting fees.

The closure of U.S. reactors has attracted increasing political attention in recent months, most notably

with former White House climate adviser Carol Browner joining Nuclear Matters, a campaign partially funded by Exelon Corp. -- the country's largest reactor operator. The group announced today that former Arkansas Sen. Blanche Lincoln, a Democrat, also has joined.

NRC Commissioner Kristine Svinicki said the agency in the coming weeks will meet with the Federal Energy Regulatory Commission to probe dynamics that are causing reactors to close, changes that may not be reversible.

Members of the subcommittee asked why the agency is increasing fees for utilities even though the Energy Department is analyzing the effects of a third of the country's approximate 100 reactors closing. When asked whether the NRC was also taking such a look, Macfarlane said the commission has "not gone that far out."

Macfarlane sidestepped Rep. Jerry McNerney's (D-Calif.) question about whether the nuclear industry can step up as a major power source in the coming years to tackle climate change, noting that the NRC is strictly a regulator of reactor safety and does not prognosticate on the industry's fate. The chairwoman acknowledged that nuclear energy produces baseload power "that's largely carbon-free" and noted that while five reactors are coming online, five reactor closures were also announced during the past two years.

Clarification: *An earlier version of this story quoted Magwood as saying he would be interested in making industry fees "a bit more moderate," but his office later clarified that Magwood misspoke and meant to use the word "modern."*

UTAH:

Salt Lake City mayor targets 'dark cloud' of air pollution

Published: Wednesday, May 7, 2014

Salt Lake City's mayor has put addressing the "dark cloud hanging over" his skyline at the top of the priority list for this year's budget.

Two-term Democratic Mayor Ralph Becker said air pollution is the biggest threat to the city's future. As part of his proposed $800 million budget for Utah's most populous city, he wants to continue converting the city's fleet to clean-burning diesel by 2018 and eliminating all two-stroke engines over the next two years. He also aims to find more funding for streetcars and expand bike paths.

Thousands rallied at the state Capitol in downtown Salt Lake City in January, calling for air quality improvements in northern Utah cities that have been choked with smog in recent years (*Greenwire*, Jan. 27; Dennis Romboy, Salt Lake City *Deseret News*, May 6). **-- DTB**

ClimateWire -- Thu., May 8, 2014 -- **Read the full edition**

1. RENEWABLE ENERGY: Wave and tidal power industry buffeted by rough U.S. regulatory process

The American wave and tidal industry, which has the potential to meet roughly one-third of all U.S. electricity needs, has a treacherous route to navigate in order to live up to its potential. The United States is well-positioned to be the global leader in this nascent marketplace, according to industry experts. But onerous regulations and a lack of federal funding stand to quash the domestic industry before it really gets started.

2. OFFSHORE WIND: Troubled N.J. pilot project wins millions in federal funding

Sometimes, the dark horse trots into the winner's circle. Fishermen's Energy LLC, a company that has proposed a five-turbine, 25-megawatt offshore wind farm near Atlantic City, N.J., yesterday was named one of three offshore wind developers to receive up to $47 million in Department of Energy funding.

TODAY'S STORIES

3. **RESEARCH:** Rapid Arctic warming may be partly due to natural climate variations -- study

4. **AGRICULTURE:** Rising CO2 emissions may lower food value of crops

5. **REGULATION:** Northern Colo. oil and gas emissions are 3 times higher than EPA estimates -- study

6. **EMISSIONS:** Agency forecasts CO2 drop even as electricity use rises

7. **FINANCE:** U.N. climate chief asks religious leaders to divest their assets from fossil fuels

8. **TRANSPORTATION:** Calif. expands 'Hydrogen Highway' for fuel-cell vehicles

9. **COMMUNITIES:** Solar project on polluted reservation headlines new grants for tribal clean energy

10. **PUBLIC OPINION:** American views on climate change deviate from global norm

11. **NATIONS:** More than half the people in China say they're environmentalists

12. **AMAZON:** Over 400 hydro projects could change world's largest river basin

13. **NATIONS:** German Cabinet approves green-energy surcharge rebate for power-intensive companies

E&ETV's OnPoint

14. **ENERGY POLICY:** Alliance to Save Energy's Tate discusses future of Senate efficiency bill

EnergyWire -- Thu., May 8, 2014 -- **Read the full edition**

1. SECURITY: For utilities and their suppliers, lack of communication is opening for cyberthreats

PHOENIX -- The cyber peril to energy companies and their vendors has brought forth a tide of regulations, industry standards and voluntary guidelines, but these are not enough, speakers at the Utilities Telecom Council's convention here said.

TOP STORIES

2. **TRANSPORT:** DOT crude-by-rail orders close in on Bakken oil

3. **CLIMATE:** 'Top-down' study from NOAA finds much higher methane emissions in Colo.

4. **CLIMATE:** Scientist blasts White House take on methane emissions

ELECTRICITY

5. **UTILITIES:** Duke's recipe for success -- more customers using more electricity

6. **GRID:** Senate hearing stresses need for threat information sharing

7. **ELECTRICITY:** NRG links with supplier of household products in renewables partnership

8. **UTILITIES:** Xcel, solar groups propose incentives for Colo. customer panels

OIL AND GAS

9. **CAMPAIGN 2014:** Texas lieutenant governor candidates aim at each other, not drilling or drought

10. **FINANCE:** Chesapeake aims to trim $1M from each new well's cost in 2014

11. **POLICY:** EIA wants to recast monthly production report with more state data

12. **HYDRAULIC FRACTURING:** Beverly Hills council bans fracking

13. **OFFSHORE DRILLING:** Statoil looks to build factories on the ocean floor

14. **OIL AND GAS:** Encana buys into Eagle Ford for $3.1B

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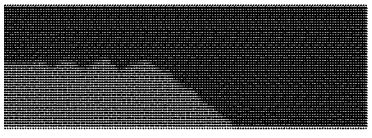

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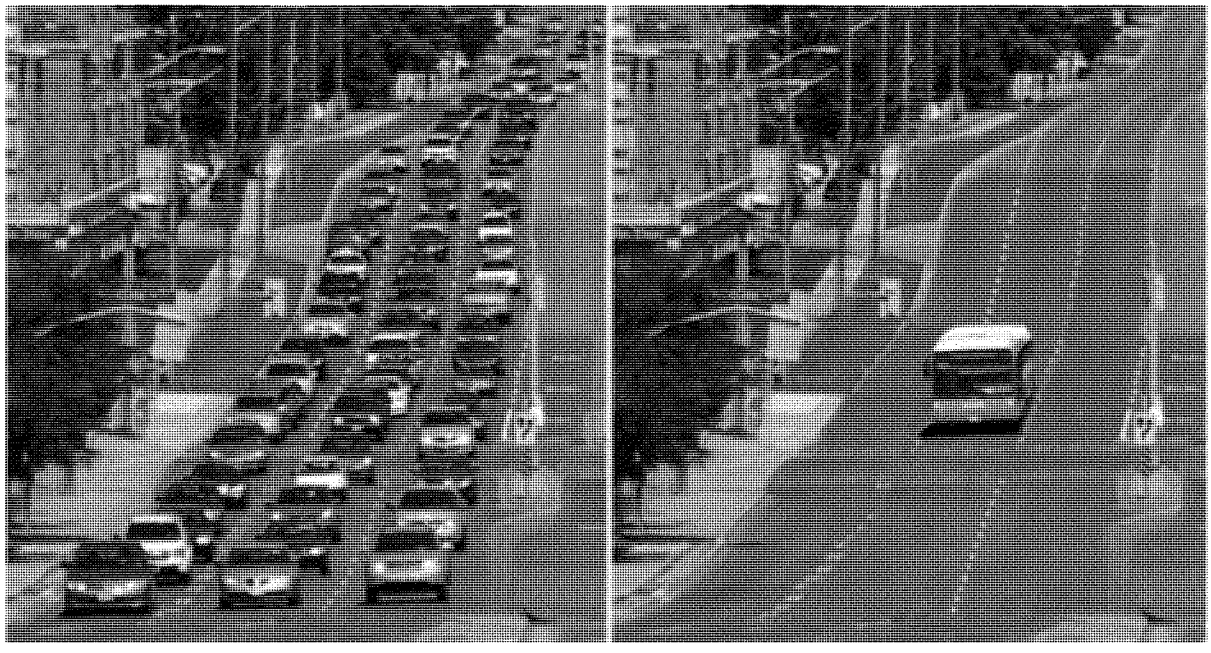

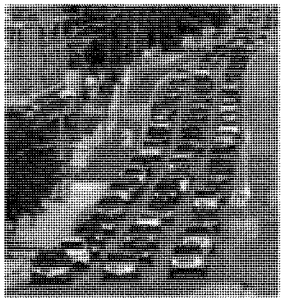

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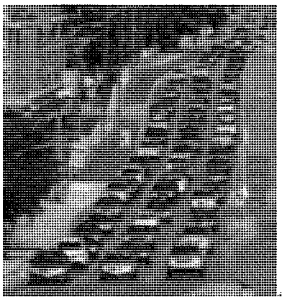


Air & Radiation Law News

for May 7, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Ford Motor Co. to Pay California $2.96M For Noncompliant Diagnostic Systems

Ford Motor Co. will pay California $2.96 million for selling about 16,500 automobiles with noncompliant onboard diagnostic systems, the computer-based equipment that monitors the performance of critical engine and emission control systems,...

Air Pollution

Judges Question Advocacy Groups' Standing In Challenge to EPA Cross-State Rule Memo

Federal appeals court judges May 6 appeared skeptical the Sierra Club and other environmental groups have established standing to challenge a 2012 Environmental Protection Agency memo advising regional offices on how to respond to a court...

Air Pollution

Kansas Company to Pay $2 Million to Reduce Emissions of Volatile Organic Compounds

A natural gas storage company will pay around $2 million to build and operate a system to reduce emissions of volatile organic compounds at a facility in Conway, Kan., the Environmental Protection Agency said May 5....

Climate Change

Congress Splits Along Party Lines in Reaction To Warnings in National Climate Assessment

Members of Congress split along party lines May 6 in reacting to the release of a broad U.S. assessment of how climate change is impacting U.S. regions....

Climate Change

Failure of Climate Bill Ranks as Top Issue On Retiring Chairman's Unfinished Agenda

Rep. Henry Waxman (D-Calif.), who is retiring after nearly four decades in the House and was instrumental in getting passage of many key environmental laws, said May 6 that climate change legislation tops his list of issues still in need of congressional...

Climate Change

U.S. Issues Loudest, Clearest 'Alarm Bell' On Climate Action to Date, Adviser Says

Researchers have issued the "loudest and clearest alarm bell to date" signaling the need for urgent actions to combat climate change in the U.S., the president's science adviser said May 6....

Emissions Trading

China to Allow Trading of Voluntary Credits From Carbon Sequestration Starting in June

China officially will allow trading in voluntary credits from forest carbon sequestration, also called carbon sinks, starting June 1, according to a notice from the State Forestry Administration....

Emissions Trading

European Commission Proposes Shield For 175 Industries in Its Emissions Market

The European Commission has proposed expanding the list of industries in its emissions market that should be protected from relocating to regions without greenhouse gas curbs....

Energy

Amendment Fight Threatens Senate Bill, Vote on Linked Keystone Pipeline Legislation

Senate Majority Leader Harry Reid (D-Nev.) said May 6 he won't allow Republican-backed amendments to an energy efficiency bill on the Senate floor, a move that could sink the bill and a linked vote on legislation approving the Keystone...

Energy

D.C. Circuit Upholds Renewables Standard For 2013 Despite It Being Eight Months Late

Federal appellate judges May 6 unanimously rejected challenges to the Environmental Protection Agency's renewable fuel standard for 2013 despite the rule being issued more than eight months late (Monroe Energy LLC v. EPA, D.C. Cir.,...

Energy

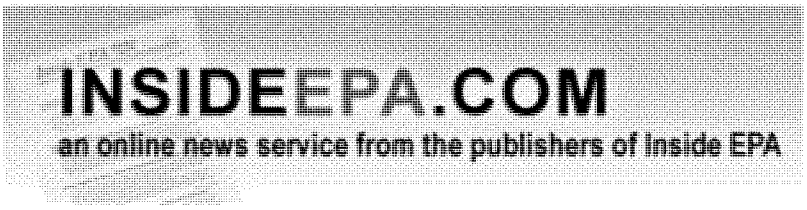
Keystone Pipeline Supporters Lobby Hard, Remain Shy of 60-Vote Threshold in Senate

Supporters of the Keystone XL oil pipeline said May 6 they are probably within two votes of being able to clear a 60-vote procedural hurdle in the Senate and pass a bill authorizing the $5.4 billion northern leg of the Canada-to-Texas project....

Hazmat Transport

GAO Says Military Needs to Show More Care In Management of Hazmat Transportation

The Defense Department needs better documentation, data and packaging in its transportation of hazardous materials, according to a Government Accountability Office report....



Inside EPA's **Clean Air Report**, 05/08/2014

http://insideepa.com/Clean-Air-Report/Clean-Air-Report-05/08/2014/menu-id-68.html

D.C. Circuit Rejects Refiners' Challenge To EPA's 2013 RFS Fuel Targets

The U.S. Court of Appeals for the District of Columbia Circuit in a unanimous opinion has rejected refiners' suit challenging EPA's renewable fuel standard (RFS) targets for 2013, backing as reasonable the agency's approach to setting the targets and the compliance deadline for meeting the standard's fuel blending requirements.

EPA Decision To Lower 2013 Cellulosic RFS Spurs Debate On 2014 Target

EPA's decision to lower the 2013 renewable fuel standard (RFS) target for cellulosic biofuel production is spurring debate over what signal the move sends for the looming final 2014 RFS cellulosic target, with refiners saying this year's target should also be reduced while biofuels advocates want EPA to significantly increase the fuel target.

DOJ Highlights Legal Uncertainty For EPA After Reinstatement Of CSAPR

A top Department of Justice (DOJ) attorney says that despite the Supreme Court's reinstatement of EPA's Cross-State Air Pollution Rule (CSAPR) emissions trading program, there is lingering legal uncertainty for the agency as the appellate panel that rejected the rule will now consider specific challenges to CSAPR it did not previously address.

Judges Suggest Mootness, Standing Hurdles For CSAPR Policy Memo Suit

Appellate judges at May 6 oral arguments suggested environmentalists may face hurdles proving they have legal standing to sue EPA over a policy memo that sought to provide interim advice to states on how to craft air pollution control plans following an earlier ruling scrapping the agency's Cross-State Air Pollution Rule (CSAPR).

White House Plans Campaign To Highlight Climate Study's Regional Risks

The Obama administration is launching a public outreach campaign to highlight the findings of the just-released third National Climate Assessment (NCA), in an effort to underscore adverse regional impacts of climate change the study documents and increase public support for both mitigation and adaptation efforts.

Absent EPA, States Struggle To Regulate Radioactive Waste From Drill Sites

States are struggling with how to regulate disposal of radioactive drilling waste that EPA is largely preempted from regulating in a comprehensive national policy, as varying definitions of the waste among states and local factors such as population density make it difficult for states to work together to develop new rules.

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Senate Majority Leader Harry Reid (D-NV) is promising to block consideration of amendments targeting EPA's greenhouse gas (GHG) rules for power plants when the Senate . . .

Greenwire

BIOFUELS:

Court upholds EPA's 2013 RFS rule

Amanda Peterka, E&E reporter

Published: Tuesday, May 6, 2014

A federal court today upheld U.S. EPA's 2013 renewable fuel standard rule against a challenge from a refinery owned by Delta Air Lines Inc.

The U.S. Court of Appeals for the District of Columbia Circuit said in a ruling this morning that EPA issued a reasonable rule setting the targets for renewable fuel use last year. The agency also adequately took into account the ability of refiners to purchase credits to meet the standards, Judge Judith Rogers wrote in an opinion.

"EPA's decision to preserve the 2013 fuel standards ... was reasonable," Rogers wrote.

The court did not, however, rule on challenges brought by oil industry trade groups. The court decided to sever those challenges from the refiner's lawsuit and potentially consider them at a later date.

EPA in August issued a renewable fuel standard that required refiners to blend 16.55 billion ethanol-equivalent gallons of renewable fuel in the 2013 compliance year. Of that total, 13.8 billion gallons was to be conventional ethanol and 2.75 billion gallons advanced biofuel not made from corn. The agency did not use waiver authorities given to it by statute to reduce the overall renewable fuel target.

Monroe Energy LLC, Delta's refinery, had asked the court to vacate EPA's rule on the grounds that the agency acted arbitrarily when it did not reduce refiners' requirements for blending renewable fuels.

The refinery said that EPA's decision imposed disproportionate burdens on merchant refiners like itself that do not blend their own ethanol and must meet their RFS obligations solely by purchasing credits known as Renewable Identification Numbers (RINs). Monroe argued that other refineries hoarded credits during 2013, driving up its compliance costs (*Greenwire*, April 7).

But the court today found that EPA correctly determined that the total renewable fuel volume mandate could be met and took into account the blend wall, the term given to the practical limit to the amount of ethanol that can be blended in today's fueling infrastructure.

Although "EPA's analysis was not as robust" as it might have been, the agency also adequately weighed the amount of credits available in the market for refiners to meet the standard, taking into account credits that may be banked for use in future compliance years, Rogers said.

EPA recognized that refiners have available "various alternative methods to comply" with the targets, Rogers said. The agency also postponed the compliance deadline to help refiners, despite issuing the final rule eight months beyond the statutory deadline, the judge noted.

"EPA acknowledged the lateness of the final rule and considered various ways to minimize the hardship caused to obligated parties," Rogers wrote, "ultimately concluding that the best way to balance obligated parties' interest in regulatory certainty with EPA's statutory obligation to ensure the renewable fuel volumes are annually met was to extend the compliance demonstration deadline by four months."

The opinion did not address challenges brought against the 2013 RFS standards by the American Petroleum Institute and American Fuel & Petrochemical Manufacturers.

In a lawsuit that was combined with Monroe's challenges, the oil trade groups argued that EPA released its final rule eight months late and made changes that caught refiners by surprise and increased their compliance burdens.

They also argued that EPA overshot its estimation of how much cellulosic biofuel -- an advanced biofuel made from agricultural residue, grasses and other plant materials -- would be produced.

The court severed the cellulosic challenge from the lawsuit earlier this year after EPA said it would reconsider the standard on its own. The ruling today says that the court has also decided to remove the other challenges and hold them in abeyance.

EPA released a much lower cellulosic standard in late April; it's unclear yet whether the oil trade groups will continue to challenge it and the other aspects of the 2013 rule in court (*E&ENews PM*, April 22).

EPA:

McCarthy bound for Costa Rican president's inauguration

Robin Bravender, E&E reporter

Published: Tuesday, May 6, 2014

Gina McCarthy will represent the Obama administration at Costa Rica's presidential inauguration this week.

The U.S. EPA chief has been picked to lead a presidential delegation to the inauguration of President-elect Luis Guillermo Solis on Thursday, the White House announced yesterday.

McCarthy will be accompanied by two State Department officials: Gonzalo Gallegos, a U.S. diplomat serving in Costa Rica, and Francisco Palmieri, deputy assistant secretary of State for Central America and the Caribbean.

Costa Rica has won international acclaim for its environmental efforts in recent years. The Central American nation has been a pioneer in eco-tourism and pledged in 2007 to become the world's first carbon-neutral country by 2021.

But Costa Rica's ability to meet that goal has been thrown into doubt. An official from the center-left Citizens' Action Party (PAC) -- the political group represented by Solis -- indicated that the country would drop that commitment, Reuters reported in March.

"We don't think it would be possible to reach carbon neutrality by 2021, because the most important tasks to reduce emissions in the country are yet to be done," Patricia Madrigal, PAC's environmental adviser, told Reuters. She said the PAC didn't intend to abandon the carbon neutrality goal or other climate policies, but pegged 2025 as a more realistic target.

Solis, a history professor and former diplomat, won in a landslide election to succeed Laura Chinchilla, Costa Rica's first female president.

AIR POLLUTION:

Skeptical judges question enviros challenging EPA's cross-state guidance

Daniel Lippman, E&E reporter

Published: Tuesday, May 6, 2014

Judges were skeptical of environmentalists' arguments today in a case pitting green groups against U.S. EPA on the validity of a memo instructing states to continue to use an old air pollution rule.

At issue is a November 2012 memo that then-EPA air chief Gina McCarthy sent to regional air offices after EPA's Cross-State Air Pollution Rule, or CSAPR, was vacated by the U.S. Court of Appeals for the District of Columbia Circuit on August 2012. The CSAPR rule was upheld 6-2 by the Supreme Court last week, which means that the lower court case could be moot if EPA starts to enforce CSAPR again (*Greenwire*, April 29).

Judge David Tatel of the D.C. Circuit asked the environmentalists' counsel and Earthjustice attorney Thomas Cmar whether the case was indeed "moot" given the Supreme Court's ruling. "Could you imagine any other circumstances that they could continue to use [the Clean Air Interstate Rule]?" Tatel asked.

Cmar responded by saying there was "much uncertainty" about the future of CSAPR. Given that, he said, the agency may still use CAIR, the George W. Bush-era rule, to approve some state anti-pollution plans in the interim.

Tatel also pressed Cmar about whether the petitioners suffered a substantial injury, given that the areas (Chicago and Atlanta) where they live are currently meeting air quality standards.

When another judge made a similar argument, Cmar said "that's true," but he pointed to the haze levels in national parks that are not meeting current standards.

DOJ's petition on behalf of EPA also said the environmental groups bringing the suit lacked "standing to do so."

"[In] both cases, Petitioners' claim of injury is too speculative to qualify as actual or imminent. Petitioners rely completely on vague generalities and do not identify a specific facility that they assert will increase its emissions in the future," DOJ's court filing read.

The case started when environmental groups filed a federal lawsuit challenging the EPA guidance provided to states to address air pollution that drifts across state lines. The guidance argued that the agency is choosing to rely on an outdated and unlawful program (*Greenwire*, Jan. 24, 2013).

The agency had argued that while it waited for the case to play out, states should revert to CAIR.

The Sierra Club, National Parks Conservation Association and Natural Resources Defense Council, however, filed a petition in the D.C. Circuit raising questions about the memo. For one, they noted that the D.C. Circuit had thrown out CAIR in 2008, saying it was insufficient for protecting public health.

In a petition filed this February, they argued that the memo and policy violated the Clean Air Act and were "arbitrary and capricious," and said that some of the petitioners' members were injured when EPA "denied them the right to comment on the illegal policy. ... These individuals have health problems or jobs that make them susceptible to poor air quality."

In its response, EPA said the memo was not a final agency rule and did not change existing laws or policy, which means it wasn't subject to comment requirements.

Other judges were also skeptical of the environmentalists' arguments. Judge Judith Rogers said that "it's very difficult to [envision] how the court could write an opinion to give you the relief that you're" requesting.

The Justice Department lawyer representing EPA, Norman Rave, said he thought the case was "probably moot" and hinted that in the near future, there would be no reason for the case.

Tatel asked Rave whether it was possible that CAIR could continue to be used by EPA in the interim. Rave responded that there were other issues with CSAPR that the Supreme Court did not address. But he later said it was "not terribly likely" that EPA would continue to use CAIR.

"CAIR is a temporary program that the D.C. Circuit found in 2008 that it was illegally issued and fundamentally flawed," Earthjustice attorney Cmar said in a telephone interview before the court arguments.

"And for EPA to adopt this policy of assuming across the board that all CAIR emission reductions will necessarily continue moving forward in all locations that CAIR covered when at that time it did not know what a replacement rule for CAIR might look like [is] contrary to that statutory language" of the Clean Air Act, Cmar said.

The case, No. 13-1014, is *Sierra Club, et al. v. U.S. EPA, et al.*

EPA:

States make closing arguments on existing power plant rule

Jean Chemnick, E&E reporter

Published: Tuesday, May 6, 2014

State regulators are weighing in on U.S. EPA's climate change rule for existing power plants with a month to go before the proposal's release.

In a recent addition to the docket of state comments on the EPA website, Michigan's Department of Environmental Quality urges EPA to "take into account the variations among the states and avoid giving one state or region competitive advantages over another."

Dan Wyant, the DEQ director, explains in a three-page letter that Michigan is a manufacturing state with a healthy appetite for electricity, 53 percent of which is derived from coal.

"While the market is driving some generation toward natural gas and the cost of renewable energy is decreasing, both of these would require capital investments in transmission lines and pipelines that must be borne by the ratepayers," he wrote. "Though Michigan will continue to invest in renewable energy alternatives, the shift away from coal will take time."

In order to avoid placing Michigan at a disadvantage compared with other large industrial states with different power portfolios, Wyant urges EPA to avoid proposing a "drastic reduction" in greenhouse gas emissions in a short time.

The rule, he adds, should specify mass-based standards or an emissions budget for an entire state, allowing states to determine how to meet the cap. EPA has successfully used such an approach for other rules, he notes, including for the popular acid rain trading program.

A second possibility, he writes, would be a rate-based approach -- specifying emissions per megawatt-hour that could be converted to a mass-based option for greater flexibility.

Clean Air Act Section 111(d), which EPA is using to promulgate the rule, gives states the job of determining how the standard should be implemented.

Michigan is asking EPA to defer to states in setting the base-line years that will serve as a starting point for calculating emission reductions. The state proposes the average of 2004, 2005 and 2006 emissions to start. States would then receive credit for any changes to their electrical sector following that base line, including plant retirements related to market conditions.

Vinson Hellwig, Michigan DEQ's air quality division chief, said in a brief interview the existing power plant rulemaking was one of the most complex he's seen EPA undertake in his nearly 40 years as a regulator, which included two stints in the federal government.

"I don't know what they're planning to put in their proposal, but they've had to put a lot of different factors that maybe they don't have to typically consider when they're doing a rulemaking," he said.

Where most Section 111(d) rulemakings are prescriptive, EPA has signaled its intent to build as much flexibility into the existing power plant rule as it can, perhaps by offering more than one option next month for public comment.

But the task is difficult for states too, Hellwig said. President Obama set a 13-month timeline last year for regulators to write and submit state implementation plans (SIPs) to EPA after the agency finalizes the rule next June. These would include all the regulations that would allow the state to meet whatever emissions-reduction threshold the agency sets for it.

"That's not enough time for us," Hellwig said.

Michigan DEQ is asking EPA to give states three years to write their implementation plans or for a phased approach that would let states submit conditional plans by the earlier deadline.

That timeline would ensure that a new administration had the task of approving or declining final plans -- something the president's memorandum last year sought to avoid.

Emission targets at issue

Hellwig's division is laying the groundwork for its SIP for the existing power plant rule even as Michigan's Republican-led executive branch prepares to oppose it, including in the courts. State Attorney General Bill Schuette (R) joined with 16 other attorneys general last September on a letter to EPA Administrator Gina McCarthy warning that they would be watching for signs of statutory overreach by her agency.

But Hellwig said it was not unusual for states to work on rulemakings that they might ultimately challenge in court.

"We've done that with other rules as well," said Hellwig, pointing to EPA's 2012 mercury and air toxics rule for utilities, which was also the subject of a lengthy court challenge that ended in April when a federal appeals court upheld it.

In the case of the greenhouse gas rule, Hellwig said, early work is particularly important because the timeline is so constrained.

"We're not going to be able to reactively wait," he said. "We have to start thinking about it now and planning for it even if it may change."

Michigan didn't weigh in on one of the central points of conflict surrounding the rule: whether EPA should set state emissions targets based on what individual plants could achieve on-site or whether it should take into account the reductions that are possible across the system through improvements in demand-side efficiency, renewable energy deployment, combined heat and power, and other measures.

Most fossil-fuels-rich states favor the former interpretation, and fossil fuels advocates have all but promised that if EPA takes a "beyond the fence line" approach to the rule, it will end up in court. But the Great Lakes State has such a diverse electric power sector that Hellwig said a broader approach might be to its advantage.

"We would look for the least-cost solution, let me put it that way," he said.

That's not so for Kansas. In comments posted by EPA on April 30, the Kansas Department of Health & Environment states that while EPA probably doesn't have the authority to regulate CO2 at all, system-based reductions for existing sources are barred by the Clean Air Act.

"Once the efficiency standards are set, then the states should have flexibility in implementing the standards to help reduce compliance costs," Kansas officials wrote. This could include credits for "beyond the fence line" activities such as more use of renewable energy -- Kansas has a renewable energy standard of 20 percent by 2020 -- but Kansas officials said EPA should not base its emissions-reduction goals on those options.

Michigan DEQ also cautioned that making coal-fired power plants more expensive to operate could lead utilities to abandon some, stranding the $3 billion they have invested in complying with other EPA rules.

But EPA has signaled its rule would require states to make systemwide reductions, and environmentalists say the standard should fit the tools states can use to meet it. Limiting emissions-reduction requirements to the few percentage points plants can save on-site through minor efficiency upgrades would not fulfill EPA's legal obligations, they say.

"That's like I get to have my handicap determined on a round of golf I play with one club, but then when I actually play golf I get to play with all the clubs I have in the bag," said David Doniger, director of the climate and clean air program at the Natural Resources Defense Council.

He pointed to a paper released in March by Harvard Law School that argues EPA should follow the "symmetry principle" in setting its standard (*Greenwire*, March 5).

"Any adequately demonstrated system of emission reduction available for compliance with a performance standard must also drive the standard's stringency," the paper says.

The comments West Virginia submitted to the agency in February also argued for a source-based approach. But EPA should give utilities credit for plant retirements after a 2005 base line, the document argued, even though they don't reduce emissions at facilities that will continue to operate into the future.

Fred Durham, acting director of the air division at West Virginia's Department of the Environment, said in a brief interview that the retirements accomplish the same goal of reducing CO2 entering the atmosphere -- even if they are driven by market realities or non-CO2 EPA rules rather than the new proposal.

"What counts is the carbon dioxide that actually goes into the air," he said. The state's nine expected coal plant retirements will amount to a 20 percent decrease in emissions by 2020, he said, a goal on par with many members of the Northeast's Regional Greenhouse Gas Initiative (RGGI).

'Outside the fence'

But while states like Michigan, Kansas and West Virginia urge EPA not to go too far in regulating existing power plant emissions, the RGGI states, California and other early movers have told the agency the opposite: A lack of ambition could penalize them and discourage other states from signing on to similar regional emissions-reduction systems.

A group of 15 states with extensive CO2 and renewable energy policies convened by the Washington, D.C.-based Georgetown Climate Center asked EPA in a December letter to set a stringent, "beyond the fence line" rule that recognizes existing state policies as a means for compliance and that "equitably recognizes the different starting points and circumstances of different states, including the pollution reductions achieved by states through climate and clean energy programs" (*Greenwire*, Dec. 16, 2013).

Collin O'Mara, secretary of Delaware's Department of Natural Resources and Environmental Control, said on the sidelines of a recent briefing that the coming rule has spurred states that are not part of RGGI to begin to explore joining the compact.

Even in states where cap and trade faces political resistance, there is movement toward the conclusion that it might be cheaper and simpler than other regulatory options, he said.

"There's been an interesting progression that's been going on the past 18 months as folks are getting more and more comfortable with the concept of having such an approach," said O'Mara, who was tapped last week to lead the National Wildlife Federation (*E&ENews PM*, May 1).

But an EPA rule that asks too little of states might kill that trend and place states that have already made

steep emissions cuts at a competitive disadvantage.

Former EPA senior policy counsel Robert Sussman said the White House would be likely to advance a tougher rule anyway, because on-site efficiency upgrades would not make enough progress toward its goal of reducing greenhouse gas emissions by 17 percent below 2005 levels by 2020.

"What I'm hearing is that there's a lot of pressure from the White House to achieve big reductions under this rule," Sussman said in an interview. "The only way you can really get there is with an outside-the-fence-line approach."

Changes in the power sector have resulted in substantial emissions reductions the last few years that have not occurred in other segments of the economy, Sussman noted. And the White House will almost certainly view the existing power plant rule as a vital opportunity to make further gains.

That will mean assigning substantial new and additional emissions-reduction responsibilities to states across the spectrum -- from the fossil-fuel-dependent Midwest and Southern states to the Western and Northeastern states that are already regulating carbon.

Sussman, who was also an EPA deputy administrator under President Clinton, outlined his views in an article published last month.

OIL AND GAS:

Encana to pay $5M in Mich. antitrust case

Published: Tuesday, May 6, 2014

Canada's largest natural gas producer is hoping to put scandal behind it after reaching a $5 million settlement with Michigan over collusion charges.

Encana Corp. yesterday pleaded no contest to misdemeanour antitrust violations in a Michigan court, days after the U.S. Department of Justice decided not to pursue federal charges in a separate investigation.

"Together, these effectively conclude the inquiries of both the federal and state government into these allegations, averting the need for costly and protracted litigation," the company said in a statement.

Half the penalty will go to people affected by Encana's actions, and half will fund Michigan's antitrust enforcement efforts, said state Attorney General Bill Schuette (R).

An investigative report based on correspondence unearthed by Reuters in 2012 accused the Canadian giant of colluding with Chesapeake Energy Corp. to avoid a bidding war in 2010 over lucrative deposits in the Collingwood Shale region of Michigan (*Greenwire*, March 20).

Encana said after an internal investigation in 2012 that former CEO Randy Eresman had done nothing wrong. But the scandal continued to plague the company's front offices. Eresman stepped down, the company went through major management changes and new CEO Doug Suttles stopped pumping money into developing its Michigan assets (Jeffrey Jones, Toronto *Globe and Mail*, May 5). **-- DTB**

4-alarm fire shuts down Colo. plant

Published: Tuesday, May 6, 2014

Firefighters are investigating a four-alarm blaze that lit up a coal-fired plant in Colorado Springs, Colo., yesterday morning.

The fire forced the evacuation of 62 employees and damaged infrastructure in the Martin Drake power plant, which provides a third of Colorado Springs' energy.

Nearly 22,000 consumers were briefly out of power as the blaze shut down the plant.

"It's going to be inoperable for quite some time," Colorado Springs Fire Chief Chris Riley said yesterday.

Finding other energy sources will likely be expensive for ratepayers and the city. For now, power is being rerouted from nearby plants to make up for the shortage.

The fire appears to have occurred at the smallest and oldest boiler in the facility, built in 1962.

One contract employee was treated for minor injuries and released, fire and utility officials said (Colorado Springs *Gazette*, May 6). **-- JL**

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When it rains, it pours. When it's dry, it's parched. When it's hot, it lasts. These are some of the impacts climate change is already bringing to the United States, with more extremes to come in the future, according to the National Climate Assessment report released yesterday.

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People who hear the word "enhanced" might think of a stronger body part or a loaded pizza. For Susan Hassol, it represents the problematic dialect of climate scientists, many of whom, admittedly, have a better grasp of wind currents than words.

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Whether you live in Denver or Detroit, Boston or the San Francisco Bay Area, or in one of the farm towns sprinkled across the Midwest and Great Plains, you are feeling the effects of climate change.

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When it comes to earthquakes, Oklahoma is the new California. The Sooner State may be better known for tornadoes. But since October, Oklahoma has had more quakes than California, knocking the Golden State out of first place in the lower 48 states.

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3. **UTILITIES:** TVA reviewing privatization options with federal officials

4. **POLICY:** State Dept. huddles with Ukrainian energy business leaders

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5. **UTILITIES:** NRG Energy CEO touts value of recent acquisitions, 'limitless future potential growth'

6. **UTILITIES:** Big data to help track electricity customers

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OIL AND GAS

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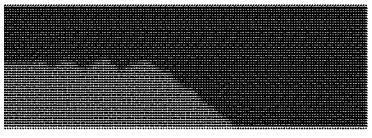

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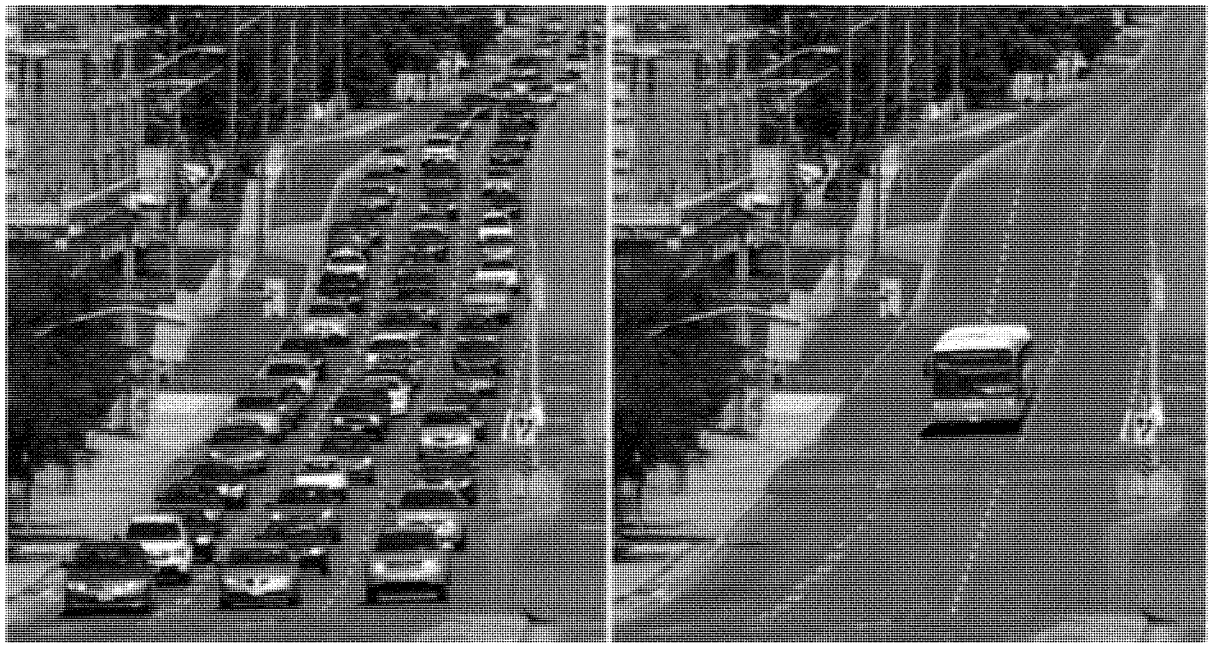

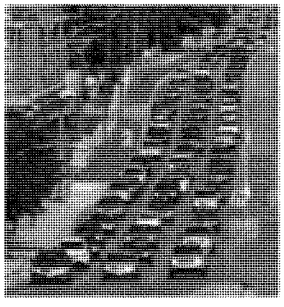

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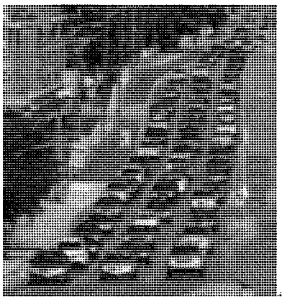
From: Turley, Jennifer
Sent: Tue 5/6/2014 3:27:10 PM
Subject: Air & Radiation Law News for May 6, 2014



Air & Radiation Law News

for May 6, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

Maryland Governor Signs Legislation Addressing Climate Change, Other Matters

Maryland Gov. Martin O'Malley (D) signed several pieces of legislation including several climate change and energy-related measures passed during the General Assembly's recently completed 2014 legislative session....

Climate Change

Rockefeller Bills Would Support Research, Tax Incentives for Carbon Capture Systems

Sen. Jay Rockefeller (D-W.Va.) introduced two bills May 5 that would provide incentives to develop and deploy commercial-scale carbon capture systems....

Climate Change

White House Touts Year of Progress In Report Compiling Obama Climate Actions

The White House is touting a series of climate actions taken thus far in 2014 by President Barack Obama in lieu of congressional action, including the president's strategy for cutting methane emissions and the launch of new standards to...

Energy

API Kicks Off Ad Campaign Backing Keystone Pipeline Before Senate Vote

Television ads sponsored by the oil industry's main trade association are being broadcast in five states to pressure Democrats to back the Keystone XL pipeline, part of a flurry of last-minute lobbying before a Senate vote that could be...

Energy

Federal Suit Challenging Cape Wind Power Purchase Contract Dismissed

A federal judge in Massachusetts on May 2 rejected requests by opponents of a proposed wind farm in Nantucket Sound to invalidate a contract between Cape Wind Associates and NSTAR Electric Co. (Town of Barnstable v. Berwick, D. Mass., Docket...

Energy

Senate Expected to Take Up Tax Bill Extending Energy Credits Through 2015

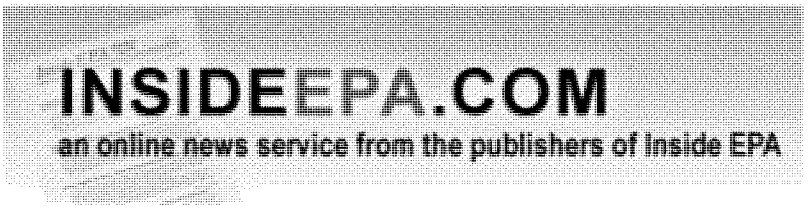
The Senate is slated to take up tax legislation the week of May 12 that would extend the renewable energy production tax credit and billions of dollars in other expired energy incentives retroactively from Jan. 1 through 2015....

Renewable Energy

D.C. Circuit Hears Oral Arguments In Wind Farm Divestment Challenge

A Chinese-owned company asked a federal appeals court to block a government order that the company

divest its interest in wind farm projects in Oregon near U.S. defense facilities, while the federal government countered that the president...



Inside EPA's **Risk Policy Report**, 05/06/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-05/06/2014/menu-id-130.html

Advocates Fight Texas' Latest Bid For EPA Approval Of 'Flexible' Air Permits

Environmentalists are fighting Texas' latest bid to win EPA approval of a controversial "flexible" approach to Clean Air Act permitting, opposing a recent agency proposal to sign off on the policy after years of legal fights and warning that it would allow facilities to avoid strict federal permitting mandates to install air pollution controls.

Latest Blogs

West Virginia Urges EPA To Delay Utility Climate NSPS

West Virginia Attorney General Patrick Morrisey (R) is urging EPA to delay the slated June 1 release of its proposed climate new source performance standards . . .

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Greenwire

RENEWABLE ENERGY:

Clean tech, Big Oil hottest new couple in energy world

Katherine Ling, E&E reporter

Published: Monday, May 5, 2014

First of three stories on the traditional energy industry's embrace of clean technology.

"Sometimes you need to kiss many frogs before you find the princes."

That sums up the past few years of investing in clean technology, says Wal van Lierop, co-founder and CEO of Chrysalix Energy Venture Capital. But now the industry has transformed to the point that even a small but growing number of traditional energy companies are embracing the use of renewables.

"What we are seeing is a maturing of clean technology, and it is arising in the mainstream of existing large industries," van Lierop said. Chrysalix, which focuses solely on clean technology, has attracted a majority of its $250 million in funding from conventional energy companies like Royal Dutch Shell PLC, Total SA and Électricité de France (EDF).

The key, van Lierop said, is to "try to develop technology that can have a major impact on the world, but you try to develop it on the nickel of the people that have the capital."

In theory, using renewables makes sense to power the everyday operations of traditional energy companies, which often work in remote and harsh conditions where infrastructure like roads or pipelines is minimal. The current relationship between the traditional and clean technology energy industries, however, is far from a fairy tale.

But the two may need each other more than they would like to admit. The International Energy Agency and U.S. Energy Information Administration have issued report after report acknowledging a foreseeable need for fossil fuels and mining but saying they must be part of a "low-carbon solution" -- a notion echoed by Energy Secretary Ernest Moniz and the Obama administration.

The traditional energy sector has another oft-overlooked reason to embrace renewables: It is in itself a considerable consumer of energy, especially in the form of heat supplied by diesel and other carbon-based fuels.

In the United States, the mining sector -- including oil and gas extraction -- accounted for about 33 percent of the industrial consumption of distillates and fuel oil in 2012, with almost two-thirds of that by oil and gas, according to a *Greenwire* analysis using EIA data. The U.S. industrial sector is only second to transportation in consumption of petroleum products, according to EIA's monthly energy review from March.

Relying on petroleum products is a costly proposition for any industry with rising prices that may soon be compounded by carbon emission regulations in California, Australia and other places. That is even more of a pressing issue in countries outside the United States that do not have the same access to low-cost natural gas.

The budding relationship has benefits for renewables, too. For the burgeoning clean technology sector, the energy industry offers two crucial components of success: capital and expertise. These two inputs make the difference for a technology becoming commercially successful rather than just another report in a science journal.

A union is not that simple, of course. The traditional industry's general view of renewable energy is that it is too expensive, unreliable, risky and not large-scale enough to provide solutions -- and is a competitor in the long run.

Clean technology startups often view partnering with traditional energy as selling out, or in direct conflict with many founders' mission -- fighting climate change. Plus the small, new companies designed themselves to be providers of technology without the infrastructure, desire or experience to offer the power solutions that these larger industries seek.

Nathanael Greene, director of the renewable energy policy program at the Natural Resources Defense Council, said his "knee jerk" reaction to the idea of renewable energy helping to clean up the traditional power industry was a bit of the proverbial "putting lipstick on a pig."

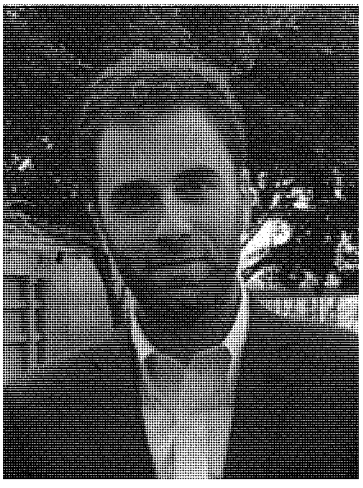
But he acknowledged, "Any renewable energy advocate that is serious about renewable getting to scale recognizes that the answers are going to be really big companies playing in that space."

"I think this sort of purist approach of renewable energy development only lasts for a little while," Greene added. "Technical expertise is technical expertise, and we need that to flow to the best technologies, and money is critical to scaling renewable to the level we need them to achieve to stop global warming."

Van Lierop estimates the traditional energy industry market to be worth $3 trillion to $4 trillion that could be an important source of investment for startups to tap now.

That's especially important as governments continue to cut back on funding meant to take technology from the laboratory to the market. Plus, a traditional source of private money, venture capitalism, has been pulling back on funding for energy projects because of the longer five- to 10-year return on investment timelines, favoring instead the "clean Web" startups based on websites and software.

There is much to be gained for both sides if the two industries work together, according to Matt Scullin, founder and president of Alphabet Energy Inc., a company that converts waste heat into energy and is targeting the mining and drilling industry as its first market.



Matt Scullin, founder and president of Alphabet Energy. Photo by Kate Ling.

"These 'dirty' companies stand to be cleaned up the most," he said. "We want to have impact. We think we can have impact. The impact can be had in these global dirty industries."

Highest-value customers

Like many of his California clean tech compatriots, Scullin is an idealistic and driven scientist-turned-entrepreneur. He previously worked at IBM Corp., General Motors Co. and X/Seed Capital, backed by his doctorate and master of science in materials science from University of California, Berkeley, where he was advised by Arun Majumdar, the former head of the Advanced Research Projects Agency-Energy.

Alphabet Energy wants to be the "Intel of waste heat recovery," Scullin said, becoming a critical component of efficiency and a power source for industry no matter what fuel or equipment is used. One of

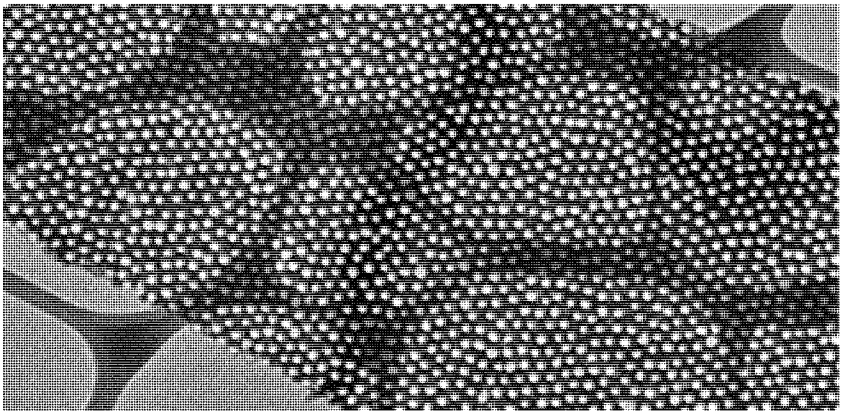
the company's thermoelectric modules is only the size of a shoebox and could be adapted to many different applications, he said. While the technology existed in the lab for a long time, Scullin was able to find low-cost materials and manufacturing that made it possible to commercialize.

Alphabet first looked at waste heat energy technology to improve fuel consumption of cars, using the heat from the cars' exhaust to provide additional power. But the company found that market moved too slowly to provide the kind of funding and customers it needed in the near term to grow, said Scullin, who co-founded the company five years ago.

Although his products are clean technology that cuts emissions, that is not the leading marketing point for his company. The most important point, Scullin said, is the cost savings for companies.

"The quickest to market is very, very high-value waste heat," Scullin explained. Oil, gas and mining companies "are going to pay the quickest and the most, and allow us time to come down on the cost curve on volume." Lowering the technology price through volume could lead to more partnerships with industries that deal with furnaces, such as steel, with others that use a great deal of heat and then finally to the tailpipes of cars.

"We have to take the right steps. We have to be pragmatic and seek the highest-value customers first," Scullin said.



Nanotechnology that Alphabet Energy uses with silicon to make its thermoelectrics low-cost. Photo courtesy of Alphabet Energy.

He added, "Rome wasn't built in a day. You can think about changing the world, but the fact of the matter is, these energy industry and very heavy industries are very slow-moving. One should not expect for adoption to be rapid in a single industry and for disruption to occur overnight."

Encana Corp., a leading North American energy producer, is a key investor in Alphabet Energy and has offered the startup important engineering and market insights into real-world applications via a pilot project -- another significant benefit to partnering with established energy companies, according to Scullin. Alphabet is preparing to announce one of its first products for application in the mining and oil industries within weeks.

'Simply too brown'

Other startup companies are following a similar strategy to Alphabet Energy's. But partnering with the traditional energy sector is not always the easiest path forward for clean technology.

Steve Taub, senior vice president of Investment Strategy at GE Ventures, advised the battery company Solid Power during a recent Energy Department investment pitching session that targeting oil drilling and other sectors could be difficult because they have a "tough, long cycle" in terms of buying new equipment and are "heavily regulated."

Solid Power is considering down-hole drilling operations as the first market it will target, Douglas Campbell, founder and president, told the panel, because the "nasty environment" of drilling requires reliable and "extremely high-tech" solutions like the solid-state battery his company offers. Solid Power says its battery could be lighter and safer and could run longer than lithium-ion batteries at a lower cost.

Chicago-based PyroPhase Inc. is also concentrating on oil companies but that has come at a cost to fundraising, particularly with the federal government, according to PyroPhase President Jeff Presley. The company is now mainly concentrating on the Canadian market.

Oil sands operations currently use mostly natural gas to produce the heat and steam necessary to extract the oil. PyroPhase's technology uses lower-frequency radio waves to heat up oil sands to release petroleum. Renewable energy could power the radio waves, so the technology could be an important consumer of renewable power when there is more supply than demand on the system -- such as spring runoff or windy nights.

"Our technology could take that electricity and convert it to heat underground and, in a way, treat it like a battery," storing the energy in the form of oil being heated and separated into a usable form, he said. "The real fundamental thing is for utilities to have a customer who likes intermittent energy. Industrial-scale customers -- the kind that consumes megawatts, not kilowatts."

The technology could also be used in environmental remediation or oil spills, Presley added.

But Presley said because the technology is helping oil sands development and doesn't necessarily have to be powered by renewable energy, it is "not as green as people would like."

Despite a good reception from experts -- including winning a "Sustainable Technology of the Year Award" in 2011 from the McGraw-Hill Platts Global Energy Awards -- Presley said the government's response for the technology during the Obama administration has been "frustrating."

A DOE staffer at an oil shale symposium several years ago "flat told me, 'We loved this technology, but it was simply too brown,'" he said.

NRDC's Greene said some caution in pairing the renewable and traditional energy sectors is wise. There should be awareness that traditional energy investment in clean technology may not be "altruistic," he said.

"Marginal improvements are good, but if you are already on the unsustainable side of the ledger, you are just getting closer to less bad," he said.

"There is this sort of green-washing potential that needs to be guarded against," he added. "We are going to be needing low-carbon energy and energy that doesn't destroy habitat and pollute water, and it is not like at some point we'll just, the market will just decide on its own to start producing that and we won't think about it anymore. It's not like those challenges are going away."

But Chrysalix's van Lierop said the current push toward clean energy strategies for companies is comparable to a decade ago, when businesses all wanted an Internet strategy; Internet strategies are no longer a separate business plan.

"Frankly, I always say that if in a decade -- at most two decades from now -- if we still talk about clean technology, then something horrible has gone wrong," van Lierop said. "It really needs to become a normal part of doing business."

Tomorrow: How a solar power technology for oil production may turn a California regulation to promote low-carbon fuels on its head.

KEYSTONE XL:

Lobbying escalates ahead of still-unscheduled Senate vote

Elana Schor, E&E reporter

Published: Monday, May 5, 2014

The oil industry and environmentalists are taking their lobbying and grass-roots organizational games to a new level today ahead of an expected -- but not yet assured -- Senate vote this week on Keystone XL.

The American Petroleum Institute (API) this weekend began running a "significant" TV, radio and online advertising campaign targeting seven Senate Democrats ahead of an expected upper-chamber debate on the controversial oil sands crude pipeline. Climate activists at 350.org, however, are countering in a campaign aimed at flooding three of the same seven senators with public entreaties to vote against KXL.

The push-pull action is especially notable given that senators have yet to reach full agreement on a package of amendments to a long-stalled bipartisan energy efficiency bill that the Canada-to-U.S. pipeline is all but inextricably linked to this spring. If that bill derails amid squabbling over other contentious matters, such as a GOP demand for a separate vote on language halting U.S. EPA's climate rules for new power plants, an anticipated Senate vote on KXL could yet fall by the wayside this week.

If senators can reach agreement on a framework for taking up the efficiency bill and the pipeline, third-ranked Senate Democratic leader Charles Schumer of New York told MSNBC today, the final tally will be "very close."

Cognizant of that precarious math, which so far appears to leave pipeline proponents short of victory, API expanded its playing field to target Sens. Tom Udall of New Mexico and Al Franken of Minnesota, neither of whom are typically mentioned as swing votes on the $5.4 billion project.

"This is certainly something we're going to pull out all the stops on," API Senior Manager Cindy Schild told reporters today. "We're going to use all our outreach options at this point."

Other Democrats targeted by API are Sens. Chris Coons and Tom Carper of Delaware; Michael Bennet and Mark Udall of Colorado; and Tim Johnson of South Dakota. Udall and Johnson told *Greenwire* last week that they would oppose a binding measure that forces approval of KXL, while Carper last week moved from opposition to uncertainty.

On 350.org's Democratic contact list for membership pleas against the pipeline, which greens lambaste as a threat to the climate thanks to the larger emissions footprint of Canadian oil sands crude, are Sens. Bob Casey of Pennsylvania and Bill Nelson of Florida, in addition to Carper, Bennet and Udall.

"Keystone XL is the top priority for our thousands of members in states from Florida to Colorado," the environmental group's policy director, Jason Kowalski, said in a statement today.

On Friday's The Cutting Edge, reporter Elana Schor discussed the KXL vote count and the politics and previews the Senate's action. Click here to watch The Cutting Edge.

Nelson indicated Friday that although he supports the pipeline, he would oppose any pro-KXL measure that does not restrict overseas export of products refined from the oil sands crude it would carry.

Senate Majority Leader Harry Reid (D-Nev.) set up a test vote early tomorrow to begin debate on the efficiency plan, though success on that front would give party leaders more time to hammer out an agreement on debating KXL as well as other big-ticket energy issues (*E&E Daily*, May 5).

Schumer today hinted at lower blood pressure among Democratic leaders over allowing a binding KXL vote, aligning with what many pipeline watchers believe to be the White House position as he told MSNBC that "it is not the [momentous] issue that each side is making it out to be."

GRAND CANYON:

Court tosses industry suit over Obama admin ruling blocking mining claims

Manuel Quiñones, E&E reporter

Published: Monday, May 5, 2014

The U.S. Court of Federal Claims has tossed a uranium exploration company's lawsuit against the Obama administration over its 2012 decision to block new mining claims on roughly 1 million acres around the Grand Canyon National Park.

Judge Susan Braden last week said Vane Minerals LLC's request for almost $80 million in compensation for 678 company mining claims and exploration activities in the affected area was not ripe for discussion.

Vane Minerals argued that the Bureau of Land Management and the Forest Service are not letting the company explore its existing mining claims.

Even though the Obama administration's withdrawal does not affect existing mining claims, regulators are only honoring claims proved to be valid. In other words, they must go through a test showing they contain economically recoverable mineral reserves.

Braden sided with the Obama administration in saying that Vane needed to go through a validation process before determining how the withdrawal will affect its claims.

"Unless and until Plaintiff receives a [valid existing rights] determination," she wrote, "neither the BLM, the Forest Service, nor this court can determine if and how the Withdrawal Order will impact Plaintiff's unpatented mining claims."

In its own court filings, Vane Minerals argued that it shouldn't have to go through the validation process because the government is well aware of the rich uranium deposits around the Grand Canyon.

The company also argued that the withdrawal made it harder to conduct the necessary exploration to prove validity -- and that having to prove validity amounted to a new regulatory burden.

"Had the segregation, and later withdrawal, not been in effect, the Forest Service would not have required mineral examinations or demonstrations of mineral discoveries as a condition of approving VANE's plans of operations," the company wrote in a court filing.

It added that "the value of VANE's mining claims has significantly decreased. Moreover, VANE must pay annual fees to maintain its claims, even though it is effectively barred from developing them."

But Braden, in her 23-page opinion, wrote, "Congress has authorized the Department of Interior to determine the validity of mining claims on the public lands."

"In this case," she concluded, "Plaintiff failed to obtain a VER determination and consequently has no property right."

Taylor McKinnon, energy director for the Grand Canyon Trust, described the case as an uranium industry attempt to "raid" the U.S. Treasury. "Dismissal of this case is good news for the American public and Grand Canyon National Park," he said.

An attorney for Vane Minerals said this morning the company was mulling its options. It can appeal to the U.S. Court of Appeals for the Federal Circuit.

Arizona case

While Braden's ruling is a win for opponents of uranium mining around the Grand Canyon, more significant litigation is pending in Arizona U.S. District Court involving numerous companies and groups, including the National Mining Association and the Nuclear Energy Institute.

The groups and companies argue that a section of the Federal Land Policy and Management Act allowing for congressional resolutions of disapproval is unconstitutional and, therefore, so are 5,000-acre-plus withdrawals.

Last year, Judge David Campbell agreed with the mining and nuclear industries in finding the resolutions unconstitutional, but he said that didn't invalidate the withdrawals.

Companies have signaled their interest in appealing Campbell's decision (*Greenwire*, July 16, 2013). However, other parts of the case remain pending, including whether the Obama administration followed the National Environmental Policy Act in approving the withdrawal.

COAL:

NMA files legal challenge to black lung rule

Manuel Quiñones, E&E reporter

Published: Monday, May 5, 2014

The National Mining Association is asking the courts to review the Mine Safety and Health Administration's new rule to protect miners from black lung disease, the group said today.

Last week, Murray Energy Corp. filed a challenge to the rule in the 6th U.S. Circuit Court of Appeals. NMA, joined by Walter Energy Inc. and the Alabama Coal Association, filed its challenge in the 11th U.S. Circuit Court of Appeals.

"The paramount issue here -- the protection of our workforce -- demands focused and effective solutions that deliver real protections to those who need them," NMA CEO Hal Quinn said. "These solutions are absent in this 'one-size-fits-all' approach that fails to reflect the constructive suggestions from representatives of industry and labor."

He added in a statement, "We are left with no choice but to seek judicial intervention to resolve these important concerns."

The mining group is also asking MSHA to delay implementation of the rule, which tightens rules for miner coal dust exposure. The new standards have a two-year phase-in period.

But NMA's Bruce Watzman wrote in a letter to the mining regulator: "Even putting those severe defects aside for the moment, the implementation schedule and the new requirements are misaligned and, as a result, preclude a fair and proper opportunity for coal mine operators to comply with the rule."

MSHA chief Joe Main has touted efforts to collaborate with companies in implementing the rule. "MSHA has made a commitment to help coal operators be as informed as they can be, and we have asked industry and labor to join with us to get a jump-start on implementation," he said in a recent statement.

Also today, MSHA is holding a meeting of companies, industry groups and safety advocates to discuss the rash of deaths in non-coal mines. Ten workers have died so far this year.

AIR POLLUTION:

Ozone levels will rise dramatically as climate warms -- study

Scott Streater, E&E reporter

Published: Monday, May 5, 2014

As the climate continues to warm and temperatures rise, concentrations of lung-irritating ground-level ozone could significantly increase over the next four decades, according to a new federal study.

The study led by the Boulder, Colo.-based National Center for Atmospheric Research (NCAR) forecasts this spike in ozone pollution levels by 2050 across the continental United States if current emissions of ozone-forming pollutants persist.

Unless emissions of ozone precursors from sources such as cars and industry smokestacks that mix in the sunlight and heat to form the lung irritant are "sharply cut," nearly all of the continental United States will experience at least a few days each summer of high ozone concentrations.

Regions of the country that already have high summertime ozone levels, such as the Midwest and the East and West coasts, "could face unhealthy air during most of the summer," according to the researchers.

"It doesn't matter where you are in the United States -- climate change has the potential to make your air worse," NCAR scientist Gabriele Pfister, the lead author of the new study, said in a statement. "A warming planet doesn't just mean rising temperatures, it also means risking more summertime pollution and the health impacts that come with it."

The peer-reviewed study -- which also included researchers at the Pacific Northwest National Laboratory and the University of Colorado, Boulder -- is expected to be published online this week in the *Journal of Geophysical Research: Atmospheres*, which is produced by the American Geophysical Union.

The study comes as U.S. EPA considers strengthening the current health-based ozone standard, which is 75 parts per billion (ppb) averaged over any eight-hour period.

Ground-level ozone forms when nitrogen oxides from automobile tailpipes, industry smokestacks and other sources mix in the sunlight and heat with volatile organic compounds (VOCs) emitted from numerous sources, including trees. At high concentrations, ozone can trigger asthma attacks and inflame the conditions of those with bronchitis, emphysema and other respiratory diseases.

Children and the elderly as especially vulnerable to high concentrations of ozone. The American Lung Association last week released an annual report that estimated 147 million people -- almost half of all Americans -- live in counties where the air quality is unhealthy (*Greenwire*, April 30).

EPA has been considering lowering the federal ozone standard to as low as 60 ppb. Environmental activists represented by Earthjustice have asked a federal court to force EPA to finalize a new National Ambient Air Quality Standard for ozone by Oct. 1, 2015. The agency has missed its five-year deadline for reviewing the 2008 standards as mandated by the Clean Air Act (*Greenwire*, April 30).

Successfully reducing ozone precursors could have a dramatic impact on the ozone concentrations, even as temperatures continue to rise.

The good news in the NCAR-led study is that if the levels of NOx and VOCs are significantly reduced over the next three or four decades, ozone concentrations could actually drop to levels below what is seen today.

The researchers used an IBM supercomputer operated by NCAR that allowed them to simulate pollution levels hour by hour for 39 hypothetical future summers, accounting for year-to-year variations in meteorological conditions, according to the research center.

Under one scenario in which emissions of NOx and VOCs continued at current levels through 2050, the researchers found that the number of eight-hour violations of the 75 ppb ozone standards would jump 70 percent on average nationwide.

But under a second scenario analyzed for the study, the researchers found that sharp reductions of NOx and VOCs resulted in a significant reduction in ozone levels, even as temperatures rise.

"This study confirms the key role of emission control strategies in future air quality projections and demonstrates the need for considering degradation of air quality with future climate change in emission policy making," according to the study abstract.

Pfister, the study's lead author, added, "Our work confirms that reducing emissions of ozone precursors

would have an enormous effect on the air we all breathe."

NUCLEAR WASTE:

Some shipments from national lab are stopped as WIPP probe continues

Published: Monday, May 5, 2014

Investigators have stopped certain shipments of radioactive waste from the Los Alamos National Laboratory to a temporary storage area in West Texas while they search for the cause of nuclear contamination at the U.S. government's underground waste facility in southeastern New Mexico.

The Department of Energy on Friday said the shipments were paused to protect residents, workers and the environment as a team continues to investigate the underground repository to understand what caused a radioactive leak Feb. 14 that closed the Waste Isolation Pilot Plant and affected some workers (*Greenwire*, April 24).

DOE officials said they are looking at the contents of a set of drums that came from Los Alamos.

"The team is looking at the possibility that a chemical reaction may have occurred within a drum, causing a potential release," the agency said in a statement.

Investigators are also examining whether the radiation release was caused by the waste packages themselves.

Pressure on the Los Alamos lab is heating up to remove the waste as the wildfire season picks up. A 2011 fire came close to the edge of its property (Associated Press, May 2). **-- JL**

AIR POLLUTION:

Chinese soot creates haze in Alaska skies

Published: Monday, May 5, 2014

Haze that fouled Alaska's skies Saturday was caused by airborne pollution from China, according to the National Weather Service.

The agency said soot from Chinese smokestacks drifted into the high reaches of the atmosphere and across the Pacific Ocean on prevailing winds until it eventually descended on Anchorage and the Cook Inlet area.

"Meteorologists and researchers have the ability to 'rewind' the path to see where [the pollution] starts," the agency reported on its Facebook page. "In our case today, that 'launch' was well over 5,000 miles away and from 14 days ago."

Dirty air has reached Alaska from the west before, but it usually isn't visible.

Colleen Flanagan Pritz, a Colorado-based ecologist with the National Park Service's Air Resources Division, co-authored a study that found foreign contaminants in Alaskan fish populations. The study,

published in the April issue of the *Journal of the American Water Resources Association*, said the contaminants, found in several varieties of trout and some samples of Arctic char, were carried into Alaska by atmospheric currents and landed with precipitation.

"That is beyond our control, at present, anyway," Pritz said. "The airshed has no boundaries" (Craig Medred, *Alaska Dispatch*, May 3). **-- DTB**

AIR POLLUTION:

Political fight over Sriracha factory grows heated

Published: Monday, May 5, 2014

California lawmakers are rushing to the defense of a hot sauce factory that's threatened to leave the state over air pollution regulations.

State and federal officials have signaled their support for Sriracha maker Huy Fong Foods, whose owner says he is considering relocating his Irwindale, Calif., hot sauce factory after the city sued him over alleged pollution problems. The city claims emissions from the factory pose a health hazard (*Greenwire*, April 10).

If Sriracha leaves the state, the high-profile defection would come on the heels of Toyota Motor Corp.'s decision to relocate its headquarters from California to Texas.

Officials said the state can't afford to lose more jobs. The factory is one of the region's "shining stars," said state Sen. Ed Hernandez (D).

Texas lawmakers chimed in, saying the Lone Star State would welcome Sriracha.

"#Sriracha may not be welcome in California, but you'd be welcomed with open arms and eager taste buds in Texas," Sen. Ted Cruz (R) tweeted last week.

It remains unclear whether Huy Fong Foods is serious about moving, however. The Irwindale City Council, which won a preliminary partial injunction against the factory, is still considering further action.

"I don't think it's reasonable that a few-thousand-dollar air filtration fix is really going to drive out a company that's spent more than $30 million to build a factory," said Fred Galante, an Irwindale city attorney (Frank Shyong, *Los Angeles Times*, May 2). **-- DB**

MICHIGAN:

State agency is helping steel plant avoid pollution limits -- emails

Published: Monday, May 5, 2014

A steel plant in Michigan has received help from a state agency in its quest to avoid air pollution guidelines, emails show.

The Michigan Economic Development Corp. (MEDC) has been lobbying the state Department of Environmental Protection (DEP) to give the Severstal Dearborn plant permission to release more pollutants than a 2006 permit allows, according to emails obtained by the *Detroit Free Press*.

DEP and U.S. EPA have cited the plant for air pollution violations more than two dozen times since 2010. The steel mill is located in a ZIP code where the air is 45 times more toxic than the statewide average, according to an EPA score.

But after the state development agency became involved in 2012, DEP officials began working with Severstal to revise the plant's 2006 permit, according to emails between state officials. In February, DEP proposed a new permit that would allow the plant to emit more pollutants.

A spokeswoman for MEDC said the agency helped the plant and DEP communicate but didn't push the environmental department to relax its regulations.

"We're there to be a conduit of communication. We don't advocate," Amy Banninga said.

But Chris Bzdok, an environmental lawyer who obtained the emails, questioned the arrangement.

"I see a steel company and another arm of the state of Michigan seeming to stop at nothing to bend the rules and carve out exemptions," Bzdok said (Keith Matheny, *Detroit Free Press*, May 4). **-- DB**

ClimateWire -- Tue., May 6, 2014 -- Read the full edition

1. SCIENCE: U.S. study says climate change is here, with more severe weather and economic impacts

Climate change is happening now, with impacts that are hitting American citizens in their wallets and affecting their quality of life, according to the new National Climate Assessment report scheduled to be released today.

2. POLICY: Europe tries to block new invasive species, but those driven by climate change get a pass

Cracking down on invasive species for the first time, the European Parliament has approved legislation to stop alien species of plants, animals and insects from entering the European Union and to limit their damage.

TODAY'S STORIES

3. RENEWABLE ENERGY: $100M Maine wind farm faces rejection because of 'scenic impacts'

4. NATIONS: Germany and Brazil offer climate policy lessons for the U.S.

5. BUSINESS: Energy-water-food linkage hitting corporations as well as communities -- panel

6. BUSINESS: Solar Inc. gets CA$115 million loan to build solar projects for Ontario

7. ENERGY: U.N. struggles to define sustainable development goals

8. OFFSHORE WIND: Pioneering Cape Wind project announces it is now 'litigation-free'

9. SCIENCE: Scientists think 1950 could be start of humans' imprint on Earth

10. OCEANS: East Antarctica more vulnerable than expected to long-term thaw

11. **FOOD SECURITY:** Family farmers show how to increase yields in a warming world

12. **NEGOTIATIONS:** U.N. secretary-general urges greater climate action

EnergyWire -- Tue., May 6, 2014 -- Read the full edition

1. SECURITY: State regulators consider more explicit grid oversight but puzzle over how to handle it

As the scope of cyber and physical threats against electricity infrastructure has grown, some state regulators are instituting or considering more oversight of the steps taken by local utilities to ward off and recover from attacks. These efforts rub against a division of views about how the evolving, but still amorphous, threats to critical energy infrastructure should be handled.

TOP STORIES

2. **EARTHQUAKES:** Okla. oil and gas activity 'likely' linked to record-setting seismic surge

3. **FINANCE:** Shale drilling pollution 'could be a liability for water utilities'

4. **HYDRAULIC FRACTURING:** Schumer on N.Y. fracking: 'I sure would' support it, if Cuomo goes along

ELECTRICITY

5. **TRANSMISSION:** DOE lists handful of alternative routes to Northern Pass

6. **ELECTRICITY:** Energy Future bankruptcy could expose transmission unit to greater scrutiny

7. **GRID:** Solar panel leaseholders face new taxes in Ariz.

OIL AND GAS

8. **PUBLIC HEALTH:** Limited report sheds little light on birth defects in drilling-heavy Colo. county

9. **PEOPLE:** Ore. energy director suddenly resigns

10. **OFFSHORE:** Better well control through video games? 2 companies are making it happen

11. **WORKFORCE:** TransCanada adds financial expert to board as CEO predicts job cuts

12. **GAS EXPORTS:** Developer seeks details from 'most competitive jurisdiction in the world for LNG'

13. **HYDRAULIC FRACTURING:** Conn. lawmakers seek moratorium on Marcellus Shale fracking waste

14. **ENVIRONMENT:** Soil remediation an attractive -- if unproven -- cleanup method for Colo. drillers

15. **TRANSPORT:** After spate of derailments, N.J. questions crude-by-rail shipments

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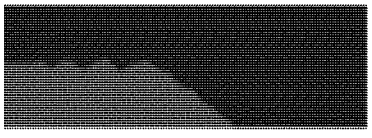

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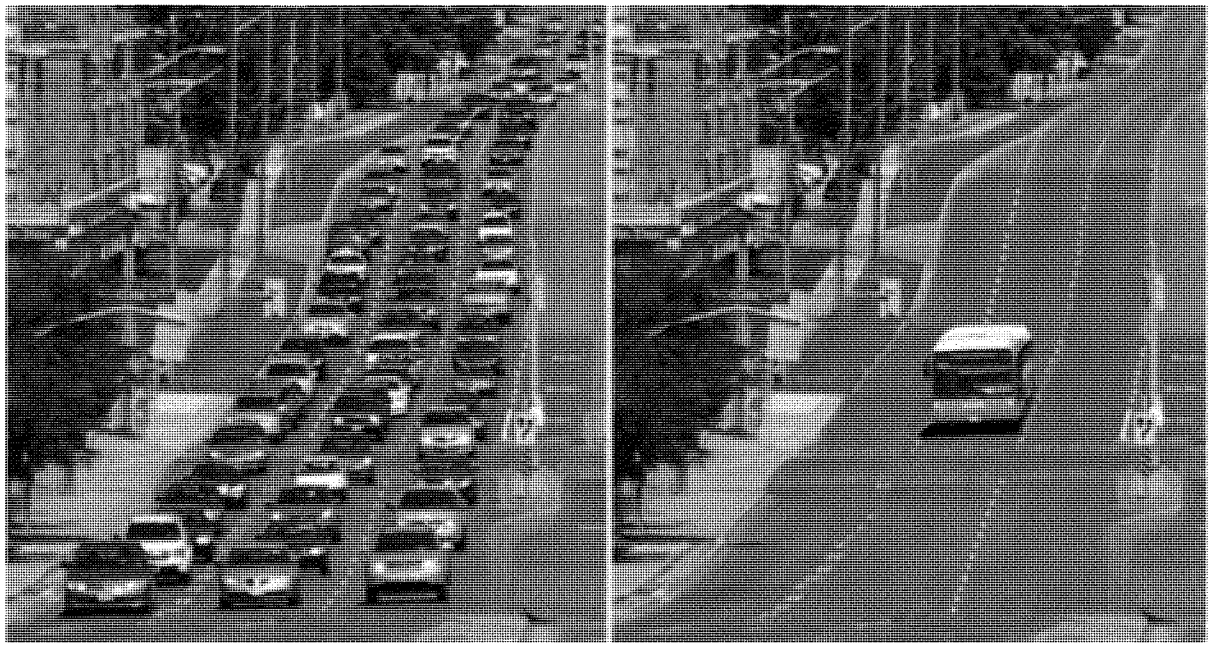

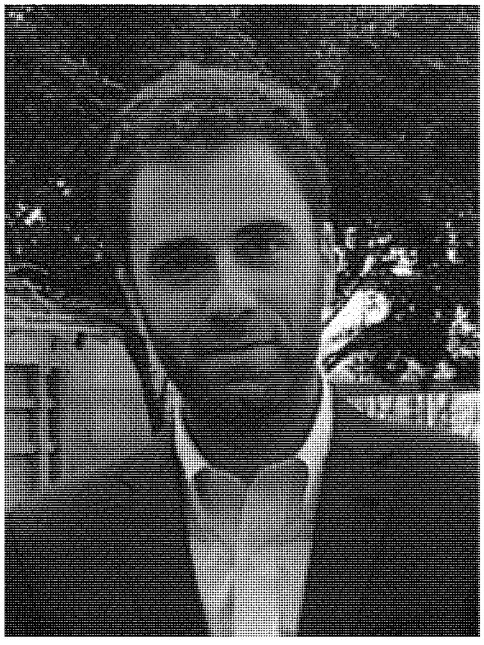

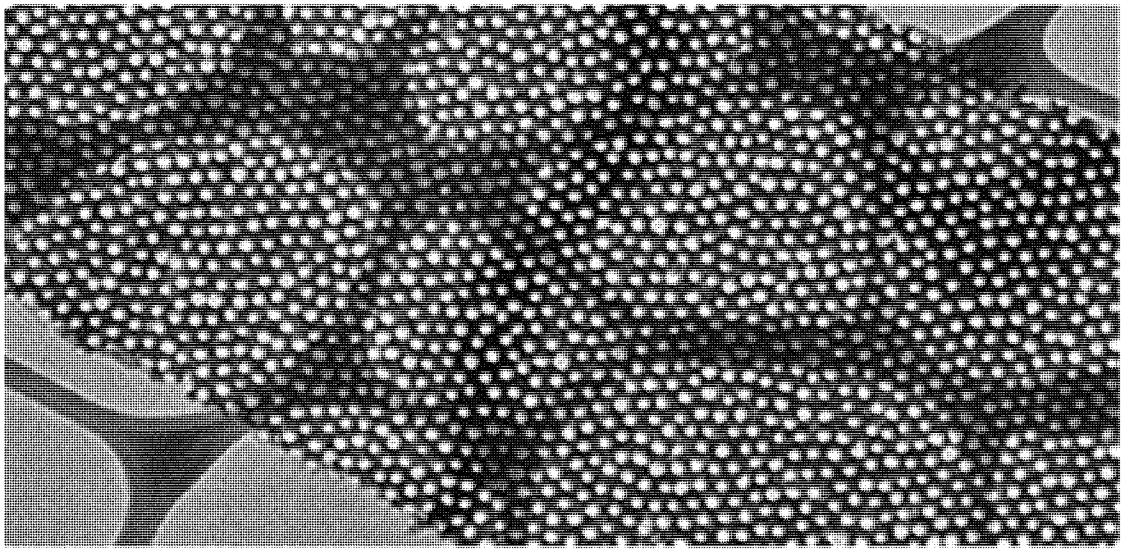

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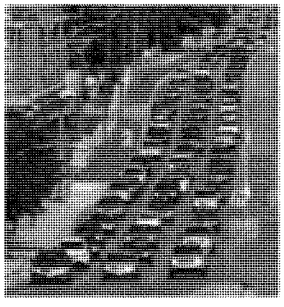

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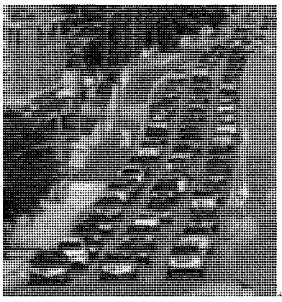
Subject: Air & Radiation Law News for May 2, 2014



Air & Radiation Law News

for May 2, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Makes Diesel Grant Funding Available Through Program Targeted for Elimination

The Environmental Protection Agency will make $9 million in federal grant funding available under the Diesel Emissions Reduction Act (DERA) in fiscal year 2014, consistent with last year but significantly less than was available during...

Air Pollution

EPA Proposes New Work Practices To Control Radon From Uranium Mill Tailings

The Environmental Protection Agency will propose several new work practices to control radon emissions from uranium mining as part of revisions to the air toxics standards to be published in the Federal Register May 2....

Air Pollution

Investors in Coal-Burning Plants Brush Off Supreme Court's Decision on EPA Air Rules

Investors in coal-burning utilities are brushing off a decision by the U.S. Supreme Court this week that gave federal regulators more power to control air pollution....

Climate Change

Global Building Efficiency Goal, Climate Deal On Agenda as Top Emitters Head to Mexico

Negotiators from the United States, China and other top greenhouse gas emitters continue talks May 8-9 in Mexico City on an international goal for improving building energy efficiency as well as progress toward a global climate change agreement,...

Climate Change

Ontario Plans to Issue First Green Bond From Canadian Province This Year

Ontario will issue the first green bond from a Canadian province in the second quarter, the financing chief for the province said May 1....

Climate Change

Reporting Initiative, Climate Declaration Called Proof of Sustainability's Coming of Age

Ceres President Mindy Lubber said April 30 that 800 companies have signed the organization's Climate Declaration to pledge support for national action on climate change, and 4,600 multinational companies are using a global reporting...

Climate Change

Researcher: Farmers' Adaptation Strategies Not Sufficient for Long-Term Climate Impacts

It is unlikely that the adaptation strategies used by American farmers will be sufficient to deal with the negative impacts of climate change on agriculture in the long term, one of the authors of the upcoming

National Climate Assessment said...

Climate Change

Russia Says Global Climate Deal Must Be Binding for All Through at Least 2030

A global agreement to cut greenhouse gas emissions beginning in 2020 should be legally binding, commit developed and developing nations alike to address climate change, and remain in effect at least until 2030, Russia said in an April 30 submission...

Climate Change

Top Energy Democrat Asks Republicans To Hold Hearing With Climate Scientists

The top Democrat on the House Energy and Commerce Committee May 1 called on House Republicans to hold a hearing featuring authors of recent Intergovernmental Panel on Climate Change reports, which warned that the window may be closing for making...

Climate Change

UN Climate Change Official Wants Rich Nations to Help Developing World Adapt

Christiana Figueres, the United Nations' top climate change official, called for "substantial pledges" from rich countries to help the developing world adapt to climate change....

Energy

Nebraska Attorney for Keystone Opponents Questions Federal Preemption Over Routing

The Nebraska attorney representing three landowners opposed to the Keystone XL oil pipeline said May 1 that Congress cannot use the Constitution's commerce clause to preempt Nebraska officials from deciding the route of a common carrier...

Energy

New Bill Would Expand the DOD's Use Of Energy Savings Performance Contracts

A bill introduced April 30 would seek to expand the Defense Department's use of energy savings performance contracts (ESPCs), boost combat effectiveness and speed up the development of advanced military technologies....

Energy

Reid Says Keystone Approval Vote Likely
As Senate Moves to Energy Legislation

Legislation on approval of the Keystone pipeline is likely to get a standalone vote as part of a deal to pave the way for Senate consideration of energy efficiency legislation (S. 2262), Senate Majority Leader Harry Reid (D-Nev.) said May 1....

Energy

Treasury, IRS Consider Additional
Guidance for Renewable Energy Credits

The Treasury Department and the Internal Revenue Service are considering a third round of guidance addressing production tax credits available for renewable energy projects in response to continued reluctance on the part of potential investors,...

Energy

U.S. Likely to Leave Much Fossil Fuel
In Ground, White House Science Adviser Says

The U.S. is likely to end up "leaving quite a lot of fossil fuels in the ground" in the long run, the president's science adviser said May 1....

Energy

Updated 2013 Cellulosic Biofuel Standard Published

The Environmental Protection Agency will revise the 2013 cellulosic biofuel blending requirement to accurately reflect actual production in a direct final rule to be published in the Federal Register May 2. The direct final rule will reduce...

Enforcement

$55 Million Restitution Claims in Citgo Case Denied

A federal district court judge denied motions from the Environmental Protection Agency and residents of Corpus Christi, Texas, seeking a combined $55 million in restitution from Citgo Petroleum Corp. and Citgo Refining and Chemicals Co....

EPA

EPA Official's Misconduct Enabled Parts
Of John Beale's Fraud, Investigation Finds

A senior Environmental Protection Agency official's misconduct enabled convicted felon John Beale to commit fraud involving work time, attendance and air travel, an Office of the Inspector General report found. ...

Hazmat Transport

DOT Sends Rail Safety Proposal
On Crude Oil, Ethanol to White House

The Transportation Department submitted a proposal to regulate the transportation of crude oil and ethanol by rail to the White House Office of Management and Budget for review, according to the OMB's website....

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CASAC Urges Extensive EPA Data Analysis For Next SO2 NAAQS Review

Several members of EPA's Clean Air Scientific Advisory Committee (CASAC) are urging the agency to commit to an extensive risk and exposure assessment (REA) of new data on sulfur dioxide's (SO2) health effects in its review of the SO2 national ambient air quality standard (NAAQS), given uncertainty over whether EPA will craft an REA.

EPA Faulted For Failing To Assess Methane Impacts Of Massive Drilling Plan

EPA is drawing strong criticism from environmentalists for failing to address the methane impacts of a massive planned oil and gas drilling project in Utah in response to a National Environmental Policy Act (NEPA) review, an approach that advocates say is a concern if only because of the potential ozone

impacts of the methane emissions.

Ethanol Group Warns EPA Use Of Demand Waiver In 2014 RFS May Spur Suit

A key ethanol advocacy group is threatening to sue EPA if the agency's final 2014 renewable fuel standard (RFS) scales back fuel blending requirements based on limited demand for ethanol, countering that the Clean Air Act only allows EPA to waive some fuel mandates under the RFS based solely on supply and not demand issues.

Latest Blogs

GOP Senators Urge CEQ Against Settling NEPA GHG Suit

Senate environment committee Republicans are urging the White House Council on Environmental Quality (CEQ) against settling a suit filed by environmentalists seeking to force release . . .

EPA Agrees To Binding Deadline For Wood Stove Air Rule

EPA is proposing a consent decree with several states and environmental groups that would commit the agency to a legally binding Feb. 3 deadline for . . .

Washington Bid To Curb GHGs Could Aid NSPS Plan

Washington Gov. Jay Inslee (D) has issued an executive order requiring various steps to curb greenhouse gases (GHGs) in the state including creating a cap-and-trade . . .

Greenwire

KEYSTONE XL:

Stand-alone vote likely in Senate as efficiency bill bogs down

Elana Schor, E&E reporter

Published: Thursday, May 1, 2014

Senators appear to have coalesced around a stand-alone vote on the Canada-to-U.S. pipeline that's become a household name, but the bipartisan energy efficiency bill Keystone XL is linked to remains hobbled by procedural difficulties ahead of a possible floor debate next week.

Crystallized in a three-page updated pro-pipeline bill offered today by Sens. Mary Landrieu (D-La.) and John Hoeven (R-N.D.), the emerging consensus on how to consider KXL rests on a separate, binding vote to cut short the Obama administration's ongoing review of the project before the upper chamber proceeds to a broader debate on the efficiency measure. That vote would see fierce lobbying of Democratic fence-sitters from the oil industry and environmentalists, with KXL backers so far short of 60 votes.

But a potential objection from Sen. David Vitter (R-La.) to any deal that does not include his amendment

ending health care overhaul bill benefits for lawmakers and staff gives aides two parliamentary challenges: how to push past Vitter, who is planning to run for governor of Louisiana in 2015, and how to avoid objections to a separate consent agreement for a binding KXL vote (*E&E Daily*, May 1).

Sen. Rob Portman (R-Ohio), one of the efficiency bill's two main sponsors, told reporters today that "I hope we can keep to amendments related to energy" should the efficiency bill stay on track for floor debate next week.

Vitter's insistence is "one of the issues we're dealing with right now," Hoeven said in an interview. "The biggest issue is amendments."

But Senate Majority Leader Harry Reid (D-Nev.) is now aware that Republicans and his own Energy and Natural Resources chairwoman are seeking a binding vote to override President Obama's authority over KXL, Hoeven added -- and that a nonbinding "sense of the Senate" measure would not pass muster.

"The decision has already been made," Landrieu said in a brief interview today. "We're going to move forward on Keystone XL and the energy bill."

NATURAL GAS:

Judges seem open to second-guessing FERC in N.Y. pipeline case

Jeremy P. Jacobs, E&E reporter

Published: Thursday, May 1, 2014

Residents of a town in southeastern New York fighting a natural gas compressor station appeared to gain some traction with federal appellate judges today in a packed Washington, D.C., courtroom.

The Minisink Residents for Environmental Preservation and Safety argued that federal energy regulators failed to consider the environmental impact of Millennium Pipeline Co.'s facility and dismissed an alternative plan supported by people in the town.

The Federal Energy Regulatory Commission, the residents' attorney argued, was predisposed to sign off on projects under the Natural Gas Act.

"The commission's decision should be second-guessed," attorney Carolyn Elefant told a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit before a standing-room crowd.

In July 2012 FERC approved Millennium's plan for a 12,260-horsepower gas-powered station in Minisink that adds pressure to the existing pipeline, allowing the company to move more gas daily.

The commission's decision was not unanimous. Then-Chairman Jon Wellinghoff and Commissioner Cheryl LaFleur, who is now acting chairwoman, dissented.

At issue in their dissent and again in court today was the so-called Wagoner Alternative, a proposal from the community that would have allowed Millennium to meet its demand requirements without building the station in Minisink. The alternative required Millennium to construct a smaller compressor station next to an existing facility in Sparrowbush, N.Y., where fewer people would be directly affected.

Judge Patricia Millett took issue with FERC's willingness to sign off on proposed projects under its Natural Gas Act authority.

She pointedly asked FERC attorney Karin Larson whether there was a "presumption" in favor of such proposals.

When Larson replied that there wasn't, Millett asked whether there was an opportunity for the public to comment on the proposal.

For large projects, Larson responded, there was during a "pre-filing" period. But the Minisink station, she said, was a "rather small project" that didn't meet that criterion.

Her answer prompted groans and gasps from the courtroom, which was full of residents of Minisink, a town of 4,400 people.

After a moment, Millett responded: "I hope the commission can understand why comments like that would give people pause."

Millett also had problems with FERC's dismissal of the Wagoner Alternative. The main justification given by the commission and Millennium was that option would require the company to replace a 24-inch Neversink section of the pipeline, which is about 7 miles long, with a 30-inch pipe. Such a process would cause environmental damage.

But Millett, a Democratic appointee, noted that there was already a "bottleneck" in southern New York's natural gas transportation system. And Judge Brett Kavanaugh, a Republican appointee, noted that "common sense" would indicate that Millennium would have to replace that section of the pipeline in the future anyway.

Attorney Aaron Streett of Baker Botts LLP, representing Millennium, acknowledged that "at some point," the Neversink section "will have to be expanded."

"Everyone agrees on that," he said.

The judges also posed difficult questions to the residents' attorney, including whether the group must defer to the commission's judgment and ruling in the case. Kavanaugh, in particular, seemed reluctant to second-guess the commission's findings.

And Millett noted that the Wagoner Alternative was not properly before the commission as an actual possibility.

She added that companies have proposed expanding the Neversink pipeline before and have run into a host of environmental concerns regarding the fauna and flora in the area.

If the commission were to shut down the Minisink station and encourage Millennium to pursue the alternative, it would be "out of the frying pan and into the fire."

Elefant countered that it is not out of the norm for agencies to review alternatives.

"Agencies routinely consider alternatives whether they are before the agency or not," she said.

The third judge on the panel, Democratic appointee Robert Wilkins, asked few questions during the arguments.

WILDFIRE:

Driven by wind and drought, blaze threatens Southern Calif.

Published: Thursday, May 1, 2014

A wildfire ran unchecked through drought-stricken Southern California yesterday, threatening homes in the foothills of the San Bernardino Mountains as fire crews dealt with conditions usually reserved for the fire season's end.

The Etiwanda fire started in the San Bernadino National Forest yesterday morning and, driven by atypical 80-mph gusts, had charred 1,000 acres at the edge of the wealthy community of Rancho Cucamonga, 42 miles east of Los Angeles, by the afternoon.

Residents of 1,650 houses were evacuated until early evening, when the order was lifted without explanation despite expectations that the fire would grow overnight.

"As long as there is still wind on it, it's going to continue to grow," said Forest Service spokesman Lee Beyer.

The Etiwanda blaze, which more than 706 firefighters battled, is the second major wildfire this year. Unseasonably hot weather, the worst drought in decades and Santa Ana winds have already pushed fire danger to late-summer extremes.

California officials have kept staffing levels for wildland firefighters elevated since last year, and Gov. Jerry Brown (D) recently ordered emergency response agencies to streamline processes for adding staff and purchasing firefighting equipment (*ClimateWire*, April 28).

"The drought has absolutely set the stage for a potentially very busy and very dangerous fire season," said Daniel Berlant, a spokesman for the California Department of Forestry and Fire Protection. "As we move into the summer months, conditions are only going to get hotter, they're only going to get dryer, and so the likelihood of large and damaging fires increases" (Alex Dobuzinskis, Reuters, May 1). **-- DTB**

NUCLEAR WASTE:

NRC agrees to take up enviros' spent fuel concerns

Hannah Northey, E&E reporter

Published: Thursday, May 1, 2014

Nuclear Regulatory Commission officials have agreed to review a request from 34 environmental groups calling on the agency to take a closer look at the potential dangers of storing hot, radioactive spent reactor fuel in wet pools across the country.

The decision was hailed as a rare achievement for groups that for years have fought -- unsuccessfully -- to halt reactor licensing activities following the 2011 earthquake and tsunami in Japan.

"It's good news for us in that they acknowledge they've got a problem," said Diane Curran, an attorney at Harmon, Curran, Spielberg & Eisenberg LLP, who filed the petition. "That's progress for the NRC."

The NRC in a *Federal Register* notice today said it would accept a rulemaking petition Curran and Mindy

Goldstein, a lawyer who represents the Southern Alliance for Clean Energy, filed on behalf of the groups in February. The commission also said it would deal with the group's additional request to halt licensing activities until the review is complete in a separate case.

Since the 2011 accident in Japan, activists have called on the NRC to halt licensing activities and take a closer look at safety issues ranging from reactor designs to spent fuel pools and evacuation zones -- the bulk of which are either under review or have been dismissed. Earlier this month, the NRC denied environmentalists' request to expand emergency planning zones around U.S. reactors.

In today's case, the groups argued that work the NRC conducted following the Japanese disaster revealed "new and significant information" on spent fuel pools that should trigger a closer look under the National Environmental Policy Act (NEPA). In some scenarios, the NRC found it could be beneficial to accelerate moving spent fuel from wet pools to dry, concrete casks, they said.

The same groups took issue with a draft study the NRC released last year that found even a strong earthquake has a low probability of damaging pools full of waste to the point that they will lose water (*Greenwire*, June 26, 2013).

The NRC has already put final licensing decisions on hold while the agency attempts to address deficiencies in its waste confidence policies that a court identified last year -- namely, wet pool leaks and fires (*Greenwire*, Jan. 24).

Existing plants that need renewals can continue operating on their old permits until the regulatory process is finished.

The pace at which the NRC resolves the issue could directly affect the Tennessee Valley Authority's construction of a reactor at its Watts Bar plant in eastern Tennessee. TVA is currently building the reactor at a cost as much as $4.2 billion under a construction license but will need an NRC-approved operating license in early 2015 to begin loading fuel into the reactor to test the unit, according to the company.

OIL AND GAS:

2 dead, 9 injured in explosion at Texas field

Published: Thursday, May 1, 2014

Two workers died and another nine suffered minor injuries in an explosion at a West Texas oil field yesterday, local police said.

Loving County Sheriff Billy Hopper said the workers were changing a wellhead with heavy machinery when the explosion happened.

"Those wellheads are tremendously heavy pieces of equipment," he said, and they sometimes weigh more than 1,000 pounds.

Hopper said officials received the emergency call yesterday morning around 8:30 a.m.

"This is the first accident we've had like this in about a year," he said (AP/*Fuel Fix*, April 30).

Hopper speculated that a valve might have been left open and built-up pressure blew out a nearby wellhead.

The two workers killed were identified as Amos Ortega of Artesia, N.M., and Roberto Andrade Magdaleno of El Paso, Texas. RKI Exploration & Production owns the well where the blast occurred, and the two were among about a dozen independent contractors at the site.

Seven people have now died at Loving County's oil fields since 2006, Hopper said.

RKI spokesman Jeremy Fitzpatrick said the Occupational Safety and Health Administration and the Railroad Commission of Texas are investigating.

"It's extremely unfortunate," he said. "Our thoughts and prayers are with the families of the killed and injured" (Paresh Dave, *Los Angeles Times*, April 30). **-- JL**

AIR POLLUTION:

EPA offers new round of grants for clean diesel projects

Daniel Lippman, E&E reporter

Published: Thursday, May 1, 2014

U.S. EPA announced the offer today of $9 million in grants for clean diesel projects aimed at cutting emissions from diesel engines, such as those found in trucks, locomotives and buses.

The Diesel Emissions Reduction Act (DERA) Program targets projects considered cost-effective ways to improve fleets in areas with dirty air.

EPA expects to provide cash for 10 to 20 projects under this funding round. Some of the money will go toward replacing engines or vehicles and installing exhaust control devices to make engines less polluting.

While diesel engines are often very efficient, they do release nitrogen oxides, particulate matter and other pollutants. That contributes to air pollution that can lead to asthma attacks and worsen other respiratory diseases.

Started in 2008, DERA has reduced air pollution by hundreds of thousands of tons and saved millions of gallons of fuel, EPA said in a news release. Those estimates, the agency said, suggest that $1 spent on making diesel engines cleaner leads to as much as $13 in public health benefits, such as fewer hospitalizations and less time out sick for people affected by air pollution.

The deadline for proposals for this latest grant funding is June 17. Eligible intuitions for the money include governments or port authorities that have jurisdiction over air quality, nonprofits that focus on transportation or air quality, and school districts that operate bus fleets.

FLORIDA:

Possible gas explosion kills 2, injures up to 150 at jail

Published: Thursday, May 1, 2014

Two inmates are dead and as many as 150 inmates and officers are injured after an apparent gas explosion tore through a jail in the Florida Panhandle last night, a county spokeswoman said.

The explosion at the booking center of the Escambia County Jail caused the building to partially collapse, said Kathleen Castro, Escambia County's public information manager.

The jail held around 400 female inmates and 200 males at the time of the explosion, she said. The uninjured were moved to different jails in nearby counties while the injured were taken to hospitals.

Search and rescue officials believe everyone is accounted for, Castro said.

The names of those killed have not yet been released.

"I ain't never heard anything like it," said Rodney Cozine, a resident who lives near the jail (Melissa Nelson-Gabriel, AP/*Atlanta Journal-Constitution*, May 1). **– JL**

CALIFORNIA:

Idea of wind-powered ferry fleet gets boost in San Francisco

Published: Thursday, May 1, 2014

Pollution regulators have granted $355,000 to a group of sailors and entrepreneurs trying to build wind-powered ferryboats to service San Francisco.

The idea would make the city the nation's first with a wind-powered ferry service.

Napa, Calif.-based Wind and Wing Technologies is among those working on plans to harness the winds of the San Francisco Bay using carbon-fiber sails generally found on racing yachts.

"The winds are here," said Jay Gardner, the company's president, who has been testing the winds along ferry routes with a 42-foot trimaran equipped with one of the sails.

The team now wants to equip larger passenger boats with the sail, which proponents say will work in tandem with diesel engines and cut fuel use and emissions up to 40 percent.

"Just watch the revs on the engine decrease as the sail takes over," Gardner said.

The sailing tests will conclude this month, and its users hope to entice buyers with the resulting data.

The sail isn't just the same old technology -- it's turned on by a remote switch and operates without rigging or tacking.

It costs $250,000 to build, but a ferry can use up $1.2 million of fuel a year. The potential emissions savings impressed the Bay Area Air Quality Management District, which helped the project's backers get a grant from a state fund set aside for clean air promotion (Kurtis Alexander, *San Francisco Chronicle*, April 30). **-- JL**

JAPAN:

Frozen wall plan at Fukushima draws concern from TEPCO adviser

Published: Thursday, May 1, 2014

A plan by Tokyo Electric Power Co. and supported by the Japanese government to build a frozen underground wall to block water contamination at the destroyed Fukushima Daiichi nuclear power plant needs more risk assessment, according to a company adviser.

TEPCO hopes to use the wall to keep groundwater from getting into the basements of reactor buildings damaged by the March 2011 tsunami and nuclear meltdown.

Dale Klein, chairman of the company's Nuclear Reform Monitoring Committee, said the plan is based on untested hydrology assumptions at the site and may not work.

"Are there any unintended consequences?" Klein asked today at a news conference in Tokyo. "We're concerned about safety and environmental protection."

In September 2013, the Japanese government pledged $313 million to build the 0.9-mile wall underground by using pipes sunk into the ground coursing with coolant (Jacob Adelman, Bloomberg, May 1).

Meanwhile, in Oregon and Washington, researchers on Tuesday said they discovered small amounts of radiation from the Fukushima plant in albacore tuna caught offshore.

The authors of the Oregon State University study said the levels are so low, a person would have to consume 700,000 pounds of the fish to match ordinary yearly radiation levels people receive from the sun, X-ray machines and other sources. However, their findings show some of the wide-ranging impacts of the nuclear meltdown on the Pacific Ocean.

"I think people would rather have an answer on what is there and what isn't there than have a big question mark," said Delvan Neville, the lead author (Shelby Sebens, Reuters, April 29). **-- JL**

CANADA:

Town holds its noses, worries beached whale will explode

Published: Thursday, May 1, 2014

Scientists are trying to allay concerns that a dead blue whale washed up on an eastern Canadian shoreline will explode, but the problem of the rotting carcass's stench is undeniable.

Federal agencies have begun working with locals to try to remove the 85-foot-long whale, which appeared near the town of Trout River in Newfoundland just in time for tourist season. It is one of three beached whales on the province's west coast.

The 60 tons of decomposing flesh has blanketed the town with a powerful odor. Trout River's clerk, Emily Butler, is also worried that methane gas building up inside the carcass could cause the animal to burst.

Jack Lawson, a research scientist with Canada's Fisheries Department, said that is unlikely and the whale will likely deflate like an old balloon as its skin breaks down, allowing gas to escape.

There are two options to deal with the beached blue whale, Lawson said: Either bury it with heavy equipment or cut it up and ship it to a landfill.

The town council considered asking fishermen to tow the mammal out to sea but opted to call in federal environmental agents (Associated Press, April 30). **-- DTB**

AIR POLLUTION:

Former EPA senior policy counsel Sussman discusses agency's challenges to meeting existing source rule deadline

Published: Thursday, May 1, 2014

With recent budget and personnel changes at U.S. EPA, does the agency have adequate resources in place to meet President Obama's aggressive Climate Action Plan deadlines? During today's OnPoint, Robert Sussman, former senior policy counsel at EPA, discusses the future of the existing source standard and subsequent state planning. Sussman also explains how this week's Supreme Court ruling on EPA's Cross-State Air Pollution Rule could foreshadow the court's future consideration of Clean Air Act cases.

Click here to watch today's OnPoint.

ClimateWire -- Fri., May 2, 2014 -- **Read the full edition**

1. NOVELS: With hope and horror, climate fiction writers depict the future

Hailed by Rolling Stone as "the first great climate change novel," "Odds Against Tomorrow" is at the vanguard of a new genre of fiction called climate fiction -- or "cli-fi" -- that sets its human protagonists against the onrush of planet-altering global warming. At times humorous, hopeful and terrifying, these stories offer a wider lens on a subject long dominated by hard science.

2. WEATHER: Fla. rainfall was 'historic,' Weather Service says

Although hurricane season has not yet arrived, Florida Panhandle residents and parts of coastal Alabama saw disastrous flooding from record rainfall Monday and Tuesday more akin to amounts seen in tropical storms than a spring weather system.

TODAY'S STORIES

3. **STATES:** Fla. lawmakers invite private flood insurers to risk-prone shores

4. **REGULATION:** Hawaii utility ordered to add more renewables as rooftop solar stalls

5. **BUDGET:** Interior, Forest Service project $470M shortfall to fight wildfires

6. **FOOD SECURITY:** U.S. corn crop more sensitive to drought -- report

7. **ADAPTATION:** PSE&G requests rate hike to finance $1.2B resilience program

8. **AGRICULTURE:** IPCC, National Climate Assessment authors warn of climate impacts on food supply

9. **RESOURCES:** Water supplies grow short for lack of modern management

10. **SOCIETY:** Crowdsourcing moves into agriculture, search-and-rescue operations

11. **WEATHER:** Tornadoes could boom and bust as climate changes

12. **EMISSIONS:** Records show atmospheric CO2 exceeded 400 ppm every day in April

13. **TRANSPORTATION:** Madrid to install world's first 'smart' parking meters

14. **SCIENCE:** Scientists look back to predict Earth's future climate

EnergyWire -- Fri., May 2, 2014 -- **Read the full edition**

1. UTILITIES: Renewables get vote of financial confidence in NextEra spinoff plans

NextEra Energy Inc.'s decision to form a separate company for its renewable portfolio is a signal that wind and solar projects have risen to the level of being a strong, steady, long-term investment, analysts say.

2. TRANSPORT: Could derailment in D.C.'s shadow accelerate oil-by-rail action?

LYNCHBURG, Va. -- "That guy better be getting hazard pay," said Marquis Brown, pointing across the river to someone scrambling down a smoldering embankment. The lone worker was apparently helping to fish three tank cars from the James River downtown here, where a CSX Corp. train hauling crude derailed and caught fire Wednesday afternoon. No one was hurt in the incident, but "that was a lucky situation," according to Brown, who works for a nearby restoration firm and said he has seen up to 1,000 people gather along the tracks for festivals such as the Fourth of July.

TOP STORIES

3. **EARTHQUAKES:** Oklahoma City seismic swarm linked to 4 disposal wells -- study

4. **UTILITIES:** 'Duck chart' makes a flap on the California grid

5. **BUSINESS:** Coal giant Consol puts production growth squarely on gas

ELECTRICITY

6. **GRID:** Texas operator says new plants will boost supplies as summer progresses

7. **UTILITIES:** Energy Future's bankruptcy a big payday for one financial firm

8. **ELECTRICITY:** Ky. groups ask for delay in plant approval

OIL AND GAS

9. **HYDRAULIC FRACTURING:** EDF's Krupp defends fracking support -- 'We need to just recognize reality'

10. **HYDRAULIC FRACTURING:** Alliance calls on FracFocus to release disclosure reports to public

11. **MARCELLUS SHALE:** Environmental group urges Pa. to set methane rules

12. **EARNINGS:** Exxon Mobil's many new projects keep hopes high as profits dip

13. **ALASKA:** ConocoPhillips to spend $1.7B to resuscitate North Slope

14. **PEOPLE:** Continental shifts leadership as senior executive leaves for Williams spinoff

15. **PEOPLE:** D.C. energy lawyer moves to new firm

16. **POLICY:** Rules for private oil in Mexico aim for fast foreign investment

17. **HYDRAULIC FRACTURING:** Fracking sand grows as a commodity

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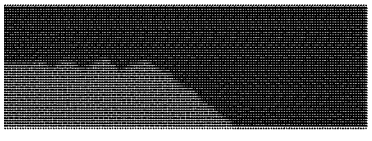

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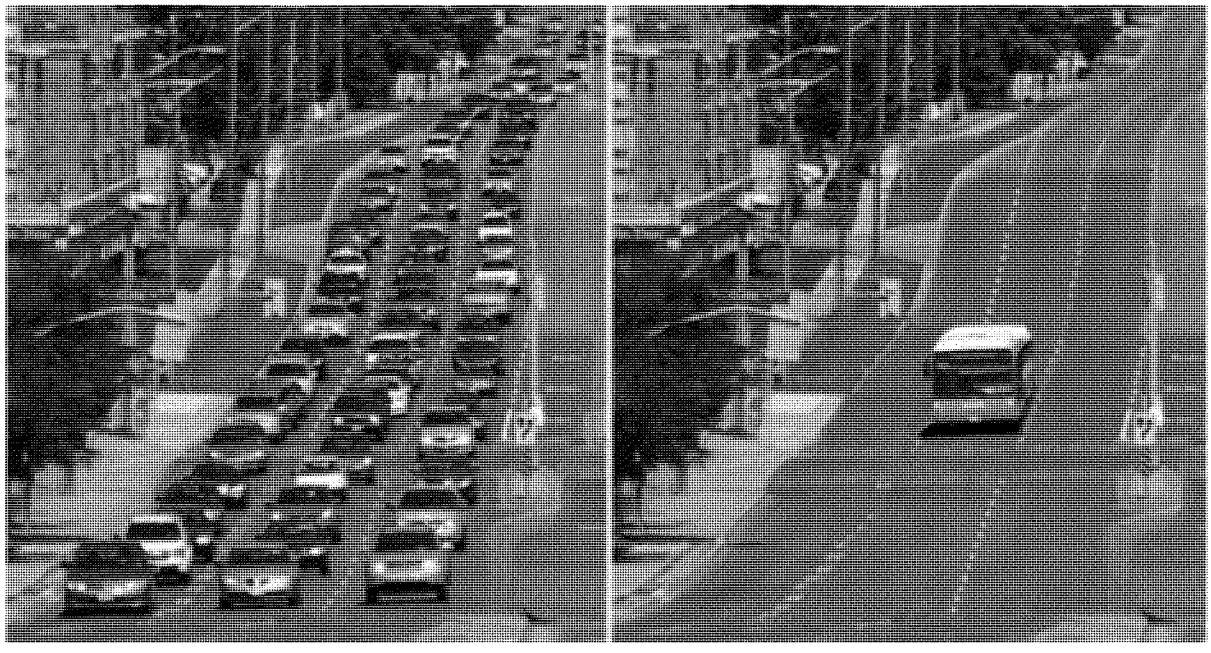

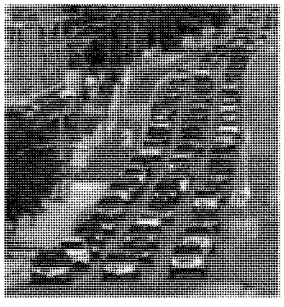

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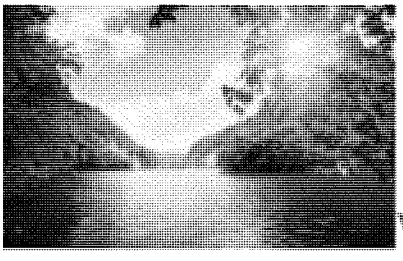
From: Turley, Jennifer
Sent: Fri 5/2/2014 2:01:10 PM
Subject: Water Law News for May 2, 2014



Water Law News

for May 2, 2014

Bloomberg BNA **Daily Environment Report™**

Oil Spills

British Columbia Proposes Better Response
To Land-Based Heavy Oil, Other Hazmat Spills

The Canadian Energy Pipeline Association said it supports British Columbia's proposals to ensure government and industry can quickly and effectively respond to land-based spills of heavy oil and other hazardous material....

Sustainability

Groundwater Overuse Depleting Aquifers
In Many Parts of U.S., Ceres Official Says

The outlook for the nation's groundwater is not good and the impact of overuse is being felt in almost every aquifer, especially in areas with the highest agricultural productivity, the head of the Ceres Water Program said April 30....

Water Pollution

Company Indicted for Illegal Discharges
Of Stormwater Into Hawaiian Coastal Waters

A federal grand jury in Honolulu indicted Waste Management of Hawaii Inc., its vice president and general manager, and its environmental protection manager on 13 counts of illegally discharging contaminated stormwater on multiple occasions,...

Water Resources

Yuba River Allocation Challenge Moot
Due to Later Order, California Court Rules

A water district cannot challenge a state water board decision requiring higher in-stream flows and lower temperatures for Yuba River salmon and steelhead because a subsequent order "superseded" the decision, a California appeals...

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Supreme Court Weighs Reconsideration Of Novel Stormwater Liability Ruling

The Supreme Court is set to consider whether it will revisit an appellate court's decision holding a county stormwater agency strictly liable for all stormwater pollution at its monitoring stations regardless of the pollutants' origin, despite the high court's 2013 decision in the county's favor based on different legal arguments.

Greenwire

KEYSTONE XL:

Stand-alone vote likely in Senate as efficiency bill bogs down

Elana Schor, E&E reporter

Published: Thursday, May 1, 2014

Senators appear to have coalesced around a stand-alone vote on the Canada-to-U.S. pipeline that's become a household name, but the bipartisan energy efficiency bill Keystone XL is linked to remains hobbled by procedural difficulties ahead of a possible floor debate next week.

Crystallized in a three-page updated pro-pipeline bill offered today by Sens. Mary Landrieu (D-La.) and John Hoeven (R-N.D.), the emerging consensus on how to consider KXL rests on a separate, binding vote to cut short the Obama administration's ongoing review of the project before the upper chamber proceeds to a broader debate on the efficiency measure. That vote would see fierce lobbying of Democratic fence-sitters from the oil industry and environmentalists, with KXL backers so far short of 60 votes.

But a potential objection from Sen. David Vitter (R-La.) to any deal that does not include his amendment ending health care overhaul bill benefits for lawmakers and staff gives aides two parliamentary challenges: how to push past Vitter, who is planning to run for governor of Louisiana in 2015, and how to avoid objections to a separate consent agreement for a binding KXL vote (*E&E Daily*, May 1).

Sen. Rob Portman (R-Ohio), one of the efficiency bill's two main sponsors, told reporters today that "I hope we can keep to amendments related to energy" should the efficiency bill stay on track for floor debate next week.

Vitter's insistence is "one of the issues we're dealing with right now," Hoeven said in an interview. "The biggest issue is amendments."

But Senate Majority Leader Harry Reid (D-Nev.) is now aware that Republicans and his own Energy and Natural Resources chairwoman are seeking a binding vote to override President Obama's authority over KXL, Hoeven added -- and that a nonbinding "sense of the Senate" measure would not pass muster.

"The decision has already been made," Landrieu said in a brief interview today. "We're going to move forward on Keystone XL and the energy bill."

WATER POLICY:

Sportmen's groups lament exclusion from hearing on wetlands rule

Annie Snider, E&E reporter

Published: Thursday, May 1, 2014

Sportsmen's groups are miffed that their voices were not represented in a House field hearing earlier this week that explored the impacts of an Obama administration proposal aimed at clarifying which headwater streams and wetlands receive federal protection.

The hearing, held in Altoona, Pa., by House Transportation and Infrastructure Chairman Bill Shuster (R-Pa.), looked at the current implementation of Clean Water Act regulations in the state, particularly with respect to natural gas development. It also explored the potentially broader implications of the recent Obama administration proposal (*E&E Daily*, April 29).

Only Republican members staunchly opposed to the regulatory proposal attended the field hearing and the panel of witnesses included no supporters of it, although the panel appears to have been more geared toward issues related to the implementation of the current rules in Pennsylvania.

"At the time the chairman first announced the date of this hearing in Altoona, he also announced his intention to have a hearing on the same subject here in Washington -- now slated for May 8 -- and we fully expect members on both sides of the aisle and stakeholders on both sides of the issue to participate," said a spokesman for the committee's Democratic members.

Representatives from sportsmen's groups say they asked to be included on the panel but were told it was full.

"The thing that we were disappointed by, of course, was by the lack of any clean water or fish habitat advocate at the hearing," said Steve Moyer, vice president for government affairs at Trout Unlimited. "It just seemed like a real missed opportunity to have that voice. Mr. Shuster's district has some real awesome fisheries in it."

Opponents of the regulatory proposal, which would increase the number of streams, creeks and wetlands that receive automatic protection under the Clean Water Act following two muddled Supreme Court decisions, say that it would be a federal overreach and stands to have widespread impacts across the economy. At the hearing, an environmental manager for Consol Energy Inc. showed a map of a large project that she said would face a $10 million increase under the regulatory proposal.

Supporters of the regulation, though, say the economic impacts are overstated and that the small streams and wetlands at stake in the proposal provide vital habitat to fish and insects and filter pollution that would otherwise flow downstream.

The Monday field hearing was only the beginning of what is likely to be a heated political battle over the regulatory proposal on Capitol Hill with the first Washington, D.C.-based hearing on it scheduled for next Thursday.

With the fate of the proposal likely hanging on the support of moderate Democrats, backers have been particularly highlighting the support of hunters and anglers.

In a letter to Shuster yesterday, three dozen Pennsylvania sportsmen's groups asked that their perspective be included as the debate moves forward.

"The committee you now chair helped give birth to the Clean Water Act in 1972. Now 40 years later the law has come to a major crossroads," they wrote. "As you scrutinize the proposal, we urge you and the committee to strongly consider the views of sportsmen and women in Pennsylvania and support the reasonable and science-based efforts of the [Army Corps of Engineers] and EPA to clarify and restore the Act's jurisdictional coverage."

WATER POLLUTION:

W.Va. judge faults Consol for selenium dumps

Manuel Quiñones, E&E reporter

Published: Thursday, May 1, 2014

A West Virginia federal judge yesterday faulted Consol Energy Inc. for what he called illegal discharges of the chemical element selenium into state waterways.

U.S. District Court Judge Robert Chambers for the Southern District of West Virginia said there was "evidence sufficient to establish at least one violation of West Virginia's water quality standards" from the Peg Fork mountaintop-removal mine in Mingo County.

The West Virginia Department of Environmental Protection, hearing of environmental groups' concerns, took action against allegations of Consol pollutant releases in 2011. But Chambers said it was not enough to preclude the current litigation.

"[T]he Court finds that the WVDEP's enforcement action regarding the two permits at issue in this case does not constitute 'diligent prosecution' as that term is used by the [Clean Water Act] and the [Surface Mining Control and Reclamation Act]. The enforcement action, therefore, is not a bar to Plaintiffs' lawsuit," wrote Chambers.

Environmental groups suing Consol, including the Sierra Club, cited the judge's ruling in calling WVDEP oversight too lax. They also took the Army Corps of Engineers to task for permitting the mine in the first place.

"This decision not only reinforces the role that citizens play in protecting our water but should serve as a reminder to the EPA and Army Corps that they need to take a stronger stand to protect Appalachian residents' water and health," said Bruce Nilles, head of the Sierra Club's Beyond Coal Campaign.

Chambers rejected environmental group arguments to set penalties for the pollution dumps. He said that would be discussed in the second phase of litigation and that he would take the state's enforcement into account.

Chambers made a similar decision last month against Alpha Natural Resources Inc. Several other cases by environmental groups against coal companies remain pending in Appalachia.

This morning, Alpha announced a $56 million net loss for the first quarter of 2014, citing weak market conditions. Consol last month announced $116 million in first quarter net income, buoyed by its natural gas business.

Coal ash

Selenium, an element that can cause significant harm to aquatic life and can be found coming from strip

mining operations, is also a concern when it comes to coal ash dumps.

Environmental groups and faith leaders are pressing Duke Energy Corp. to take stronger measures in response to February's ash spill, which sent thousands of tons of waste into the Dan River in North Carolina.

Yesterday, North Carolina Treasurer Janet Cowell (D), who manages state investments in Duke, asked the company's board to commission an independent investigation of the spill. Other major investors have done the same.

"Although Duke Energy is being evaluated today by various federal and state governmental bodies, none of those organizations will be focused on ways to improve corporate governance or management practices," wrote an attorney for Cowell. "Independent internal investigations have unique aspects that can help teach companies how to better run their business."

Duke shareholders are meeting in Charlotte today.

ENDANGERED SPECIES:

Group sues FWS for missed deadline on manatee petition response

Jessica Estepa, E&E reporter

Published: Thursday, May 1, 2014

A Florida group yesterday filed suit against the Fish and Wildlife Service for failing to respond to a petition to downlist the manatee.

At issue is a petition filed by Save Crystal River Inc., a group made up of citizens from Crystal River, Fla., in December 2012. In the petition, the group -- from a town that is known for its love for manatees and for the robust tourism industry surrounding the creatures -- asked the agency to consider reclassifying the West Indian manatee from endangered to threatened, based on a five-year review of the species completed by FWS.

In that review, completed in April 2007, the agency recommended that the downlisting be made for the species, which includes the Florida and Antillean subspecies. The most recent stock assessment from FWS counted 4,834 manatees, up from 3,802 in 2009.

But the agency did not take action on its own recommendation, resulting in the 2012 petition from the Florida group.

Under the Endangered Species Act, FWS is required to respond within 90 days. The agency's statutory deadline was in March 2013.

That led to yesterday's lawsuit, filed by the conservative nonprofit Pacific Legal Foundation on behalf of Save Crystal River. The legal group has handled a number of ESA lawsuits concerning downlistings and delistings over the years.

PLF lawyer Christina Martin noted the criminal penalties people face under ESA if the animals are harmed. A downlisting would allow for more flexible management practices.

In the bigger picture, the lawsuit also holds officials accountable, she said.

"The government should follow their own rules," she said. "This doesn't mean we dislike the manatee. That's not the case at all."

GULF SPILL:

5 accused of defrauding BP fund with $2.4M false-claim scheme

Published: Thursday, May 1, 2014

A grand jury has indicted five people in what prosecutors say was a family-led scheme to defraud the BP PLC compensation fund for victims of the 2010 Deepwater Horizon oil spill.

Authorities say those five recruited 15 others to make false claims against BP.

Charged were Marcella Truss, 53, and her husband, Martee Davis, 41, of Grand Bay, Ala.; Truss' son, Robert Truss III, 26, of Houston; her brother, Howard Lenard Carroway, 42, of Mobile, Ala.; and Cedric Dion Ravizee, 37, of Birmingham, Ala.

They are charged with conspiracy to commit wire and mail fraud to file fraudulent claims of more than $2.4 million from the fund. They received about $1.4 million before the indictment, according to prosecutors.

"We place a high priority on the prompt investigation and prosecution of fraud related to natural and man-made disasters to ensure that funds available to help victims of those tragedies do not fall into the hands of criminals," U.S. Attorney Joyce White Vance said (Kent Faulk, *Birmingham News*, April 30). **-- SP**

ARCTIC:

Earthquake equipment could help track glaciers' ice loss

Joshua Learn, E&E reporter

Published: Thursday, May 1, 2014

An accidental discovery by the Alaska Earthquake Center revealed that the powerful seismology tracking network has been capturing important data for decades that glacier scientists could use to track ice loss events.

"Every day, we detect something like 100 earthquakes. But if you look at those detections, there is a small subset that is not actually earthquakes," said Michael West, director of the center.

For decades, researchers working in the center pushed the glacier noise to the side as little more than a nuisance that distracted them from tracking quakes -- the state harbors four out of every five occurring in the United States. "In Alaska, these glacial events have been largely treated as a curiosity, a byproduct of earthquake monitoring," West said in a news release.

But in 2010, experts watching the Columbia Glacier noted that the tongue, or end of the glacier, had retreated from the deeper ocean where it was free-floating and had become grounded on bedrock. Suddenly, West said in an interview, the labs began to record a huge amount of seismic activity "big enough to be recorded on earthquake sensors a few hundred kilometers away."

The documentation from other glacier scientists matched the signals, leading West and others to realize they had a wealth of data going back decades that tracked large glacial calving events.

Calving is the term for when chunks of ice fall off the end of a glacier into the water. The largest of these ice chunks register enough seismic noise to be picked up by seismologists at the Earthquake Center.

West said this information could help track calving activities of a vast network of glaciers more easily. "Without anyone actually being there, we see this clear as day in the earthquake record," he said. "It's sort of a freebie data set."

He's presenting his research today at the annual meeting of the Seismological Society of America.

West said the Earthquake Center's discovery coincides with increased focus on glaciers due to global warming. "I see this as another tool in the arsenal for measuring the impacts of climate change," he said.

Regine Hock, a glaciologist with the Glaciers Group at the University of Alaska, Fairbanks, said that although this information is valuable for tracking calving events, other kinds of observations might be needed to track the larger increase or decline of glaciers.

Signals from calving could increase, for example, even though a glacier is growing due to heavy snowfall. Glaciers could also be retreating due to melting without giving off too many seismic signals.

"If you track one of [the glaciers] back in time, you have to be careful to correlate total mass changes," Hock said. "[Calving] is only part of the balance."

But she said the readings could nonetheless still be a powerful tool; calving events make up an important part of the study of glaciers.

West said the seismic readings could help track the patterns of individual glaciers, which reach peak calving at different times. "The most notable observation is we see the seasonal patterns of these glaciers. We see [calving events] turn on in the summer and turn off in the winter."

The readings could also indicate a glacier is beginning to undergo some kind of major change. "When a particular glacier begins to behave different, it's my interest to put out an alert to glacier scientists."

West said he hopes glacier scientists begin to take more advantage of tools like these, which track information about remote glaciers not recorded by other experts.

"I have no doubt that we are actually missing the vast majority of glacier activity," he added.

ARCTIC:

Dutch police detain Greenpeace activists in oil tanker protest

Published: Thursday, May 1, 2014

Dutch authorities have detained 31 Greenpeace activists who tried to block an oil tanker from docking at the Rotterdam Port.

Activists used two ships, rubber rafts and paragliders to confront the Mikhail Ulyanov, a tanker carrying oil from Russia's first offshore oil well in the Arctic, as the vessel tried to enter the port.

Greenpeace members painted the words "No Arctic Oil" in white on the tanker's hull and hung a protest banner from one of their own ships. Police detained the activists after the Mikhail Ulyanov docked several hours later.

"The fight to stop Arctic oil drilling is one of the defining battles of our time," Greenpeace International Executive Director Kumi Naidoo said in a statement. "We will not be intimidated, and we will win."

Greenpeace staged a similar protest in the Arctic last September. Russian authorities arrested 30 people on board the Arctic Sunrise and held them in custody for several months (Toby Sterling, AP/Albany *Times Union*, May 1). **-- DB**

WATER POLLUTION:

Urine-tinged contents of Ore. reservoir won't be flushed after all

Published: Thursday, May 1, 2014

Thirty-five million gallons of potentially urine-tainted water in a Portland, Ore., reservoir will be diverted to an empty reservoir instead of sent down the drain.

Officials had planned to drain the water, part of the city's drinking supply, after 19-year-old Dallas Swonger was caught on video seeming to pee into the open-air reservoir near Mount Tabor (*Greenwire*, April 17). Swonger, who contends that his stream never made it to the water, was cited for public urination and trespassing.

It was the second urination incident in less than three years at a Mount Tabor reservoir.

Tests found that the water in Reservoir 5 was fit for drinking, but it won't be going to customers' taps. Heavy rains slowed the draining process, so city officials took the opportunity to fill nearby Reservoir 6, currently sitting empty and deemed an eyesore by some neighborhood residents. Officials will be watching to determine what happens when water is left uncirculated in the reservoir.

"We're going to be monitoring it and see how long it stays fresh and clear," Portland Water Bureau spokeswoman Jaymee Cuti said.

Built in 1911, Reservoir 5 is one of five open-air reservoirs that the city is switching over to underground storage to comply with federal regulations. In the meantime, Reservoir 5 finished refilling Saturday and is once again providing Portland residents with drinking water (AP/Minneapolis *Star Tribune*, April 30). **-- DTB**

WATER POLLUTION:

Execs of company behind W.Va. spill appear to be starting new venture

Published: Thursday, May 1, 2014

Some of the top executives of Freedom Industries Inc., the chemical company that filed for bankruptcy earlier this year after one of its leaky storage tanks fouled the water of 300,000 West Virginians, have been linked to another chemical company.

Lexycon LLC registered with West Virginia's secretary of state last month and has some of the same employees. The companies share addresses and phone numbers.

Lexycon said in a statement that the company shares some of Freedom's former employees "that have extensive experience in the chemical industry" but said Freedom President Gary Southern is not connected to the firm.

Freedom has been named in more than 60 lawsuits related to the chemical spill. As the company goes through bankruptcy court, those lawsuits will likely not reach their conclusions. Freedom's head bankruptcy lawyer would not comment on Lexycon.

The two companies offer very similar descriptions of themselves.

Freedom Industries describes itself on its website as "a full service producer of specialty chemicals for the mining, steel and cement industries. Founded in 1986 and located in Charleston, West Virginia, Freedom Industries is a leading producer of freeze conditioning agents, dust control palliatives, flotation reagents, water treatment polymers and other specialty chemicals."

Lexycon doesn't yet have a finished website but described itself at a recent coal processors conference as "a full service producer of specialty chemicals for the mining, steel and cement industries. Founded in 2013 with facilities located in Charleston, West Virginia, Lexycon is a leading producer of freeze conditioning agents, dust control palliatives, flotation reagents, water treatment polymers and other specialty chemicals" (David Gutman, *Charleston* [W.Va.] *Gazette*, May 1). **-- SP**

AUSTRALIA:

U.N. agency calls for reef protections, criticizes dumping plan

Published: Thursday, May 1, 2014

A U.N. agency said Australia needs to do more to protect the Great Barrier Reef, although it backed away from putting the reef on a list of World Heritage sites in danger.

UNESCO yesterday recommended that its World Heritage Committee delay action for at least a year to see whether the Australian government takes steps to conserve the reef. It sharply criticized government plans to dump excavated seabed near the reef as part of a coal port expansion.

The reef has lost half its coral cover in 30 years and faces new threats from rising sea temperatures linked to climate change, polluted water and new development.

Specifically, environmental groups are worried about a planned expansion of the Abbot Point coal port, which the Australian government gave permission to dump as much as 3 million cubic meters of dredged material within the boundaries of the World Heritage area but about 25 miles from the nearest reef.

UNESCO said there were less damaging disposal methods the government could have used.

"This is of particular concern given evidence suggesting that the inshore reefs in the southern two-thirds of the property are not recovering from disturbances over the past few decades," the report said.

Australia isn't obligated to follow UNESCO's recommendations, but if the agency revoked the Great Barrier Reef's World Heritage status, it could be a major embarrassment to the nation (Rebecca Thurlow,

Wall Street Journal, May 1). -- **SP**

ClimateWire -- Fri., May 2, 2014 -- **Read the full edition**

1. NOVELS: With hope and horror, climate fiction writers depict the future

Hailed by Rolling Stone as "the first great climate change novel," "Odds Against Tomorrow" is at the vanguard of a new genre of fiction called climate fiction -- or "cli-fi" -- that sets its human protagonists against the onrush of planet-altering global warming. At times humorous, hopeful and terrifying, these stories offer a wider lens on a subject long dominated by hard science.

2. WEATHER: Fla. rainfall was 'historic,' Weather Service says

Although hurricane season has not yet arrived, Florida Panhandle residents and parts of coastal Alabama saw disastrous flooding from record rainfall Monday and Tuesday more akin to amounts seen in tropical storms than a spring weather system.

TODAY'S STORIES

3. **STATES:** Fla. lawmakers invite private flood insurers to risk-prone shores

4. **REGULATION:** Hawaii utility ordered to add more renewables as rooftop solar stalls

5. **BUDGET:** Interior, Forest Service project $470M shortfall to fight wildfires

6. **FOOD SECURITY:** U.S. corn crop more sensitive to drought -- report

7. **ADAPTATION:** PSE&G requests rate hike to finance $1.2B resilience program

8. **AGRICULTURE:** IPCC, National Climate Assessment authors warn of climate impacts on food supply

9. **RESOURCES:** Water supplies grow short for lack of modern management

10. **SOCIETY:** Crowdsourcing moves into agriculture, search-and-rescue operations

11. **WEATHER:** Tornadoes could boom and bust as climate changes

12. **EMISSIONS:** Records show atmospheric CO2 exceeded 400 ppm every day in April

13. **TRANSPORTATION:** Madrid to install world's first 'smart' parking meters

14. **SCIENCE:** Scientists look back to predict Earth's future climate

EnergyWire -- Fri., May 2, 2014 -- **Read the full edition**

1. UTILITIES: Renewables get vote of financial confidence in NextEra spinoff plans

NextEra Energy Inc.'s decision to form a separate company for its renewable portfolio is a signal that wind and solar

projects have risen to the level of being a strong, steady, long-term investment, analysts say.

2. TRANSPORT: Could derailment in D.C.'s shadow accelerate oil-by-rail action?

LYNCHBURG, Va. -- "That guy better be getting hazard pay," said Marquis Brown, pointing across the river to someone scrambling down a smoldering embankment. The lone worker was apparently helping to fish three tank cars from the James River downtown here, where a CSX Corp. train hauling crude derailed and caught fire Wednesday afternoon. No one was hurt in the incident, but "that was a lucky situation," according to Brown, who works for a nearby restoration firm and said he has seen up to 1,000 people gather along the tracks for festivals such as the Fourth of July.

TOP STORIES

3. EARTHQUAKES: Oklahoma City seismic swarm linked to 4 disposal wells -- study

4. UTILITIES: 'Duck chart' makes a flap on the California grid

5. BUSINESS: Coal giant Consol puts production growth squarely on gas

ELECTRICITY

6. GRID: Texas operator says new plants will boost supplies as summer progresses

7. UTILITIES: Energy Future's bankruptcy a big payday for one financial firm

8. ELECTRICITY: Ky. groups ask for delay in plant approval

OIL AND GAS

9. HYDRAULIC FRACTURING: EDF's Krupp defends fracking support -- 'We need to just recognize reality'

10. HYDRAULIC FRACTURING: Alliance calls on FracFocus to release disclosure reports to public

11. MARCELLUS SHALE: Environmental group urges Pa. to set methane rules

12. EARNINGS: Exxon Mobil's many new projects keep hopes high as profits dip

13. ALASKA: ConocoPhillips to spend $1.7B to resuscitate North Slope

14. PEOPLE: Continental shifts leadership as senior executive leaves for Williams spinoff

15. PEOPLE: D.C. energy lawyer moves to new firm

16. POLICY: Rules for private oil in Mexico aim for fast foreign investment

17. HYDRAULIC FRACTURING: Fracking sand grows as a commodity

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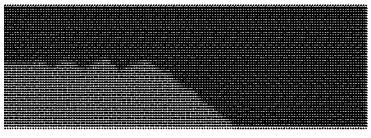

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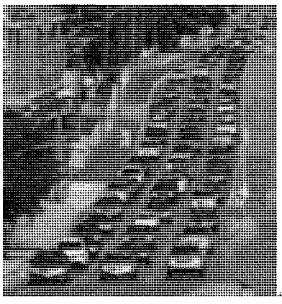

Air & Radiation Law News

for May 1, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA Approves Pennsylvania's Regional Haze Plan for Second Time

The Environmental Protection Agency reissued a final rule approving Pennsylvania's plan for meeting Clean Air Act requirements for reducing regional haze, which was challenged by environmental groups when it first received EPA approval...

Air Pollution

EPA Proposes Approval of Revised Haze Plan for Aging New Mexico Plant

The Environmental Protection Agency announced a proposed regional haze reduction plan April 30 that would require the retirement of two of four coal-fired units at the San Juan Generating Station in northwest New Mexico by the end of 2017....

Air Pollution

Lung Association Reports Increased Pollution Levels

Nearly half of Americans lived in areas with unhealthy levels of air pollution between 2010 and 2012, the American Lung Association said in its annual report on air quality. That represents an increase from last year's report, covering...

Climate Change

California and Northeastern States Join DOE Partnership for Hydrogen Infrastructure

California and the Northeast States for Coordinated Air Use Management joined H2USA, a public-private partnership the Energy Department formed a year ago to accelerate the commercialization of fuel cell electric vehicles and related hydrogen...

Climate Change

Energy Efficiency Could Reduce Carbon Emissions

States could achieve a 26 percent reduction in carbon dioxide emissions from the power sector by 2030 through the pursuit of energy efficiency targets and improvements in building codes, according to an April 30 report from the American Council...

Climate Change

Japan Working With Asian Development Bank On Sharing Emissions Reduction Technology

Japan is working to establish a concession fund with the Asian Development Bank this summer that would promote Japanese emissions reduction technology transfers to developing countries on the continent, a Ministry of the Environment official...

Climate Change

Opponents Look Beyond Clean Air Act To Challenge EPA's Power Plant Rule

Opponents of the Environmental Protection Agency's proposed carbon dioxide standards for newly built power plants are looking to federal statutes beyond just the Clean Air Act to base legal cases. ...

Climate Change

Washington Governor Takes Executive Action to Prod Legislature on Climate Change

Response to the creation by Washington Gov. Jay Inslee (D) of a task force charged with recommending a way to put a cap on carbon reflects perennial divisions in state politics with immediate push back from Republicans and conservative organizations....

Emissions Trading

Germany Fines 61 Aircraft Operators For Breach of EU Emissions Trading Rules

Germany ordered 61 aircraft operators from countries including Russia and the U.S. to pay fines for breaching European Union emissions trading rules....

Energy

China Fuels Highest Solar Silicon Demand, Commodity Used to Make Photovoltaic Cells

The polysilicon industry is headed for its biggest boom since a price war started three years ago. ...

Energy

Keystone's Future Turns on Century-Old Measure Established to Curb Rail Barons

The future of the Keystone XL oil pipeline may turn on a century-old Nebraska measure to curb the influence of railroad barons (Thompson v. Heineman, Neb., No. S-14-000158, argued 4/18/14)....

Hazmat Transport

Surface Transportation Proposal Would Increase Maximum Penalties, Create Fee

The Obama administration's $302 billion surface transportation proposal includes provisions that would increase the maximum civil penalty the Transportation Department could assess for violations of the federal hazardous materials...

Transportation

New York Governor Asks Obama to Take Action on Crude Oil Transportation Safety

The federal government should take swift action to step up regulation of crude oil transportation and strengthen safety standards for the industry, New York Gov. Andrew M. Cuomo (D) recommended April 30 in a letter to President Obama....

Inside EPA's **Weekly Report**, 05/02/2014

http://insideepa.com/Inside-EPA/Inside-EPA-05/02/2014/menu-id-67.html

Court Grants Environmentalists' Tight Timeline For Ozone NAAQS Review

A federal district judge has granted environmentalists' request to force EPA to propose in December whether to revise its ozone national ambient air quality standard (NAAQS) and issue a final rule by Oct. 1, 2015, rejecting the agency's request for the court to give it an additional six weeks for publishing the final regulation.

Latest Blogs

'Recalcitrant' States Ready Work On EPA Climate NSPS

States considered likely to challenge EPA's pending climate new source performance standards (NSPS) for utilities are nevertheless starting discussions on how to craft compliance plans . . .

Greenwire

AIR POLLUTION:

White House takes victory lap after cross-state ruling

Robin Bravender, E&E reporter

Published: Wednesday, April 30, 2014

Two of President Obama's top environmental aides are declaring victory after the Supreme Court resurrected one of the administration's most controversial air pollution policies.

Dan Utech -- Obama's special assistant for energy and climate change -- and acting White House Council on Environmental Quality Chairman Mike Boots wrote in a blog post yesterday that "over 240 million Americans can breathe easier" in the wake of the ruling and lauded the decision to uphold the "vitally important public health rule" issued in 2011.

The court handed the Obama administration a big victory yesterday with its 6-2 decision upholding U.S. EPA's Cross-State Air Pollution Rule that's aimed at clamping down on air pollution that drifts across state lines. A federal appeals court had thrown out the program in 2012 after utilities and several states challenged the rule, arguing that EPA had exceeded its authority (*Greenwire*, April 29).

Environmentalists and congressional Democrats hailed the ruling yesterday, while industry groups and GOP critics warned the rule is an example of regulatory overreach that will drive up costs for businesses (*E&ENews PM*, April 29).

Utech and Boots said reinstating the rule will provide substantial health benefits "at modest costs using readily available pollution controls already adopted by many power plants." They cited EPA estimates that the rule will prevent up to 34,000 premature deaths, 400,000 cases of aggravated asthma and 1.8 million sick days per year -- and would result in up to $280 billion in health benefits each year.

They touted several other major air pollution policies from the Obama administration -- all of which have been met with stiff opposition. "Although we've made important progress in cutting smog, soot, mercury, and toxic air pollution, our work is not done. More action is needed to cut the harmful carbon pollution that causes climate change, impacting our communities and public health," they said.

EPA's rule aimed at cutting greenhouse gas emissions from existing power plants, due in June, "will build on the administration's previous clean air successes," they said.

AIR POLLUTION:

Judge signals she'll side with enviros on EPA ozone deadline

Jeremy P. Jacobs, E&E reporter

Published: Wednesday, April 30, 2014

A federal judge indicated yesterday that she intends to side with advocacy groups trying to force U.S. EPA to set new standards for ozone air pollution by October 2015.

Attorneys from Earthjustice, representing several green groups that brought the lawsuit, said Judge Yvonne Gonzalez Rogers for the Northern District of California ruled from the bench that she would reject EPA's motion to delay the standards until November 2015.

The groups had asked the court to force EPA to finalize a new National Ambient Air Quality Standard for ozone, the main component of smog, by Oct. 1, 2015. The agency has missed its five-year deadline for reviewing the 2008 standards as mandated by the Clean Air Act.

EPA told the court that the October deadline wasn't feasible. It proposed issuing a final rule by Nov. 15, 2015.

The agency said the review is taking a long time because of the "abundance of new scientific evidence" on the health effects of ozone pollution (*E&ENews PM*, Feb. 26).

Apparently the judge has rejected that argument in a win for the green groups. Their motion calls for EPA to propose the new standard by Dec. 1 and finalize it by October of next year.

EPA's slow progress in updating the standard has long been criticized by public health advocates.

The current standard of 75 parts per billion was set in 2008, and the White House scuttled EPA's attempt to tighten the standard to between 60 and 70 ppb in 2011.

EPA has since indicated it is considering a standard as low as 60 ppb (*Greenwire*, Feb. 3).

EPA:

State regulators seek credit in new rule for efficiency programs

Jean Chemnick, E&E reporter

Published: Wednesday, April 30, 2014

The state regulators that will play a leading role in implementing U.S. EPA's greenhouse gas rules for existing power plants are putting the finishing touches on guidelines for how the rule should handle state energy efficiency programs.

The proposal by the "Three N's" group -- comprising the National Association of Clean Air Agencies (NACAA), the National Association of State Energy Officials (NASEO) and the National Association of Regulatory Utility Commissioners (NARUC) -- is part of a mountain of public comments being sent to EPA and the White House ahead of the rule's scheduled release in June.

The comments are aimed at swaying the White House Office of Management and Budget's review of the rule.

The regulators' recommendations suggest how EPA can structure a rule that encourages states that haven't adopted extensive energy efficiency programs while preserving existing state efficiency programs.

EPA must specify that states can claim credit for energy efficiency improvements that lead to emissions reductions, the document says.

And the agency must provide methodology for assessing how those energy efficiency-based emissions reductions will be measured and quantified.

The group asks EPA to provide that information no later than June 2015, President Obama's deadline for finalizing the rule.

By that time, EPA should also offer states a partial list of approvable efficiency options that states can draw from in writing their implementation plans, the group says.

EPA must also collaborate with states in setting guidelines for monitoring and verifying emission reductions, it says, though it should defer to states that are already making reductions through efficiency efforts that meet verification standards.

Among other recommendations from the Three N's: EPA should give credit for past as well as future emission reductions after a base line. It should also "recognize and encourage" multi-state and regional energy efficiency efforts and compliance strategies.

States face a tight timeline to write implementation plans under the rule for existing power plants. That deadline has spurred even states opposed to EPA carbon dioxide regulations to participate in efforts like the meetings of the Three N's.

The president's timeline calls for states to submit their plans to EPA for approval by June 30, 2016, but many states have asked for additional time, and EPA officials have signaled that they will probably grant that request. If a state does not submit an approvable plan, it runs the risk of having EPA step in with a less flexible federal option.

The fact that state regulators from both Democratic- and Republican-led states reached agreement on the principles shows there is room for bipartisan consensus on certain aspects of these regulations, said Malcolm Woolf, vice president of Advanced Energy Economy.

"You can take the politics out of this, and there are ways to deploy energy efficiency and alternative energy technologies in a cost-effective way to comply with this new requirement," he said in an interview.

A range of states have raised the possibility of participating in a regional or multi-state program as a means of complying with the rule, though they seem to differ on how that program would work.

Members of the Northeast's Regional Greenhouse Gas Initiative have billed their program as a "plug and play" option other states could join, while more fossil fuels-heavy states have shunned the idea of cap and trade for CO2.

"We're hopeful that EPA's rule will give states the flexibility to consider regional approaches, because we think those can be a least-cost option for regions," Woolf said.

This is particularly true, he said, because few states have self-contained power markets that fit neatly within their own borders.

The American Council for an Energy-Efficient Economy (ACEEE) also urged EPA to craft a rule that encourages states to tap demand-side energy efficiency.

In a report released today, ACEEE looked at the greenhouse gas reduction potential of four common state efficiency policies: the energy savings target (the report proposes 1.5 percent annually), nationwide residential and commercial building codes, investment in combined heat and power facilities, and efficiency standards for equipment and products.

These policies, which have been adopted by many states already, could reduce CO2 emissions by 600 million tons by 2030 if they were expanded to all 50 states, ACEEE said in the report.

They also yield health and economic benefits, report author Sarah Hayes said on a call this morning with reporters.

"Energy efficiency is the ultimate resource: It's clean, reliable and cheap," she said.

The report found that there was potential for these four policy options to yield power -- and emissions reduction savings in states across the country. In fact, the greatest potential for improvement was estimated to be in Midwestern and Southern states that currently lack strong efficiency mandates. Florida was the state found to have the greatest potential to reduce energy use from their adoption: an estimated 388.6 million megawatt-hours by 2030.

But while efficiency policies fall under the purview of state governments, participants on a press call said EPA would have to be clear about what it would accept as a means of complying with the rule. "It's important for EPA to provide guidance so that states aren't starting with a blank slate," said Richard Caperton, director of national policy at data analysis company Opower Inc.

NUCLEAR WASTE:

U.S., Germany in talks to transfer waste to S.C. storage site

Published: Wednesday, April 30, 2014

Germany would ship radioactive waste to a storage site in South Carolina under a plan proposed by the Energy Department, newly revealed documents show.

The United States offered to store material from a shuttered German reactor at the federal Savannah River Site facility near Aiken, S.C., according to a 2011 DOE letter obtained under the Freedom of Information Act.

Negotiations for the transfer are underway, but an agreement hasn't been finalized, Jim Giusti, an SRS spokesman, said yesterday. "We are still evaluating that. If that decision is made, Germany will fully fund the work."

The nuclear waste was produced at a German reactor that operated from 1967 to 1988. Germany has been seeking places to store radioactive material after announcing plans in 2011 to shut down its commercial nuclear program by 2022.

Environmental advocates said Germany should look elsewhere.

"The proposal to import highly radioactive spent fuel from Germany to SRS is simply nuclear dumping dressed up as nuclear nonproliferation," said Tom Clements, director of the SRS Watch environmental group.

The Savannah River Site helped produce nuclear weapons during the Cold War and now serves as a waste storage facility (Eric Connor, Columbia [S.C.] *State*, April 30). **-- DB**

OIL AND GAS:

Pipeline leak sprays oily mist across Alaska tundra

Published: Wednesday, April 30, 2014

Twenty-seven acres of the North Slope in Alaska was sprayed when strong winds carried an oily mist

caused by a pipeline failure across a swath of snow-covered tundra.

According to a statement from the state Department of Environmental Conservation, the leak of an unknown quantity of natural gas and water containing crude oil was spotted Monday during a routine inspection of the pipeline located on the BP Exploration (Alaska) west operating area in Prudhoe Bay, at H Pad Well 8. The site remained closed yesterday.

The line was isolated and depressurized within two hours, but not before the oil had spread across an area the size of 20 football fields.

Ashley Adamczak, a spokeswoman with the DEC, said the pipe was pointed skyward in its "12 o'clock position" during the leak.

"The pressurized gas forced fluid to go up and hit a 30-mph wind, and that is what caused such a long release," Adamczak said.

The damage is only about a mile from the site of the largest recorded spill on the North Slope in 2006. In response to that spill from a separate pipeline, which covered 2 acres of tundra with 200,000 gallons of oil, BP pleaded guilty to negligence for failing to address pipe corrosion and spent $500 million upgrading 16 miles of transit pipeline, according to BP spokeswoman Dawn Patience (Alex DeMarban, *Alaska Dispatch*, April 29).

Adamczak said Monday's spill, which state environmental officers are investigating, was unrelated to the 2006 damage.

The agency reported that no wildlife was affected by the spray (AP/*Fuel Fix*, April 30). **-- DTB**

ETHANOL:

3 cellulosic producers eye 2014 start dates

Amanda Peterka, E&E reporter

Published: Wednesday, April 30, 2014

Three big companies that have placed bets on turning agricultural waste into transportation fuel say they're on track to open production facilities this year.

Abengoa Bioenergy, POET-DSM Advanced Biofuels and DuPont have invested millions of dollars in facilities that would convert post-harvest corn debris into cellulosic ethanol. The first to come online will likely be Abengoa's biorefinery in Kansas, capable of producing 25 million gallons of cellulosic ethanol a year, company representatives say.

"I'm pretty confident 2014 is going to be a banner year for cellulosic ethanol," said Christopher Standlee, Abengoa's executive vice president of global affairs, at a Washington, D.C., event yesterday.

There's a saying about cellulosic ethanol being always five years away. The industry wants to change that in 2014.

The 2007 renewable fuel standard, which required refiners to use both conventional ethanol and advanced biofuel, prompted the push for cellulosic ethanol, but the industry has failed to meet the standard's lofty targets.

Abengoa plans to open its facility near the end of May or beginning of June, according to Standlee. POET-DSM, a joint venture spearheaded by the largest U.S. ethanol producer, will likely follow in the end of June with its own 25-million-gallon plant in Iowa, said Doug Berven, the company's vice president of corporate affairs.

DuPont has not given an expected start but will start making fuel by the end of the year at a 30-million-gallon facility, also in Iowa, said Aaron Whitesel, Dupont's senior manager of government affairs.

All three companies plan to license their technology once their first plants are completed.

Quad County Corn Processors, a small ethanol producer in Iowa, is also planning to produce cellulosic fuel in the coming months from corn kernel fiber, a part of the corn plant that is left over after conventional ethanol production. Quad County has developed a bolt-on technology that can be added to existing ethanol plants.

But while company representatives say they are optimistic this year, they all raised doubts about their ability to expand cellulosic ethanol production in the United States.

The companies say that U.S. EPA's November proposal to lower the 2014 biofuel blending requirements for the first time since the RFS was put into place has dampened enthusiasm among investors and shareholders (*E&ENews PM*, Nov. 15, 2013).

"Our confidence level is high that we can make this work," Berven said. "The one thing that will stifle that is if there isn't a market for our product."

AIR POLLUTION:

Almost half of Americans regularly breathe unhealthy air -- study

Daniel Lippman, E&E reporter

Published: Wednesday, April 30, 2014

Almost half of all Americans, more than 147 million people, live in counties where the air quality, specifically the ozone or particle pollution, is unhealthy, according to the annual State of the Air report issued today by the American Lung Association.

Almost 9 percent of Americans, or more than 27.8 million people, live in 17 counties that have unhealthy levels of all the air pollutants measured in this year's report, which covered the years 2010 through 2012.

A number of California metropolitan areas including Los Angeles-Long Beach, Visalia-Porterville-Hanford, Bakersfield and Fresno-Madera, topped the charts for being the most ozone-polluted cities, though many cities on the list are steadily cleaning up their air.

But the report says 22 of the 25 metro areas most polluted by ozone, including Los Angeles, New York and Chicago, had worse problems because warmer summers in 2010 and 2012 made ozone and smog more likely to form.

"If [there] is more heat, you're going to have the chemistry working more effectively in a negative way, and it creates more ozone and helps cook that," said Janice Nolen, the lung association's assistant vice president for national policy and advocacy.

Still, there were some hopeful signs in the report, including the fact that a number of big cities hit their lowest particle-pollution levels ever, including Philadelphia, Cincinnati and Indianapolis.

"We are happy to report continued reduction of year-round particle pollution across the nation, thanks to cleaner diesel fleets and cleaner power plants," said Harold Wimmer, president and CEO of the American Lung Association, in a statement. But he said the progress represented a "partial victory" given that so many Americans still don't breathe healthy air.

"We know that warmer temperatures increase risk for ozone pollution, so climate change sets the stage for tougher challenges to protect human health. We must meet these challenges head on to protect the health of millions of Americans living with asthma and chronic obstructive pulmonary disease."

Nolen said a priority for the nation should be to reduce carbon pollution because all the carbon dioxide being emitted leads to higher temperatures and, thus, more ozone.

She also urged U.S. EPA to set a tough standard on ozone pollution; the agency is currently in a scientific review process to look at whether to set a new benchmark. In a court ruling yesterday, the U.S. District Court for Northern California said EPA must issue a new proposed ozone standard by October of this year.

"We have decades of information that … shows that it literally saves lives, and [that] a protective standard can clean up the air," Nolen said. "We have long-term analyses that shows that cleaning up the air quite literally adds two to four months on the average life span."

Agency critics charge that if the current standard of 75 parts per billion is lowered, it will hurt the economies of areas that are designated as not being compliant with the rules. That's because that nonattainment designation makes it harder for new industrial facilities to expand operations and hire more people if those actions create more pollution.

Sam Atwood, a spokesman for the South Coast Air Quality Management District that includes Los Angeles, said in an interview that his agency is focused on cutting nitrogen oxide pollution to attack both particulate matter pollution as well as ozone.

Meeting the current 75 parts per billion standard by a 2032 deadline, he said, is "going to require some very big changes. It's going to require, in essence, zero emission or virtually zero emission transportation, especially in goods movement to a much greater extent, and also in the passenger fleet."

"We definitely think it's an uphill battle," Atwood said. The Los Angeles metropolitan area is so spread out and has 12.8 million people, many of whom drive their cars everywhere, which creates pollution. It's also warm most of the year, which helps ozone to form.

The Los Angeles-Long Beach ports also produce lots of emissions from ships docking to trucks and trains getting the goods that come in.

AIR POLLUTION:

Chicago proposes ban on new petcoke storage sites

Published: Wednesday, April 30, 2014

A proposed petcoke storage ban in Chicago exempts three facilities along the Calumet River, angering

advocates who had hoped for tougher regulations.

The ordinance would ban new petcoke storage facilities on the city's South Side, where advocates say dust from the material, a byproduct of oil sands refining, poses a significant health threat.

But advocates slammed the proposal, which is backed by Mayor Rahm Emanuel (D), because it would allow three companies to continue storing and burning the waste at existing facilities.

"We need clean air to breathe," said Maria Diaz, a representative of a Marsh Elementary School parents' group.

Supporters defended the zoning change, which the City Council is expected to vote on today.

"Under this ordinance, Chicago will not become a dumping ground for petcoke, and we are preventing this material from negatively impacting our communities," said Bill McCaffrey, a spokesman for Emanuel.

The Emanuel administration originally considered a citywide ban but dropped the plan after deciding it might not stand up in the courts (Michael Hawthorne, *Chicago Tribune*, April 30). **-- DB**

ClimateWire -- Thu., May 1, 2014 -- **Read the full edition**

1. GAMES: 'Voice mails from the future' elicit personal views on dealing with climate change

Chronofacts carry messages from a variety of possible futures -- some sound neighborly and pleasant, while others sound downright apocalyptic and ugly. These messages make up the basis of FutureCoast, a collaborative storytelling game that explores what various people in the present day think climate change holds for their future.

2. EMISSIONS: Energy efficiency is described as the most cost-effective way of meeting future EPA greenhouse gas targets -- report

Doing more with less is an important tactic in fighting climate change, and it points to what may be the most cost-effective way of complying with potential carbon emissions rules under the Clean Air Act.

TODAY'S STORIES

3. **BUSINESS:** Shift away from fossil fuels will be wrenching, risky, 'ugly' and ultimately necessary -- author

4. **ARCTIC:** 'Flow bergs' become one of a number of hazards as polar ice melts

5. **CALIFORNIA:** Bill advances to add cost of cap and trade to gas pump disclosures

6. **ADAPTATION:** Local-level policies may be the most cost-efficient

7. **ENERGY POLICY:** Amendment to energy bill aims to boost tribal renewable energy ventures

8. **HYDROPOWER:** U.S. has potential to double its capacity -- DOE report

9. **SPECIES:** Acidity is dissolving the shells of a critical component in the ocean food system

10. **ADAPTATION:** Iowans adjust to shifts in weather

11. **CARBON MARKETS:** China plans to incorporate high-polluting regions into emissions trading

12. **SCIENCE:** Extreme rainfall events likely to increase in U.K.

E&ETV's OnPoint

13. **AIR POLLUTION:** Former EPA Senior Policy Counsel Sussman discusses agency's challenges to meeting existing source rule deadline

EnergyWire -- Thu., May 1, 2014 -- **Read the full edition**

1. UTILITIES: Exelon doubles down on regulated assets with Pepco buy

Exelon Corp.'s CEO says the nuclear giant's planned $6.8 billion purchase of utility owner Pepco Holdings Inc. is consistent with the company's belief in the recovery of power prices in regional electricity markets and the value of regulated utility assets to its long-term financial health.

TOP STORIES

2. **TRANSPORT:** Va. oil train derailment sparks fire, calls for oversight

3. **ELECTRICITY:** NRG's Crane tells Houston that change is coming ... eventually

4. **LNG:** Cameron project wins favorable FERC impact assessment

ELECTRICITY

5. **UTILITIES:** ComEd real-time pricing customers reaped big savings in '13

6. **UTILITIES:** Southern looks to forge 'settlement' over rising costs at next-gen coal plant

7. **UTILITIES:** Government bank helps Japanese power companies deal with fuel costs

OIL AND GAS

8. **ACQUISITIONS:** More deals, fewer dollars as oil companies continue swapping assets

9. **OIL AND GAS:** Green group accuses Calif. of 'blatant violations of fracking disclosure rules'

10. **PEOPLE:** Oil spill commission press secretary joins enviro think tank

11. **OIL AND GAS:** Energy capital lands near top of dirty-air list

12. **EARNINGS:** Disappointing results for Shell as CEO again pledges turnaround

13. **FINANCE:** Shale drillers raising money on poorly rated bonds

14. **OIL AND GAS:** Legal concerns arise from $3M Texas fracking award

15. **OIL AND GAS:** Colo. bill to study fracking's effect on health fails in committee

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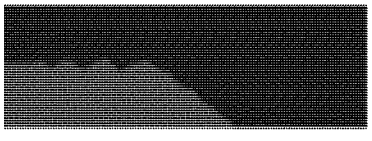

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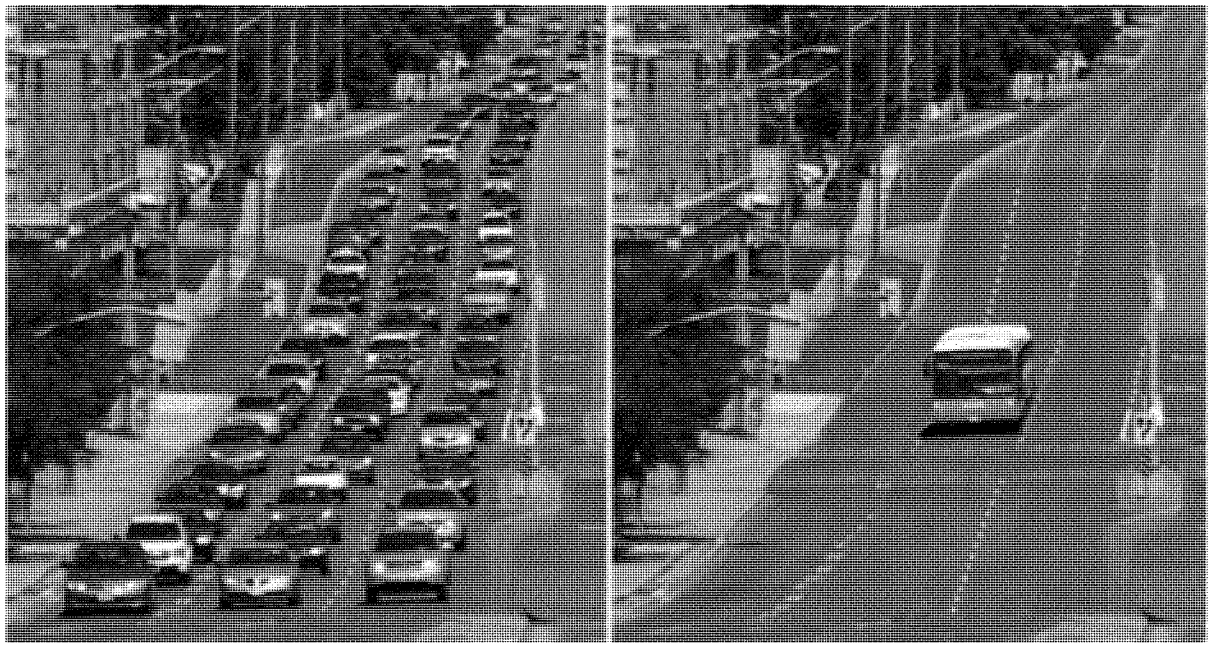

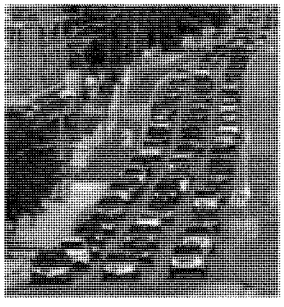

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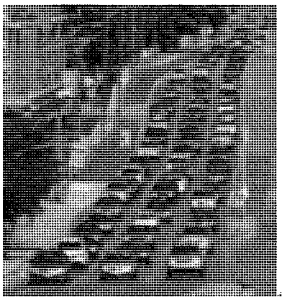

Air & Radiation Law News

for April 30, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Challenges Remain Despite Supreme Court Decision Reinstating EPA Cross-State Rule

The Environmental Protection Agency scored a victory when the U.S. Supreme Court reinstated the cross-state emissions rule for power plants, but changing market and compliance conditions may force the agency to rethink how the rule is implemented...

Air Pollution

Court Orders EPA to Propose Overdue National Standards for Ozone by December

A federal district court ordered the Environmental Protection Agency to propose by Dec. 1 delayed national ambient air quality standards for ozone (Sierra Club v. EPA, N.D. Cal., No. 13-2809, 4/29/14)....

Air Pollution

Environmental Groups Attack Proposal On Pennsylvania Power Plant Emissions

Pennsylvania's proposed regulations to control power plant emissions fall short because they don't require coal-fired plants to use the most effective, reasonably available technology for controlling nitrogen oxides emissions,...

Air Pollution

Supreme Court Upholds Cross-State Rule, Says EPA Interpretation of Law Reasonable

The U.S. Supreme Court on April 29 reinstated an Environmental Protection Agency rule intended to cost-effectively reduce pollution that crosses state lines, saying the agency reasonably interpreted the Clean Air Act (EPA v. EME Homer City...

Air Pollution

Wyoming Intends to Sue EPA Over Lead Plan

Wyoming has given notice of its intent to sue the Environmental Protection Agency for alleged failure to take action on the state's plan to address lead pollution. The plan is designed to ensure Wyoming's compliance with the 2008 national...

Climate Change

EPA Issues GHG Permit to Texas Company

A Texas renewable power producer received a final greenhouse gas prevention of significant deterioration (PSD) construction permit, a move that will allow the clean energy company to move ahead with development of a natural gas-fired, combined-cycle...

Climate Change

EPA Put Off Forwarding Power Plant Rule Last Fall With Eye on Midterms, Inhofe Says

Republican Sen. James Inhofe (Okla.) said April 29 he has confirmed that the Environmental Protection Agency held off on forwarding to the Federal Register its proposal to limit greenhouse gases from new power plants for more than two months...

Climate Change

Tornadoes May Have Been 'More Tragic' Without Forecast Investments, Official Says

The tornadoes that have hit the South in recent days could have been even "more tragic" if communities had not had early warning, a White House science adviser said April 29....

Energy

DOE Proceeds With Review of Cape Wind Loan Guarantee After Favorable Court Ruling

The Energy Department is proceeding with "active review" of an application for a loan guarantee by Cape Wind Associates LLC after a federal court decision in March upholding the Interior Department's approval of the company's...

Energy

Energy Department Aims to Double Electricity From Hydropower by 2030

The Energy Department is seeking to double the amount of electricity generated by hydropower by 2030, Secretary Ernest Moniz said April 29 as the department released a new assessment that said an additional 65 gigawatts of potential hydropower...

Sustainability

NRDC, Financial Firms Launch Index To Help Investors Avoid Fossil Fuel Stocks

The Natural Resources Defense Council has partnered with fund manager BlackRock and global index provider FTSE Group to provide investors with a road map to avoid stocks linked to fossil fuels....

Transportation

Administration's Transportation Plan Aims to Streamline Environmental Reviews

A range of measures to further streamline environmental reviews for surface transportation projects are included in the Obama administration's authorization proposal announced April 29 by Transportation Secretary Anthony Foxx....

Inside EPA's **Environmental Policy Alert**, 04/30/2014

http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-04/30/2014/menu-id-132.html

High Court's CSAPR Decision Triggers New Legal, Policy Hurdles For EPA

The Supreme Court's ruling reinstating EPA's Cross-State Air Pollution Rule (CSAPR) emissions trading program triggers a slew of new legal and regulatory hurdles before the agency can fully implement the rule, as it allows pending suits over CSAPR-related rules to resume and also is likely to require EPA to make updates to CSAPR.

Senate GOP Eyes Looming Efficiency Bill Floor Debate To Fight EPA Rules

Senate Republicans are stepping up calls to use looming floor debate over a long-pending energy efficiency bill as a vehicle to fight EPA regulations for coal-fired utilities, a move that expands the GOP's tactics for the legislation beyond forcing action on the Keystone XL pipeline but one that could create new hurdles for approving the bill.

In 6-2 Ruling, Supreme Court Reinstates EPA's Cross-State Air Pollution Rule

In a 6-2 ruling, the Supreme Court has reinstated EPA's Cross-State Air Pollution Rule (CSAPR), a cap-and-trade program to cut emissions of sulfur dioxide and nitrogen oxides. The majority opinion, written by Justice Ruth Bader Ginsburg, said EPA acted within its authority in how it created the trading program.

Latest Blogs

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EPA is moving its science advisor, Glen Paulson, from a slot advising the agency's administrator to a new

position as senior advisor to the assistant . . .

EPA Sends Final RFS 'Pathway' Rule For OMB Review

EPA has sent for White House Office of Management & Budget (OMB) pre-publication review its final rule designating new biofuel "pathways" to qualify under the . . .

Inhofe Investigates EPA's Alleged Climate NSPS Delay

Sen. James Inhofe (R-OK) is investigating what he alleges is EPA's plan to intentionally delay finalizing its first-time utility climate rule until after the 2014 . . .

Greenwire

AIR POLLUTION:

EPA wins big as Supreme Court upholds cross-state rule

Jeremy P. Jacobs, E&E reporter

Published: Tuesday, April 29, 2014

In a landmark win for the Obama administration and public health advocates, the Supreme Court today resurrected U.S. EPA's program for air pollution that drifts across state lines after a lower court had thrown it out.

The 6-2 decision upholds EPA's Cross-State Air Pollution Rule, or CSAPR, a regulatory regime for 28 Eastern states that requires upwind states to cut emissions that cause downwind states to exceed the agency's air standards.

A federal appellate court invalidated the program in August 2012 after it was challenged by utilities and several states, holding that EPA had improperly relied on a cost analysis in determining how much states must cut emissions and superseded state authority by implementing federal plans before states were allowed to draft their own.

Justice Ruth Bader Ginsburg rebuffed both of those findings today.

In a 32-page opinion, Ginsburg wrote that the court is largely bound by its precedent in 1984's *Chevron v. Natural Resources Defense Council*, which held that if a statute's language is ambiguous, courts must defer to an agency's interpretation.

The Clean Air Act, and specifically the good neighbor provision at issue, does not tell EPA what factors to consider.

"Under *Chevron*, we read Congress' silence as a delegation of authority to EPA to select from among reasonable options," Ginsburg wrote.

At times quoting from Scripture, Ginsburg noted that interstate air pollution is a complicated problem, since multiple upwind states may contribute to a downwind state exceeding EPA's National Ambient Air Quality Standards for pollutants like ozone, nitrogen oxides (NOx) and sulfur dioxide (SO2).

EPA, therefore, had to grapple with the "thorny causation problem" of air pollution in Midwestern states plaguing Eastern states, Ginsburg wrote, so using a cost-benefit analysis to determine how to most efficiently make reductions is logical.

"Using costs in the Transport Rule calculus, we agree with EPA, also makes good sense," Ginsburg wrote. "Eliminating those amounts that can cost-effectively be reduced is an efficient and equitable solution to the allocation problem the Good Neighbor Provision requires the Agency to address."

The ruling comes after a string of losses for EPA's cross-state programs. The agency has been trying to implement the good neighbor provision since 1998. In 2005, EPA issued its Clean Air Interstate Rule, or CAIR, but it was thrown out by federal judges in 2008 for not doing enough to protect public health.

CAIR was left in place while EPA tried again. In August 2011, it finalized CSAPR, which curtailed NOx and SO2 emissions to address ozone, particulate matter and other pollution problems in downwind states. CSAPR outlined a two-step process. First, EPA screened states to make sure they contributed more than 1 percent to a downwind state exceeding EPA air standards. If a state satisfied that requirement, EPA used cost allocation to determine how much that upwind state could reduce its emissions using complex modeling.

The agency then imposed those "budgets" on states through a federal implementation plan, or FIP.

In addition to the cost analysis, states also challenged EPA's going forward with a FIP before a state could issue its own implementation plan, or SIP. The D.C. Circuit agreed with that argument in tossing out the rule (*Greenwire*, Aug. 21, 2012).

But Ginsburg, joined by the liberal wing of the court and Chief Justice John Roberts and Justice Anthony Kennedy, held that the Clean Air Act does not require EPA to give states another crack at a SIP after the agency found the state's good neighbor plans inadequate.

"In short, nothing in the statute places EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations," Ginsburg wrote. "By altering the schedule Congress provided for SIPs and FIPs, the D.C. Circuit stretched out the process. It allowed a delay Congress did not order and placed an information submission obligation on EPA Congress did not impose."

Two conservative justices, Antonin Scalia and Clarence Thomas, dissented from the opinion. A third, Justice Samuel Alito, recused himself from the case.

Scalia said the majority went too far in deferring to EPA's judgment, casting the case as an instance where "unelected agency officials" are exercising "broad lawmaking authority."

Backing the reasoning of the D.C. Circuit opinion, Scalia said the Clean Air Act requires upwind states to only cut the proportional amount that they contribute to downwind states. EPA cannot, Scalia wrote, require states to reduce emissions by more than they are responsible for a downwind state exceeding a NAAQS.

"Today, the majority approves that undemocratic revision of the Clean Air Act," Scalia wrote.

Notably, Ginsburg indicated agreement on this point but said the hypothetical situation isn't a reason to invalidate the entire rule. If a state does end up having to reduce emissions by more than its share of a neighboring state's pollution, that state could bring a "particularized, as applied challenge" to EPA's program, she wrote.

Reactions

EPA and environmental and public health groups applauded the ruling, while industry representatives lamented it.

"Today's Supreme Court decision is a resounding victory for public health and a key component of EPA's efforts to make sure all Americans have clean air to breathe," EPA Administrator Gina McCarthy said in a statement. "The Court's finding also underscores the importance of basing the agency's efforts on strong legal foundations and sound science. This is a big win for the nation's public health and a proud day for the agency."

The American Lung Association, which asked the court to review the D.C. Circuit ruling, said "millions of Americans will breathe easier" because of the high court's decision.

The association noted that when EPA adopted the rule in 2011, it estimated that once CSAPR was fully implemented, it would prevent up to 34,000 premature deaths and 400,000 cases of aggravated asthma.

"People who live downwind of these major polluters need this decision, because the ozone and particle pollution in their communities threatens their lives," the association said.

Lawyers who represent industry groups, on the other hand, said the ruling unfairly disregarded arguments from states that EPA's actions threatened the "cooperative federalism" on which the Clean Air Act is based.

Attorney Scott Segal, who represents the utility industry at Bracewell & Giuliani and directs the Electric Reliability Coordinating Council, said the ruling could portend federal overreach when the government proposes closely watched greenhouse gas standards for existing power plants later this summer.

"As we stand at the precipice of new carbon regulations, we are concerned that EPA may be emboldened to take actions that undermine cooperation with the states," Segal said. "If they so do, there could be severe consequences for electric reliability and affordability. Let's hope that EPA pays more attention to the better angels of its nature and allows for states to truly formulate implementation plans with flexibility."

Click here for the opinion.

BIOFUELS:

'Excruciatingly slow' EPA approvals hurting startup companies

Amanda Peterka, E&E reporter

Published: Tuesday, April 29, 2014

NexSteppe, a startup seed company headquartered in San Francisco, is hoping to capitalize on the federal renewable fuel standard.

The company has developed two varieties of sorghum, a type of annual grass, engineered specifically for bioenergy. NexSteppe believes fuels made from the crops could help refiners comply with their annual biofuel mandates under the RFS.

But the petitions for NexSteppe's sorghum crops are mired in a regulatory abyss at U.S. EPA, among more than 30 renewable fuel petitions that the agency has yet to act on. Biofuels made from those crops and technologies do not yet count for credit under the renewable fuel standard, so there's no incentive for refiners to use the fuel.

Biofuel advocates say companies like NexSteppe represent the real-world effects of the long and uncertain approval process for new renewable fuel technologies. National Sorghum Producers submitted its first petition for NexSteppe nearly two years ago. In the face of the delays, NexSteppe CEO Anna Rath said the company is focusing on other countries around the world -- especially Brazil.

"Seed companies develop hybrids specially for this market, and all of a sudden they're in just a wait situation," said Tim Lust, CEO of the National Sorghum Producers. "The U.S.'s regulatory system has slowed stuff down to the point that our private companies are just pulling out."

The 2007 renewable fuel standard required the nation to go beyond corn ethanol to next-generation biofuels. It spurred the launch of several biofuels companies attempting to develop new technology to create advanced biofuels, as well as seed companies focused on engineering crops specifically for bioenergy production.

EPA, though, must first approve new renewable fuel inputs, technologies and products -- collectively known as "pathways" -- before they can qualify for the credits that refiners use to show compliance with the standard. The approval process is based on a life-cycle greenhouse gas review; a fuel qualifies as an advanced biofuel if it reduces greenhouse gas emissions by 50 percent compared to a gasoline base line.

The lengthy approval process has long been under fire by biofuel advocates. Critics say EPA is keeping new fuels out of the market by delaying the reviews, while at the same time proposing to lower the advanced biofuel mandate on the grounds that there aren't enough fuels available.

The agency has been "excruciatingly slow" to approve new pathways, said Biotechnology Industry Organization Executive Vice President Brent Erickson.

An analysis last May by researchers at the University of Illinois, Urbana-Champaign, found that companies that petitioned the agency for new next-generation fuel types have had to wait an average of 1.37 years for a decision. According to the Advanced Biofuels Association, some companies have gone out of business awaiting approval of their technologies.

"These individual facilities don't know whether to sign a contract with a grower for this coming year, or whether it will be another year," Lust said. "It's just creating lots of challenges to the entrepreneurs that are starting these facilities."

Some of the pending applications are controversial, including a petition to allow palm oil-based biodiesel. EPA has so far approved 12 advanced pathways, including cellulosic ethanol made from crop residues and sugar cane ethanol. According to the Office of Management and Budget, EPA sent a new pathways rule to the White House yesterday, but it's unclear when it will go into effect.

When approval does come, it can make a big difference.

"If you're building a plant that has a technology that is dependent on a particular feedstock, say sweet sorghum, and you go ahead and make that investment without having the approval ahead of time, or at

least a really high degree of confidence you're going to get the approval, the risks are very, very high," said John Urbanchuk, a biofuels economist and managing partner at ABF Economics.

In late 2012, EPA approved grain sorghum -- the type that is fed to animals as livestock feed -- as a feedstock for biofuels. Depending on the type of facility it is produced in, grain sorghum counts toward either conventional ethanol or advanced biofuel. It can be seamlessly substituted for corn in conventional ethanol production.

Spurred partly by the approval and partly by drought in the United States, grain sorghum production has taken off in the United States. In the last two years, it has increased by 40 percent. About 40 percent of the nation's 8 million acres currently goes into fuel production today.

Chromatin Inc., a seed company formed in 2010, has capitalized off the market in the United States. It has formed partnerships with major ethanol companies to take its sorghum as a feedstock.

"We're running this in the way that the big ag companies have produced corn -- hundreds of new hybrids a year," said Daphne Preuss, CEO of Chromatin.

NexSteppe, which formed three years ago with the goal of finding the best potential source of bioenergy, is eyeing different types of sorghum.

Working in collaboration with DuPont, the company developed a high-biomass sorghum that can grow 20 feet tall in four months and is bred to have low moisture at the time of harvest, making it cheap to transport and process. The company's other sorghum, a type of sweet sorghum, is similar to sugar cane but needs about half the water.

Both sorghum have all the properties of an ideal feedstock: low inputs, high yield, an existing supply chain infrastructure, return on investment for growers and great genetic diversity.

"Our sorghums have been designed for industrial processes, and that makes them pretty different from what's come before," Rath, the CEO, said last week.

National Sorghum Producers submitted the petition to EPA for NexSteppe's high-biomass sorghum in August 2012, and the petition for sweet sorghum in December 2013, according to Lust.

Rath said she believes sorghum seems like a natural fit for the RFS because its water effectiveness contributes to life-cycle emissions benefits, but the sorghum company does not know when EPA will finish its review.

EPA has acknowledged the delays. Last month, the agency announced it would revamp reviews by making internal processes more efficient and developing a new step-by-step guidance for petitioners. EPA also plans to launch an automated review process for previously approved inputs and technologies. The review is expected to take six months, during which time EPA will only weigh "high priority" petitions (*Greenwire*, March 19).

"Our objectives are a more efficient and transparent process with improved public service," EPA said.

But Rath said EPA's action further complicates the landscape because companies do not know how the approval process will look at the end of the six-month review.

"The EPA has gotten some push-back on the way that it's approved other feedstocks, so the way that new feedstocks get approved might change," Rath said.

NexSteppe's first customers for its high biomass sorghum are Brazilian biomass power producers, Rath said. Brazil is experiencing a shortage of hydropower due to drought, and the company hopes its sorghum can act as a replacement. The price of bagasse, a sugar cane residue used for ethanol production, has also increased, making the environment more favorable for drop-in energy crops not subject to price fluctuations in big commodity crops.

The company announced last week that it had sold more than 2,500 acres of its high biomass sorghum for biopower in Brazil, bringing it to 65 percent of the bioenergy sorghum market in the country.

"I believe power is going to be an enabler of cellulosic biofuels," Rath said. "What we're doing in Brazil right now in power is proving a dedicated cellulosic feedstock for an industrial process at scale."

There is one company in the United States, Southeast Biofuels, planning a commercial-size biofuels facility in Florida capable of converting sweet sorghum to fuel.

Rath said that she remains "optimistic that [the petition review] gets done in the relevant time horizon so people trying to build facilities using some of these feedstocks can use it."

CLIMATE:

Delay of new-power-plant rule politically motivated -- Inhofe

Jean Chemnick, E&E reporter

Published: Tuesday, April 29, 2014

The Senate's top climate change skeptic is accusing U.S. EPA of intentionally delaying publication of its proposal for new power plants' greenhouse gas emissions to shield Senate Democrats from taking a politically risky vote on the rule.

Sen. James Inhofe (R-Okla.) said in a letter to EPA Administrator Gina McCarthy that the unusually lengthy hiatus between the proposal's rollout on Sept. 20 and its publication in the *Federal Register* on Jan. 8 appears calculated.

"It appears that the delay in the proposals publication may have been motivated by a desire to lessen the impact of the President's harmful environmental policies on this year's mid-terms," he wrote in the letter sent yesterday.

The Clean Air Act sets a deadline of one year for a rule to be finalized after a proposal is published in the *Register*. An agency rulemaking is not usually published on the day of its unveiling, but Inhofe notes that if the New Source Performance Standard (NSPS) had been published last Sept. 20, a final rule would have been due this year.

That timeline would have allowed congressional Republicans to bring to the floor a resolution under the Congressional Review Act to strike down the final rule, forcing Democrats locked in tight races in fossil-fuel-rich states like Alaska and Louisiana to vote to preserve EPA's authority -- or to buck their party's leadership.

"Now, because of EPA's delay, the proposal will not need to be finalized until well after this election cycle," Inhofe wrote.

McCarthy said during a January Senate hearing and elsewhere that the long hiatus between the rollout

and publication of the NSPS proposal was due to a delay at the *Federal Register* stemming from last fall's government shutdown. But Inhofe points to correspondence between his office and the Office of the Federal Register that shows EPA didn't transfer the rule until Nov. 25.

EPA said in a statement that the three-week government shutdown created a work backlog that contributed to the delay.

"This is a normal part of the rulemaking process, and the time needed for these procedures varies for each rule," the agency said.

"EPA submitted the proposal to the *Federal Register* on November 25, 2013," it continued. "After completing the routine interagency quality control processes, EPA worked with the *FR* to ensure that the proposal would be published on a date when all personnel were back in the office after the holiday and available to respond to inquiries about the proposal."

Inhofe has promised to investigate whether the late publication date was politically motivated.

NUCLEAR:

Cost estimates for controversial S.C. project skyrocket

Hannah Northey, E&E reporter

Published: Tuesday, April 29, 2014

A controversial and over-budget nuclear facility in South Carolina that has strong GOP backing could cost more than $30 billion to build and operate, according to a new federal analysis released today.

The Energy Department's cost analysis of the Mixed Oxide (MOX) Fuel Fabrication Facility at the Savannah River Site in South Carolina bolsters the Obama administration's recent decision to place the project in cold standby.

The MOX facility is part of a nonproliferation agreement with Russia to dispose of 34 metric tons of weapons-grade plutonium. Construction costs, once estimated in 2008 to hover around $5 billion, are now pegged at $10 billion, according to the report.

DOE is conducting a separate root cause analysis to determine why costs skyrocketed. That report has not yet been released.

But Sen. Lindsey Graham (R-S.C.), who last year threatened to place a hold on Energy Secretary Ernest Moniz's nomination over the project, disagreed with the report's findings and vowed to fight the White House plan to shutter the facility.

"I don't agree with their number," Graham said during an interview today.

The Palmetto State Republican on Twitter today said that he had spoken with Moniz yesterday and the agency has agreed to continue building the MOX plant through the end of the fiscal year, which ends Sept. 30.

"As member of Senate Appropriations [Committee], I will work to ensure the Obama Administration's FY15 budget request doesn't become a reality," the senator tweeted. "As long-time supporter of #MOX, I will continue to work with my colleagues in Senate & House, GOP and Dem, to push #MOX program

forward."

The National Nuclear Security Administration, an agency within DOE, said today that it will advance construction through September and retain "key nuclear engineers and other highly-skilled workers that will be needed regardless of the path forward." In fiscal 2015, NNSA intends to work with the contractor to place the project in cold shutdown.

"We are continuing our ongoing discussions with Congress as they review and evaluate the FY 2015 budget request," the agency said in a statement.

Graham said during an interview that DOE's decision to continue construction through the current fiscal year was "good news" but not a "permanent fix."

Opponents of the project welcomed the report.

"The report affirms that the cost of the MOX program is unsustainable and that other, cheaper options must be fully analyzed before the MOX program continues beyond September 2014," Tom Clements, director of Savannah River Site Watch, said in a statement. "Disposal of plutonium as nuclear waste is clearly the cheaper option and must be vigorously pursued while the MOX program is being placed on standby."

AIR POLLUTION:

EPA to finalize wood-heater rule under settlement with states, enviros

Daniel Lippman, E&E reporter

Published: Tuesday, April 29, 2014

U.S. EPA has settled a lawsuit filed by seven states and environmental groups on wood-heater emissions with an agreement that the agency will release overdue regulations next year that would make some of those products 80 percent more efficient.

In a consent decree at the U.S. District Court for the District of Columbia, EPA says it will publish the final rule by Feb. 3, 2015, to update emission limits on residential wood heaters. It published the proposed rule this February and comments are due by May 5.

"I commend EPA for acknowledging its overdue obligation to update its air pollution standards for wood heaters, and for agreeing to finalize those standards by early next year," New York Attorney General Eric Schneiderman (D) said in a statement. "My office will continue to engage EPA and the other states to ensure that the standards safeguard public health."

The seven states -- Connecticut, Maryland, Massachusetts, New York, Oregon, Rhode Island and Vermont -- and environmental groups, including the Environmental Defense Fund, had sued EPA last October to compel the agency to issue the rules (*Greenwire*, Oct. 9, 2013).

EPA had drafted a rule on these wood heaters but when it went to the White House Office of Management and Budget for review in late July last year, OMB failed to act, said Earthjustice attorney Timothy Ballo, who was involved in the case. OMB did not immediately respond to a request for comment.

"The mix of products has changed so we're seeing a lot more outdoor wood boilers, which have really

grown in popularity," Ballo said. "They weren't regulated under the [1988] standards, [and] we want strong standards for products that people are actually buying a lot of today."

The rules -- part of the Clean Air Act's New Source Performance Standards -- are designed to cull fine particulate matter from wood smoke. Particulates, or soot, are linked to asthma, cardiovascular disease, and short-term irritation of the eyes, throat and lungs. Wood-burning devices contribute to 13 percent of all soot pollution in the country, according to EPA data.

Ballo noted that these regulations are supposed to be reviewed and updated every eight years, which did not happen in this case.

EPA has come under some GOP criticism for the rule, with Missouri Rep. Blaine Luetkemeyer proposing a bill earlier this month to stop the regulation (*E&E Daily*, April 8).

"These proposed new wood stove rules by the EPA would be disastrous for small businesses, consumers, and the economy in rural Missouri, particularly at a time when the price of other heating fuels is skyrocketing," Luetkemeyer said in a statement at the time. COAL:

Obama admin says Alaska's anti-lawsuit measure may run afoul of federal law

Manuel Quiñones, E&E reporter

Published: Tuesday, April 29, 2014

The federal Office of Surface Mining is taking issue with a 2003 Alaska law meant to discourage what its promoters call "frivolous lawsuits" by environmental groups.

OSM said the law runs counter to the state's strip-mining regulatory program that the federal agency approved in 1983 under the Surface Mining Control and Reclamation Act.

Allen Klein, OSM's Western regional director, said in a recent letter to Alaska officials that the state's enactment of House Bill 145 "significantly changes how state courts may authorize award of fees under the Alaska program in civil actions brought to compel compliance with the program and is not in accordance" with SMCRA.

H.B. 145, enacted under former Gov. Frank Murkowski (R), established a "loser pays" system in litigation against environmental regulators.

In other words, groups challenging state decisions and companies in court run the risk of being saddled with the other side's attorney fees. The law may also keep the groups from recovering attorney fees.

Many congressional Republicans have wanted to enact such measures to stem the tide of environmental lawsuits against resource-extraction projects. Alaska has been a pioneer in that arena.

Former Alaska House Speaker John Harris (R) said in 2007 that the previous regime protecting groups "created a cottage industry for outside environmental groups to sue anyone trying to build something in Alaska without having to worry about the consequences of losing."

He added about H.B. 145, "The idea is to allow the person who got sued to recover some of the costs in defending the litigation. The concept is to create a consequence from filing lawsuits and to make people

think twice before filing a frivolous lawsuit."

In 2012, several environmental groups skeptical of new coal mining projects in Alaska complained to OSM. They said the state's law contradicted SMCRA provisions meant to facilitate citizen lawsuits.

They also argued that H.B. 145, upheld by the Alaska Supreme Court in 2007, amounted to a change in Alaska's coal mine regulatory program without obtaining OSM approval.

The groups, represented by Trustees for Alaska, told OSM that Alaska's law "serves as a significant deterrent to citizens bringing suit in the Alaska courts" to enforce strip mining laws and "inhibits citizens from finding attorneys who are able and willing to represent them."

The Alaska Department of Natural Resources has told OSM that H.B. 145 didn't change the OSM-approved Alaska strip-coal mining program because the agency still has the discretion to award groups' attorney fees in administrative matters. When it comes to the courts, the agency argued that judges have discretion, too.

OSM was not convinced. "I am notifying you that a state program amendment is necessary," Klein wrote on April 21, giving the state 60 days to submit an amendment.

"Once received," he wrote, "OSMRE will review the proposed amendment on its merits and either approve or disprove it in accordance with the regulatory review requirements."

DNR is standing its ground. "Our position has been that House Bill 145, which passed more than a decade ago, did not change the Alaska coal program. More than a decade after the fact, OSMRE is telling us the opposite," the agency said a statement. "We're reviewing the letter and will respond."

In a separate Alaska case, OSM is reviewing whether the state allows a coal mining company in the state to operate without permits.

ETHANOL:

Brazil's exports to plummet after U.S. cuts biofuel targets

Published: Tuesday, April 29, 2014

Declining biofuel mandates in the United States are likely to produce Brazil's lowest levels of ethanol exports in more than a decade, according to analysts. U.S. EPA has proposed cutting the amount of ethanol blended with motor fuel.

Brazil, the world's largest shipper, will send out about 395.8 million gallons of ethanol this year, down 46 percent from 2013 levels, said Enrico Biancheri, a commercial officer at Biosev SA.

Brazil's ethanol exports have fizzled not only because of the changing biofuels mandate but because the United States currently has ample supplies of corn and some of Brazil's corn crops struggled during the winter season, industry observers say.

"Demand from the U.S., which absorbs about 70 percent of our ethanol, may drop significantly," Biancheri said. "Besides, they have plenty of cheap corn right now, and pricewise, it doesn't make sense to ship to the U.S." (Lucia Kassai, Bloomberg, April 28). **-- SP**

MOTOR VEHICLES:

DOE-automakers partnership has spurred technology gains -- study

Sean Reilly, E&E reporter

Published: Tuesday, April 29, 2014

In 1970, then-President Nixon summoned government and car industry researchers to pursue the shared goal of producing "an unconventionally powered, virtually pollution-free automobile" -- by 1975.

While Nixon's timetable proved a stretch, the industry-government research partnership has nonetheless produced hundreds of technological accomplishments over the years, according to an overview released yesterday.

The Department of Energy's hydrogen fuel-cell program, for example, claims more than 360 patents, while its vehicle technology efforts helped to cut the cost of automotive lithium-ion batteries by more than half between 2008 and 2012, the Bipartisan Policy Center's American Energy Innovation Council says.

Although definitively measuring the practical payoff is difficult -- in part because automakers' vehicle marketing and development plans are corporate secrets -- "the evolving partnership has grown into a model of private sector consultation ... and deserves emulation in other areas of DOE's portfolio of pre-commercial energy research," the report says.

Its release coincides with a Senate Appropriations Committee hearing this afternoon at which Energy Secretary Ernest Moniz, White House Office of Science and Technology Policy Director John Holdren and several other senior officials are set to testify on the role of federal spending in promoting innovation.

The report, which draws on earlier, generally favorable reviews by the National Academy of Sciences, also finds more consistency across administrations than is usually presumed.

Over the years, DOE's vehicle technology efforts have been rebranded from the Partnership for a New Generation of Vehicles launched by the Clinton administration to the George W. Bush administration's FreedomCAR program to the Obama White House's U.S. DRIVE initiative.

Despite the perception that the first focused on diesel hybrids, the second on hydrogen fuel-cell research and the last on battery electric and plug-in hybrids, an analysis of DOE spending from fiscal 1991 through 2012 on vehicle and hydrogen fuel-cell activities shows that 86 percent of the money across the three administrations went to four areas: materials research and development; internal combustion R&D; fuel cells and hydrogen R&D; and electric and hybrid drive, batteries and power electronics, according to the report.

Total spending in those areas during that time -- not counting funding from the 2009 American Recovery and Reinvestment Act -- amounted to about $5 billion in constant 2005 dollars, the study concludes.

The government's first try at a partnership approach, however, was something of a flop.

Nixon had set the 1975 target in a broader message to Congress on environmental quality issues. But it wasn't until 1976 that lawmakers passed the Electric and Hybrid Vehicle Research, Development and Demonstration Act, which called on the federal government to buy or lease up to 7,500 electric and/or hybrid electric vehicles, as well as create a loan guarantee program to help bring those cars to market.

The bill, which was passed over a veto by Nixon's successor, President Gerald Ford, ultimately led to the

government's purchase of 1,100 vehicles, but the goals of cutting pollution and reducing demand for oil remained a high-profile R&D area for what became DOE in 1977, the report says.

WHITE HOUSE:

Obama checks out electric vehicles in Philippines

Robin Bravender, E&E reporter

Published: Tuesday, April 29, 2014

President Obama got a sneak peek at electric bus prototypes in the Philippines today before wrapping up his tour of Asia.

Obama inspected a U.S.-made electric mini-bus prototype that's slated to replace some of the diesel-fueled Jeepney vehicles that are popular forms of public transit in Manila and are known for contributing to air pollution and snarling traffic in the capital city.

The new vehicles are being developed by Global Electric Transportation, a 50-50 venture between American and Filipino investors to develop a connected mass transport system, according to a White House pool report. Vancouver, Wash.-based Pangea Motors is the exclusive provider and distributor of electric vehicles for the venture.

The electric buses, dubbed the City Optimized Managed Electric Transport (COMET), are scheduled to roll out in Manila in May. They'll operate on a fare card system rather than the cash fare scheme on traditional Jeepney buses.

Over the next three years, about 15,000 COMET vehicles are expected to be deployed, replacing about 30,000 Jeepneys that will be taken off the roads.

ClimateWire -- Wed., April 30, 2014 -- **Read the full edition**

1. ADAPTATION: Coastal storm resilience measures slowly moving into 'tornado alley'

Last Sunday and Monday night, tornadoes struck in Arkansas and Oklahoma, killing at least 35 people and leaving the little town of Vilonia, Ark., looking as if a giant maul had battered its homes. The severe weather continued yesterday and left residents of "tornado alley" in the southern and central United States to debate how they might have been better prepared. The answer might be found just a few miles farther south, where communities on the Gulf and Atlantic coastlines have been adapting to hurricanes -- intensified by climate change -- for several years.

2. TRANSPORTATION: DOE's advanced vehicle manufacturing loans come under attack in Senate

Robust federal investment in research and development programs is central to ensuring U.S. global competitiveness, lawmakers on both sides of the aisle said yesterday at a Senate Appropriations Committee hearing on U.S. innovation. But with a severe strain on the budget, senators expressed concern that certain federally supported programs could take a hit.

TODAY'S STORIES

3. COAL: $5.5B Kemper carbon capture project to be delayed until 2015

4. RESEARCH: National Academy of Sciences lays out questions for future Arctic research

5. MARKETING: How tapping into consumers' identities can help them buy sustainably

6. WIND: For now, industry hangs its hopes on Texas -- AWEA report

7. BUSINESS: Companies invest to protect against climate change, but small steps dominate -- study

8. STATES: Wash. governor wants to 'eliminate' coal

9. AGRICULTURE: Monsanto launches initiative to save water, reduce nitrogen fertilizer use

10. GLACIERS: Deadly avalanche, 'closed' Everest blamed on climate change

11. OCEANS: Miami-Dade County fighting 'inertia' on sea-level-rise plan

12. ADAPTATION: World's megacities are dropping below sea level

13. NATIONS: France's energy minister pledges 10,000 green jobs

E&ETV's OnPoint

14. RENEWABLES: Geothermal Energy Association's Gawell discusses challenges facing industry in U.S.

EnergyWire -- Wed., April 30, 2014 -- **Read the full edition**

1. ELECTRICITY: In bankruptcy filing, Energy Future looks for another reboot

Energy Future Holdings Corp., the Texas power company formerly known as TXU Corp., yesterday filed for Chapter 11 bankruptcy less than seven years after emerging from a record leveraged buyout that relied on an outlook of strong natural gas prices.

TOP STORIES

2. OIL AND GAS: It's the private sector, not Congress, that can crack Russia energy monopoly -- EIA chief

3. FINANCE: One-stop tool for fossil-fuel divestment aims for the mainstream

4. OIL AND GAS: Permian Basin is holding onto more water, complicating production -- report

ELECTRICITY

5. GRID: Summer power outlook good for New England, but new resources are needed -- ISO

6. ELECTRICITY: FirstEnergy nixes winter surcharge for residential customers

7. ELECTRICITY: Indian tribes increasingly flex negotiating muscle, costing utilities

OIL AND GAS

8. EARTHQUAKES: States teaming up to discuss shaking and drilling

9. EARNINGS: BP upbeat about restructuring as profit slides

10. REGULATION: Texas overhauls oil and gas website as it adapts to new compliance rules

11. PEOPLE: Suncor ushers in new chairman as predecessor retires

12. REGULATION: N.D. governor rejects special session for oil boom needs

13. EARNINGS: Cheniere CEO's pay more than doubles

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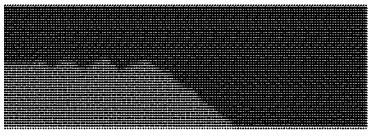

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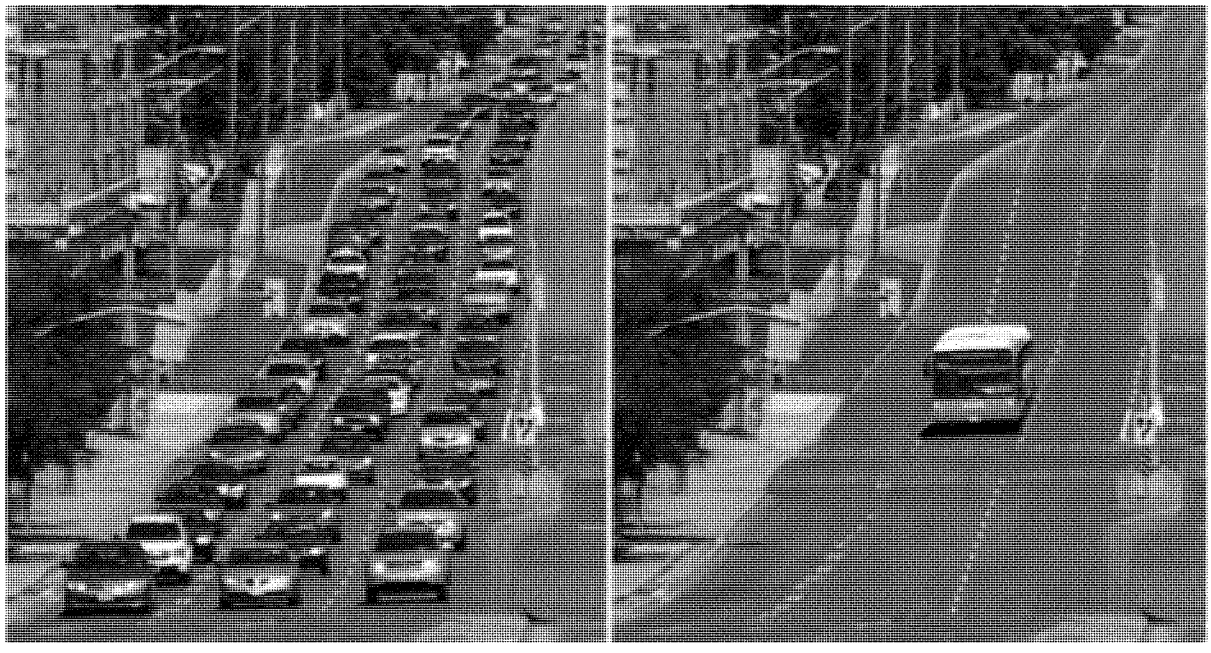
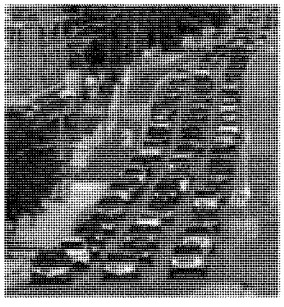
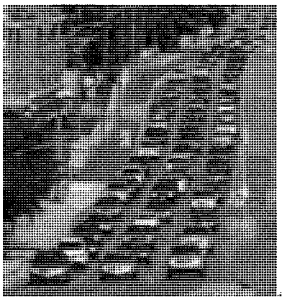




To: Allnutt, David[Allnutt.David@epa.gov]; Anderson, Lea[anderson.lea@epa.gov]; Anderson, Steve[Anderson.Steve@epa.gov]; Aranda, Amber[aranda.amber@epa.gov]; Averback, Jonathan[Averback.Jonathan@epa.gov]; Bennett, Karen[Bennett.Karen@epa.gov]; Bessette, Suzanne[Bessette.Suzanne@epa.gov]; Bogoshian, Matthew[Bogoshian.Matt@epa.gov]; Branning, Amy[Branning.Amy@epa.gov]; Bunker, Byron[bunker.byron@epa.gov]; Chapman, Apple[Chapman.Apple@epa.gov]; Chester, Steven[Chester.Steven@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Crum, Lynda[Crum.Lynda@epa.gov]; Crystal, Roy[crystal.roy@epa.gov]; Davis, Julian[davis.julian@epa.gov]; Dickinson, David[Dickinson.David@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Doster, Brian[Doster.Brian@epa.gov]; Dubey, Susmita[dubey.susmita@epa.gov]; Dubois, Roland[Dubois.Roland@epa.gov]; Embrey, Patricia[Embrey.Patricia@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Froikin, Sara[Froikin.Sara@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Graham, Cheryl[Graham.Cheryl@epa.gov]; Hannon, John[hannon.john@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Hoffman, Howard[hoffman.howard@epa.gov]; Hogan, Stephanie[Hogan.Stephanie@epa.gov]; Holmes, Carol[Holmes.Carol@epa.gov]; Horowitz, Michael[horowitz.michael@epa.gov]; Igoe, Sheila[Igoe.Sheila@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Jordan, Scott[Jordan.Scott@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Kataoka, Mark[Kataoka.Mark@epa.gov]; Klepp, Robert[Klepp.Robert@epa.gov]; Knapp, Kristien[Knapp.Kristien@epa.gov]; Lovett, Lauren[Lovett.Lauren@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Manners, Mary[manners.mary@epa.gov]; Marks, Matthew[Marks.Matthew@epa.gov]; Matthews, Julie[Matthews.Juliane@epa.gov]; McConkey, Diane[Mcconkey.Diane@epa.gov]; Mclean, Kevin[Mclean.Kevin@epa.gov]; Moore, Bruce[Moore.Bruce@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Niebling, William[Niebling.William@epa.gov]; Nguyen, Quoc[Nguyen.Quoc@epa.gov]; OECA-OCE-AED[OECAOCEAED@epa.gov]; Okoye, Winifred[Okoye.Winifred@epa.gov]; Orlin, David[Orlin.David@epa.gov]; Pastorkovich, Anne-Marie[Pastorkovich.Anne-Marie@epa.gov]; Prince, Michael[prince.michael@epa.gov]; Rodman, Sonja[Rodman.Sonja@epa.gov]; Rowland, John[Rowland.John@epa.gov]; Sagoff, Kendra[sagoff.kendra@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Schmidt, Lorie[Schmidt.Lorie@epa.gov]; Silverman, Steven[silverman.steven@epa.gov]; Smith, Kristi[Smith.Kristi@epa.gov]; Snyder, Doug[Snyder.Doug@epa.gov]; Srinivasan, Gautam[Srinivasan.Gautam@epa.gov]; Stahle, Susan[Stahle.Susan@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Thrift, Mike[thrift.mike@epa.gov]; Tierney, Jan[tierney.jan@epa.gov]; Ting, Kaytrue[Ting.Kaytrue@epa.gov]; Tsirigotis, Peter[Tsirigotis.Peter@epa.gov]; Versace, Paul[Versace.Paul@epa.gov]; Vetter, Rick[Vetter.Rick@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Wilcox, Geoffrey[wilcox.geoffrey@epa.gov]; Williams, Brent[Williams.Brent@epa.gov]; Williams, Melina[Williams.Melina@epa.gov]; Williamson, Timothy[Williamson.Tim@epa.gov]; Zenick, Elliott[Zenick.Elliott@epa.gov]; Wills, Jennifer[Wills.Jennifer@epa.gov]; Conger, Nick[Conger.Nick@epa.gov]; Blake, Wendy[Blake.Wendy@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]
From: Turley, Jennifer
Sent: Thur 4/24/2014 3:04:34 PM
Subject: Air & Radiation Law News for April 24, 2014



Air & Radiation Law News

for April 24, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Decisions on Air Permits, MATS Rules Are Some Cases to Watch, Conference Told

Cases involving time limits for the government to take action against companies accused of failing to get Clean Air Act permits to modify facilities are among issues worth watching in Michigan, along with challenges to federal emissions rules,...

Climate Change

Lobbying Surprisingly Strong on Climate Bill; Action Said to Hinge on Campaign Reform

Pronounced dead on arrival upon its introduction in 2013, the carbon tax bill authored by Sens. Barbara Boxer (D-Calif.) and Bernie Sanders (I/D-Vt.) is attracting a healthy bit of lobbying, suggesting both industry and environmental groups...

Climate Change

Minnesota Regulators Push Back Date To Apply Carbon Dioxide Values to 2019

The Minnesota Public Utilities Commission voted to delay the date by which utilities in the state should begin applying the costs of regulating carbon dioxide emissions to 2019....

Corporate Responsibility

China Drops Environmental Ban On Two Major Oil and Gas Companies

China's government removed its two biggest oil and gas companies from an environmental blacklist after their operations posted drops in pollution last year....

Energy

EPA Lists Top 100 Renewable Energy Users

The Environmental Protection Agency announced an updated list of the top 100 organizations that voluntarily use the most renewable energy power. According to the list from the agency's Green Power Partnership, the Intel Corp. is the...

Energy

FERC Commission Member Says Rolling Blackouts Possible in Midwest in 2016

A projected shortfall of generation in combination with extreme weather could lead to rolling blackouts for states served by the Midwest regional grid operator in 2016, Federal Energy Regulatory Commission member Philip Moeller said April...

Energy

GE, Mitsubishi Settle Wind Turbine Dispute

The International Trade Commission will terminate its investigation under Section 337 of the Tariff Act of 1930 into imports of variable speed wind turbines after the parties reached a settlement, according to a notice scheduled for publication...

Energy

Keystone XL Allies Revive Effort in Congress To Bypass Obama in Getting Project Approval

The Obama administration's latest Keystone XL delay is having an unintended consequence—the revival of the effort in Congress to circumvent the White House by forcing approval of the project....

Energy

Moniz Says Department Will Continue Processing LNG Export Licenses

The Energy Department will issue conditional approvals of licenses to export liquefied natural gas to non-free trade agreement countries when the timing is appropriate, Energy Secretary Ernest Moniz said April 23....

Energy

No Oil, Gas Drilling Allowed on Future Conservation Easements in Virginia

The Virginia organization that administers the state's predominant conservation easement program will no longer grant landowners conservation easements that permit the extraction of oil or natural gas from the surface of the property....

Enforcement

Hess to Pay New Jersey $33.5 Million To Settle MTBE Contamination Claims

Hess Corp. has agreed to pay $33.5 million to New Jersey to resolve claims that it contaminated the state's waters with the gasoline additive methyl tertiary butyl ether (In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig., S.D.N.Y.,...

Enforcement

PG&E Pleads Not Guilty to 12 Charges In 2010 Explosion That Killed Eight People

Pacific Gas & Electric Co. pleaded not guilty April 21 to 12 criminal charges arising from a natural gas

transmission pipeline explosion and fire in 2010 that killed eight people (United States v. Pacific Gas & Electric Co., N.D. Cal.,...

Enforcement

Virgin Island Utility Settles Clean Air Act Violations

The Virgin Islands Water and Power Authority agreed to pay a $700,000 penalty and improve its emissions controls for nitrogen oxides as part of a proposed consent decree announced April 23 (United States v. Virgin Islands Water and Power Auth.,...

Hazardous Waste

Neighbors of Settling Party Have Right To Intervene in Indiana Cleanup Action

Land owners alleging contaminants migrated onto their properties from an adjacent manufacturing site should have been allowed to intervene in a state cleanup action against the manufacturer, the Indiana Court of Appeals has ruled (Moran...

Hazmat Transport

Canada Limits Tank Car Use, Cuts Speeds In Response to Lac-Mégantic Rail Disaster

Canada is taking further decisive steps to address the safety of rail transport of oil and other dangerous goods in response to the July 2013 derailment and explosion that devastated the Quebec community of Lac-Mégantic, Transport Minister...

Hazmat Transport

First Responders Look to Industry For Aid on Crude-by-Rail Accidents

Representatives from emergency responder organizations told the National Transportation Safety Board on April 23 that first responders are unable to handle large-scale derailments involving trains transporting crude oil or other flammable...

Hazmat Transport

NTSB Chairman Calls for Fast Action

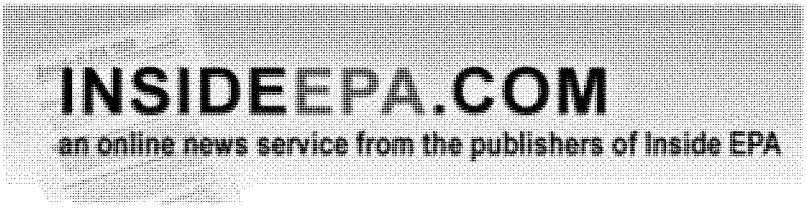
On U.S. Tank Car Design Standards

Deborah Hersman, outgoing chairman of the National Transportation Safety Board, urged the U.S. Transportation Department to act quickly to address the risk of transporting crude oil and ethanol by rail....

Radioactive Waste

Concerns Over Low-Level Waste Disposal Growing With Expansion of U.S. Oil Drilling

Oil fields are generating thousands of tons of low-level radioactive waste as the U.S. drilling boom leads to a surge in illegal dumping and states debate how much landfills can safely accept....



Inside EPA's **Weekly Report**, 04/25/2014

http://insideepa.com/Inside-EPA/Inside-EPA-04/25/2014/menu-id-67.html

California Cites Air Act Power In High Court Bid To Uphold Landmark LCFS

California is urging the Supreme Court to reject ethanol and oil companies' requests for the justices to overturn an appellate ruling upholding the state's landmark low carbon fuel standard (LCFS), saying the program is legal because it is protected by California's unique Clean Air Act power to set fuel standards stricter than federal rules.

Eastern States Eye Air Pollution Pact In Lieu Of New EPA Transport Rule

Eastern states seeking to cut ozone pollution transported downwind are considering entering into a "memorandum of understanding" (MOU) with upwind states on a coordinated plan for reducing ozone-forming emissions, which state officials say could obviate the need for a new federal interstate air pollution rule that EPA is developing.

Coal Utilities Fight OTC's Draft Plan For Short-Term NOx Emissions Limits

Coal utility sector officials are opposing a draft plan by Northeastern and Mid-Atlantic states in the Ozone Transport Commission (OTC) to impose new short-term limits on ozone-forming nitrogen oxides (NOx) emissions from power plants, warning it could shutter coal plants for which it would be cost-prohibitive to install NOx controls.

Greenwire

COAL:

Obama admin releases landmark 'black lung' rule

Manuel Quiñones, E&E reporter

Published: Wednesday, April 23, 2014

The Obama administration today released a final rule aimed at protecting coal miners from black lung disease over industry protests.

The rule attempts to reduce the amount of breathable coal dust in mining areas by overhauling how companies sample the air and increasing monitoring requirements, including personal continuous-dust testing machines in high risk areas.

Unveiling the rule at an event in Morgantown, W.Va., Labor Secretary Thomas Perez hailed what he called a significant advance in curbing a disease connected to the deaths of least 76,000 miners since 1968.

"Today we advance a very basic principle -- you shouldn't have to sacrifice your life for your livelihood," Perez said.

Mine Safety and Health Administration chief Joe Main said, "This final rule fulfills a longstanding commitment that I made on my first day with MSHA, and one to which I have been dedicated most of my working life."

Sen. Jay Rockefeller (D-W.Va.), who had been pressuring the administration to finalize the rule, called it "a big step forward" but added that "it is by no means the end of our fight to eradicate this scourge of coal miners."

The National Mining Association lobbied fiercely against the rule, arguing it relies on faulty science.

The administration has cited statistics showing black lung cases on the rise in the past several years after decades of declines, but NMA says increases are in a few isolated areas.

"Rather than follow the evidence with a focused response, MSHA has unfortunately decided to proceed with a less effective one-size-fits-all nationwide approach," trade group CEO Hal Quinn said in a statement today.

Quinn also accused MSHA of ignoring industry alternative suggestions, including personal protection devices for miners or rotating them away from high-dust areas.

"All of these measures and more have been recommended by NMA and are recognized in other industries to protect workers, yet all were ignored in favor of a standard that experts have concluded cannot be met by existing technologies," Quinn said.

Companies have expressed concern about compliance costs, especially amid a coal downturn. Patriot Coal Corp., for example, said today it could lay off several hundred miners because of production cuts.

MSHA said the new rule would cost underground coal mine operators about $27 million a year to implement. The cost for surface operators will be roughly $4 million per year, the agency said.

Congressional Republicans have tried to drop riders into appropriations legislation to keep the administration from releasing the black lung rule pending further research.

The Government Accountability Office conducted at least two probes of MSHA's rulemaking, one released in 2012 and another earlier this year. Both audits backed the rulemaking and MSHA's data use (*E&ENews PM*, April 9).

The rule includes some concessions to the industry. Companies, for example, won't have to cut miners' overall dust exposure by half, as originally proposed in 2010. And the new standards will also be phased in over two years.

The White House Office of Management and Budget has been reviewing the rule since last year. OMB held meetings in the fall with labor and coal company representatives.

Black lung disease -- also called miners asthma -- has become the subject of national debate in the wake of a Center for Public Integrity investigation that revealed industry practices making it harder for workers to receive black lung benefits.

CPI's investigation, which won the Pulitzer Prize last week, spurred changes in the Labor Department meant to make it easier for workers to obtain black lung benefits. Workers or their beneficiaries have received more than $45 billion in recent decades.

Rockefeller said health care and financial support are vital to those who are already suffering. "I'll do all I can to make sure these miners and their families get the benefits they need and so rightfully deserve," he said

Said Senate Health, Education, Labor and Pensions Chairman Tom Harkin (D-Iowa), whose father had black lung, "Because there is no cure for black lung, it is imperative that we protect miners from developing the disease in the first place, which is exactly what this rule will do."

COAL:

III. production makes comeback, drawing scrutiny from green groups

Manuel Quiñones, E&E reporter

Published: Wednesday, April 23, 2014

The coal industry in the Illinois Basin is more than holding its own in a rough time for mining.

At least two major coal companies have declared bankruptcy in recent years, and two major Appalachian mining states, West Virginia and eastern Kentucky, have endured large job losses and production declines. The Mountain State, for example, mined 120 million tons of coal in 2012, down from more than 160 million tons in 2001.

Meanwhile, coal production in the Illinois Basin -- which includes most of Illinois and parts of Indiana and western Kentucky -- has increased to almost 50 million tons in 2012 from 33 million tons in 2009, according to the federal Energy Information Administration.

Boasts Phillip Gonet, president of the Illinois Coal Association: "Illinois is the Saudi Arabia and Kuwait of coal."

The Illinois Basin can be called the comeback kid of coal mining. The Clean Air Act Amendments of 1990 made it tougher for utilities to burn the region's high sulfur coal, causing regional coal production to fall by half, Gonet said.

But technology has since made it easier for plants to trap pollutants, giving utilities more leeway to buy coal from western Kentucky, Indiana and Illinois. "We believed that if we hung in there," Gonet said, "we'd have a chance to come back."

Another advantage for the Illinois Basin's coal is its proximity to coal-fired power plants in the Midwest and East, areas accessible by rail and barge through the Ohio and Mississippi rivers.

"We really ramped up. So that's where a lot of the extra production is going," Gonet said. He identified Foresight Energy LLC, owned by coal executive Chris Cline, as a main force behind the production boom.

The U.S. coal export boom has also helped Illinois, Gonet said. And the expansion of the Panama Canal could make it easier to for central U.S. mines to access Asian markets.

A 2013 report by Illinois' Office of Coal Development said that exports increased from 2.5 million tons in 2010 to more than 5 million tons in 2011. It predicted 2012 exports at more than 13 million tons.

"The competitiveness of Illinois coal is enhanced by the ability of producers to efficiently transport Illinois coal to markets throughout the world," the report says.

To be sure, not everyone's happy with the region's coal-mining good fortune.

Environmental groups have taken issue with the very existence of an Office of Coal Development. They want to curb rather than enhance coal mining.

Last month police arrested activists protesting a Peabody Energy Corp. strip mine expansion in the Saline County, Ill., community of Rocky Branch. They wanted to stop workers from cutting trees.

Jeff Biggers, a writer and anti-coal activist who grew up in Illinois, noted that the site is located a few miles from Peabody's first mine in the state in the late 1800s.

Opponents have also collected signatures in an effort to persuade Attorney General Lisa Madigan (D) to investigate state permitting for the project.

"The local citizens in this area have risen up to fight the state, to protest the mine," said Joyce Blumenshine, Illinois Sierra Club conservation committee chairwoman. "I really see a growing public concern regarding the new mine permits and expanded mine permits."

Greens press regulators

Environmentalists point to Democratic Gov. Pat Quinn's opposition to a strip mine development near the Illinois River in the community of Banner back in 2005, when he was lieutenant governor.

"Strip mining on this site threatens the drinking water of local residents and habitat of eagles, pelicans and fish," he said then. "It will reduce tourism potential, strain local water treatment systems and pollute the Illinois River and Copperas Creek."

But mining foes now see state agencies under Quinn, as not much more than a rubber stamp for coal companies.

"I think citizens across the state are waking up to the fact that our state agencies are seen as weak and favorable to the coal industry," Blumenshine said. "And the state knows citizens have limited resources."

Blumenshine has been particularly vocal in her opposition to longwall underground coal mining. Unlike traditional underground mining techniques known as room and pillar, longwall mining employs large machines and removes more coal, heightening the risk of subsidences.

Earlier this month, Madigan and the Illinois Department of Natural Resources announced a new framework for coal mine permitting as part of a settlement over mining in Banner.

Among the announced changes are earlier public notification of proposals, regulator neutrality at public hearings, a ban on pre-hearing conferences and more environmental review consultations.

"These measures reflect years of effort to instill a more transparent process that is responsive to community concerns," Madigan said in a statement.

"By agreeing to implement these changes, DNR is committing to ensure that anyone who has a stake in mining operations will be heard before a permit application is decided upon."

But in Blumenshine's view, "There are many concerns that we have that we don't see were even addressed." And she knows industry will be pushing back during the ratification and implementation process.

"It's a political process," she said.

The Illinois Coal Association's Gonet sees many of the changes as slowing down the permitting process and giving environmental groups more leeway to block all mining operations. He sees that as their goal.

"Fortunately, the changes are not going into place overnight," he said. "We're hoping that the time gives us the opportunity to convince policymakers that some of these provisions aren't necessary."

Environmental groups, however, are looking to fight the industry on another front. Like their counterparts in West Virginia, Illinois coal field advocates have asked the federal Office of Surface Mining to take over the state's coal mine regulatory program.

The request from Citizens Opposing Pollution, represented by attorney Penni Livingston, stems from a

2012 Illinois Supreme Court decision in a case against slurry dumps associated with former mining by Exxon Mobil Corp.

Even though Livingston argued that post-mine activities by Exxon ran afoul of the Surface Mining Control and Reclamation Act, justices focused on the company having permits for those activities.

As a result, Livingston wrote OSM last month, "The citizens of Illinois are without adequate means to fulfill the intent of the law and to bring about compliance through enforcement as intended by the law."

Ervin Barchenger, OSM Mid-Continent Region director, said earlier this month that the agency would take 60 days to decide whether to review the Illinois program.

"We need it to succeed," Blumenshine said about the request. "This will hopefully make a big difference in seeing mining laws really enforced in Illinois."

In Appalachia, with its high-profile battle over mountaintop removal mining, groups have filed numerous lawsuits and stirred up national attention.

Blumenshine said, "I think Illinois will become the new battleground for citizens."

Industry wary

EIA has predicted a relatively stable future for Illinois Basin coal production, with new forecasts due later this month.

The basin may continue benefitting from production declines elsewhere.

But international markets and domestic regulations remain uncertain variables, especially with the Obama administration poised to enact new power plant emission standards.

And Arch Coal Inc. yesterday announced a $124 million net loss.

"It's a little scary," Gonet said.

OIL AND GAS:

Texas freezes San Antonio's air quality funding over drilling report

Published: Wednesday, April 23, 2014

Texas has frozen a San Antonio agency's funding after it mistakenly released a report on air pollution driven by oil and gas drilling.

The Texas Commission on Environmental Quality said the Alamo Area Council of Governments breached its contract earlier this month by releasing some results of a two-part draft report on the city's worsening air quality.

TCEQ spokesman Terry Clawson said the council erred by posting a "summary presentation" of the draft on its website.

Kevin Wolff, the council's chairman, admitted that AACOG made a "fairly minor mistake" but said the state commission's reaction was extreme.

TCEQ froze the council's fiscal 2015 funding for air quality protection at $570,000, even as other cities saw their funding increase. San Antonio is battling pollution problems caused by an increase in traffic and oil and natural gas drilling in the Eagle Ford Shale play (Lisa Song, Center for Public Integrity, April 23). -- **DB**

AIR POLLUTION:

Battle lines form as Pa. proposes new power plant regs

Daniel Lippman, E&E reporter

Published: Wednesday, April 23, 2014

A newly published Pennsylvania state proposal to regulate air pollution from coal-fired power plants is raising the hackles of environmentalists, who say it does too little to cut down nitrogen oxides (NOx) and volatile organic compounds that have helped put much of the state out of compliance with the federal Clean Air Act.

State regulators say the plan has gone through multiple committees and will help protect public health as well as ensure reliable electricity for residents and businesses.

The Sierra Club and others question why the biggest power plants aren't being required to always use already-installed technology that dramatically reduces emissions of NOx, which helps form smog.

"The data we have on their emissions indicates that many of them are not operating this emission control technology consistently, which means they're polluting about 40 percent more in terms of NOx than they could be," said Tom Schuster, senior Pennsylvania campaign representative at the Sierra Club.

So why doesn't the utility industry, which has given more than a million dollars to Pennsylvania politicians every election year since 2006, run its pollution-reduction technologies all the time to cut emissions?

"Only the operators know, but I can speculate it saves them a little bit of money to do that because all the power plants in Pennsylvania sell power based on whoever is cheapest at the time, so if they can bid their electricity into the market a little bit cheaper, that's what they'll do," Schuster said. "But unfortunately, it puts the public health at risk, and we think that's unacceptable."

What the Pennsylvania Department of Environmental Protection is proposing are additional requirements for coal-fired plants to implement reasonably available control technology (RACT) to reduce emissions. The state is part of the Northeast's Ozone Transport Region, which means the entire state has to comply with the RACT requirements under the Clean Air Act.

Schuster said DEP's plan would actually set limits that are higher than the current average rate of pollution for these plants, adding that the plan would "not set a meaningful limit on smog-causing pollution."

Ryan Knapick, a staff attorney with the Clean Air Council, said another problem with the proposal is that it

would, in some circumstances, allow for 30-day emissions averaging for NOx.

That means that if an owner-operator of a given power plant has several facilities, "he can take the emissions from all of the facilities, average them out, and then ... say, 'I'm meeting the limits,'" Knapick said.

"The problem with that is what you're going to have happen is an owner-operator of a system of facilities can really clamp down at one facility and then by way of the averaging scheme increase his emissions or operations at other facilities," he said.

That could potentially lead to pollution hot spots that could affect the health of neighboring residents.

Environmentalists point to the potential negative health ramifications of a looser standard because asthma and other respiratory diseases are worsened by smog and ozone in the air.

"Asthma is the most common chronic health condition among children and the third most common reason for hospitalization," said Esther Chung, a professor of pediatrics at Jefferson Medical College in Philadelphia, in a statement.

"I see many children with asthma who are unable to play sports or participate in physical activity, and some suffer so severely that they cannot speak and require intensive care at a hospital," Chung said. "Smog contributes to and exacerbates these problems."

DEP, industry defend plan

DEP Deputy Secretary Vince Brisini defended the plan, saying it's been reviewed by multiple advisory committees and that DEP officials who wrote the plan are professionals.

He also said DEP is submitting requests with air monitoring data to U.S. EPA to take parts of the state out of ozone nonattainment areas.

The public can comment on the plan through June 30, and DEP will hold three public hearings in Pittsburgh, Harrisburg and Norristown. The plan, which may change based on the comments, will then be submitted to EPA for its approval; if it's not happy with the plan, EPA could send the state back to the drawing board.

Pennsylvania relies on coal for 40 percent of its electricity generation, according to the federal Energy Information Administration, and renewable energy accounted for less than 4 percent of the state's electricity in 2013. It's also the fourth-largest coal-producing state in the country.

Environmentalists point out that neighboring states such as New York and Maryland have set limits on NOx that are significantly lower than those set by Pennsylvania, and they say the state's residents shouldn't have to pay the price just because of where they live.

"Pennsylvania is not New York, Pennsylvania is not Delaware, and it's not Maryland," said Jacob Smeltz, president of utility industry group the Electric Power Generation Association. He said Maryland and other surrounding states are net importers of electricity, while Pennsylvania is a net exporter and should get more flexibility.

"We're the second-largest producing state in the nation, and the value of the production of electricity from all sources is important to Pennsylvania's economy, and our regulators have to balance that with their important task of creating environmental rules, which provide for an appropriate level of control," he said.

George Lewis, a spokesman for PPL, a utility which serves 1.4 million customers in the state, said the company thinks that the DEP plan is reasonable "and provides the right balance between cleaner air and reliable electricity supply."

"The proposed regulation would result in even greater levels of reduction that have already been achieved without putting such significant economic burdens on coal-fired plants that they would not be able to compete in the PJM generation market," Lewis said in a statement, referring to the PJM regional transmission group, which operates in all or parts of 13 states and the District of Columbia.

Gene Barr, president and CEO of the Pennsylvania Chamber of Business and Industry, said in a statement that "ever tightening standards have caused the closure of a number of electric generating facilities threatening the reliability of our electric supply."

The coal and electric utility sectors are powerful in Pennsylvania, which might influence how decisions are made that affect their industries.

The electric utility industry gave a total of $1.95 million to Pennsylvania candidates in 2012 with 76 percent going to Republicans and 24 percent going to Democrats.

In 2011 and 2012, the utility industry gave Pennsylvania Gov. Tom Corbett (R) and Lt. Gov. Jim Cawley (R) $213,000, even though they weren't in an election cycle, making utilities the sixth-biggest industry in terms of donations to those officials that year, according to Followthemoney.org, run by the National Institute on Money in State Politics.

Patrick Henderson, Corbett's deputy chief of staff and energy executive, said that "this rule is more protective of public health and air quality, not less protective. There's no backsliding."

"The so-called environmentalists, let's be clear, the Sierra Club ... is much more interested in an ideological political discussion than an air-quality discussion," Henderson said in an interview. "It's disappointing ... that folks are giving this any sort of credence because we are in the mix of the political season and that's exactly what they're doing."

Henderson said that anyone looking for a correlation between campaign contributions and public policy was "sorely mistaken." He pointed to the environmental gains the state has made in recent years, including cuts in methane, sulfur dioxide, NOx and volatile organic compounds.

AIR POLLUTION:

Battery-recycling plant plans layoffs amid arsenic concerns

Published: Wednesday, April 23, 2014

More than 120 workers at an idle battery-recycling plant southeast of Los Angeles could be temporarily laid off in the next two months. That's nearly all the plant's employees.

Regulators shut down Exide Technologies' Vernon, Calif., plant last month over concerns that arsenic emissions could endanger 100,000 nearby residents.

The South Coast Air Quality Management District board and then a Los Angeles Superior Court judge

denied the company's request to continue operating while it installed equipment to control the toxic emissions. The air quality board also rejected Exide's appeal for more time to meet stricter arsenic regulations.

"Because our Vernon facility is not currently operating and not able to meet the new operational standard ... we had no choice but to make this very difficult decision," CEO Robert Caruso said in a statement about the layoffs, which employees and union leaders called "disappointing."

John Moretta, a priest at Resurrection Catholic Church in Boyle Heights, said he is concerned for the employees and their families, many of whom live in the community, but not at the price of public health.

"The simple fact is that 120 workers cannot be balanced with the health of 100,000 people," he said.

The company, which is in the midst of bankruptcy proceedings, said it is re-evaluating the plant's future (Christine Mai-Duc, *Los Angeles Times*, April 22). **-- DTB**

CALIFORNIA:

State releases map of most polluted census tracts

Published: Wednesday, April 23, 2014

California has released a first-of-its-kind map of the state's most polluted census tracts.

Pollution is highest in predominantly low-income parts of the San Joaquin Valley, Los Angeles County and the Inland Empire that have an abundance of highways or industrial and agricultural production, the map shows.

The state's most polluted pocket is a 3,000-person census tract in Fresno with high levels of toxic air and asthma rates.

"It is a major breakthrough that will give us a better opportunity to direct or redirect precious resources to the communities that need it the most," said state Sen. Kevin de León (D).

The state EPA created the map, publishing it this week in an environmental report.

Democratic Gov. Jerry Brown's proposed fiscal 2015 budget includes $225 million for environmental protection initiatives in underprivileged areas (Tony Barboza, *Los Angeles Times*, April 22). **-- DB**

ClimateWire -- Thu., April 24, 2014 -- **Read the full edition**

1. MEDIA: How a study of biased reporting on climate change morphed into a tale of biased science

Early last month, Hong Fuhai, an economics professor at Nanyang Technological University, Singapore, received an unexpected question: Was it true that he and his colleagues said it is OK to lie about climate change?

2. CITIES: Lower Manhattan is 20 times more likely to flood than it was in 1844 -- study

NEW YORK -- Manhattan is 20 times more likely to see its busy, low-lying downtown flooded than it was in the mid-19th century, a new analysis has found.

TODAY'S STORIES

3. EMISSIONS: Exelon says it has met its climate goals 7 years early, but nuclear fleet faces economic risk

4. FORESTS: Recovery from the shock of Colo.'s massive flood will take a while -- report

5. BUSINESS: Apple, Google race to reduce greenhouse gas footprints

6. RELIGION: Movie director finds inspiration, environmental message and resonance with science in 'Noah'

7. FINANCE: U.S. green groups ask Japan's leader to stop supporting overseas coal plants

8. RESILIENCE: Policy actions next year could determine how we prepare for climate disaster

9. RENEWABLE ENERGY: U.S. solar power grows by 418% in 4 years and has strong 'growth prospects' -- EIA

10. COAL: Near death of U.K. industry may benefit Russia

11. ELECTRIC VEHICLES: Buyers are younger and wealthier than hybrid counterparts

12. NEGOTIATIONS: China's emissions policy could be 'game changer' at international level -- E.U. official

13. GLOBAL WARMING: Everest will become riskier as climate changes

14. FOOD SECURITY: Jackfruit could replace climate-threatened staple crops

E&ETV's OnPoint

15. NUCLEAR: Exelon's Von Hoene discusses impact of wind energy incentives on nuclear's competitiveness

EnergyWire -- Thu., April 24, 2014 -- **Read the full edition**

1. HYDRAULIC FRACTURING: Baker Hughes phasing out 'trade secrets' in FracFocus disclosure

One of the country's major providers of hydraulic fracturing services plans to begin disclosing all the chemicals it uses in "fracking" fluid, without exceptions for trade secrets.

TOP STORIES

2. ELECTRICITY: 2 green groups laud Energy Future as others cite pollution worries

3. TRANSPORT: NTSB chairwoman slams 'tombstone mentality' on oil-safety rulemaking

4. NATURAL GAS: Ukraine's growing instability 'too risky' for some supermajors

ELECTRICITY

5. POWER MARKETS: FERC approves limits on external capacity in PJM auctions

6. ELECTRICITY: Mexico's state utility planning natural gas pipelines

OIL AND GAS

7. CALIFORNIA: New battle strategies emerge in fight over oil severance tax

8. ARCTIC: NAS oil spill report emboldens drilling foes

9. NATURAL GAS: Shale fields likely to be first up for bid in Mexico

10. BAKKEN SHALE: Oil companies fight calls for production slowdown to curb flaring

11. NATURAL GAS: Safe fracking 'simply not possible,' former Mobil Oil exec says

12. BAKKEN SHALE: New 'man camp' housing complex carries $30M price tag in N.D. oil patch

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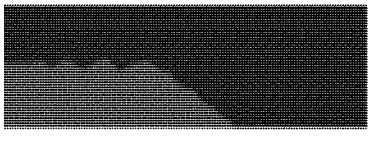

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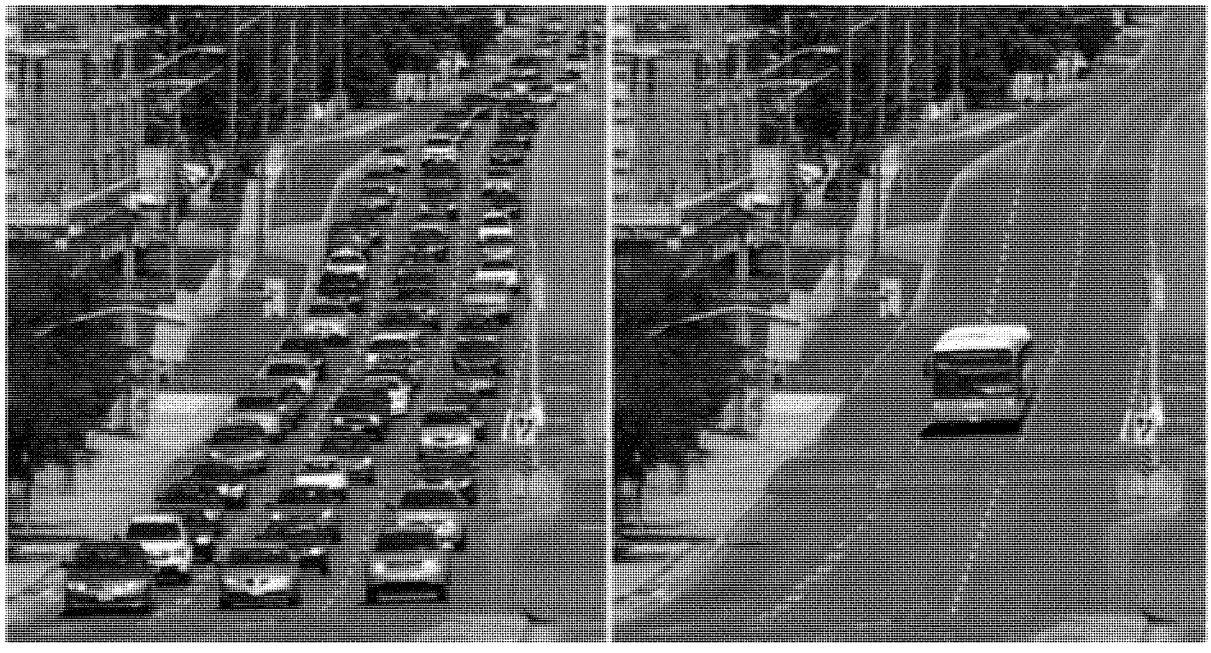
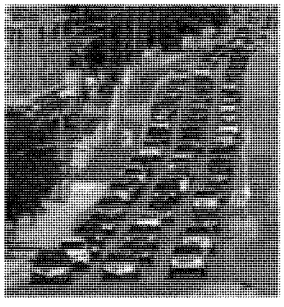
Greenwire





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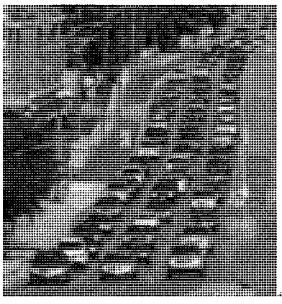

Air & Radiation Law News

for April 23, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Advocates Ask EPA to Reconsider Decision Not to Regulate Lead Emissions From Planes

Environmental advocacy groups have filed a petition asking the Environmental Protection Agency to reconsider its decision not to regulate lead emissions from aircraft....

Air Pollution

New York City Officials Propose Plan For Broad Air Pollution Code Revision

A broad revision of New York City's Air Pollution Control Code has been proposed to further advance air quality progress made under a city sustainability master plan, Mayor Bill de Blasio (D) and other city officials announced April 22....

Climate Change

EPA Sends Carbon Dioxide Proposal For Modified Plants to OMB for Review

The Environmental Protection Agency sent a proposed rule that would regulate carbon dioxide emissions from modified and reconstructed power plants to the White House for review April 21....

Climate Change

Federal Court Finds Minnesota Law to Curb Carbon Emissions to Be Unconstitutional

A federal judge in St. Paul, Minn., has struck down a Minnesota law that aimed to curb power plant carbon dioxide emissions, holding that it violated the Commerce Clause of the U. S. Constitution (North Dakota v. Heydinger, D. Minn., No. 11-CV-3232,...

Climate Change

More Than 110 Groups Report Lobbying Congress on EPA Power Plant Rules

At least 110 companies, ranging from large publicly traded companies to small regional organizations, reported lobbying Congress in the first quarter of 2014 in some form about carbon pollution standards from the Environmental Protection...

Climate Change

Most U.S. Cities With Emissions Pledges Report Progress on Goals, Survey Says

More than half of U.S. cities have made formal pledges to cut their carbon emissions and most of those cities are making progress toward their goals, according to a survey released April 22 by the U.S. Conference of Mayors....

Climate Change

Senate Records on Lobbying Reflect Robust Interest in Social Cost of Carbon

At least 17 organizations disclosed lobbying on the social cost of carbon during the first quarter of 2014, Senate public records show, indicating consistent interest in the issue on Capitol Hill by energy

companies and business entities....

Climate Change

South Florida Properties, Tourism at Risk
Due to Climate Change, Officials Say

Sea rise, storm surge and other climate change impacts could put billions of dollars worth of coastal properties and tourism activities in South Florida at risk, local officials said April 22 at a field hearing in Miami Beach organized by Sen....

Climate Change

UN Offers Option to Make Agreement
In 2015 Voluntary for Developing Nations

The United Nations has released a summary of options for the global agreement to be finalized in 2015 to curb greenhouse gas emissions, including one that would make emissions reductions binding for developed nations but voluntary for developing...

Energy

EPA Further Reduces 2013 Cellulosic Fuel
Blending Requirement to 810,185 Gallons

The Environmental Protection Agency will require petroleum refiners and importers to blend 810,185 gallons of cellulosic biofuels into the fuel supply in 2013 in response to petitions for reconsideration as part of a direct final rule signed...

Energy

FASB to Weigh Writing of Rules Calling
For Companies to Disclose Carbon Holdings

Accounting regulators plan to decide April 28 whether to start an effort aimed at having oil, gas, coal and power companies make footnote disclosures about their carbon holdings....

Energy

Governor Urges Nebraska Supreme Court
To Dismiss Keystone Pipeline Challenge

A court challenge holding up TransCanada Corp.'s Keystone XL pipeline should be dismissed, Nebraska's governor said, urging his state's highest court to allow the project to move forward Thompson v. Heineman, Nebraska Supreme...

Enforcement

Colorado House Approves Bill Increasing Penalties for Violations of Oil, Gas Rules

The Colorado House has approved a bill (H.B. 1356) that would increase existing penalties for violations of oil and gas rules. ...

Enforcement

Judge, in Reversal, Says Government Can't Seek Injunction in U.S. Steel Air Case

A federal judge, reversing an earlier ruling, said federal and state governments can't seek an injunction against U.S. Steel Corp. for alleged violations of the Clean Air Act stemming from construction work done in 1990 (United States...

Hazmat Transport

Rail Industry Estimates Enhanced Tank Car Will Be Less Likely to Release Crude Oil

Research conducted by the freight rail industry indicates that equipping rail tank cars with additional safety design features would make the cars far less likely to release crude oil in the event of a derailment, according to an industry researcher....

Regulatory Policy

Justice Department Touts Accomplishments In Defending Greenhouse Gas Regulations

The Justice Department issued a report April 22 pointing to its legal defenses of greenhouse gas regulations as highlights of fiscal year 2013 for the department's Environment and Natural Resources Division....

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Inside EPA's **Clean Air Report**, 04/24/2014

http://insideepa.com/Clean-Air-Report/Clean-Air-Report-04/24/2014/menu-id-68.html

EPA Floats GHG Plan For Modified Plants In Likely Bid To Ease CCS Mandate

EPA is floating a proposed rule for how modified power plants must comply with its pending new source performance standard (NSPS) for reducing greenhouse gas (GHG) emissions, a measure that appears aimed at shielding facilities that install more efficient technologies to lower emissions from having to install costly carbon capture and sequestration (CCS) systems as the agency's strict plan for new coal plants requires.

Latest Blogs

EPA Reduces 2013 Cellulosic RFS

EPA is granting refiners' request to significantly reduce their cellulosic biofuel production target under the agency's 2013 renewable fuel standard (RFS) from 6 million gallons . . .

Environmentalists Seek Boiler MACT Remand

Environmentalists are urging a federal appeals court to grant a broad remand of EPA's contested combustion air rules and require the agency to take public . . .

Greenwire

CLIMATE:

A quarter of Americans don't believe in man-made warming -- Gallup poll

Jean Chemnick, E&E reporter

Published: Tuesday, April 22, 2014

A quarter of the U.S. population does not believe human-caused emissions are driving climate change, according to a new Gallup poll.

The poll, released today and conducted March 6-9, found that climate skepticism has significantly increased compared with Gallup's first poll on the issue in 2001. The polling firm that year classified only 12 percent of respondents as "cool skeptics" -- showing little or no personal concern about man-made climate change. The 2014 poll put 25 percent of respondents in that category, down only slightly from a high in 2010 of 28 percent.

The newly minted skeptics came from the ranks of previously undecided respondents -- dubbed the "mixed middle" by Gallup -- and not from "concerned believers." Belief in harmful man-made warming, at 39 percent, has rebounded compared with 2010 and 2012, when only 33 percent of respondents ranked in that category. Respondents who are ambivalent about warming dropped to 36 percent, compared with 49 percent in 2001.

The poll surveyed 1,048 adults and has a 4-point margin of error.

Results broke down along gender lines. Sixty-six percent of skeptics were male, while 60 percent of believers were women. But it did not show a strong trend related to education level. Respondents with an advanced degree made up 19 percent of the "concerned believers" group and 18 percent of the "cool skeptics."

NUCLEAR:

Former White House climate adviser joins pro-nuclear campaign

Hannah Northey, E&E reporter

Published: Tuesday, April 22, 2014

Former White House climate adviser Carol Browner has joined a growing campaign to drum up support for the country's fleet of aging reactors as a means of tackling climate change.

Browner, also a former U.S. EPA chief, joined Nuclear Matters, a campaign partially funded by Exelon Corp. that aims to inform the public about the need for nuclear power as a carbon-free source of baseload power, as well as economic challenges reactors face and potential fixes.

The group, which former Sens. Evan Bayh (D-Ind.) and Judd Gregg (R-N.H.) launched in recent weeks, has also enlisted White House heavyweights including former Energy Secretary Spencer Abraham and Bill Daley, former Commerce secretary and chief of staff for the Obama administration (*E&E Daily*, April 1).

"Preserving our existing nuclear plants will be a key part of our efforts to reduce carbon emissions and build a cleaner-energy future and safer environment for our children," Browner said in a statement.

Browner's decision to join the group shines a brighter light on the plight of nuclear reactors across the

country that are facing stiff competition from a surge of cheap natural gas, new costs following the 2011 nuclear accident in Japan and, according to some, market flaws that don't value carbon-free baseload power.

Pete Lyons, the Energy Department's assistant secretary for nuclear energy, said earlier this year that a rash of premature U.S. reactor closures could threaten the country's aggressive climate goals.

DOE, he said, was reviewing one scenario under which a third of the country's approximately 100 reactors would be shuttered. Lyons said such a situation could throw a wrench in the Obama administration's goal -- outlined in the president's Climate Action Plan unveiled last June -- of cutting emissions 17 percent below 2005 levels by 2020 (*Greenwire*, Feb. 5).

The U.N. Intergovernmental Panel on Climate Change's recently released fifth assessment report found limiting greenhouse gas emissions to around 450 parts per million would require tripling or even quadrupling zero- and low-carbon energy sources including nuclear power, fossil fuels with carbon capture and sequestration, and bioenergy with CCS by 2050.

NATURAL GAS:

Freeing Ukraine from Russian gas 'within our power' -- Biden

Nick Juliano, E&E reporter

Published: Tuesday, April 22, 2014

With the assistance of Europe and the United States, Ukraine will one day be able to thrive without relying on natural gas supplies from its hostile neighbor, Vice President Joe Biden promised the country's Parliament today during a visit meant to underscore U.S. support for the fledgling government against Russia.

"Imagine where you'd be today if you were able to tell Russia: 'Keep your gas.' It would be a very different world you'd be facing today," Biden said, according to a White House transcript of his remarks. "It's within our power to alter that."

Biden arrived in Ukraine yesterday as the Obama administration announced a $50 million aid package to boost economic and political reforms in the country.

Part of the U.S. effort, according to a White House fact sheet, will involve teams of experts from various federal agencies traveling to the country to provide energy assistance in several areas: support to reverse natural gas pipeline flows to provide supply alternatives to Russia, technical assistance to boost Ukrainian production of conventional and shale gas, and advice from the Department of Energy and U.S. Agency for International Development on maximizing energy efficiency.

"Experts have shown that the Ukraine could substantially lessen its energy dependence and deny any country the capacity to use energy as a political weapon through a combination of all those things, but in no small part through greater energy efficiency and use of its existing energy," a senior administration official said yesterday of the energy aid.

Biden and the senior administration official did not specifically mention liquefied natural gas (LNG) exports as part of the Ukraine aid effort. He stressed several times that Russian influence could be curtailed, though he said such an outcome would take time and some "very difficult decisions."

Experts say it could be years before U.S.-produced LNG could arrive in Ukraine because of a variety of infrastructure complaints. But calls for speedier export license approvals have grown markedly in Congress in the months since tensions erupted in Ukraine.

Lawmakers have said the U.S. oil and gas boom offers an opportunity to weaken Russia's influence over its neighbors' energy supplies. The House Energy and Commerce Committee earlier this month advanced legislation from Rep. Cory Gardner (R-Colo.) to greenlight exports to more than 150 countries.

Sen. John Hoeven (R-N.D.) also argued for speedier export approvals after returning earlier this week from a trip to Eastern Europe that featured meetings with high-ranking officials from Estonia, Latvia and Lithuania. Also along for the trip were Sens. John McCain (R-Ariz.), John Barrasso (R-Wyo.) and Ron Johnson (R-Wis.).

"Our allies need and very much want U.S. LNG, and there is no better time for the U.S. to approve the permits to start building LNG terminals that will signal our allies that they can get relief from dependency on Russian gas," Hoeven said.

BIOFUELS:

Advocates launch new RFS campaign

Amanda Peterka, E&E reporter

Published: Tuesday, April 22, 2014

Biofuels supporters today launched a new ad campaign to rally support for the federal renewable fuel standard.

The campaign by Fuels America, a coalition of biofuels, agriculture and national security organizations, includes both television and digital advertising, as well as the launch of a website, www.oilrigged.com. The organization did not give a cost figure for the campaign.

The TV ads allege that oil companies are spending big to "rig the system" against American consumers and "bullying" gas stations to use more oil, rather than biofuels. The ads are expected to run for at least two weeks on cable networks.

Fuels America is urging the Obama administration and Congress to maintain the renewable fuel standard, through which U.S. EPA sets yearly levels of conventional ethanol and advanced biofuels that refiners need to either blend into petroleum fuels or purchase credits. Many members of Congress have called for either repeal or reform of the standard, while EPA recently proposed the first rollback of the yearly targets (*E&ENews PM*, Nov. 15, 2013).

Oil industry trade groups have led the call for repeal of the standard. Last month, the American Petroleum Institute launched an ad campaign that featured consumers concerned about harms caused by the federal biofuel mandate (*E&ENews PM*, March 20).

NATURAL GAS:

PG&E pleads not guilty in deadly pipeline explosion

Published: Tuesday, April 22, 2014

Pacific Gas & Electric Co. yesterday pleaded not guilty to 12 felony charges stemming from a 2010 natural gas pipeline explosion in the San Francisco Bay Area.

Prosecutors claim that the utility relied on incomplete safety information while operating the pipeline, which exploded in the city of San Bruno, killing eight people and destroying 38 homes (*Greenwire*, April 2).

PG&E has long denied the allegations.

"We want all of our customers to know that we're working hard to build the safest and most reliable gas system in America," the company said in a statement after entering its not-guilty plea. "The legal process will ensure that all of the facts related to this tragic event are fully reviewed" (Garance Burke, *AP/Albuquerque Journal*, April 21). **-- DB**

BIOFUELS:

EPA mandate will face legal challenges, industry group warns

Amanda Peterka, E&E reporter

Published: Tuesday, April 22, 2014

The Advanced Biofuels Association warned U.S. EPA yesterday that it will face legal challenges if it fails to increase this year's mandate for advanced biofuels.

EPA has proposed requiring refiners to use 2.21 billion ethanol-equivalent gallons of advanced biofuels this year in a rule that is scheduled to be finalized in June.

The number is below last year's actual production of 3.23 billion gallons and flies in the face of a court ruling last year that found EPA could not use the annual target-setting exercise to unduly influence the market, Advanced Biofuels Association President Michael McAdams told a crowd of industry supporters yesterday.

"You're suable if you put any number below 3.23 billion in because the courts have specifically said to you, you can't put your thumb on the scale to push this industry," McAdams said. "Well, you can't put your thumb on our head and push us down, either."

The U.S. Court of Appeals for the District of Columbia Circuit last year found that EPA's methodology in calculating how much cellulosic biofuel could be produced in 2012 was not accurate enough. The agency displayed a "special tilt" toward promoting the growth of the industry that was not consistent with statute, the ruling found (*Greenwire*, Jan. 25, 2013).

EPA's proposal last November would represent the first rollback of both the conventional ethanol and advanced biofuel mandates written into law by the 2007 Energy Security and Independence Act. The

2007 renewable fuel standard included yearly targets for biofuels but gave EPA some leeway in reducing the targets on an annual basis (*E&ENews PM*, Nov. 15, 2013).

The proposal to scale back the target for advanced biofuels to a level below last year's actual production -- which was made up of a combination of biodiesel, imported sugar-cane ethanol and other advanced fuels -- has stymied investment in new projects and companies, according to industry representatives. They have launched a massive advocacy effort to persuade EPA to raise the target in its final rule.

"We had significant challenges in the logic behind a rule proposed [that] essentially damages investor confidence in our ability to product technologies, to raise capital, and it certainly would deliver a material blow on the advanced side in particular if this rulemaking were to proceed forward," said Tim Zenk, vice president of corporate affairs at Sapphire Energy Inc., which operates a large-scale algae farm in New Mexico.

In a speech yesterday at the Advanced Biofuels Leadership Conference in National Harbor, Md., McAdams told supporters that he recently met with the White House and EPA to press the case for setting a target of at least 3.23 billion ethanol-equivalent gallons.

"I said to them, if you want to follow the mandate of the 2012 court decision, then your number for advanced biofuels under that decision should be 3.23 billion gallons," he said. "Why? Because that's what we as an industry made last year. That's not fiction. That's not fairy dust."

The statute that created the RFS, in comparison, called for 3.75 billion ethanol-equivalent gallons of advanced biofuels in 2014.

EPA Administrator Gina McCarthy has acknowledged in multiple public appearances that the agency may have gotten the targets for both conventional ethanol and advanced biofuel wrong. Last month, Agriculture Secretary Tom Vilsack told reporters he was urging McCarthy to raise the targets to reflect a greater projected consumption of fuel this year.

EPA has maintained that it wants to put the renewable fuel standard on a "manageable trajectory." But whether the agency follows through with higher targets likely won't become known until the final rule is released in late spring or early summer.

Brooke Coleman, executive director of the Advanced Ethanol Council, yesterday said he was confident that the industry's efforts would pay off and the numbers would rise.

The proposal is "turning growth markets into shrink markets. Investors don't flock to shrink markets. I think the White House and EPA have gotten that point. I think they're ready to increase the numbers," Coleman said.

Others were more cautious: "It remains to be seen whether or not the administration is ... really thinking through the long-term effects of these policies," Zenk said.

McAdams delivered a more bleak prognosis.

"I was told no one will like this rule," he said of his recent meetings with the White House and EPA.

He also charged that EPA's delays in approving new fuel technologies -- which it must do based on life-cycle analyses of greenhouse gas emissions before the fuels are allow to qualify under the renewable fuel standard -- were holding up new fuels from entering the market that could be used to boost the volume targets.

Risk to federal investments?

EPA has typically taken years to approve new pathways, and last month, it announced a six-month delay in most applications in order to revamp its approval system to make it more timely (*Greenwire*, March 19).

The actions by EPA risk undermining the federal government's $1 billion investment in advanced biofuels over recent years and stands to put $14.7 billion in private investment in jeopardy, McAdams said. Some companies have gone out of business already waiting for EPA to finish pathway reviews, according to the Advanced Biofuels Association, which represents about 35 advanced biofuels companies.

"They're creating new problems all under the context of trying to save the RFS," McAdams said, adding that his group would focus its efforts on maintaining support in Congress, where RFS legislation could gain traction next year if the Senate switches from Democratic to Republican control.

Harry Baumes, director of the Agriculture Department's Office of Energy Policy and New Uses, maintained that his department is still focused on building up next-generation fuels, especially drop-in fuels that can be added into the fuel system without modifying existing infrastructure. His office collaborates with EPA on the fuel reviews.

"My apologies that it's taking so long," he said. "Part of these requirements are these life-cycle analyses. Some things you just can't turn a switch on."

Despite challenges, some in the industry say they remain confident.

"Reports of our demise have truly been greatly exaggerated," Jonathan Wolfson, CEO of California-based algae technology company Solazyme Inc., said this morning. "Right at the time when we're starting to see the first commercial traction, there are people out there talking about the end. This is not the end."

COAL:

Obama admin set to unveil controversial black lung rule

Manuel Quiñones, E&E reporter

Published: Tuesday, April 22, 2014

The Obama administration is poised to release new rules to protect coal miners from black lung disease amid strong opposition from industry groups.

The Department of Labor will make a formal announcement tomorrow in West Virginia of rules expected to reduce the amount of respirable coal dust that miners can be exposed to.

The department's Mine Safety and Health Administration has been working on the rules for several years. The proposed final standards have been under review by the White House Office of Management and Budget since last year.

Coal mining companies, plus the National Mining Association, have questioned the wisdom of MSHA's proposed standards and whether the administration's research is sound.

Government Accountability Office audits released in 2012 and this year have generally backed MSHA's rulemaking and research justifications.

The black lung issue has been in the news following a Pulitzer Prize-winning investigation by the Center for Public Integrity that accused industry doctors and attorneys of making it tougher for workers to obtain black lung benefits.

The Department of Labor has already announced reforms to make it easier for miners to obtain benefits. And last week, DOL's Office of Workers' Compensation Programs released a final rule to promote digital chest X-rays for diagnosing the disease.

NUCLEAR ENERGY:

Opponents challenge plan to bill ratepayers $3.3B for San Onofre costs

Published: Tuesday, April 22, 2014

Opposition is growing after utilities in Southern California proposed charging customers more than $3 billion for replacement power generated after the 2012 shutdown of the San Onofre nuclear power plant.

Ratepayers would pay $3.3 billion through 2021 for costs incurred from the closed power plant near San Clemente under a plan developed last month by Southern California Edison (SCE), San Diego Gas & Electric Co. and two ratepayer advocacy groups.

Under the agreement, customers would not be charged for $1 billion in costs related to the plant's defective steam generators -- but the utilities could recoup some of those losses from the manufacturer, Mitsubishi Heavy Industries Ltd.

"This proposed settlement means that customers don't pay for the steam generator project," Ron Litzinger, the president of SCE, said in a statement last month. But "our customers will pay for replacement power they received."

The proposal was slammed by ratepayer advocacy groups that were left out of the negotiations.

The deal would force ratepayers to "underwrite the mistakes of Edison and their failed steam generator project," said Ray Lutz with Citizens Oversight, one of several groups that filed an objection to the proposal. "This is a disaster for ratepayers and should not be approved."

Also filing a legal challenge was San Diego attorney Mike Aguirre, who said ratepayers shouldn't be on the hook for the plant's troubles.

The California Public Utilities Commission must approve the plan. The panel is not expected to take up the issue until next month at the earliest.

The San Onofre plant was shut down in January 2012 after the discovery of a radiation leak from steam generator tubes. Later that year, SCE announced that the plant would be permanently closed (Ed Joyce, KPCC, April 21). **-- DB**.

COAL:

Wyo. scrutinizes Australia allegations as it considers gasification plant

Published: Tuesday, April 22, 2014

An Australian energy company seeking to build a coal gasification project in Wyoming is under scrutiny over accusations of environmental damage caused by a similar project in Australia.

Linc Energy caused "serious environmental harm" at a coal gasification plant in the Australian state of Queensland, according to a Queensland government report released earlier this month.

The report, based on a nine-month investigation, did not provide further details. Linc Energy has disputed the findings.

Still, Wyoming officials said yesterday they've reached out to Australian officials to find out what happened.

"We would certainly be interested in what the outcome is," said Keith Guille, a spokesman for the Wyoming Department of Environmental Quality.

But Guille said the investigation won't affect the state's approval process for Linc's proposed coal gasification plant. The plant, which would store burned coal reserves, requires approval from the state and U.S. EPA (*Greenwire*, Feb 3; Mead Gruver, AP/Casper [Wyo.] *Star-Tribune*, April 22). **-- DB**

NUCLEAR WASTE:

After leak, safety rules will change for disposal site workers

Published: Tuesday, April 22, 2014

The discovery of contamination at a federal nuclear waste disposal site in southeast New Mexico has officials rethinking the site's work safety rules.

The Energy Department's Waste Isolation Pilot Plant near Carlsbad was shuttered after a radiation leak in February. Whenever the facility reopens, officials said its 1,070 workers can expect stricter safety standards.

"Now we're going to have to wear protective equipment -- coveralls, shoe covers and gloves -- to make sure contamination doesn't get on us and respirators so it doesn't get in us. People who haven't had to wear protective equipment will have to," said Bob McQuinn, the president and project manager of Nuclear Waste Partnership, the plant's operator.

"The formality of what we do is going to have to be strengthened," McQuinn added. "Although there was training [in the past], we weren't as good at formality of operations as we need to be."

The plant was built in the 1980s to store transuranic waste from 22 federal nuclear labs. The waste is

stored in salt bed caverns more than 2,000 feet underground (Lauren Villagran, *Albuquerque Journal*, April 22). -- **DB**

ELECTRIC VEHICLES:

Tesla delivery delays frustrate Chinese buyers

Published: Tuesday, April 22, 2014

The first-ever shipment of Tesla Motors Inc. vehicles is set to be distributed in China today, but delays have dampened the mood among some once-eager buyers.

Electric cars have struggled to gain a foothold in China, despite assurances from the Chinese government that the country was ready to become a major new market for automakers producing alternatively powered vehicles.

Tesla CEO Elon Musk will be at the high-profile event where the first Model S will go to its buyer. But the anticipation has worn off a bit for customers like Sam Long, who ordered his $121,000 Model S last year. Long said his car, according to Tesla's website, hasn't been built yet. He and 22 other Tesla buyers recently hired lawyers to work on the deliveries.

"The company told me they are still training electricians in Zhuhai," said Long, referring to the southern Chinese city where he lives. "I feel my rights have been hurt."

Tesla hopes to sell 5,000 vehicles in China this year as the country strives toward its ambitious goal of putting 500,000 plug-in hybrid and electric vehicles on the road by next year and 5 million by 2020 (Colum Murphy, *Wall Street Journal*, April 21). -- **DTB**

CHINA:

Law would step up environmental regulation

Published: Tuesday, April 22, 2014

China has submitted new environmental legislation to the country's parliament, the first change to the law in a quarter-century, official news agency Xinhua said late yesterday.

The National People's Congress this week is considering the fourth draft of amendments to the 1989 environmental protection law. Xinhua reported that the changes would protect whistleblowers, give regulators the ability to close down and confiscate polluting equipment, and allow company officials to be detained if they fail to submit environmental impact assessments or refuse to suspend production.

While sure to draw opposition from the business community, the move is part of the promise the Communist Party made last year to end the nation's all-out industrialization, which has led to frequently toxic air pollution levels and the contamination of one-fifth of China's farmland (*Greenwire*, April 18).

Xu Shaoshi, the director of the National Development and Reform Commission, yesterday told the

parliament that China still requires a "stronger policy mechanism" to overcome the focus on growth that has dominated politics in China for decades (David Stanway, Reuters, April 22). **-- DTB**

AIR POLLUTION:

Dentons' Rubin discusses impacts of D.C. Circuit Court's mercury and toxics ruling

Published: Tuesday, April 22, 2014

Last week, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Obama administration's Mercury and Air Toxics rule. How significant is this win for U.S. EPA? What is the impact of the ruling on future air regulations coming out of the agency? During today's OnPoint, James Rubin, counsel in the global energy, transport and infrastructure sector at Dentons and a former Department of Justice representative to the White House Climate Change Task Force, breaks down the ruling and its significance.

Click here to watch today's OnPoint.

ClimateWire -- Wed., April 23, 2014 -- **Read the full edition**

1. REGIONS: Senate field hearing highlights the costly sea-level challenge facing Fla.

In southeast Florida, it is not unheard of to see people wading through floodwaters to their homes or businesses, or worrying about floating cars. During a high tide event last fall, 1 ½ feet of salt water flowed over the streets of Miami Beach. Local officials spoke of the high cost of adapting to these conditions at a congressional field hearing yesterday in South Florida about the threat of sea-level rise.`

2. CITIES: Local leaders push for climate action as Congress 'drops the ball'

Climate action in Seattle aims to make the city carbon-neutral in less than 40 years. In Bridgeport, Conn., a former landfill is sheathed in solar panels to produce clean power. And a Republican mayor in Carmel, Ind., is seeing emissions ebb by turning sewage into fertilizer. That's happening despite a gun-shy Congress that's avoided taking federal action on rising temperatures, leaving local officials to lead the way on thorny political efforts to cut carbon from cars, buildings and electricity sources, according to municipal leaders.

TODAY'S STORIES

3. WATER: Groundwater management and stormwater recycling bills begin to move through Calif. Senate

4. WILDFIRES: The relationship between forest fire and climate change is complex but vital

5. POLICY: Kerry makes climate change a new top international priority

6. BUSINESS: Group working with 260 companies stresses need to 'manage the unavoidable'

consequences of climate change

7. GEOTHERMAL: The 'invisible renewable' struggles with slow U.S. growth

8. BIOFUELS: EPA sends 2013 cellulosic blending requirement sharply downward

9. NEW YORK: De Blasio says city's sustainability efforts show 'early progress'

10. WEATHER: Tornado season gets its safest start in nearly a century

11. EDUCATION: Climate change slowly entering school curriculums

12. FORESTS: Amazonian governments turn to drones to monitor deforestation

13. RENEWABLE ENERGY: Bloomberg Philanthropies invests in a solar lamp

EnergyWire -- Wed., April 23, 2014 -- **Read the full edition**

1. UTILITIES: Ill. still in search of solution for 'broken' renewable standard

A conflict between state laws continues to stifle renewable energy development in Illinois, a state with one of the most ambitious green power mandates that's already among the nation's largest wind energy producers.

TOP STORIES

2. ELECTRICITY: 'Fragile' grid challenges an energy importer's supersized solar dreams

3. TECHNOLOGY: Texas-sized supercomputer is blazing a trail with oil and gas research

4. TRANSPORT: A sliver of steel drives a wedge into oil-by-rail safety push

ELECTRICITY

5. PEOPLE: Maine governor nominates PUC 'alternates' to serve in utility dispute

6. ELECTRICITY: Maine Legislature fails to override veto on solar rebate bill

7. ENERGY STORAGE: Elon Musk says Panasonic a likely partner in Tesla 'gigafactory'

8. UTILITIES: Southern's media-mogul alliance adds another solar asset

9. ELECTRICITY: Ohio group calls for probe of town's coal plant membership

OIL AND GAS

10. OIL AND GAS: Hilcorp scoops up 4 North Slope fields from BP

11. PEOPLE: Noble fills out executive team for offshore spinoff

12. INFRASTRUCTURE: DOE's Moniz worries about New England's lack of energy capacity

13. REFINING: U.S. gasoline prices rise as more fuel gets exported abroad

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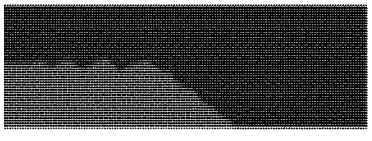

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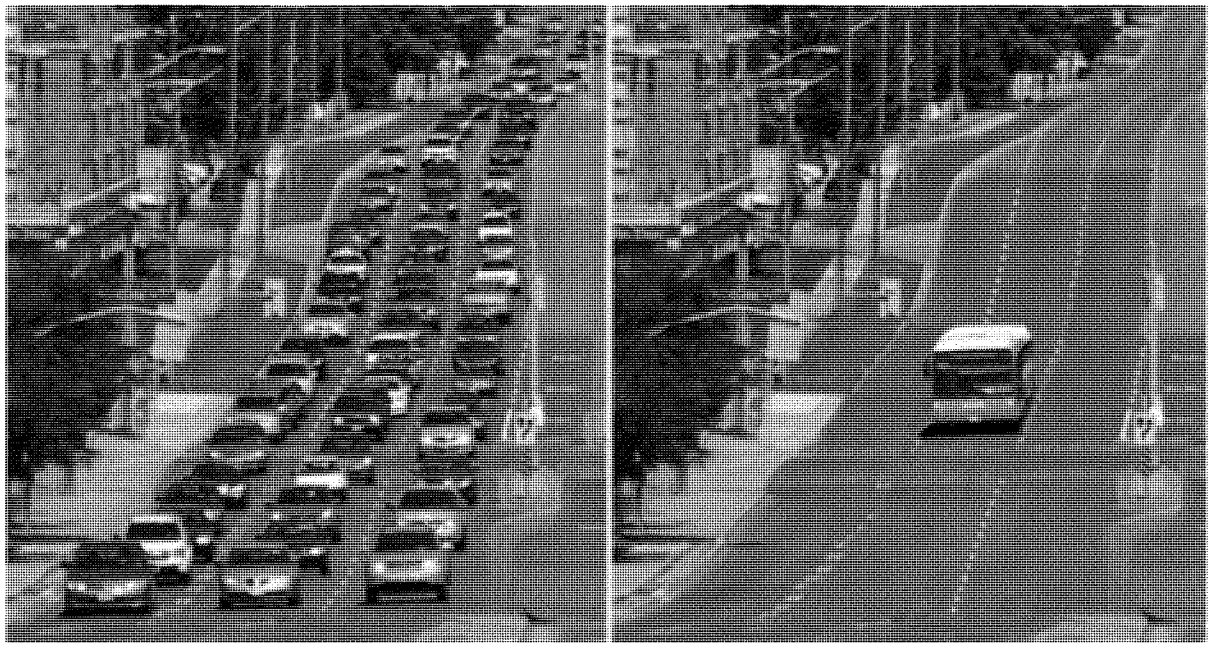

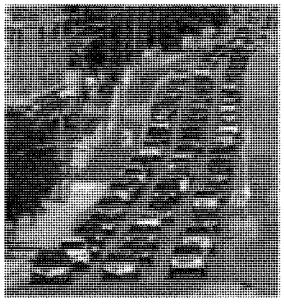

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Sent: Tue 4/22/2014 2:52:11 PM
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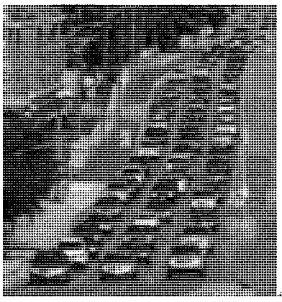

Air & Radiation Law News

for April 22, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA New Source Review Enforcement Hobbled but Not Dead After Legal Blows

The courts have dealt the Environmental Protection Agency's signature power plant enforcement program blows during the past year, and although the initiative is hobbled, it's not dead, legal observers say. ...

Energy

Cellulosic Ethanol Can Emit More Carbon Than Gasoline, University Study Says

Using corn stover to produce cellulosic ethanol releases carbon dioxide that would otherwise have been stored in the soil, according to a study published in the April 20 edition of the journal Nature Climate Change....

Energy

Fate of Keystone XL Pipeline Project Tied to Nebraska Supreme Court Challenge

The focus of the Keystone XL debate has shifted from a fierce lobbying war in Washington to Lincoln, Neb., where the state Supreme Court has been asked to weigh a legal challenge to the pipeline....

Energy

Oil Shipment From Arctic Continental Shelf Part of Russia's Plan to Spur Development

The first shipment of crude oil extracted on the Arctic continental shelf from a Russian platform marks the beginning of broad development in the Arctic, which will strengthen the nation's position on world energy markets and spur development...

Energy

TransCanada Chief Expresses Disappointment With State Department Delay on Keystone XL

The president and chief executive officer of TransCanada Corp. said he is "disappointed and frustrated" with the State Department's decision to extend a review of the Keystone XL oil sands pipeline probably until after the November...

Hazmat Transport

NTSB Chairman Says Communities Not Prepared for Worst-Case Rail Accidents

Deborah Hersman, the outgoing chairman of the National Transportation Safety Board, said April 21 that U.S. communities are not prepared to respond adequately to worst-case accidents involving trains carrying crude oil and ethanol....

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Inside EPA's **Risk Policy Report**, 04/22/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/22/2014/menu-id-130.html

Environmentalists Revive Push For EPA To Ban Lead In Aviation Gasoline

Environmentalists are reviving their push for EPA to ban lead in aviation gasoline (avgas) by asking the agency to reconsider its denial of their petition seeking the prohibition and to issue a finding on whether leaded avgas endangers public health and welfare, which could trigger a Clean Air Act mandate for EPA to issue the lead ban.

EPA Rejects DOE-Funded Study Finding GHG Boost From Cellulosic Fuels

EPA is rejecting conclusions of a Department of Energy (DOE)-funded study that finds ethanol produced from crop residues such as corn stover can have higher lifecycle greenhouse gas (GHG) emissions than conventional gasoline, arguing that the findings are based on an "extremely unlikely scenario" of unsubstantiated agricultural practices.

Diesel Generator Operators Defend EPA Air Rule's 'Emergency' Exemption

Companies operating diesel generators to supply power during spikes in demand are defending EPA's decision in an air rule for the units that allows them to operate without using pollution controls for up to 100 hours during "emergency" periods including demand-response, saying the provision is unlikely to lead to an increase in emissions.

Greenwire

DOE:

Obama admin calculations spared developers millions in loan guarantee fees for Ga. nuclear project, documents show

Hannah Northey, E&E reporter

Published: Monday, April 21, 2014

The Obama administration finalized $6.5 billion worth of loan guarantees for the country's first U.S. reactors in decades without requiring developers to pay a "credit subsidy fee" -- money that protects taxpayers should the developers default, according to documents obtained by *Greenwire*.

The Energy Department zeroed out the fees in February when finalizing a first-of-its-kind $3.5 billion loan guarantee for a subsidiary of Southern Co. and an approximately $3 billion loan guarantee for Oglethorpe Power Corp. to build two reactors at the Alvin W. Vogtle nuclear plant, about 30 miles southwest of Augusta, Ga., according to two letters obtained through Freedom of Information Act requests.

DOE Loan Program Office Executive Director Peter Davidson sent a Feb. 11 letter to Earl Long, Southern subsidiary Georgia Power's assistant treasurer, and a separate letter the same day to Betsy Higgins, Oglethorpe's chief financial officer, which said the companies owed nothing in final credit subsidy fees tied to the execution of the Vogtle loan guarantees.

"The credit subsidy fee payable to DOE in connection with its execution of the loan guarantee agreement dated Feb. 20, 2014, between DOE and [Oglethorpe], pursuant to which DOE will guarantee a federal financing bank loan to OPC [for $3 billion, including estimated capitalized interest] is $0," Davison wrote in one letter to Higgins.

The Office of Management and Budget's calculation may reflect that Southern Co. has invested billions -- more than $25 billion -- in the project and is an investment-grade company with years of experience in the electricity business -- unlike other startups the agency has provided with loan guarantees. A 2013 report from the Nuclear Energy Institute noted both Southern Co. and its subsidiary, Georgia Power, are A-rated, investment-grade companies that can recoup costs, being located in a regulated market.

DOE spokesperson Dawn Selak: "This calculation is based upon a standard methodology used across the federal government. In this case, it should be noted that the Vogtle project sponsors are well-established, sizable companies that are already heavily invested and wholly committed to the project."

Southern Co., notably, declined to provide a comment for the record.

While Vogtle is moving forward, other loan guarantees in the past, authority DOE has under the Energy Policy Act of 2005, have not materialized. Most recently, Constellation Energy Group -- now a division of leading nuclear power generator Exelon Corp. -- backed away from plans to build a reactor in Maryland after DOE asked for an initial $880 million upfront payment in fees, an amount calculated by the OMB, to protect against a potential project default.

Activists have for years called on DOE to divulge the details of the loan guarantees, namely the credit subsidy fees -- an amount that represents the "price tag" nuclear developers must pay to the federal government to cover the risk that a project is not completed and that the government may have to repay the project's lenders.

The zero-sum figure drew immediate criticism as a "sweetheart deal" for the companies.

"It is outrageous that the Department of Energy and Office of Management and Budget somehow determined that the two reactors under construction at Plant Vogtle pose less of a risk of default today than they did a couple years ago," said Sara Barczak, director of the Southern Alliance for Clean Energy's high-risk energy choices program. Barczak said the fees are critical in light of the 2011 nuclear disaster in Japan, stiff competition nuclear projects face from cheap gas and the snuffing out of other projects.

"The Vogtle expansion is 21 months behind schedule, well over $1 billion over budget and has a large outstanding lawsuit of nearly another billion dollars between Southern Co. and Westinghouse," she said. "How that together doesn't constitute an unacceptable risk to taxpayers is baffling."

The fees are based on the Office of Management and Budget's governmentwide formula. The OMB formula, according to a Nuclear Energy Institute 2010 white paper, is based on the probability of default and how much is lost or recovered, the timing of the default, and how quickly the company would recover.

The revelation that the credit subsidy fees for Southern and Oglethorpe are nil is critical in light of DOE's ongoing negotiations on a third loan guarantee for $1.8 billion for the Municipal Electric Authority of Georgia, which is also taking part in building the two Westinghouse AP1000 units that are slated to begin operating at Vogtle in 2017 and 2018.

Georgia Power owns 45.7 percent of the Vogtle project, Oglethorpe owns 30 percent and MEAG, a consortium of municipalities, owns 22.7 percent.

The fees have been a point of debate in negotiations surrounding the loan guarantees -- agreements initially expected to be finalized in 2012 that got bogged down over terms and costs and eventually complicated by DOE requirements that were added after the much-publicized bankruptcy of solar panel maker Solyndra, which had received federal loan guarantees (*E&ENews PM*, Jan. 30).

Southern CEO Tom Fanning hinted in 2012 that the utility could move forward with Vogtle without the DOE support, saying, "Whatever terms and conditions we enter into ultimately work to the benefit of our customers" (*Greenwire*, July 19, 2012). But during the following months and years, Southern officials said they were nearing an agreement -- one suitable for a large corporation -- that was economical for customers (*E&ENews PM*, Feb. 21, 2013).

Analysts say that the future of the U.S. nuclear industry, and of nuclear power generation in the United States, will largely depend on the success of the two reactors, called Vogtle 3 and 4. Although the reactors are being built, developers have already faced regulatory snags and construction hang-ups, leading to delays and cost increases over time. The project is now estimated to cost the utility and its ratepayers nearly $15 billion.

Even so, the agreement signifies the White House's push for new nuclear, as well as a drawdown of the original nuclear program.

When the White House announced its conditional commitment in 2010, then-White House climate adviser Carol Browner said she hoped the Georgia reactors would be "the first of many new nuclear projects." That call saw a Democratic president being cheered by the nuclear power industry for supporting nuclear's long-hoped-for revival, while being condemned by nuclear power opponents on the left for putting billions of dollars in taxpayer money at risk (*ClimateWire*, Feb. 17, 2010).

Industry officials at the time said an upfront credit subsidy payment of 1 to 2 percent of the loan amount would be manageable, but a significantly higher number would kill the proposed reactor projects.

The nuclear industry has defended the project. The NEI in its 2010 white paper noted that Southern and other utilities building the reactors are placing their balance sheets at risk -- "in essence, pledging the company and its assets as security for the loan guarantee."

Lake Barrett, an energy consultant based in Washington, D.C., noted that the Vogtle reactors are located in a regulated market and that the Public Utility Commission in Georgia supports the project. "[The project] is pretty low-risk from an investment point of view, they're in a state that's regulated and the ratepayers are going to honor those debts," he said. "The companies get a reasonable rate of return, as opposed to 'you're on your own, baby.'"

DOE has received eight other applications for almost $64 billion in loan guarantees that the agency considers inactive. Following the finalization of MEAG's loan guarantee, DOE will have $10.2 billion in remaining nuclear authority -- enough, the agency anticipates, to support one other nuclear generation project, according to the Government Accountability Office.

ENERGY POLICY:

Judge strikes down Minn. emissions reduction law

Manuel Quiñones, E&E reporter

Published: Monday, April 21, 2014

Minnesota state leaders are promising to appeal a key federal court decision that last week invalidated a 2007 anti-coal law in closely watched litigation about the nation's energy future.

Minnesota U.S. District Judge Susan Nelson ruled Friday that the state's Next Generation Energy Act, which aimed to reduce greenhouse gas emissions in the state, violated the U.S. Constitution's Commerce Clause.

The law not only limited power production in Minnesota but also restricted the purchase of carbon-intensive energy from other states. As a result, neighboring North Dakota, a power exporter, sued in 2011.

Nelson ruled that the measure had the effect of usurping federal power to regulate interstate commerce because of the regional distribution of electricity.

Nelson wrote in her opinion that the Minnesota law "is a classic example of extraterritorial regulation because of the manner in which the electricity industry operates."

Citing electric distribution through the Midcontinent Independent System Operator, Nelson explained that when a "non-Minnesota entity" puts power into the regional grid, it cannot ensure that the electricity won't end up in Minnesota or contribute to its greenhouse gas emissions.

"Thus," Nelson wrote, "the statute also requires out-of-state entities to seek regulatory approval in Minnesota before undertaking transactions in other states."

She concluded, "This statute overreaches and, if other states adopt similar legislation, it could lead to balkanization."

The Minnesota Chamber of Commerce and the National Mining Association were just two of numerous utility and coal mining interests that backed North Dakota.

In a friend-of-the-court brief, NMA and the chamber argued that if other states, especially with large population centers, follow Minnesota's lead, it could spell the end of coal-fired power.

"Technological development of more efficient coal generation plants in the United States will thus cease," the brief said, "removing a major driver of critically needed worldwide technological development."

North Dakota Attorney General Wayne Stenehjem (R) cheered Nelson's ruling. "This ruling will allow North Dakota to continue its role as a vital and essential source of affordable electricity for consumers in Minnesota and across the country," he said.

Minnesota Gov. Mark Dayton (D) said the law does not restrict new power plant construction as long as developers offset carbon emissions.

"In other words, Minnesota's law encourages the replacement of older, more-polluting power plants with more efficient, cleaner facilities," Dayton said in a statement. "In this case, North Dakota operators propose to build new, coal-fired power-generating plants without offsetting emission reductions. Prevailing winds will carry those toxic emissions directly into Minnesota. That shameful practice should not be permitted by either the state or federal government."

Environmental groups in a friend-of-the-court brief expressed concern about the litigation's effect on actions in other states to limit coal-fired power.

"Like all states, Minnesota extensively regulates utilities serving its citizens, including rates, return on investment, service reliability and the generating resources utilities may construct or rely on," they wrote.

North Dakota and its backers, the green groups said, would scrap long-standing state powers "reflected in renewable portfolio standards and scores of other state laws, to distinguish among different types of power generation in regulating sales to in-state customers."

BIOFUELS:

Emissions from corn stover greater than those from gasoline -- DOE-backed study

Amanda Peterka, E&E reporter

Published: Monday, April 21, 2014

Producing biofuels from cornstalks, husks and other agricultural wastes will increase greenhouse gas emissions compared to gasoline, according to a new Department of Energy-backed study.

The study published yesterday in the journal *Nature Climate Change* estimated the effects of removing corn crop residues from 128 million acres across 12 Corn Belt states. It found that total annual emissions from producing biofuel out of those residues would be 7 percent higher than those of gasoline averaged out over five years and above the regulatory threshold set by the federal renewable fuel standard for cellulosic biofuel.

The study is backed by a $500,000 DOE grant and is likely to factor into the debates in Washington, D.C., over the future of biofuels policy.

The research is already taking heat from the renewable fuels industry, which this year is set to open the first U.S. facilities built to generate cellulosic biofuel from corn stover. The industry says that the research was based on unrealistic assumptions about how much agricultural waste is to be harvested and does not reflect what's actually happening on farm fields.

"The article says little about real world stover-to-ethanol fuel because it uses corn stover removal rates far exceeding those used in the field," said Brooke Coleman, executive director of the Advanced Ethanol Council, which represents the companies making cellulosic ethanol. "The analysis also models a one-size-fits-all approach to managing soil carbon that, by definition, ignores how farmers manage their land."

The model developed by University of Nebraska, Lincoln, assistant professor of agronomy and horticulture Adam Liska found that harvesting corn stover that is currently left on fields decreases soil

organic carbon partly by increasing soil erosion by wind and water. Based on a harvest rate of about 2.7 tons of stover per acre per year, Liska found that the emissions add an average of 50 to 70 grams of carbon dioxide per megajoule of biofuel.

Unless the lost carbon is mitigated by certain management practices, such as planting no-till cover crops, corn-stover biofuels will likely not meet 60 percent reduction threshold used by U.S. EPA to define cellulosic biofuels, the study found.

The states of Minnesota, Iowa and Wisconsin showed the highest net loss of carbon because they have cooler temperatures and have more carbon in the soil. The emissions are not properly characterized in EPA's life-cycle emissions, the study says.

It also found that the rate of carbon emissions is constant no matter how much stover is taken off the field.

"If this research is accurate, and nearly all evidence suggests so, then it should be known sooner rather than later, as it will be shown by others to be true regardless," Liska said in a statement. "Many others have come close recently to accurately quantifying this emission."

The major companies set to open cellulosic ethanol facilities this year, though, say they are planning to harvest far less corn crop residue from farm fields than the rate used by the study.

POET-DSM Advanced Biofuels, a joint venture between the nation's largest ethanol producer and a Dutch enzyme maker, is planning to collect only about a ton per acre, or less than a quarter, of the residue left on cornfields each year after the fall harvest, according to Steve Hartig, the company's general manager for licensing. POET-DSM plans to open a 20-million-gallon-a-year cellulosic biofuel plant in northwest Iowa later this year and to collect stover from about 120,000 acres within a 30-mile radius.

Previous research, including analyses from Iowa State University, the University of Illinois and Argonne National Laboratory, has found that stover collection rates in the range of 20 to 30 percent -- or leaving about 3 tons of stover on the field -- likely will not have negative sustainability impacts.

"I think the study is a theoretical thing," Hartig said in an interview this morning. "You could also take all the stover off the field, you could take none of the stover off the field, and those are all maybe an interesting thing to study from an agricultural point of view, but they have no basis to what we're doing. And we're taking about 20 percent, and we're also consistently working with the farmers on that."

DuPont's biofuels branch, which is also planning to open a 20-million-gallon-a-year plant in Iowa, aims to take 160,000 to 170,000 acres of corn stover -- or 600,000 stacked bales -- to operate its plant. Its harvest rate for stover is also about a ton per acre per year (*Greenwire*, Dec. 13, 2013).

NUCLEAR WASTE:

Feds, state reject each other's Hanford cleanup plans

Published: Monday, April 21, 2014

The dispute over the Hanford nuclear site continues as Washington state and the federal government both rejected each other's cleanup proposals.

Washington Gov. Jay Inslee (D) and Attorney General Bob Ferguson (D) sent a letter to the Department of Justice on Friday saying the Department of Energy's plan to clean up the waste and leaking tanks was too vague.

"Energy's proposal lacks sufficient specificity, accountability and enforceability," Inslee said.

The state submitted a counterproposal requesting a detailed schedule for the cleanup, mandatory safety regulations for treating groundwater, and progress reports filed regularly with courts and the state.

But the Justice Department said that Washington's plan doesn't "account for the realities" of technical problems and costs and that providing a schedule isn't possible because of the uncertainty of the technology workers will use to handle the facility's waste.

Federal attorneys wrote that the state's plan may double the federal cost most years and raise "a number of significant technical, safety, budgetary and legal issues that render it unworkable."

Washington state and the federal government agreed on a plan in 2010 to clean up the waste at Hanford from making plutonium and other ingredients for nuclear weapons. But the next year, DOE warned it was falling behind schedule.

Inslee's office said the state could request "dispute resolution," which would open a 40-day negotiation period, since each side has rejected the other's offer. If the parties don't agree on anything in that time frame, Washington could ask a federal court to order DOE to use the state's plan (Jim Camden, Spokane *Spokesman-Review*, April 19). -- **JL**

ALTERNATIVE FUELS:

Tires could power N.M. cement plant

Published: Monday, April 21, 2014

A Tijeras, N.M., cement plant is seeking permits to burn tires to fuel its operations. It would be the first plant in the state to use tire-derived fuel.

Doug Roark,vice president of energy and environment at GCC Rio Grande Inc., the plant's operator, said the tires would cause no odor, smoke or air quality problems when burned in a controlled environment.

According to the Portland Cement Association, an industry group, 48 plants in the United States already burn tires for fuel. The New Mexico plant could consume 1.5 million tires each year if operating at full capacity, Roark said. That would replace some of the 66,000 tons of coal the plant's two kilns burn each year.

State regulators say the plant will have to notify local residents and hold public meetings if it seeks to update its Clean Air Act permit to allow for burning tires. It also will have to continue to meet U.S. EPA guidelines for air emissions (Elise Kaplan, *Albuquerque Journal*, April 21). -- **SP**

YUCCA MOUNTAIN:

DOE temporarily saved money by closing repository -- IG

Hannah Northey, E&E reporter

Published: Monday, April 21, 2014

The Obama administration saved about half-a-billion dollars by ceasing the Energy Department's activities at the now-abandoned Yucca Mountain repository in Nevada -- but those savings were temporary and costs are now piling up without a waste solution, DOE's inspector general found.

IG Gregory Friedman released a report last week showing the federal government avoided $412 million in costs after the administration decided to shutter the project.

"We believe the Yucca Mountain cost avoidance, while generally associated with [Office of Management and Budget] guidance, only provided a temporary savings to the government as the requirement for the department to safely dispose of nuclear waste material has not been suspended," Friedman wrote.

Yucca Mountain has become a hotly debated political issue, with House Republicans criticizing the administration for pulling the plug on the Nevada site after the government spent more than $15 billion on the Nevada project over more than three decades.

House Republicans have also warned the White House against what they say would be the costly and illegal restart of a national search for a new repository, a move that Energy Secretary Ernest Moniz has said would cost up to $11 billion.

Nuclear plant operators have been winning lawsuits against the federal government to recoup hundreds of millions of dollars in costs for removing and storing spent fuel that the government had promised to take more than a decade ago and put in Yucca Mountain.

So far, the government has paid $776 million in claims arising from 76 suits over breach of contract, the Department of Energy said, and legal fees have added about a third more to settlement costs. By 2020, the government's liability is expected to grow to about $11 billion, according to a report from the University of Illinois.

The IG conducted an audit that found DOE, which manages about 118 million square feet of mostly federally owned real property assets, had saved almost $600 million from its handling of those assets, the bulk of which stemmed from shuttering the Yucca Mountain project. The remaining $168 million was achieved through the agency's demolishing or selling excess facilities.

The IG's audit aimed to determine whether DOE had managed its real estate properties effectively and in accordance with a governmentwide initiative to reduce excess properties, cut costs, save energy and water, and curb greenhouse gas emissions.

Facing mounting pressure to lower the federal deficit, President Obama in the summer of 2010 issued a memo directing the heads of executive agencies to accelerate efforts to identify and eliminate excess properties and set a target of saving at least $3 billion (*E&ENews PM*, June 10, 2010). Obama at the time said curbing greenhouse gas emissions would be a side benefit.

CALIFORNIA:

Some truckers might get reprieve from diesel emission rules

Published: Monday, April 21, 2014

California might delay new diesel emission rules to give small trucking companies more time to comply with the law.

The change, which the state Air Resources Board is considering this week, would give small fleets and owner-operators several more years to install costly filters that capture soot and smog from diesel-powered trucks. The regulations are part of a state law aimed at cutting diesel emissions 85 percent by 2020.

"We're all struggling" to comply with the rule, said Allen Forsyth, who operates a three-truck fleet in Los Angeles. "I used everything I had to buy a 2012 truck. But I'm absolutely broke now."

Officials said the change wouldn't affect California's air quality improvement goals. But environmentalists jumped on the proposal, urging the state not to postpone the deadline.

"We're asking them to hold the line," said Diane Bailey, a senior scientist with the Natural Resources Defense Council.

The Air Resources Board is slated to vote on the plan Thursday (Tony Barboza, *Los Angeles Times*, April 20). **-- DB**.

ENERGY POLICY:

Brookings' Muro pitches plan to finance clean energy projects through bond market

Published: Monday, April 21, 2014

In the absence of federal action, could the future of clean energy finance be in state and local bond markets? During today's OnPoint, Mark Muro, a senior fellow at the Brookings Institution and the policy director of the Metropolitan Policy Program, discusses a new paper on state and local capabilities to finance clean energy development through the use of public finance bonds.

Click here to watch today's OnPoint.

ClimateWire -- Tue., April 22, 2014 -- **Read the full edition**

1. CITIES: New $5M prize gives towns and cities more incentives to promote energy efficiency

Georgetown University will open a new contest tomorrow, dangling a $5 million prize for cities across America to improve their efficiency. Open to almost 9,000 communities with populations between 5,000 and 250,000 residents, the program will track entrants over a two-year period and grant the award in 2017.

2. NEW YORK: De Blasio's first climate report focuses on homebuilding,

not adaptation

NEW YORK -- Mayor Bill de Blasio's first major policy statement on climate change resiliency may dwell mostly on how to fix rotted homes destroyed by Superstorm Sandy, but administration officials insist that short-term emphasis will shift in due course.

TODAY'S STORIES

3. FORESTS: Colo. pine beetle outbreaks have significant impact on groundwater supply -- study

4. BUSINESS: Top decisionmakers pledge to keep lowering energy emissions

5. BIOFUELS: EPA's newly proposed targets are bad for climate, assert industry heads

6. SOCIETY: Why do male climate experts hog the media spotlight?

7. TRANSPORTATION: Toll lanes that favor public transit are key to lowering congestion, emissions

8. ADAPTATION: Phoenix considers water options amid global warming

9. FINANCE: University of Oregon student vote urges cutting fossil fuel stocks

10. SCIENCE: Ice core research helps compile 800,000-year climate change record

11. NATIONS: Australia's incoming Senate majority party won't support climate plan

E&ETV's OnPoint

12. AIR POLLUTION: Dentons' Rubin discusses impacts of D.C. Circuit Court's mercury and toxics ruling

EnergyWire -- Tue., April 22, 2014 -- Read the full edition

1. ELECTRICITY: Why aren't Southern utilities jumping into the solar business?

The debate over how rooftop solar panels can be paid for in some Southeastern states will stay around until the laws change to something utilities and solar advocates can live with. That may take a while.

2. TRANSPORT: Oil-by-rail loophole keeps U.S. emergency response plans in the dark

U.S. transportation officials don't review how railroads would handle worst-case oil train disasters like last summer's derailment in Quebec, which killed 47 people in a fiery explosion.

TOP STORIES

3. FINANCE: Diverging oil divestments at neighboring schools point to cost of climate action

4. ELECTRICITY: Okla. governor signs distributed generation bill, adds order clarifying tariffs

5. NATURAL GAS: 'Historic moment for Alaskans' as Legislature OKs massive pipeline project

ELECTRICITY

6. POWER MARKETS: Merchant mixup continues as Calpine unloads 6 plants for $1.57B

7. ELECTRICITY: In Jamaica, gas plant contract marks step toward cheaper juice

OIL AND GAS

8. BAKKEN SHALE: Enviros want industry-backed N.D. anti-flaring plan to go further

9. FINANCE: Investors find appeal in smaller, more focused drilling companies

10. NATURAL GAS: Pa. residents appealing EPA's permitting of injection well

11. BUSINESS: Chesapeake hired by former head to drill in Utica

12. LNG: Shell expands Russia project with support from Putin

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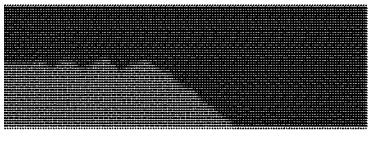

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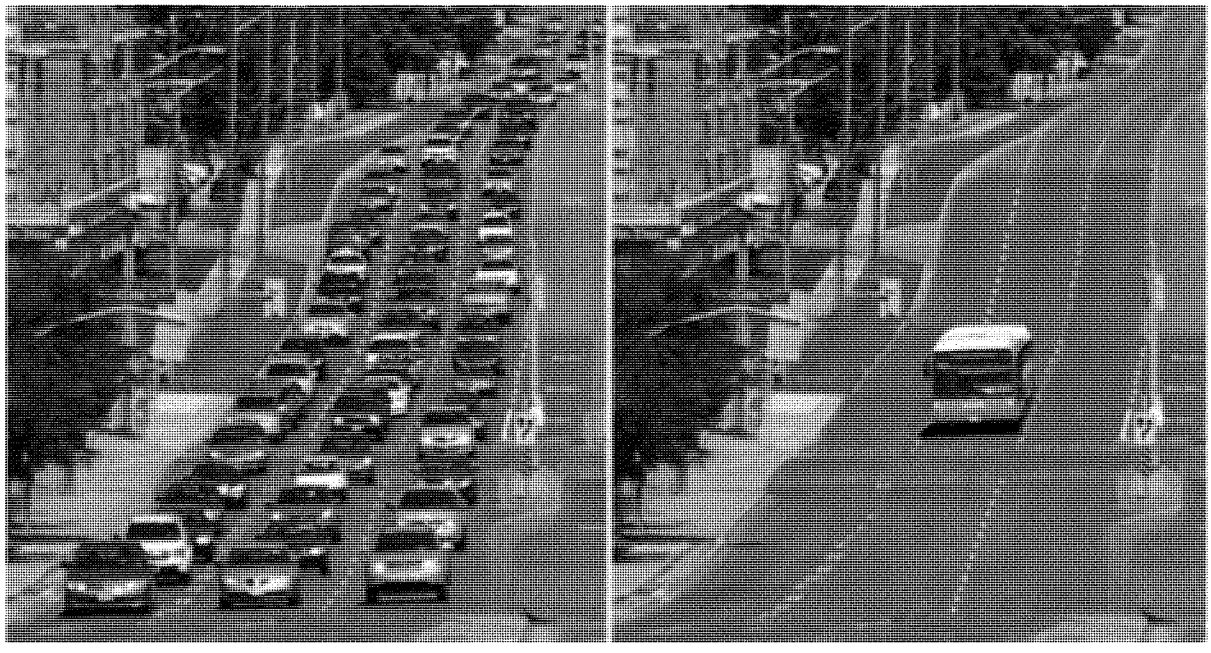

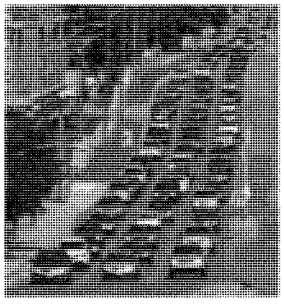

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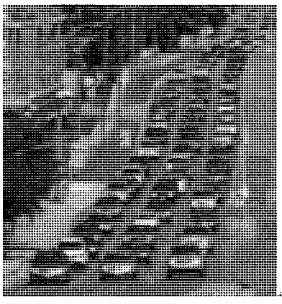

Air & Radiation Law News

for April 21, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

D.C. Circuit Upholds EPA Cement Kiln Rules, Vacates Waiver of Fines During Malfunction

A federal appeals court April 18 upheld the Environmental Protection Agency's revised air toxics standards for cement kilns but said the agency overstepped its authority when it tried to limit the authority of federal district courts...

Climate Change

Brazil Kicks Off Carbon Credit Donations To Offset Emissions Generated by World Cup

Companies with certified emissions reduction credits (CERs) issued by Brazilian projects under the Kyoto Protocol's Clean Development Mechanism (CDM) can donate them to offset carbon dioxide emissions generated by the upcoming 2014...

Climate Change

Power Plant Proposal on Schedule, EPA Says

The Environmental Protection Agency said in an April 17 statement it is on schedule to propose carbon dioxide emissions limits for existing power plants by June 1, but it will not discuss any details of the upcoming rule. The EPA is required to...

Climate Change

Record $4.43 Billion Pledged to GEF
To Help 140 Nations on Climate, Other Issues

A total of 30 developed nations have committed $4.43 billion to the Global Environment Facility, which will distribute the funding over the next four years to help developing nations tackle environmental threats from climate change and deforestation...

Energy

State Department Delay on Keystone XL
Renews Calls in Congress to Force Decision

The State Department delay in the review process for the Keystone XL oil sands pipeline has renewed calls for legislation to force President Barack Obama to make a decision....

Energy

Ukraine Seeks to Boost Renewable Energy
To Curb Dependence on Russian Natural Gas

Seeking to lessen its dependence on Russian natural gas, Ukraine is trying to lure investment to boost its use of renewable energy such as biomass, wind and solar power....

Fuel Efficiency

Utah Legislature Amends Law to Provide
Tax Credits for Fuel-Efficient Vehicles

The Utah Legislature has amended state law to establish tax credits for fuel-efficient vehicles, valid for corporate and personal income taxes in 2015....

Ozone Depletion

Canada Directs Industries to Submit Details of HFCs Use in 2008-2012 Period

Canada is directing industrial users of hydrofluorocarbons to submit detailed data on their use of the substances in the 2008-2012 period to assist the government in meeting Canada's international obligations....

Radioactive Waste

Washington State Moves Toward Resolution Of Dispute in DOE Cleanup of Hanford Site

Washington state has taken another step toward triggering formal dispute resolution with its rejection of an Energy Department proposal for cleanup of mixed radioactive and chemical waste at the Hanford Nuclear Reservation....

Transportation

Texas Transportation Agency Revises Rules In Preparation to Assume NEPA Authority

The Texas Department of Transportation has revised its environmental review regulations for transportation projects, taking one more step toward full assignment of the federal government's environmental review role....

CORRECTION

An article in the April 16 report about California Senate President Pro Tempore Darrell Steinberg's proposal for spending cap-and-trade revenue misstated a comment by Lauren Faber of the Environmental Defense Fund. While Faber did...

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GOP Lawmaker Cites DOE Funding To Fault EPA's Utility CCS Requirement

Rep. Morgan Griffith (R-VA) is bolstering arguments that the 2005 energy law prohibits EPA from relying on Department of Energy-funded carbon capture and sequestration (CCS) projects to justify its proposed CCS mandate for new power plants, saying the law's funding criteria shows CCS is not a commercially viable technology.

D.C. Circuit Scraps Affirmative Defense, Forcing EPA To Revise Air Rules

The U.S. Court of Appeals for the District of Columbia Circuit has scrapped EPA's use of a novel "affirmative defense" in a cement air toxics rule that exempted emissions spikes due to equipment malfunctions from Clean Air Act penalties, which could force the agency to overhaul several other regulations that included the contested defense.

Greenwire

COAL:

Is EPA rulemaking hurting technology innovation?

Manuel Quiñones, E&E reporter

Published: Friday, April 18, 2014

Some top technology firms are expressing concern about U.S. EPA's proposed rules to limit power plant carbon emissions, questioning whether they will truly encourage innovation.

Pro-coal groups, including the National Mining Association and the American Coalition for Clean Coal Electricity, along with their allies in Congress, have questioned the agency's plans to require carbon capture and sequestration for all new coal-fired power plants.

Beyond discussing whether CCS is "ready" for such a mandate, EPA critics have also said the agency's proposal is making technology firms apprehensive about investing in advancing the technology.

"We've pulled way back on carbon capture [research and development]," said Kip Alexander, a power technology executive at Babcock & Wilcox Co. He cited "the way the rules are being written, the rules are being made" for the strategic decision to scale back.

The statement may appear counterintuitive. If EPA is going to require a certain technology, why wouldn't companies be scrambling to cash in on the requirement? And why wouldn't technology firms be ramping up their research to help them out?

Coal boosters respond that market conditions and the high cost of CCS mean that utilities will instead opt

for building natural gas power plants or turn to renewables. Such a reality would hurt coal and leave the country vulnerable in times of high power demand, they argue.

Alexander said Babcock & Wilcox ramped up its focus on technology to reduce power plant greenhouse gas emissions as policymakers increased their focus on global warming, especially when regulation-minded Democrats gained control of Congress and the White House.

"From say 10 years ago to four or five years ago, we were seeing signals with things like Waxman-Markey that carbon capture was going to be required for new coal, and we invested in first-generation solutions," Alexander said in an interview.

Beyond policy, market conditions were different back then. Natural gas prices were higher and more volatile when the cap-and-trade bill authored by Reps. Henry Waxman (D-Calif.) and Ed Markey (D-Mass.) passed the House in 2009.

In 2008, for example, the price of natural gas topped $13 per million British thermal unit. It was less than half that earlier this year.

Not only did coal have a leg up in the marketplace several years ago, but the cap-and-trade legislation included tens of billions of dollars for carbon capture and sequestration efforts.

"We all scrambled, thinking there was a market coming," Alexander said. "The economics unfolded as we did the development. We still do research and development for coal technology. But it's a lot more geared toward the global market."

'Not the right answer'

Robert Hilton, vice president of power technologies for government affairs at Alstom SA's power division in the United States, another top power plant technology firm, didn't necessarily say proposed EPA rules were killing CCS research but was also not shy about criticizing the proposal.

Requiring "CCS at a point when CCS is improving is not the right answer," Hilton, who frequently speaks on carbon capture issues, said in an interview. "As an industry, we're not ready to go with CCS on a bunch of plants."

EPA has touted ongoing CCS projects like Southern Co.'s Kemper County, Miss., power plant, which is soon to open, as evidence of the technology's current viability.

The Obama administration also often touts billions of dollars in Department of Energy spending to promote and develop CCS. Plus $8 billion in new loan guarantees is currently in the application process.

That doesn't keep Hilton from insisting that research efforts are "absolutely languishing." He said, "How can we say it's anything but languishing? And there's no financing for new [demonstration projects]."

At the same time, he said, "We're continuing to drive technology because we do believe that governments will accept the responsibility of what's happening to the atmosphere."

Fred Eames, CCS Alliance attorney and partner at the firm Hunton & Williams LLP, is also among the industry advocates who thinks EPA is hurting rather than encouraging technological innovation.

"EPA said it read the comments on its prior version of the rule," he wrote in an email. "Then it would have read comments from the people who would know best -- equipment manufacturers, utilities, financiers --

that a mandate is going to hurt CCS, not help it."

Eames added, "If the Administration wants to encourage CCS, it needs to support research and incentives, but every year the President's budget proposes deep cuts."

Partial capture

Carbon capture advocates, who stress that the technology is necessary for the world to meet climate goals, often speak at conferences about what is keeping CCS from becoming commercially available faster.

For years, the conventional wisdom -- even among opponents of strong government action on climate change -- was that governments failed to incentivize CCS by not enacting tougher emissions constraints or pricing.

But during a recent Global CCS Institute meeting at the Canadian Embassy in Washington, D.C., several carbon capture advocates noted that governments, including in the United States, are slowly but surely boosting regulations on carbon (*Greenwire*, March 3). In other words, the regulatory trigger is in many ways already there.

CCS advocates therefore identified other factors preventing the widespread commercial penetration of CCS include cost, competition from gas and renewables, and liability concerns, especially for long-term underground storage.

Sarah Forbes, senior associate at the World Resources Institute, who specializes in carbon capture efforts, said new Obama administration injection rules to encourage and regulate the underground storage of CO2 were a necessary part of administration efforts and are boosting the practice.

Like many CCS backers not involved in politics or lobbying, Forbes demurred from weighing in on whether EPA's proposal to require CCS for all new coal plants would effectively kill rather than boost the technology's U.S. footprint.

But in an interview last week, she stressed that EPA's mandate would only require plants to trap about half of their CO2 emissions. That, in her view, has been absent from much of the back and forth.

For perspective, the energy giant Southern hopes to capture at least 65 percent of CO2 emissions at the Kemper plant. The DOE-backed FutureGen 2.0 project in Illinois looks to capture more than 90 percent of plant emissions.

Last month EPA proposed a permit for FutureGen's plans to inject CO2 underground. And this week it proposed a similar permit for an Archer Daniels Midland Co. project in Decatur, Ill. (*ClimateWire*, April 17).

Forbes, who spent time working on clean coal issues at DOE, said EPA's greenhouse gas control and CCS mandate proposal "actually gives a good bit of flexibility in terms of systems design."

When it comes to the future, Forbes said policymakers and companies have to decide how much money to spend on the technology and the appropriate level of public-private cooperation.

"The question that I would ask in this space is what is the model for the next generation of CCS that would be installed," he said.

'Not without cost'

Pushing that next generation of CCS projects is one of the top concerns for Julio Friedmann, DOE's clean coal chief, who says they are crucial to growing the technology's marketplace penetration.

Lawmakers are also pushing legislation to help commercialize CCS. A new bill by Sen. Heidi Heitkamp (D-N.D.) would boost federal research spending and provide incentives to utilities (*Greenwire*, March 24).

While welcoming the legislation, National Mining Association spokesman Luke Popovich said the group's main concern was the EPA proposal. "She's offering to build a hospital for patients who need urgent attention now," he said.

EPA Administrator Gina McCarthy defended her agency's rulemaking during a PBS interview last year. "It's not about adding cost," she said, while conceding that the rule is "not without cost" to power generators and the coal industry.

"It is about providing certainty that there is a future for coal and a future that allows them to manage their carbon emissions effectively at a time that we know they need to be managed for public health and the environment," she said.

At the same time, in its regulatory impact analysis for the greenhouse gas rules, EPA cited federal statistics predicting that few if any new coal power plants would be built in the coming years.

"Taken together, current and expected natural gas and coal market trends are contributing to a fundamental shift in the economic conditions for new power plant development that utilities and developers have recognized and responded to in planning," the EPA analysis said.

The tough landscape for U.S. coal is why Matt Dooley, an Alstom executive consulting engineer, is thinking about the growing demand for the fuel beyond U.S. shores.

"I can tell you that Alstom is a global player in technology. We provide power solutions all over the world," he said. "Coal may be declining in the U.S. but not declining in other places."

At the same time, even though coal is thriving abroad and China has been active in CCS research, Dooley noted, "Market drivers for energy efficiency in Third World countries isn't there."

When it comes to efficiency, Dooley said at least some coal power plants in the United States could be installing technology to boost their performance but don't, not wanting to trigger a New Source Review under the agency's greenhouse gas tailoring rule.

Dooley sees the trend as an example of EPA inadvertently stifling technological innovation through regulations. "A lot of this technology exists now that can be implemented," he said. "We didn't start this yesterday. We've been doing this for many years."

Delay tactic?

George Peridas, a scientist with the Natural Resources Defense Council, visited SaskPower's Boundary Dam carbon capture project in Canada this week. It reinforced his view about the righteousness of EPA's proposed mandate.

"This is living proof that this is right here, right now," Peridas said in an interview. "If you go to Boundary Dam, it's staring at you, it's real."

Peridas called industry's resistance to CCS an effort to delay the inevitable, a "standard tactic that industry often deploys to complain about new rules."

Peridas said continuing the status quo of burning coal without carbon capture is no longer an option if the world wants to meet its climate goals.

EPA's proposed standard is, therefore, a way to level the playing field because no utility would be able to seek commercial advantage by building a coal plant without CCS.

"No one can hold a crystal ball and predict what the market is going to do," said Peridas, calling it "plausible" for gas prices to increase in a way that would make new coal plants with CCS viable.

Even though it is not an option for new plants in all regions, selling captures of CO2 for enhanced oil recovery can also boost the economic benefits of CCS. Both Boundary Dam and Kemper plan to sell their carbon emissions for drilling nearby.

Then there are smaller companies like Eco Power Solutions Inc. that have been researching new, more affordable ways of capturing emissions in order to benefit from increased regulations (*Greenwire*, March 11, 2013).

Beyond coal

Even though EPA's proposed CCS standard for new power plants does not include natural gas projects, which generally release less CO2 emissions, Peridas said CCS research would have to continue for those plants too.

"Even a large-scale switch from coal to gas won't do it," Peridas said about meeting global climate goals. "We have to do CCS on gas as well."

The Obama administration has been stepping up its efforts to promote DOE's CCS research for natural gas plants. Those efforts have faced resistance from pro-coal lawmakers who say coal research is the priority, especially with the possible new rules.

Don't count on the private sector to drive the innovation.

"It remains to be seen," Alexander said. "It won't happen on its own through private R&D."

Reporter Jean Chemnick contributed.

WIND:

BLM advancing large Calif. project with measures to avoid condors, eagles

Scott Streater, E&E reporter

Published: Friday, April 18, 2014

The Obama administration has completed the draft environmental analysis of a commercial-scale wind

farm project in the foothills of the Tehachapi mountain range, an area that has some of the nation's best wind resources near habitat for California condors and golden eagles.

The Bureau of Land Management today released a draft environmental impact statement (EIS) for the Tylerhorse Wind Project in Kern County, Calif., proposed to be built on about 1,200 acres of BLM land inside the Tehachapi Wind Resource Area where wind farms have been in operation for 30 years.

BLM and U.S. EPA both published notices in today's *Federal Register* announcing the availability of the draft EIS, which kicks off a 90-day public comment period running through July 17.

The Tylerhorse Wind Project, proposed by a subsidiary of Iberdrola Renewables LLC, would have the capacity to produce 60 megawatts of electricity, or enough to power about 20,000 homes and businesses.

The draft EIS also includes a draft plan to amend the California Desert Conservation Area to allow for the wind farm. But the Tehachapi area where the wind project is proposed comprises a mixture of public and private lands already dotted with wind farms, including the Catalina Renewable Energy Project and the Pacific Wind Project.

The Tylerhorse project would share an existing operations and maintenance building with Iberdrola's adjacent 189 MW Manzana Wind Energy Project. And a portion of the project could also connect to the Whirlwind substation through the adjacent Pacific Wind Project, according to BLM.

"We are excited to reach this milestone with the BLM, though plenty of work remains," Paul Copleman, a spokesman for Iberdrola Renewables, said in an emailed statement to *Greenwire*. "We think it's a great site for a wind project, in part because it's an area that already has wind projects operating, but also because it would take advantage of existing infrastructure at our operating Manzana wind farm to minimize its potential impact."

BLM is aiming to issue a final EIS by the end of the year and a record of decision granting final approval by next year, said Mike Sintetos, a BLM spokesman in Sacramento.

It would take about four months to construct the 40-turbine layout, according to BLM. But Copleman said it is "premature to speculate on a timeline" for when the wind farm would be built and placed into operation.

If built, the Tylerhorse project would be one of the few commercial-scale wind farms on federal land in California.

BLM, which manages about 20 million acres of public land with wind power potential, has approved 11 large-scale wind projects in the West since 2009; three are located in the Golden State.

The Tylerhorse project would be the second large-scale wind power project on BLM land in Kern County, behind the 153 MW Alta East Wind Project approved last year on about 2,000 acres of BLM land.

The Tylerhorse proposal would rank a distant fourth on BLM land in the state in terms of electricity generating capacity, behind the Alta East project, the 315 MW Ocotillo Express Wind Energy Facility approved in 2012 on more than 10,000 acres of BLM land in Southern California's Imperial County, and Iberdrola's own 186 MW Tule Wind Power Project in San Diego County.

But Tylerhorse would be located in an area that is known habitat for California condors and golden eagles.

BLM's record of decision for the Alta East project last year included a first-ever incidental take permit authorized by the Fish and Wildlife Service allowing the project proponent, New York-based Terra-Gen Power LLC, to kill or harm one endangered California condor during the 30-year life of the project. BLM has yet to detect any condors at the project site.

Terra-Gen Power installed advanced condor mitigation measures, including very high frequency (VHF) equipment that can pick up signals from radio telemetry devices placed on all California condors that allow the wind farm operators to detect condors as far as 16 miles away. The detection of condors within 2 miles would signal to operators to reduce wind turbine speeds to 15 miles per hour (*Greenwire*, May 24, 2013).

Iberdrola Renewables is proposing many of the same enhanced mitigation measures for the Tylerhorse Wind Project.

Sintetos, the BLM spokesman, said the agency will consult with Fish and Wildlife on the project but that no decision has been made yet whether to request an incidental take permit or even whether such a permit is necessary at the site.

"There's no answer to that yet," he said.

EPA's Region 9 office in San Francisco submitted scoping comments to BLM in October 2011 urging the agency to include in the draft EIS specific measures to reduce impacts to eagles and clarify how the proposed project will comply with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

Jeff Aardahl, a biologist and the California representative for Defenders of Wildlife, said that after taking a cursory look at the multivolume draft EIS, BLM and Iberdrola Renewables appear to have done a considerable amount of work to devise mitigation strategies to reduce impacts to birds and bats.

"They appear to have followed kind of the lead set by the Alta East Wind Project developers," Aardahl said. "I think this document shows they've gone to some greater efforts and made enhanced measures for mitigation that don't always show up in other projects."

Aardahl said he does worry about the general location of the project on the desert slope of the Tehachapi Mountains, and he said he is concerned about the concentration of wind farms in the general area.

But he added that he would rather have wind development in the already developed area than in more remote, pristine areas.

"We're going to have wind power, there's no doubt about it," he said. "I think the argument can be made [that] if the resource is good and there's a lot of turbines out there already, let's maximize the area's potential and do the proper mitigation. I'd rather them fill in all the in-between spaces out there than say, 'Well, we've had enough, let's go to some other place in the desert without any development.'"

Click here to read more about the proposed Tylerhorse Wind Project.

AIR POLLUTION:

Judges nix provision preventing lawsuits under EPA cement kiln standards

Jeremy P. Jacobs, E&E reporter

Published: Friday, April 18, 2014

A federal appeals court today vacated the part of U.S. EPA's air standards for portland cement kilns that shields violators from civil lawsuits if they exceed the limits during malfunctions.

The U.S. Court of Appeals for the District of Columbia Circuit held that EPA did not have the authority to grant kilns an "affirmative defense" for violations occuring during unavoidable malfunctions.

However, the court also upheld EPA's standards, as well as its extension of their compliance deadline, rebuffing challenges from a public health group.

Judge Brett Kavanaugh, writing for the court, said the Clean Air Act expressly allows citizens to bring lawsuits against alleged violators and the agency could not carve out an exemption for cement kilns.

"EPA argues that its proposed affirmative defense simply fleshes out the statutory requirement that penalties be applied only when 'appropriate,'" wrote Kavanaugh, a Republican appointee. "But under this statute, deciding whether penalties are 'appropriate' in a given private civil suit is a job for the courts, not for EPA."

The lawsuit is the latest in a long string of challenges to EPA's National Emission Standards for Hazardous Air Pollutants, or NESHAP, for portland cement kilns.

After the D.C. Circuit threw out parts of the standards in a case brought by industry in 2011, EPA recalculated them and promulgated a new limit for particulate matter that advocates claimed was weaker than the original one. The agency also pushed the compliance deadline for all pollutants back two years to September 2015.

The kilns are one of the top sources of man-made mercury emissions in the United States. When the agency issued the standards it said they would prevent 960 to 2,500 deaths per year.

The Natural Resources Defense Council challenged all aspects of the new final rule, but the court said EPA did not act unreasonably.

"EPA administers the Clean Air Act, and we must defer to its reasonable interpretation of any ambiguities in the statute," Kavanaugh wrote. "Here, even if the statute does not compel EPA's reading, and indeed even if EPA's reading is not the better reading, the statute at a minimum is sufficiently ambiguous on this point to permit EPA's reading. ... Because EPA's reading is at least reasonable, we reject petitioners' argument."

Kavanaugh was joined on the opinion by Senior Judge Harry Edwards and Judge Srikanth Srinivasan, both Democratic appointees.

With regard to the challenge to EPA extending the compliance date for pollutants like mercury and other gases even though it didn't revise those limits, Kavanaugh said it wouldn't make sense for EPA to separate the deadlines for each pollutant.

"This conundrum," Kavanaugh wrote, "is resolved when one realizes that it would be irrational and even absurd to have different compliance dates for the different pollutants."

Attorney Seth Johnson of Earthjustice, which represented the advocates, said closing the "affirmative defense" loophole is significant.

"The court's decision rightly tells polluters they won't get a free pass when they spew uncontrolled toxic emissions into the air we breathe," Johnson said in a statement. "The communities who have been burdened by excess mercury, particulate matter, and other hazardous air pollution that plants blame on 'malfunctions' can now rest assured that plants won't have a license to emit pollution at will."

Industry groups, however, also applauded the ruling for upholding the standards, with the Portland Cement Association saying it is "very pleased."

"EPA's revised cement NESHAP rule struck the right balance in establishing compliance limits that, while still extremely challenging, are realistic and achievable," the association's president, Gregory Scott, said in a statement. "Today, the court agreed with EPA's balancing of these important issues."

Click here for the opinion.

NUCLEAR ENERGY:

Tiny, cheaper underground plants could be the future -- new NEA chief

Published: Friday, April 18, 2014

The incoming chief of the Nuclear Energy Agency said small, cheaper underground plants could replace hulking nuclear facilities in the future as the industry struggles with safety concerns stemming from Japan's Fukushima Daiichi disaster.

Such plants could be roughly the size of two semi-trailers and would have pre-made factory parts that would be hauled by trucks or trains and slotted together.

William Magwood, the incoming director of the forum for nuclear energy countries, based in Paris, said the United States expects to receive the first applications for licensing the new modular reactors by the latter half of 2014, though it could take an additional six years before one is built.

Full-size reactors cost $6 billion to $8 billion to build, but "a small reactor ... can be built for a fraction of that cost," Magwood said.

The Energy Department has spent $450 million trying to persuade companies to develop the technology. However, promising developer Babcock & Wilcox Co. announced this week that it's reducing spending because of a need for "significant additional investors" (Lori Hinnant, Associated Press, April 17). **-- JL**

NUCLEAR WASTE:

Possible source of N.M. radioactive leak found

Published: Friday, April 18, 2014

Work crews may have discovered the source of radiation that leaked from a federal nuclear waste dump half a mile underground in southeastern New Mexico, authorities said yesterday.

The Department of Energy's deputy recovery manager, Tammy Reynolds, told a community meeting in Carlsbad that further investigation is required, but contamination was discovered where waste was being stored underground most recently.

She said the deeper crews went into the area, the more radioactive contamination they discovered Wednesday.

Waste from the Waste Isolation Pilot Plant is stored in rooms cut out of underground salt beds and sealed when full. Five of the seven rooms are full and sealed. Workers found the contamination in the seventh and most active storage area.

Crews and maybe robots will go into the area to try to see what caused the leak, possibly a roof collapse or the puncture of a container by a forklift (Jeri Clausing, Associated Press, April 17). **-- JL**

OIL AND GAS:

Apache's work with environmental investment firm viewed as a model

Published: Friday, April 18, 2014

In an unexpected partnership, billionaire oil company operator Steve Farris often turns to a bearded Vermont environmentalist for advice.

Farris' alliance with Steven Heim, managing director of Boston Common Asset Management, which touts its socially responsible investing, is turning heads in the business community as it helps the company fend off environmental activism from shareholders.

Farris, the CEO of Apache Corp., says his approach is a model for allowing shareholders to voice their opinions rather than shutting them out of the process. The company hasn't faced any shareholder proxy proposals on environmental issues since 2006, while competitors have faced dozens, analysts said.

Brian Rice, a portfolio manager for the California State Teachers' Retirement System, said in an email, "The 'Apache Model' is a very appropriate one for constructive shareholder/company engagement."

Still, other activists worry Heim's attitude reflects a lack of urgency the environmental movement can no longer afford.

"Like apartheid, climate change doesn't yield to incremental, tiny steps," said Bill McKibben, president of environmental group 350.org.

Heim, though, said the incremental steps add up.

"What I've been trying to do is to elevate the level of understanding of issues by the investors, not just the executives," Heim said (Ross Kerber, Reuters, April 17). **-- SP**

ClimateWire -- Mon., April 21, 2014 -- **Read the full edition**

1. RISK: China is spreading the use of insurance to cope with climate change damage

Weeks before the harvest started last summer, Li Ping's rice paddies were hit by extreme weather. Temperatures of 95 degrees Fahrenheit baked Longtan village in north China for over a month, and Li's rice yields decreased by 20 percent compared with normal years. But Li did not struggle to raise money for his next planting, which he did after previous crop failures. Instead, the 51-year-old farmer waited at home for the money to come.

2. BIOFUELS: Study casts doubts on GHG savings of fuels made from corn stover, cobs

The loss of soil carbon that results from removing corn field wastes to make biofuels could negate their value as a low-carbon fuel ingredient, a recent paper suggests.

TODAY'S STORIES

3. TECHNOLOGY: New battery research initiative announces first corporate members

4. WILDFIRES: For forests and grasslands alike, bigger Western wildfires are the new normal -- study

5. SCIENCE: Va. Supreme Court rules scientist's emails were proprietary under state freedom of information law

6. RESEARCH: Scientists begin to develop more accurate predictions of Arctic sea ice losses

7. PUBLIC OPINION: Poll shows majority support for wind power across Great Lakes region

8. FINANCE: Nations pledge a record $4.3B to offset environmental damage

9. TRANSPORTATION: NASCAR begins an environmental cleanup with fuel cells

10. ELECTRIC VEHICLES: Nissan offers free charging for Leaf buyers in several markets

11. ADAPTATION: La. authority battles with oil and gas companies over coastal protections

12. FINANCE: Religious groups urge Pope Francis to join fossil fuel divestment campaign

13. RENEWABLE ENERGY: Inventor develops solar car to solve Pakistan's gas crisis

E&ETV's OnPoint

14. ENERGY POLICY: Brookings' Muro pitches plan to finance clean energy projects through bond market

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1. GRID: Power players muster forces for electricity market reforms

The behemoths of the electric power sector are pushing federal regulators hard to enact reforms in East and Midwest markets that they say would strengthen the reliability of electricity supply and shore up their bottom lines.

TOP STORIES

2. KEYSTONE XL: It's déjà vu all over again for oil sands politics

3. CAMPAIGN 2014: Will Wendy Davis' fracking fights haunt her Texas run?

4. OFFSHORE: Enviros want Interior to stop Arctic work until flawed leasing plans are rewritten

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5. TRANSMISSION: Texas rancher takes line-placement fight to PUC

OIL AND GAS

6. POLITICS: At least one Colo. fracking ballot challenge is headed to state Supreme Court

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8. WORKFORCE: Energy's diversity problem drives a nationwide 'conversation' tour

9. OFFSHORE: Actor's latest role is advocate against Arctic drilling

10. REFINING: U.S. poised to be net exporter of gasoline next year -- report

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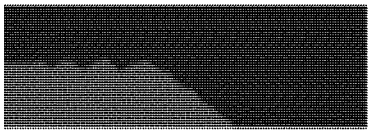

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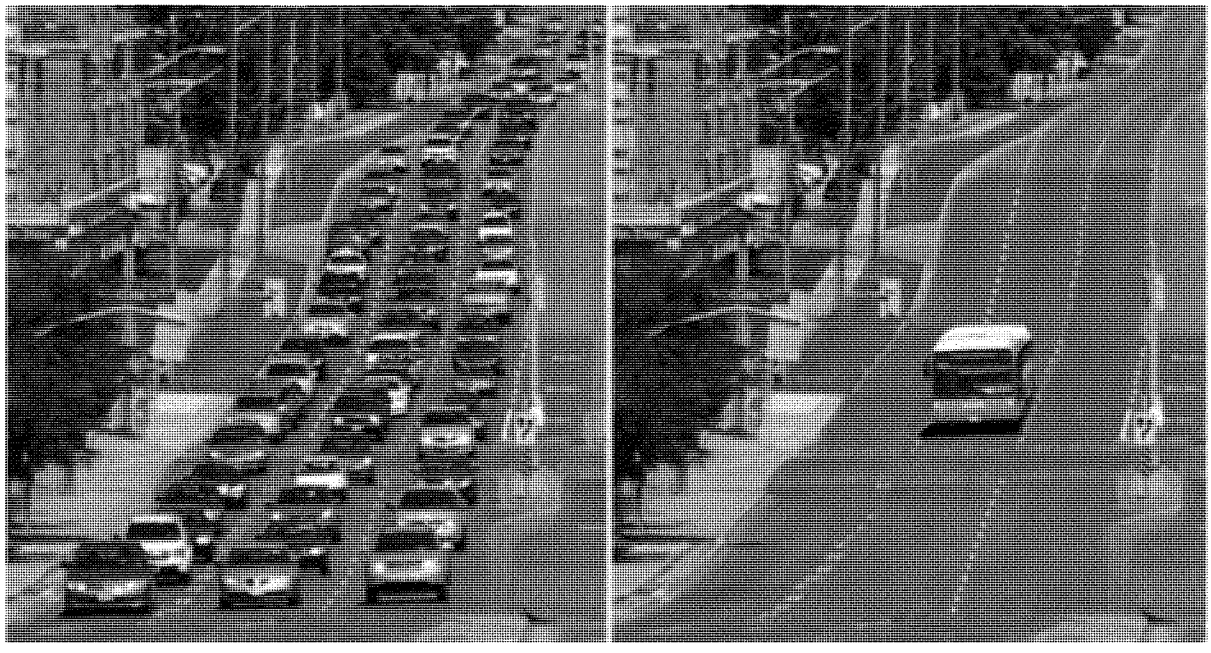

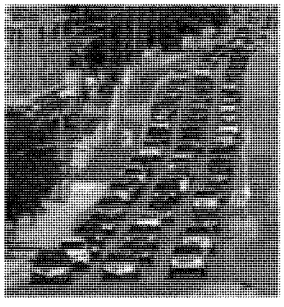

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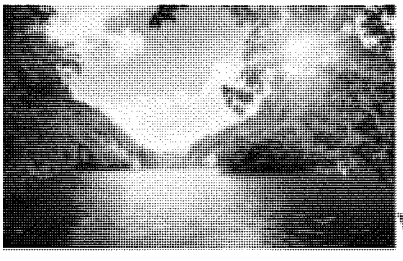
Subject: Water Law News for April 21, 2014



Water Law News

for April 21, 2014

Bloomberg BNA **Daily Environment Report™**

Drinking Water

EPA, Health Canada Plan Health Advisories
Addressing Toxics-Releasing Blue-Green Algae

The Environmental Protection Agency and Health Canada are jointly planning drinking water health advisories for cyanobacteria, the harmful forms of blue-green algae, according to an EPA official....

Enforcement

BP Executive Settles Insider Trading Charges
Based on Knowledge of Extent of Gulf Spill

Former BP plc official Keith Seilhan agreed April 17 in the U.S. District Court for the Eastern District of Louisiana to pay more than $224,000 to resolve Securities and Exchange Commission charges that he sold company securities based on inside...

Mining

EPA to Release Selenium Criteria
Including Fish-Tissue-Based Number

A senior Environmental Protection Agency official said the agency will soon release proposed water quality criteria for selenium that will involve evaluating selenium concentrations in fish tissue and in the water column, even though several...

Water Pollution

Julia Anastasio Named ACWA Executive Director

The Association of Clean Water Administrators has named Julia Anastasio to serve as its executive director and general counsel. Anastasio, who is currently senior manager of government affairs and director of sustainability for the American...

Water Pollution

Maine Legislature Approves Bill to Create
Protection, Monitoring Program for Lakes

The Maine Legislature approved a bill April 18 that would create a protection and monitoring program for the state's 5,700 lakes....

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Inside EPA's **Risk Policy Report**, 10/29/13

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-10/29/2013/menu-id-130.html

EPA Advances New Chromium 6 Assessment As California Prepares MCL

EPA is moving closer to revising its years-old assessment of the human health risks of hexavalent chromium (Cr6), which is expected to form the basis for a stricter drinking water standard, though California has recently taken one of the last steps toward finalizing a similar state standard that may not be as strict as what environmentalists are seeking.

States Concede In Fight On EPA Water Funding Pilot But Seek 'Refusal Right'

State opponents of a novel EPA water infrastructure funding pilot are conceding that they are not likely to block Congress from creating the program in a pending Army Corps of Engineers authorization bill but they are urging lawmakers to preserve states' role in the funding process, including by requiring municipalities to give states a novel "right of first refusal" before seeking new project financing.

Latest Blogs

ACWA Names Public Works Lobbyist As New Director

The Association of Clean Water Administrators (ACWA), representing state water regulators, has named Julia Anastasio, currently the senior manager of government affairs and director of . . .

Greenwire

FISHERIES:

Fla. governor calls for federal law

changes in wake of red snapper dispute

Jessica Estepa, E&E reporter

Published: Friday, April 18, 2014

Florida Gov. Rick Scott (R) yesterday jumped into the ongoing fray over management of red snapper in the Gulf of Mexico, calling for more flexibility in federal fisheries law.

In a letter sent to Commerce Secretary Penny Pritzker, Scott said he was "very disappointed" in the federal government's management of the popular red snapper in the Gulf, as well as other stocks. Last week, the Gulf of Mexico Fishery Management Council approved a recommendation that would limit the recreational season for the fish to 11 days, down from the proposed 40 days (*Greenwire*, April 11).

Federal recreational season days have been on the decline, even as the stock -- declared overfished by the federal government in the 1980s -- has grown more abundant, Scott said.

He called for changes to the Magnuson-Stevens Fishery Conservation and Management Act, the top fisheries law in the United States. As lawmakers work on reauthorizing the act, which expired at the end of fiscal 2013, they should add provisions for more flexibility, recreational data collection, and considerations for social and economic needs, he said.

"The Act must be modified to allow more fishing opportunities; not less, as fish stock improves," he wrote. "Under the current system, the Federal Fishery Management Council process and the Act are unnecessarily rigid and too often penalize fishermen and the businesses and communities that depend on them."

His concerns echo several of those aired by managers and anglers alike before congressional committees over the past year. A discussion draft released last year by House Natural Resources Chairman Doc Hastings (R-Wash.) calls for more cooperation between federal managers, states and the recreational fishing community.

A Senate proposal is expected to be introduced soon by Sen. Mark Begich (D-Alaska), likely with input from Sen. Marco Rubio (R-Fla.). Rubio, along with the rest of the Florida congressional delegation, were sent a copy of Scott's letter.

Still, Scott did not go so far as to demand that management of the stock be transferred to the states, a move that has been suggested by fellow Republican Gov. Bobby Jindal of Louisiana.

Scott commended his state's Fish and Wildlife Conservation Commission for approving a 52-day season earlier this week, a move he said will allow for both economic opportunities and continued recovery of the fishery.

ARCTIC:

Ancient ice preserves 3-million-year-old soil -- study

Joshua Learn, E&E reporter

Published: Friday, April 18, 2014

Some of the oldest ice on the planet protects relatively intact soil dating from millions of years ago in Greenland, new research has found.

As global temperatures rise and parts of Greenland's ice sheet melt at accelerating rates, the discovery of certain isotopes under nearly 10,000 feet of ice also reveals that the ice was previously stable for millions of years.

"It's a soil from before we were humans, which is kind of sobering," said Paul Bierman, a professor of geology and natural resources and one of the authors of the study, published in *Science* yesterday. "It means there are places on the world that really haven't changed for the past few million years."

Bierman's team, looking at a beryllium isotope it found at the very bottom of ice core samples, reasoned that the ice cover has remained stable for 2.5 million to 3 million years. Typically, ice core samples go back around 120,000 years in Greenland.

The beryllium isotope, created by the interaction of cosmic rays and the Earth's atmosphere, sticks to the ground where it falls. So the discovery of this isotope in silt extracted from the ice cores implies that some of the soil that was initially covered by expanding ice continues to be preserved today.

[+] The southwestern margin of the Greenland Ice Sheet. Silt rich layers are visible at the base of the ice are visible beyond the team's field camp. Photo by Paul Bierman, courtesy of the University of Vermont.

"Think about this as kind of an archive," Bierman said. His team's analysis shows these isotopes sat on the ground for more than 100,000 years before getting covered by ice.

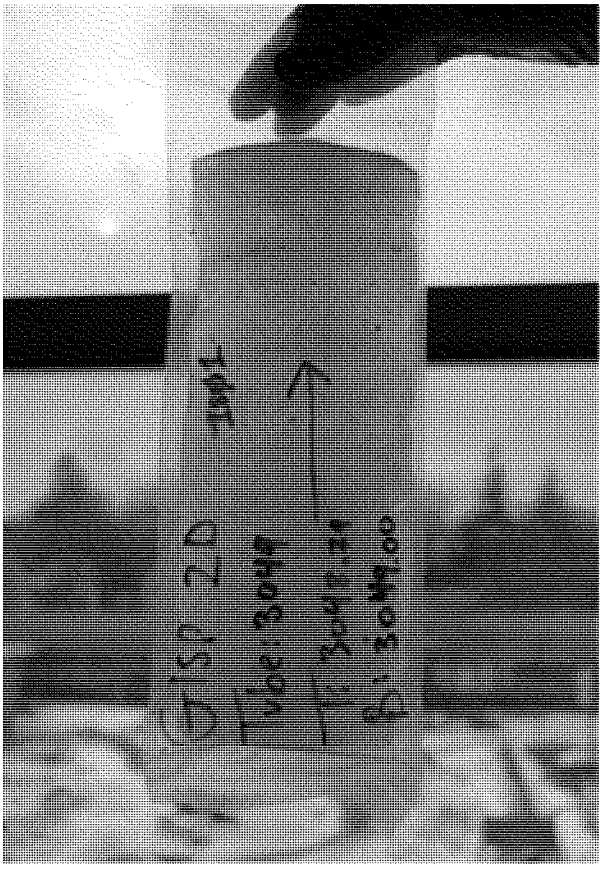
Scientists tend to think of glaciers as eroding the ground underneath as they form, but in this case, the ice instead preserved the landscape. "We weren't expecting to find this ancient soil under there," Bierman said. "We were expecting to find ground-up rock."

If this ice cover began, as Bierman said, before humans came into existence, a wide-scale melting of the

ice could have untold effects on our environment. "If humans warm the climate enough to remove the Greenland ice sheet, that's something new. That's not something nature's done," he said. "We don't see a time in the past that seems to show when these sheets went away on their own."

Mike MacCracken, the chief scientist for climate change programs at Washington, D.C.'s Climate Institute, said the ice's historical stability won't protect it from relatively recent human activity. "On the one hand, this would seem to suggest great stability that would seem to be comforting in terms of what human activities could do to disturb this," he said. But as carbon dioxide emissions increase, among other changes that could contribute to the rapid warming of the ice, he suggested caution in "drawing lessons from the findings about how stable the ice sheet might be."

"Instead, it seems to me, the finding that is most clear is that human activities are starting to seriously perturb a natural system that has been present for millions of years," MacCracken said.



A piece of the ice core, laden with silt and sand, that the team later melted to analyze for ancient soil or isotopes. Photo by Paul Bierman, courtesy of the University of Vermont.

Michael Bevis, a geodesic researcher at Ohio State University, said the rate of ice loss over Greenland as a whole more than tripled between 2003 and 2013. Bevis, who recently released a paper in the journal *Nature Climate Change* about rising sea levels caused by the melting of the Greenland ice sheet, said in an email that the ice loss was driven largely by higher air and sea temperatures and that "we have no particular reason to suppose that this trend is going to end anytime soon."

Bierman said that although his team focused on beryllium within the ice cores, he did find ancient carbon and wouldn't be surprised if there were traces of life preserved under these glaciers. "In other ice cores, people have looked at ancient plant matter or DNA," he said.

But Bierman -- who now plans to analyze ice core samples from Antarctica -- said there is still a lot to be learned about what's happening. "We just don't know much about what was going on under the Greenland ice sheet. It's difficult and expensive to get there," he said.

As glaciers melt or recede, they often rip the landscape up, so any traces of ancient soil currently being preserved could be lost.

AGRICULTURE:

Migrant workers, farmers unite in call for Calif. drought relief

Published: Friday, April 18, 2014

California's ongoing water shortage is placing new strains on farms and bringing farm owners and workers together in a way rarely seen.

At a recent Fresno County, Calif., rally, farmers in plaid shirts stood next to migrant farmworkers, and the groups held signs in English and Spanish -- "no water, no food" and "sin agua, no futuro."

Victor Lopez, former mayor of Orange Cove, Calif., said he's never seen the kind of cooperation brought about by the drought. Lopez, the founder of the Latino Water Coalition, which organized the rally, marched with Cesar Chavez in the 1960s to push for better working conditions. He said farmers and workers are on the same page about the drought and are seeking federal legislation to ease the shortage.

"For the first time in the history -- I've been a farmworker the majority of my life, and I've never seen the coalitions that have been formed -- farmers and the farmworkers have united," Lopez said. "This is an issue that's going to affect the world" (Kirk Siegler, NPR, April 17). **-- SP**

WETLANDS:

Developer sentenced for illegal filling in Miss.

Annie Snider, E&E reporter

Published: Friday, April 18, 2014

A real estate developer yesterday received a 15-month sentence for draining and filling wetlands on a Mississippi property.

William "Rusty" Miller, part owner of a company that excavated and filled wetlands on the property, was

sentenced to nine months in prison and six months in home confinement by Chief U.S. District Judge Louis Guirola Jr. in district court in Gulfport, Miss. He was also ordered to pay a $15,000 fine and $19,246 in restitution.

Miller pleaded guilty last December to having caused the wetlands damage on a 1,710-acre parcel in Hancock County, Miss., which an expert had previously told him was as much as 80 percent federally protected wetlands, according to a Justice Department statement.

"In spite of additional notice he had received of the prohibition against filling and draining wetland without authorization, Miller hired excavation contractors to trench, drain and fill large portions of the property to lower the water table and thus to destroy the wetland that would otherwise be an impediment to commercial development," the DOJ release said.

Typically, in order to receive a permit for wetlands impacts from the U.S. Army Corps of Engineers, an applicant must protect and restore wetlands elsewhere to compensate for the damage. Miller did not receive such a permit.

Hancock County Land LLC, the principal owner of the land in question, previously pleaded guilty to related charges.

In that case, the corporation was ordered to pay a $1 million penalty and to perform community service by completing wetland restoration and preservation plans. This included replanting native vegetation in the affected wetland area, donating about 272 acres to the Land Trust for the Mississippi Coastal Plain for preservation in perpetuity, funding its management and maintenance, paying $100,000 toward the litigation costs of the Gulf Restoration Network, and paying a $95,000 civil penalty to the U.S. Treasury.

OFFSHORE DRILLING:

Russia sends first oil shipment from controversial Arctic platform

Published: Friday, April 18, 2014

Russia made its first shipment of oil today from an offshore rig in the Arctic that was the focus of protests leading to the arrest of 30 Greenpeace activists.

President Vladimir Putin said the platform would help Russia's growth in the global energy market.

"This, in essence, is the beginning of great and large-scale extraction of minerals and oil by our country in the Arctic," Putin said to workers on the Prirazlomnoye platform via video link from near Moscow. "The whole project will positively influence Russia's future presence on the global energy markets and will strengthen both the whole economy and the energy sector."

Russian authorities last year arrested 30 Greenpeace activists protesting the oil production and charged them with piracy before releasing them two months later through amnesty from the Kremlin.

"If we do not stop this Arctic oil rush, we risk not only the environment but our ability to shake off the power structures of the last century," Greenpeace International Executive Director Kumi Naidoo said in a

statement.

Gazprom Neft, the oil section of Russia's top gas producer, shipped the first 77,000 tons of oil from the platform by tanker.

Russia has looked to exploit Arctic oil as its West Siberian fields are gradually becoming sapped, but the launch has been delayed by technical problems and higher costs than predicted.

The country currently produces more than 10 billion barrels of oil per day (Alexei Anishchuk, Reuters, April 18). **-- JL**

WATER POLICY:

Comment period on Obama admin's wetlands, stream proposal opens Monday

Annie Snider, E&E reporter

Published: Friday, April 18, 2014

A major regulatory proposal from the Obama administration aimed at clarifying which streams, creeks and wetlands receive protection under the Clean Water Act is slated to open for public comment Monday.

The proposal, announced March 25, is scheduled to run in the *Federal Register* on Monday. U.S. EPA has said it will be collecting public comment on the proposal for 90 days (*Greenwire*, March 25).

Two muddled Supreme Court decisions in 2001 and 2006 created massive confusion about which waters -- particularly which small streams and geographically isolated wetlands -- fall under the scope of the Clean Water Act. Impacts to waters protected by the federal law must be permitted by the Army Corps of Engineers (*Greenwire*, Feb. 7, 2011).

The Obama administration's proposal would cover nearly all streams that ultimately flow into larger rivers and lakes, but decisions about wetlands would be made based on case-by-case analysis. It stands to have major implications for a wide range of industries, including construction, mining, oil and gas, and agriculture. A number of industry groups and congressional Republicans have vowed to fight the proposal.

EPA and environmental groups argue that the regulation would not expand federal jurisdiction, though, and that the waters at issue are important for drinking water, fish and insect habitat and to prevent flooding.

Click here to read the *Federal Register* listing.

WATER POLLUTION:

Man says he only peed *near* Ore. reservoir

Published: Friday, April 18, 2014

The man accused of peeing into Portland, Ore.'s drinking supply said he urinated *near* a reservoir, not into it.

City officials insisted his stream reached the water, citing video evidence, but Dallas Swonger disagreed in an interview yesterday with online news magazine *Vocativ*.

"I leaned up against the wall and pissed on it," he said. "Right there on the wall, dude. I don't know else how to describe it."

Swonger said it was absurd the city decided to drain 38 million gallons of treated water from the reservoir after the incident (*Greenwire*, April 17).

"I've seen dead birds in there. During the summer time I've see hella dead animals in there. ... I mean, really, dude?" (Anna Griffin, Portland *Oregonian*, April 17; Shane Dixon Kavanaugh, *Vocativ*, April 17).

Water quality tests from the reservoir near Mount Tabor came back clean yesterday, but the city went ahead with the draining plan because officials said they refused to deliver deliberately contaminated water to residents.

The Multnomah County District Attorney's Office has yet to determine whether to pursue criminal charges against Swonger, who was cited for trespassing along with two friends who were with him the night of the incident (Steven Dubois, AP/*Seattle Times*, April 17). **-- DTB**

WEST VIRGINIA:

Ad budget doubles in bid to lure tourists back after chemical spill

Published: Friday, April 18, 2014

West Virginia officials yesterday announced an additional $1.2 million in funding yesterday that more than doubles the Division of Tourism's budget for its annual spring advertising campaign, as the state struggles to repair its reputation from a chemical leak earlier this year in time for the summer tourist season.

The agency previously had $1 million for advertising, which it plans to launch next week with television spots in the Washington, D.C., and Pittsburgh markets. The new funding will allow West Virginia to run tourism spots in the Cincinnati, Cleveland and Columbus, Ohio, markets, as well, and the state will also buy radio advertisements in Greensboro, N.C.; Lexington, Ky.; and Richmond and Roanoke, Va.

Tom Crooks of the Stonewall Group, which is producing the advertisements, said a survey conducted for the tourism agency found 52 percent of prospective visitors were highly aware of the spill of the chemical 4-methylcyclohexane methanol, or MCHM, earlier this year from a Freedom Industries storage site in Charleston, W.Va.

Eleven percent of respondents said the spill would make them less likely to vacation in West Virginia, Crooks said.

There were some encouraging findings, though, for state officials; 80 percent who took the survey knew the spill had not affected the entire state, and more than 85 percent of people who had visited West Virginia in the past would still recommend the state to their friends, Crooks said.

Some of the state's prime whitewater rafting areas are on rivers that flow into the Kanawha River -- which was contaminated in the MCHM spill -- but state officials say they need to make it clear to visitors that these areas are upstream and were not affected by the incident (*Greenwire*, Feb. 26).

"At some point in time, all the noise is going to go away," said Division of Tourism Commissioner Steve White (Phil Kabler, *Charleston* [W.Va.] *Gazette*, April 17). **-- SP**

ClimateWire -- Mon., April 21, 2014 -- **Read the full edition**

1. RISK: China is spreading the use of insurance to cope with climate change damage

Weeks before the harvest started last summer, Li Ping's rice paddies were hit by extreme weather. Temperatures of 95 degrees Fahrenheit baked Longtan village in north China for over a month, and Li's rice yields decreased by 20 percent compared with normal years. But Li did not struggle to raise money for his next planting, which he did after previous crop failures. Instead, the 51-year-old farmer waited at home for the money to come.

2. BIOFUELS: Study casts doubts on GHG savings of fuels made from corn stover, cobs

The loss of soil carbon that results from removing corn field wastes to make biofuels could negate their value as a low-carbon fuel ingredient, a recent paper suggests.

TODAY'S STORIES

3. TECHNOLOGY: New battery research initiative announces first corporate members

4. WILDFIRES: For forests and grasslands alike, bigger Western wildfires are the new normal -- study

5. SCIENCE: Va. Supreme Court rules scientist's emails were proprietary under state freedom of information law

6. RESEARCH: Scientists begin to develop more accurate predictions of Arctic sea ice losses

7. PUBLIC OPINION: Poll shows majority support for wind power across Great Lakes region

8. FINANCE: Nations pledge a record $4.3B to offset environmental damage

9. TRANSPORTATION: NASCAR begins an environmental cleanup with fuel cells

10. ELECTRIC VEHICLES: Nissan offers free charging for Leaf buyers in several markets

11. ADAPTATION: La. authority battles with oil and gas companies over coastal protections

12. FINANCE: Religious groups urge Pope Francis to join fossil fuel divestment campaign

13. RENEWABLE ENERGY: Inventor develops solar car to solve Pakistan's gas crisis

E&ETV's OnPoint

14. ENERGY POLICY: Brookings' Muro pitches plan to finance clean energy projects through bond market

EnergyWire -- Mon., April 21, 2014 -- **Read the full edition**

1. GRID: Power players muster forces for electricity market reforms

The behemoths of the electric power sector are pushing federal regulators hard to enact reforms in East and Midwest markets that they say would strengthen the reliability of electricity supply and shore up their bottom lines.

TOP STORIES

2. KEYSTONE XL: It's déjà vu all over again for oil sands politics

3. CAMPAIGN 2014: Will Wendy Davis' fracking fights haunt her Texas run?

4. OFFSHORE: Enviros want Interior to stop Arctic work until flawed leasing plans are rewritten

ELECTRICITY

5. TRANSMISSION: Texas rancher takes line-placement fight to PUC

OIL AND GAS

6. POLITICS: At least one Colo. fracking ballot challenge is headed to state Supreme Court

7. MARKETS: Trade group touts rebound in U.S. gas supplies

8. WORKFORCE: Energy's diversity problem drives a nationwide 'conversation' tour

9. OFFSHORE: Actor's latest role is advocate against Arctic drilling

10. REFINING: U.S. poised to be net exporter of gasoline next year -- report

11. REGULATION: Wyo. sets aside flaring discussion, examines oil and gas setbacks

12. FINANCE: Some analysts criticize pipelines set up as 'MLPs'

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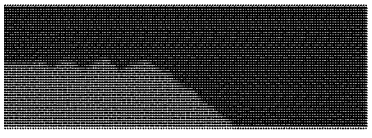

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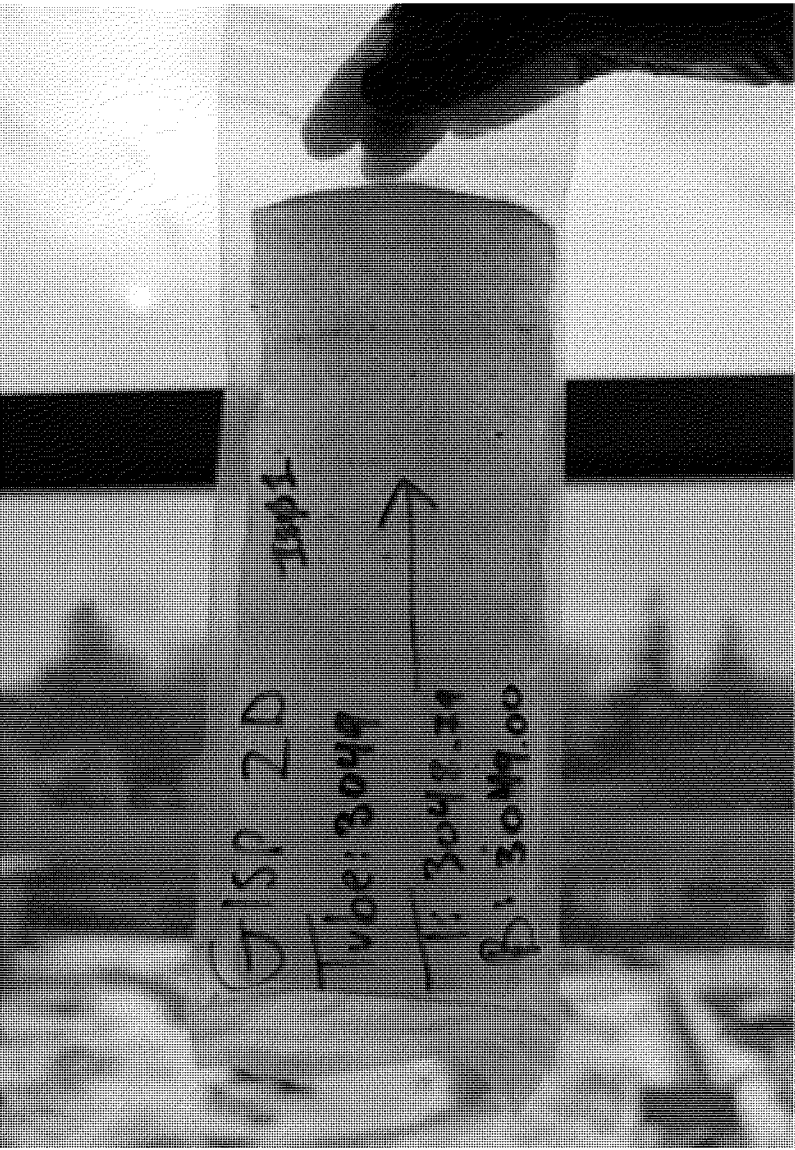

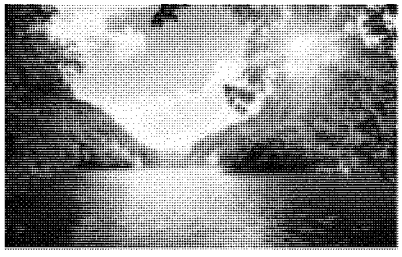

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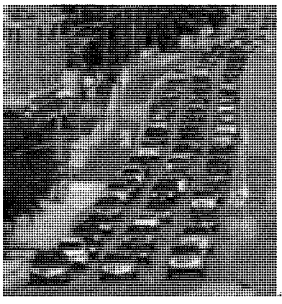

Air & Radiation Law News

for April 15, 2014

Bloomberg BNA **Daily Environment Report™**

Climate Change

UN Panel: Still Time to Avert Worst Of Climate Change, but World Must Act

The worst global effects from climate change can still be averted but only if countries act quickly, according to the latest report from the Intergovernmental Panel on Climate Change....

Election 2014

Environmental Groups Join Forces To Raise $5 Million for 2014 Election

Two of the nation's largest environmental groups are combining forces to raise $5 million for the 2014 election as a step to blunt better-financed efforts by industry groups fighting tougher climate change laws....

Energy

$5.2 Billion Mississippi Power Plant Project Could Help Determine Future of Coal Industry

Rising from the scrub pines of central Mississippi is a $5.2 billion project that may help determine the future of coal in the age of global warming....

Energy

Changing Market, Regulations Cause Drop in Demand for Petroleum, GAO Says

Changing market conditions and environmental regulations have decreased demand for petroleum, the Government Accountability Office said in a report released April 14....

Energy

EPA, Petroleum Groups Ask Court to Sever Portions of 2013 Renewable Fuels Lawsuit

The Environmental Protection Agency and the petroleum industry are asking federal appellate court judges to sever and hold in abeyance some challenges to the 2013 renewable fuel standard following recent oral arguments in a lawsuit on the...

Energy

Sens. Landrieu, Murkowski Ask EIA to Take Long Look at Impact of Lifting Oil Export Ban

The chairman of the Senate Energy and Natural Resources Committee and the committee's top Republican have asked the Energy Information Administration to take a comprehensive look at the impacts of repealing the ban on U.S. crude oil exports....

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Inside EPA's **Risk Policy Report**, 04/15/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/15/2014/menu-id-130.html

In Key Legal Test, Court Urged To Require EPA Response To Nutrient Petition

Environmentalists are urging an appeals court to broadly apply the landmark, but rarely considered, administrative provisions in the Supreme Court's landmark ruling in Massachusetts v. EPA that required agencies to formally respond to Clean Air Act and other regulatory petitions, arguing that the high court's logic applies equally to petitions under the Clean Water Act (CWA) despite EPA's claims to the contrary.

Weighing Industry Data, EPA Wins Lengthy Extension For Power Plant ELG

EPA and environmentalists have agreed to extend to September 2015 the deadline for the agency to revise its decades-old discharge standards for the coal- and steam-electric power sector, though advocates say they will ask for a speedier deadline if the agency misses a December target for a related waste rule governing coal ash.

EPA Agrees With GAO Call For Plan To End Annual Delays In Issuing RFS

EPA is agreeing with the Government Accountability Office's (GAO) call to develop a plan for ending annual delays in issuing renewable fuel standard (RFS) production targets, with GAO noting that some refiners are warning that a late RFS creates industry uncertainty and increases costs because refiners cannot plan fuel production effectively.

Texas Ruling Shows Limits For Advocates' Air Enforcement In Lieu Of EPA

A federal district court's rejection of environmentalists' suit against a Texas utility over alleged Clean Air Act violations highlights the hurdles advocates face in their bid to fill what they claim is a gap in air law enforcement by EPA and state officials, sources say, as it shows the high legal burden of proof advocates must satisfy.

Latest Blogs

IPCC Climate Mitigation Study May Boost EPA GHG Rules

The Intergovernmental Panel on Climate Change (IPCC) is calling on countries to mitigate greenhouse gas (GHG) emissions from several sectors including using carbon capture at . . .

Court Urged To Sever Data Issues From 2013 RFS Suit

EPA and refiners are urging the U.S. Court of Appeals for the District of Columbia Circuit to sever out disputes on two key data issues . . .

States Seek EPA Funding Boost For Non-Climate Programs

State and local air officials are urging EPA to increase funding for grants that will help states meet their "core" Clean Air Act duties to . . .

Greenwire

CLIMATE:

IPCC summary calls for action sooner rather than later to address warming

Jean Chemnick, E&E reporter

Published: Monday, April 14, 2014

The world needs to ramp up the ambition of its greenhouse gas reduction goals -- and do so quickly -- if it is to avoid the worst effects of global warming, a U.N. panel of experts warned yesterday.

A draft summary of the mitigation section of the Intergovernmental Panel on Climate Change's fifth assessment report, released yesterday in Berlin, showed that the world's current greenhouse gas emissions reduction pledges are likely to hold warming to 3 degrees Celsius above preindustrial levels -- if countries stick to them. But scientists have warned that if human emissions push warming above 2 degrees Celsius compared with that base line, that will open the door to dangerous and costly shifts in the world's climate.

To avoid this, the IPCC draft said, countries must follow their pre-2020 pledges made in Cancun, Mexico, in 2010 with ambitious post-2020 pledges capable of holding atmospheric CO2 levels at or below 50 gigatons by 2030. Worldwide emissions must decline between 40 and 70 percent below 2010 levels by midcentury.

If carbon emissions creep up above that point, much more drastic and expensive emissions reductions will be needed post-2030 and the world will have to rely more heavily on hypothetical future technologies that would remove heat-trapping emissions from the atmosphere. The likelihood of missing the 2-degree goal will also increase, the report said, ushering in a world of more severe heat waves, floods, and other events linked to global warming.

This third and final installment of the IPCC report comes as the Obama administration continues to state that it expects the United States to meet its 2020 pledge of reducing greenhouse gas emissions by 17 percent below 2005 levels. It also comes as the White House weighs a post-2020 pledge for release ahead of next year's U.N. climate summit in Paris -- a process that has already prompted push-back from Republican lawmakers (*E&E Daily*, Feb. 28).

The White House said again that its near-term target is within reach two weeks ago, when it unveiled its strategy to reduce emissions of methane, the second-largest contributor to man-made global warming (*Greenwire*, March 28). The methane blueprint calls for reductions from a variety of sources, but could pave the way for new regulations for the oil and gas sector. U.S. EPA is expected to release five white papers very soon that could show options for curbing petroleum leakage.

EPA is also moving ahead with first-of-a-kind CO2 rules for new and existing power plants, with a draft guidance for the latter rule now undergoing interagency vetting at the White House. Stakeholders are waiting to see whether the agency will propose only emissions-reduction measures to be taken on-site at individual plants, or whether it might take a more systemwide approach drawing on efficiencies and fuel-shifting opportunities "outside the fence line."

The IPCC report warns that narrower emissions-reduction strategies are generally less cost-effective than broader ones if the goals remain the same.

"Well-designed systemic and cross-sectoral mitigation strategies are more cost-effective in cutting emissions than a focus on individual technologies and sectors," the summary reads. "At the energy system level these include reductions in the [greenhouse gas] emission intensity of the energy supply sector, a switch to low carbon energy carriers (including low-carbon electricity) and reductions in energy demand in the end-use sectors without compromising development."

Environmental Defense Fund visiting chief economist Thomas Sterner, who took a leadership role in writing part of the report, said in a statement that the report should prompt governments to move to price carbon.

"There are real opportunities to limit emissions, but we need the application of strong policy instruments around the world," Sterner said. "For instance, in most countries right now there is virtually no cost to emitting greenhouse gases, but an increasing number of areas are starting to adopt permit trading."

He pointed to California's emissions trading program as one example. "Other important policy instruments that we identified include stimulating research on new technologies, and removing the subsidies on fossil fuels that are now in place in many countries," he said.

EPA could craft an existing power plant rule that allows states to choose to limit emissions through some form of a permit trading program. But a federal cap-and-trade program would need approval from Congress, as would funding for alternative energy or rollbacks to fossil fuel tax breaks. All appear to face an uphill battle.

But Capitol Hill Democrats said over the weekend that the newest report should help generate political momentum for those policies.

"The longer we wait to act, the harder and more expensive it will be," said Environment and Public Works Committee Chairwoman Barbara Boxer (D-Calif.) in a statement.

KEYSTONE XL:

$43,000 later, union declares open war on anti-pipeline Democrats

Elana Schor, E&E reporter

Published: Monday, April 14, 2014

Keystone XL's elevation as an emblem of climate change is starting to stoke tension within the Democratic Party to match its cross-aisle controversy, due to one union's vow to retaliate against 27 House Democrats who oppose the oil sands pipeline on greenhouse gas grounds.

The Laborers' International Union of North America sent letters last week to House Democrats who recently urged Secretary of State John Kerry to recommend a presidential rejection of KXL, the $5.4 billion link between Canada's oil sands and Gulf Coast refineries made famous by environmentalist resistance to the emissions-heavy crude it would carry. The labor group already has given $43,000 this election cycle to a dozen of the Democrats it is now targeting, according to campaign finance reports tallied by the nonpartisan Center for Responsive Politics.

In his letter to the House Democrats, Laborers General President Terry O'Sullivan lamented their depiction of the short-term construction jobs that KXL would create as "'dirty', 'temporary', and of little 'real' value to the economy" despite their value to out-of-work union members.

"These are not jobs that might occur; they will occur, if only the enemies of the pipeline will accept the fact that the Canadian oil sands are going to be extracted and moved to market, with or without it," O'Sullivan wrote, urging members to direct "'the power' and the fury" of its organization at any signatories to the Democratic letter who continue to oppose KXL.

The Laborers' move suggests that a continued delay by the Obama administration in ruling on the pipeline may stoke more internal Democratic drama over KXL as the November midterm elections approach. Billionaire climate activist Tom Steyer is eyeing up to $100 million in spending during the campaign season to bolster the fortunes of green candidates, though his NextGen Climate Action political committee has indicated that keeping the Senate in Democratic hands is a valuable enough goal to dissuade him from working to defeat pro-KXL members of President Obama's party.

A Steyer spokesman did not return a request for comment on the Laborers' letter by publication time.

The 150 wealthy anti-KXL donors who signed a letter last year against the project have given less than half of what pro-pipeline unions have given so far this election cycle to vulnerable Senate Democrats and fall similarly behind in total giving to other races (*E&E Daily*, April 11).

The dozen recipients of Laborers campaign donations who received last week's letter are: Carol Shea-Porter of New Hampshire, Adam Schiff of California, Rush Holt of New Jersey, Jackie Speier of California, Raúl Grijalva of Arizona, John Delaney of Maryland, Hank Johnson of Georgia, Frank Pallone of New Jersey, Tim Ryan of Ohio, Jim Moran of Virginia, Keith Ellison of Minnesota and Judy Chu of California.

Click here to read LIUNA's letter to the House Democrats.

NATURAL GAS:

Proposed La. pipeline closure triggers bipartisan outcry

Hannah Northey, E&E reporter

Published: Monday, April 14, 2014

The proposed closure of a 1920s natural gas pipeline that runs across eastern Louisiana for safety

reasons has drawn the ire of the Senate Energy and Natural Resources Committee's new chairwoman and her colleagues.

American Midstream Partners LP, a subsidiary of Boston-based hedge fund ArcLight Capital Partners LLC that operates the Midla pipeline, is now squarely on Louisiana Democrat Mary Landrieu's radar following the company's proposal to abandon 355 miles of the pipeline -- a key natural gas access point for about 11,000 customers in nine parishes in eastern Louisiana.

American Midstream asked the Federal Energy Regulatory Commission last month for permission to close the pipeline. The company also asked FERC for a condensed comment period on its proposal, all of which drew the ire of Landrieu and her colleagues.

"This is simply unacceptable and simply an outright violation of the public interest standard of the federal Natural Gas Act as administered by FERC," Landrieu wrote in an April 1 letter. "To make matters worse, Midla's application proposes a highly compressed process for FERC consideration of this complex and important matter."

Republican Sens. Thad Cochran and Roger Wicker of Mississippi echoed Landrieu's concerns in a separate letter, as did Rep. Bill Cassidy (R), who is one among a crowded field seeking to prevent Landrieu from winning a fourth term in November.

Last week, FERC rejected the company's request for a shortened comment period.

But the fate of the pipeline is still in question and American Midstream has asked FERC to hold a technical conference to sort out the issue.

American Midstream said in filings to FERC that modern tools cannot be used to find or predict leaks due to construction techniques used to build the vintage pipeline. The pipeline has leaked for decades, the company said, and leakage rates are rising, erosion has reduced pipeline burial depths and floods on the Mississippi River have destroyed six of eight river crossings. The development of two schools, a prison and a planned housing community have also encroached on the right of way, American Midstream said.

"While we are aware of no imminent danger, we cannot be sure the Midla pipeline is safe to operate," Steve Bergstrom, American Midstream's president and CEO, said in a statement. "The fact that the pipeline is still in service five decades beyond its predicted useful life is a testament to Midla's maintenance program. Like an old car, however, there is only so much maintenance that can be done before the frame gives way and the car must be replaced."

Bergstrom said the pipeline needs to be shut down and replaced -- or an alternative avenue for serving the parishes with gas needs to be pursued.

American Midstream is also facing backlash from industry. In a filing to FERC, Atmos Energy Marketing LLC warned that firm shippers on the line could have their contracts prematurely halted and wouldn't be able to access much-needed gas for residents there.

American Midstream in recent weeks commissioned a detailed engineering study that looked at a dozen options for partial reconstruction of the mainline and identified several non-pipeline alternatives to ensure customers in the parishes receive gas, including trucking compressed natural gas to Midla's existing distribution system connections.

The company in a statement estimated the cost of delivering gas to customers there would trigger an uptick in costs -- about $1.76 per month more than residents currently pay -- but said that increase is a "small price to assure the safety of those along Midla's route."

NUCLEAR WASTE:

No radiation found in reservoirs near dump site

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Three reservoirs near a federal nuclear waste dump in southeastern New Mexico have tested negative for radiation following a leak at the plant earlier this year, researchers said Saturday.

Water samples from the reservoirs near the Waste Isolation Pilot Plant outside Carlsbad, N.M., did not contain trace amounts of radioactive particles, according to a study by scientists at the Carlsbad Environmental Monitoring and Research Center.

The samples were collected March 20 and 28 at Brantley Lake, Lake Carlsbad and Red Bluff Lake. The radiation leak took place in February (*Greenwire*, April 3; Associated Press, April 13). **-- DB**

OIL AND GAS:

Home buyouts around Detroit refinery create ghost town

Published: Monday, April 14, 2014

A mostly abandoned Detroit neighborhood is partly the consequence of Canadian oil development.

The Marathon Petroleum Corp. refinery in the Oakwood Heights area has processed crude oil for more than 75 years, and in recent years, much of it has been Canadian crude from the oil sands of northern Alberta.

When residents protested a planned refinery expansion over smells and explosions at the plant, Marathon bought many of the surrounding properties, allowing residents to move elsewhere.

So far, 275 homes have been demolished, and more demolitions are scheduled for later this year.

Marathon has paid an average of about $65,000 per house, far above what the blighted properties normally command on the real estate market.

And the emptying neighborhood has brought wildlife like foxes, opossums, raccoons, groundhogs and rabbits back to the area.

"There was no place in the city of Detroit, I bet, as quiet as this was [last] New Year's Eve," said Mary McKenzie, one homeowner who has decided to stay. "It was wonderful. No gunshots, no nothing" (Alexander Panetta, Canadian Press/*Ottawa Citizen*, April 13). **-- SP**

UNITED KINGDOM:

Wind energy more popular than fracking -- poll

Published: Monday, April 14, 2014

Wind farms are more popular in Britain than hydraulic fracturing, a new study shows.

According to the YouGov poll, 62 percent of respondents said they would rather live next to a wind farm than a fracking site. Nineteen percent said they would prefer an oil or gas well near their home, according to the poll.

The government-backed survey of 2,000 adults was commissioned by Ecotricity, a private wind energy group run by the renewables advocate Dale Vince.

The results present an awkward reality for the ruling Conservative Party, which backs the use of fracking to extract trapped layers of oil and gas from underground shale deposits.

"The government's own polling clearly shows they can't be thinking about the general population," Vince said (John Murray Brown, *Financial Times*, April 14). **-- DB**

REGULATION:

Former EPA general counsel Martella discusses agency's latest moves on water, air

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14. EDUCATION: ConocoPhillips gives $6M to support Texas engineering initiative

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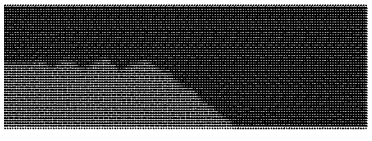

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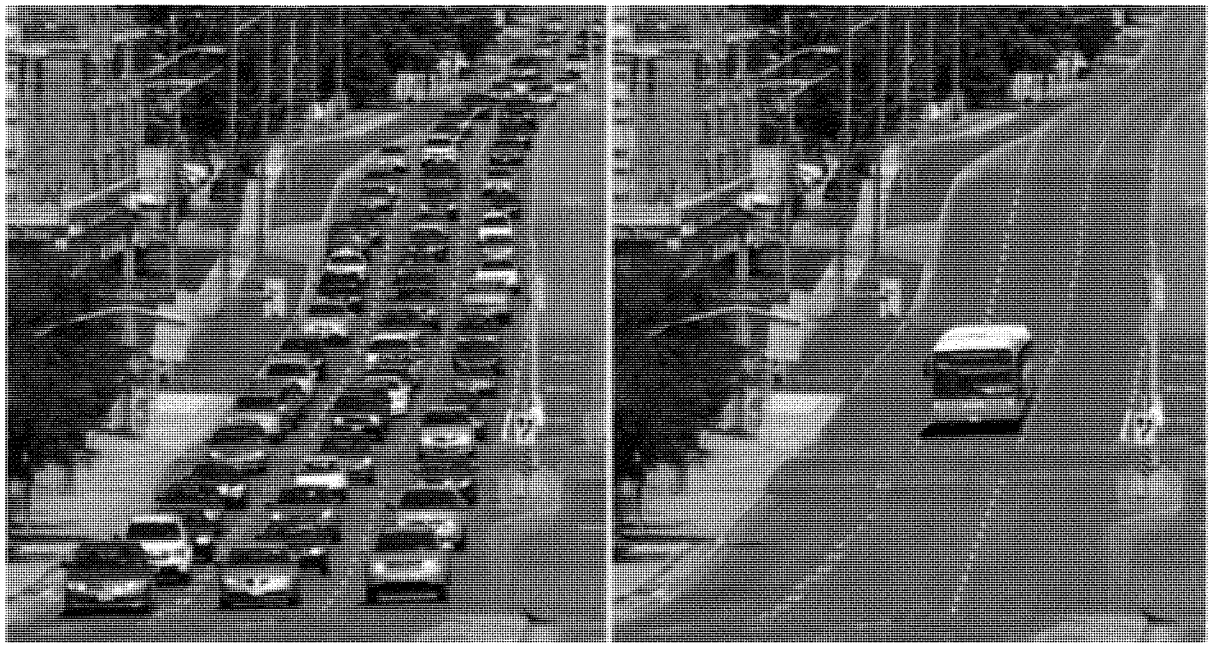

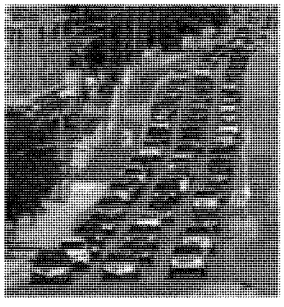

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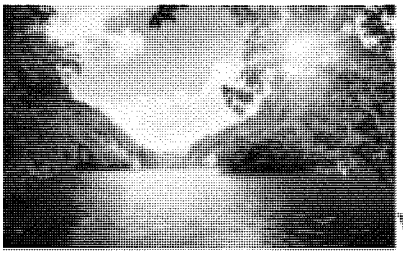

Water Law News

for April 15, 2014

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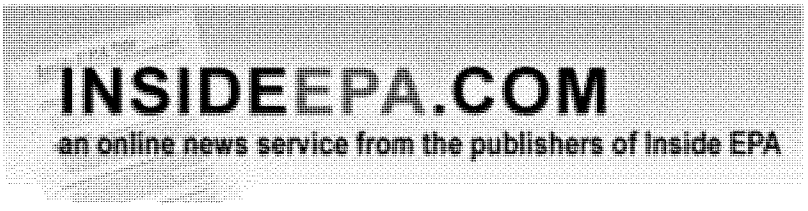
Buffalo Agency to Spend $380 Million To Reduce Combined Sewer Overflows

The Buffalo Sewer Authority will spend $380 million over the next 20 years to reduce the untreated waste, pollutants and debris flowing into the Niagara River, the Environmental Protection Agency Region 2 announced April 14....

Water Resources

Water Industry Demonstrates Resiliency Over Past 10 Years, AWWA Survey Says

The water sector in North America has been resilient in the face of many large-scale political, financial, environmental and technological changes during the past 10 years, according to an American Water Works Association report based on...



Inside EPA's **Risk Policy Report**, 04/15/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/15/2014/menu-id-130.html

In Key Legal Test, Court Urged To Require EPA Response To Nutrient Petition

Environmentalists are urging an appeals court to broadly apply the landmark, but rarely considered, administrative provisions in the Supreme Court's landmark ruling in Massachusetts v. EPA that required agencies to formally respond to Clean Air Act and other regulatory petitions, arguing that the high court's logic applies equally to petitions under the Clean Water Act (CWA) despite EPA's claims to the contrary.

Plaintiffs' Attorney, Environmentalists Fault EPA's Draft PFC Risk Estimates

Early comments from environmentalists and a law firm representing plaintiffs exposed to perfluorochemicals (PFCs) are critical of EPA's first-time draft risk estimates for chronic drinking

water exposures to two ubiquitous PFCs, contending the agency omitted some of the most significant human health data and appears to have "cherry-picked" what data it relied on.

Latest Blogs

Ohio Addresses Seismic Risks In Fracking Permits

Ohio has adopted first-time state provisions to strengthen its underground injection permitting requirements for hydraulic fracturing that occurs in areas of known earthquake activity, adding

Greenwire

NUCLEAR WASTE:

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The samples were collected March 20 and 28 at Brantley Lake, Lake Carlsbad and Red Bluff Lake. The radiation leak took place in February (*Greenwire*, April 3; Associated Press, April 13). **-- DB**

KEYSTONE XL:

80-acre crop carving protests pipeline

Published: Monday, April 14, 2014

Critics of the Keystone XL pipeline have etched an 80-acre message of protest into a Nebraska farm.

The message, which reads "Heartland#NoKXL" under a portrait, was carved into the dirt with a tractor by farmer Art Tanderup, who owns the land.

"We have always been stewards of the land," Tanderup said. "The soil is very sandy here. Any leak would leach into the Ogallala aquifer, contaminating our water without any concrete plan to clean up the pollution."

Opponents of TransCanada Corp.'s proposed pipeline worry that it would increase pollution and contaminate groundwater, and they want President Obama to reject the proposal.

TransCanada said the pipeline would include safety upgrades such as remote control shut-off valves and would undergo frequent inspections.

Nebraska is one of four states in a section of the pipeline that still needs approval, along with Montana, South Dakota and Kansas. The southern section between Oklahoma and Texas has already been built (AP/*Fuel Fix*, April 14). **-- JL**

BEACHES:

Stormproof bathroom sets inequality debate swirling

Published: Monday, April 14, 2014

The location of a stormproof waterfront restroom in New York City has turned into a test of Mayor Bill de Blasio's (D) promise to address income inequality.

The city is building the $2.5 million public bathroom across from the Oceana, a luxury housing complex facing the Atlantic Ocean in Brighton Beach, Brooklyn. Opponents of the project, which replaces a restroom destroyed by Superstorm Sandy, have asked the city to move the bathroom to a spot in front of a nearby community center.

"There won't be any sun in the apartments that face" the bathroom once the facility is built, said Oceana resident Dmitry Geyber.

The criticism has sparked outrage from other Brighton Beach residents who say the Oceana shouldn't get special treatment.

"Wealthy buildings should not be able to influence public land-use policy and while the area's poorer residents are ignored," said Geoffrey Croft of NYC Park Advocates. "That is the definition of 'A Tale of Two Cities.'"

The de Blasio administration has extended a public comment period on the project to May 5. De Blasio took office in January after running a campaign last year that was focused on the city's widening income gap (Michael Howard Saul, *Wall Street Journal*, April 14). **-- DB**.

DROUGHT:

Water problems haven't put a damper on Vegas glitz -- yet

Published: Monday, April 14, 2014

Visitors to the glitzy Las Vegas strip would never know the area was struggling with a severe water shortage.

The Bellagio Hotel's popular fountain continues to shoot off on schedule, and restaurants at casinos make sure customers receive ample tap water.

Away from the glamour, the area's principal water supply, Lake Mead, is nearly at its lowest level since it opened in 1936. Engineers are working on an $817 million project to lower the city's water intake pipe before the water level drops so far that it can't enter the pipe.

"We've got a crisis at hand and a catastrophe in the making," said Rob Mrowka, a senior scientist at the Center for Biological Diversity.

As the situation worsens, Las Vegas may face new pressures to adapt to an era of scarce supply, since the city lacks access to abundant water sources, said Bart Miller, water program director for the conservation nonprofit Western Resource Advocates.

So far, the city has been able to avert disaster by conserving more water: Water use per person dropped 40 percent between 2002 and 2013. But conservation officials warn those techniques won't be effective as the area's water supply continues to tighten (James Nash, Bloomberg, April 13). **-- SP**

OHIO:

Fertilizer certification bill takes aim at algae blooms

Published: Monday, April 14, 2014

A bill sponsored by Ohio state Sen. Cliff Hite (R) would create a fertilizer certification program in hopes of reducing algae blooms in area lakes and rivers.

While some worry the bill's proposals wouldn't go far enough to combat blooms in areas such as Lake Erie, others praised Hite's proposal as a first step toward cutting phosphorous runoff from farms, which are a leading cause of excessive algae growth.

Hite's bill, which passed the state House unanimously last week and should come before the Senate in May, would require farmers who use fertilizer on 50 acres or more to attend state-developed certification courses. Farmers who voluntarily develop nutrient management plans and maintain accurate records of fertilizer use would receive certain legal protections.

Critics, like the Ohio Environmental Council, want to see greater regulation of other nutrients such as manure, which isn't covered by Hite's proposal.

"Is it going to solve all the problems that we have right now in our lakes and streams? Well, it's going to be a step in the right direction," Hite said. "We're going to have to really study to see if we need to do more" (Jim Siegel, *Columbus Dispatch*, April 14). **-- SP**

CHINA:

Crude leak caused water contamination that affected millions

Published: Monday, April 14, 2014

A crude oil leak from a pipeline owned by a unit of the China National Petroleum Corp. was behind contamination that affected the drinking water of 2.4 million people in Lanzhou in western China, the country's state media said Saturday.

The official Xinhua news agency quoted Yan Zijiang, the Chinese city's environmental protection chief, as saying the leak caused dangerous levels of benzene to get into the city's water. He said Saturday that the corroded pipeline owned by Lanzhou Petrochemical Co. was being fixed (Reuters/*New York Times*, April 12).

Officials last week reported that the city's drinking water contained 20 times more benzene -- a cancer-inducing chemical -- than national safety standards permitted (*Greenwire*, April 11).

The incident occurred a few months after 62 people were killed in Qingdao when crude oil from a pipeline owned by China's other principal oil firm, Sinopec Ltd., leaked into sewers and exploded.

A senior safety official said after that incident that several similar and "quite shocking" corrosion cases were discovered. The environment ministry stopped approving new refineries by Sinopec or CNPC because the companies weren't following environmental rules.

The two companies have been embroiled in an ongoing investigation looking into patronage networks of former energy czar Zhou Yongkang (Lucy Hornby, *Financial Times*, April 12). **-- JL**

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The results present an awkward reality for the ruling Conservative Party, which backs the use of fracking to extract trapped layers of oil and gas from underground shale deposits.

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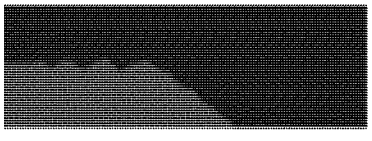

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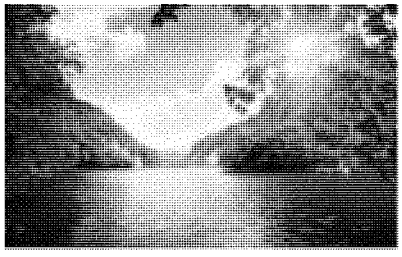

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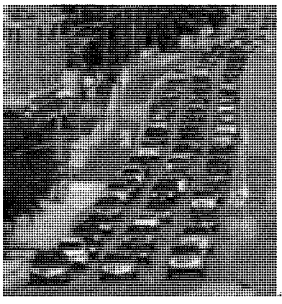
Subject: Air & Radiation Law News for April 14, 2014



Air & Radiation Law News

for April 14, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

D.C. Circuit Denies Challenge to EPA Rule That Retained Current Carbon Monoxide Limit

The Environmental Protection Agency acted reasonably in retaining primary, health-based national ambient air quality standards for carbon monoxide that were first set in 1971, a federal court of appeals has ruled (Communities for a Better...

Air Pollution

Power Industry Group Asks Supreme Court To Review EPA's 2008 Ozone Standard

A power industry advocacy group is asking the U.S. Supreme Court to review how the Environmental Protection Agency set the 2008 ozone air quality standard (Utility Air Regulatory Grp v. EPA, U.S., docket number unavailable, 4/10/14). ...

Climate Change

EPA's Power Plant Rules Top Target If Republicans Take Senate, Whitfield Says

A House-passed bill to curtail the Environmental Protection Agency's authority to regulate greenhouse gas emissions from power plants "is a top priority" for Republicans if they gain control of the Senate in the fall elections,...

Climate Change

IPCC Report Unlikely to Include Estimate Of Economic Impact of Climate Change

The Third Working Group of the Intergovernmental Panel on Climate Change concluded five days of talks in Berlin on April 11, seeking to identify pathways to reduce emissions sufficiently to avoid the biggest impacts of climate change....

Climate Change

Senators Say Methane Rules for Farms Unnecessary

Sixteen Republican senators urged the Obama administration not to regulate methane emissions from the agriculture industry in an April 10 letter to the Environmental Protection Agency, Energy Department and Agriculture Department. The...

Climate Change

Vitter Presses McCabe for More Details On Social Cost of Carbon Figure

Sen. David Vitter (R-La.) pressed the Environmental Protection Agency's top air pollution official to explain what role, if any, she may have played in setting a new figure on the social cost of carbon....

Energy

Boxer, Whitehouse Urge Kerry to Resist Political Pressure on Keystone Decision

Democratic Sens. Barbara Boxer (Calif.) and Sheldon Whitehouse (R.I.) called on the Obama administration to resist political pressure and fully consider the health impacts of the proposed Keystone

XL oil pipeline before making a decision...

Energy

Landrieu Plans Energy Committee Hearing In May on Keystone Pipeline, Aide Says

The Senate Energy and Natural Resources Committee will hold a hearing in May on the Keystone XL pipeline and other energy infrastructure, a committee aide said in an April 11 e-mail to Bloomberg BNA....

Energy

Reid Says Renewable Tax Credit Extension, Energy Efficiency Bill Will Get Floor Time

Senate Majority Leader Harry Reid (D-Nev.) said April 11 that he will bring to the floor legislation that would retroactively extend the production tax credit and a number of other expired energy tax incentives as well as energy-efficiency...

Energy

Tax Credit Uncertainty Cost Wind Power Industry 30,000 Jobs in 2013, Group Says

The U.S. wind industry shed more than 30,000 jobs in 2013 because of uncertainty over the extension of a key tax credit used by the industry, according to a report by the American Wind Energy Association....

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D.C. Circuit Rejects Suit Seeking Stricter EPA Carbon Monoxide NAAQS

The U.S. Court of Appeals for the District of Columbia Circuit has rejected environmentalists' lawsuit challenging EPA's decision to retain and not strengthen its carbon monoxide (CO) national ambient air quality standards (NAAQS), deferring to the agency's conclusion that scientific evidence did not justify setting the stricter limits.

EPA Review Of Low Number Of GHG Permit Applications May Inform Rule

EPA is evaluating why the actual number of facilities that have applied for greenhouse gas (GHG) permits is far below the estimates the agency used to justify elevating GHG permitting thresholds, and the results of the review could inform the agency's pending rulemaking that could lower the thresholds to require permits at more facilities.

EPA Includes Railroad Ties In Plan To Expand List Of 'Non-Waste' Fuels

EPA has granted requests by the wood and paper sectors to add creosote-treated railroad ties to a categorical list of materials that can be burned for fuel in lightly regulated boilers rather than more strictly regulated incinerators, in addition to several other types of debris and other residuals it is adding to the list of "non-waste" fuels.

Latest Blogs

Industry Split Over Combustion Air Rules Remand

Industry groups are split over environmentalists' call for a federal appeals court to remand EPA's package of combustion air rules to force an overhaul of . . .

EPA Says Few Utilities Seek MATS Extension

EPA says less than one-quarter of coal-fired power plants subject to the agency's mercury and air toxics standard (MATS) have applied for compliance deadline extensions . . .

Greenwire

AIR POLLUTION:

Electric utilities seek Supreme Court review of EPA ozone standards

Daniel Lippman, E&E reporter

Published: Friday, April 11, 2014

Electric utilities yesterday asked the Supreme Court to review U.S. EPA's 2008 air standards for ozone, arguing that last year's ruling upholding them ignored key parts of the Clean Air Act and granted the agency too much discretion in setting the limits.

EPA in 1997 set the ozone standard at 80 parts per billion, but in 2008, after being prodded by environmental groups and others, EPA lowered the standard to 75 parts per billion. The new limits provide greater health protections while imposing new compliance costs on power plants and other emitters.

Last July, the U.S. Court of Appeals for the District of Columbia Circuit upheld EPA's ozone limit but ordered a review of the public welfare part of the standard (*Greenwire*, July 23, 2013).

Ozone is a major component of smog and can pose significant health and respiratory threats to vulnerable populations such as children and pregnant women.

Electric utilities, states and environmental groups all sued after EPA's action in 2008. Some argued for a lower standard, while utilities contended that EPA didn't have the authority to lower the limit, given what they saw as a lack of conclusive evidence showing that 80 ppb was insufficient to protect public health.

In the Supreme Court petition, the Utility Air Regulatory Group (UARG), an industry group, is calling for the 2008 standard to be declared illegitimate. The group argues that EPA's administrator is changing policies like the ozone standard "with no greater explanation" on similar risks that are "more (or less) certain than in the past."

UARG is seeking to make it more difficult for EPA to lower standards for ozone. They say EPA must have more conclusive scientific proof that a reduction is necessary to fulfill the Clean Air Act's requirement for an "adequate margin of safety."

EPA is required to review six major pollutants every five years to take into consideration new scientific and medical evidence. In 2008, a clean air scientific advisory board recommended that the standard be set between 60 and 70 ppb, but the EPA administrator at the time, Stephen Johnson, overruled them.

That committee is now working on another update to the ozone levels, which it plans to submit to the EPA administrator sometime over the next several months. EPA has indicated it is considering setting a standard as low as 60 ppb (*Greenwire*, Feb. 3).

Referring to the 2001 ruling in *Whitman v. American Trucking Associations*, the industry group argues in the petition that Supreme Court decisions hold that EPA decisions have to "be driven by scientific findings that support drawing a precise line separating over-regulation from under-regulation."

The Supreme Court said in that ruling that EPA has to set air quality standards "at the level that is ... not lower or higher than necessary."

Public health advocates were quick to criticize the petition.

"Electric power companies want to kill the already weak smog standard set by the Bush administration in 2008," said Frank O'Donnell, president of Clean Air Watch. "This is just the latest manifestation of an all-out corporate campaign to block efforts to reduce smog-forming pollutants."

It takes the votes of four justices to grant review of a case. The court will likely consider UARG's petition this fall.

AIR POLLUTION:

Appeals court rejects greens' bid for more stringent CO standard

Jeremy P. Jacobs, E&E reporter

Published: Friday, April 11, 2014

A federal appeals court today rejected a challenge from environmental groups seeking to force U.S. EPA to set more stringent air standards for carbon monoxide.

The U.S. Court of Appeals for the District of Columbia Circuit unanimously ruled that EPA "acted reasonably" in choosing not to update its primary carbon monoxide standard -- which is supposed to protect human health -- and held that environmental groups had failed to show how they were injured by EPA's not adopting a secondary standard for the welfare of animals, the environment and climate.

Communities for a Better Environment, a California-based nonprofit, WildEarth Guardians and others had argued that EPA had ignored a growing body of science that carbon monoxide emitted from tailpipes poses a significant health risk.

But Judge Brett Kavanaugh said they failed to convince the three-judge panel that EPA acted arbitrarily and capriciously.

"We have considered all of petitioners' challenges to EPA's decision to retain the extant primary standards," Kavanaugh, a Republican appointee, wrote. "We find none of petitioners' arguments persuasive."

EPA hasn't updated the primary National Ambient Air Quality Standard, or NAAQS, for carbon monoxide in more than four decades. In 1985, the agency revoked the secondary standard and has not promulgated one since, deciding in 2011 to leave the standards as they were.

Kavanaugh also noted that when setting scientific standards, the court is bound by precedent to give EPA the benefit of the doubt.

"As a general matter, we grant significant deference in setting the NAAQS," Kavanaugh said.

The primary standard is currently 9 parts per million averaged over an eight-hour period, or a one-hour average of 35 parts per million. The environmental groups contended that epidemiological studies showed that level of carbon monoxide in the area correlated with harmful health effects.

But Kavanaugh and the court sided with EPA's rejection of that argument.

"As EPA reasonably explained, the modeling programs used in the epidemiological studies did not rule out the possibility that another pollutant was causing the adverse health effects observed in the studies."

With regard to the secondary standard, the panel held that the environmental groups failed to prove how they, or the climate, were injured by the lack of a secondary NAAQS.

They "have not presented a sufficient showing that carbon monoxide emissions in the United States -- at the level allowed by EPA -- will worsen global warming as compared to what would happen if EPA set the secondary standards in accordance with the law as petitioners see it," Kavanaugh wrote.

Kavanaugh was joined on the panel by Judge Janice Rogers Brown and Senior Judge Stephen Williams, both also Republican appointees to the bench.

Click here for the opinion.

CLIMATE:

Vitter demands answers from McCabe on social cost of carbon

Jean Chemnick, E&E reporter

Published: Friday, April 11, 2014

Sen. David Vitter (R-La.) today quizzed President Obama's pick for U.S. EPA air chief on her contribution to the administration's revision last year of its estimate for the social cost of carbon.

Vitter asked acting Assistant Administrator for Air and Radiation Janet McCabe in a letter for details about the working group's methods for arriving at the new estimate that carbon dioxide costs society $37 per ton emitted -- a figure that has already appeared in the cost-benefit analyses for several EPA rulemakings.

Critics, including Vitter, who serves as top Republican on the Senate Environment and Public Works Committee, have said that the interagency working group process that led to the SCC revision last May, was shrouded in mystery. The group increased its estimate for the economic and health costs of CO2 from a $24 to $37 in 2015.

The administration has named the 12 agencies that were represented on the panel, and it used publicly available models. But critics have demanded the names and titles of all involved in the process, a request Vitter reiterated in today's letter. And he asked McCabe whether she participated in the deliberations and whether she signed off on the result.

Vitter raised the issue earlier this week during McCabe's confirmation hearing before the committee, where he charged the administration with pursuing a "haphazard" process in crafting the estimate.

SCC estimates are "of great significance not only because they are used frequently to justify costly and controversial regulations, but also because the specific participants with any level of involvement in the process behind developing the estimates have been kept completely anonymous," he said in today's letter.

CLIMATE:

Senate GOP launches pre-emptive strike on livestock emissions

Jean Chemnick, E&E reporter

Published: Friday, April 11, 2014

Senate Republicans last night launched a pre-emptive strike against any plans to regulate methane emissions from livestock -- despite assurances from the Obama administration that it does not plan to do so.

Sens. John Thune (S.D.), Mike Johanns (Neb.) and 14 of their GOP colleagues released a letter to the heads of U.S. EPA and the Energy and Agriculture departments, asking them to "stop pursuing regulations on livestock emissions."

The letter stated that the agencies are mulling rules that would cost medium-sized dairy farms up to $22,000 and medium-sized cattle farms up to $27,000 annually.

"Federal regulations of [greenhouse gases] in the agriculture sector would have detrimental implications on livestock operations across the country," the letter says.

"These sorts of top-down regulations are not only absurd, but they create a tremendous burden for the industry," said Johanns, a former Agriculture secretary under President George W. Bush. "Agencies should work with Congress and the ag industry to develop manageable strategies to achieve our mutual goal of caring for our environment rather than trying to regulate them into oblivion."

The senators say in the letter that their concern stems from the March 28 methane guidance released by the White House, which holds out the possibility of new or tighter EPA rules for oil and gas systems and for landfills. But while EPA estimates that agriculture accounts for about 28 percent of human-caused methane emissions, the guidance specifies that agency efforts to curb those emissions will be incentive-based and voluntary.

USDA, EPA and DOE are tasked with releasing a "Biogas Roadmap" in June, "outlining voluntary strategies to accelerate adoption of methane digesters and other cost-effective technologies to reduce U.S. dairy sector greenhouse gas emissions by 25 percent by 2020." The digesters, which are costly, would turn methane-emitting manure into biogas energy.

"USDA and EPA will also continue to support biodigester technology deployment by providing financial and technical assistance through voluntary programs," the methane blueprint states.

EPA and other agencies have avoided using regulation to tackle heat-trapping emissions from agriculture in the past, exempting the sector from Clean Air Act rules that target major emitters through the so-called tailoring rule and other actions.

But Johanns spokesman Nick Simpson said the letter was precautionary. "It's an ounce of prevention approach to discourage costly regs before they are enacted, and encourage a more cooperative approach with the ag industry," he said.

The National Farmers Union, which supported legislation in 2009 and 2010 to cap non-farm CO2 emissions, released a statement last month supporting the methane guidance expressly because it seemed to rule out regulatory action.

"NFU is pleased that the administration's strategy to reduce methane emissions recognizes that farmers and ranchers are important partners in the effort to solve our nation's climate challenges," said Senior Vice President of Programs Chandler Goule.

He agreed that methane digesters are promising and underutilized. "The strategy's voluntary on-farm methane reduction opportunities, supported by financial and technical assistance, will add to farmers' bottom lines and support rural economies while reducing greenhouse gas emissions," he said.

ELECTRIC VEHICLES:

Tesla placing bets on foreign growth as U.S. sales show signs of slowing

Published: Friday, April 11, 2014

Electric car maker Tesla Motors Inc. is kicking off sales in China this month, even as critics at home say the auto company needs to produce a cheaper vehicle that will attract interest from average drivers.

The company's co-founder, Elon Musk, plans to travel to China to personally deliver the first vehicles, said Simon Sproule, Tesla's vice president of marketing and communications.

Musk said earlier this year that sales in China may match the company's U.S. sales as soon as next year. The company is hoping to boost production of the Model S sedan by 56 percent this year and plans to expand in Europe, as well (Ohnsman/Chang, Bloomberg, April 10).

Ultimately, though, some analysts think the car company may need to expand beyond its luxury roots to capture a larger share of the market.

Tesla sold about 1,600 Model S sedans in the United States in March, a slight increase from the same month a year earlier, according to AutoData Corp. The vehicle's base price is about $71,000.

"We believe that Model S demand in the U.S. has plateaued," said Brian Johnson, an analyst with Barclays Capital.

Thilo Koslowski, an analyst with Gartner Inc., said a planned new vehicle from the company is expected to cost less than $40,000, but it's still a few years from release. By then, other automakers may have their own vehicles ready at that price point, Koslowski said (Jerry Hirsch, *Los Angeles Times*, April 8). **-- SP**

FINANCE:

Anti-apartheid leader calls for boycott of fossil fuel industry

Published: Friday, April 11, 2014

Archbishop Desmond Tutu yesterday called for a boycott of the fossil fuel industry similar to economic and moral campaigns that were used to fight apartheid in South Africa.

Tutu, the legendary anti-apartheid leader and Nobel Peace Prize winner, joined other climate change activists in support of recommendations outlined in a leaked draft of the Intergovernmental Panel on Climate Change report due out Sunday calling for a dramatic cut in fossil fuel investment.

"People of conscience need to break their ties with corporations financing the injustice of climate change," he wrote in an article for the London *Guardian*. "It is clear [the companies] are not simply going to give up; they stand to make too much money."

Tutu said investors should drop their fossil fuel stocks and people should "boycott events, sports teams and media programming sponsored by fossil-fuel energy companies" as a way to combat the growing threat of climate change.

The IPCC report states that investment in fossil fuels must drop by tens of billions of dollars a year in order to stave off dangerous levels of global warming (Damian Carrington, London *Guardian*, April 10). -- **DTB**

NUCLEAR ENERGY:

Westinghouse reaches fuel deal with Ukraine

Published: Friday, April 11, 2014

Westinghouse Electric Co. said today that it has extended an agreement with Ukraine's largest nuclear power plant operator, state-owned Energoatom, to fuel its plants until 2020.

The deal will allow Westinghouse to supply fuel for 15 nuclear reactors that generate half the country's electricity, decreasing the nation's dependence on Russian energy.

Russia raised natural gas prices by 80 percent and has threatened to cut off supplies over political disputes between the two nations. That has prompted the Ukrainian government to look elsewhere to secure its energy needs.

The deal was a "milestone" for Ukraine and the company, said Westinghouse Vice President Mike Kirst (Roman Olearchyk, *Financial Times*, April 11). -- **SP**

ClimateWire -- Mon., April 14, 2014 -- **Read the full edition**

1. POLICY: U.N. panel says next 15 years will be critical for affordable climate change actions

Averting a climate catastrophe won't be cheap, but it will be affordable as long as countries act urgently to set the wheels of a low-carbon transition into motion, the United Nations declared yesterday.

2. ADAPTATION: Canadian cities top climate resiliency ranking

Quantifying how resilient a city is to climate change and its attendant threats can be difficult, but a London-based property company might have performed the most comprehensive analysis to date.

TODAY'S STORIES

3. FINANCE: New secondary market aims to proliferate cheap loans for home energy efficiency projects

4. BIOFUELS: IPCC strikes reference to a controversial land-use factor

5. OCEANS: Fish living in CO2-saturated waters lose ability to sense predators -- study

6. TECHNOLOGY: Could airborne wind turbines power the world?

7. NATIONS: Grenada's prime minister secures international help to use more renewable energy

8. COAL: Pending U.S. pollution rules shut down 4 coal-fired generators in Ky.

9. EMISSIONS: Global CO2 emissions could peak before 2020 if China achieves coal reduction goals

10. ADAPTATION: Time running out to protect U.K. coastline -- report

11. EMISSIONS: Camels take back seat in global-warming blame game

EnergyWire -- Mon., April 14, 2014 -- Read the full edition

1. TECHNOLOGY: Smart thermostats join the 'Internet of Things' to turn up the heat on utilities

The new thermostats are actually armaments in a battle among corporations to control the home's operating system. Whoever wins, it is likely that the thermostat and the energy data tied to it will become much easier to use, and even sexy. The consequences for power companies and for energy use could be profound.

2. OIL AND GAS: Size, costs of global projects become Big Oil's millstone

HOUSTON -- Are the supermajors too big for their own good?

TOP STORIES

3. EARTHQUAKES: Ohio makes biggest link yet between shaking and fracking

4. CALIFORNIA: Oil companies pushed to release more data on offshore drilling

ELECTRICITY

5. UTILITIES: AEP customers saw most weather-related outages since 2003 -- report

6. REGULATION: Pa. electricity regulator pushes consumer-friendly policies

7. JAPAN: Tepco looks to thermal power while nuclear remains off

OIL AND GAS

8. NORTH DAKOTA: Rule changes won't keep state from achieving oil output goal -- regulator

9. OFFSHORE DRILLING: Statoil plans to develop big North Sea gas find

10. MARKETS: Oil and gas reserves move in opposite directions, says EIA outlook

11. OIL AND GAS: U.S. avoids 'Dutch Disease' despite resource boom

12. EDUCATION: Texas groups strategize to get students ready for oil and gas jobs

13. MARKETS: Cheniere CEO reinforces limits to U.S. gas-driven clout

14. OIL AND GAS: European gas deal breaks from oil-indexed contracts

E&ETV'S ONPOINT

15. REGULATION: Former EPA general counsel Martella discusses agency's latest moves on water, air

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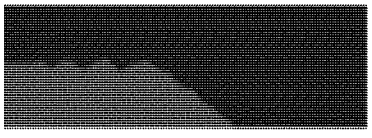

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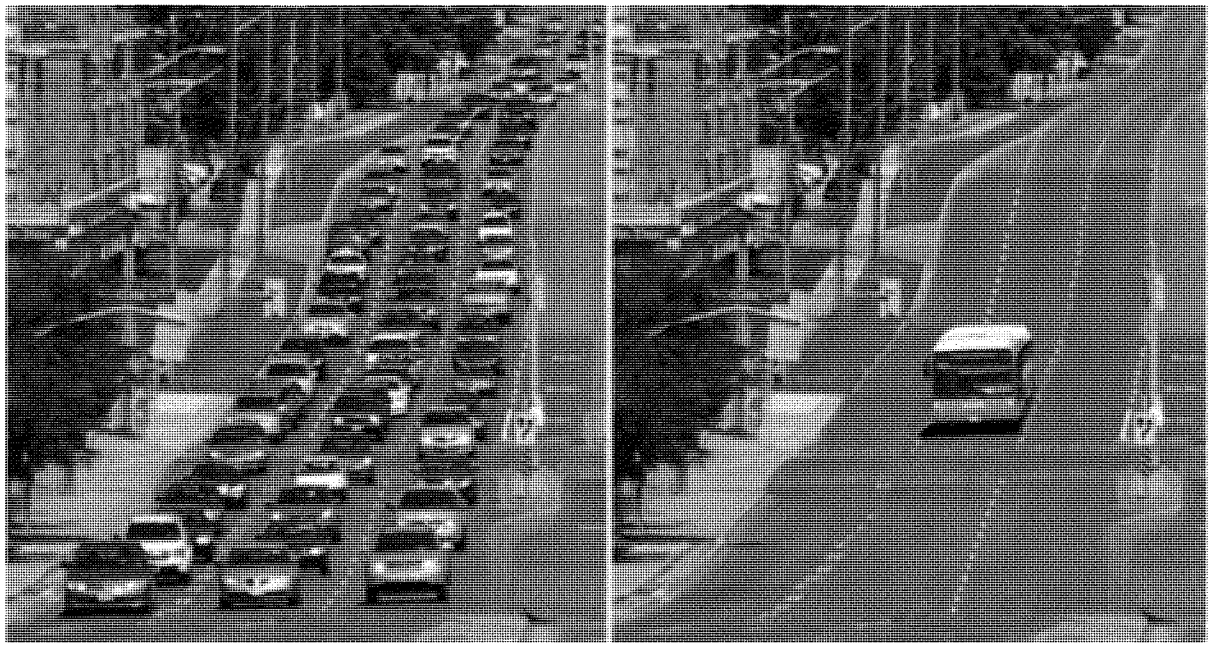

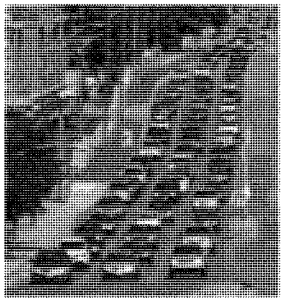

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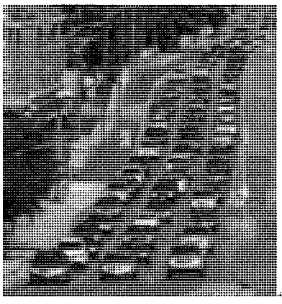
Subject: Air & Radiation Law News for April 11, 2014



Air & Radiation Law News

for April 11, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

Global Panel Examines 'Forces of Disruption' In Transition to Low-Carbon Economy

An international group of researchers is trying to understand "forces of disruption," such as Tesla Motors Inc., Nest and Opower, and figure out how they can support the transition to a low-carbon economy, the group's director...

Climate Change

Senator Targets 2015 for Moving Climate Bill; Companies Push for Renewable Tax Credits

Congress is on the verge of moving forward on a "significant piece" of climate-change legislation as early as 2015 in response to looming Environmental Protection Agency rules to curb power plant carbon pollution, Sen. Sheldon Whitehouse...

Energy

11 Senate Democrats Push Obama to Make Decision on Keystone Pipeline by May 31

President Barack Obama ought to decide by May 31 whether to approve the Keystone XL pipeline, 11 Senate Democrats said in an April 10 letter. ...

Energy

Corn Ethanol Blending Mandate a 'Flop,' Should Be Repealed, Rep. Welch Says

The renewable fuel standard has been a "well intentioned flop" and the corn-based ethanol blending mandate should be repealed, Rep. Peter Welch (D-Vt.) said....

Energy

Energy Efficiency Bill Could Reach Senate Floor in May, Shaheen Says

Senate energy efficiency legislation backed by companies such as the Dow Chemical Co. and investor-owned utility National Grid could be brought back to the floor in May, the legislation's sponsor said April 10, citing talks with Democratic...

Energy

Petroleum Groups Want Biodiesel 'Loophole' Closed in RIN Quality Assurance Rule

Allowing biodiesel producers to separate and sell renewable fuel credits creates opportunities for fraud in the renewable identification number market, petroleum groups told the Environmental Protection Agency and White House during...

Energy

Senators Weigh Burden of Security Threats, Environmental Initiatives on Bulk Power Grid

The Federal Energy Regulatory Commission is taking steps to better protect sensitive information regarding electric grid security following an "emergency alert" by the Department of Energy inspector

general, FERC Acting Chairman...

Energy

Washington Ecology Department Reviews Proposed Pacific Coast Crude-by-Rail Terminals

The Washington Department of Ecology and the city of Hoquiam, Wash., began receiving comments April 10 to determine the scoping of environmental impact statements for two independent proposals to expand bulk-storage terminals. ...

Natural Resources

Interior Releases 'Landscape-Level' Strategy For Offsetting Land, Resource Impacts

The Interior Department released April 10 a strategy to offset land and resource impacts of oil and gas, mining, roads, pipelines and other large development projects through "landscape-level" planning....

Radioactive Waste

FY 2015 Spending Bill to Include Interim Nuclear Storage Provision, Feinstein Says

Senate appropriators will include language authorizing the Energy Department to develop interim nuclear waste storage sites as part of a fiscal year 2015 energy and water spending bill, Sen. Dianne Feinstein (D-Calif.) told Bloomberg BNA...

Taxes

China Accelerates Plans for Environmental Taxes, Moves to Cut Emissions From Coal

China will speed up the development of environmental tax legislation that could penalize heavy polluters to help the central government pay for programs to address air, soil and water pollution, said a report from the State Council, China's...

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In Ozone Case, Utilities Ask High Court To Reinstate Test For Setting NAAQS

Despite a series of failed attempts by industry groups to reverse EPA's national ambient air quality standards (NAAQS), power plant operators are urging the Supreme Court to reverse an appellate ruling that upheld the agency's Bush-era decision to strengthen its ozone standard, alleging the ruling is at odds with a years-old high court test for how to set NAAQS.

States Seek To Limit EPA's FY15 Earmarks For GHG, Nutrient Programs

State regulators are generally supporting EPA requests to increase grant funding for states to implement federal environmental programs in fiscal year 2015 but in testimony to House appropriators they urged lawmakers to limit agency requests to earmark some of the funds for high-priority greenhouse gas (GHG) and nutrient reduction programs.

Latest Blogs

Clock Starts For Suits Over Contested Gas GHG Permit

EPA has published the final Clean Air Act permit for a proposed natural gas-fired plant in Texas, starting a 60-day clock for environmentalists and others . . .

Greenwire

AIR POLLUTION:

Advocate urges House appropriators to boost state, local grants

Daniel Lippman, E&E reporter

Published: Thursday, April 10, 2014

The Obama administration's budget request for clean air programs shortchanges states at a time of growing responsibility for regulating emissions, a leading clean air advocate told House appropriators today.

The proposed budget for fiscal 2015 includes $243.2 million for state and local air quality grants. That would be an increase of $15 million over current levels.

But within the request, President Obama asks for a $24.3 million increase in funding for greenhouse gas programs while asking for a cut of $9.3 million for "core" air programs that aim to reduce pollutants like sulfur dioxide, nitrogen oxides and particulate matter.

"State and local air quality agencies have struggled with insufficient resources for many years," said Bill Becker, executive director of the National Association of Clean Air Agencies (NACAA). He said thousands of Americans die or get sick from air pollution every year, although the nation's air has been getting cleaner for several decades.

"While the Clean Air Act envisioned the federal government providing grants for up to 60 percent of the cost of state and local air programs, the truth is that it provides only 25 percent, while state and local agencies provide the remaining 75 percent."

He told the House Appropriations Subcommittee on Interior, Environment and Related Agencies that state and local air officials lack "sufficient resources" to properly implement the Clean Air Act. Becker spoke at an annual public witness hearing where advocates of different programs related to the subcommittee's purview pleaded for dollars.

Given that the House is controlled by Republicans, many of them eager to display their fiscal rectitude to voters back home, it's unclear how effective any of these pleas for money will be.

But that didn't deter advocates from organizations including the American Alliance of Museums, Wilderness Land Trust and Everglades Foundation from asking for their programs to be given priority in the budget scramble.

Becker said an NACAA study found that there was an annual shortfall of $550 million in federal grants for state and local air quality programs. While he acknowledged that it is unrealistic for the budget to be vastly increased, his association urged the House Appropriations subcommittee to add $35 million to the clean air programs over Obama's request. Becker also asked for more flexibility for states to allocate the federal money they get for air.

"While we understand Congress is not able to provide increases of that magnitude, even the modest increases we are requesting will help," he said.

CLIMATE:

Whitehouse challenges corporate allies to move the ball on warming legislation

Jean Chemnick, E&E reporter

Published: Thursday, April 10, 2014

One of Congress' most vocal climate advocates today appealed to like-minded corporations to balance the influence and capital that anti-regulatory companies have spent fanning the flames of climate skepticism.

Speaking at a Capitol Hill briefing with pro-climate action companies co-hosted by the umbrella organization Ceres, Sen. Sheldon Whitehouse (D-R.I.) reiterated that he believes legislation to price carbon dioxide emissions is "tantalizingly close" -- and perhaps possible as soon as next year. But well-heeled industry groups that have opposed action -- he mentioned the fossil fuels industry and the U.S. Chamber of Commerce -- have created the illusion that corporate America is a behemoth opposed to any climate change regulation, he said.

In January, the U.S. Chamber partnered with the National Association of Manufacturers and others on a new coordinated campaign to oppose U.S. EPA climate rules.

Companies from a variety of sectors have acknowledged that human-caused climate change is occurring and are incorporating that expectation into their practices, Whitehouse noted. Some have even called for carbon legislation.

"But the corporate message hasn't sunk through," he said. "It's a murmur -- many voices are saying the same thing, but because it's not being said together, it doesn't come through clearly."

He called on the companies to "make the murmur into a message" that would grab his colleagues' attention.

Whitehouse and Rep. Henry Waxman (D-Calif.), his co-chairman on the Bicameral Task Force on Climate Change, heard from five companies that touted their efforts to curb company emissions and harden their operations against climate change. The briefing marked the first anniversary of a "climate declaration" signed by 750 companies calling for climate legislation.

Letitia Webster, global director of corporate sustainability for outdoor apparel company VF Corp., said climate change topped its customers' list of concerns. A major consumer of cotton, VF is taking steps to improve the sustainability of the supply chain, she said. She also made a pitch for carbon legislation and a permanent renewable energy tax credit.

Rob Olson, chief financial officer of Ikea US, announced the company's investment in a new Hoopeston, Ill., wind farm. The company has a goal of relying on renewable energy for two-thirds of its power, he said.

Colin Dyer, president and CEO of commercial real estate company Jones Lang LaSalle, discussed ways to improve building efficiency, including through government action. Kevin Rabinovich, director of global sustainability for Mars Inc., the chocolate maker, said his company had mapped the genome of cocoa and released it into the public domain in hopes of finding more drought-resistant strains of the vital crop. Amy Hargroves, director of corporate responsibility and sustainability for Sprint Communications Inc., made a pitch for good corporate citizenship.

But Hargroves, whose company is based in Kansas, said that climate change is rarely a topic raised during meetings about the company's sustainability practices.

"We've tried to change the dialogue a little bit away from the climate issue because it has so much baggage on it, and instead just talk about the business benefits," she said.

But Whitehouse said that internal efforts by companies will only go so far toward addressing warming.

"It doesn't support the next step, which is: How do you break through this little ring of denial that a very small subset of the corporate community has erected around Washington, D.C., very inconsistently with the views and experience of the great majority of the corporate community?" he said.

Whitehouse has said that EPA's existing power plant guidance that will be proposed later this spring may be a turning point for corporate interest in a carbon price. Faced with a new obligation to limit emissions, he argues, large utilities will demand economy wide legislation that would share responsibility.

But while the agency has said little about the proposal it must release early in June, officials have assured stakeholders that it will be cost-effective and will not require today's power fleet to retrofit with carbon capture and sequestration technology.

The rule is currently undergoing interagency review at the White House.

COAL:

DOE, Tampa Electric launch CO2-capture project at Fla. power plant

Manuel Quiñones, E&E reporter

Published: Thursday, April 10, 2014

The Department of Energy announced the start yesterday of a pilot project near Tampa, Fla., that would reduce coal pollutants and capture carbon dioxide emissions.

DOE and its partner, Tampa Electric Co., aim to demonstrate a technology called warm gas cleanup at the utility's Polk Power Station's coal gasification unit.

Coal gasification involves turning coal into gas and removing pollutants before burning it for electricity. The idea behind the pilot is to remove as many pollutants as possible and capture CO2 emissions.

DOE clean coal chief Julio Friedmann said the demonstration "is a major step forward in the effort to develop and deploy our coal resources in the cleanest way possible."

The Polk Power Station houses the country's first coal integrated gasification combined cycle (IGCC) plant and one of the few in the world.

Last year, Duke Energy Corp. began operating the Edwardsport Generating Station IGCC plant in Indiana. And Southern Co.'s Kemper plant in Mississippi will be an IGCC facility with carbon capture.

Kemper is often touted as a model for coal industry survival in what policymakers call a carbon-constrained world. And Friedmann's goal at DOE is to make such projects even cleaner and more commercially viable.

"This partnership between the department and Tampa Electric represents our commitment to fostering the next generation of carbon capture technologies that drive down costs, increase efficiency and help ensure a sustainable future for America's energy supply," he said.

DOE spent $168 million in stimulus funds on the Tampa pilot. Friedmann added, "Fossil fuels will be a major part of America's energy supply for decades to come -- and today's demonstration."

The idea of promoting clean coal technology is unpopular with some environmental groups. Today, for example, the Sierra Club released a report calling for the Obama administration's Climate Action Plan to

forsake fossil fuels.

"Global carbon pollution must be drastically reduced in order to avoid passing the tipping point of 3.6 degrees Fahrenheit in the next 15 year," it says. "This means quickly moving away from oil, gas and coal to embrace clean, renewable energy such as solar and wind power."

In February, Peabody Energy Corp., the largest U.S. coal mining company, launched a campaign to promote coal as a way to reduce global energy poverty and also tout efforts at making the fuel cleaner (*E&ENews PM*, Feb. 26).

The World Wildlife Fund filed a complaint today in Belgium against an ad for the Peabody campaign, calling it false advertising.

FUEL EFFICIENCY:

Toyota to apply hybrid engine technology to conventional cars

Published: Thursday, April 10, 2014

Toyota Motor Corp. said today it will expand a line of fuel-efficient engines first developed in hybrid vehicles to 14 models this year and next year.

Hybrids such as the Toyota Prius and Ford Fusion use the technology to alternate between an electric motor and a gas engine. It's fairly rare in purely gas-powered vehicles, but Toyota said even conventional vehicles should see 10 percent better fuel efficiency through the technology.

The automaker said the engine, which uses a process called the Atkinson cycle, should be more efficient without sacrificing engine power.

The new engines are "the future direction of Toyota engine development," spokesman Brian Lyons said (Yuri Kageyama, AP/*Detroit Free Press*, April 10). **-- SP**

AIR POLLUTION:

Calif. city calls Sriracha factory a public nuisance

Published: Thursday, April 10, 2014

A city in Southern California has turned up the heat on a Sriracha hot sauce factory, declaring it a public nuisance and giving it 90 days to stop the spicy smells that resulted in a slew of complaints from residents last fall.

The decision by Irwindale's City Council means officials will be able to go into the factory and make changes if the odors continue past the deadline.

After taking air samples from inside the plant, the South Coast Air Quality Management District recently reported that Huy Fong Foods Inc., the company that makes the hot sauce, is making progress.

John Tate, a lawyer representing the hot sauce company, said it was working on its filtration system. He said the public nuisance declaration was "the city flexing its muscle and thumbing Huy Fong in the eye."

The city sued Huy Fong Foods in October last year after residents said fumes released from the grinding of hot chili peppers stung their eyes and produced coughing fits and headaches (*Greenwire*, Oct. 29, 2013; AP/Albany *Times-Union*, April 10). **-- JL**

CHINA:

Artist sells jar of clean French air for $860 to protest pollution

Published: Thursday, April 10, 2014

A Chinese artist has drawn attention to China's stifling smog by selling a jar of clean mountain air he collected on a business trip to southern France.

Beijing artist Liang Kegang said the jar of air from Provence, auctioned off for $860, was a form of artistic protest against the air pollution plaguing Beijing and other Chinese cities.

"Air should be the most valueless commodity, free to breathe for" anyone, Kegang said. "This is my way to question China's foul air and express my dissatisfaction."

Kegang's stunt followed comments by Chinese President Xi Jinping, who joked last month that leaders in pristine Guizhou province should sell air to visitors. Within days, tourism officials unveiled plans to sell canned air as souvenirs (AP/London *Guardian*, April 10).

However, China is also taking more serious steps to address the problem.

The Environment Ministry today announced the results of a three-month study that found 1,888 industrial businesses violated pollution guidelines.

The ministry has gone after companies that fail to comply with air standards or provide false emissions data to avoid penalties. The government said it expects to spend $6.4 billion on air monitoring between 2011 and 2015 (David Stanway, Reuters, April 10). **-- DB**

REGULATION:

C2ES senior fellow Aarons discusses compliance options for states on existing source rule

Published: Thursday, April 10, 2014

As the Office of Management and Budget reviews U.S. EPA's draft rule for existing power plants, how might the agency build flexibility for states into its proposal? During today's OnPoint, Kyle Aarons, a senior fellow at the Center for Climate and Energy Solutions, discusses current state programs that could fit into a federal rule. He also weighs in on the possible role of the debate over the social cost of carbon in

the response to the existing source proposal.

Click here to watch today's OnPoint.

ClimateWire -- Fri., April 11, 2014 -- **Read the full edition**

1. BUSINESS: Peabody Energy pitches coal as the cure for Third World poverty

Faced with uncertain domestic markets and mounting regulatory pressures over pollution at home, the U.S. coal industry is shifting its focus to some of the poorest nations of the world, where it argues coal should be a primary antidote to global energy poverty.

2. FINANCE: World Bank chief says fighting climate change and fighting poverty are linked

World Bank President Jim Kim yesterday put climate change at the center of the fight against extreme poverty, part of an effort since he began his tenure to link the two looming global problems.

TODAY'S STORIES

3. WEATHER: Latest outlook says El Niño likely, but a lot could still change

4. POLITICS: Calif. Senate leader will drop carbon tax proposal, sources say

5. ADAPTATION: American Indians describe widespread impacts of climate change on tribal land

6. WIND POWER: AWEA annual report focuses on new construction rather than installation decline

7. POLICY: EPA promotes voluntary programs, state partnerships amid shrinking budget

8. CITIES: Green groups urge N.Y. Mayor de Blasio to get serious on climate change

9. TRANSPORTATION: What's good for climate is good for business, GM says

10. DROUGHT: Tumbleweeds invade arid southern Colo.

11. NATIONS: U.K. opening finance 'lab' to help meet U.N.'s $100B climate protection goal

12. RENEWABLE ENERGY: First plane to take solar-powered flight around the world revealed

13. WEATHER: Monster cyclone heads toward northeast Australia

EnergyWire -- Fri., April 11, 2014 -- **Read the full edition**

1. SECURITY: White House official questions FERC's 'next to impossible'

grid assault scenario

A senior White House security official yesterday downplayed conclusions of a confidential study last year by the Federal Energy Regulatory Commission warning that attacks on a handful of high-voltage substations could cause cascading power outages across the United States.

TOP STORIES

2. UTILITIES: Southern teams up with Chinese coal giant to expand gasification technology

3. POLICY: State's energy envoy sees 'world of competition' opening up through LNG

4. SAFETY: In N.D.'s oil patch, wrecks increase as trucks push onto farm roads

THIS MORNING'S STORIES

5. ELECTRICITY: Low-income households behind the smart grid curve -- report

6. OIL: A gusher of crude is finally flowing out of Iraq

7. OIL: Texas' estimated crude reserves grow by 3B barrels

8. PEOPLE: Offshore group appoints new board leaders

9. ELECTRICITY: FirstEnergy Solutions' one-time fee for winter costs is under investigation in Ohio

10. ELECTRICITY: Houston-area transmission line plan draws ire

11. OIL MARKETS: OPEC's crude output plummeted in March

12. ELECTRICITY: Report warns of soaring energy bills if Scotland breaks away

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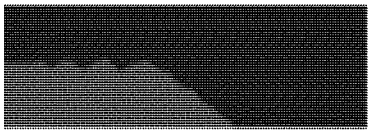

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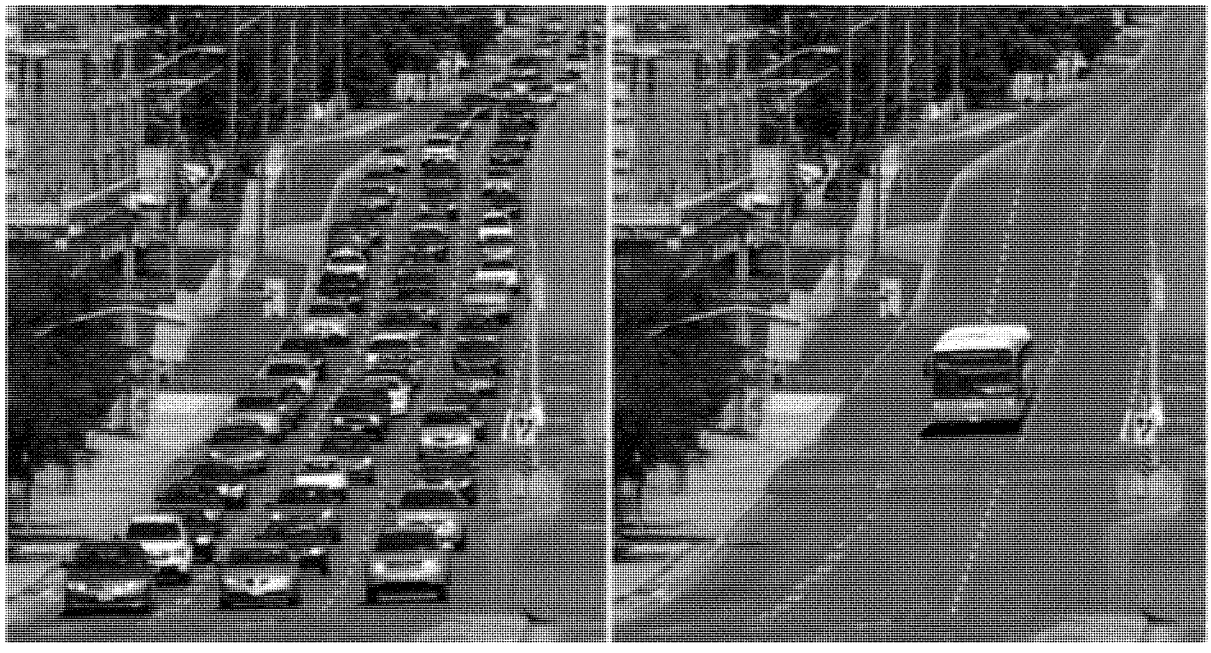

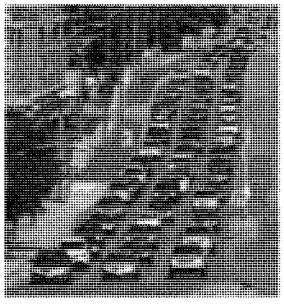

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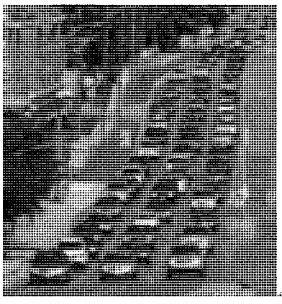
Subject: Air & Radiation Law News for April 8, 2014



Air & Radiation Law News

for April 8, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

EPA Weighing Electric Power Reliability In Crafting Standards for Power Plants

The Environmental Protection Agency will take into account the need for continued reliability of the U.S. electricity supply in finalizing its carbon limits for existing coal-fired power plants, the head of the agency said April 7....

Climate Change

Russian Government Approves Plan to Cut Greenhouse Gas Emissions Across Economy

Russia has approved a plan for reducing greenhouse gas emissions in major sectors of the economy that will be central to formulating the country's position in international negotiations on a new climate change treaty expected to be finalized...

Climate Change

Third Round of IPCC Climate Change Talks Begin in Berlin Amid Concerns About Leaks

Talks set to finalize the third and final section of the Intergovernmental Panel on Climate Change Fifth Assessment Report began April 7 in Berlin amid unusual concerns about leaked documents and allegations from a former contributor....

Climate Change

UN Climate Change Body Wants to Merge Greenhouse Gas Emissions Credits Systems

The United Nations Framework Convention on Climate Change has taken the first step toward standardizing the accreditation systems for Joint Implementation (JI) projects and Clean Development Mechanism (CDM) projects....

Emissions Trading

Cap-and-Trade Program for Renewables More Effective, Predictable, Report Says

A cap-and-trade program for renewable fuels would better ensure greenhouse gas emissions reductions from the transportation sector, the Institute for Policy Integrity said in a report....

Energy

Alabama Puts Strict Limits on Wind Farms In Two Counties but Passes No State Rules

The Alabama Legislature stopped short of passing strict statewide regulations on wind turbines before adjourning for the year on April 3, but the state did enact local legislation that could kill approximately 100 megawatts from wind farm...

Energy

Japan Stops Short on Setting Goals For Renewable Energy in Policy Update

Prime Minister Shinzo Abe's government stopped short of setting goals for renewable energy in the final

version of a draft plan that reinforces atomic power's role in Japan's energy future, calling it a vital source of generation....

Energy

Judges Question EPA's Delay in Issuing 2013 Renewable Fuel Standard Rule

A federal appellate judge questioned the Environmental Protection Agency's "egregious" delay in issuing the 2013 renewable fuel standard blending requirements during oral arguments April 7 (Monroe Energy LLC v. EPA, D.C....

Energy

U.S. Shale Gas Boom Leads Developers Of Wind Power to Seek More Subsidies

Wind power in the U.S. is on a respirator. The $14 billion industry, the world's second-largest buyer of wind turbines, is reeling from a double blow: cheap natural gas unleashed by the hydraulic fracturing revolution and the death last...

EPA

Republicans Seek More Documents on Beale

Sen. David Vitter (R-La.) and Rep. Darrell Issa (R-Calif.) are seeking all documents from former senior Environmental Protection Agency air official Robert Brenner related to former EPA official John Beale, who was convicted in a fraud case....

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Inside EPA's **Risk Policy Report**, 04/08/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/08/2014/menu-id-130.html

EPA Weighs New 'Ultrafine' Particle Air Standard Ahead Of NAAQS Review

EPA plans to revisit the question of whether to set a first-time national ambient air quality standard (NAAQS) for "ultrafine" particles (UFP) as part of its upcoming review of its existing particulate matter (PM) NAAQS, which could lead to stricter air limits than the current fine particulate matter (PM2.5) and large particle (PM10) standards.

Judges Ask Tough Questions Of EPA, Refiners In Lawsuit Over 2013 RFS

Appellate judges at April 7 oral arguments asked tough questions to EPA over its delays in developing the 2013 renewable fuel standard (RFS) and the problems that causes for refiners in meeting the rule, but at least one judge also pressed one refining company to justify its claim of massive costs it faces in complying with the RFS.

Groups Float Competing Proposals To Achieve RFS' GHG Reduction Goal

Low-carbon fuel supporters and biofuel advocates are floating competing ideas for how to achieve EPA's renewable fuel standard's (RFS) greenhouse gas (GHG) reduction goals, with low-carbon fuel advocates pushing a climate cap-and-trade program to boost the RFS while biofuel groups say the best option is to ramp up the RFS' fuel targets.

OTC Floats Daily NOx Utility Limits As Model For EPA Rule To Curb Ozone

The Ozone Transport Commission (OTC) of Northeast and Mid-Atlantic states is floating a draft plan for daily and hourly nitrogen oxides (NOx) emissions limits on power plants as a model for a future EPA rule to reduce ozone-forming NOx emissions and help states achieve a potentially stricter ozone standard that the agency is considering.

Latest Blogs

EPA Interagency Utility NSPS Talks May Ease OMB Review

EPA Administrator Gina McCarthy says the agency held many talks with other agencies including the Department of Energy and the Federal Energy Regulatory Commission during . . .

EPA Environment Report Includes Sustainability Indicators

EPA has unveiled its latest draft Report on the Environment (RoE), an extensive report intended to measure the health of the environment and its impacts . . .

Greenwire

BIOFUELS:

EPA delays, ethanol credits take center stage in RFS court battle

Amanda Peterka, E&E reporter

Published: Monday, April 7, 2014

The oil industry today took its fight against U.S. EPA's 2013 renewable fuel mandate to court, urging appellate judges to vacate the agency's target for biofuel use in gasoline and diesel.

In arguments this morning, the three-judge panel from the U.S. Court of Appeals for the District of Columbia Circuit posed hard questions to both the oil industry and U.S. EPA. Judges appeared skeptical of the merits of the oil industry's lawsuit as well as EPA's delay in issuing the yearly renewable fuel targets.

"Why in the world is EPA so egregiously late on this and so consistently late?" Judge Thomas Griffith asked.

EPA in August proposed a renewable fuel standard that requires refiners to blend 16.55 billion ethanol-equivalent gallons of renewable fuel in 2013. Of that total, 13.8 billion gallons was to be conventional ethanol and 2.75 billion gallons advanced biofuel not made from corn.

At the center of the case is whether EPA has discretion over and adequately considered carryover credits from previous years that refiners could use to comply with biofuel targets.

The court is also weighing whether EPA broke the law by issuing the final rule more than eight months after a statutory Nov. 30 deadline.

Monroe Energy LLC, a subsidiary of Delta Air Lines Inc., argued that the rule burdens merchant refiners like itself that do not blend their own ethanol and must meet their RFS obligations solely by purchasing credits known as Renewable Identification Numbers (RINs). It argues that EPA failed to account for other refiners hoarding their RINs, which correspond to gallons of ethanol, in 2013 to meet future compliance targets.

EPA's rule "poses devastating costs" on independent refiners, attorney David DeBruin, representing Monroe, told the judges. He said the refinery estimated it would spend $100 million to buy 2013 RINs.

"The critical fact is you have to consider 2014. This is a two-year currency," DeBruin said.

But Judge Judith Rogers said the agency did discuss carryover RINs in its final rule, pointing to a section in the appendix of the rule laying out expected carryover credits. And the agency testified that it expects refiners should have at least 1.2 billion credits available from the end of 2013 to use toward their 2014 obligations.

"We assume that the agency is not writing nonsense," Rogers said.

Rogers and Judge Cornelia "Nina" Pillard, both Democratic appointees, questioned whether EPA is even

obligated to consider carryover credits. Pillard also asked why Monroe had not taken advantage of other ways to comply with the RFS.

Department of Justice attorney Lisa Bell, representing EPA, argued that Monroe has other compliance options beyond simply buying RINs on the market. It could, for example, purchase and market ethanol on its own.

Unlike Monroe, the American Petroleum Institute's arguments today centered on whether the delay in issuing the rule should be cause for overturning it. Although EPA issued a proposed rule in January of last year, it did not finalize the rule until August. The agency did, though, extend the compliance period for last year until June 2014.

Robert Long, an attorney representing API, argued that the delay hurt refiners because EPA used an updated version of fuel data in the final rule that would never have been considered if the agency had released the rule on time.

Long said EPA did not notify refiners that it would be using the updated fuel consumption data from the Energy Information Administration, which he said increased their burden under the standard.

The judges questioned why EPA shouldn't use the data, since they were more accurate than earlier data.

"If you don't dispute its accuracy, then what is the harm?" asked Griffith, a Republican appointee.

Griffith also at times seemed sympathetic to the industry argument.

"At some point, there has to be some line drawn here to give the regulated entities certainty," he said.

DOJ attorney Brian Lynk, representing EPA, said the agency's track record is not as bad as critics claim. He said last year's delay occurred because the agency was considering the blend wall, the term for the physical constraints to the amount of ethanol that can be used in the market, for the first time.

Rogers, though, raised concerns about whether the law allows API to challenge the delay in the first place. She indicated that the court may lack jurisdiction over issues related to the timeliness of the rule in the first place.

Long, API's counsel, argued that EPA had forfeited its right to raise jurisdictional concerns because it did not raise those concerns in court briefs. However, he also said API may be willing to put that challenge on hold while the court decides the other issues in the case.

The court has also put on hold API's challenge to the agency's standard for cellulosic biofuels, a subset of the RFS that mandates the blending of fuels made from plant-based materials like agricultural residues and grasses. EPA earlier this year independently said it would reconsider the target.

Monroe has asked for an expedited ruling on the case. EPA will likely wait for the lawsuit's conclusion to issue its final 2014 RFS. This year, the agency has proposed to lower the targets for both ethanol and advanced biofuels for the first time, based largely on blend wall concerns; both biofuel and oil industry groups have already threatened litigation (*E&ENews PM*, Nov. 15, 2013).

Reporter Jeremy Jacobs contributed.

COAL:

Pugnacious Blankenship undaunted by accusations on anniversary of deadly mine blast

Manuel Quiñones, E&E reporter

Published: Monday, April 7, 2014

Former Massey Energy CEO Don Blankenship won't back down.

With independent investigators, federal inspectors and union leaders blaming him and what they describe as a reckless safety culture at Massey for the explosion that killed 29 West Virginia coal miners four years ago, Blankenship insists they have it wrong.

"This mine blew up from natural gas," Blankenship told *Greenwire* during an interview on Saturday, on the Upper Big Branch explosion's anniversary.

Last week, Blankenship released an hourlong documentary expounding his view that a sudden and natural inundation of gas caused the blast. He then made rounds of media outlets in New York.

The reaction to his offensive was swift and severe. Mine safety advocates dismissed the documentary as repackaging old arguments. And Sen. Joe Manchin (D-W.Va.) asked that the documentary be scrapped.

"It surprises me that we've not getting more effort by others who are independent to actually look at the gas," Blankenship said in the interview.

"There's no debate about it," he said if the gas theory. "It's black-and-white."

There have been several reports on the Upper Big Branch tragedy. Manchin, as West Virginia governor in 2010, tasked former Mine Safety and Health Administration chief Davitt McAteer with conducting an independent probe. State regulators also investigated.

Those investigators, plus MSHA and the United Mine Workers of America, agreed that a small ignition turned into a huge explosion because of excess amounts of coal dust.

The MSHA report accused Massey of keeping two sets of books at Upper Big Branch to hide safety violations. The UMWA called the explosion "industrial homicide."

Addressing the natural gas issue, the McAteer report says, "The issue of a massive, unforeseen inundation is significant from a legal standpoint because mitigating factors can excuse or decrease the liability of a mine or business owner following a disaster such as occurred at Upper Big Branch."

And the MSHA report says, "The volume and pressure of gas and the size of the floor fractures were relatively small. Thus, the volume of gas released from the floor was also small."

But Blankenship is standing his ground.

Saying he's used to going against the grain, he expressed pride at having worked to reduce the union's power in the West Virginia coal fields at a time when its role was deeply rooted.

Don Blankenship led Massey Energy Co. from 2000 to 2010. Watch his 2009 OnPoint appearance here.

Now Blankenship says he's once again ruffling feathers by providing an alternative explanation for Upper Big Branch. Opposition against him, Blankenship said, is spurred by his challenging the establishment.

"In order to change a paradigm or change a norm or to get people to look at things different," Blankenship said, "it takes a lot of determination and a lot of criticism."

Blankenship, who spent most of his early life in rural southern West Virginia, says he worked in the coal mines to help pay his tuition at Marshall University in Huntington, W.Va.

"I was quite popular, if you will, in the school," he said.

Since then he has described himself as a defender of miners against union excesses or environmentalists who want to shut down coal.

Of the miners, Blankenship said, he "stayed among them, lived among them." He said he is "basically one of them."

Blankenship joined Massey in the 1980s and worked his way up to CEO. He headed the company for about a decade before leaving in 2010. The antagonism against him, he said, began as he started to challenge the status quo.

A fiery free-market advocate, climate change skeptic and fierce opponent of the Obama administration, he said there are two reasons MSHA doesn't embrace his theory. The first, he said, is that he's "somewhat of a political adversary. Second, it protects them."

He added, "I think obviously they've been able to place 99 percent of the blame or either me or the company. And not on themselves or the truth."

'Cautionary tale of hubris'

It was around 3 p.m. on Easter Monday that the Upper Big Branch (UBB) exploded. It was soon called the worst such incident in four decades.

Soon after, reports emerged about a history of safety violations at the mine. One of the miners who died, Gary Wayne Quarles, is said to have predicted the disaster.

"Man, they got us up there mining, and we ain't got no air," a witness recalled Quarles saying, according to one of the investigative reports. "Every day I just thank God when I get out of that coal mine that I ain't got to be here no more."

MSHA's report accused Massey of failing to properly maintain equipment, allowing combustible coal dust to accumulate throughout Upper Big Branch and intimidating workers.

"Witness testimony revealed that miners were intimidated by UBB management and were told that raising safety concerns would jeopardize their jobs," said the MSHA report.

The McAteer report says, "The story of Upper Big Branch is a cautionary tale of hubris. A company that was a towering presence in the Appalachian coalfields operated its mines in a profoundly reckless manner, and 29 coal miners paid with their lives for the corporate risk-taking."

Blankenship's take: "In my heart and my mind, I'm certain that I did the best I knew how to do. And I did it extremely well."

He also says the explosion could have been prevented if MSHA had allowed Massey an alternative ventilation plan.

"It's natural that one of the things that stays with me is the first phone call," Blankenship said of his first hearing about problems at the mine. "Of course you're sitting there with anxiousness. Immediately we began the process of scrambling."

Then he added, "The worst part was the call after another hour or so. ... It was bad. We did everything we knew to do after that point."

Blankenship said he was pleased that independent reports also faulted MSHA for not being diligent enough in the years and months leading up to Upper Big Branch.

At the same time, Blankenship envisions a different role for the federal government in mine safety oversight, one that is more cooperative than adversarial.

He'd like to see MSHA split into several offices -- one for enforcement, another for research and technology, and another to examine mining accidents.

"The industry will never be able to work as well with a police force as they would with a technology application group," he said. "It would be real easy to make huge improvements. That's the sad part."

Legislation, criminal investigation

MSHA has reorganized its operations and cracked down on mine safety violators in response to Upper Big Branch. Many Democrats in Congress say legislation is also needed to boost penalties and protect whistle-blowers.

Last week, California Rep. George Miller, top Democrat on the House Education and Workforce Committee, and Connecticut Rep. Joe Courtney, top Democrat on the Workforce Protections Subcommittee, asked Education and Workforce Chairman John Kline (R-Minn.) to act on pending bills.

"Four years after this tragedy, and two years after all of the investigation reports have been finalized, inaction by this Congress on needed legislation is both glaring and inexcusable," the Democrats wrote.

"There is only one message being sent to the UBB families," they wrote, "Congress is closing their ears to their pleas. It is harsh conclusion, but the lack of action leaves the unmistakable impression that Congress as an institution is indifferent to the blood shed by these miners."

They also told Kline, "We agree with your statement that the genesis of this disaster 'lies in Massey's corporate culture that valued profit over safety.'"

A criminal investigation by U.S. Attorney Booth Goodwin in West Virginia is ongoing, and many family members of Upper Big Branch victims have called for Blankenship to be indicted.

Last year, David Hughart, former president of a Massey subsidiary that controlled the White Buck Coal Co., pleaded guilty in U.S. District Court to conspiring to prevent the MSHA from policing Massey mines and helping conceal safety violations.

When Judge Irene Berger asked Hughart whether advance warnings were company policy and who had ordered them, he said "the chief executive officer," referring to Blankenship.

Blankenship attorney William Taylor, with the law firm Zuckerman Spaeder LLP, promptly sent reporters a statement responding to Hughart's claims. "Don Blankenship did not conspire with anybody to do anything illegal or improper," Taylor said.

Whatever happens, Blankenship says, his documentary and media interviews will help set the record straight, from his point of view. That's his goal, he said, not rehabilitating his image.

"No lawyer should say or recommend that I do what I'm doing," he said. "Yes, you have to take these investigations seriously, but you also have to let your upbringing and character" show.

Blankenship added, "I've said in speeches many times that the media and your adversaries can damage your reputation, but they can't scratch your character."

Blankenship said he's enjoyed the last few years. He spends time with friends, his two children and his three grandchildren. He also is active on social media and online, trying to spread a conservative, small-government, pro-business message.

In 2011, Blankenship incorporated McCoy Coal Group Inc. in Kentucky. However, the coal boss said he's not looking into new mining ventures for the time being.

For now, the man who has been called the "dark overlord" of coal is bent on setting the record straight about Upper Big Branch. Public condemnation and a protest by victims' family members will not deter him.

"I thought that after four years, there would be a little less emotion and a little more support for the truth," he said. "People are so judgmental. They forget we're people, too."

KEYSTONE XL:

As enviros open closing arguments, 100 scientists and economists urge Obama to nix pipeline

Elana Schor, E&E reporter

Published: Monday, April 7, 2014

More than 100 scientists and economists today released a public plea that President Obama reject Keystone XL -- including two academics whose previous comments about the emissions impact of the Canada-to-U.S. oil sands crude project have provided fodder for pipeline backers.

The open letter to Obama and Secretary of State John Kerry comes as the $5.4 billion project nears what could prove a pivotal crossroads -- given that Kerry's department is entering the final month of a 90-day review period dedicating to weighing its national interest value. Or it could just be approaching another waystation on its previous path of delay, given that the White House has no final deadline for acting on a recommendation it may receive from Foggy Bottom on the merits of the 730,000-plus barrels of heavy crude that KXL would ship to the Gulf Coast.

For environmentalists, however, this spring is poised to bring a closing argument of sorts in their yearslong battle to elevate KXL as a symbol of outmoded fossil-fuel projects that governments the world over must eschew if carbon emissions are to stay below levels linked to dangerous climate change. Co-signed by climatologist James Hansen, who coined the term "game over" to describe the emissions impact of the growth in oil sands crude development that activists warn KXL would trigger, today's letter represents a key plank in greens' final case.

"A critical first step is to stop making climate change worse by tapping into disproportionately carbon-intensive energy sources like" the heavy, bitumen-based oil sands fuel that KXL would ship from Alberta to Nebraska, then ultimately to the Gulf, the scientists and economists wrote today.

"We agree that climate impact is important and evidence shows that Keystone XL will significantly contribute to climate change," the academics continued in their letter. The group cited a projection in the State Department's March environmental review of the pipeline that the annual incremental emissions from the fuel KXL would carry could top 27 million tons of carbon dioxide equivalent, or the amount of pollution from seven coal-fired power plants.

That high-end estimate of greenhouse gases from KXL is nine times higher than the yearly CO2 estimate offered by project sponsor TransCanada Corp. and more than 45 percent higher than U.S. EPA's most recent estimate of the pipeline's potential annual emissions footprint (*E&E Daily*, July 19, 2013).

Two of the researchers who signed today's letter, David Keith of Harvard University and Ken Caldeira of the Carnegie Institution for Science, have appeared in pro-pipeline memos downplaying KXL's broader climate impact that the industry-backed group Oil Sands Fact Check (OSFC) produced based on comments they made to *Nature* magazine last year.

Asked whether his presence on today's letter marked a change from his previous remark that "I don't believe that whether the pipeline is built or not will have any detectable climate effect," Caldeira responded that his view on the project's emissions contribution is unchanged.

"Every individual carbon dioxide emission source contributes to climate change," Caldeira said via email. "The climate effects of carbon dioxide emissions from any individual source are statistically undetectable, but in aggregate these carbon dioxide emissions are having a profound effect on our planet."

KXL, the scientist added, "is important as a signal" from the Obama administration about the nation's commitment to embracing "the near-zero emission energy industries of [the] 21st century."

OSFC spokesman Matt Dempsey, a former Senate GOP aide, contended that the letter's more moderate tone of opposition to KXL marks a disavowal of Hansen's stark two-word advice.

"In an amazing attempt to walk back outlandish and unscientific claims, outspoken critics of Keystone XL have gone from calling Keystone XL 'game over' to 'a step in the wrong direction,'" Dempsey said in a statement. "That's an extraordinary shift in rhetoric and shouldn't go unnoticed."

Click here to read the scientists and economists' letter to Obama and Kerry.

CLIMATE:

McCarthy says power plant rule will be flexible but require results

Jean Chemnick, E&E reporter

Published: Monday, April 7, 2014

Correction appended.

U.S. EPA Administrator Gina McCarthy today said the power plant climate rule now being reviewed by the White House will give states broad latitude to determine how to bring down their carbon dioxide emissions, but that it will require provable emissions reductions.

Speaking at a forum hosted by the Bipartisan Policy Center, McCarthy said her agency's proposed guidance for existing power plants will take full advantage of the flexibility provided by the Clean Air Act to let states craft their own implementation plans. It will allow states to comply using existing policies, she added.

"My goal is not to supplant what states are doing, but to support it," she said.

McCarthy noted that her agency has consulted with a broad set of stakeholders ahead of writing the proposal that is now undergoing White House vetting ahead of a June release. But she said the conversation would not end when the proposal is made public. The final rule released in June 2015 will look substantially different from this spring's proposal, she said, in part because of subsequent discussions with stakeholders and the states.

The proposed document -- which was written during the autumn and winter months -- will "tee up a number of ideas" for how states could structure their plans, McCarthy said.

"There is enormous flexibility in the definition of a state plan, and our ability to look at the timeline for achieving that -- for submitting the plans and for achieving the reductions," she said. "And we're going to take full advantage of that in this proposal, so that we can have more concrete discussions as we move forward."

President Obama's memorandum signed last year asked states to submit their implementation plans to EPA by the end of June 2016 in order to allow the agency to accept or reject them before the end of his administration. Reductions are set to phase in by 2020.

McCarthy said again that the proposal would recognize the differences between utility sectors in different states and would avoid interfering with their resource management planning or compromising reliability.

But she said it would require states to make demonstrable emissions reductions.

"This carbon pollution standard is going to be federally enforceable," she said. "It is going to be a requirement. It is not going to be an aspirational goal that 'if everything else goes right, it ought to happen.'"

EPA will vet the plans to see if they make the reductions the guidance requires, she said.

McCarthy shared the stage with Colette Honorable, president and chairman of the board of the National Association of Regulatory Utility Commissioners.

Honorable, who also heads the Arkansas Public Service Commission, said utility regulators did not expect EPA to accept plans that would not result in carbon reductions. But she said many states are working to better integrate renewable energy and efficiency into their power systems, and those efforts should be counted toward any reduction goal the federal agency puts forward.

"We aren't saying, 'Let's throw it all up against the wall and see what sticks,'" she said. "We are saying we have demonstrated, proven, cleaner energy options. And it would be a shame not to allow these efforts going on across the country to support the work Gina is speaking of."

But Honorable noted that regulators from different states have drastically different positions about what EPA should and should not do in its rule. NARUC advocates only for positions that are a consensus among its members, she said. The organization adopted a resolution late last year urging EPA to ensure that its guidelines credit states for the emissions reductions they have already made and not to intrude on states' jurisdiction over decisions about integrated resource planning and generation portfolios (*Greenwire*, Dec. 6).

So questions like how EPA should hold states accountable for emissions reductions will be a subject for future discussions, she said.

Arkansas and other states are already working to lay the groundwork for implementation plans even before EPA releases its proposed guideline, Honorable said. Speaking to reporters after the panel with McCarthy, Honorable said she had met with Arkansas' environmental regulators and with industry to give and receive input ahead of writing its plan. She educated the environmental regulators about energy efficiency and demand response programs that utility regulators are currently implementing that might be tapped for Arkansas' implementation plan for the existing power plant rule, she said.

She said NARUC encouraged other states to begin doing the same preparatory work, and many had. But states' views on the rule vary broadly, and some, including Oklahoma and West Virginia, have devoted significant resources to advocating against the coming rules, arguing that they will undermine fossil fuel use.

"We are all over the map literally and figuratively, so I don't want to paint too rosy of a picture in saying that I'm certain we can find consensus," Honorable said.

But regulators are primarily interested in ensuring that customers have access to reliable power no matter what federal agencies propose.

"So we think it's more prudent for us to get on top of it and to work ahead," she said.

Correction: *An earlier version of this story misspelled the name of Colette Honorable, president of the National Association of Regulatory Utility Commissioners.*

NUCLEAR POWER:

Dozens of plants face pricey earthquake safety tests

Published: Monday, April 7, 2014

Under revised estimates of earthquake risk, at least two dozen nuclear reactors in the United States have told the Nuclear Regulatory Commission they are unable to show their plants can withstand the most severe quake they might face, requiring them to complete costly new safety assessments, according to industry.

The safety assessments could cost $5 million each and may find that certain plants need design changes.

The NRC so far has assumed that plants built to earlier specifications don't present an immediate risk, but critics say the agency needs to raise its standards in order to prevent a Fukushima Daiichi-style disaster if a major earthquake occurred. Plants were required to file reports by March 31 evaluating their earthquake risk.

"The NRC should be demanding implementation of seismic safety upgrades it called for following the Fukushima meltdowns, not merely more study of nuclear reactors that it knows are clearly at higher risk than was previously believed," Sen. Ed Markey (D-Mass.) said in a statement. "What is needed is action to secure at-risk nuclear reactors, not merely more reports."

NRC spokesman Scott Burnell said earthquakes stronger than the maximum that plants were designed to withstand would not necessarily cause serious damage to a nuclear facility but were cause for further investigation (Matthew Wald, *New York Times*, April 5). **-- SP**

ALTERNATIVE FUEL:

Calif. city to use food waste to power garbage trucks

Published: Monday, April 7, 2014

A Sacramento, Calif., neighborhood will be part of a rare experiment to fuel city garbage trucks with its leftovers.

About 1,000 homeowners in Sacramento's Elmhurst neighborhood will start placing food scraps into yard waste bins. The scraps will then be transported to a biofuel facility and converted into fuel.

After the food waste is separated at a local transfer station, it will be shipped to a facility operated by Clean World Partners to become fuel for the city's 13 waste collection trucks.

The one-year trial program "moves our city toward being greener and smarter," said City Council member Kevin McCarty (Ryan Lillis, *Sacramento Bee*, April 5). **-- SP**

AIR POLLUTION:

Smog study aims to reduce asthma in Houston school kids

Published: Monday, April 7, 2014

Researchers at Rice University have launched a study of air pollution near Houston schools.

Scientists are developing a system to warn Houston Independent School District officials on days when the region has elevated levels of ozone or smog. Better information could lead to a ban on idling school buses, more school nurses or other changes, researchers said.

"We are trying to determine if there is a problem with asthma and air pollution near schools and how do we mitigate it if there is," said Rice statistician Katherine Ensor, who is leading the study funded by a $730,000 Houston Endowment grant.

The eight-county school district has 80,000 students who attend class within 200 feet of a highway or major road, according to a 2013 *Houston Chronicle* report. Some 5,000 students in the district suffer from asthma.

"Our goal is to prevent asthma attacks," said Gwendolyn Johnson, the school district's manager of health and human services. "You can't cure asthma, but you can manage it" (Matthew Tresaugue, *Houston Chronicle*, March 3). **-- DB**

NEW YORK:

City struggles to phase out dirty heating fuel

Published: Monday, April 7, 2014

Buildings in New York City are struggling to comply with an ambitious ban on dirty forms of heating oil.

A 2011 law imposed a citywide ban on a heavy heating oil, known as No. 6, that goes into effect in 2015. The law gave buildings until 2030 to stop using a slightly cleaner oil known as No. 4. Both heating fuels emit soot that causes asthma and other health problems.

But property owners and landlords say the high cost of converting heating systems to cleaner fuels -- like an oil known as No. 2 or natural gas -- has prevented them from meeting the city's requirement. They also said poor access to natural gas has made it harder for buildings to switch over.

Converting boilers can cost more than $17,000, property managers said. Since the law passed three years ago, half the 10,000 buildings across New York that burn No. 6 have switched to cleaner heating oils.

"It's just not something you can snap your fingers and get it done overnight," said Joshua Einsenberg, executive vice president of property management firm Urban American Management.

City officials said the law is making a difference, even if buildings have been slow to comply.

"By phasing out the use of the dirtiest heating oils and increasing the efficiency of boilers, we will continue to build on the progress that has seen dramatic reductions in air pollution in New York City," said Emily Lloyd, the commissioner of the Environmental Protection Department, in a news release.

Environmental groups said landlords haven't been moving fast enough.

"We are not satisfied with the level of turnaround," said Cecil Corbin-Mark, deputy director of WeAct, an environmental group. A lot of landlords "will probably have to be pulled into this kicking and screaming," he said (Kia Gregory, *New York Times*, April 6). **-- DB**

JAPAN:

Plan supports nuclear but doesn't set clean energy mandates

Published: Monday, April 7, 2014

A long-awaited comprehensive energy plan prepared by Japan's government reiterated nuclear energy's key role in the country's energy security but did not set renewable energy targets.

Nuclear power is "an important baseload energy source," according to a 78-page draft of the plan.

The plan is Japan's first energy policy update since the 2011 Fukushima Daiichi disaster, which drew new attention to the safety of the country's nuclear plants. Deputy Chief Cabinet Secretary Katsunobu Kato said it could be approved as early as Friday.

One political party, New Komeito, had pushed to have a renewable energy mandate of 30 percent by 2030, or 35 percent if hydropower was also included. Instead, the document says Japan will set renewable energy levels that "further" exceed previous targets -- a step down from "significantly" exceeding them, as some officials had sought (Watanabe/Adelman, Bloomberg, April 7). **-- SP**

UNITED KINGDOM:

Nitrogen a 'major threat' to wildlife

Published: Monday, April 7, 2014

Nitrogen pollution contributing to smog in the United Kingdom also poses an enormous threat to a variety of species, experts say.

Rising emissions from agriculture, power stations and cars are causing nitrogen to build up in the soil. Clare Whitfield, a consultant at the government's statutory conservation adviser, said the levels are critical in most nonagricultural land.

"Nitrogen represents a major threat to biodiversity in the U.K. and across Europe. It is an underacknowledged and very big issue that has slowly crept up on us," Whitfield said.

The extra nitrogen throws ecosystems off balance by favoring species that thrive on nitrates.

Ecosystems across the United Kingdom are being affected as grass, heather, thistles and nettles deprive flowers, bees, lizards, snakes, spiders and other species of light, water and space.

Nitrogen can also leach into groundwater and cause "blue baby syndrome" in infants, impairing the oxygen-carrying capacity of their blood (Tom Bawden, London *Independent*, April 6). **-- JL**

ClimateWire -- Tue., April 8, 2014 -- **Read the full edition**

1. WEATHER: Above-average precipitation helped spur deadly Wash. landslide -- USGS

Many unanswered questions remain surrounding last month's massive, deadly landslide in northwest Washington, but geologists are fairly certain that higher-than-average rainfall played an important role.

2. RESEARCH: Researchers resolve misunderstanding about how some lithium batteries function

In the push for batteries that store more energy and cost less, many researchers are chasing diminishing performance returns with exotic materials and chemistries, including lithium air, liquid metal and molten salt. One of the problems is that scientists are still grappling with the fundamental physics behind batteries and are finding out that in some instances, they've been going about it all wrong.

TODAY'S STORIES

3. REGULATION: Utility executives warn of 'murky' situation around reliable electricity

4. SCIENCE: Study offers new warning about methane production from permafrost thaw

5. CALIFORNIA: Bill to synchronize stoplights with cap-and-trade revenues advances, while another stalls

6. EMISSIONS: Deserts can store more CO2 than previously thought

7. DROUGHT: Drought in U.S. intensified in March -- USDA

8. WILDFIRES: After a dry winter, the Southwest braces for a long, hot fire season in 2014

9. SPECIES: Some Southwestern animal species threatened as temperatures rise -- USGS

10. SPECIES: Butterfly astonishes scientists by rapidly adapting to climate change

11. NEGOTIATIONS: E.U., Germany expected to reach agreement on renewable energy surcharge

12. UNITED KINGDOM: Britain releases new 'Solar Strategy'

13. NATURAL GAS: U.S. shale revolution unlikely to spread internationally

E&ETV's OnPoint

14. CLIMATE: Policy Integrity adviser Livermore says administration underestimating social cost of carbon

EnergyWire -- Tue., April 8, 2014 -- Read the full edition

1. NATURAL GAS: TransCanada's role looms large in Alaska's push for equity stake in export project

The clock is ticking on Alaska's bid to take an equity ownership role in building one of the largest LNG export projects in the world.

TOP STORIES

2. OIL MARKETS: Optimistic federal assessment sees an end to U.S. liquid imports by 2040

3. REGULATION: Texas sees push and pull over plan to increase groundwater protection

4. POLITICS: Industry shells out millions in bid to preserve Alaska oil-tax law

THIS MORNING'S STORIES

5. TECHNOLOGY: Solar-driven oil recovery brings fields back to life in the desert

6. LNG: Labor shortage 'one of the largest challenges' as B.C. prepares for export boom

7. PEOPLE: Houston utility sets executive committee

8. OIL EXPORTS: U.S. gives out first export licenses for Canadian crude

9. GRID: Vulnerabilities catch lawmakers' attention

10. OIL AND GAS: Industry struggles to make Monterey Shale economical

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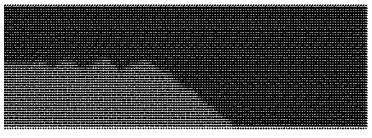

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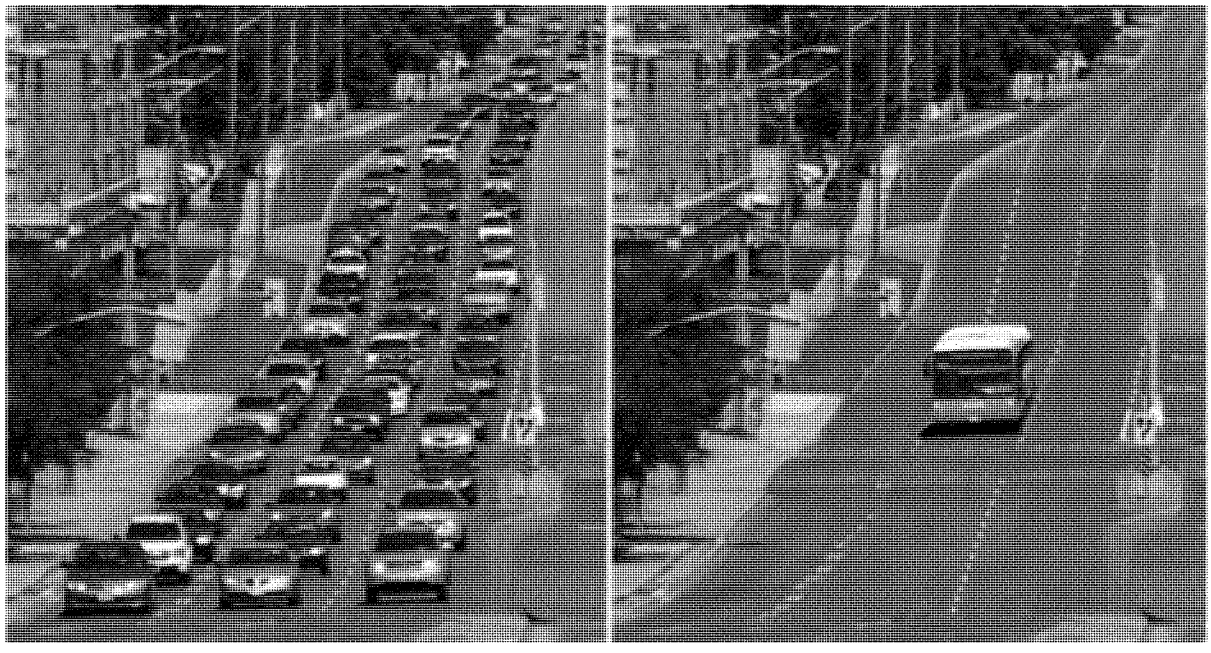

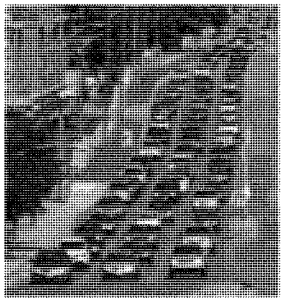

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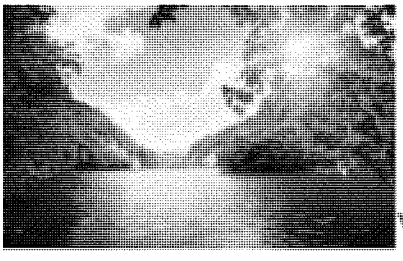
From: Turley, Jennifer
Sent: Tue 4/8/2014 2:51:04 PM
Subject: Water Law News for April 8, 2014



Water Law News

for April 8, 2014

Bloomberg BNA **Daily Environment Report™**

Drilling

Alaska Commission Completes Revisions
Of Regulations for Hydraulic Fracturing

Revised and expanded state regulations for hydraulic fracturing have been approved by the Alaska Oil and Gas Conservation Commission and will be forwarded soon to the state's law department for review and then to the lieutenant governor...

Drinking Water

Grevatt Says EPA Priority Over Next Year
Is Developing Legionella Guidance

A new priority at the Environmental Protection Agency's drinking water office is to study the bacterium legionella and develop guidance on how to control it, an agency official said April 7....

Endangered Species

Advocacy Groups Ask Interior, California
To Halt Rollback of Delta Estuary Protection

A coalition of environmental, fishing and other advocacy groups has asked the U.S. Department of Interior and California agencies to halt rollbacks of environmental protections in the San Francisco Bay-Sacramento-San Joaquin River Delta...

Mining

Environmental Groups Urge Federal Court
To Reconsider Stream Protection Rule Case

Nine environmental groups urged a federal court to reconsider claims it earlier deemed moot that the Interior Department violated the National Environmental Policy Act (NEPA) and administrative law in development of a rule to protect streams...

Mining

Rio Tinto to Divest Stake in Northern Dynasty,
Owner of Pebble Mine, Will Donate Shares

Rio Tinto Plc will divest its 19.1 percent stake in Northern Dynasty Minerals Ltd., the company that has proposed the large open-pit Pebble Mine in southwest Alaska, after concluding the gold and copper mine does not fit with the company's...

Mining

Supreme Court Denies Club's Petition To Review Permitting for Michigan Mine

The U.S. Supreme Court denied April 7 a petition by a private outdoor recreation club to review whether federal agencies were obligated to issue a Clean Water Act discharge permit to a planned copper and nickel mine in Michigan (Huron Mountain...

Water Pollution

Clarity on Which Waters Are Protected Needed to Aid in Enforcement, Stoner Says

The proposed "waters of the United States" rule was prompted by the lack of clarity over which waters and wetlands are protected under the Clean Water Act, which in turn has made enforcement difficult, the acting head of the Environmental...

Water Pollution

Draft Legislation to Revise Requirements For Sewer Overflows Awaits Introduction

Draft legislation that would require the Environmental Protection Agency to modify water quality standards and permit limits for sanitary sewer systems during heavy rains is still waiting to be introduced, an official with the group that...

Water Pollution

West Virginia Can't Indefinitely Suspend Selenium Limits for Mines, Judge Rules

The West Virginia Department of Environmental Protection isn't authorized to indefinitely suspend selenium water quality requirements for mining permits, but it may do so temporarily, a federal judge has ruled (Ohio Valley Environmental...

Water Resources

California Water Agencies Recommend Actions for Groundwater Management

California needs to take immediate and bold action to protect its groundwater resources, the Association of California Water Agencies said April 7 in recommending a series of legislative and administrative changes for the state to consider....

Water Resources

Climate Change Imposes 'New Norm' On Utility Infrastructure, McCarthy Says

Environmental Protection Agency Administrator Gina McCarthy called on the nation's water utility managers and state and local officials to prepare the water infrastructure to deal with a "new norm" represented by changing...

Water Resources

Feinstein Introduces Revised Drought Bill In Attempt to Boost Odds of Passage

Sen. Dianne Feinstein (D-Calif.) has introduced revised legislation to address severe drought conditions in the Western U.S. that removes direct spending from the proposal in hopes of boosting the bill's odds of passage out of the Senate....

Wetlands

Science Panel Urges EPA to Address Cumulative Impacts of Isolated Waters

A panel of scientists plans to reiterate that the Environmental Protection Agency "explicitly address," in a draft study, the cumulative and aggregate impacts and functions streams and isolated wetlands have on downstream waters....

Durbin Says Time Is Up for Ship's Coal Ash Dumping

The S.S. Badger, the last coal-fired passenger ship in the U.S., should be held strictly to the terms of a consent decree that requires it to stop dumping coal ash into Lake Michigan by the end of the 2014 season or shut down, Sen. Dick Durbin (D-Ill.)...

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Inside EPA's **Risk Policy Report**, 04/08/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/08/2014/menu-id-130.html

EPA's CWA Rule May Defeat 'Facial' Suits But Key Terms Face Challenges

Industry and other critics of EPA's recently released proposal for clarifying the reach of the Clean Water Act (CWA) say the measure appears likely to overcome "facial" challenges alleging constitutional or statutory violations, but they say that legal uncertainty about the definition of a host of key terms will likely drive site-specific, as-applied challenges.

GOP Presses EPA To Codify Narrow 'Scalia' Test In CWA Jurisdiction Rule

A group of GOP senators is urging EPA to codify the narrow test crafted by Supreme Court Justice Antonin Scalia for determining whether waters are subject to the Clean Water Act (CWA) as it crafts a rule clarifying which waters are jurisdictional, in addition to the broader test advanced by Justice Anthony Kennedy that EPA is proposing to adopt.

With Appeal On Hold, North Carolina Suit Marks New Test For CAFO Permits

A North Carolina farm is asking a federal district court to block state regulators from permitting air emissions from livestock operations under the Clean Water Act (CWA), opening a new legal front on the issue just as a landmark appellate case that had been expected to test the issue is delayed as the court grapples with procedural questions.

Greenwire

BRISTOL BAY:

Rio Tinto gives up on Pebble

Manuel Quiñones, E&E reporter

Published: Monday, April 7, 2014

Mining giant Rio Tinto PLC has decided to give up its roughly 19 percent stake in Northern Dynasty Minerals Ltd., the parent company of the controversial Pebble copper and gold mine planned for southwestern Alaska.

Today Rio Tinto issued a statement saying that the Pebble project, which could become one of the world's largest mines, "did not fit" with the company's strategy.

As a result the company will hand over its shares to two Alaska charities -- the Alaska Community Foundation to help with educational and vocational training, and the Bristol Bay Native Corp.'s Education Foundation.

"Rio Tinto has long and historic ties to Alaska and we continue to see Alaska as an attractive location for potential future investment," said CEO Jean-Sebastien Jacques. "By giving our shares to two respected Alaskan charities, we are ensuring that Alaskans will have a say in Pebble's future development and that any economic benefit supports Alaska's ability to attract investment that creates jobs."

Rio Tinto announced last December that it would study whether to remain a part of Pebble. That followed a decision by Anglo American PLC, the main financial force behind the project, to pull out last September (*E&ENews PM*, Dec. 23, 2013).

Today's announcement comes as U.S. EPA mulls vetoing key Army Corps of Engineers permits for the mine. The agency believes such a project would damage the Bristol Bay area's valuable salmon fishery.

How the charities will use Rio Tinto's shares remains unclear. BBNC, one of the recipients, has been one of the most outspoken Pebble opponents.

"Rio Tinto's gift will benefit organizations that serve the people and communities of Alaska," said Greta Goto, executive director of the BBNC Education Foundation.

BBNC CEO Jason Metrokin, who has traveled to Washington, D.C., to lobby for EPA intervention, said today, "Rio Tinto deserves credit for its willingness to reconsider its position in the Pebble Project."

He added, "This gift provides an example of what open discussion and relationship building between stakeholders with differing views can accomplish. However, BBNC's opposition to the proposed Pebble mine has not changed."

Environmental groups welcomed the news.

"The company's decision to divest is a vindication of its stated commitment to sustainability in the region and the health, safety, and cultural heritage of the people of Bristol Bay," said Pebble foe Joel Reynolds, Western director for the Natural Resources Defense Council, "and its withdrawal serves the interests of the company's shareholders."

Earthworks northwestern issues advocate Bonnie Gestring echoed those comments, saying, "Rio Tinto's divestment from Pebble may not be the final nail in the coffin, but it's surely one of the last."

Northern Dynasty CEO Ron Thiessen put a positive spin on what is more tough news for his effort to develop Pebble. The company has been looking for a new partner since the pullout by Anglo American. Today he said he was "pleased" with Rio Tinto's decision to give its shares to charity.

Thiessen said he looked forward to meeting with the charities "to better understand their long-term goals and aspirations, and how their ownership interest in Northern Dynasty and the Pebble Project can make the greatest possible contribution to the people and communities they serve."

Alaska Republican Sen. Lisa Murkowski similarly welcomed the manner in which Rio Tinto went about giving up its shares. However, she also took the opportunity to express her distaste for EPA's actions.

"I understand that many mining companies are re-evaluating their project portfolios right now, but I'm concerned by what else may have prompted this decision," she said. "If we want to attract investment to our state and our economy, we need a regulatory system at the federal level that is predictable enough to allow responsible development to go forward, at least to the permitting stage, and without the threat of a pre-emptive veto from the EPA hanging over it."

KEYSTONE XL:

As enviros open closing arguments, 100 scientists and economists urge Obama to nix pipeline

Elana Schor, E&E reporter

Published: Monday, April 7, 2014

More than 100 scientists and economists today released a public plea that President Obama reject Keystone XL -- including two academics whose previous comments about the emissions impact of the Canada-to-U.S. oil sands crude project have provided fodder for pipeline backers.

The open letter to Obama and Secretary of State John Kerry comes as the $5.4 billion project nears what could prove a pivotal crossroads -- given that Kerry's department is entering the final month of a 90-day review period dedicating to weighing its national interest value. Or it could just be approaching another waystation on its previous path of delay, given that the White House has no final deadline for acting on a recommendation it may receive from Foggy Bottom on the merits of the 730,000-plus barrels of heavy crude that KXL would ship to the Gulf Coast.

For environmentalists, however, this spring is poised to bring a closing argument of sorts in their yearslong battle to elevate KXL as a symbol of outmoded fossil-fuel projects that governments the world over must eschew if carbon emissions are to stay below levels linked to dangerous climate change. Co-signed by climatologist James Hansen, who coined the term "game over" to describe the emissions impact of the growth in oil sands crude development that activists warn KXL would trigger, today's letter represents a key plank in greens' final case.

"A critical first step is to stop making climate change worse by tapping into disproportionately carbon-intensive energy sources like" the heavy, bitumen-based oil sands fuel that KXL would ship from Alberta to Nebraska, then ultimately to the Gulf, the scientists and economists wrote today.

"We agree that climate impact is important and evidence shows that Keystone XL will significantly contribute to climate change," the academics continued in their letter. The group cited a projection in the

State Department's March environmental review of the pipeline that the annual incremental emissions from the fuel KXL would carry could top 27 million tons of carbon dioxide equivalent, or the amount of pollution from seven coal-fired power plants.

That high-end estimate of greenhouse gases from KXL is nine times higher than the yearly CO2 estimate offered by project sponsor TransCanada Corp. and more than 45 percent higher than U.S. EPA's most recent estimate of the pipeline's potential annual emissions footprint (*E&E Daily*, July 19, 2013).

Two of the researchers who signed today's letter, David Keith of Harvard University and Ken Caldeira of the Carnegie Institution for Science, have appeared in pro-pipeline memos downplaying KXL's broader climate impact that the industry-backed group Oil Sands Fact Check (OSFC) produced based on comments they made to *Nature* magazine last year.

Asked whether his presence on today's letter marked a change from his previous remark that "I don't believe that whether the pipeline is built or not will have any detectable climate effect," Caldeira responded that his view on the project's emissions contribution is unchanged.

"Every individual carbon dioxide emission source contributes to climate change," Caldeira said via email. "The climate effects of carbon dioxide emissions from any individual source are statistically undetectable, but in aggregate these carbon dioxide emissions are having a profound effect on our planet."

KXL, the scientist added, "is important as a signal" from the Obama administration about the nation's commitment to embracing "the near-zero emission energy industries of [the] 21st century."

OSFC spokesman Matt Dempsey, a former Senate GOP aide, contended that the letter's more moderate tone of opposition to KXL marks a disavowal of Hansen's stark two-word advice.

"In an amazing attempt to walk back outlandish and unscientific claims, outspoken critics of Keystone XL have gone from calling Keystone XL 'game over' to 'a step in the wrong direction,'" Dempsey said in a statement. "That's an extraordinary shift in rhetoric and shouldn't go unnoticed."

Click here to read the scientists and economists' letter to Obama and Kerry.

PUBLIC LANDS:

Coburn details concerns over bill protecting Mont. watershed

Phil Taylor, E&E reporter

Published: Monday, April 7, 2014

A bill to protect more than 380,000 acres of federal lands west of Montana's Glacier National Park from future oil and gas and mining development neglects the possibility that future energy technologies could be less disruptive to the environment, said Sen. Tom Coburn (R-Okla.), who blocked the bill from passing the Senate last week.

Coburn detailed his concerns over S. 255 in a letter Friday to Senate Minority Leader Mitch McConnell (R-

Ky.) obtained by *Greenwire*.

The bill by Sen. John Walsh (D-Mont.) aims to protect the watershed surrounding the North Fork of the Flathead River and is backed by Republican Rep. Steve Daines of Montana, the state government, the region's largest employers, conservation groups and major oil and gas companies that formerly held leases there. The bill was originally sponsored by former Sen. Max Baucus (D-Mont.), who is now ambassador to China -- whom Walsh was appointed to replace.

The House passed Daines' nearly identical H.R. 2259 by voice vote (*E&E Daily*, March 5).

But when Walsh sought unanimous consent to pass the measure Thursday, Sen. Pat Toomey (R-Pa.) objected on behalf of Coburn and Sen. Ted Cruz (R-Texas). The Energy and Natural Resources Committee passed the bill last summer by voice vote.

Coburn said he appreciates sponsors' passion for the bill and acknowledged the widespread support in Montana, but he said the bill has national implications since it deals with federal lands and minerals.

"This bill seeks to withdraw hundreds of thousands of acres of federal land from any form of energy development into perpetuity without regard for technological innovation potentially producing a cleaner or more efficient extraction and reclamation process in the future," he wrote in his letter. "It is doubtful that Congress has the foresight to determine our nation's energy needs or natural resource development capabilities a decade from now, let alone forever."

As an alternative, Coburn suggested transferring the lands to Montana so the state can decide how the land may be developed, while also taking on the burden of managing them and foregoing any federal aid it receives for not being able to levy taxes on the lands due to their federal ownership.

Coburn also suggested a 20-year mineral withdrawal, which is consistent with the Bureau of Land Management's administrative authority under the Federal Land Policy and Management Act. Coburn said he wants the opportunity to offer amendments if the bill comes back to the floor.

Coburn's opposition suggests it's less likely the measure will pass by unanimous consent, meaning it will have to go through the Senate's lengthy regular order or be attached to other must pass legislation.

It may also bolster claims by House Republicans that they are doing their part to pass conservation bills but are being stymied by the Senate in an ongoing blame game over Congress' gridlock.

Walsh spokeswoman Andrea Helling said Coburn's objections have no merit.

"These objections are rooted in politics -- not policy," Helling said. "This bill is important for Montana's lucrative outdoor economy, and it protects Montana's clean air and water. The senator from Oklahoma should end his partisanship and vote for the bipartisan bill that would truly create jobs and benefit our economy."

The North Fork proposal is backed by ConocoPhillips Co., Chevron Corp., and Pioneer Natural Resources Co., which have each voluntarily relinquished leases in the region as part of efforts to preserve the watershed both north and south of the U.S.-Canada border.

ConocoPhillips could have developed its 169,000 acres of leases in a safe and environmentally responsible manner but gave them up in recognition of the area's "important economic and recreational qualities" and value to Glacier, said a May 2011 letter from Jim Ford, the company's vice president for federal and state government affairs.

The Congressional Budget Office estimated that Walsh's bill would have no significant impact on the federal budget.

WATER POLICY:

Army fort's groundwater pumping won't derail species recovery -- FWS

Scott Streater, E&E reporter

Published: Monday, April 7, 2014

The Fish and Wildlife Service and the Army, after years of litigation with conservation groups, have finalized a new biological opinion that they say should allow an Arizona Army base to continue tapping groundwater without harming the San Pedro River Basin and two endangered species that depend on it to survive.

Fish and Wildlife's new biological opinion concludes that operations at Fort Huachuca in southern Arizona over the next decade are not likely to jeopardize the survival and recovery of the endangered Huachuca water umbel plant and an endangered bird called the Southwestern willow flycatcher.

Fort Huachuca pumps millions of gallons of groundwater a year that feeds the San Pedro River. The Center for Biological Diversity and the Maricopa Audubon Society in January filed a federal lawsuit against the Fish and Wildlife Service and the Defense Department. Among other things, the two groups maintained that the ongoing pumping of groundwater by the fort has damaged the San Pedro River and the ability of the two endangered species to recover.

The new biological opinion for the base replaces a 2007 version that was challenged in federal court by environmentalists.

A federal judge in May 2011 agreed with the environmental groups that the Fish and Wildlife biological opinion failed to properly analyze the effects of the fort's groundwater pumping on the endangered species. Judge A. Wallace Tashima of the U.S. District Court for the District of Arizona ordered the Army and Fish and Wildlife to write a new biological opinion.

The new opinion, which covers base activities through March 2024, notes that the Army has made significant efforts to reduce water usage on the base, and has also purchased and retired off-site agriculture water rights in the San Pedro and Babocomari river basins.

Fish and Wildlife even incorporates the probable effects of a warming climate into the biological opinion, which was signed last week by Steve Spangle, FWS's Arizona field supervisor. As part of the process, the Army and Fish and Wildlife also conferenced on the potential impacts of fort operations on two riparian species recently proposed for listing as threatened species -- the northern Mexican garter snake and yellow-billed cuckoo.

"The Fort continues its superb job of furthering endangered species conservation -- continuing to be a crucial partner in species recovery," Spangle said in a statement. "Even as we finish this consultation, the Fort is completing additional water management conservation easements to protect San Pedro and Babocomari river flows and riparian habitat."

Among other things, the biological opinion commits Fort Huachuca to maintaining "rock barriers around [vulnerable] Huachuca water umbel populations," and to "continue with water conservation efforts." The base will also help the Bureau of Land Management and other federal land managers along the Upper San Pedro River maintain habitat for the Southwestern willow flycatcher.

The Upper San Pedro River is the last undammed and free-flowing river in the desert Southwest and is a biological treasure, providing important habitat for a wide array of species, environmental groups say. The San Pedro corridor is also one of the most important migratory flyways in the United States, with millions of songbirds using the river each year during their migrations between Central America and Canada.

The new biological opinion "is the result of a lot of hard work and cooperation" between the military and Fish and Wildlife, Army Col. Dan McFarland, the Fort Huachuca garrison commander, said in a statement.

In addition, McFarland said, the biological opinion "gives us the flexibility to support current military and national security missions and the ability to support future missions while ensuring we continue to meet all requirements of the Endangered Species Act."

But the environmental groups that have been pressuring Fish and Wildlife and the Army to protect the San Pedro River Basin say they need to carefully review the voluminous biological opinion before they can determine whether it properly balances military operations with wildlife protections.

"We are really happy to finally have a new biological opinion," said Melanie Kay, an Earthjustice attorney in Denver representing the Center for Biological Diversity and the Maricopa Audubon Society. "The biological opinion is a pretty big document, so we need a chance to review it and decide on our next steps."

Robin Silver, one of the Center for Biological Diversity's founding members, based in Flagstaff, Ariz., said he also plans to carefully read the latest biological opinion. But he added that based on the three previous biological opinions Fish and Wildlife has conducted, all of which were either thrown out by the courts or voluntarily withdrawn, "I wouldn't bet on this [biological opinion] being any better than the last three."

McFarland, the Fort Huachuca garrison commander, countered that Fort Huachuca has a long history of responsible stewardship and said that will continue in the future.

"Fort Huachuca has been sustaining the land it defends since 1877 and continues to be a leader in environmental stewardship in southeastern Arizona, the Army and the Department of Defense," he said in his statement. "We are committed to continuing our water conservation and mitigation efforts."

AGRICULTURE:

Texas rice farmers reeling from drought

Published: Monday, April 7, 2014

A lengthy drought in Texas has wreaked havoc on the state's once-booming rice farming industry.

Farmers around Matagorda County are facing a third straight year without adequate water supplies after state officials diverted water from the Colorado River to maintain Austin's depleted reservoirs.

The drought has forced many rice farmers to switch to corn, which needs less water but has a lower profit margin.

Matagorda County expects to grow around 25,000 acres of corn in 2014, up from 15,000 acres in recent years, according to Brent Batchelor, a Bay City-based agent for the Texas A&M AgriLife Extension Service.

Rice production will likely hit 2,500 acres, down from around 25,000 acres in 2011, he said.

"We're hoping this is a one-year deal, because we want to go back to rice," said Stewart Savage, a rice farmer who switched to corn this year. "Our land is for rice" (Matthew Tresaugue, *Houston Chronicle*, March 30). **-- DB**

OCEANS:

Poorer water quality could be drawing jellyfish to Puget Sound

Published: Monday, April 7, 2014

Scientists aren't sure why more jellyfish are appearing in Puget Sound but suspect it might have to do with declining water quality in the area.

The jellyfish can harm ecosystems by consuming plankton that otherwise could have fed other sea creatures, such as herring. That, in turn, can make it harder for salmon, birds and marine mammals to survive.

It's possible the jellyfish are increasing in number because of excess nutrients from sewage in the water, said Casey Rice of the National Oceanic and Atmospheric Association's Northwest Fisheries Science Center. The nutrients give rise to algae, which provide food for larger plankton.

Jellyfish have almost no predators and appear to be more prevalent in the southern part of the Puget Sound (Christopher Dunagan, AP/Portland *Oregonian*, April 6). **-- SP**

WATER POLLUTION:

Human waste may have been illegally dumped in N.M. rivers

Published: Monday, April 7, 2014

Septic waste could be leaking into New Mexico rivers from sewage systems or may have been illegally

dumped, according to a preliminary environmental study.

The San Juan Watershed Group, which is affiliated with the U.S. Department of Agriculture, tested water from April to October last year and found the Animas, San Juan and La Plata rivers exceeded New Mexico *E. coli* standards.

The group's coordinator, David Tomko, said tests taken in Colorado met both states' standards, indicating the problem is happening downstream in San Juan County.

"It is startling. It is unexpected," he said. "But let's see if there's another explanation."

E. coli and *Bacteroides* are indicators of human and animal waste, though Tomko said most of the tests seem to indicate the prevalence of human waste.

Tomko said septic service businesses have dumped waste illegally before, and the watershed group's operations officer, Mike Stark, said more than 60 percent of New Mexico's surface water flows through the county (Dan Schwartz, Farmington [N.M.] *Daily Times*, April 6). **-- JL**

WATER POLLUTION:

EPA to clean up PCB-laced mud in Calif. 'den of iniquity'

Published: Monday, April 7, 2014

U.S. EPA will begin cleaning up a contaminated San Francisco waterway between Candlestick Point and the Hunters Point Shipyard, the agency has announced.

EPA officials said they would soon post signs at the waterway, known as Yosemite Slough, warning residents of lead and polychlorinated biphenyls, or PCBs, known to be present in the mud there. A cleanup is slated to start by 2017.

The $15 million plan will involve moving about 1,100 truckloads of soil from the area and capping it with clean sand, EPA Region 9 Administrator Jared Blumenfeld said.

While fences already block off the site, it's often used by fishermen, illegal dumpers and copper thieves, Blumenfeld said.

"It's one of those places in San Francisco that when you are there, you'd never imagine you are in San Francisco," he said. "It's like a den of iniquity. When you are there, you feel like you could be in the 1850s."

EPA believes the top layer of mud at Yosemite Slough contains about 5,000 parts per billion of PCB contamination, well above the 386 ppb considered safe. Blumenfeld said EPA plans to finance the cleanup from settlement agreements it intends to reach with companies believed to have contaminated the site (Marisa Lagos, *San Francisco Chronicle*, April 4). **-- SP**

LOUISIANA:

Enviros rally against bill limiting wetlands lawsuits

Published: Monday, April 7, 2014

Environmental groups are urging Louisiana lawmakers to reject legislation that would limit lawsuits over wetlands damage.

The bill, H.B. 862, would ban municipalities and local agencies from filing suit in wetlands cases without obtaining permission first from the state Department of Natural Resources.

Lawmakers should "renounce support for H.B. 862 and any other bills that would raise the interests of the oil and gas industry above the law," said Anne Rolfes of the advocacy group Bucket Brigade in a news release.

The bill was introduced after a state levee authority sued 97 oil and gas companies. The lawsuit is opposed by Gov. Bobby Jindal (R) and industry groups in the state (Mark Schleifstein, New Orleans *Times-Picayune*, April 4). **-- DB**

UNITED KINGDOM:

Nitrogen a 'major threat' to wildlife

Published: Monday, April 7, 2014

Nitrogen pollution contributing to smog in the United Kingdom also poses an enormous threat to a variety of species, experts say.

Rising emissions from agriculture, power stations and cars are causing nitrogen to build up in the soil. Clare Whitfield, a consultant at the government's statutory conservation adviser, said the levels are critical in most nonagricultural land.

"Nitrogen represents a major threat to biodiversity in the U.K. and across Europe. It is an underacknowledged and very big issue that has slowly crept up on us," Whitfield said.

The extra nitrogen throws ecosystems off balance by favoring species that thrive on nitrates.

Ecosystems across the United Kingdom are being affected as grass, heather, thistles and nettles deprive flowers, bees, lizards, snakes, spiders and other species of light, water and space.

Nitrogen can also leach into groundwater and cause "blue baby syndrome" in infants, impairing the oxygen-carrying capacity of their blood (Tom Bawden, London *Independent*, April 6). **-- JL**

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Many unanswered questions remain surrounding last month's massive, deadly landslide in northwest Washington, but geologists are fairly certain that higher-than-average rainfall played an important role.

2. RESEARCH: Researchers resolve misunderstanding about how some lithium batteries function

In the push for batteries that store more energy and cost less, many researchers are chasing diminishing performance returns with exotic materials and chemistries, including lithium air, liquid metal and molten salt. One of the problems is that scientists are still grappling with the fundamental physics behind batteries and are finding out that in some instances, they've been going about it all wrong.

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3. REGULATION: Utility executives warn of 'murky' situation around reliable electricity

4. SCIENCE: Study offers new warning about methane production from permafrost thaw

5. CALIFORNIA: Bill to synchronize stoplights with cap-and-trade revenues advances, while another stalls

6. EMISSIONS: Deserts can store more CO2 than previously thought

7. DROUGHT: Drought in U.S. intensified in March -- USDA

8. WILDFIRES: After a dry winter, the Southwest braces for a long, hot fire season in 2014

9. SPECIES: Some Southwestern animal species threatened as temperatures rise -- USGS

10. SPECIES: Butterfly astonishes scientists by rapidly adapting to climate change

11. NEGOTIATIONS: E.U., Germany expected to reach agreement on renewable energy surcharge

12. UNITED KINGDOM: Britain releases new 'Solar Strategy'

13. NATURAL GAS: U.S. shale revolution unlikely to spread internationally

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14. CLIMATE: Policy Integrity adviser Livermore says administration underestimating social cost of carbon

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The clock is ticking on Alaska's bid to take an equity ownership role in building one of the largest LNG export projects in the world.

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2. OIL MARKETS: Optimistic federal assessment sees an end to U.S. liquid imports by 2040

3. REGULATION: Texas sees push and pull over plan to increase groundwater protection

4. POLITICS: Industry shells out millions in bid to preserve Alaska oil-tax law

THIS MORNING'S STORIES

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6. LNG: Labor shortage 'one of the largest challenges' as B.C. prepares for export boom

7. PEOPLE: Houston utility sets executive committee

8. OIL EXPORTS: U.S. gives out first export licenses for Canadian crude

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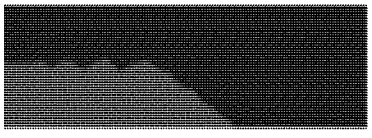

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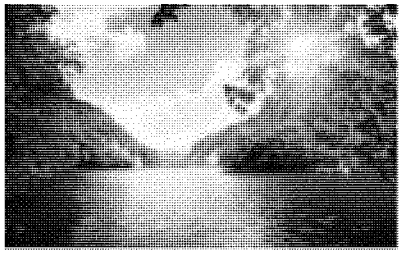

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From: Turley, Jennifer
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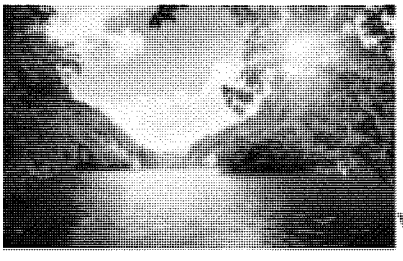
Subject: Water Law News for April 7, 2014



Water Law News

for April 7, 2014

Bloomberg BNA **Daily Environment Report™**

Agriculture

UN: Severe Weather Drives World Food Prices Higher for Second Straight Month

Severe weather helped drive world food prices dramatically higher for the second consecutive month in March, according to the Rome-based United Nations Food and Agriculture Organization, with dry weather in the U.S. and Brazil hurting wheat...

Drilling

Regulators Say Pace of Federal Permitting Has Been Increasing for Oil, Gas Development

Federal regulators of onshore and offshore energy production told Congress April 4 they are making progress on expediting the leasing process for oil and natural gas exploration....

Drilling

Shell Drilling Rig That Ran Aground in Arctic Was Moved in Winter to Avoid Tax, U.S. Says

A desire to avoid millions of dollars in Alaska state taxes played a role in Royal Dutch Shell Plc's decision to move a drilling rig, which later broke free from a towboat and ran aground on an uninhabited island in Alaska, the U.S. Coast Guard...

Great Lakes

Michigan Says White Lake on Track For Removal From Areas of Concern Listing

White Lake in Michigan is on track for delisting from a binational registry of Great Lakes "areas of concern" within the next few months, as work on the final two restoration projects addressing specific ecological issues has been...

Water Pollution

15 Republican Senators Urge EPA to Extend Comment Period on Jurisdiction Proposal

Fifteen Republican senators urged the Environmental Protection Agency to extend the comment period for its proposed rule on Clean Water Act jurisdiction to 180 days from the current 90 days. ...

Water Pollution

Congressional Appropriators Told to Reject SRF Cuts

A coalition of the nation's mayors, cities, counties, state environmental and water agencies and national wastewater and drinking water groups wrote individually to House and Senate appropriators, urging them to reject the cuts the...

Water Pollution

EPA Maintains Clean Water Act Authority
To Write TMDL Plans for Impaired Waters

The Environmental Protection Agency has told an appellate court that the Clean Water Act has authorized it to set a total maximum daily load plan to restore impaired waters when states are unable to meet their obligations (Am. Farm Bureau Fed'n...

Wetlands

Court Denies Reconsideration Motion
In Dredge-and-Fill Permit Takings Case

The U.S. Court of Federal Claims denied motions by two municipal solid waste management companies to reconsider its dismissal, due to lack of subject matter jurisdiction, of their takings claim related to a denied dredge-and-fill permit...

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Inside EPA's **Water Policy Report**, 04/07/2014

http://insideepa.com/Water-Policy-Report/Water-Policy-Report-04/07/2014/menu-id-127.html

EPA's SRF Cuts Draw Criticism But Open Door To New Water Funding Pilot

EPA is drawing bipartisan criticism over its proposal to cut its state revolving funds (SRFs) in fiscal year 2015, but a key House appropriator says the move could ease Congress' path as lawmakers weigh alternate funding approaches, which sources say could include a new pilot EPA water infrastructure loan program, thanks to the proposed cuts.

Despite EPA Rejection, Region I Continues Use Of Stormwater Retrofit Rules

EPA Region I appears to be taking the lead among the agency's regions in its willingness to use novel Clean Water Act (CWA) powers to selectively subject existing commercial and industrial facilities to stormwater retrofit control requirements after several regions recently rejected environmentalists' calls to broadly exercise the authority.

Greenwire

WATER POLICY:

Obama admin's bid for regulatory 'certainty' baffles farm interests

Annie Snider, E&E reporter

Published: Friday, April 4, 2014

U.S. EPA Administrator Gina McCarthy unveiled a major Clean Water Act rule proposal last week by emphasizing it would provide "certainty" to industries and individuals whose work encroaches on wetlands and streams.

Among those McCarthy most wanted to reassure: farmers and ranchers, a crucial block that the Obama administration must sway if the proposal is to have a chance of being finalized.

Agriculture Secretary Tom Vilsack stayed on message yesterday, telling House lawmakers "the purpose of this is to provide clarity and certainty for producers."

But the Obama administration is struggling to convince agribusinesses and farmers. Even the proposal's most ardent backers fret that the administration flubbed its effort to sow "certainty."

The word, it turns out, is stirring up trouble.

To regulators, "certainty" is usually used in a legal context. Is there consistency in how a law's applied? Does it seem logical and clear? And in the case of the Clean Water Act proposal, does it meet tests laid out by the Supreme Court in its two confusing rulings on federal wetland oversight?

EPA and the Army Corps of Engineers intend for the proposal to clear up the confusion created by the high court by having nearly all small streams and wetlands near them get automatic federal protection. Certainty and clarity are achieved, EPA claims, because there would be fewer case-by-case decisions. Everyone, the agency says, would know that certain waters are categorically in.

But "certainty" means something else for farmers. Their bottom line: Does the rule make clear what they can do without running afoul of the law?

"To farmers, certainty means having clear rules or policies in place so that they can make long-term

decisions," said Brittany Jablonsky, spokeswoman for the National Farmers Union, which has backed the rule proposal in hopes it would clean up the muddled regulations left in the Supreme Court's wake.

The Obama administration stresses that its proposal would carry forward the exemptions laid out in the 1972 water law for agricultural and forest practices. Moreover, the agencies added some additional exemptions for conservation practices and spell those points out in a fact sheet and "interpretive rule" focused on agriculture. Both were released along with the formal proposed rule (*Greenwire*, March 25).

Vilsack said in an interview yesterday the regulatory agencies stressed to him the rule wasn't intended to affect farmers' everyday practices and were open to working with the Department of Agriculture to clarify this.

"For agricultural purposes, they really tried to reaffirm that normal agricultural practices [aren't] involved. They tried to re-emphasize it's not about drain tiles; it's not about more regulations on ditches. It's not about wastewater treatment facilities -- it's not about any of that stuff," he said. "From my perspective, EPA has been willing to talk and willing to listen, and there's still more discussion to take place."

But so far, the agencies have failed to convey that message to farmers who claim to be even more confused than before.

First, many say they are befuddled by the agencies' use of the term, "interpretive rule." For the record, it's a rule that is intended as guidance to government officials in the field. But it doesn't require a notice and comment period, so both supporters and opponents of the proposal have wondered if the next administration could make dramatic changes.

"Understand the concern that people have that, 'Oh they're just putting this in the interpretive rule, which they can change at any time,'" Rep. Mike Simpson (R-Idaho) told McCarthy at a hearing last week.

Patrick Parenteau, a professor at Vermont Law School who has extensive experience on Clean Water Act matters, said an interpretive rule is seen by courts a form of "housekeeping."

"It's binding on the government," he said. "If an individual regulatory office were to adopt a very different interpretation of what was exempt, not only would they be in trouble with their bosses in Washington, but that would be the basis for a challenge."

Conservation exemptions

The 53 additional exemptions for conservation practices that regulators released with the proposed rule are also confusing people.

Stakeholders are struggling to understand why those 53 practices were included -- and why others that they say provide the biggest boost to water quality aren't on the list.

"This is 53 practices out of 180 -- so why not the other ones?" asked Ferd Hoefner, policy director for the National Sustainable Agriculture Coalition, which supports the proposed rule. "They have left the biggest conservation practices off the list -- nutrient management, integrated pest management, conservation tillage."

By listing just some conservation practices as exempt from dredge-and-fill permitting, farm groups ask, does that mean others require permits?

Moreover, some of the conservation practices omitted from the list are environmentally sensitive versions

of what every farmer does today under the Clean Water Act exemptions for normal farming practices. So, Hoefner asks, are the normal versions of them exempt but the conservation versions not?

Patty Lawrence, chief of staff for USDA's Natural Resources Conservation Service, said the initial list of 53 exemptions was culled from NRCS's master list of conservation practices because they met two criteria: They are aimed at water quality and they might be used near jurisdictional waters.

"The 53 practices listed in the interpretive rule were identified because of their water quality purpose and potential for use in aquatic, riparian and wetland areas," she said. "Conservation practices generally used in upland areas are not addressed under the interpretive rule because they are covered under the existing exemption for normal farming, ranching and silvicultural activities and upland soil and water conservation practices."

Then there's a question about what a farmer must do to qualify for these exemptions.

Don Parrish, senior director of regulatory relations at the American Farm Bureau Federation -- a staunch opponent of the proposal -- called the NRCS version of a practice "not just the gold standard," but "the Bentley, platinum standard."

For instance, Parrish said that there is a major difference between the type of fencing that an average farmer would want to install and the type that the NRCS standard requires.

And the potential for multiple interpretations of these practices has environmental and sustainable agriculture groups concerned about the fact that the interpretive rule would allow farmers to self-certify that the practice is being implemented in accordance with the NRCS standard.

"Sometimes this type of practice may be well-intentioned, but not well-informed and not a practice that actually conserves streams, wetlands, water quality, or fish and wildlife habitat," said Jan Goldman-Carter, senior manager for wetlands and water resources at the National Wildlife Federation.

For instance, she said, a farmer that goes into a stream to clear out debris that was washed in during a storm might end up causing additional erosion and water quality problems. But that activity might be interpreted as exempt under the practice of "clearing and snagging," she said.

"That just seems like eventual litigation waiting to happen," the National Sustainable Agriculture Coalition's Hoefner said.

But NRCS's Lawrence said that for an activity to qualify for the exemption, it must match NRCS standards.

"In order for an individual to be covered under the exemption for one or more of the 53 listed conservation practices," she said, "it must be part of an ongoing agricultural or silvicultural operation, and it must be implemented according to NRCS standards and specifications."

'That word is very loaded'

Then there's another problem: Several states have passed or are exploring "regulatory certainty" laws for agriculture that would do something very different from what EPA and the Army Corps are proposing.

The programs vary, but they typically allow farmers to voluntarily implement conservation activities above and beyond what is currently required and receive a guarantee that they won't face additional regulatory requirements for some time.

For instance, USDA and EPA signed an agreement with Minnesota in 2012 to help the state develop a program that would provide producers immunity from regulation under Minnesota's water quality standards in exchange for implementing certain conservation practices.

To some in the agriculture community, these types of programs are what they think of when they hear regulators talking about "certainty."

"That word is very loaded and to have EPA use it in the fact sheet right up at the front -- I think that's causing some confusion," Hoefner said.

NRCS says the documents are most definitely not offering any sort of regulatory immunity. For one thing, the interpretive rule and the list of conservation practice exemptions deal only with Section 404 of the Clean Water Act -- restrictions on dredging and filling -- not the sections that focus on pollution discharges. Many of those programs are in fact handled by the states.

"Agricultural water quality certainty programs are developed and administered by state agencies," Lawrence said. "There is no intended link between these state-run programs and the Clean Water Act interpretive rule, although it is possible that they can complement one another."

But for farmers, ranchers and other regulated entities that aren't versed in the nuances of the Clean Water Act, those types of distinctions may be lost.

"Our organization deals with conservation practices all the time and in all sorts of different ways at very detailed levels, and it's not clear to us," Hoefner said. "So if it's not clear to us, I can't imagine it's very clear to other people."

BLM:

Appropriators pepper agency about fracking regs

Jessica Estepa, E&E reporter

Published: Friday, April 4, 2014

House appropriators today examined the proposed fiscal 2015 budget of the Bureau of Land Management, though many of their concerns weren't among the priorities laid out by the agency's head.

Rep. Ken Calvert (R-Calif.), chairman of the Interior, Environment and Related Agencies Appropriations Subcommittee, focused on the proposed update to hydraulic fracturing regulations, which Interior Department officials have repeatedly said will likely be turned out this year.

Calvert worried that the regulations would further delay drilling permitting on federal lands. He pointed to a Government Accountability Office report that noted a 229-day average wait period for permits.

"Delays in permitting have resulted in declining rather than increasing production on federal lands as producers take their business instead to state and private property," he said.

He wondered whether the government could afford more production delays brought about by the fracturing rules.

Neil Kornze, BLM's principal deputy director, noted that the agency is working to bring down the wait time. Three years ago, the average wait time was 300 days. Two years ago, it was down to 225 days. And last year, that was down to 200 days. The creation of an online permitting system -- which would allow the agency to better communicate with companies that send in incomplete applications -- will help shorten the approval process. For example, the field office in Carlsbad, N.M., instituted its own online system, which resulted in a 70-day waiting period.

He also said the agency was working closely with states to make sure federal regulations aren't overlapping with state rules and to ensure that there will be cooperation between federal and state officials moving forward.

Subcommittee ranking member Jim Moran (D-Va.) homed in on the agency's grazing fees, which the Obama administration announced earlier this year would be kept at the legal minimum of $1.35 a month to graze a cow and a calf on BLM allotments. Moran said this was essentially a subsidy, given that states charged much higher grazing fees.

Kornze said the fees are based on the formula established by Congress using numbers from the 1960s. The agency would be able to provide more information if it was an issue that lawmakers wanted to dig into, he said.

When appropriators did get to the priorities laid out by Kornze, much of it was positive (*E&E Daily*, April 4). Moran noted that the proposed creation of an inspection and enforcement fee would ask energy companies to adhere to the same processes for onshore drilling as has already been established for offshore drilling.

The BLM budget also proposes maintaining $15 million in funding for sage grouse initiatives, which Calvert supported since the agency manages the most sage grouse habitat in the nation.

"I don't want to find out two years from now that the BLM could have done more if they had the resources," he said.

Also receiving a lot of attention during the hearing was the agency's wild horse and burro program, which would receive a $2.8 million increase to implement National Academy of Sciences recommendations and allow for fertility control methods to keep populations from growing.

But even with those agents, Rep. Tom Cole (R-Okla.) said the number of the wild horses that are being managed by the agency is unsustainable, and he asked Kornze to report back on how that issue could be tackled.

Drawing the most ire during the hearing was actually the Keystone XL pipeline, something that isn't actually under BLM's purview. Rep. Betty McCollum (D-Minn.) noted the concerns about railway transportation as oil and gas production continues to grow in the country, asking Kornze about the agency's views.

That led to a quick exchange with Rep. Chris Stewart (R-Utah) about the authorization of KXL. While that pipeline wouldn't affect the shipments in McCollum's state, supporting that and other pipeline projects would ensure better safety, Stewart said.

NATURAL DISASTERS:

County thought about buying up homes a decade before Wash. mudslide

Published: Friday, April 4, 2014

Officials in Snohomish County considered a plan to ward off disaster by buying people's homes 10 years before a mudslide buried the Washington community and killed at least 30 people.

A county flood management plan from 2004 said the cost of removing Oso residents by buying the properties "would be significant, but would remove the risk to human life and structures."

Instead, the county opted to stabilize the base of the hillside with a large log wall, according to documents first reported on by *The Seattle Times*.

Some residents said they had never heard of the buyout proposal or the danger of a landslide. Irene Kuntz, whose sister died in the March 22 landslide, said her father bought land in Oso in 1940 and he "never was given any notice that it was in danger."

When it was considering its options 10 years ago, the county used a report prepared by consultant group GeoEngineers Inc., which said a potential landslide was a "significant risk to human lives and private property."

A 2000 draft study by GeoEngineers estimated it would cost $1.6 million to buy all the land in the floodplain area.

Snohomish County Public Works officials were not available to comment (Phuong Le, AP/*Houston Chronicle*, April 4). **-- JL**

HYDRAULIC FRACTURING:

Exxon Mobil to report on risks to environment

Published: Friday, April 4, 2014

Exxon Mobil Corp. has reached an agreement with New York City's pension funds to disclose more information about the environmental risks of hydraulic fracturing.

The pension funds, which control about $1.02 billion of Exxon shares, had sought to force the oil company to report on risks surrounding disposal of fracking wastewater, air pollution, methane emissions and other concerns.

Exxon said it would release the information in a report on its website in September.

As part of the agreement, the New York City Comptroller's office, which manages the funds, will withdraw a shareholder proposal to force a vote on the proposal at Exxon's upcoming shareholder meeting. A similar proposal last year won support from about 30 percent of shareholders.

"We understand people have concerns. This activity is somewhat new and not understood in some parts of the country," Exxon spokesman Alan Jeffers said. "People want more information, and the more they know, the better" (Ernest Scheyder, Reuters, April 3). **– SP**

COAL ASH:

State orders Little Blue Run site to close faster

Published: Friday, April 4, 2014

The nation's largest coal ash impoundment will close three years earlier than expected, the Ohio Department of Environmental Protection announced yesterday.

A new closure plan requires Akron, Ohio-based FirstEnergy Generation LLC to finish capping its 1,900-acre Little Blue Run impoundment in Beaver County, Pa., by 2028, officials said.

Under the deal, FirstEnergy will also be required to increase the number of water pollution monitors at the site from 74 to more than 300, control particulate emissions and perform quarterly contamination studies, among other activities.

The company said the cleanup will cost $169 million.

The impoundment, built in 1975, contains 20 billion gallons of coal ash from FirstEnergy's Bruce Mansfield power plant in Shippingport, Pa.

A federal consent order bars FirstEnergy from dumping coal ash at the site after 2016 (Don Hopey, *Pittsburgh Post-Gazette*, April 3). **-- DB**

OIL SPILL:

Rock slide releases 4,200 gallons of crude into Ky. waters

Published: Friday, April 4, 2014

An estimated 4,200 gallons of crude oil spilled into Kentucky waters before the spill was stopped

yesterday, officials say.

The cause was a rock slide that overturned or damaged a storage container at an oil well, Pike County Emergency Management Director Doug Tackett told the *Appalachian News-Express*.

Most of the oil was contained to Harmons Branch, but some made it into streams and the Levisa Fork River.

Kinzer Drilling Group yesterday morning asked the emergency management agency for help, and Tackett said the cleanup is ongoing.

He warned water plants downstream to stop intakes if they spotted any oil (AP/*Seattle Post-Intelligencer*, April 4). **-- JL**

ClimateWire -- Mon., April 7, 2014 -- **Read the full edition**

1. COMMUNICATION: Republican climate skeptic has on-air conversion in Showtime's ambitious 'Years of Living Dangerously'

There's a scene in Showtime's glossy new climate change documentary in which Republican Rep. Michael Grimm, a longtime skeptic, seems as if he's about to undergo a conversion of faith on global warming. Toward the end of the episode he appears in, Grimm, whose Staten Island, N.Y., constituents had to contend with the effects of Superstorm Sandy, tells MSNBC host Chris Hayes that his position on climate change has in fact evolved. But when Hayes asks what Grimm intends to do about it, politics as usual is back in play.

2. RESEARCH: After 2nd U.N. climate report, scientists call for more streamlined process

Every seven years, the Intergovernmental Panel on Climate Change publishes three colossal reports about global warming. The second of that set of three, focusing on impacts and adaptation, was just released, and on its heels have come calls for the structure of those reports to change.

TODAY'S STORIES

3. BUSINESS: Financial sun begins to rise on retail solar power

4. EMISSIONS: Ohio becomes 3rd state to adopt stricter rules on oil and gas leaks

5. FINANCE: Global renewables investment fell in 2013 by 14% -- report

6. FORESTS: Private forests are key to mitigating climate change, group says

7. AVIATION: European Parliament defers decision to tax emissions of foreign airlines

8. RENEWABLE ENERGY: Boeing to build solar plant in Guam

9. CARBON MARKETS: E.U. market poised to rebound as permit glut is reined in

10. NATIONS: Norway oil fund to boost renewable energy investments

11. ADAPTATION: Climate change will 'lead to battles for food' -- World Bank president

EnergyWire -- Mon., April 7, 2014 -- **Read the full edition**

1. SECURITY: Utilities and infrastructure face new risks as Microsoft trims cyber support

Tomorrow, Microsoft Corp. will carry out its well-advertised decision to cut back on cybersecurity support for its legacy Windows XP operating system, exposing an undisclosed number of electric utilities, chemical plants, energy facilities and other critical infrastructure in the United States and worldwide to new cybersecurity vulnerabilities, the company warns.

TOP STORIES

2. RISK: Markets unmoved by Exxon Mobil's fracking disclosure

3. ELECTRICITY: Okla. bill seeks change in cost structure for homegrown energy

4. ENERGY POLICY: Ala.'s wind resistance is an isolated case, enviro groups say

THIS MORNING'S STORIES

5. TRANSPORTATION: What does 'peak car' mean for oil demand?

6. EARTHQUAKES: Kan. considers 'traffic light' approach to limit fracking-linked quakes

7. PIPELINE: Enbridge oil pipe moves a step closer to reality in Ill.

8. PIPELINES: Canadian rail execs see no threat from oil lines

9. BUSINESS: Gazprom shifts away from U.S. investors over Crimea crisis

10. ELECTRICITY: Md. investigating winter price spikes

11. UTILITIES: Power supplier can't claim millions in extra damages for cancelled plant -- ruling

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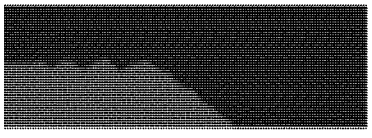

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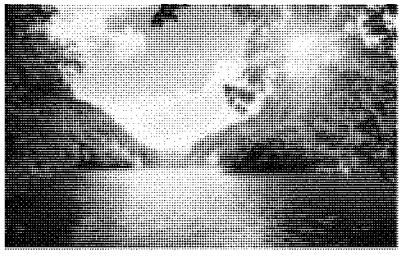

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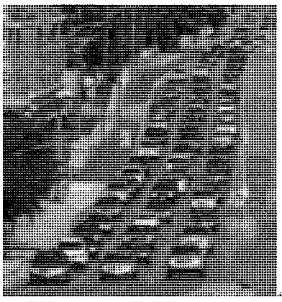

Air & Radiation Law News

for April 3, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Air Pollutants From Biomass Burning Exceed Those From Coal, Report Says

Facilities burning biomass emit more air pollutants, including carbon dioxide, per megawatt-hour than those that burn coal, according to a Partnership for Policy Integrity report....

Air Pollution

China Considers More Electric-Car Incentives With Sales Lagging Behind Targets

China may exempt electric-car buyers from paying purchase taxes as part of expanded state measures to bolster sales of such vehicles after past incentives failed to spur demand, Vice Premier Ma Kai said....

Air Pollution

EPA Should Strengthen Procedures to Study Pollution's Effects, Inspector General Says

The Environmental Protection Agency followed applicable regulations when it conducted five studies in 2010 and 2011 on the effects of pollution on humans, but the agency's procedures should be updated and strengthened as the existing...

Air Pollution

EPA Studying Role of Air Sensors In Evaluating Air Quality of Communities

The Environmental Protection Agency is studying how small-scale, low-cost air quality sensors can be used to help reliably evaluate an area's air quality, an agency official told a federal advisory subcommittee April 2. ...

Climate Change

EPA Seeks Small Business Input on Truck Rule

The Environmental Protection Agency is seeking nominees to serve on a small-business advocacy review panel for an upcoming proposal to set greenhouse gas emissions standards for medium- and heavy–duty vehicles beyond model year...

Climate Change

Republican Amendments to Bar Carbon Tax, Set New Hurdles for EPA Rules Fall Short

A Missouri Republican fell short April 2 in his attempt to raise a new hurdle to any future legislative efforts to impose a carbon tax, as Senate Democrats blocked more than a half-dozen proposals to advance energy projects such as the Keystone...

Climate Change

Interview: IPCC Official Christopher Field Discusses Latest Climate Change Report

After five days of talks, the Intergovernmental Panel on Climate Change presented the Working Group II report March 31 in Yokohama, Japan. The new document, the second of three parts that will combine to

become the IPCC's Fifth Assessment...

Energy

DOE Likely to Solicit Loan Guarantees
For Renewables This Quarter, Moniz Says

The Department of Energy is likely to solicit a new round of department-backed loan guarantees for renewable energy technologies in "this quarter" of 2014, Energy Secretary Ernest Moniz told reporters April 2....

Energy

Energy Department to Take Over Uranium
Enrichment Project in Ohio, Moniz Says

The Department of Energy will take over management of U.S. Enrichment Corp.'s American Centrifuge uranium enrichment project later this month as the department looks into "reprogramming" nearly $57 million to continue the...

Energy

U.S. Suppliers Cannot Export Natural Gas
To EU Until 2015, Kerry Tells Officials

Companies with licenses to export natural gas from the U.S. could not ship liquefied natural gas (LNG) to the European Union before 2015, Secretary of State John Kerry said at the opening of the EU-U.S. Energy Council meeting in Brussels on April...

General Policy

McCarthy Defends Power Plant Rules,
Promises Renewable Fuel Standard by June

During congressional testimony April 2, Environmental Protection Agency Administrator Gina McCarthy defended the forthcoming carbon pollution standards for coal-fired power plants and promised a final renewable fuel standard by June....

Hazmat Transport

PHMSA Chief Says Petroleum Institute

Failing to Share Bakken Crude Oil Data

The American Petroleum Institute has failed to provide the Transportation Department with requested information on the characteristics of crude oil from the Bakken region in North Dakota, according to the head of the Pipeline and Hazardous...

CORRECTION

An article in the March 28 report about a proposed rare earth mine inaccurately stated the company's name and the spokesman's title. The company is Rare Element Resources Ltd., and George Byers is the company's vice president...

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Inside EPA's **Weekly Report**, 04/04/2014

http://insideepa.com/Inside-EPA/Inside-EPA-04/04/2014/menu-id-67.html

Advocates Urge EPA To Strengthen Air Permit Mandates For Biomass Plants

Environmentalists are urging EPA to strictly regulate biomass-fired power plants as "major sources" subject to strict Clean Air Act permit requirements after finding that the facilities emit more greenhouse gases (GHGs) and conventional pollutants than coal plants, yet are able to bypass the permit mandates and are subject to less stringent emission limits.

EPA Cites D.C. Circuit's Utility Rule Decision To Narrow Suit Over 2013 RFS

EPA is trying to limit the scope of a lawsuit over the agency's 2013 renewable fuel standard (RFS) ahead of April 7 oral arguments by arguing several industry attacks on the rule were raised too late for consideration in the suit, citing a recent appellate ruling in a case over an EPA utility air rule that underscored the limits on time-barred claims.

EPA Resists Shippers' Call To Stay Vessel General Permit's Implementation

EPA is urging a federal court to reject a petition from a coalition of shipping groups seeking to stay implementation of its 2013 vessel general permit (VGP) and extend its compliance deadlines, arguing that

the industry groups failed to meet the high legal bar to allow for "untimely" judicial review.

Latest Blogs

ExxonMobil Downplays Climate Change Economic Risks

ExxonMobil, the world's largest oil company, is downplaying the economic risks it faces from climate change and strict policies intended to curb greenhouse gas emissions, . . .

Greenwire

CARBON CAPTURE:

Entrepreneurs vie to turn heat-trapping gas into a red-hot commodity

Katherine Ling, E&E reporter

Published: Wednesday, April 2, 2014

The Energy Department recently hosted a debutante party.

Awkward, adolescent companies that capture carbon emissions or convert them into chemicals or fuels nervously gussied up booths and showed off nearly mature technology ready for commercial partners at the agency's annual Energy Innovation Summit.

Unlike the wallflowers of last year, largely exhibited in posters on the wall, carbon utilization and alternative carbon capture technologies were a noticeable presence on the main floor at this year's DOE Advanced Research Projects Agency-Energy (ARPA-E) conference in Washington, D.C.

Their technology could help turn carbon emissions from just a problem into an opportunity as well.

Carbon, of course, is of grave concern because of its effect on the planet's temperature and atmosphere.

It is also the main staple in almost every product people use or consume daily. Manufacturers currently rely heavily on carbon from fossil fuels to create plastics, fibers, textiles and packaging, as well as refined liquid fuels.

So instead of sequestering all of the carbon dioxide emissions underground, what if part of it was used instead as a feedstock?

It is much easier to move factories closer to sources of emissions than geographic formations to stuff the gas into. It could replace the 5 to 7 percent of fossil fuels diverted into the petrochemical industry to make ethane, methane, propane and butane -- the building blocks of the chemical industry.

Manufacturers would probably be relieved to have a feedstock that is not quite as volatile as the world's oil and gas markets. The factories could also potentially act as a buffer on the electric grid, developers

say, taking excess generation when the wind is blowing too hard at night, for example -- a problem as the percentage of intermittent renewable generation on the grid grows.

"Some people are reaching for low hanging fruit; some want the slow rabbits" when it comes to clean technology, said Dale Lutz, the lead intellectual property specialist at multinational manufacturer 3M Co.

Carbon utilization is "the low-hanging rabbit or the slow rabbit trying to get the low-hanging fruit," Lutz said, crediting the description to a professor of mechanical engineering at the Massachusetts Institute of Technology.

Det Norske Veritas (DNV), a Norwegian risk management consulting firm, said in a recent paper that turning CO2 into fuel, chemicals and non-conversion materials like cement or building stock has the potential to reduce about 10 percent of total current annual CO2 emissions, or about 3.7 gigatons per year and "much greater reductions are possible through wider adoption of these technologies."

It's not a complete solution for the carbon problem clearly, but it could help -- especially if there is money to be made. At the moment the only commercial market for CO2 is for enhanced oil recovery, helping to push out oil that traditional drilling leaves behind.

The problem is the process to capture and convert CO2 into chemicals or fuels has been too expensive because of the catalyst materials used or high energy consumption, especially with the recent low prices of natural gas here in the United States.

Rich Masel, right, founder of Dioxide Materials, poses with Dale Lutz of 3M, left, and their team at their booth at the 2014 ARPA-E Energy Innovation Summit. Photo by Katherine Ling.

Those barriers remain significant, but no longer look insurmountable.

It is exciting to see for ARPA-E leaders, as one of the agency's earliest funding solicitations in 2009 was a program for alternative carbon capture -- Innovative Materials and Processes for Advanced Carbon Capture Technologies (IMPACCT).

The program has helped "de-risk" several technologies that may lower the cost and energy penalties of carbon capture that make it more accessible as a feedstock.

The program embodies the "catalyst" role that ARPA-E aims to fill and the agency is "ecstatic" about the

results of this early funding as the three-year grants are now winding down or are completed, ARPA-E's Deputy Director Eric Rohlfing said.

"We take very innovative ideas from the realm of basic science -- from where there is not a lot of investment -- a lot of interest but not a lot of investment -- to technology," he said.

The improved outlook for carbon capture and utilization technology has already caught the eye of attractive partners like 3M, Boeing Co., BP PLC and the National Energy Technology Laboratory (NETL), which ARPA-E made sure to keep in the loop on its IMPACCT projects.

Interest in the technology is growing much faster overseas at the moment with other manufacturing countries like Germany facing natural gas at $8 to $11 per million British thermal units compared to about $4 MMBtu in the United States.

'You never argue when God smiles'

At his booth at the showcase, Dioxide Materials inventor and CEO Rich Masel -- who received an ARPA-E open grant in 2012 -- had Lutz and other 3M employees by his side, as 3M is helping to develop the technology. The Dioxide technology uses a highly efficient electrolyzer to convert carbon dioxide into formic acid that could be used to form chemicals or fuels.

It is also a modular product, meaning that a company just adds as many electrolyzer units that it needs to process more CO2. This eliminates the risk and cost of making the electrolyzer bigger -- or as the company says "scale out not scale up."

Masel said he began tinkering with converting CO2 to fuel after the U.S. military asked him to find a way to make fuel onsite to help eliminate expensive and dangerous fueling convoys through hostile territory or the vulnerability of aircraft carriers steering in a straight line for four hours on the open ocean to refuel.

"They were getting sick of fighting wars for oil," said Masel, who describes himself as "an old catalyst guy."

The technology combines two catalysts -- a metal and an organic -- to convert CO2 into chemicals, improving the energy efficiency and lowering the cost by shrinking what was a two-step process into one. It worked the first time Masel tried it, he said.

"It worked better than I imagined it would," he said. "God smiled on me. You never argue when God smiles," he said.

Acknowledging that breaking into the chemical industry will take a few years, the company will soon begin selling carbon dioxide sensors that determine the number of people in a room based on the CO2 count: the more people breathing in a room, the more carbon dioxide. The sensor can relay that information to a thermostat that can adjust the heating or cooling setting accordingly.

A few aisles over at the showcase, Liquid Light recently announced the licensing availability of its technology that turns CO2 into ethylene glycol. The chemical is used to make a broad range of products like plastic bottles and polyester clothing and has a market worth $27 billion annually, according to the company.

Liquid Light -- which can tweak its technology to convert CO2 to more than 60 different chemicals -- was not an ARPA-E grant recipient, but CEO Kyle Teamey agreed that the market has opened up in the past few years, and the company's technology is ready to take advantage of that.

Liquid Light actually started off as a company that used solar energy to convert CO2 into chemicals -- hence its name -- but it runs most efficiently off electricity for now, Teamey said.

While it is does help cut carbon emissions, Liquid Light's main message is economic, Teamey said.

"If you can't come in with good economics, no one is going to care," he said. "The only way to do it is making money while saving the world, so you don't even know you are doing it."

Liquid Light's process requires $125 or less of CO2 to make a ton of ethylene glycol, compared to $617 to $1,113 of feedstocks derived from oil, natural gas or corn, according to the company. These differences are especially significant as ethylene glycol sells for $700 to $1,400 per metric ton.

Dioxide Materials and Liquid Light join the ranks of several other companies who have entered the chemicals market using carbon gas as a feedstock, including Carbon Recycling International, Novomer, Joule and LanzaTech -- which actually uses carbon monoxide, often a gas byproduct of the steel mills and oil refining -- to make fuels and chemicals using microbes (*E&E Daily*, Dec. 3, 2012).

Capturing CO2

Having more of a viable market to take the CO2 would help spur carbon capture technologies, said Daniel Buttry, chairman of the chemistry and biochemistry department at Arizona State University.

"There is some hesitation to fund the [CO2 capture] projects because what are you going do to with the CO2?" Buttry said.

Buttry is the recipient of an ARPA-E grant of $662,000 for his technology that could cut the cost of capturing CO2 in half. The electrochemical cell would work like a fuel cell "running backwards" -- capturing CO2 at the cathode, separating and transporting it across the cell to release it at the anode.

The technology reapplies ideas developed by Andrew Bocarsly, the founder of Liquid Light and a professor of chemistry at Princeton University, said Buttry, who has only been developing the technology for about two years.

While Buttry is still in the middle of his ARPA-E funding, three of the alumni of the IMPACCT program were just down the aisle. They have received additional interest and funding from NETL to scale up.

Alliant Techsystems Inc. (ATK) is one of those projects. A global aerospace and defense manufacturer, its carbon capture technology is based on a problem for its main line of business: gas condensation in its wind testing tunnels. The technology compresses the gas and blows it at very high speeds, which causes the temperature to drop very low and the carbon dioxide to condense in the tunnel and fall out into a separator.

The ATK analysis shows that, for a 550 megawatt pulverized coal power plant, it could be done using about a quarter of the energy and at half the cost of the current technology, which is based on amine solvents (derivatives of ammonia).

George Papadopoulos, a senior manager in ATK's Advanced Systems and Power group, said the company was working on partnering with a utility for a one- to two-year pilot project. They are also tweaking the technology to freeze the CO2 into larger dry ice particles and addressing the question of what form of the CO2 -- gas or liquid -- would be preferred by potential partners who would want to use the CO2 as feedstock. ATK already had some interesting discussions with a company growing algae for fuel, for instance.

The third ARPA-E graduate is a project from General Electric Co., which is also working with NETL on scaling up its technology, using a different solvent-based process that captures CO2 but turns it into a solid form for easier disposal.

ARPA-E's Rohlfing said even though IMPACCT is ending, he still sees a role for ARPA-E in carbon capture and utilization in future funding solicitations.

For instance the issue of gas or liquid separation -- whether carbon dioxide or otherwise -- is an important phenomenon for a lot of technologies and lowering its energy intensity would be a significant discovery. Similarly there are still plenty of opportunities to explore recycling carbon dioxide back into a product.

"Somehow you need to put energy back into CO2 to make it more useful," Rohlfing said, "and the key is to how to do that in the most efficient way."

AIR POLLUTION:

Report slams biomass sector, dubbing it 'the new coal'

Daniel Lippman, E&E reporter

Published: Wednesday, April 2, 2014

While the biomass energy sector has been labeled as green renewable energy, a report released today says burning scrap lumber and wood debris and agricultural waste products to create electricity is producing lots of air pollution and carbon dioxide emissions.

"These facilities are sort of notorious for spouting out a lot of smoke on startup or shutdown," said Mary Booth, director of the group Partnership for Policy Integrity and author of the report, "Trees, Trash, and Toxics: How Biomass Energy Has Become the New Coal." "It's just an inherently polluting technology anyway, and even with sophisticated emission controls, it's still quite polluting."

Booth said her reviews of air permits revealed a pattern: "I was seeing facilities that were escaping regulation."

The biomass industry pushed back strong on the report, calling the science in it neither "factual nor new."

"Biomass is a clean, renewable energy source that our nation relies upon to reduce our dependence on fossil fuels," said Bob Cleaves, president of the Biomass Power Association, in a statement.

"Our industry uses residuals from forest maintenance as well as wood already used for other purposes like construction. These materials have no other use; they would otherwise decompose either in landfills, emitting the harmful methane gas, or on a forest floor where they would provide kindling to wildfires."

The report highlights one comparison that shows a biomass power plant had higher allowable emission rates than a coal or gas plant in carbon monoxide, nitrogen oxides, filtered particulate matter 10 (PM 10) and volatile organic compounds. Only the coal plant had higher sulfur dioxide emissions.

Booth said that a "loophole" allows biomass plants to emit much more pollution than other energy sources like coal.

The Clean Air Act requires coal plants to go through Prevention of Significant Deterioration permitting if the plant is going to emit 100 tons of each of the major pollutants per year. But Booth said biomass plants have been able to emit 250 tons per year before the same type of permitting applies.

"I think [U.S. EPA] is under tremendous political pressure and ... it's been a really disproportionately powerful industry," she said. "They have a lot of powerful friends in Congress, southern Democrats who are from timber states, and this is what the wood industry says they want. And they're going to give it to them."

The 2009 federal stimulus package funded several measures that have helped the industry, including the Investment Tax Credit and the Production Tax Credit.

There have been some signs that regulations for biomass energy may be tightened. Last July, a three-judge panel on the U.S. Court of Appeals for the District of Columbia Circuit said EPA had failed to justify a 2011 decision that gave biomass facilities a three-year exemption from greenhouse gas rules (*Greenwire*, July, 12, 2013).

One reason biomass energy has been growing is that it's seen by some as less carbon-intensive than fossil fuels, which is partly why 700 megawatts of biomass energy were added to the grid last year.

Some scientists have backed up that position. In a 2010 open letter to senators, dozens of forestry professors wrote that "burning fossil fuels that are mined from millennia-old deposits of carbon produces an addition to carbon in the atmosphere, whereas burning woody biomass recycles renewable plant growth in a sustainable carbon equilibrium producing carbon neutral energy."

But today's report disputes that perception, saying "biomass power plants emit more CO2 than fossil fueled plants because wood and other types of biomass are carbon-rich, but not particularly energy-rich, particularly relative to natural gas."

"This means that burning biomass releases more CO2 per unit energy inherent in the fuel. ... Just as important, however, is that biomass power plants are much less efficient than gas and coal-fueled plants, in part because biomass fuels tend to have relatively high moisture content, and it takes significant energy to boil off excess water before useful energy can be generated."

EPA:

McCarthy defends agency rulemakings, budget before House panel

Jean Chemnick, E&E reporter

Published: Wednesday, April 2, 2014

Correction appended.

U.S. EPA Administrator Gina McCarthy faced renewed push-back this morning from Republican lawmakers over her agency's basis for proposing to require all new coal-fired power plants to use carbon capture and storage (CCS) technology.

Discussion of EPA regulations including the climate rule dominated the joint hearing of two House Energy and Commerce Committee subpanels, which was nominally held to review the agency's $7.9 billion fiscal 2015 budget request.

GOP members of the Energy and Power and Environment and Economy subpanels again charged that EPA had ignored provisions of a 2005 law when it released a standard for new power plants last September that relied on three government-funded projects to demonstrate that CCS is viable. Members of the two subpanels argued that the Energy Policy Act, originally crafted by the full committee, prohibits EPA from considering federally backed projects at all when setting air quality rules.

Energy and Power Subcommittee Chairman Ed Whitfield (R-Ky.) noted that he and other House Republicans have asked McCarthy for her views on why her agency had the authority to consider Southern Co.'s Kemper energy facility and two other Energy Department-funded projects when setting the carbon standard. Those letters had gone unanswered, he said (*E&E Daily*, March 13).

"How can you proceed to this, and what are your lawyers telling you?" he asked.

McCarthy noted that the agency released a supplementary document in February -- now open for public comment -- laying out its argument that while the 2005 law barred it from basing its rule solely on federally financed projects, it did not prevent it from considering them together with other factors, like the use of CCS components in natural gas processing and by other industries as well as projects abroad.

"We have a very robust record to show that CCS is technically achievable and available, the way the law requires," she said.

But Whitfield dismissed her comments, saying that the proposed rule seemed to make new coal-fired power off-limits in the United States in a way that it is not in other countries. Even Europe, he said, has boosted its imports of American coal in recent years to satisfy a larger share of its energy demand.

U.S. utilities have said they cannot comply with EPA draft's mandate that they use CCS, Whitfield said, and would simply have to stop building coal-fired units. That decision would trickle down to other parts of the economy, he said.

"I think America is being jeopardized by this kind of action," he said. He added that the proposal seems to rely too heavily on opportunities to sell captured CCS for use in enhanced oil recovery to prove that CCS is cost-effective.

"There are many places where we need plants and enhanced oil recovery cannot play a part," he said.

Energy and Commerce Chairman Fred Upton (R-Mich.) said that the proposal for new power plants and another for existing plants that this week moved to the White House for vetting are part of a broader regulatory overreach by the agency.

"The Obama administration is seeking to regulate where they failed to legislate, and this pace has continued with the release of several major rules that imposed billions of dollars in costs with questionable benefits," Upton said.

But the two greenhouse gas rules promise to be the costliest parts of the president's regulatory agenda, he said. He compared them to the White House's rollout of its health care law, which he said "was also rolled out with a host of assurances that fell woefully short."

"Many EPA rules were introduced with the same kinds of rosy economic promises, and they are proving to be just as detached from reality," he said.

But McCarthy told panel Republicans that recent shutdowns of coal-fired power plants had more to do with the historically low cost of natural gas than with regulations. And panel Democrats pointed to the

Intergovernmental Panel on Climate Change's fifth assessment report -- a portion of which was released this week -- to show that climate change also has costs.

Ranking member Henry Waxman (D-Calif.) said the world is "at a crossroads" when it comes to climate change. It can either choose to act, he said, or allow atmospheric emissions to grow to the point where catastrophic climate change will be inevitable and pose a threat to the economy.

"I know you understand this and are committed to making [EPA] one of the world leaders in the effort to protect families from the dangerous climate change," he said. "I want you to know that I am committed to supporting your efforts."

Other EPA rules

Turning to other issues, Environment and Economy Subcommittee Chairman John Shimkus (R-Ill.) asked for McCarthy's cooperation on his bid to reform the 1976 Toxic Substances Control Act, which has been untouched since it was enacted.

Shimkus has said he wants to collect input from a variety of stakeholders on his proposal, including EPA. He held a hearing on March 13 that highlighted some areas of disagreement (*E&E Daily*, March 13).

"EPA has given us some valuable, but preliminary technical assistance, but many large policy issues still need resolution," he said today. "We want to resolve those with you, and we hope you share our ambition and sincere desire to make this a collaborative process."

McCarthy fielded questions from other panel Republicans about other rulemakings in EPA's pipeline.

She noted that EPA is currently reviewing its ozone emissions standards but will wait for its Clean Air Act Advisory panel to weigh in before signaling whether it might revise that standard. In response to a question from Upton, she promised that the agency would finalize its 2014 renewable fuel standard rule by June and would hope to move more quickly on RFS rulemakings in the future.

Democrats on the committee praised the agency's focus on climate change -- the Obama budget calls for an investment of nearly $200 million for climate-related programs in fiscal 2015.

But they said that by proposing bare-bones funding levels for other EPA programs, the administration is showing that it does not sufficiently value EPA's work. The document released March 4 proposed a cut of $300 million from a variety of sources, with the largest reductions from the Drinking Water and Clean Water state revolving funds. Collectively, the two funds -- which provide cash to states for water programs through revolving loans -- would lose $581 million from the 2014 enacted levels, with funding set for $1.8 billion in fiscal 2015.

Rep. Paul Tonko (D-N.Y.) called the overall request "disappointing."

In addition to laying out funding priorities, he said, the budget "is or it should be a statement about what we aspire to for the future."

He added, "This budget is not very inspiring."

By proposing to cut the revolving funds, Tonko said, the agency will ensure that the United States continues to rely on outdated and crumbling water infrastructure. McCarthy replied that while more money would help reduce the backlog of water projects waiting for funding, the agency is trying to make the most of the resources it has, including by investing in "green" infrastructure that will ensure funded projects withstand more frequent storms and other events linked to climate change.

Correction: *An earlier version of this story misattributed quotations by Rep. Paul Tonko.*

NATURAL GAS:

Federal charges brought against Calif. utility in deadly pipeline blast

Anne C. Mulkern, E&E reporter

Published: Wednesday, April 2, 2014

The Justice Department yesterday charged California-based utility Pacific Gas & Electric Co. with 12 felony counts of safety violations in a deadly 2010 pipeline explosion near San Francisco.

In an indictment filed in U.S. District Court for the Northern District of California, the U.S. attorney's office said that the company and its employees had failed to meet the requirements of the federal Natural Gas Pipeline Safety Act. It listed the penalty for the charges at more than $6 million.

"Pacific Gas & Electric Co., by and through the actions of its employees, knowingly and willfully violated a minimum safety standard for pipelines carrying natural gas," the indictment said. "Pacific Gas & Electric Co. knowingly and willfully failed to identify and evaluate potential threats to covered segments on the lines."

A PG&E pipeline running beneath the San Francisco suburb of San Bruno exploded Sept. 9, 2010. The blast killed eight people, injured 58 people, destroyed 38 homes and damaged 70 others. Federal and state investigators both launched inquiries in the aftermath.

The charges come through an indictment from a federal grand jury. The counts include failure to gather and integrate relevant data to identify all potential threats to a gas transmission pipeline; failure to maintain certain repair records for a gas transmission pipeline; failure to include all potential threats and to select a suitable threat assessment method; and failure to prioritize an unstable pipeline with a manufacturing threat.

A National Transportation Safety Board investigation after the blast found that it happened in part because of shoddy pipe welding. Federal regulators found that the company had poor quality control when the pipe was initially installed. NTSB also faulted the California Public Utilities Commission (CPUC) for failure "to detect the inadequacies in PG&E's integrity management program."

PG&E said in a statement that it believes that "its employees did not intentionally violate the federal Pipeline Safety Act, and that even where mistakes were made, employees were acting in good faith to provide customers with safe, reliable and affordable energy."

"San Bruno was a tragic accident," PG&E Chairman and CEO Tony Earley said in a statement. "We've taken accountability and are deeply sorry. We have worked hard to do the right thing for victims, their families and the community, and we will continue to do so."

"We want all of our customers and their families to know that nothing will distract us from our mission of transforming this 100-plus-year-old system into the safest and most reliable natural gas system in the country," he added.

California Attorney General Kamala Harris (D) called the indictment "an important step in providing justice for the individuals, families and community devastated by the 2010 pipeline explosion and fire."

"As alleged in the indictment, PG&E knowingly and willfully failed to identify and evaluate threats to its transmission pipelines, including Line 132 underneath much of San Bruno," Harris said. "When allegedly faced with evidence of transmission line problems, PG&E knowingly and willfully chose not to assess and remediate them."

San Bruno officials described the action as "a measure of justice."

"One of the worst natural gas disasters in American history was caused by PG&E's gross misconduct," said Mayor Jim Ruane. "PG&E and its executives should get the harshest penalty to prevent this from ever happening again."

The CPUC has been weighing financial penalties in a state regulatory proceeding on San Bruno.

The CPUC's Consumer Protection and Safety Division last summer said that PG&E shareholders should pay a $2.25 billion penalty, including a $300 million punitive fine. That was a revision from an earlier proposal, following criticisms that the division had been too lenient toward the utility. It initially had recommended a $2.25 billion fine but said that all of it would go toward safety upgrades. It also allowed credits for completed upgrades.

An administrative law judge panel is reviewing the CPUC safety arm's latest proposal and those of other interested groups and will make a recommendation on a fine, possibly next month. CPUC commissioners ultimately will vote on a penalty.

"We hope the leadership demonstrated the U.S. Attorney's Office will finally get Governor Brown and Attorney General Harris to see the seriousness of PG&E's safety transgressions and the lack of proper oversight by the CPUC," Ruane said in a statement. "These criminal charges should encourage them to take strong action against both the utility and the CPUC and show their independence from PG&E's deep political influence that led to this disaster in the first place."

CALIFORNIA:

Emissions at metal-finishing plant present high cancer risk -- officials

Published: Wednesday, April 2, 2014

Toxic emissions from a metal-finishing plant in Southern California pose an "unacceptably high" cancer risk to nearby residents, state officials said yesterday.

The South Coast Air Quality Management District said it would ask regulators to order Hixson Metal Finishing to reduce the amount of chromium-6 emissions from its plant in Newport Beach, Calif.

Hixson President Douglas Green said the company would work with state officials to address the issue. "We'll find the source and stop it," he said.

Chromium-6 is a carcinogen made famous by the 2000 Hollywood film "Erin Brockovich" about pollution in a desert town northeast of Los Angeles (Garrison/Cowan, *Los Angeles Times*, April 1). **-- DB**

UNITED KINGDOM:

Saharan dust storms bring intense smog cloud to England, Wales

Published: Wednesday, April 2, 2014

Saharan dust storms are causing abnormally high levels of smog in southern England and Wales.

Millions of people with asthma or other conditions were cautioned to stay indoors.

Forecasters said one of the year's worst smogs would only get worse through today with some areas reaching an air pollution level of 10 out of 10.

"We usually see this happen several times a year when big dust storms in the Sahara coincide with southerly winds to bring that dust here," said a representative of the United Kingdom's national weather service. "More dust rain is possible during showers expected later this week."

By tomorrow, cleaner air from the Atlantic Ocean should begin to relieve parts of the country, forecasters say (Halliday/Tran, London *Guardian*, April 2). **-- JL**

ClimateWire -- Thu., April 3, 2014 -- **Read the full edition**

1. FUELS: U.N. report explores bioenergy's potential for pulling CO2 out of the air

Pushing the needle back on billowing carbon dioxide emissions may be necessary to avoid catastrophic warming. But for those who are squeamish about drastically engineering the climate by seeding algae blooms or spraying aerosols to form clouds, scientists are exploring the concept of negative emissions.

2. BUSINESS: Industry and House urge NOAA to use commercial weather data

The weather forecasting services the National Oceanic and Atmospheric Administration offers through its National Weather Service are very good.

TODAY'S STORIES

3. POLICY: National Park Service forms adaptation strategies at the local level

4. COAL: Northwestern officials weigh in on opposition to coal export terminals

5. TRANSPORTATION: DOE jump-starts sluggish clean vehicle manufacturing program

6. BUSINESS: Steyer venture hires company to model coastal disasters

7. WEATHER: Arctic warming theory so 'cutting edge,' it's hard to prove

8. EPA: McCarthy uses budget hearing to highlight state-federal collaboration

9. FINANCE: Clean energy investments dropped by 11% last year as incentives were phased down

10. CARBON CAPTURE: Costs rise again at Kemper carbon capture and storage plant

11. SOCIETY: BBC scrutinized by MPs for 'false balance' in climate change coverage

12. CARBON MARKETS: China's second-largest carbon exchange launched by Hubei province

13. INDIA: Major solar power expansion planned for 2015

14. DEFORESTATION: European company to launch algae-based liquid laundry detergent this year

E&ETV's OnPoint

15. ENERGY POLICY: Pew's Cuttino discusses decline in U.S. clean energy investments

EnergyWire -- Thu., April 3, 2014 -- Read the full edition

1. ELECTRICITY: Federal regulators aim to fix power markets by next winter

Federal energy regulators should aim to make a series of "small market fixes" by the onset of next winter to lessen the volatility seen in the price of electricity and natural gas during a series of extreme cold events in January and February, said Cheryl LaFleur, acting chairwoman of the Federal Energy Regulatory Commission.

TOP STORIES

2. PUBLIC HEALTH: Pa. project finds flaws in how air pollution is monitored at drilling sites

3. PIPELINES: Gas distributors' group seeks lawmakers' help in securing refunds for overcharges

4. ELECTRICITY: CenterPoint CEO touts grid investments amid utility death spiral chatter

THIS MORNING'S STORIES

5. UTILITIES: More cost overruns at Kemper carbon capture plant fuel concerns over coal

6. OIL AND GAS: Efficiencies drive consultants' optimism over Bakken Shale's staying power

7. ELECTRICITY: 'Zombie' coal plant owner in N.Y. looks for green light to start pumping power

8. CLIMATE: Competition aims to build a better methane detector

9. GAS EXPORTS: Cheniere's Corpus Christi project signs with Spanish buyer

10. HYDRAULIC FRACTURING: State AGs to discuss fracking at Colorado Energy Summit

11. PIPELINES: Duke, Piedmont looking for second N.C. natural gas line

12. UTILITIES: All of Ohio's providers met reliability standards last year

13. OFFSHORE DRILLING: Federal regulators ask industry for near-miss accident data

14. COLORADO: Lawmakers advance plan for fracking health study

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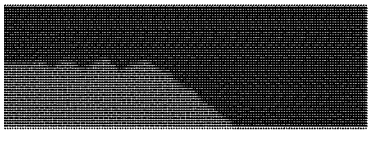

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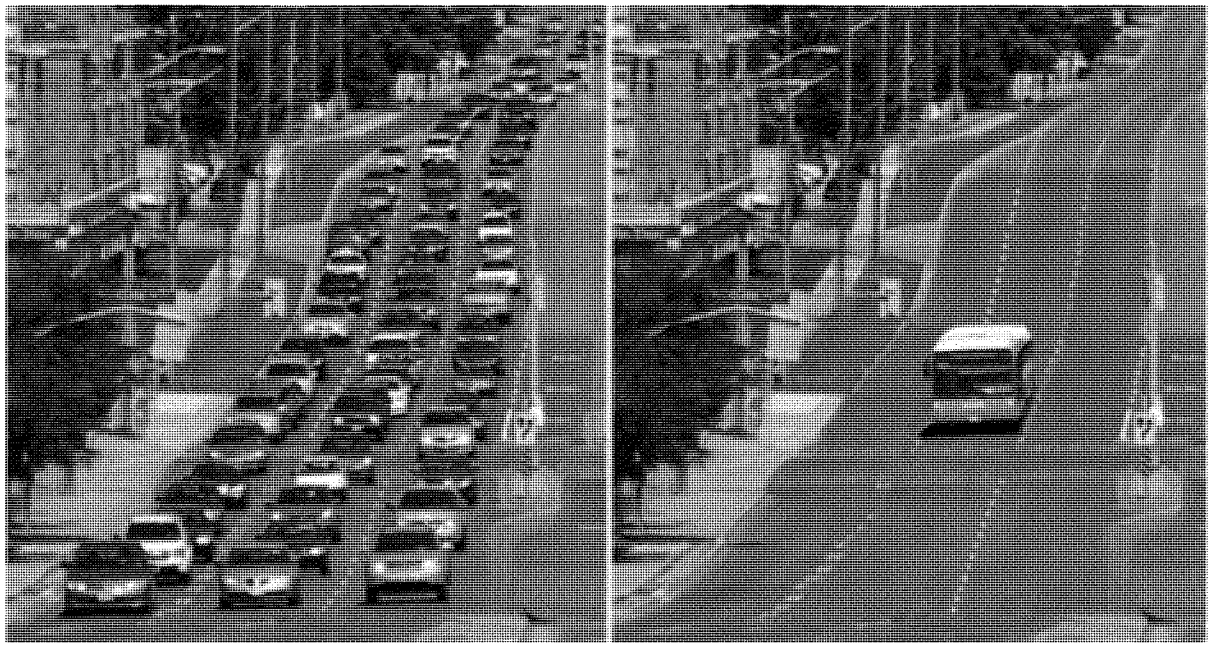

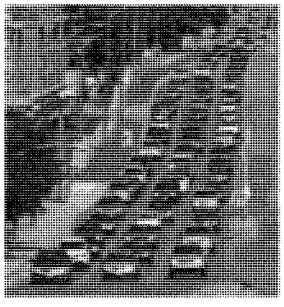

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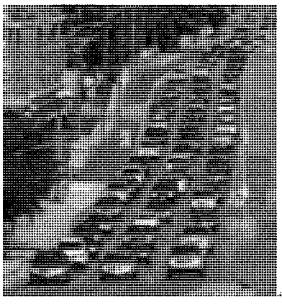

Air & Radiation Law News

for April 2, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA on Track to Propose Ozone Transport Rule by Summer, McCabe Tells State Officials

The Environmental Protection Agency is on track to propose its rule to curb ozone pollution that crosses state lines in the East this summer, Janet McCabe, the agency's acting assistant administrator for air and radiation, told state...

Air Pollution

Wyoming, PacifiCorp Challenge EPA On Partial Rejection of Regional Haze Plan

PacifiCorp. and Wyoming are challenging the Environmental Protection Agency's partial rejection of the state's plan for addressing regional haze (PacifiCorp v. EPA, 10th Cir., No. 14-9534, 3/31/14; Wyoming v. EPA, 10th Cir.,No....

Budget

House Republicans Target Climate Change Spending in FY 2015 Budget Resolution

A fiscal year 2015 budget plan developed by House Republicans aims to reduce funding for federal climate change programs....

Climate Change

EPA Proposal to Regulate Carbon Dioxide From Existing Plants Under OMB Review

The White House is reviewing an Environmental Protection Agency proposal that would set the first carbon dioxide emissions limits for existing power plants....

Climate Change

Republicans Target EPA Power Plant Rules, Push LNG Exports, Keystone in Amendments

Senate Republicans filed amendments April 1 to a pending unemployment insurance bill to block the Environmental Protection Agency's carbon dioxide limits for power plants and to force the Obama administration to ratchet up exports...

Energy

FERC Conference Highlights Problems Of Using Natural Gas for Electric Generation

High natural gas prices in the record-breaking 2013-2014 winter season cost the Mid-Atlantic power pool a half-billion dollars in additional payments to generators in order to keep the lights on for a 13-state region, a regional grid executive...

Energy

Four Lawmakers Seek EPA Insight Into Renewable Fuel Standard 'Challenges'

Four lawmakers asked the Environmental Protection Agency to describe any "statutory challenges" that impair its ability to administer the renewable fuels standard....

Energy

Grassley Expects Vote on Amendment To Extend Renewable Energy Tax Credit

Sen. Chuck Grassley (R-Iowa) said April 1 he has filed an amendment to extend the renewable energy production tax credit to be considered during a markup of tax extenders legislation scheduled for April 3 by the Senate Finance Committee. ...

Energy

Michigan Cuts Taxes on Technique Using Carbon Dioxide to Extract Oil, Natural Gas

Drilling companies that use carbon dioxide to enhance oil- and gas-well production will see lower taxes under legislation signed April 1 by Lt. Gov. Brian Calley (R)....

Energy

Vermont Governor Signs Bill to Expand Program for Buying Power From Households

Vermont Gov. Peter Shumlin (D) signed a bill April 1 to expand a program that allows residents to sell home-generated alternative energy to utilities....

Enforcement

Office of Surface Mining Adjusts Civil Penalty Fees

The Office of Surface Mining Reclamation and Enforcement (OSM) will adjust civil monetary penalty fees for inflation, effective May 2, as required at least every four years, according to a final rule to be published April 2. Fee adjustments,...

EPA

Senate Committee to Consider Nomination Of McCabe to Head EPA Air Office on April 8

The Senate Environment and Public Works Committee will consider the nomination of Janet McCabe to

head the Environmental Protection Agency's air office April 8, Sen. Jim Inhofe (R-Okla.) and a committee aide told Bloomberg BNA. ...

Hazmat Transport

Canadian Rail Regulator Calls for Quicker Tank Car Replacement After Lac-Mégantic

Canada's railways need to act more quickly to replace older DOT-111 tank cars that are still used to transport crude oil in response to the July 2013 derailment and explosion that devastated the Quebec community of Lac-Mégantic and...

Pipeline Safety

PG&E Charged With 12 Safety Violations In Fatal Pipeline Explosion in California

PG&E Corp., owner of California's largest utility, was charged with 12 pipeline safety violations by the U.S. government for a 2010 natural gas explosion that killed eight people in San Bruno, Calif....

Pipeline Safety

Rangel Introduces Pipeline Modernization Bill

Rep. Charles Rangel (D-N.Y.) introduced legislation (H.R. 4338) that would require gas pipeline operators to accelerate the repair and replacement of high-risk pipelines. The Pipeline Modernization and Consumer Protection Act, introduced...

Radioactive Waste

Washington State May Pursue Dispute Resolution Over DOE Cleanup of Hanford

Washington state, following decades of delay by the Department of Energy in its cleanup of mixed radioactive and hazardous chemical waste at the Hanford Nuclear Reservation, is poised to invoke the dispute resolution clause of a consent decree...

Regulatory Policy

OIRA Chief Faces Tough Questions About Influence Over Federal Regulations

Howard Shelanski, the administrator of the Office of Information and Regulatory Affairs, faced tough questions by public interest advocates expressing concerns that the agency exercises delaying tactics and undue influence over the federal...

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Inside EPA's **Environmental Policy Alert**, 04/02/2014

http://insideepa.com/Environmental-Policy-Alert/Environmental-Policy-Alert-04/02/2014/menu-id-132.html

EPA, State Air Officials Agree On Plan To Overhaul, Streamline SIP Process

SAUSALITO, CA -- EPA and state officials have agreed on a framework plan for using existing Clean Air Act authority to overhaul and streamline the state implementation plan (SIP) process for attaining air quality standards while also committing the agency to clear the existing backlog of SIPs by the end of 2017.

Florida, Utilities Fight Suit For Strict Antidegradation Limits On Nutrients

Florida officials and regulated entities are seeking to block environmentalists' novel suit aimed at forcing EPA to strengthen antidegradation rules as a way to more strictly enforce the state's landmark nutrient limits, filing motions to intervene in the ongoing suit in part because they fear EPA could agree to a settlement that tightens permit limits.

EPA Budget Proposal Leaves Fate Of Key Air Toxics Assessment In Doubt

EPA's fiscal year 2015 budget proposal leaves the fate of the agency's major nationwide assessment of risks from air toxics in doubt due to uncertainty over funding for the program, which could potentially mean another delay for EPA's latest version of the assessment after scrapping a planned update last year due to resource constraints.

EPA FY15 Proposal Boosts Funds For States To Implement Climate Rules

President Obama's fiscal year 2015 budget proposal for EPA would significantly boost funding for climate

programs including states' efforts to implement the agency's greenhouse gas (GHG) regulatory agenda, which may help alleviate states' fears of resource burdens in crafting plans to comply with EPA's GHG rule for existing utilities.

EPA Details Guide For Sustaining Laboratories' Functions For NAS Review

EPA has outlined a series of guidelines that it is using as it assesses whether and how to sustain its laboratories' "science functions" while also making the labs more efficient and able to address future needs, according to documents recently released by a National Academy of Sciences (NAS) committee reviewing the issue.

Latest Blogs

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OIRA Chief Seeks To Speed Rule Reviews

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Greenwire

BUDGET:

House GOP plan slashes energy and research, takes a duller ax to environmental spending

Elana Schor, E&E reporter

Published: Tuesday, April 1, 2014

Government energy spending on programs without defense purposes would fall by nearly half under a budget House Republicans unveiled today that also slashes climate change and advanced scientific

research programs while promoting more oil and gas drilling on federal land.

House Budget Chairman Paul Ryan's (R-Wis.) fiscal framework, likely his last before taking the Ways and Means Committee gavel next year, conforms to the $1.014 trillion spending cap he agreed to in a two-year pact with Senate Budget chief Patty Murray (D-Wash.). But beneath that ceiling, Ryan pitched a panoply of conservative priorities -- many of which appeared in his previous budgets -- while making notable cuts to Energy Department investment in "research and development projects best left to the private sector."

The broad spending category that includes Department of Energy renewables and efficiency programs, as well as oversight agencies such as the Federal Energy Regulatory Commission, would receive $4.2 billion in total budget authority for fiscal 2015 under Ryan's plan. That category is projected to see authority of about $8.4 billion in the current fiscal year, according to the White House's most recent budget proposal.

Ryan's plan would give $34.3 billion in total budget authority for fiscal 2015 to the spending category that includes environmental efforts at U.S. EPA, the National Oceanic and Atmospheric Administration, and other agencies. That level would represent a $2.5 billion-plus cut from authority in the current fiscal year, according to the White House's latest budget -- which remains a softer blow than what environmental spending took two years ago, when Ryan proposed taking it back to levels unseen since 2001 (*E&E Daily*, March 29, 2012).

In addition to those cuts, House Republicans also would offer a sweeping deregulatory push to advance energy infrastructure projects, including the Keystone XL pipeline, while expanding fossil fuel development on federal lands. Applied and advanced scientific research would see cuts beyond DOE under the Ryan blueprint, which states that "the unique role of the federal government is in supporting basic research, and funding should be distributed accordingly."

The budget may yet lack sufficient support to pass even with solely Republican votes, due to lingering conservative dissatisfaction with the Ryan-Murray deal. But Democrats and environmental groups nonetheless lined up today to slam the document as a love letter to oil and gas.

"It seems like a cruel April Fool's Day joke to push expanded drilling on the heels of destructive oil spills in the Gulf and in our Great Lakes, but that's exactly what we should expect when Ryan and House Republicans continue to put the demands of their big polluter allies before the interests of the American people," Sierra Club Executive Director Michael Brune said in a statement.

House Minority Whip Steny Hoyer (D-Md.) blasted the budget in a statement for "embracing the painful and irrational sequestration cuts and slashing funding that supports investments in opportunity, growth, and security."

Coal 'targeted'

Nearly two full pages of the budget's legislative text, as released, are dedicated to slamming draft EPA greenhouse gas rules for new power plants that are now undergoing a pivotal review at the White House budget office. The emissions regulations amount to "unfairly targeting the coal industry," the budget states.

Beyond EPA, however, other environmental regulatory efforts would slow or halt under the House GOP budget.

Ryan's text calls for advancement of "the many commonsense energy and water projects currently trapped in complicated bureaucratic approval processes" and decries "mostly ideological regulatory

activity ... much of which flies in the face of" landmark laws the Obama administration has invoked to conduct it.

The budget also would end U.S. involvement in two World Bank foreign assistance funds aimed at helping lower-income nations adapt to a warming planet. The House GOP also proposed to end participation in the Strategic Climate and Clean Technology funds during last year's appropriations cycle.

"Given the record-high levels of deficits, the explosive growth in U.S. government debt, and the heavy reliance on foreign financing, the federal government is borrowing funds abroad to provide financial assistance in this area, which is not a core U.S. foreign-policy function," Ryan's budget states in recommending the programs' demise.

Reining in land conservation

Obama's budget sought to more than double Land and Water Conservation Fund (LWCF) spending while gradually shifting it to mandatory status, freeing the government's signature land purchasing and protection program from the congressional appropriations process (*Greenwire*, March 4). Ryan, by contrast, didn't offer a specific pot of money for LWCF but outlined goals far different from the president's by noting that "the federal government is already struggling with a maintenance backlog on the millions of acres it controls."

The House Republican edict that LWCF spend on maintenance and operations before acquiring new land drew immediate criticism from conservationists such as Alan Rowsome, senior director of government relations at the Wilderness Society.

"Rather than take dollars from a popular and wildly successful conservation program that also helps our lands and waters, the Ryan budget should be increasing funding for the land management agencies so they can better steward our nation's public lands," Rowsome said via email.

Ryan's budget also would limit the lands Interior Department agencies can purchase under an expired law that uses proceeds from Bureau of Land Management land sales. The proposal could disrupt a broad spectrum of the law's supporters including the National Rifle Association, stock growers and environmentalists.

Ryan's budget would stipulate that Interior may use no more than 30 percent of the proceeds from lands sales under the expired Federal Land Transaction Facilitation Act to purchase high-quality habitat, a break from current law that allows all the money for that purpose. Ryan's budget would send remaining proceeds to pay down the deficit.

Bills offering a clean reauthorization of FLTFA enjoy strong bipartisan backing in Congress -- support that could erode under the Ryan proposal. Fiscal conservatives including Rep. Cynthia Lummis (R-Wyo.) have backed the law as an alternative to using appropriations to purchase federal lands.

The Obama administration has pushed strongly for an extension of FLTFA, which it said has allowed the sale of about 26,000 acres and the purchase of 18,000 acres since the law was enacted in 2000.

Reporter Phil Taylor contributed.

TAX POLICY:

PTC out, biofuels in extenders package to be marked up Thursday

Nick Juliano, E&E reporter

Published: Tuesday, April 1, 2014

Tax credits for biofuels and other gasoline alternatives, energy-efficient new homes and coal producers in Indian Country would be reinstated under legislation unveiled today by the Senate's top tax writers.

The wind industry and other renewable electricity producers still have some lobbying ahead of them, as Senate Finance Chairman Ron Wyden (D-Ore.) and ranking member Orrin Hatch (R-Utah) did not propose a renewal of the production tax credit (PTC), typically the most expensive of the energy provisions included in "tax extenders" bills.

Sen. Charles Grassley (R-Iowa) said today he would offer an amendment to extend the PTC for two years when the Finance Committee marks up the bill Thursday, and he expected it would pass.

In a bipartisan package released today, Wyden and Hatch proposed two-year extensions for 42 temporary tax incentives that expired in December and another two set to lapse at the end of this year, down from 55 breaks that won renewal the last time Congress enacted an extenders bill. The extenders provide incentives for a variety of individuals and businesses, ranging from letting teachers deduct the cost of school supplies to adjusting how taxes are calculated for owners of racehorses.

Among the most significant of the eight energy-specific provisions included in the proposal is an extension of the $1.01-per-gallon advanced biofuels tax credit and a similar set of $1-per-gallon biodiesel credits.

A representative of the cellulosic biofuels industry cheered its inclusion in the proposal, saying quick extension of the credit is key to keep companies operating in the United States.

"Timing is very important. These provisions have already expired and executives in our industry are weighing the pros and cons of developing projects here or abroad," Brooke Coleman, executive director of the Advanced Ethanol Council, said in an email. "Congress cannot afford to allow taxes to increase on one of the most innovative industries in the world, especially against the backdrop of permanent tax breaks to oil and gas."

As for the wind industry, the PTC does not lack for supporters on the Finance Committee and is expected to be added back to the package when it is marked up later this week. Still, the credit has attracted more opposition from conservatives than in previous years and is expected to face resistance from Republicans in the House and on the Senate floor.

When the committee last considered extenders legislation in 2012, the first draft from then-Chairman Max Baucus (D-Mont.) also did not include a PTC extension, but the credit ultimately was renewed and expanded in a second version of the bill, which was enacted as part of a broader January 2013 bill to avoid the so-called fiscal cliff.

The bipartisan extenders package includes nine energy-specific items, down from 13 included in the 2012 package. The latest draft drops the $23-per-megawatt-hour PTC and a parallel allowance for renewable developers to instead claim a 30 percent investment tax credit (ITC), an incentive particularly prized by the offshore wind industry.

This time around, Republicans objected to including a PTC extension in today's bipartisan proposal, a committee aide said. But Wyden supports an extension, and it is expected to be addressed at Thursday's meeting. Sen. Chuck Grassley (R-Iowa), one of the credit's strongest supporters, predicted the credit

would prevail in the end: "We're going to win either way," Grassley said in a brief interview yesterday evening.

Wind developers aren't sweating yet.

"We're optimistic with the Senate Finance Committee that we have the votes we need to get into the bill the committee passes," said Rob Gramlich, senior vice president for public policy at the American Wind Energy Association.

Other credits that didn't make the cut were the Section 25C efficiency credit, which supported home weatherization and related activities; a credit for manufacturers of efficient appliances; and deferral of rules related to transmission property sales to implement Federal Energy Regulatory Commission or state restructuring policies.

In addition to the biofuels credit, the Wyden-Hatch proposal would renew incentives for refueling infrastructure for alternative-fuel or electric vehicles, the purchase of electric motorcycles, production of coal on Indian lands, construction of new energy-efficient homes and alternative fuels. It also would extend bonus depreciation allowances for advanced biofuels. All of those provisions expired at the end of last year and would be reinstated through 2015. The draft also would extend a credit for new fuel-cell vehicles that otherwise would expire at the end of this year.

Steven Nadel, executive director of the American Council for an Energy-Efficient Economy, said in an email that he was pleased to see the new home credit included and said his group's next top priority is renewing the 179D credit that benefits efficient commercial buildings, which expired at the end of last year. He said he was unsurprised by the absence of the appliance credit given the lack of a lobbying push by appliance makers.

AIR POLLUTION:

New technologies let EPA 'collect a lot more data in a lot more places'

Jason Plautz, E&E reporter

Published: Tuesday, April 1, 2014

Second of two stories on EPA air pollution monitoring. Click here to read part one.

High school students toting pollution monitors the size of paperback books scoped out the future of environmental protection recently at a park in Brooklyn, N.Y.

Tim Dye, a senior vice president for Sonoma Technology, oversaw the monitoring tests conducted by six student teams whose equipment sniffed for airborne soot along Sunset Park's running trails, sidewalks and lawns.

"The day we were doing it, the east-west streets had a strong wind and there was a lot of dust being kicked up," Dye recalled in an interview. "When you weren't in the wind alley, the levels went down. When we collected all the data, there was a clear sawtooth pattern. By having the measurements and the individual experience, we could determine what was going on."

U.S. EPA -- which oversees the nation's most extensive network of air pollution monitors -- is looking to such small, mobile devices to fine-tune its picture of the air Americans breathe.

Chet Wayland, director of EPA's air quality assessment division, said falling prices for sensors have meant a "lot of really cool stuff" is now possible in air monitoring. It's possible, he said, the agency's 3,000-monitor network might evolve beyond stationary machines into something more personal.

"A fixed site monitor doesn't represent anyone's air," said George Allen, who coordinates the monitoring and assessment committee for Northeast States for Coordinated Air Use Management.

"What one person does is entirely different than what another person does," Allen said. "They're all these micro-environments that, taken together, can be a big network."

In an interview last fall, EPA enforcement and compliance chief Cynthia Giles described a potential "revolution ... in people's awareness about air pollution issues" that could come with personal monitors and vehicles that track air pollution (*Greenwire*, Oct. 23, 2013).

The first step, however, is a simpler change but one that analysts say could have major implications for tracking air pollution.

In its 2010 revisions of the National Ambient Air Quality Standards for nitrogen dioxide, EPA required that more than 100 cities install monitors near roads to measure NO2, with monitoring for particulate matter and other criteria pollutants to follow. The monitors are phased in depending on city size through 2017.

The goal is to track tailpipe pollution that isn't detected by stationary monitors that are usually placed far from major roads.

Although research has shown that traffic pollution can drift up to a mile, it's still most concentrated near roads, where researchers say it can linger and affect people who live and work near freeways.

Studies have shown that bicycle commuters and others near roads inhale more than the average share of soot and other exhaust pollutants. And a 2011 study published in the journal *Epidemiology* found that even bus riders and drivers were breathing in enough dust and nitrogen oxides that they performed worse on breathing tests than the bikers. There's been growing concern about the health effects of living or working near a busy roadway and breathing exhaust for hours on end.

Under the monitoring plan, the largest cities must place four monitors within 160 feet of roadways, while smaller cities will have to site one to three monitors. The mere act of doing the siting has proved challenging (*see sidebar*), but supporters say they hope the readings will provide valuable data that might influence city development.

Eric Stevenson, director of technical services at California's Bay Area Air Quality Management District, said the information can improve an already strong monitoring network. For example, he said, studies have shown that residents who live in buildings near roads show higher levels of asthma and other respiratory problems.

"We want to get in there and find out what's causing those health effects," Stevenson said. "Is it emissions? Is it socio-economic? We won't know until we have that data."

And that data can eventually be used to inform any number of decisions, like construction permits for apartment buildings, public parks and businesses.

Want to set up a monitor? Bring an

attorney -- and a landscaper

It seemed simple enough in 2010 when U.S. EPA told state and local air regulators to set up multipurpose air monitors near busy roads.

But installing a monitor requires months of site-selection studies and consideration of a wide range of issues -- from weather patterns to paint colors.

Eric Stevenson, director of technical services at California's Bay Area Air Quality Management District, said his office spent more than two years exploring road segments that might meet EPA requirements and get two monitors online by January of this year, with a third to follow next year.

Each 2-mile road segment had to be studied for the mix and volume of cars and trucks that travel it. An area heavily traveled by diesel trucks will spit out disproportionate readings of nitrogen oxides.

Even the proximity of tall buildings can affect readings as concrete canyons trap pollution.

"You go through all these matrices that EPA helped put together to identify a very particular road segment, and then we did exhaustive studies of the areas in those highest-rated road segments," Stevenson said in an interview. "There are meteorological considerations, construction considerations, you don't want to be on a bridge or in a valley. We had to look at every conceivable site that met the criteria."

Once Stevenson's agency picked out locations, it contacted property owners to inquire about renting space for monitoring sheds (100 to 150 square feet) or room for equipment at an existing building or poles. The state Department of Transportation needed to weigh in on safety, since the monitors were going to be within 50 meters of traffic.

Of course, looks count.

"We located a site in one of Berkeley's parks, and there's a lot of hurdles to go through there," Stevenson said. "It's a park, so you have to meet aesthetics. You can't cut down trees, all sorts of things like that. We had to meet a defined color palette and get a landscaping plan."

With that "difficult" work done, Stevenson said, the agency is ready after 2 ½ years' effort to request construction bids.

-- Jason Plautz

"We've developed tools here at the district already to try to guide cities and counties on ways to infill so we're not building day care centers right next to a freeway," he said. "We work closely with our partners here ... with information sharing to hopefully minimize adverse impacts."

The National Association of Manufacturers, the U.S. Chamber of Commerce and other business groups challenged the particulate matter portion of the requirement in arguments last month before the U.S. Court of Appeals for the District of Columbia Circuit. The groups said the new readings would unfairly skew results and would lead to economic penalties that would hit businesses already affected by pollution-reduction plans.

The concerns do hark back to the broader question about the conflict between seeking out more data and

avoiding attainment problems. But, said National Association of Clean Air Agencies President Bill Becker, more data drawn from more places will only help.

"Air pollution doesn't respect streets or regional boundaries, and we know that a small problem at one station probably exists at your office or across a river on a certain day," Becker said.

"But sweeping dirt under the rug doesn't make the room cleaner. It just hides it."

Monitoring gets personal

There's a small but growing movement to equip people with small, mobile pollution monitoring.

The more data, they say, the better for environmental protection.

Sonoma Technology's Dye, for example, often carries his hand-sized Air Beam device.

Tucked into a plastic case made by a 3-D printer, the Air Beam comprises off-the-shelf components: a microcontroller, a battery, a temperature and humidity sensor, a fan, and a particulate sensor. The monitor sends through Bluetooth real-time information on particulate pollution.

The Air Beam goes where Dye goes. He even held it out a taxi window in Beijing, where he found particulate matter readings on the outskirts of the city higher than in the busy city center (he later realized that was due to a ban on truck traffic inside the city).

"This device isn't going to let you go to a regulator and go to EPA and tell them there's a problem," Dye said. "But we know it's only going to get better."

As monitoring technology gets smaller and the cost of the technology also shrinks, buying a monitor isn't an expensive proposition.

Sensors have gone down to as little as $150, and although the technology is crude relative to the advanced EPA monitors, it's still enough to detect major trends, like pollution from traffic or nearby wood burning.

Even as EPA is exploring satellite technology and projections to spot air pollution trends, air assessment chief Wayland said the agency is well aware of personal monitoring enthusiasts and is considering how to incorporate personal data into future compliance and research discussions.

A draft Next Generation monitoring road map issued last March by the agency lays out plans to be "actively involved" in new technology and analyze what the advances mean for the future.

"The Weather Channel carries air quality. You pick up *USA Today* and it has information on air quality. People really want to know," Wayland said. "Some people think it's cool, some people need it for health reasons. People really just like to know what's going on around them."

The monitors can come in a variety of applications, from the hand-held AirCaster to larger ones that can sit in a kitchen or backyard. EPA has developed "mobile monitors" in cars rigged up with sensors and computers that can track pollutants and particulates along highways. The Pennsylvania-based nonprofit Group Against Smog and Pollution (GASP) has outfitted bicycles with monitors on the handlebars to create a map of Pittsburgh cycling routes.

EPA and the Department of Health and Human Services even awarded $100,000 to a Conscious Clothing

system that would rig a soot monitor onto a wearable vest (*Greenwire*, June 6, 2013).

A pilot program run by EPA has installed a solar-powered low-cost monitor in a park bench in Durham, N.C., that broadcasts real-time ozone and particulate matter data through its Village Green pilot. The real-time readings -- able to be read on a computer or phone -- can track effects as detailed as a spike when a car drives by or a smoker lights up a cigarette on the bench.

The CitizenAir website -- which Dye helped create -- acts as a sounding board for personal air enthusiasts, where they can share recordings and new technology and discuss EPA's future strategies.

Impact seen on regulators, regulations

A model for EPA might be the National Weather Service, which collects meteorological data from more than 8,000 backyard stations through its Citizen Weather Observer Program and integrates them into an online database. A volunteer with the right equipment can apply for the program, which has given finer details to the service's network of stationary systems and satellites.

The open question, however, is how reliable any citizen air data will be for regulatory purposes, as a $150 sensor won't pick up the same degree of pollution or varied information as EPA-sanctioned permanent monitors. Just the intake on the large-scale monitors run by air agencies is bigger than most hand-held devices.

Stationary monitors feed their readings into computers that analyze and crunch data, factor in meteorological conditions, and can flag anomalous findings. Monitors will have backups that run less frequently but can confirm data and are checked annually by EPA and as much as weekly by the agencies that run them.

The technology that's available today can't claim nearly the same quality assurance, especially when it costs just $150. Readings can be thrown off by water moisture -- a concern on foggy days -- and can't be calibrated across multiple devices to ensure a consistent network. Even the most ardent supporters say that right now, the monitors are best used for spotting trends and drawing broad-stroke conclusions.

"Some of these devices are qualitative, some I would call semi-quantitative," Allen said. "None of them come even close to the demands and complexities of regulation."

Still, he added, citizen science is a growing field, and "empowering people to measure their own pollution" can yield pressure for cleanups.

Wayland agreed, adding that individual monitors also offer a good spot to test new technology.

"The technology is going to allow us to collect a lot more data in a lot more places," Wayland said. "But I'm also excited because if there's a new technology that develops and it pans out, then we ought to be able to apply it to our regulatory monitors down the road and bring down the cost."

Dick Valentinetti, a former Vermont regulator and chairman of the National Association of Clean Air Agencies' monitoring committee, said he could see public demand for individual monitoring persuading EPA to adopt more of it.

"Every monitor only gives you a snapshot," Valentinetti said. "Let's say instead of one monitor, you could get 60 snapshots of a small area. You could almost get rid of any anomalies. That's really going to make the future."

COAL:

Manchin asks producers to scrap Blankenship documentary

Manuel Quiñones, E&E reporter

Published: Tuesday, April 1, 2014

West Virginia Democratic Sen. Joe Manchin is demanding that producers of a new documentary about the 2010 Upper Big Branch mine explosion take it offline, saying he was misled into participating.

The documentary was backed by former Massey Energy Co. CEO Don Blankenship, who is featured prominently in the movie blaming the Obama administration and politicians for hiding the truth about the blast that killed 29 miners.

While several investigations have blamed Massey's safety practices for the explosion and questioned Blankenship's leadership, the former company executive says it was a sudden inundation of natural gas that caused the incident (*E&ENews PM*, March 31). He denies any wrongdoing.

Manchin also appears prominently in the documentary expressing support for the coal industry and lack of knowledge about some details of Massey's point of view.

"I write to demand you cease and desist the distribution of your documentary 'Upper Big Branch -- Never Again,' posted yesterday, March 31, 2014, remove the documentary from any websites where you posted it, and remove any and all references to my name, image, and likeness from the film," the senator wrote to Adroit Films LLC.

Manchin said the company misled him into believing the documentary was about mine safety and would be dedicated to the victims' families.

"Your deliberate acts of omission and misrepresentation are compounded by the final product," Manchin said. "Despite my thirty-minute interview, you only dedicated one minute and thirty-two seconds to mine safety -- one of the most important issues in West Virginia -- in an attempt to vindicate Mr. Blankenship."

Manchin was scheduled to be on West Virginia MetroNews this morning talking about the issue. Blankenship has also been making the rounds on television and social media.

Blankenship took to Twitter in response to Manchin's comments. He said the senator is "a great politician but he needs to help us protect miner health and safety. You can't do that by hiding the truth."

Blankenship is often vilified with allegations that he valued production over safety. The former Massey CEO, saying he is the true mine safety advocate, says Manchin "thinks this is about his feelings. It's not. It's about miner safety and jobs."

Comments are starting to pile up on the YouTube page that houses the documentary. Some are positive. Others blast Blankenship. One says, "Blankenship is a killer and its just to bad he is not in jail now."

COAL:

McConnell plans amendment to strike down climate, mining rules

Jean Chemnick, E&E reporter

Published: Tuesday, April 1, 2014

Senate Minority Leader Mitch McConnell (R-Ky.) said today that he would file an amendment this week to an unemployment-insurance bill that would require speedier approvals for mining permits and bar U.S. EPA from regulating power plant carbon dioxide emissions.

McConnell introduced legislation last year to streamline permitting for coal mines, particularly in Appalachia, in an effort to push back against the Obama administration's enhanced oversight (*E&E Daily*, May 7, 2013).

His proposed amendment to the unemployment measure would pair those provisions with a requirement that any Clean Air Act CO2 rules be approved by Congress.

EPA has proposed a rule for new power plants that would mandate carbon capture and storage for future coal-fired units. The agency today sent the White House its draft guidance for existing power plants -- which is expected to be released by June 2. Congressional approval would likely be an impossibly high hurdle for both rules.

"My legislation would keep unelected bureaucrats from blocking desperately needed jobs in Kentucky by sitting on surface mining permits," McConnell said in a statement. "Remember: this Administration's anti-Kentucky policies have helped bring about a depression -- depression with a capital D -- in many Kentucky coal counties."

The amendment would also require the approval of coal-mining permit applications a set number of days after they are submitted to the Bureau of Land Management, and it would prevent EPA from retroactively vetoing Army Corps of Engineer permits.

McConnell has separately offered a resolution of disapproval under the Congressional Review Act that would veto the new power plant rule.

McConnell's amendment joins another spearheaded by Sen. James Inhofe (R-Okla.) that would bar EPA from crafting new air quality or climate change rules until it provides an analysis of the employment implications of rules it has finalized recently (*Greenwire*, March 31). It is unclear what amendments will receive a vote.

AIR POLLUTION:

Ex-employee sues DuPont on leaked carcinogen charges

Published: Tuesday, April 1, 2014

A former employee of a DuPont Co. chemical plant in Ascension Parish, La., has sued the company, alleging the plant regularly leaked cancer-causing gas at the site.

Jeffrey Simoneaux, who worked at the sulfuric acid plant for 22 years, including as an operator in the safety and protection division, sued the company alleging violations of the False Claims Act, which would allow him to claim a share of any funds recovered through the lawsuit.

The suit alleges DuPont owes the federal government $25,000 for each day it leaked sulfur trioxide, a known carcinogen, in violation of the Toxic Substances Control Act. U.S. District Judge Shelly Dick will hear oral arguments Friday in the case at the U.S. District Court for the Middle District of Louisiana.

Simoneaux said in the filing DuPont retaliated against him for noting the leaks in a company logbook. He said he tried to slow down production at the plant in order to correct the problem but was overruled by a superior.

DuPont has denied the allegations (Emily Lane, New Orleans *Times-Picayune*, March 31). **-- SP**

CARBON CAPTURE:

EPA proposes to issue first ever CO2 injection permits

Manuel Quiñones, E&E reporter

Published: Tuesday, April 1, 2014

Correction appended.

U.S. EPA yesterday proposed to issue the first ever permits for the underground injection and permanent storage of carbon dioxide captured from a coal-fired power plant.

Such approvals are crucial for U.S. carbon capture and sequestration efforts, a stated priority of the Obama administration and at least some environmental groups seeking to reduce CO2 emissions. Coal companies have also embraced CCS as part of their future.

In 2010, EPA created the Class VI designation under the Underground Injection Control Program specifically for CCS. However, the agency had yet to act on permit requests.

Yesterday afternoon EPA said it would take public comment on its proposal to issue several Class VI permits for the Department of Energy-backed FutureGen 2.0 project in Illinois.

The FutureGen Alliance, a public-private partnership, said in a statement, "The Alliance appreciates the hard work the agency has done to complete the draft permits and we look forward to the issuance of final permits which will allow us to keep this near-zero emissions project on track."

The EPA draft injection permits follow a DOE record of decision released earlier this year formally approving $1 billion in funding for FutureGen 2.0.

The venture involves retrofitting a coal power generating unit in Meredosia, Ill., to capture 90 percent of its greenhouse gas emissions. The gas would then be piped to injection wells.

Developers hope to inject more than 1 million metric tons of carbon dioxide every year for 20 years. That's equivalent to eliminating carbon emissions from more than 200,000 cars, EPA said.

"When finalized, the Class VI permits will allow for the permanent geologic sequestration -- capture and storage -- of carbon dioxide in a saline aquifer within the Mt. Simon sandstone formation" in the upper Mississippi Valley and lower Great Lakes region, FutureGen said.

EPA is accepting public comment on the draft permits until May 15. The agency is also holding a public hearing in Illinois, plus two question-and-answer sessions.

Archer Daniels Midland Co. is also waiting for an EPA Class VI injection permit for a DOE-backed project to capture emissions from an ethanol plant. ADM applied in 2011.

EPA critics have wondered whether the agency is truly committed to promoting carbon capture and sequestration. They cite delays in using the Class VI permits (*Greenwire*, Dec. 20, 2013).

Carbon capture advocates have also questioned a proposed guidance document meant to clarify the relationship between Class VI well permits for CO2 sequestration and Class II injection permits for enhanced oil recovery (*Greenwire*, March 3).

Advocates say that while well intentioned, the proposed guidance may end up increasing scrutiny of enhanced oil recovery, even though the practice is relatively common in the oil fields.

Beyond the permitting details, at least some CCS advocates worry that proposed rules to require carbon capture on all new coal-fired power plants will actually discourage the technology. EPA, however, says its intention is to push CCS deployment.

Correction: *EPA is accepting public comment on the draft permits until May 15. An earlier version of this story contained an incorrect end date.*

GREEN BUILDING:

Wood construction lowers GHG emissions, cuts fossil fuel use -- study

Amanda Peterka, E&E reporter

Published: Tuesday, April 1, 2014

Replacing steel and concrete with wood in building construction would reduce greenhouse gas emissions and reduce fossil fuel consumption, according to a new report led by Yale University.

The scientists found that up to 31 percent of carbon dioxide emissions and 19 percent of fossil fuel consumption related to steel and concrete construction could be avoided by using wood building materials.

"This study shows still another reason to appreciate forests," said Chadwick Oliver, director of the Global Institute of Sustainable Forestry at Yale School of Forestry and Environmental Studies and lead author of the report, in a statement yesterday.

The study comes as wood buildings, including skyscrapers, are becoming a more popular concept as concerns about climate change grow. The Agriculture Department last month announced the launch of a prize competition for high-rise wood architecture and a training program to support the use of wood in

buildings (*E&ENews PM*, March 18).

The researchers compared several scenarios, including leaving wood in forests and increasing harvests of forest materials to substitute building materials with wood products. They projected that annual wood harvests could be increased to the equivalent of 34 percent of total wood growth in the world; harvests are currently at about 20 percent of total wood growth.

The study found that more carbon dioxide is saved by replacing steel and concrete construction with wood through avoided emissions than is lost from the increased harvests.

The researchers also found that wood construction saves energy compared to concrete and steel construction. A wood floor consumes 80 megajoules of energy per square meter of floor, compared to 516 megajoules for steel and 290 megajoules for concrete of the same size, they said.

The results were published in the *Journal of Sustainable Forestry* and co-authored by researchers from the University of Washington. Funding for the study came from the Forest Service Forest Products Laboratory and undisclosed institutions and private donors.

NUCLEAR WASTE:

4 more workers exposed to radiation at N.M. repository -- DOE

Published: Tuesday, April 1, 2014

The Department of Energy now believes four additional workers were exposed to low levels of radiation after an accident earlier this year at the nation's only underground nuclear waste dump.

That brings the total to 21 workers thought to have been contaminated, although officials say they don't expect the workers to experience lasting health problems.

DOE also said it plans to send a crew of cleanup workers underground today for the first time since the initial accident at the Waste Isolation Pilot Plant near Carlsbad, N.M.

The team of eight waste experts will enter the former salt mine and set up bases it can use to explore the contaminated area in hopes of determining what caused the radiation release, the agency said (Associated Press, March 31). **-- SP**

URANIUM:

Cash-strapped USEC faces more financial woes

Published: Tuesday, April 1, 2014

A company that wants to build a uranium-enrichment plant in Ohio is facing financial woes as the latest of a number of government cash bundles that have kept the plant going for the past few years runs out on April 15.

The Maryland-based U.S. Enrichment Corp. is behind a federally funded research and development venture at the American Centrifuge Project in Piketon, Ohio, but it has already declared bankruptcy in Delaware to restructure its debt.

The company was originally a federally owned entity but was privatized in 1998.

Supporters say the plant should be funded for the sake of national security while critics say it's a waste of money.

Employees at the plant in Piketon have been warned of possible layoffs, even while the company assured bondholders it would not stop work in Ohio (Jessica Wehrman, *Columbus Dispatch*, April 1). **-- JL**

JAPAN:

Families trickle home as Fukushima exclusion lifted

Published: Tuesday, April 1, 2014

Residents of a town near the devastated Fukushima Daiichi nuclear power plant who evacuated in the wake of the 2011 tsunami, earthquake and meltdown face a difficult decision now that the area has been reopened.

The Miyakoji area of Tamura -- a city inland from the coastal power plant -- has 357 registered district residents and has been off-limits since March 2011.

While some residents are excited to return home, others are reluctant.

"Many of our friends and neighbors won't come back," said Kimiko Koyama, a 69-year-old resident. "There are no jobs. It's inconvenient, and young people are scared of radiation."

Miyakoji is the first area opened after cleanup efforts in the 12-mile Fukushima exclusion zone. The disaster forced the evacuation of more than 160,000 people, and a number of towns remain off-limits.

Hundreds of workers are involved in cleanup efforts across the prefecture, scraping topsoil, pruning leaves and tree branches, and rinsing off houses in a $30 billion cleanup of radioactive fallout. Deadlines aren't being met, and the long-term radiation reduction goal set by the previous administration isn't expected to be achieved (Mari Saito, Reuters, April 1). **-- JL**

EMISSIONS:

Former DOJ official Lorenzen discusses Obama strategy on methane

Published: Tuesday, April 1, 2014

Following last week's announcement by the Obama administration that it will explore the possibility of regulating methane emissions from the oil and gas sector, what are the potential impacts on states and industry if federal methane rules are implemented? During today's OnPoint, Thomas Lorenzen, a partner

at Dorsey & Whitney and the former assistant chief in the Environment and Natural Resources Division at the Department of Justice, discusses the significance of the interagency analysis and talks about the administration's next steps.

Click here to watch today's OnPoint.

ClimateWire -- Wed., April 2, 2014 -- **Read the full edition**

1. BUSINESS: Exxon Mobil asserts low-carbon regulations won't happen

In an unprecedented disclosure, Exxon Mobil Corp. told investors this week that it believes climate change poses a risk to its bottom line, but the firm made no gestures toward a future without oil and gas.

2. POLITICS: Climate change experts become an endangered species along the N.C. coast

Faced with the realities of a low-lying, constantly shifting shoreline, it's hard to find North Carolinians who deny the sea is rising. But for the state's coastal land-use planners, the real questions are: How quickly, and by how much?

TODAY'S STORIES

3. DROUGHT: Despite rains, snowpack reading in Calif. brings bad news

4. WATER: Most U.S. companies see water as a risk, but few spend money to reduce it -- report

5. DEFENSE: Hagel to highlight security threats of climate change at summit with Southeast Asian officials

6. NEGOTIATIONS: What may be first victim of sea-level rise hosts talks for sympathetic bloc

7. BIOFUELS: Will KiOR's heavy losses shake up the industry?

8. EMISSIONS: Review of air permits finds high pollution rates for biomass energy -- environmental group

9. WILDLIFE: Why some golden eagles avoid collisions with wind turbines and others don't

10. EMISSIONS: Methane-emitting microbe may have caused Earth's worst mass extinction

11. CARBON MARKETS: E.U. carbon prices jump after emissions decline slowed in 2013

12. SOCIETY: College classes teach climate change through arts

13. PEOPLE: Yeb Saño becomes the 'face' of a climate justice movement

EnergyWire -- Wed., April 2, 2014 -- **Read the full edition**

1. OIL AND GAS: Energy leaders wonder: Where's the economic recovery?

HOUSTON -- The oil and gas industry, along with downstream petrochemical manufacturers, is growing increasingly concerned over potential economic and business conditions over the next couple of years.

TOP STORIES

2. AIR EMISSIONS: Gas fumes sicken West Virginians, put spotlight on home-state driller

3. ELECTRICITY: Entergy CEO sees economic development role as Gulf Coast booms

4. SECURITY: Sparks fly when hackers hit industrial networks

THIS MORNING'S STORIES

5. EARTHQUAKES: Skeptical Texas officials plan hearings on quake-fracking link

6. ENFORCEMENT: Congressional drilling critics call on EPA to reopen pollution probes

7. PEOPLE: BP appoints new chief scientist to replace DOE nominee

8. ELECTRICITY: Utah exempts NSA facility from paying utility taxes

9. RENEWABLES: S.C. solar bill gets green light from Senate panel

10. WORKFORCE: Oil and gas businesses need to collaborate to stem skills crisis -- survey

11. FINANCE: Marcellus companies enjoy record-breaking IPOs

12. GAS EXPORTS: Russia's Gazprom raises gas prices on Ukraine after discount expires

13. OIL AND GAS: Winter cold drives up fracking sand prices

14. OIL: Global Partners facing $117K fine in Ore. for exceeding crude shipment cap

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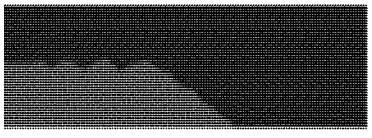

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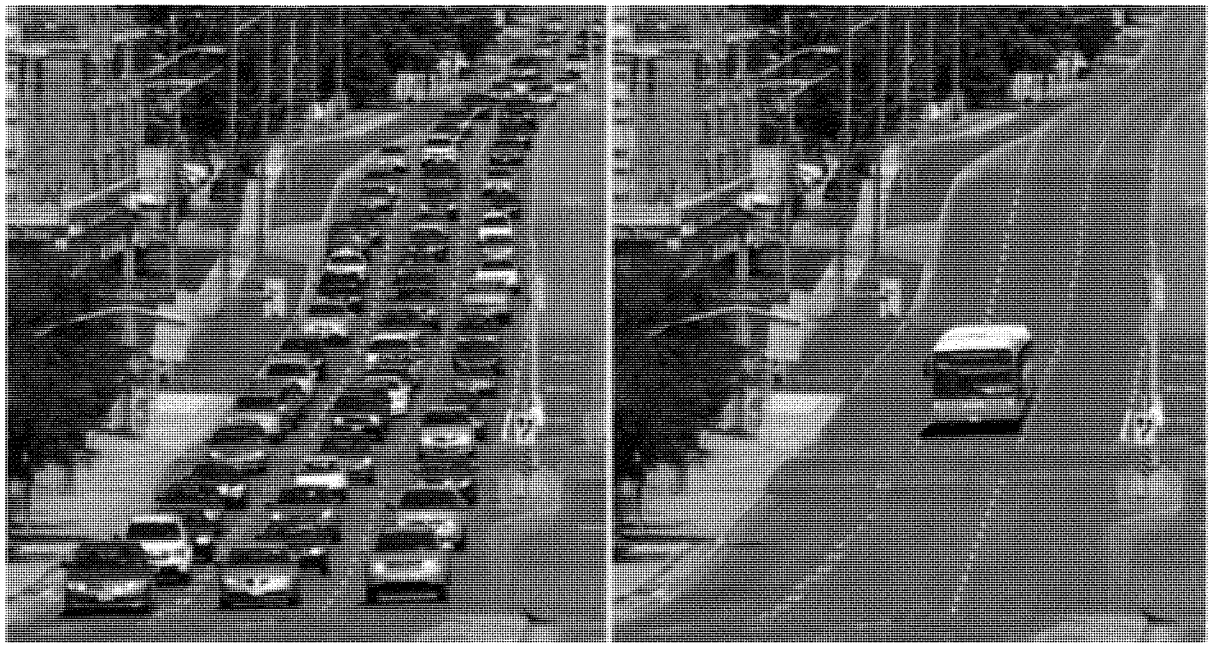
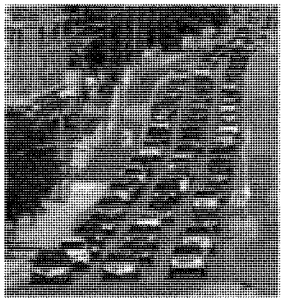
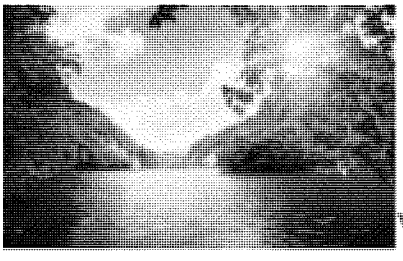




To: Allnutt, David[Allnutt.David@epa.gov]; Bogoshian, Matthew[Bogoshian.Matt@epa.gov]; Brown, Samuel[BROWN.SAMUEL@EPA.GOV]; Chester, Steven[Chester.Steven@epa.gov]; Cozad, David[Cozad.David@epa.gov]; Dierker, Carl[Dierker.Carl@epa.gov]; Dolph, Becky[Dolph.Becky@epa.gov]; Field, Stephen[Field.Stephen@epa.gov]; Frankenthaler, Douglas[Frankenthaler.Douglas@epa.gov]; Frey, Bert[frey.bertram@epa.gov]; Gable, Kelly[Gable.Kelly@epa.gov]; Giles-AA, Cynthia[Giles-AA.Cynthia@epa.gov]; Harrison, Ben[Harrison.Ben@epa.gov]; Helwig, Amanda[Helwig.Amanda@epa.gov]; Isales, Lydia[Isales.Lydia@epa.gov]; Jackson, Brooke-Sidney[Jackson.Brooke-Sidney@epa.gov]; Kaplan, Robert[kaplan.robert@epa.gov]; Mackey, Cyndy[Mackey.Cyndy@epa.gov]; Michaud, John[Michaud.John@epa.gov]; Morgan, Jeanette[Morgan.Jeanette@epa.gov]; Moyer, Robert[Moyer.Robert@epa.gov]; Mulkey, Marcia[Mulkey.Marcia@epa.gov]; Muller, Sheldon[Muller.Sheldon@epa.gov]; Murray, Suzanne[Murray.Suzanne@epa.gov]; Nalven, Heidi[Nalven.Heidi@epa.gov]; Rodrigues, Cecil[rodrigues.cecil@epa.gov]; Schaaf, Eric[Schaaf.Eric@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Shepherdson, Melanie[Shepherdson.Melanie@epa.gov]; Siegal, Tod[Siegal.Tod@epa.gov]; Starfield, Lawrence[Starfield.Lawrence@epa.gov]; Stern, Allyn[Stern.Allyn@epa.gov]; Theis, Joseph[Theis.Joseph@epa.gov]; Wade, Alexis[Wade.Alexis@epa.gov]; Walker, Mike[Walker.Mike@epa.gov]; Ward, W. Robert[Ward.Robert@epa.gov]; Yager, Scott[Yager.Scott@epa.gov]; OGC WLO[OGC_WLO@epa.gov]; Conger, Nick[Conger.Nick@epa.gov]; Schramm, Daniel[Schramm.Daniel@epa.gov]
From: Turley, Jennifer
Sent: Tue 4/1/2014 2:24:31 PM
Subject: Water Law News for April 1, 2014



Water Law News

for April 1, 2014

Bloomberg BNA **Daily Environment Report™**

Mining

More Than 77 Percent of Commenters Urged EPA to Protect Bristol Bay From Pollution

More than 850,000, or about 77 percent, of the roughly 1.1 million public comments submitted on the Environmental Protection Agency's draft assessments of potential mining impacts on salmon in Bristol Bay, Alaska, supported protection...

Water Pollution

Attorneys Say Sediment Ponds, Swales Might Be Classified as Federally Protected Waters

In its proposed rule on Clean Water Act jurisdiction, the Environmental Protection Agency may inadvertently be categorizing sediment-trapping ponds and stormwater-capturing grassy swales as waters of the United States, according to...

Water Pollution

District Court in New York Remands EPA Water Transfers Rule for Revision

A federal district court in New York has remanded to the Environmental Protection Agency for reconsideration a 2008 rule (40 C.F.R. 122.3(i)) stating that permits are not required for transfers of water from one body of water to another (Catskill...

Water Pollution

EPA to Hold Webinar on Proposal to Clarify Federal Jurisdiction Under Clean Water Act

The Environmental Protection Agency will hold a webinar April 7 to discuss the proposed rule that would clarify the scope of Clean Water Act jurisdiction over the nation's waters and wetlands....

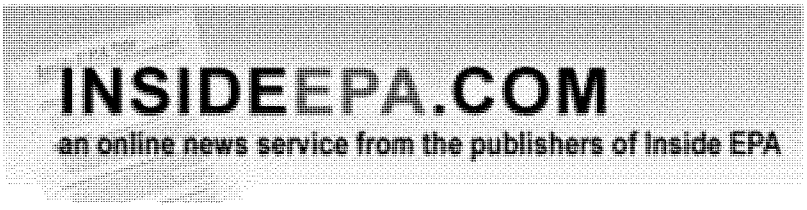
Water Resources

High Court Denies Review of Rule Identifying Alaska Navigable Waters as Public Lands

The U.S. Supreme Court on March 31 denied Alaska's petition for review of an appeals court decision upholding a 1999 rule that identifies which navigable waters constitute "public lands" under the Alaska National Interest Lands...

CORRECTION

An article in the March 28 report about the Chemical Safety and Drinking Water Protection Act (S. 1961) introduced by Sen. Joe Manchin (D-W.Va.) implied the bill would impose new federal construction, leak protection and inspection standards...



Inside EPA's **Risk Policy Report**, 04/01/2014

http://insideepa.com/Risk-Policy-Report/Risk-Policy-Report-04/01/2014/menu-id-130.html

Advocates Advance Novel Suits On Clean Water Permits For Coal Trains

Environmentalists are weighing whether to consolidate two novel cases testing whether train cars carrying coal and other pollutants are subject to Clean Water Act (CWA) discharge permits because they are "point sources" of pollution, litigation they hope will help them curb industry plans to construct new coal export terminals in the Pacific Northwest.

Judge Vacates EPA's Water Transfer Rule, Opening Door To Permit Mandate

In a stinging decision, a federal judge has overturned EPA's rule exempting some water transfers from Clean Water Act (CWA) permit requirements because the agency misinterpreted the law's requirements, a ruling that if not stayed could require new and ongoing transfer operations to seek permits or face enforcement actions.

Despite State Fears, Key Senators Back SDWA For New EPA Spill Program

Democratic senators on the environment committee are poised to mark up a bill later this week creating a new EPA drinking water law program governing chemical releases from above ground storage tanks,

despite fears from state drinking water regulators that they lack the resources and expertise to implement the bill's mandates, sources say.

Latest Blogs

SAB Panel Poised To Weigh Key CWA Jurisdiction Study

EPA has scheduled two calls this spring for its Science Advisory Board (SAB) panel to discuss its draft recommendations for improving EPA's draft study of . . .

Greenwire

WATER POLICY:

Judge sends controversial transfer rule back to EPA

Annie Snider and Jeremy P. Jacobs, E&E reporters

Published: Monday, March 31, 2014

A federal judge on Friday sent U.S. EPA's controversial "water transfer" rule back to the agency to reconsider, holding that the agency overstepped its legal authority.

EPA's 2008 rule exempted government agency transfers between different bodies of water -- if they didn't involve industrial, municipal or commercial use -- from obtaining a national discharge permit.

The rule has been supported by municipalities and regulators in South Florida and New York City, which rely on pumping to provide their residents with water. Subjecting such transfers to the permitting process could prove complicated and costly, they say.

The rule has been criticized and challenged by environmental groups such as the Sierra Club and Friends of the Everglades, however, which say it allows dirty water to enter public drinking water supplies.

U.S. District Judge Kenneth Karas of the Southern District of New York ruled that EPA's "justification does not hold water."

The case centers on the sticky legal issue of what constitutes "navigable waters" under the Clean Water Act. EPA has periodically sought to provide more clarity on the issue, including a proposal last week that would bring nearly all rivers, streams and the wetlands under the law's protection (*Greenwire*, March 25).

Under the Clean Water Act, any discharge of pollutants into a navigable body of water requires a permit. Environmental groups argue that water getting piped or conveyed from one jurisdictional body of water into another constitutes a discharge and should require a permit. To justify its exemption under its 2008

rule, EPA argued that the water being conveyed through pipes or canals that clearly aren't navigable would still retain the "status" of navigable waters, thus suggesting that the movement of waters isn't actually adding pollutants to navigable waters.

Karas argued that this interpretation served to broaden the definition of navigable waters beyond what previous courts have upheld. He based most of his decision on the Supreme Court's 2006 decision in *Rapanos v. United States*. The case dealt with what qualifies as a "navigable water," and a majority of the justices were unable to agree on a definition.

Justice Anthony Kennedy, writing a concurring opinion, held that EPA has limited authority to expand the scope of whether something qualifies as a "navigable water" in broad terms. He argued that there is a "requirement that the word 'navigable' in 'navigable waters' be given some importance."

Karas said EPA's water transfer rule "goes beyond those limits." Kennedy's opinion, he said, would prohibit a "blanket determination that these conveyances, in general, constitute 'navigable waters.'"

He remanded the rule back to the agency to reconsider.

The ruling is significant because EPA's new rulemaking on Clean Water Act jurisdiction is likely to be challenged by agricultural and other industry interests. EPA also may appeal Karas' ruling to the 2nd U.S. Circuit Court of Appeals.

Environmental groups heralded the decision.

"It's well-established by now that a city can't just dump sewage into a river -- they've got to clean it first," said Earthjustice attorney David Guest. "The same principle applies here with water pumped from contaminated drainage canals."

Florida groups challenged the rule because of "backpumping" that has for years sent polluted water from agricultural fields into Lake Okeechobee. That lake, at the north end of the Everglades, has been overwhelmed with nutrient pollution that spawns massive algal blooms in the region.

Click here for the ruling.

OCEANS:

U.N. court bans Japanese whaling

Published: Monday, March 31, 2014

A U.N. court today ruled that Japan must halt whaling operations in the Antarctic.

Japan has long claimed it harvested whales for scientific research rather than for human consumption. But the International Court of Justice today sided with plaintiff Australia when it ruled that Japan's practice of examining the whales for research before selling the meat to customers didn't justify the number of whales killed.

"In light of the fact the JARPA II [research program] has been going on since 2005 and has involved the killing of about 3,600 minke whales, the scientific output to date appears limited," a presiding judge said.

Japan has harvested up to 850 minke whales and smaller numbers of fin and humpback whales in the Southern Ocean since 2005, saying the practice falls in line with a 1946 treaty that allows killing for research.

Australia argued that the two peer-reviewed papers that have been released since 2005 based on results obtained from nine harvested whales didn't justify the number of killings (Thomas Escritt, Reuters, March 31). **-- JL**

OCEANS:

Trash complicates search for missing flight

Published: Monday, March 31, 2014

The search for debris from Malaysia Airlines Flight 370 has been complicated by a broad environmental problem: ocean garbage.

As teams continue combing the Indian Ocean for signs of the missing jet -- which disappeared on March 8 with 239 people on board -- searchers say they keep spotting potential crash items, only to discover that the flotsam is actually trash.

"You sight these search objects, and think you've made a breakthrough, and then you" realize it's garbage, said New Zealand Wing Cmdr. Andy Scott, who led a search for Flight 370 on Saturday.

The frustration among rescue workers underscores a pollution crisis in the world's oceans, said Denise Hardesty, a research scientist at the Australian science agency CSIRO.

Hardesty estimates there are between 5,000 and 7,000 small pieces of plastic per square kilometer in the waters around Australia alone.

"It takes 400 or 500 years for lots of types of plastics to completely break down," Hardesty said. "It just goes into smaller and smaller bits. You even find plastics in plankton -- that's how small it gets."

Flight 370's presumed location in the Indian Ocean is on the edge of a massive garbage dump, according to Charles Moore, an environmentalist known for drawing attention to a similar ocean trash heap known as the Great Pacific Garbage Patch.

"It's like a toilet bowl that swirls but doesn't flush," Moore said (Nick Perry, Associated Press, March 31). **-- DB**

OIL AND GAS:

Tar balls from Houston spill wash up 200

miles away

Published: Monday, March 31, 2014

Oil from last week's Galveston Bay spill in Texas has washed up on the shores of Mustang Island State Park, nearly 200 miles from the original spill site.

A Coast Guard lieutenant confirmed that crews yesterday were sent to the island to clean up beaches.

"The tar balls are about the size of a quarter up to 3 inches," said Lt. Tyrone Conner.

The barrier island, near Corpus Christi, Texas, is a popular camping and swimming destination and a sensitive ecosystem that hosts nesting grounds for shorebirds and turtles. Experts hadn't expected spill sludge to arrive until later this week.

Federal and state officials said they were tracking the movements of the nearly 170,000 gallons of fuel that spilled after a ship collided with a barge March 22.

Conner said a joint command for oil spill response and cleanup made up of the Coast Guard and the Texas General Land Office was awaiting further directions from the National Oceanic and Atmospheric Administration as the agency tracked oil movements (Fraser/Horswell, *Houston Chronicle*, March 30). -- **JL**

OIL AND GAS:

Cleanup crews find no more contamination in Lake Michigan spill

Published: Monday, March 31, 2014

Search teams checking an area of Lake Michigan yesterday were unable to find any more oil in the water, officials said.

Workers from the Coast Guard, BP PLC and U.S. EPA canvassed the area of water near BP's Whiting, Ind., refinery, where oil spilled last week, but they couldn't find any more oil after a cleanup effort removed the substance from a half-mile section of shoreline.

As a result, the Coast Guard said it would allow BP to remove most of the containment boom it installed in the lake about 20 miles southeast of downtown Chicago.

About 15 to 39 barrels of oil escaped from the refinery March 24 when equipment malfunctioned, BP estimates (Associated Press, March 31). -- **SP**

WATER POLLUTION:

Company touts government grants to use acid mine drainage for fracking

Manuel Quiñones, E&E reporter

Published: Monday, March 31, 2014

A unit of Battelle Memorial Institute, the well-known nonprofit science and technology company, is touting new government grants that will allow it to increase the use of polluted water spewing out of coal mines for hydraulic fracturing operations.

Lawmakers and regulators in Pennsylvania have been wanting to encourage oil and gas drillers to use at least some of the 300 million gallons of often smelly and discolored water that comes out of flooded abandoned mines.

Last year, the Pennsylvania Department of Environmental Protection released a final white paper aimed at helping companies navigate bureaucratic, permitting and liability issues. As a result, the practice is beginning to take off.

Winner Water Services Inc., a Battelle venture, earlier this month announced receiving a $1.2 million grant from the Department of Energy and another $500,000 from the Pennsylvania Department of Community and Economic Development to treat polluted mine water at a Butler County, Pa., site and then use it in the fracking process.

"The first year is critical for us," said WWS CEO John Ontiveros, stressing the need to prove the technology and its long-term market viability.

"After that," he said in an interview, "we're looking at places in northeast Pennsylvania where they have a lot of abandoned mines and some challenges getting water."

Battelle and Winner Water Services, which markets itself as a leader in providing water for frac jobs, tried out their so-called HydroFlex water treatment technology at a pilot site in Johnstown, Pa., in 2008.

"We've developed an extractant that removes the iron and the sulfates," creating water that is cleaner but still below drinking standards, said Ontiveros. "And then we remove those contaminants and recycle the extractant."

But cost concerns kept the technology from taking off. Despite the magnitude of the acid mine drainage problem in the Keystone State, scarce federal and state funds have communities looking for the cheapest treatment options, often using limestone and settling ponds.

They also face liability issues. Even nonprofits worry that cleaning water from abandoned mines means regulators will make them responsible for the site or any further problems.

The growth of fracking, a water-hungry enterprise, plus the white paper addressing liability concerns, is allowing companies to make money from treating polluted water and selling it for frac jobs.

"We're one of the pioneers," said Ontiveros. "We may not provide [water for] the entire frac [job], but we may be one of the multiple sources that provide the water."

The practice is called a win-win because acid mine drainage often goes untreated and fracking operations don't necessarily need clean water. Seneca Resources Corp., an energy firm, has also boasted using coal mine-impaired water for hydraulic fracturing.

"We hope it gets huge," Ontiveros said, noting that he is in talks with potential users in places like Colorado. "This technology is adaptable."

In a separate development, a peer-reviewed study published late last year in the journal *Environmental Science and Technology* suggested that acid mine drainage could help remove radioactive pollutants from hydraulic fracturing wastewater.

The practice of using mine wastewater in fracking is not without controversy, however. Environmental groups have protested Pennsylvania legislation meant to add further liability protections to companies wanting to use mine water for fracking (*EnergyWire*, Jan. 21).

Those environmental groups worry about letting polluters off the hook and about further damaging the environment by taking impaired water from one location and injecting it in another.

"The activities that would occur as a result of the enactment of SB411 are far-reaching and require comprehensive analysis and yet the General Assembly has not conducted any study or analyses of the potential impacts," groups told lawmakers in a letter. "This is a consequential mistake that must be avoided."

WATER POLICY:

EPA advisory group schedules 2 public calls on Clean Water Act science report

Annie Snider, E&E reporter

Published: Monday, March 31, 2014

Researchers reviewing a key U.S. EPA report on the scientific underpinnings of the major Clean Water Act regulation announced by the Obama administration last week have scheduled two public conference calls on their work.

EPA's Science Advisory Board review panel will hold teleconference calls with the public to discuss its draft review on April 28 and May 2, according to a notice to be published in tomorrow's *Federal Register*.

EPA released the scientific report, "Connectivity of Streams and Wetlands to Downstream Waters," last fall when it announced its plans to promulgate a rule aimed at clarifying which streams, creeks, bogs and marshes fall under the jurisdiction of the 1972 law following two muddled Supreme Court decisions (*Greenwire*, Sept. 24, 2013). The report is a synthesis of previous peer-reviewed scientific studies.

It found that streams, regardless of how infrequently they flow, have important effects on downstream

waters. They transport sediment, provide habitat and absorb nutrients that would otherwise pollute larger waterways. It also concluded that wetlands and other waters in floodplains of streams and rivers "strongly influence" downstream waters in similar ways.

But the survey didn't find enough information to make general conclusions about wetlands located farther away from rivers and streams. Environmentalists argue that at least some regions of geographically isolated wetlands, such as those in the Prairie Potholes region of the northern Great Plains, should qualify for protection. They have urged the scientific review panel to give this issue greater attention.

EPA officials have said the regulation announced last week, which would increase the number of small streams and nearby wetlands that automatically qualify for protection, will not be finalized until the scientific review is complete (*Greenwire*, March 25).

Industry groups and GOP members of Congress, however, have faulted the Obama administration for beginning the rulemaking process before the scientific review is complete.

They have also argued against the agency's method of aggregating waters -- for instance, looking at multiple small streams within the same watershed -- in order to show a significant connection between what happens in them and what happens in larger, downstream waters (*Greenwire*, Nov. 8, 2013).

The Science Advisory Board's review panel held a face-to-face, public meeting in Washington, D.C., in December. Its draft report has yet to be released.

Click here for more information on the teleconference calls.

WATER POLLUTION:

After spill, W.Va. residents remain cautious of tap water

Published: Monday, March 31, 2014

Months after a chemical leak fouled the water of more than 300,000 West Virginia residents, many remain cautious about drinking tap water, even though state officials say they no longer have reason to fear a foul-smelling contaminant.

Scott McMillion, of Charleston, W.Va., and his family now use their tap water only for flushing the toilet. He's teaching others to capture rainwater for use as a drinking source and founded a group called Charleston Rain Catchers.

McMillion is among many who say that, even though the state lifted a ban on drinking water on Jan. 13, they still suspect the water may cause health issues. Others are careful to ask when dining out what water source was used to prepare their food.

"My family's concern is that there doesn't seem to be hard science to tell us what long-term effects there are to this chemical exposure," McMillion said (Sarah Plummer, AP/*Denver Post*, March 30). -- **SP**

1. LAW: U.N. branch prepares to codify shipping rules in polar regions

Before the MS Explorer sank off the coast of Antarctica seven years ago, passengers fled the ship in inflatable lifeboats in a scene reminiscent of the Titanic disaster. Incidents like these -- while not causing casualties -- are the types of disasters the International Maritime Organization wants to prevent with the final draft of the "polar code," which if enacted would be the first comprehensive mandatory rules for commercial ships in polar regions.

2. CALIFORNIA: Promotion of cap-and-trade money for residents downplays looming higher electricity rates

California leaders yesterday trumpeted news that consumers in the state soon would be receiving electricity bill credits "thanks to a state program to fight climate change by reducing greenhouse gas emissions." Their release didn't mention a related development: higher electricity rates.

TODAY'S STORIES

3. WIND: 4 governors sign letter urging renewal of wind production tax credit

4. BUSINESS: Climate change risks outweigh opportunities, companies say

5. CARBON CAPTURE: EPA issues first-ever CO2 injection permits

6. NEGOTIATIONS: 'Tale of two futures' begins to resonate among world leaders

7. OCEANS: As pink salmon dominate in northern ocean, birds feel effects

8. AGRICULTURE: How taking a pass on a cheeseburger could help fight climate change

9. SCIENCE: Dirt could boost understanding of climate change

10. RENEWABLE ENERGY: Mexican energy overhaul could boost cross-border wind power

11. AGRICULTURE: Iowa farmers discuss effects of climate change on agriculture

12. ADAPTATION: Researchers develop card game to teach climate resiliency

E&ETV's OnPoint

13. EMISSIONS: Former DOJ official Lorenzen discusses Obama strategy on methane

EnergyWire -- Tue., April 1, 2014 -- **Read the full edition**

1. LNG: Dow's peculiar position in spotlight as export debate rages on

Dow Chemical Co.'s position as one of the country's most outspoken opponents of unfettered exports of domestic natural gas overseas wouldn't be so curious but for one thing.

2. CLIMATE: Exxon Mobil doubts new policies will disrupt oil and gas market

Exxon Mobil Corp. believes climate policy is "highly unlikely" to keep its oil and gas reserves from selling in the next three decades.

TOP STORIES

3. ELECTRICITY: Colo. utility plans nation's first energy rebates for marijuana growers

4. CLIMATE: EPA plans certification system for companies that reduce methane emissions

5. RENEWABLES: S.C. takes 'deliberate' steps toward solar

THIS MORNING'S STORIES

6. ELECTRICITY: Energy Future delays annual filing as reorganization looms

7. ENERGY POLICY: Ohio's Kasich undecided on bill to suspend efficiency, renewables mandates

8. PEOPLE: Wyo. oil and gas head resigns after short tenure

9. NATURAL GAS: China's shale forecast suddenly gets sunnier

10. FINANCE: Private equity group places billion-dollar bet on conventional gas

11. BUSINESS: Regulations overshadow energy executives' optimism for 2014 -- survey

12. NEWSMAKER: 35-year-old becomes CEO of Ukraine's gas monopoly

13. OFFSHORE DRILLING: First Chinese deepwater natural gas operation starts pumping

14. UTILITIES: Fla. Legislature heavily influenced by power sellers -- report

15. NATURAL GAS: Explosion near LNG tank in Wash. draws fire from gas critics

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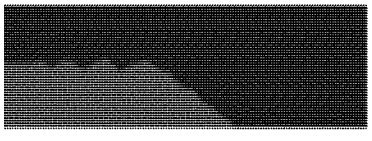

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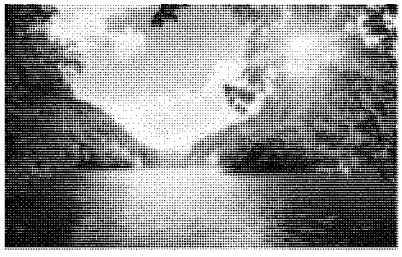

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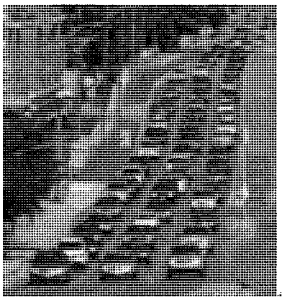


Air & Radiation Law News

for March 31, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Conclusory Opinions by Three Experts Nixed In Lawsuits Over Pollution at Power Plant

Expert testimony on whether airborne emissions from a coal-fired electric generating facility violated the Pennsylvania Air Pollution Control Act must be excluded because the opinions offered legal conclusions, the U.S. District Court...

Air Pollution

EPA Proposed Standards for Wood Heaters Would Increase Heating Costs, Senators Say

Senators from Maine and South Dakota say the Environmental Protection Agency's proposal to clean up the next generation of wood stoves and heaters would increase heating costs for consumers....

Climate Change

EPA Urged to Stay Within Air Act Authority In Regulating Existing Power Plant Emissions

The Environmental Protection Agency needs to stay squarely within its legal authority under Clean Air Act Section 111(d) in regulating greenhouse gas emissions from existing power plants, Robert Wyman, an attorney at Latham & Watkins...

Climate Change

Methane Plan Calls for EPA to Evaluate Controls It Once Deemed Unnecessary

A White House plan that requires the Environmental Protection Agency to consider ways to further reduce methane emissions from oil and natural gas wells represents a policy reversal for the agency, which had previously argued direct regulation...

Climate Change

Obama Issues Plan to Cut Landfill Methane, Defers Decision on Oil, Gas Sector Emissions

The White House unveiled a strategy March 28 to cut U.S. methane emissions, a potent greenhouse gas, that will include limits for new landfills and coal mines operating on public lands....

Climate Change

Swiss Re Says Losses From Disasters Decreased

Global economic losses from natural catastrophes and man-made disasters totaled $140 billion in 2013, down from $196 billion the year before and well below the 10-year average of $190 billion, according to an analysis by reinsurance firm...

Climate Change

West Coast States, British Columbia Believe Pact Will Boost Impacts of Individual Efforts

An agreement signed in October 2013 by the governors of California, Oregon and Washington and the leader of British Columbia to collaborate on climate policies could produce a consistent fueling infrastructure for electric vehicles on the...

Energy

Administration Still 'Committed to Biofuels'
Despite Proposed Reduction, McCarthy Says

The Obama administration "remains committed to biofuels" despite a proposed rule that would roll back the biofuel mandates in the Environmental Protection Agency's 2014 renewable fuel standard, Administrator Gina McCarthy...

Energy

FTC Proposes Changes to Fuel Rating Rule

The Federal Trade Commission is proposing changes to its fuel rating rule, which determines the fuel rating that appears on fuel pump labels, sets how octane levels are calculated and helps to inform consumers about proper fuel for their vehicles....

Energy

Musk Joins Designer Westwood in Taking
'Crowdfunding' to Clean Energy Development

E-commerce visionary Elon Musk and British punk-fashionista Vivienne Westwood see eye to eye on a new wave in clean energy: You need to find investors online....

Energy

Renewable Energy Credit Extension
Is Not Automatic, Rep. Levin Says

An extension of the renewable energy production tax credit isn't "automatically a given," Rep. Sandy Levin (D-Mich.), the top Democrat on the House Ways and Means Committee, told a forum held by the American Council on Renewable...

Energy

Southern Co. Agrees to Investors' Request
For Report on Renewable Energy Investments

Southern Co. has agreed with shareholders to report on how the historically coal-focused utility is investing in renewable energy....

Energy

Toronto-Dominion Bank to Sell Bonds Tied to Funding Environmental Initiatives

Toronto-Dominion Bank said it is the first Canadian commercial lender to sell a so-called green bond, offering a C$500 million ($454 million) debt security tied to funding environmental initiatives....

Enforcement

Consent Decree Requires Processor To Pay Fine, Convert Boilers to Gas

An Iowa court has issued a consent decree that will require Grain Processing Corp. of Muscatine, Iowa, to pay a civil penalty of $1.5 million to resolve allegations that it emitted excess amounts of particulate matter and sulfur dioxide (Iowa...

Enforcement

Senate Judiciary Votes to Advance Nominee For Justice Department Environmental Post

The Senate Judiciary Committee voted March 27 to advance John Cruden's nomination to be assistant attorney general for environment and natural resources. ...

Impact Statements

Interior Issues Draft Impact Statement On Power Plant, Mine Project in New Mexico

The Office of Surface Mining Reclamation and Enforcement issued a draft environmental impact statement March 28 for the Four Corners Power Plant and Navajo Mine Energy Project in northwestern New Mexico (79 Fed. Reg. 17,569)....

Pipeline Safety

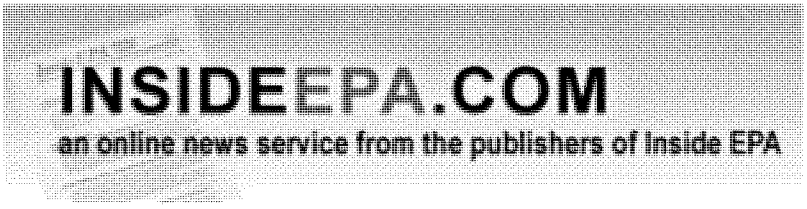
PG&E Expects to Face Criminal Charges For San Bruno Pipe Explosion in California

PG&E Corp., owner of California's largest utility, said it expects to face criminal charges for the 2010 explosion of one of its natural gas pipelines that killed eight people in San Bruno....

Transportation

Highway, Transit Agencies Issue Guidance On MAP-21 Financial Penalty Provision

Federal highway and transit agencies have issued guidance spelling out how they will implement a transportation law provision that would impose, for the first time, financial penalties on federal environmental review agencies for delays...



EPA To Review Options For Regulating Oil And Gas Methane Emissions

EPA is launching a formal review of oil and gas industry sources of the greenhouse gas (GHG) methane to help it decide by this fall on how to best control such releases, a key part of President Obama's just-released plan to curb methane emissions and which could result in first-time regulations of the pollutant for the energy sector.

CASAC Eyes Stricter Ozone Limit As Critics Raise Legal Doubts On Review

EPA Clean Air Scientific Advisory Committee (CASAC) members appear to be supporting a tightening of the existing ozone ambient air standard of 75 parts per billion (ppb) to an unspecified limit below 70 ppb, though GOP and industry critics of a stricter level are raising legal doubts over the process of CASAC's ozone review.

Environmentalists Seek Broad Court Remand Of EPA Combustion Air Rules

Environmentalists are urging a federal appeals court to grant a broad remand of EPA's boiler and incinerator emissions rules and require the agency to take notice and comment on a host of provisions that relied on a controversial statistical approach the court has doubted, pushing back on the agency' bid for a much narrower remand.

Latest Blogs

EPA Issues Kraft Pulp Mill NSPS

EPA has issued final revisions to its new source performance standards (NSPS) for kraft paper pulp mills largely mirroring a proposed version of the rule . . .

Greenwire

CLIMATE:

Methane guidance shows EPA mulling sweeping new petroleum regulations

Jean Chemnick, E&E reporter

Published: Friday, March 28, 2014

The entire natural gas system could be subject to new U.S. EPA regulations under the White House interagency guidance on methane released today.

The 15-page document, which was called for under the president's Climate Action Plan last year, instructs the agency to consider regulating the potent short-lived greenhouse gas at each of five stops along the natural gas supply chain. Opportunities for future rules include hydraulically fractured wells that produce oil along with gas, leaky production and transportation infrastructure, pneumatic devices, compressor stations and liquid unloading -- the devises that keep oil and gas flowing from the wellhead.

EPA has previously said it will release white papers to assess opportunities for methane reduction in each of these areas.

Those papers will be released this spring and will undergo independent technical review and public comment. The agency will then announce this fall whether it will move forward with any new regulatory actions in any of these areas. If it does, today's guidance commits the agency to finalize those rules by the end of 2016 -- before Obama's second term draws to a close.

White House energy and climate adviser Dan Utech, who lead the interagency task force that produced the guidance, said EPA will take steps to ratchet down methane from oil and natural gas regardless of whether it decides to develop regulations.

"We know that there are a lot of cost-effective reductions that are available out there," Utech said on a call with reporters.

The oil and gas rules are likely to draw more fire than any other aspect of the White House's methane plan, which includes actions by the Departments of Agriculture, Energy, Interior, Labor and Transportation, as well as EPA.

Industry has said that Clean Air Act regulations are unnecessary because escaped methane is bad for their bottom line. Methane is the largest component of gas.

But environmentalists have pushed for EPA to promulgate rules under Section 111(d) of the act for methane released in gas production, transportation and processing.

The guidance states that EPA will consider promulgating rules under Section 111 and Section 182 of the Clean Air Act. Both sections of the law would require the agency to put forward a technical standard to reduce emissions that states would implement, but environmentalists see a significant difference between the two.

"Our view is that a methane strategy under 111 would be much more effective," said David Doniger of the Natural Resources Defense Council.

Where Section 111(d) would target methane directly, Section 182 would focus on smog and only capture the greenhouse gas as a "bycatch." Doniger said this would mean methane would only be reduced in areas that are out of attainment for ozone. Petroleum producers in Los Angeles would be regulated, but hydraulic fracturing operations on the Bakken Shale oil field might not be.

While the oil and gas rules are likely to get top billing, the guidance also commits EPA to propose an updated standard this summer for methane from new landfills and to consider revisions to an existing landfill methane rule. The document also summarizes new and existing actions agencies will take to rein in emissions from coal mines and agriculture, and steps they will take to improve data on methane release.

The document announces a new collaboration between DOE, USDA and EPA to find voluntary opportunities to reduce emissions from the dairy industry, to be unveiled in June. It also calls for an expansion of the voluntary Natural Gas STAR program.

Utech said on the call that the guidance would make an important contribution to the administration's goal of reducing overall U.S. greenhouse gas emissions by 17 percent below 2005 levels by 2020. The guidance comes as EPA moves ahead with CO2 rules for new and existing power plants -- and after White House announcements earlier this year on climate resilience and data sharing.

"While no single step can reverse the effects of climate change, we have a moral obligation to our kids to leave them a planet that's not damaged," he said. "The release of this strategy gets us one step closer to achieving that."

NATURAL GAS:

DOE advisers recommend full disclosure with 'few, if any' exemptions for fracking fluid

Katherine Ling, E&E reporter

Published: Friday, March 28, 2014

There should be very few trade secret exemptions to full public disclosure for companies participating in a hydraulic fracturing chemicals registry, according to a report approved today by leading energy experts

who advise the secretary of Energy.

The Secretary of Energy Advisory Board (SEAB) voted to support the recommendations of a task force report on the next steps for FracFocus, a chemical registry website created based on a previous SEAB task force recommendation in 2011.

The task force's recommendations included "full disclosure of all known constituents added to fracturing fluid with few, if any exceptions"; a defined process for determining and objecting to the trade secret exemption; an outside audit to verify the disclosure system; a stable funding source for the program; and improved data entry, storage and retention so that system is more user-friendly for industry, communities and regulators (*E&ENews PM*, March 5).

John Deutch, the task force chairman, said at the meeting at Energy Department headquarters in Washington, D.C., that all 10 members of the task force favored full disclosure for fracking, noting "this is not a minor remark to have members of this task force to go from deep light blue to heavily dark red in terms of review."

The task force includes Ram Shenoy, chief technology officer of ConocoPhillips Co.; Frances Beinecke, president of the Natural Resources Defense Council; Stephen Holditch, professor of petroleum engineering at Texas A&M; Daniel Yergin, vice chairman of IHS and founder of IHS Cambridge Energy Research Associates; and Fred Krupp, president of the Environmental Defense Fund, who is a nonboard member of the team. The task force was created after a request from Sen. Ron Wyden (D-Ore.), the former chairman of the Energy and Natural Resources Committee.

FracFocus has been upheld by the industry as the answer to calls for drilling transparency, and it has been the basis of much of the fracking fluid disclosure requirements currently adopted in more than 20 states with more than half requiring companies to report on FracFocus. It is also being proposed as the foundation for the Obama administration's disclosure requirements for fracking on federal lands.

Environmentalists and other stakeholders have criticized the website for being too opaque, however, because of the number of trade secret exemptions allowed.

Deutch emphasized that companies' intellectual property would not be compromised if there were a "systems approach" to reporting, where chemicals were listed but "additive names and product names" or how they are used were not disclosed.

"My favorite example is Julia Child," Deutch explained. "If you know what Julia Child bought at the supermarket, you don't really know just what Julia Child is making" in the kitchen.

He also said since FracFocus 2.0 began last summer, about 84 percent of the almost 63,000 wells registered have invoked a trade secret for at least one chemical but a random sample of company internal records do not match these same incidences of use of this same "secret" chemical. These discrepancies should be examined and may shed light on overuse of the trade secret exemption, Deutch said.

"It is a balance," Deutch said, adding he does not consider the trade secret issue a "trivial matter." But the importance of public confidence and the benefits of answering the public's concerns about the nature of the chemicals used in fracking outweigh the possible intellectual property costs to the companies, he said.

Or, as the report said: "The public is clearly concerned about the nature of the chemicals used in hydraulic fracturing. It is much to industry's advantage to meet this concern."

The report also recommends that a company disclose an analysis or the source for 90 percent of the fracking fluid that is "water," which was previously fresh water but is increasingly recycled fracking fluid.

The report will be sent to Energy Secretary Ernest Moniz as recommendations supported by SEAB, but SEAB's duties are solely advisory in nature.

Click here to read the report.

ELECTRIC VEHICLES:

N.Y. may follow N.J. to freeze out Tesla direct sales

Colin Sullivan, E&E reporter

Published: Friday, March 28, 2014

NEW YORK -- Tesla Motors has run into a brick wall in the Northeast that may jeopardize its ability to sell electric vehicles directly to consumers in one of the country's wealthiest car markets.

The much-hyped Silicon Valley automaker has encountered a daunting problem in the region: Car dealers in New York and New Jersey don't think much of Tesla's direct-sales strategy and want to retain their middleman status between manufacturers and buyers.

In New Jersey, Gov. Chris Christie (R) recently stepped in to direct state regulators at the New Jersey Motor Vehicle Commission to enforce a law on the books that apparently prevents direct sales of new cars. Up the Hudson River in Albany, legislation is on the move, from a group of Democrats in the state Assembly, that would codify the same dynamic, and Gov. Andrew Cuomo (D) has vowed to sign the bill if it survives to his desk.

Other states, including Maryland, Arizona, Texas and Virginia, have taken similar steps to protect car franchises, though Arizona may rescind its law in an attempt to lure Tesla to locate a battery manufacturing plant within its borders. In those states, a consumer can view a Tesla-made car in stores but would be unable to haggle over price, test-drive the car or even buy it directly from the showroom.

The reason? Journalist A. Barton Hinkle had this to say in an op-ed posted at *Reason.com*: "If Tesla succeeds in challenging the franchise model, other car makers might do the same, and then dealerships would be in for a world of hurt. They would still make money, but probably nowhere near as much as they do now."

The *New York Times* made much the same point yesterday in an editorial in support of striking down such laws.

"The fight with Tesla is not really about this niche company, which expects to sell just 35,000 cars this year," the *Times* said. "The dealers are afraid that if Tesla is allowed to sell directly to consumers, General Motors, Ford and other carmakers might be emboldened to do so as well."

Another factor, said a source close to New York politics, is that car dealers tend to make money on repairs, not sales, but if they're not involved on the sales end, drivers in need of a mechanic might go elsewhere.

"They want first crack at the repairs, it's that simple," this source said, asking not to be identified by name.

Tesla CEO Elon Musk, never shy about public engagement, has gotten into the mix with a lengthy note on the company's blog defending direct sales and attacking franchise monopolies. His comments came after failed negotiations with New Jersey over a deal that would have let him operate in the state on his own terms. Musk said Christie strong-armed the motor vehicle agency after deciding against putting the issue before the state Legislature.

"When it became apparent to the auto dealer lobby that this approach would not succeed, they cut a backroom deal with the governor to circumvent the legislative process and pass a regulation that is fundamentally contrary to the intent of the law," Musk wrote in the blog.

Musk went on to discuss the policy history of such laws, which he said are on the books only because franchises in another era needed protection from big auto companies looking to buy back independent dealerships established to create a sales force at low prices.

"In most states, the laws are reasonable and clear," he said. "In a handful of states, the laws were written in an overzealous or ambiguous manner."

Musk added that other electric-car startups, including Fisker and Coda, attempted to use the traditional car dealer arrangement and failed. He also took a shot at repair shops run by dealerships, saying overcharging "is rampant within the industry and happened to me personally on several occasions when I drove gasoline cars." He then urged interested New Jersey buyers to visit showrooms but then hop "just over the river in [Manhattan] or our King of Prussia store near Philadelphia" if they want to put some money down on a vehicle.

Christie, for his part, insists it's not his fault the law says what it says and denies he made any promises to Musk. A Christie spokesman recently told the *National Review* that Tesla needs to make a better effort to engage the Legislature, not complain on its website.

"This administration does not find it appropriate to unilaterally change the way cars are sold in New Jersey without legislation, and Tesla has been aware of this position since the beginning," the spokesman said.

In New York, meanwhile, the lawmakers behind the effort to block out Tesla, led by Rochester Assemblyman David Gantt (D), have been increasingly mum when it comes to talking to the press. Calls to Gantt as well as several co-sponsors asking for comment were not returned. His bill recently cleared two committees in the Assembly and awaits floor time in Albany, with a companion Senate bill still in committee.

That those behind the effort would not comment did not come as much surprise to Dan Hendrick at the New York League of Conservation Voters, who said some Democrats with environmentally positive voting records have found themselves in the difficult position of having to defend core businesses in their districts. Many pro-business Republicans have pounced on them for the seeming contradiction, which is why the bill may not survive the more narrowly divided Senate in Albany.

"It's part of a nationwide movement to ice out Tesla and the electric car," Hendrick said. "That's the impact here. They're one of the largest players in that market."

Pro-market Republicans, including former House Speaker Newt Gingrich (Ga.), have had a field day with the developments. Gingrich in a weekly newsletter posted at Gingrichproductions.com urged Christie and others to change their thinking.

"This is a vivid example of how prison guards of the past use government, bureaucracy and lobbying to insulate themselves artificially from their competition," Gingrich wrote. "In states like New Jersey, you can buy almost anything over the Internet: wedding rings, art worth more than the average home, historic

artifacts and massive industrial equipment. But you can't buy a new car from anybody but the dealer."

Gingrich added: "There is no rational justification for the state to intervene and impose an obsolete business model on a 21st century startup. But the car dealers want to co-opt the law to protect their profits."

Other op-eds have followed in support of Tesla, in the New York *Daily News* and *Forbes* magazine, to name two. In *Forbes*, Abby Schachter, a senior fellow at the Independent Women's Forum, likened Cuomo's support for the so-called franchise protection bill to his refusal to permit high-volume hydraulic fracturing in the state.

"Keeping Tesla out of New York amounts to more of the same old crony-capitalism, protectionism and just the latest business -- natural gas drilling anyone? -- to which Albany has said 'We're closed,'" she wrote.

Hendrick predicts all the attention will help torpedo the bill on the move in Albany.

"A lot of folks reacted to what happened in New Jersey and don't want it to happen here," he said.

EPA:

McCarthy vows to be 'a friend' to clean energy industry

Daniel Lippman, E&E reporter

Published: Friday, March 28, 2014

U.S. EPA Administrator Gina McCarthy today promised renewable energy advocates that the Obama administration's climate rules would help grow the clean energy industry.

"Know that you have a friend at this podium," McCarthy told a meeting of the American Council on Renewable Energy on Capitol Hill.

"The energy issues and the environmental issues are really two sides of the same coin," she said. "If there's one message ... it is that the president's Climate Action Plan is designed to complement clean energy development and its deployment."

Rebutting charges that stricter environmental rules can hurt businesses, she said "a healthy environment can in no way jeopardize our economy" because the United States will benefit from leading the world on renewable energy.

McCarthy used the opportunity to tout her agency's upcoming carbon regulations due out in June.

The regulations are aimed "to craft a path forward in a 21st-century economy that understands our economy is going to be operating in a carbon-constrained world," she said. "We have been really having a dialogue at the state level between energy and environmental commissioners that I think has been overdue for decades" to help craft a rule that all states can comply with.

She said EPA's rules are aimed at "normal human beings who want to have jobs, who want clean air and want to have the lights come on when they switch on the lights."

And she talked up previous regulations her agency has released on fuel economy standards and for biofuels.

"Our policies are moving private capital off the shelves and they're putting them into cutting-edge technologies," she said.

She pointed to "historic fuel economy standards" that she said have helped the U.S. automobile industry add 250,000 jobs in recent years, "the best period they've seen in growth in over a decade."

And she lauded the fact that there have been at least 40 renewable energy projects built on public lands since President Obama took office. Those projects have created 20,000 jobs and generated enough electricity to power 4.8 million homes, she said.

"When it comes to clean energy, we really do have to keep incentivizing innovation," she said. "That's what the renewable fuels standard is all about. That's why the administration remains committed to biofuels."

But she said that the transition to clean energy won't happen "overnight" and that she knows "that conventional fuels are going to be an important part" of the country's energy mix going forward.

AIR POLLUTION:

Administration proposes permits for Navajo Nation plant, mine

Manuel Quiñones, E&E reporter

Published: Friday, March 28, 2014

Updated at 1:15 p.m. EDT.

The Obama administration is proposing to approve an expansion of the Navajo coal mine and permits associated with the Four Corners Power Plant within the Navajo Nation in northwestern New Mexico.

In 2012 the federal Office of Surface Mining announced it would conduct an environmental impact statement into the mine's expansion and other issues surrounding the plant.

OSM's draft EIS, announced in this morning's edition of the *Federal Register*, proposes to allow new mining within a 5,569-acre area.

The document also proposes that the Bureau of Indian Affairs approve a 25-year lease renewal for the plant and right-of-way renewals for transmission lines.

The Navajo Nation recently moved to buy the Navajo mine, which feeds the power plant, from BHP Billiton Ltd. in an effort to promote tribal employment.

However, the draft EIS envisions a reduction in mine employment from roughly 500 workers to about 300 workers because of the closure of three of five generation units at the plant.

Several groups sued OSM in 2012 for approving the mine's expansion, accusing the agency of not conducting enough environmental reviews. Groups had also sued the agency in 2011 for failing to consider the effects of mining and burning coal on local ecosystems.

Mike Eisenfeld, an organizer with the San Juan Citizens Alliance, questioned the wisdom of a decision by plant owner Arizona Public Service Co. to add environmental controls to other generating units at the plant. He asked, "What does it mean to continue to burn coal at such a vast scale?"

OSM and cooperating agencies -- including U.S. EPA, the Fish and Wildlife Service and the Army Corps of Engineers -- are also considering options for different mining or coal ash disposal configurations, said the draft EIS. One unlikely option is to block any mine expansion and plant permit renewals.

Mine emission concerns

When it comes to coal, groups are not only concerned about power plant emissions. The issue of coal mine releases, including methane, has been gaining currency.

The White House's new methane reduction strategy (*see related story*) touts Bureau of Land Management rulemaking to determine how to manage the powerful greenhouse gas when vented from mines.

A forthcoming advance notice of proposed rulemaking "will seek public input on preferred technology options for methane capture, whether the BLM should promote partnerships to capture or destroy waste mine methane, and how the agency could encourage cost-effective capture of methane from coal mines."

Even though some mines have developed systems for capturing and selling methane releases -- including a skiing company using methane at Oxbow Corp.'s shuttered Elk Creek Mine in Colorado -- the industry as a whole has resisted new regulations, saying methane venting is a safety issue and questioning the widespread economic viability of capture.

Environmental groups are also pushing states to issue Clean Air Act Title V permits for coal mines that release a certain amount of greenhouse gases, according to U.S. EPA 2010 guidelines (*Greenwire*, Dec. 5, 2013).

Regulators have proposed doing so for the San Juan Coal Mine in northwestern New Mexico. But in Colorado, the group WildEarth Guardians has sued the Colorado Department of Public Health and Environment in state court to get the agency to act on company permit requests. Other states are balking at the requirement or waiting for more EPA guidance.

Beyond greenhouse gas emissions, WildEarth Guardians is also in litigation against EPA over the agency's refusal to list coal mines as a pollution source under the Clean Air Act (*Greenwire*, March 25). In oral arguments this week before the U.S. Court of Appeals for the District of Columbia Circuit, the agency defended its argument of not having enough time to take up the matter.

UTILITIES:

Parties agree to refund ratepayers $1.4B on San Onofre shutdown

Published: Friday, March 28, 2014

Ratepayer organizations and two utilities yesterday agreed that Southern California consumers would receive $1.4 billion in refunds on their electricity bills over the next eight years due to the shutdown of a nuclear power plant.

The state's Public Utilities Commission still needs to approve the settlement.

The San Onofre nuclear power plant was shut down after a small radioactive leak was detected in newly installed steam generators in 2012, and Southern California Edison Co. decided to permanently close and decommission the plant the following year.

The refund is the first settlement in a battle over who is responsible for demolishing and cleaning up the plant as well as disposing of and safeguarding used radioactive fuel waste.

"The proposed settlement represents a huge win for consumers," said Matthew Freedman, an attorney with a San Francisco utility reform group. "It will hold utility shareholders accountable for the fiasco" (Marc Lifsher, *Los Angeles Times*, March 27). **-- JL**

OIL AND GAS:

Exxon refinery sold tainted fuel -- official

Published: Friday, March 28, 2014

More than 5 million gallons of tainted Exxon Mobil Corp. gasoline has caused fuel problems for drivers across Louisiana, according to a state official.

The company closed part of its Baton Rouge terminal Wednesday after drivers complained that fuel sold at area gas stations was giving their cars intake and valve issues.

Exxon Mobil reported the problem to the state the same day and began testing fuel at Baton Rouge gas stations for sulfur, octane and other possible contaminants, officials said.

"We are taking this matter seriously and are investigating the issue to determine the cause," the company said in a statement (Timothy Boone, Baton Rouge *Advocate*, March 27). **-- DB**

AIR POLLUTION:

EPA science advisers put off recommendation on ozone standard until May

Daniel Lippman, E&E reporter

Published: Friday, March 28, 2014

Members of a U.S. EPA scientific advisory board meeting this week in North Carolina seemed poised to urge a lower standard for ozone than the current 75 parts per billion -- but the panel members were torn about the exact figures to recommend.

At one point during the final hour of the three-day meeting that ended yesterday, the Ozone Review Panel of the Clean Air Act Science Advisory Committee (CASAC) appeared ready to decide to recommend a standard of 60 to 65 ppb until at least one panelist spoke up and said he was more comfortable setting the top figure at 70 ppb.

The committee, charged with updating the current standard of 75 ppb in the National Ambient Air Quality Standards (NAAQS), postponed making a final recommendation and will try to decide the issue in the next two months. The members will hold another committee meeting via teleconference May 28 and eventually submit a recommendation letter to EPA Administrator Gina McCarthy, who will make the final judgment.

"We are almost there, we are pretty close, we have a few ppb to go," said Christopher Frey, the panel's chairman and a professor of civil construction and environmental engineering at North Carolina State University.

While the differences may seem small to a casual observer, whether the standard is 60 or 70 can mean billions of dollars in costs that businesses have to absorb. It can also lead to healthier air and better health for many Americans, especially the young, the elderly and people with respiratory problems like asthma, experts said.

"We do have major effects at 70 observed in the literature," said Michelle Bell, a CASAC member and professor of environmental health at Yale University.

According to a 2010 EPA fact sheet, a standard of 60 ppb would avert 4,000 to 12,000 premature deaths, cut the number of days when people miss work or school by 2.5 million, and prevent 21,000 hospital and ER visits. If the standard is set at 70 ppb, those benefits are significantly reduced.

Industry, environmentalists and some members of Congress are jumping in to try to influence the process, which some of them see as the most important air pollution issue facing the U.S. today.

In a letter to CASAC, major trade associations representing industries such as agriculture, energy and manufacturing noted EPA's own estimates say it could cost as much as $90 billion annually to meet the tighter standard.

The groups said they were "greatly concerned that the implementation of a stricter ozone standard could lead to astronomical costs to U.S. businesses, disrupt energy markets and place a considerable strain on a still recovering economy and job market."

Children's health impact

But environmentalists have pushed back, saying the health benefits of tighter ozone regulations should outweigh any additional possible costs.

"A tougher standard means better health protection. Smog causes death and disease," said Frank O'Donnell, president of Clean Air Watch, in an emailed statement. "But the oil and electric power industries and other big polluters will fight anything that might drive them to spend on cleanup."

The American Lung Association's "State of the Air" report has said that almost four in 10 Americans live in areas where they breathe air that is unhealthy due to ozone pollution.

In public comments at the CASAC meeting, Leonardo Trasande, a faculty member in pediatrics and

environmental medicine at the NYU School of Medicine, spoke of the "urgent need to protect children's health" by recommending an ozone standard of 60 ppb or below. He said children are particularly vulnerable to respiratory diseases, which ozone plays a role in.

He pointed to one study where emergency room visits by asthmatic children were cut by 42 percent when morning traffic was cut by a quarter during the 1996 Olympics in Atlanta.

"Much is made about the economic impact of lowering the air pollution for industry, but little is mentioned about the economic benefits of pollution prevention for children," he said.

Push-back from GOP and industry

Predictably, Republicans and industry representatives urged CASAC to be wary of setting too tight a standard that could be impossible for the country to meet.

"Far too many of EPA's expensive air regulations rely on data that hasn't been sufficiently vetted or even provided the opportunity for independent evaluation," said Sen. David Vitter (R-La.) in a letter to Frey, the CASAC chairman. "As CASAC continues to review a potential lower national ozone standard, I urge them to uphold their legally mandated independence during the scientific review process, as well as to examine the adverse economic and energy effects that may result from actions necessary to meet a lower standard."

At a Senate Environment and Public Works Committee hearing Wednesday, Sen. James Inhofe (R-Okla.) said a new 60 ppb standard would cause "nearly every county [to] be out of attainment. ... If this happened, businesses would not be able to expand; it would essentially close the whole nation for business and result in millions of job losses."

Jeff Holmstead, a partner at Bracewell & Giuliani and former head of the EPA air office under President George W. Bush, urged the advisory board to consider any adverse economic impacts its recommendations might have, which he called "a very important part of the debate."

"It is true that the Supreme Court and various other courts have said that EPA is not allowed to consider cost and attainability when it comes to where it sets the NAAQS," he conceded.

But he added CASAC had "legal obligations that are separate" from that, including abiding by a section of the Clean Air Act that requires the panel to "advise the administrator of any adverse public health, welfare, social, economic or energy effects" from newly proposed standards.

One panel member called it "inappropriate" to also consider the costs and methods of implementation while they're evaluating the science of what ozone levels should be put in place.

NUCLEAR WASTE:

DOE team preps to enter repository for radiation tests

Published: Friday, March 28, 2014

An eight-person investigative team plans to enter the underground nuclear waste storage site in New Mexico where an accidental radiation release occurred last month.

The Department of Energy said the team will test air for contamination next week as they enter the site's most sensitive area, where nuclear waste is stored.

DOE spokesman Bradley Bugger said in a statement that the team members will wear protective clothing and use self-contained breathing devices to ensure their safety. The agency increased its estimate to 21 workers it now thinks were inadvertently exposed to radiation last month at the Waste Isolation Pilot Plant near Carlsbad, N.M., but said the radiation levels were low enough that the workers are not expected to face lasting health problems.

The four additional workers tested positive due to enhanced testing procedures that detected the radiation, Bugger said.

The additional testing is a key step in gathering information to decide how to reopen the nuclear site (Laura Zuckerman, Reuters, March 27). **-- SP**

NUCLEAR WASTE:

Radioactive fuel containers fell during unloading -- official

Published: Friday, March 28, 2014

A top official at Canada's nuclear safety agency told lawmakers that cylinders carrying radioactive material fell while being unloaded earlier this month in Halifax, Nova Scotia, because they were not properly secured to a crane.

Four steel cylinders encased in concrete fell into the cargo hold of a ship while they were being unloaded March 13.

Andre Regimbald, the director-general of the Canadian Nuclear Safety Commission, said the accident occurred because two connectors on the crane snapped off, causing the container to fall over.

"What happened is two of the lifting points on one side ... had not been properly anchored, so all of 18,000 kilograms of weight was being supported by only one side," Regimbald said.

The company that operates the port is continuing to investigate what happened. Because the cylinders met regulatory standards to withstand a fall of up to 9 meters (29.5 feet), no radioactive material was spilled from the containers, Regimbald said (Michael Tutton, Canadian Press/*Ottawa Citizen*, March 27). **-- SP**

OHIO:

Lawmakers, utility push to 'pause' efficiency mandates

Published: Friday, March 28, 2014

An Ohio utility is lobbying businesses and industry groups on the eve of an expected effort to freeze state renewable energy mandates.

FirstEnergy Corp. has urged the groups to tell lawmakers "to protect businesses and homeowners from the rising costs of Ohio's energy efficiency mandates."

Republican state lawmakers are expected to release proposed amendments as early as today to Ohio's 2008 energy efficiency legislation to stop enforcement of the regulations for up to three years while a state commission studies whether they have increased energy costs.

Both sides expect that if a regulatory "pause" takes place, it will in reality end up being permanent.

The original bill was meant to make it less appealing for utilities to construct new coal-fired power plants, but opponents say the growing use of shale natural gas has made that a cheaper option instead.

The law currently requires that 2.5 percent of power sold in Ohio come from renewable sources. That figure rises to 25 percent by 2025 (John Funk, Cleveland *Plain Dealer*, March 28). **-- SP**

JAPAN:

Fukushima cleanup halts on worker's death

Published: Friday, March 28, 2014

Tokyo Electric Power Co. has halted cleanup work at Japan's ruined Fukushima Daiichi nuclear power plant after a worker was killed today by being buried under gravel while digging a ditch.

The company said it was the first death of a laborer as a direct result of a plant accident since the March 2011 disaster. The company will stop cleanup operations to conduct an immediate safety inspection.

"In the three years since the disaster, we had not had any worker deaths caused by work (inside the plant). The fact that such a serious accident has occurred is deeply regrettable," said TEPCO spokesman Masayuki Ono.

Last year, Reuters discovered widespread labor abuses after workers complained of skimmed pay and a lack of scrutiny over plant labor conditions. The majority of workers are contracted from different construction companies.

The worker who died was in his 50s, and while TEPCO confirmed it had hired the worker through a subcontractor, it wouldn't name the direct employer.

The company has repeatedly promised to improve working conditions. It has come under criticism for its handling of the cleanup, which suffered from a number of radioactive water leaks from hastily built tanks last year (Mari Saito, Reuters, March 28). **-- JL**

GERMANY:

Utility seeks approval to close nuclear reactor early

Published: Friday, March 28, 2014

Germany's largest utility today said it will shut down one of its nuclear reactors seven months before the plant's operating license expires because the plant is becoming less profitable.

E.ON SE said it has requested approval from Germany's grid regulator and a power network operator to shut down the 1.3-gigawatt Grafenrheinfeld reactor as soon as May 2015. Its license runs until the end of 2015.

Germany and other European countries have created new subsidies for renewable energy in recent years in an attempt to reduce greenhouse gas emissions, and wind farms and solar plants have created new sources of electricity that have lowered prices. That, in turn, has cut into the profitability of older facilities (Jan Hromadko, *Wall Street Journal*, March 28). **-- SP**

ClimateWire -- Mon., March 31, 2014 -- **Read the full edition**

1. ADAPTATION: Climate change impacts are happening; the window of opportunity to act is closing -- report

Take a map of the globe and put a finger on any piece of land, and chances are that it is already being affected by climate change. Heat waves, flooding and lowered crop yields in recent years are examples of a climate that has already changed with worsening effects to be felt in years to come, said a U.N. panel in a new report.

2. POLICY: IPCC sees signs of 'cautious optimism' against dire climate warnings

Amid bleak warnings that climate change has already taken a toll on crop yields, depleted fish catches and triggered deadly floods and heat waves, a sweeping U.N. report today offers a glimmer of hope that nations will take the necessary steps to protect people in a warming world.

3. RISK: IPCC chief warns of 'climate refugees,' but report does not

Rising global temperatures will "certainly" lead to conflict and large numbers of climate refugees, the head of the United Nations' Intergovernmental Panel on Climate Change declared yesterday in comments that appeared to go beyond the science body's own findings.

TODAY'S STORIES

4. BIOFUELS: IPCC report cites risks of biofuels, but is that really new?

5. POLITICS: White House plans to patch methane leaks, but uncertainty and opposition exist

6. CALIFORNIA: State to distribute cap-and-trade proceeds back to residents

7. RENEWABLE ENERGY: President's energy policy 'starts with a commitment to low carbon' -- Moniz

8. AIR POLLUTION: 20th-century rainfall trends may need revision -- study

9. ELECTRIC VEHICLES: Waiting list forms for Calif. green car rebates

10. BUSINESS: Renewables to outshine gas in market share, investors told

11. AVIATION: U.S. airlines warn of dire consequences from E.U. climate vote

12. AGRICULTURE: India's tea producers struggle to cope with climate change

13. CARBON MARKETS: Carbon trading makes ICE record as prices hit 2-month low

14. CITIES: Calif. municipalities developing Climate Action Plans

15. IPCC: Author withdraws name, cites 'alarmist' upcoming report

E&ETV's OnPoint

16. GRID: APPA's Kelly discusses legislative, regulatory push to ramp up security

EnergyWire -- Mon., March 31, 2014 -- Read the full edition

1. ELECTRICITY: NRG looks to Apple, Google as it explores future business model

With plants from California to New York, NRG Energy Inc. still has a big stake in generating power from fossil fuels. Just don't expect David Crane to spend most of his time talking about it.

2. CLIMATE: Industry girds for potential new methane regulations

U.S. EPA may be regulating methane emissions from the oil and gas sector by the end of 2016 if the steps outlined by the White House last week come to pass.

TOP STORIES

3. TRANSPORT: DOT decries lack of industry input on Bakken safety testing

4. UTILITIES: Ind. pulls the plug on energy efficiency standard

5. EARTHQUAKES: Texas regulators hire seismologist to examine injection-linked quakes

THIS MORNING'S STORIES

6. BAKKEN SHALE: Industry group kick-starts examination of region's crude

7. CAMPAIGN 2014: Where do energy issues fit into midterm elections?

8. ELECTRICITY: Houston utilities join university effort to improve outage prediction

9. REGULATION: Pa. sets date on closely watched 'forced pooling' hearing

10. ELECTRICITY: Ore. utility plan calls for no new major generation

11. HYDRAULIC FRACTURING: FracTracker maps out all 1.1M oil and gas wells in the U.S.

12. OIL AND GAS: Energy hubs among the fastest-growing U.S. localities -- Census

13. NATURAL GAS: FAA signs off on drilling operation near Pittsburgh airport

14. GAS EXPORTS: Dow Chemical exec argues against expanding natural gas shipments to Europe

15. OIL SPILL: Cleanup in Texas' Galveston Bay falls to barge company

16. PIPELINES: Canadian billionaire family pushing Keystone XL alternative

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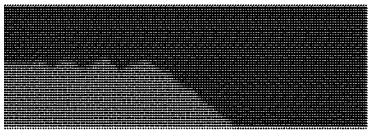

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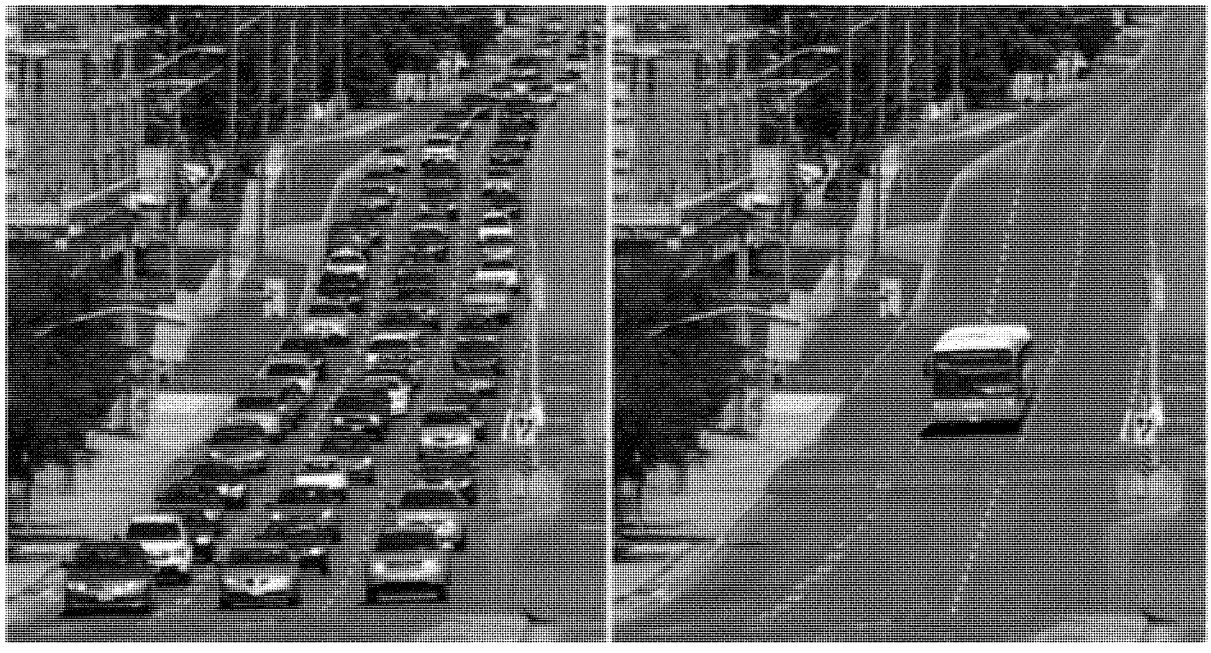

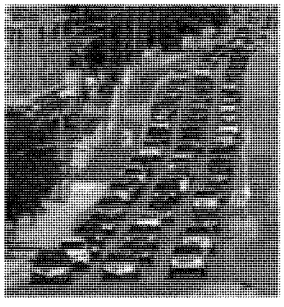

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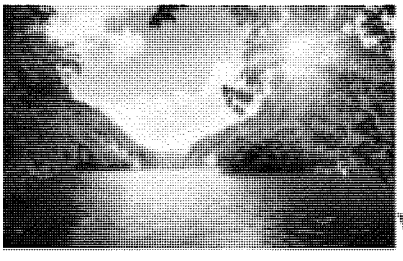
Subject: Water Law News for March 31, 2014



Water Law News

for March 31, 2014

Bloomberg BNA **Daily Environment Report™**

Oil Spills

New York Seeks Updates in EPA Plans
Covering Responses to Crude Oil Spills

The U.S. Environmental Protection Agency should revisit decades-old contingency and response plans for crude oil spills in New York, with particular attention to the environmentally sensitive areas in the eastern Great Lakes and the Hudson...

Storage Tanks

EPA, Coast Guard to Clean Up Liquids
From Tanks at Former Pulp Mill Site

The Environmental Protection Agency and the U.S. Coast Guard will clean up millions of gallons of hazardous materials leaking from underground storage tanks as well as tons of sludge contaminated by them at a defunct pulp mill in Northern California....

Water Pollution

Duke Energy Investors Seek Board Probe
Of Coal Ash Handling, Other Activities

A group of Duke Energy shareholders has called upon the utility's board of directors to conduct an investigation into the company's coal ash-handling practices as well as related lobbying and political activities, participants...

Wetlands

Agencies Choose Science Over Metrics
For Water, Wetlands 'Significant Nexus' Test

Despite calls by Western states and various affected industrial sectors, a proposed rule intended to clarify the scope of Clean Water Act protections does not quantify what is meant by "significant nexus" between geographically...

Novel Suit Seeks To Mandate EPA Review Of Seismic Risks For UIC Permits

Residents and officials in Brady Township, PA, are challenging an EPA underground injection control (UIC) permit in a novel administrative suit that could provide a new legal basis to require the agency to consider potential seismic risks when permitting disposal of oil and gas wastewater on the grounds that it may threaten drinking water sources.

Greenwire

CLEAN WATER ACT:

Lawsuits come and go, but debate over EPA veto rages on

Manuel Quiñones, E&E reporter

Published: Friday, March 28, 2014

A legendary Senate environmentalist, Maine Democrat Edmund Muskie, staked out the reach of U.S. EPA regulatory authority during the 1972 debate over the Clean Water Act.

At issue: Should it be EPA or the Army Corps of Engineers that gets the final say on permits for development that would destroy wetlands or dump debris into waterways?

On Oct. 18, 1972, the day the landmark legislation became law over President Nixon's veto, Muskie came down solidly for EPA in extended remarks published in the *Congressional Record*. "[P]rior to the issuance of any permit to dispose of spoil," he said, "the Administrator must determine that the material to be disposed of will not adversely affect municipal water supplies, shellfish beds and fishery areas. Should the Administrator so determine, no permit may issue."

Muskie's statement lives on in a legal and political fight that's been raging for more than 40 years over what's now known as Section 404(c) of the Clean Water Act. Environmentalists, industry groups, government officials and judges have spun the late senator's words to justify the scope of EPA's authority to veto Army Corps permits for a wide range of projects -- from solid waste landfills and coal mines to reservoirs and flood control projects.

EPA has vetoed 13 projects in 42 years, but each one has packed a punch. Most recently, the agency used it to squash what would have been one of the largest coal strip mines in West Virginia. It is also playing a central role in a fight over the proposed development of a massive copper and gold mine in Alaska's Bristol Bay watershed.

U.S. District Court Judge Amy Berman Jackson in the District of Columbia cited Muskie when she ruled in 2012 that EPA's retroactive veto of the West Virginia strip mine, Arch Coal Inc.'s Spruce No. 1 project, was illegal. Berman Jackson wrote that Muskie saying "prior to the issuance of a permit" meant EPA

couldn't veto a permit after it was approved. EPA vetoed the Spruce permit in 2011, four years after the corps issued it.

Arch Coal also cited Muskie it its Spruce No. 1 briefs and reminded the court that Congress gave the Army Corps, not EPA, authority to issue dredge-and-fill permits. Lawmakers, the company said, rejected a version of the Clean Water Act that would have treated dredged material, as it did industrial sewage, and recognized the corps' expertise in such matters, the company's attorneys wrote in briefs.

But EPA argued that Muskie's statement "does not imply a prohibition on post-permit action," adding that a single statement from a senator, albeit the legislation's main backer, should not outweigh the plain language of the law. And a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit agreed with the agency.

Maine Democratic Sen. Ed Muskie's words about the scope of the Clean Water Act still resonate today. Photo courtesy of Wikipedia.

The law, the judges wrote, lets EPA veto or withdraw corps permit specifications or disposal areas "whenever" the administrator determined.

Former U.S. Solicitor General Paul Clement also quoted Muskie in saying the Clean Water Act would bring "finality" to permitting when petitioning the Supreme Court on Arch's behalf to take up the case. But this week justices turned down a chance to review the Spruce No. 1 case. So if industry wants to overturn EPA's decision, it will likely have to go through Congress.

"It's huge," said Patrick Parenteau, professor at Vermont Law School, of the circuit court's decision. "I think those three judges said this is a plain text case. When the statute is as clear as this one is, that's sort of the end of the story."

To be sure, pro-coal and pro-mining lawmakers aren't ready to close the book. They have either introduced legislation or are in the process of writing a bill to overturn the appeals court ruling and also prevent EPA from pre-emptively vetoing other projects -- notably, the Pebble project in southwestern Alaska.

During its time in office, the Obama administration has broken ground with a retroactive Clean Water Act veto and may do so with a pre-emptive one -- both against mining operations.

EPA is in talks with Pebble developers, the corps and Alaska regulators to determine whether the agency wants to go the veto route in Alaska. The company has yet to submit a permit application.

Rep. Ken Calvert (R-Calif.), chairman of the House Appropriations Committee's environment subpanel, said during a hearing yesterday that EPA's actions make it "clear the administration is not serious about creating jobs."

Administrator Gina McCarthy cited the uniqueness of the Pebble deposit and Bristol Bay's natural resources. "I think it was appropriate to do that," she said about beginning an evaluation.

Impact on Pebble

Both sides of the Pebble debate paid close attention to the Spruce mine fight. The Supreme Court opting not to take that case could be seen as a blow to Pebble because it bolstered a broad interpretation of EPA's veto power and the timing for exercising it.

U.S. EPA's 13 Clean Water Act vetoes

Project	Location	Year
North Miami Landfill	Dade County, Fla.	1981
Waste and Recycling Facility	Mobile, Ala.	1984
Duck Hunting, Aquaculture Impoundment	Jehossee Island, S.C.	1985
Flood Control	Jefferson Parish, La.	1985
Shopping Mall	Attleboro, Mass.	1986
Warehousing	Carlstadt, N.J.	1988
Agriculture	Dade County, Fla.	1988
Dam and Rec. Impoundment	Bacon County, Ga.	1988
Water Supply Impoundment	James City County, Va.	1989
Water Supply Impoundment	Kent County, R.I.	1990
Water Supply Impoundment	Jefferson and Douglas Counties, Colo.	1990
Yazoo Pumps Floor Control	Issaquena County, Miss.	2008
Strip Coal Mine	Logan County, W.Va.	2011

Source: U.S. EPA

In Parenteau's words, the judges concluded: "Whenever is whenever."

Given how unlikely it is that a bill addressing the issue will be passed by a divided Congress, Pebble CEO Thomas Collier, a former Steptoe & Johnson LLP attorney, recently floated another argument against a pre-emptive veto: Litigation is almost a certainty in the event of a veto.

Collier parsed Section 404 beyond the "whenever" language and highlighted segments suggesting EPA's veto power applies only to areas where the Army Corps has made some sort of determination or fill "specification."

Section 404(a) says the corps "may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites," he said.

Then, a few lines later, Section 404(c) says, "The [EPA] Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site."

Collier warned EPA in a recent letter: "We believe that EPA lacks statutory authority to initiate the Section 404(c) veto process for the proposed Pebble Mine Project, for which the Corps has made no such specification."

He added, "Congress only granted EPA authority to veto permits or permit applications for specified disposal sites under Section 404(c), not to set aside large tracts of land in advance of any permit application."

But Natural Resources Defense Council attorney Joel Reynolds said Collier doesn't have a strong case.

"There is no requirement that this defined area must first have been the subject of a permit application, and, again, the use of the term 'whenever' is an insurmountable obstacle," Reynolds said.

Parenteau went beyond the Clean Water Act text in questioning Collier's argument. He said EPA has traditionally interpreted the law as giving the agency the authority "to advance-identify areas that are not suitable for disposal."

"You have a very long-standing consistent agency interpretation." he said. "It's not by rule. It's clearly been their official interpretation."

And Parenteau added that courts give agencies a wide berth in making such interpretations. "It only has to be a permissible interpretation," he said. "What the company is saying is a possible interpretation but is not the one EPA adopted."

He added that Pebble has already identified a general area for its dredge-and-fill activities. After all, he said, the company knows where it wants to mine. So EPA can point to that or certain areas within the Bristol Bay watershed as its disposal site.

Parenteau asked, "Why isn't that a permissible interpretation? That's the only thing the court is going to want to know."

Section 404 precedent

EPA's McCarthy has addressed concerns about the legality of her agency's actions. She tried to make the case that, contrary to conventional wisdom, pre-emptive or retroactive vetoes are not unprecedented.

"I don't think you want to think of this as any trend," McCarthy told lawmakers yesterday, noting the few times EPA has used its veto power. Still, the agency contends it has done so before, during and after the permitting process and can do so again.

When defending the legality of the Spruce retroactive veto, EPA said it's twice used its post-permit authority to block existing corps approvals. The first, in 1981, halted a trash dump at the edge of Biscayne Bay in North Miami, Fla.

EPA said several million cubic yards of solid waste would be dumped from the Munisport landfill into the bay and its wetlands.

But Arch said the North Miami case didn't count because the veto was in response to an application to modify a permit. Therefore, the company argued, there was no retroactive veto.

The second example of a retroactive veto, as EPA described it in court documents, was in 1988 to stop development of a reservoir in Ware Creek in James City County, Va.

The agency initially made its decision during permitting for the reservoir. But a federal judge and then the 4th U.S. Circuit Court of Appeals ordered the corps to issue the permit anyway because, the judges said, EPA hadn't made a convincing case in arguing that the county had alternatives to the project.

After the corps issued the permit, EPA vetoed the project again. And the second time, with the agency relying on environmental arguments, the 4th Circuit ratified EPA's action in 1993. The Supreme Court declined to take up the matter.

Judges deciding the case didn't rule on the timing of EPA's veto. So when EPA recently suggested the litigation upheld the notion of retroactive vetoes, Arch Coal attorneys balked.

"The Fourth Circuit held no such thing -- it never even discussed the issue. That, no doubt, is why EPA made no such argument to the district court," they wrote.

In defending the legality of a possible pre-emptive veto for Pebble, EPA cited another Florida case from the late 1980s.

At issue were three sites comprising more than 400 acres in the east Everglades. Two tracts had permit applications pending; the third didn't.

"I conclude that the [three Everglades tracts] provide important wildlife habitat which would be largely destroyed if the sites are rockplowed as proposed," acting EPA water chief Rebecca Hanmer wrote in 1988.

Collier rejected the case as an example of a pre-emptive veto because owners of two sites had applied for permits and all were related.

He said in a recent interview, "They have never vetoed a significant project before a permit has been filed."

OIL AND GAS:

Enviros fret over Texas spill's impact on shorebirds

Published: Friday, March 28, 2014

Environmentalists say limited harm has come to bird sanctuaries in the Houston Ship Channel less than a week after an oil spill tainted the area, but it's still too soon to determine long-term effects.

Richard Gibbons, conservation director of Houston Audubon, said more than 200 birds from a variety of species were affected by oil despite effective initial containment through booms and other efforts.

The spill occurred after a fuel barge collided with another ship Saturday and caused the release of about 168,000 gallons of oil into one of the nation's biggest petrochemical waterways.

The Coast Guard and other officials put up large booms to protect sensitive environments like the Bolivar Flats Shorebird Sanctuary -- a stopping point for many migratory birds.

The contamination is hard to trace partly because birds can ingest oil while cleaning slicked feathers.

It's also breeding season for birds in the area, and it's difficult to know whether the spill will have effects on their food supply or this year's chicks (Michael Muskal, *Los Angeles Times*, March 27). **-- JL**

OIL AND GAS:

BP ups estimate of Lake Michigan spill size

Published: Friday, March 28, 2014

BP PLC representatives say more oil -- between 15 and 39 barrels -- may have spilled into Lake Michigan from an Indiana refinery near Chicago than was previously believed.

The number marks an increase over an earlier range estimate the company released Monday of between 9 and 18 spilled barrels.

Separately, Illinois Sens. Mark Kirk (R) and Richard Durbin (D) have requested more information about the cause of the spill, an analysis of the impact of the Whiting refinery's recent production increase and information about what is being done to prevent future spills.

"Given the Whiting refinery's recent expansion of its operations to double the amount of heavy oil sands being processed, this spill raises questions about the long-term safety and reliability of BP's new, expanded production," the senators wrote to the chief executive of BP America Inc.

"BP is conducting further analysis to confirm this estimate," the company said (Reuters, March 27). **-- JL**

ClimateWire -- Mon., March 31, 2014 -- **Read the full edition**

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Take a map of the globe and put a finger on any piece of land, and chances are that it is already being affected by climate change. Heat waves, flooding and lowered crop yields in recent years are examples of a climate that has already changed with worsening effects to be felt in years to come, said a U.N. panel in a new report.

2. POLICY: IPCC sees signs of 'cautious optimism' against dire climate warnings

Amid bleak warnings that climate change has already taken a toll on crop yields, depleted fish catches and triggered deadly floods and heat waves, a sweeping U.N. report today offers a glimmer of hope that nations will take the necessary steps to protect people in a warming world.

3. RISK: IPCC chief warns of 'climate refugees,' but report does not

Rising global temperatures will "certainly" lead to conflict and large numbers of climate refugees, the head of the United Nations' Intergovernmental Panel on Climate Change declared yesterday in comments that appeared to go beyond the science body's own findings.

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With plants from California to New York, NRG Energy Inc. still has a big stake in generating power from fossil fuels. Just don't expect David Crane to spend most of his time talking about it.

2. CLIMATE: Industry girds for potential new methane regulations

U.S. EPA may be regulating methane emissions from the oil and gas sector by the end of 2016 if the steps outlined by the White House last week come to pass.

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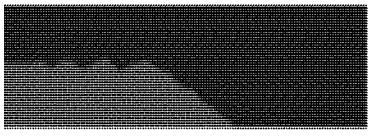

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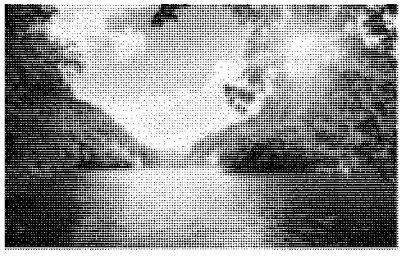

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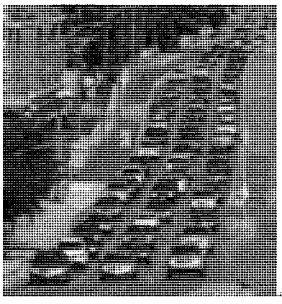
Subject: Air & Radiation Law News for March 28, 2014



Air & Radiation Law News

for March 28, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

Air Act Doesn't Preempt State Claims For Damage Caused by 'Whiskey Fungus'

More courts are likely to adopt the view that the Clean Air Act doesn't preempt state tort claims, after another court falls in line with the numerous tribunals that have rejected preemption, an environmental attorney told Bloomberg BNA...

Climate Change

California Climate Policies Continue To Survive Legal Challenges, Lawyers Say

Lawsuits challenging California's climate policies have yet to delay implementation of the programs, attorneys involved in the various cases said March 26. ...

Climate Change

Head of UN Climate Change Treaty Says Business, Environment 'Intrinsically Linked'

Adapting to climate change now would be much cheaper for governments than mitigating issues in the future and would offer long-term benefits for nations and industry, international speakers at the Globe 2014 environment and business conference...

Energy

DOE to Publish Refrigeration Final Rule

New energy efficiency requirements for refrigerators, freezers and other commercial refrigeration equipment used in supermarkets and restaurants will be published March 28 in the Federal Register. The standards, in the form of a final...

Energy

IEA Report: Technical, Economic and Political Hurdles Hamper Renewable Energy Future

The industrial world would need to undergo a "major redirection" of energy policy to rely mainly on renewable energy sources by 2050, according to a report by the International Energy Agency's Renewable Energy Technology Deployment....

Energy

Landrieu Adds Grid Security, Nuclear Energy To Senate Energy Committee Priority List

Senate Energy and Natural Resources Committee Chairman Mary Landrieu (D-La.) said March 27 that one of her priorities for the committee will be to examine the reliability and security of the electricity grid....

Enforcement

Court Affirms Sentence on Fraudulent Fuel Credits

In an unpublished per curiam opinion issued March 27, the U.S. Court of Appeals for the Fourth Circuit affirmed a Maryland man's sentence of 151 months' imprisonment after his conviction for selling $9 million in fake renewable fuel...

Enforcement

Vehicle Importer to Pay Fine, Post Bond
Over Alleged Clean Air Act Violations

A California vehicle and engine importer agreed to pay a $630,000 fine to settle allegations it imported and sold 6,800 motorcycles, recreational vehicles and engines that don't comply with Clean Air Act requirements, and it must post...

Radioactive Waste

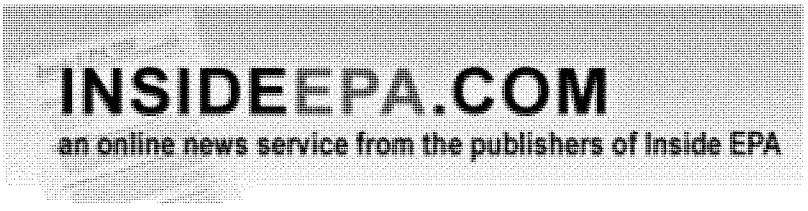
Shimkus Tells Energy Department, NRC
He Will Examine Yucca Mountain Program

Rep. John Shimkus (R-Ill.) told the Energy Department and the Nuclear Regulatory Commission on March 27 that he plans to examine the necessary actions for the agencies to complete the licensing process for a radioactive waste repository at...

Regulatory Policy

Rubio Offers Bill to Cap New Regulations,
Create New Agency to Set Regulatory Budget

Congress would set a cap on the total costs that could be imposed by environmental and other federal regulations and establish a new independent agency to analyze those costs, under a bill introduced by Sen. Marco Rubio (R-Fla.)....



IG's Equity Review Spurs Industry Fear Of Air Toxics Enforcement Targeting

An EPA Inspector General (IG) plan to assess whether the agency has adequately incorporated environmental justice in Clean Air Act air toxics inspections is spurring industry concern about whether shrinking enforcement resources and EPA's emphasis on equity will lead to targeting facilities based solely on their proximity to equity areas.

Industry, Advocates Query EPA Use Of External Enforcement Verification

Industry and environmentalist sources are questioning EPA's plan to ramp up use of third party verification for its enforcement efforts -- such as the use of external organizations to monitor compliance with settlements -- and say it is unclear how it would differ from a policy for self-disclosing violations that EPA plans to discontinue.

CASAC Members Aim To Boost Case For Novel 'Secondary' Ozone NAAQS

Members of EPA's Clean Air Scientific Advisory Committee (CASAC) are trying to bolster the case for the agency to pursue a novel distinct "secondary" ozone standard to protect the environment, highlighting insufficient scientific justification for the separate standard that industry critics could potentially use to fight a secondary limit..

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Greenwire

ENERGY POLICY:

Greens debate impacts of LNG exports on global warming

Jean Chemnick, E&E reporter

Published: Thursday, March 27, 2014

Environmentalists wary of plans to open the gates for U.S. exports of liquefied natural gas (LNG) might be missing an opportunity to advance their primary goal, fighting global warming.

So say some advocates for climate change action who see the wider distribution of natural gas leading to reduced emissions of heat-trapping greenhouse gases as coal-burning power plants are switched to gas.

Paul Bledsoe, a fellow with the German Marshall Fund and a former Clinton White House aide, is among those trying to recruit more greens to the LNG-climate camp. "There's a massive lack of awareness among Democrats and environmentalists about the climate potential here," he said in an interview.

Many environmental groups have expressed concern that LNG exports would promote unconventional gas production through hydraulic fracturing, or fracking, which they regard as a threat to water and air quality. And some have signaled their intent to campaign against it (*E&E Daily*, March 26).

"They don't understand the issue," Bledsoe said. When LNG goes to countries that would otherwise use coal for power generation, he said, it results in a net reduction in global greenhouse gas emissions.

Some of the best opportunities for the gas-for-coal swap are in Europe, he said. The price of gas there hovers around $12 per million British thermal units, about three times as expensive as in the United States. As a result, the United Kingdom, the Netherlands and Germany -- which Bledsoe dubs the "holier-than-thou triumvirate" for their ambitious international climate goals -- have expanded their imports of U.S. coal.

By diversifying Europe's gas supply and reducing its cost, American LNG exports could help those countries meet their carbon-reduction pledges, Bledsoe said. And because gas-fired power plants ramp up and down quickly, they are well suited to support the integration of intermittent renewable energy into Europe's power mix, he said.

"The U.S. and the European Union have a very important opportunity to help each other with their climate goals," he said. The United States not only can supply Europe with natural gas but can pioneer environmentally friendly production practices that Europe can later adopt.

Some of these might be outlined in a guidance on methane emissions the White House will unveil soon. It's expected to include some regulatory or nonregulatory policies aimed at limiting gas system emissions (*Greenwire*, March 24).

Europe, for its part, can show the United States how to achieve broader deployment of renewable energy, Bledsoe said.

Climate change has played a minor role so far in the congressional fight over expediting LNG exports.

The industry's congressional supporters have touted the geopolitical and economic benefits of natural gas export, especially since the crisis in Ukraine began. They argue that supplying Europe with an alternative to Russian gas will weaken that country's stranglehold on the European energy markets (*E&E Daily*, March 26).

Senate Republicans hope to attach LNG language to a Ukrainian aid package, while the GOP-controlled House mulls legislation that would direct the Energy Department to approve all outstanding applications for LNG export terminals.

DOE, meanwhile, is approving export facilities at a steady clip, most recently giving the nod to Jordan

Cove's export terminal in Coos Bay, Ore. And President Obama announced Tuesday that a new U.S.-E.U. trade deal might further facilitate exports to Europe.

One of the few lawmakers who say LNG export could pay climate dividends is Sen. Lindsey Graham (R-S.C.), who worked on comprehensive climate and energy legislation in 2009 and 2010.

The issue came up, he said, in his recent discussion with the Environmental Defense Fund, which has worked extensively on natural gas and methane emissions.

"Natural gas is a bridge fuel that has lower carbon emissions than coal, so it seems there should be an environmental awareness that natural gas should be better accessed," Graham said in an interview this week. He predicted the Ukrainian crisis would mark a turning point in the battle over permitting LNG terminals, including among Democrats.

Graham and others point to a white paper released in February stating that exported LNG is between 43 and 52 percent less greenhouse-gas-intensive than coal. The paper -- prepared for Dominion Resources Inc. by ICF International -- criticized an earlier report by the Chesapeake Climate Action Network (CCAN), which contended that LNG promotes hydraulic fracturing that contributes greatly to climate change.

ICF disputed the environmental group's claims that methane emissions from hydraulic fracturing outstrip U.S. EPA estimates. ICF added that because new gas-fired power plants are generally 40 percent more efficient than old coal-fired power plants they will replace oversees, encouraging foreign countries to transition from gas to coal could offer dividends over and above the difference between the two fuels.

'Striking that balance'

But environmental groups opposing LNG exports say permitting export infrastructure will lock in fossil fuel use for decades to come.

CCAN, the Sierra Club and 14 other groups wrote in a letter to Obama earlier this month that they were "disturbed" to see his administration proceeding with LNG permitting, including by allowing the Federal Energy Regulatory Commission to opt not to do a full environmental impact statement of Dominion's Cove Point terminal in Maryland.

"The truth is that Cove Point, like other proposed LNG export terminals, will raise U.S. gas prices -- harming virtually all Americans -- while becoming a historic catalyst for more fracking across the mid-Atlantic and triggering a huge new pulse of climate pollution," they said in the March 18 letter.

John Coequyt of the Sierra Club said not only would exports fuel the domestic fracking boom, but the liquefaction and regasification process associated with LNG would introduce additional heat-trapping emissions into the atmosphere.

Additional gas may not be needed to support European renewable energy, he said, and it might compete with wind, solar and zero-carbon nuclear power in those countries.

But others say the greenhouse gas implications of LNG exports depend on many variables that have not been adequately studied.

Two big questions: Where would the exported gas go? And what fuels would it displace when it gets there?

If the answer to the second question is coal -- or gas from a country like Russia that allows unlimited

flaring of methane during production -- the net result may be fewer emissions. The opposite is true if it edges nuclear energy or renewables.

But even then, the shift might be influenced little by U.S. export policy, said Michael Levi of the Council on Foreign Relations. Japan may decide to curtail its reliance on nuclear energy, for example, but that choice likely has more to do with the Fukushima Daiichi disaster than with the availability of American LNG.

"Odds are, if it's not replaced with natural gas it will be predominantly replaced with coal," he said.

There is also the question of whether exported gas will be used for energy generation at all or whether it might be used for fertilizer or some other purpose that would not interact with the importing country's power supply. It could also be used to power automobiles -- a scenario that would result in a net increase in greenhouse gas emissions compared with gasoline, according to a study EDF released earlier this month.

Another consideration is the extent to which LNG exports might affect American energy prices, said Josh Freed of the centrist Democratic group Third Way.

"The balance is between enabling enough to get to other countries so that others can reap the benefits of it without having too significant an effect on prices here in the United States," he said.

As long as U.S. natural gas prices remain at or below $5 per MMBtu, gas will be viable for domestic use and for limited export, he said. If the price rises, both become more complicated.

"It really is striking that balance to accomplish our domestic climate goals -- and help other countries meet their climate goals -- without going too far in a direction that ends up shifting our electricity sector back toward coal or finding that we're losing some of the manufacturing that we've gained since the shale gas revolution started," he said.

Levi, who testified yesterday before the House Foreign Affairs Committee on the Ukraine crisis and LNG imports, said he thought it unlikely that lawmakers would come to embrace LNG export for its relatively modest climate change benefits.

"If you polled every member and senator on Capitol Hill and asked what is the thing they care about most when it comes to energy, I doubt very many of them will say to you 'climate change,'" he said.

Local environmental concerns surrounding fracking and other practices are likely to continue to trump more global concerns, he said, especially since the climate benefits are so difficult to quantify.

ETHANOL:

E15 retailers visiting D.C. insist there is no blend wall

Amanda Peterka, E&E reporter

Published: Thursday, March 27, 2014

A handful of gas station owners this week traveled to Washington, D.C., in an attempt to convince policymakers that there is no "blend wall" preventing more ethanol from entering the market.

The retailers said they met with members of Congress and U.S. EPA officials over the past couple of days to dispute the notion of the blend wall, or the term used for the 10 percent ethanol saturation point in the fuel market. The retailers all own gas stations that sell gasoline containing 15 percent ethanol, or E15.

"A wall is something you can't go through. We're already beyond that," said Charlie Good, owner of Good & Quick, a gas station in Nevada, Iowa. "We're way beyond that."

The visit, which was organized by the American Coalition for Ethanol, comes as EPA is weighing a proposal to reduce the amount of ethanol and advanced biofuels that refiners are required to use this year. The agency cited the blend wall in issuing the proposal, arguing that there is a limit to the amount of ethanol that can be used in today's fueling infrastructure.

EPA has approved E15 for use in cars of model years 2001 and newer, but the vast majority of gasoline sold at gas stations today still contains 10 percent ethanol. Refiners have long warned that adding more ethanol into the mix will mean high costs for gas stations in new equipment and put cars in danger of engine and fuel system damage.

Boat and motorcycle trade organizations have also raised concerns that E15 will cause engines to corrode if their members accidentally fill up with the fuel. Several pieces of legislation were introduced this year to roll back EPA's approval of E15.

But the E15 retailers in town this week, all of whom started selling E15 within the last two years, said that they are proof there are no issues with adding more ethanol into the fuel mix.

"I've had zero complaints, zero problems," said Good, who started selling E15 last August. "I know what this can do to a motor and fuel system, and it's no different than any other fuel."

The blend wall, they told lawmakers and EPA, was made up by the oil industry to prevent more ethanol from taking away market share from refiners.

One retailer, Bruce Vollan, owner of Vollan Oil in Baltic, S.D., said he hadn't even heard the term until he started getting more involved recently in ethanol issues on the national level.

"It's convenient to say, 'There's a blend wall. Everything will be destroyed. Nobody can do more than E10. Nobody wants to buy it,'" said Ron Lamberty, a gas station owner in South Dakota and senior vice president at the American Coalition for Ethanol. "And then prove it by never offering anybody any of it and by making rules against it."

Most E15 retailers say their ethanol sales hover in the 20 to 25 percent range in the stations where the fuel is being sold.

But though the few gas station owners who sell E15 say it's been a success, the fuel has been slow to penetrate the E10-dominated market. Fewer than 100 stations in 14 states currently sell E15. Most petroleum marketers have not seen enough benefit to switch over their operations, especially when faced with potential liability issues raised by oil companies and car manufacturers.

The small cadre of about seven E15 retailers said they wanted to visit D.C. to highlight some of the issues that are inhibiting growth of the fuel. They met with EPA officials Tuesday to urge the agency to address a pressure requirement that means E15 cannot be sold during summer months in many parts of the country.

They also said they wanted to shed light on how contracting issues with oil companies are halting the introduction of more E15 into the market at branded gas stations. Three of the gas station owners told

stories about back-and-forth battles with an oil company when they attempted to sell the new fuel.

Good said he had to wait until his contract with Phillips 66 expired to sell E15. Otherwise, he would have had to pay a $30,000 penalty in order to sell fuel that contained more than 10 percent ethanol. Scott Zaremba, the owner of Zarco USA and the first retailer to begin selling E15 in the nation, said he also ended his contract with Phillips 66 after it said it would block the sale of the fuel.

"The majors have all decided to block it and do everything they can," he said.

Glenn Badenhop, president and CEO of American Freedom Energy in Liberty Center, Ohio, said the biggest issue going forward will be raising public awareness of the fuel. Badenhop began selling E15 in January and remains the only E15 retailer in Ohio.

"The education process with the general public is huge," he said. "It's amazing to me how many people don't even know there's a 10 percent blend."

Brian Jennings, executive director of the American Coalition for Ethanol, said that education process has been hampered by a patchwork of state regulations and the unarguable fact that "no one really genuinely enjoys going to fill up their car."

"It's a little complicated to try to get people to get excited about that," he said. "I think our industry has struggled a bit with that."

AIR POLLUTION:

Vehicle and engine importer fined $630K for Clean Air Act violations

Daniel Lippman, E&E reporter

Published: Thursday, March 27, 2014

California vehicle and engine importing company American Lifan Industry Inc. has agreed to pay $630,000 in civil penalties after U.S. EPA said it imported and sold thousands of vehicles and engines made in China that did not meet clean air standards.

The company sells motorcycles, recreational vehicles and engines, and EPA said it violated the Clean Air Act because the vehicles didn't have the proper certificates saying they met federal pollution standards. The agency also said American Lifan Industry didn't give customers proper emissions warranties and sold vehicles that lacked the necessary emission labels.

"Mobile sources of pollution can threaten the clean air that we all depend on for active, healthy lives," said Cynthia Giles, assistant administrator of EPA's Office of Enforcement and Compliance Assurance, in a statement. "EPA will continue to hold importers of foreign-made vehicles accountable for meeting U.S. emission limits put in place to protect Americans from harmful air pollution."

EPA also required the company to post a $300,000 to $500,000 bond to meet possible future penalties on vehicles with model year 2014, 2015 or 2016, if those don't comply with regulations. The agency said it was the first time it had secured a bond in an air quality settlement.

Agents for EPA and the Customs and Border Protection wing of the Department of Homeland Security

carried out inspections at the Dallas/Fort Worth Service Port and the Los Angeles/Long Beach port, where they discovered the violations. They also combed through company records as part of their investigation.

The company, which has had offices in Dallas and Ontario, Calif., could not immediately be reached for comment.

AUSTRALIA:

Glencore plans to close another coal mine on lower prices

Published: Thursday, March 27, 2014

Another Australian coal mine will close due to falling global prices for the commodity.

Switzerland-based Glencore Xstrata PLC announced today it will close its Ravensworth underground operation this year.

It's the latest in a string of closures in Australia's formerly thriving coal industry. Other companies like BHP Billiton Ltd. and Anglo American PLC also have closed mines, cut back staff and put the brakes on plans to expand operations.

The price tag for Australian coking coal is at its lowest since 2007.

Glencore already has laid off 17 employees with a further 113 at risk of redundancy when the plant stops producing semi-soft coking coal at the underground Ravensworth site in September.

"Continued operations [are] no longer financially viable due to a combination of lower prices, high production costs at the mine, a strong Australian dollar and geological constraints in future mining areas," said a company spokesman, adding that two open-cut mines nearby will continue normal operations (Rhiannon Hoyle, *Wall Street Journal*, March 27). **-- JL**

CHINA:

Government to relocate some offices out of Beijing to reduce air pollution

Published: Thursday, March 27, 2014

China is planning to move some facilities out of Beijing to ease the city's smog problem.

The government said it would relocate research, health care and administrative buildings to Baoding, an industrial city of 11 million roughly 100 miles southwest of the capital.

Chinese officials did not say when the move would take place.

The strategy is part of a plan to ease congestion in Beijing, which suffers from intense air pollution. Beijing

has grown to more than 21 million people and has more than 5 million cars (Li/Wee, Reuters, March 27). -- **DB**

BIOFUELS:

American Coalition for Ethanol's Jennings discusses lobbying push ahead of EPA 2014 target release

Published: Thursday, March 27, 2014

As U.S. EPA prepares its final rule for 2014 renewable fuel targets, will the intense lobbying push from the biofuels industry sway the agency to shift from its draft proposal? During today's OnPoint, Brian Jennings, executive vice president of the American Coalition for Ethanol, discusses the challenges facing his industry as it awaits EPA's final determination.

Click here to watch today's OnPoint.

ClimateWire -- Fri., March 28, 2014 -- **Read the full edition**

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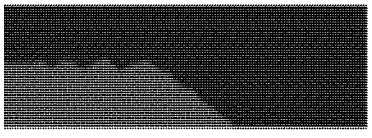

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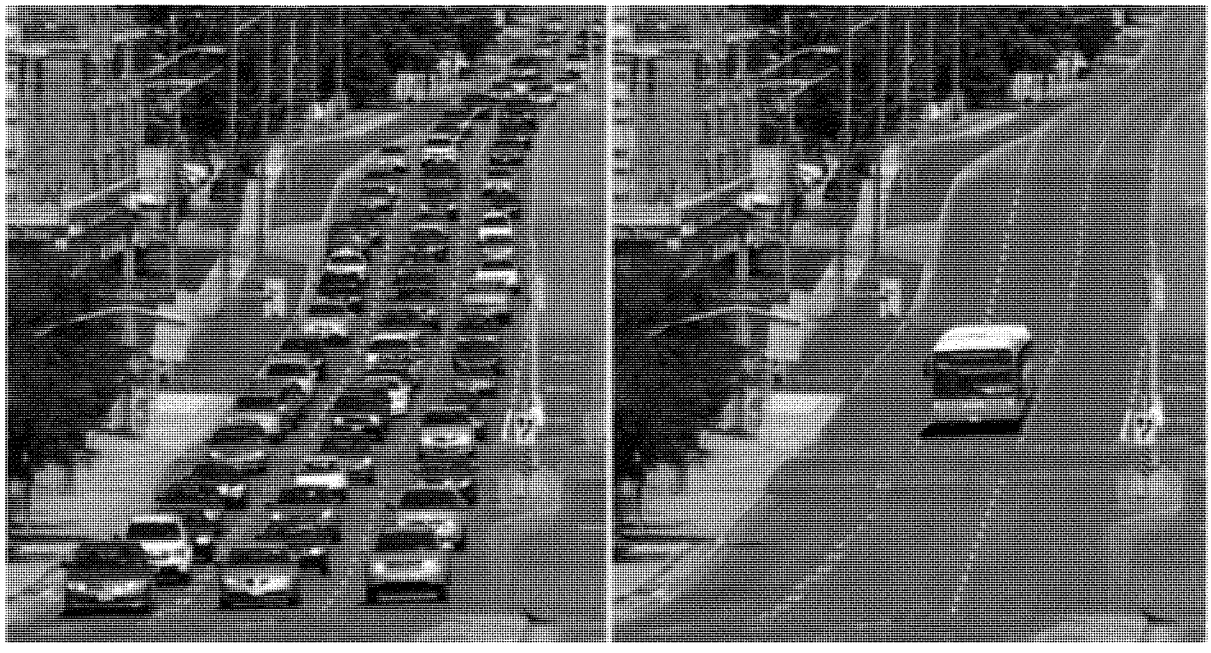

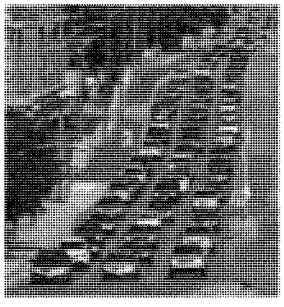

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From: Turley, Jennifer
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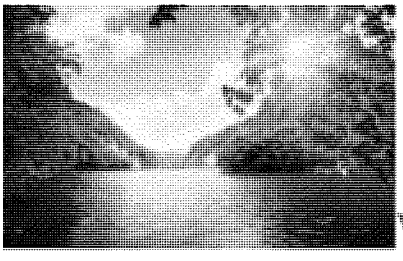


Water Law News

for March 28, 2014

Bloomberg BNA **Daily Environment Report™**

Drinking Water

Manchin Optimistic Republicans Will Support
Bill on Chemical Storage Tank Inspections

Sen. Joe Manchin (D-W.Va.) said he was optimistic Republicans will support the "realistic, simplistic approach" to protecting drinking water in his Chemical Safety and Drinking Water Protection Act (S. 1961). ...

Endangered Species

Endangered Species Suits Against Stanford
Will Proceed Separately, Federal Court Rules

Two endangered species lawsuits recently filed by environmental groups against Stanford University, one related to the university's operation of a reservoir and dam, and the other related to a biological opinion for water diversion...

Energy

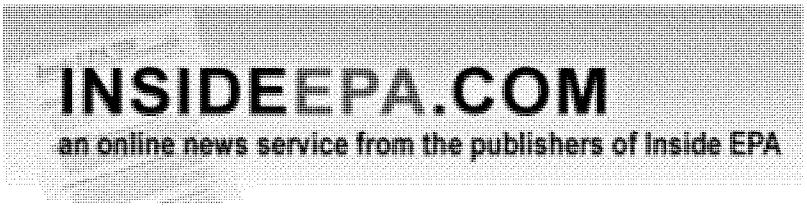
Earthquake Risk From Hydraulic Fracturing
Pushes States to Collaborate on Regulations

Several states are banding together to combat the mounting risks of earthquakes tied to the disposal of wastewater from hydraulic fracturing for natural gas....

Wetlands

House Republicans Criticize Timing of EPA
Clean Water Act Jurisdiction Proposal

Republican members of a House Appropriations subcommittee criticized the Environmental Protection Agency for releasing a proposed rule that would define "waters of the U.S." subject to federal requirements under the Clean Water...



Republicans Detail Legal, Legislative Challenges To CWA Jurisdiction Rule

House Appropriations Committee Chairman Hal Rogers (R-KY) is signaling that EPA's newly proposed rule on the reach of the Clean Water Act (CWA) will face both legal and legislative challenges focused on its definition of streams and "ephemeral" waters as well as officials' decision to advance the plan before completing a supporting study from its science advisors.

Greenwire

EPA:

Proposed water rule 'ain't going to happen,' House Approps chairman tells McCarthy

Jean Chemnick, E&E reporter

Published: Thursday, March 27, 2014

House Republican appropriators suggested today they would try to kill a U.S. EPA proposal for expanding Clean Water Act protections for streams and wetlands in their handling of the agency's fiscal 2015 budget request.

Republicans on the Interior, Environment and Related Agencies Appropriations Subcommittee peppered EPA Administrator Gina McCarthy with questions about the proposed rule at a hearing to examine her agency's fiscal 2015 budget. They said the draft -- which would bring nearly all U.S. rivers, streams and creeks under the law's protection -- was a prime example of administration overreach.

"It's the biggest land grab in the history of the world," Appropriations Chairman Hal Rogers (R-Ky.) said in his opening remarks, echoing a point he made yesterday during an Appropriations subcommittee hearing on the Army Corps of Engineers' budget (*E&E Daily*, March 27).

But Rogers pledged the House panel would do everything it can to prevent the rule from going into effect.

"That ain't going to happen, madame administrator," he told McCarthy. "And right here is where a good part of the fight's going to take place, in the subcommittee."

House Republicans have tried in the past to use the appropriations process to squash EPA air regulations for carbon dioxide, mercury and other emissions only to see their efforts fail in the Democratic Senate. A fiscal 2011 rider to downgrade the level of protection afforded to the gray wolf under the Endangered Species Act was a rare exception.

But Rogers pledged that House and Senate appropriators are committed to passing spending bills individually this year -- as they have not done for many years. That may make it easier for policy

language to survive House-Senate negotiations.

The Clean Water Act rule dominated today's hearing, pushing aside the usual marquee issues, such as EPA's plans to regulate power plants' CO2 emissions.

Rep. Mike Simpson (R-Idaho) said the water rule posed a particular threat to the economy of Western states, where water resources are vital to rural farming economies. "You've just fired the first shot across the bow in the West, because we see this as a war," Simpson said.

Subcommittee Chairman Ken Calvert (D-Calif.) said the rule was part of the agency's "go it alone" mentality, especially as it comes as EPA's science advisory panel finalizes a draft peer review of its summary of the science underpinning the rule.

"I'm very concerned about why we're moving in this direction so quickly without the science being done at this point," he told McCarthy.

But McCarthy said the rule relied on science that's been peer-reviewed elsewhere.

By asking an advisory panel to peer-review its compilation of research that had already been vetted, she said, EPA is taking a "belt and suspenders" approach -- providing an extra layer of review over and above what would usually be required for a rulemaking.

The draft peer review will be finalized ahead of the rule, she said.

She also disputed that the proposal would expand Clean Water Act enforcement of "navigable waters" beyond its historical limits. Instead, the new proposal is intended to clarify existing statutory requirements muddled by recent Supreme Court rulings for the benefit of farmers and other affected industries.

"We have moved forward because of the uncertainty that has underpinned the Clean Water Act and I think cost everybody a lot of money," she said.

'Don't look for any friendship out of this seat'

While the water proposal took the spotlight, lawmakers and McCarthy also clashed on EPA's proposed rule for new power plants' CO2 emissions and upcoming plans to regulate existing power plants.

Rogers condemned EPA's carbon regulations, calling it part of an administrationwide vendetta against the coal industry.

"EPA has worked hard to design new regulations that are designed to eliminate coal mining, coal burning, coal *period*," he said.

He added: "It makes me mad. Don't look for any friendship out of this seat."

In its EPA budget request, the administration did prioritize spending to implement its Climate Action Plan. The $7.9 billion request would cut the agency's budget by 3.7 percent compared with enacted levels, but it includes nearly $200 million to be devoted to climate-related efforts (*Greenwire*, March 4).

"Addressing the threat from a changing climate is one of the greatest challenges of this and future generations," McCarthy told lawmakers.

Calvert praised the administration for proposing overall spending reductions for fiscal 2015, but he

criticized it for taking those reductions out of programs that he said had bipartisan support -- especially the revolving loan programs for water infrastructure and the diesel emissions reductions assistance grant program, which would be eliminated under the budget.

"It seems to me that the administration is cutting bipartisan programs knowing that Congress will restore the funding," Calvert said.

Meanwhile, he said, the administration proposal appears to protect funds for its "overzealous regulations."

But Rep. Jim Moran of Virginia, the subpanel's top Democrat, said that in recent years Congress seemed only too eager to accept the cuts the White House proposed -- and ignore its call for increases elsewhere in the budget.

And full committee ranking member Nita Lowey (D-N.Y.) hammered the administration for proposing cuts that she said would not allow EPA to do its work of protecting public health.

"Instead of making a full-throated defense of the EPA, this budget request seems to indicate that EPA doesn't fully value the importance of its own work in the everyday lives of Americans," she said. She expressed particular dismay at the proposed $580.8 million cut to the State Revolving Loan Fund, which supports drinking water and wastewater infrastructure investments.

COLORADO RIVER:

Water begins flowing into parched Mexican delta

Published: Thursday, March 27, 2014

Water today began pouring into a barren delta in northwest Mexico after water management officials opened the gates of the Colorado River's southernmost dam Sunday.

Mexico's Morelos Dam, near Yuma, Ariz., began releasing 105,392 acre-feet of water and is expected to continue allowing water into the riverbed until May 18 (*Greenwire*, March 24).

Mexico and the United States agreed on the release in 2012 as part of amendments to a 1944 treaty governing their shared use of the river. Officials from the International Boundary and Water Commission, which consists of U.S. and Mexican water officials, planned to hold an event at the Morelos Dam today to mark the occasion.

Researchers are closely monitoring the release to see if it helps trees, wildlife and aquatic life in the once-fertile Colorado River delta (Associated Press, March 27). -- **SP**

NATURAL DISASTERS:

Death toll rises to 25 after mudslide rips

through Wash. community

Published: Thursday, March 27, 2014

With the official death toll at 25, hopes are beginning to fade for the 90 people still reported missing five days after a mudslide swept houses and cars away in rural Washington state.

The community of Oso, about 55 miles northeast of Seattle, continues to help rescue crews and the bereaved with free food and prayer vigils, among other things.

"This is a very strong community. ... We all stick together," said 25-year-old Jamie Olsen as she helped her husband and nearly 40 others from a nearby town sort supplies for families who had to leave their homes.

Rain-soaked embankments near Oso in Snohomish County triggered the landslide, which tore through a square mile of homes, a road and a river.

More rain was forecast for today as around 200 rescue workers continue to comb the area (Jonathan Kaminsky, Reuters, March 27). **-- JL**

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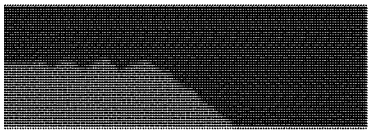

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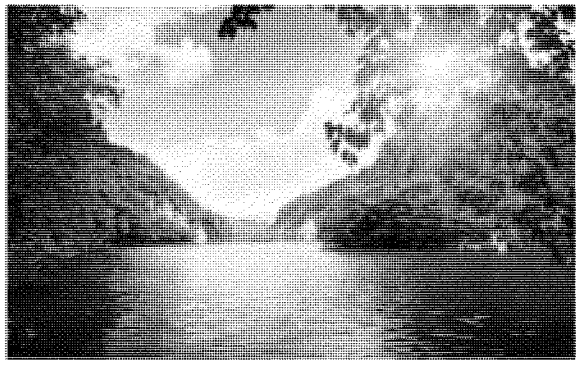

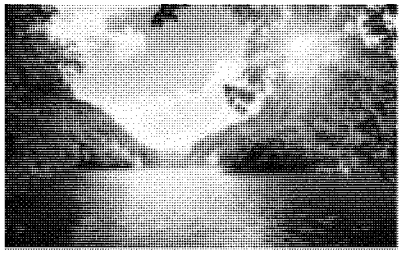

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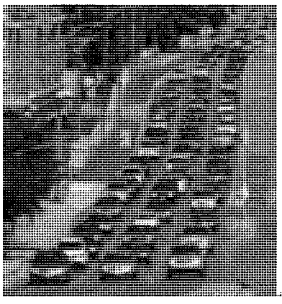
From: Turley, Jennifer
Sent: Mon 3/24/2014 2:50:28 PM
Subject: Air & Radiation Law News for March 24, 2014



Air & Radiation Law News

for March 24, 2014

Bloomberg BNA Daily Environment Report™

Climate Change

EU Leaders Promise 2030 Decision On Emissions Reduction By October

European Union leaders March 21 deferred until the fall any decision on a 2030 greenhouse gas emissions reduction target for the bloc but pledged that cuts by that date would be in line with the objective of an 80 percent to 95 percent reduction...

Climate Change

Temperature Up 2 Degrees in Colorado In Past 30 Years, Climate Report Says

Temperatures in Colorado have risen by 2 degrees in the past 30 years, according to an updated report that examines the impact of climate change on the state's water resources. ...

Climate Change

Utilities Said to Overstate Pollution-Control Costs

The power industry's concerns about the cost to reduce carbon dioxide emissions from power plants should be treated skeptically given the industry's history of overestimating the cost of pollution controls, the Center for American...

Emissions Trading

Final Two Regional Trading Programs In China Preparing for Launch in April

China's final carbon emissions trading system (ETS) pilot programs will begin in April in Hubei province and the state-level municipality of Chongqing, the last of seven regional pilot projects as the country considers a possible nationwide...

Energy

DOE's Moniz Sees Limits on LNG Exports But Congress Wants More Help for Ukraine

Energy Secretary Ernest Moniz said natural gas export licenses are approaching the limits of what the U.S. can reasonably be expected to sell in the world market, but he added the Ukraine crisis could prompt the administration to rethink its...

Energy

European Leaders Agree to Push to Enhance Energy Security, Seek U.S. Assistance in TTIP

European Union leaders agreed on the urgent need to enhance energy security and reduce dependence on Russian gas supplies in the wake of the Ukrainian crisis, and they will use an upcoming visit by President Barack Obama to assist in the effort...

Energy

Hydropower Operators Urge Supreme Court To Deny La. Landowners' Petition for Review

The U.S. Supreme Court should reject a petition by Louisiana landowners seeking review of an appeals court ruling that the Federal Power Act preempts property damage claims when the operators of

hydropower projects comply with their federal...

Energy

Lawmakers Favoring Wind Energy Projects Call for Renewing Expired Extenders Soon

Congress should quickly renew two tax credits for wind-generated energy as part of a package of currently expired provisions, Sens. Chuck Grassley (R-Iowa) and Mark Udall (D-Colo.) said in a letter to senior members of the Senate Finance Committee....

Energy

Texas High Court Won't Hear Challenge To Eminent Domain Use for Keystone Pipeline

TransCanada Corp.'s right to condemn land in Texas for its Keystone XL pipeline won't be considered by the state's highest court, which declined to hear one of the few remaining Texas cases challenging it (Crawford Family Farm...

Radioactive Waste

NRC's 'Waste Confidence' Rule Needs Site-Specific Analysis, N.Y. Official Says

The Nuclear Regulatory Commission should conduct site-specific analyses at nuclear power plants before issuing its upcoming "waste confidence" rule, which is a determination of how long spent fuel can safely be stored on site,...

CORRECTION

A story in the March 20 report about a Clean Air Task Force report on methane leaks incorrectly reported the leakage rates. The report said that one-third of gas-processing plants leak between 100,000 cubic feet and 499,000 cubic feet of methane...

CORRECTION

An article in the March 20 report on the Environmental Protection Agency's proposed rule on power plant effluent guidelines contained incorrect figures for compliance costs. The proposed rule is estimated to cost between $185 million...

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API Ramps Up RFS Repeal Push, Fearing Time To Approve Bill Narrowing

The American Petroleum Institute (API) is ramping up its push for Congress to approve legislation repealing EPA's renewable fuel standard (RFS) by launching a new advertising campaign and lobbying lawmakers, fearing that the timeframe for moving such a bill is shrinking and will end when attention shifts to the November midterm elections.

Competing Analyses Revive Debate Over Ethanol's Potential To Meet RFS

Competing background papers released by the Bipartisan Policy Center (BPC) think tank are reviving debate over the potential of higher ethanol blends including 15 percent (E15) and 85 percent (E85) to help achieve the goals of EPA's renewable fuel standard (RFS), though BPC is not suggesting any steps that could resolve the dispute.

New Industry Health Effects Data Could Help Fight Against Stricter NAAQS

A new American Petroleum Institute (API)-funded study casts doubts on the widespread view that exposures to fine particulate matter (PM2.5) and ozone increases risks of death and cardiovascular disease, which could help industry make the case against EPA tightening its national ambient air quality standards (NAAQS) for the pollutants.

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The U.S. Court of Appeals for the District of Columbia Circuit has agreed to EPA's request to suspend briefing in litigation over the agency's package

Greenwire

GRID:

Tesla, SolarCity's dream of energy storage in hands of utilities -- for now

Katherine Ling, E&E reporter

Published: Friday, March 21, 2014

Investors have been buzzing about the possibilities of Elon Musk's Tesla battery "gigafactory" and U.S. solar panel giant SolarCity enabling consumers to pair rooftop solar with affordable backup storage to free themselves from the grip of utilities and centralized power.

To achieve that dream, however, they have to first go through the utilities they are challenging to test the batteries on the system. And it has been a long slog so far.

SolarCity says it has about 500 customers who have signed up for a pilot program launched three years ago that pairs solar panels with backup battery storage.

So far, only 12 systems have been approved and connected by the utilities, according to spokesman Will Craven.

"The first year of the pilot, we were willing to give everyone the benefit of the doubt as this is a new technology and there are things to be figured out," Craven said in a phone interview. "But as time has gone on, we have begun to lose faith that we have a partner in the utility that wants to help out.

"It is a little bit like death by 1,000 letters."

Craven added that SolarCity has chosen to stop submitting applications for solar paired with backup storage systems for customers and won't submit any more until "the queue starts to move."

California's big three investor-owned utilities insist they are "actively working" and "responded promptly" to the SolarCity applications. But the issues, they say, are new and complicated, and there is some uncertainty because the California Public Utilities Commission (CPUC) has to finalize a rule on what fees they can charge for things like interconnection, standby charges and infrastructure.

Steve Malnight, vice president of customer energy solutions at Pacific Gas and Electric Co. (PG&E), said that, although there may be hundreds of people who would like battery storage systems, his company has received only 20 applications so far. Of those 20, eight have been approved and 12 are still working through the system, including four that are considered incomplete, according to PG&E.

"The facts don't always align with statements made by others in the industry right now," Malnight said. "We are consistently focused on looking at new technology to bring them forward and bring them on to improve the system for customers and to help us reach our clean energy goal."

He added, "Our focus is ensuring ... the safety and reliability for the system and the customer who is doing the installation."

Similarly, San Diego Gas & Electric, a Sempra Energy company, said SolarCity has only submitted three applications -- and two have been approved. SolarCity says only one of its SDG&E customers has been connected to the grid.

As a first-mover in modernizing the grid, California's challenges could have an impact on the nationwide advance of energy storage integration into the system. Energy storage on the grid is critical, as it offers important tools to balance load and frequency as more renewable energy is used for power generation.

Batteries are also important for the future of developers like SolarCity when state and federal grid incentives start to phase out, as well as the success for battery manufacturers like Tesla. Musk announced last month that Tesla planned to build a battery "gigafactory" to help drive down the cost of lithium batteries by producing 500,000 batteries per year by 2020 to lower the cost of its electric vehicles and provide energy storage to "non-wheeled" structures, like homes and businesses. Musk is also a part owner of SolarCity and is the cousin of SolarCity's CEO Lyndon Rive and Chief Technology Officer Peter Rive, also co-founders of SolarCity.

As the largest developer of U.S. rooftop solar photovoltaic, SolarCity's pilot program for solar paired with energy storage can provide important data and lessons for developers, the utilities, the regulators and other stakeholders about the different services energy storage could offer. The uncertainty and delay are also affecting a larger commercial backup storage program SolarCity rolled out with Tesla at the end of last year, as they are beginning to run into similar fees and issues, Craven said.

California regulators attempted to accelerate the energy storage timeline last fall by mandating that PG&E, SDG&E and Southern California Edison, a subsidiary of Edison International, add 1.3 gigawatts of energy storage to their grids by 2020. Even energy storage advocates concede it is an ambitious number and that these projects could certainly help alleviate a bit of the pressure of meeting that deadline.

$2,900 roadblock

SolarCity's customers are only some of the 667 active storage applications -- about 33 megawatts of capacity -- for California's Self-Generation Incentive Program (SGIP), according to CPUC. Almost half of those applications, or about 10 MW of capacity, are storage paired with rooftop solar, as well as other generation that counts toward the state's renewable portfolio standard. Under SGIP, the state pays for about one-third of the cost of the installed systems in an effort to boost distributed generation.

It costs SolarCity and other developers $800 per application to the utilities for the storage systems, and if the paperwork stays too long in the queue, applicants have to pay another $800 to reapply, according to Craven.

There is also a great deal of discrepancy between what the utilities are charging SolarCity for various other fees, Craven said, including the meter to monitor electrons flowing from and into the grid. The investor-owned utilities have quoted costs ranging from $400 from PG&E and SDG&E to $2,900 just quoted a few weeks ago from SCE. PG&E has even varied in meter quote costs, jumping from $400 to $1,500 back down to $600, according to emails provided by SolarCity.

What is worse, however, Craven said, is that the utilities are taking the maximum amount of time possible to answer questions -- needing a couple of weeks of back and forth instead of days to respond to simple questions.

Lyndon Rive said at a recent CPUC event on a panel with Musk and CPUC President Michael Peevey

that it is taking on average about eight months per application. Musk said that was "crazy," and Peevey noted that the process would probably be shorter after the panel, seeming to allude that the time period was unsustainably long.

Rive said the utilities are incentivized to delay the game because they win under the current system. It is up to regulators to ensure "roadblocks aren't intentionally being put there," he said.

Malnight said PG&E's process currently takes eight to 10 weeks once an application is completed. If an application is incomplete, PG&E sends correspondence to the vendor or customer outlining what information is missing from the application, including a check list of missing items, according to Ellen Hayes, a PG&E spokeswoman.

There are five steps PG&E follows once a complete application has been submitted, Malnight said: an engineering review to ensure safe operation on the grid; an interconnection agreement; the connection of a new meter, if necessary; the final field inspection; and approval to operate.

He also noted that the process would likely get faster over time, similar to what happened to connect solar panels to the grid. What once took months for solar panel interconnection can now be done online in five days, and Malnight said a similar system could eventually become the norm for the solar energy storage systems as well, although the process is slightly more complicated.

"I think this process will absolutely get faster over time as we continue to find efficiencies and standardizations in the system," he said.

Look out below

The key sticking points appear to be what utilities consider a completed application and the additional questions and answers they need to ask on an application -- and what developers consider just slow-walking an application, as well as the charges for the meter and associated services.

Jon Wellinghoff, the former chairman of the Federal Energy Regulatory Commission, said it is in the best interest of the utilities to accelerate this process no matter what the issues are.

"Ultimately it should be something the utilities should embrace," Wellinghoff said. He noted that other energy storage projects utilities are working on do not appear to be on the slow track the way these rooftop solar battery systems are, even though there doesn't seem to be a significant difference between them.

It is not just SolarCity and Tesla lining up to offer these services either, Wellinghoff said. Although they are different types of battery storage, companies like Ambri, Aquion Energy and EOS Energy Storage are coming online quickly and building factories.

"The dam is going to bust, and consumers are demanding these products," said Wellinghoff, now a partner at Stoel Rives LLP. "The utilities need to figure out how to make money off of it and work with SolarCity and others or get out of the way."

All stakeholders are currently awaiting a ruling from the CPUC on important guidelines for distributed solar projects with batteries. Utilities want to ensure that customers are not "gaming" the system by storing electricity when the price is low and selling it back when it is high, instead of selling renewable-energy-generated electricity back to the grid. They are also waiting to find out reasonable costs such as fees for meters, as well as the cost of service for utilities to "stand by" to provide electricity in case the solar battery system fails or runs out of power.

Peevey released a preliminary or "assigned commissioner ruling" last October that said utilities should waive the standby fee for now and that utilities should study the issue through 2015 and then report back to the commission on any lost revenue or other issues with backup storage interconnection. The final CPUC ruling has not been issued yet.

Back at the CPUC panel, Peevey advised SolarCity and other developers to "woo" the incumbents a bit more, "spending more time in trying to be more inclusive in trying to bring all the participants of the party at the same pace."

"But when you are running fast, like these two gentlemen are, you don't have time. You want to get ahead. There is a lack of tolerance," he said.

Hanan Eisenman, an SDG&E spokesman, said in an email that SDG&E expects the current rate reform process to create a more sustainable and balanced rate structure "that can best account for developments in technology" such as batteries.

"This process is intended to allow utilities to charge each customer for the services they receive and not the ones they don't," he said. "We look forward to working with the CPUC and other energy stakeholders on this collaborative process, which will encourage technology developers to get involved in this market and open up the utility space to more innovation, bringing new technologies and services to our customers."

Similarly, Southern California Edison said in a statement that the company "is working to address many of the complex issues raised by emerging technologies, including the additional costs of these interconnections, and is actively engaging with the California Public Utilities Commission and other stakeholders to address questions related to safely integrating solar energy and storage into the grid."

NATURAL GAS:

Export push intensifies on Hill as Russians slap sanctions on U.S. officials

Hannah Northey, E&E reporter

Published: Friday, March 21, 2014

Senate Energy and Natural Resources Chairwoman Mary Landrieu's support of exporting natural gas and her prominent committee perch likely landed her on a list of U.S. officials that Russia has barred from the country.

The Louisiana Democrat isn't upset.

"Being sanctioned by President Putin is a badge of honor," Landrieu said in a statement. "It will not stop me from using my power as chair of the Energy Committee to promote America as an energy superpower and help increase energy exports around the world."

Russian officials gave no official reason for placing Landrieu on a list of people barred from entering their country. Also on the list are Senate Majority Leader Harry Reid (D-Nev.); House Speaker John Boehner (R-Ohio); and Sens. Robert Menendez (D-N.J.), John McCain (R-Ariz.) and Dan Coats (R-Ind.).

Russian sanctions came in response to President Obama expanding financial and travel sanctions against Russia, including an additional 20 individuals and one bank. Obama also issued an executive order that authorizes -- but does not require -- the Treasury Department to sanction entire sectors of the Russian economy, including the energy sector.

Russia's strategy was fodder for jokes on Capitol Hill.

"I guess this means my spring break in Siberia is off, my Gazprom stock is lost, and my secret bank account in Moscow is frozen," McCain said in a statement. McCain in recent weeks has joined other top Senate Republicans, notably, in pushing for harder sanctions targeting Russia's energy infrastructure.

Landrieu's role in prominent national security matters as chairwoman of the Homeland Security Appropriations Subcommittee -- a panel on which Coats is the ranking Republican -- also likely played a role.

Landrieu has been an outspoken proponent of exports, repeatedly pushing the Energy Department to pick up its pace in approving proposed exports of liquefied natural gas. Three export projects are in her home state. The senator has also said energy exports are a viable political tool that should be used to help U.S. allies.

The senator has scheduled a hearing Wednesday on LNG exports featuring top officials from the U.S. Energy Information Administration, NERA Economic Consulting and an energy minister from Lithuania. Geopolitical strategy is likely to be discussed.

House Republicans are holding a hearing the same day to discuss H.R. 6, a measure from Rep. Cory Gardner (R-Colo.) aimed at fast-tracking domestic exports of liquefied natural gas to U.S. allies. Since its introduction, Gardner's bill has gained 37 co-sponsors, all Republicans except for Democrat Rep. Tim Ryan of Ohio.

Skeptics have noted it could take years before planned LNG export terminals run a maze of state and federal permitting and start shipping gas, but Senate Republicans have argued that speeding up the Energy Department's approval of export terminals could send positive signals to the markets to reduce prices, undercutting Putin's energy-fueled influence over his neighbors.

And some analysts are expressing doubt about whether the White House would follow through with sanctioning Russia's energy sector, a move that could have large ramifications given the country is one of the biggest producers of oil and natural gas, as well as a heavyweight in supplying Europe's energy needs.

"We do not currently expect the Obama Administration to pull the trigger on sanctions against Russia's energy sector owing to the (strong) prospect of retaliation against Ukraine and Europe, to say nothing of U.S. companies operating in Russia, but we cannot rule out the possible use of sector-level sanctions in the event of a significant military escalation in Ukraine," ClearView Energy Partners LLC analyst Kevin Book advised clients yesterday.

Book also questioned whether growing calls for more far-reaching measures on Capitol Hill will succeed. "Currently, we do not see momentum for a Congressional 'stampede' to broader sanctions, either," Book wrote.

Even so, calls are growing louder.

Landrieu said in a statement that the United States must act to shrink Russian influence over Europe and former Soviet states and U.S. allies.

And Sens. John Hoeven (R-N.D.) and Mark Warner (D-Va.) today urged Obama in a letter to use next week's U.S.-European Union summit in Brussels to lead a joint U.S.-E.U. initiative on energy security to counter Putin's energy influence on Ukraine and other European nations.

Among other strategies, the senators urged DOE to accelerate LNG exports by approving pending export permits within 60 days -- or providing specific reasons why that cannot happen. DOE is reviewing a number of applications from companies keen on shipping domestic gas to countries that do not have a free-trade agreement with the United States.

"Though exports would not start immediately, and though the price points in Asian markets are currently more attractive to natural gas exporters, calling for expedited approval of Liquefied Natural Gas exports will increase liquidity on the global markets and will improve the European energy security," the senators wrote.

The growing and bipartisan nature of calls emphasizing the political and economic importance of LNG exports butts up against demands among national environmental activists for the White House to keep all fossil fuels in the ground.

Groups including 350.org, which led the fight against the proposed Keystone XL oil pipeline, called on Obama earlier this week to show his resolve for tackling climate change by ordering a more comprehensive review of a liquefied natural gas export project in Maryland.

Bill McKibben, co-founder of 350.org, dismissed the calls for shipping U.S. gas to Ukraine as "stupid."

BIOFUELS:

One company's financial woes send shock waves throughout the industry

Amanda Peterka, E&E reporter

Published: Friday, March 21, 2014

The push to build a domestic cellulosic biofuel industry endured a new setback this week as one of the industry's former success stories announced it was on the brink of bankruptcy.

KiOR Inc.'s bleak outlook comes as the industry is hoping 2014 will finally be the breakout year for biofuels made from nonfood feedstocks. The 2007 renewable fuel standard mandated increasing levels of cellulosic biofuel, and several companies are completing construction on their first plants.

Experts this week said KiOR highlights the difficulties with building up a capital-intensive industry from the ground up. KiOR has struggled with balancing the high expectations needed to gain financing with reality on the ground; shareholders sued the company twice last year for not hitting goals.

And KiOR is a reminder for the industry that the economic downturn still has ramifications.

"Nobody bargained for the economic downturn in 2008, and that is a very difficult environment to try to do the incubation and technology and first commercial project, whether it's KiOR or everybody else," said Mark Riedy, counsel at Kilpatrick Townsend & Stockton LLP.

Cellulosic biofuels are made from plant-based materials such as agricultural residues, grasses, trees and municipal solid waste. How the troubles at KiOR will affect the cellulosic industry is still unknown, but experts said they likely give more ammunition to critics. The industry has produced a small fraction of the levels envisioned by the 2007 renewable fuel standard.

"It's a negative overall impression on the industry," said Bruce Babcock, an energy and agriculture economist at Iowa State University.

Backed by venture capitalist Vinod Khosla, KiOR launched in 2007. The company developed a proprietary system that uses catalytic pyrolysis, a thermochemical reaction devoid of oxygen, to convert woody biomass into gasoline and diesel. Unlike ethanol, KiOR's fuel can be dropped in directly into existing fuel infrastructure.

KiOR received attention as one of the first U.S. companies to break into next-generation biofuels. In 2011, the company raised $150 million in an initial public offering and in 2012 completed construction at a $225 million plant in Columbus, Miss. It began producing the nation's first-ever commercial quantities of cellulosic gasoline and diesel last year.

Only one other company in the country, INEOS Bio, has since begun commercially producing cellulosic biofuel: ethanol from lawn clippings and other types of waste.

KiOR, though, struggled to meet production targets and failed to run the plant consistently in its first year. Plagued by structural design bottlenecks, reliability issues and mechanical problems, the company produced 894,000 gallons of cellulosic gasoline and diesel.

In January, KiOR said it was temporarily idling the plant to make improvements. On Monday, KiOR said in a Securities and Exchange Commission filing that its problems had grown dire: It never received enough funding to make the improvements and was down to its last financing hope, a $25 million boost from Khosla contingent on performance targets (*Greenwire*, March 18).

Analysts blame KiOR's troubles on both company errors and broader issues outside its control.

Andrew Soare, a Singapore-based energy analyst at Lux Research, said that from the outset, KiOR set overly ambitious goals. The company, for example, claimed it could produce fuel for $1 a gallon. KiOR got in trouble with shareholders when it consistently failed to meet goals.

"It's really a catch-22," Soare said. "You need extremely lofty plans to raise money. But once you raise money, you have to hit those lofty plans. That's why the venture capital model has not worked in most cases in clean tech."

Alexandra Zelubowski, a senior research analyst in global refining and products markets at IHS Inc., said that KiOR has a unique approach with the potential of a big reward but that the technology is not ready for prime time. Since the plant is the company's only source of revenue, idling it to make improvements has been a massive cash burn.

"The company was too aggressive in trying to commercialize its product without doing the necessary R&D," Zelubowski said. "This is a technology issue."

Riedy, who advises renewable energy companies on financing, said KiOR's technology would likely be able to cope if it was able to receive adequate funding. But the company is still being affected by a slowdown in investment stemming from the recession, he said.

KiOR chose the venture capital and initial public offering route to finance its operations -- a very different approach compared to the next slate of cellulosic biofuel companies with plants coming online this year.

POET-DSM Advanced Biofuels, DuPont Biofuel Solutions and Abengoa Bioenergy -- all large companies with experience in biofuels and agriculture -- will likely be better positioned financially. Unlike KiOR, the companies are aiming to produce ethanol that must be blended into petroleum-based fuel. All three are deep-pocketed and can afford to lose money on their first cellulosic plants.

Zelubowski compared the makeup of the cellulosic industry to the electric vehicle industry.

"You have the established players like Chevy, trying to work off a base of core [internal combustion engine] technology that they are comfortable with and expand into advanced technologies. Is Chevy making money on the Volt? Not yet," she said. "On the other side of the coin are dedicated EV players like Fisker and Tesla. Tesla is profitable, and Fisker is bankrupt."

KiOR said the funding from Khosla would allow it to operate through August. If it does not find more funding, KiOR would be the second high-profile Khosla-backed biofuels company to go bankrupt. Georgia-based Range Fuels, which had promised to produce cellulosic ethanol, shut its doors in 2011.

Pavel Molchanov, an energy analyst at Raymond James & Associates, said that KiOR could still bounce back but that it won't be easy.

"The technology platform is still potentially valuable, but the company must provide tangible evidence that the Columbus plant is capable of producing at significant scale," Molchanov said. "And time is not infinite given the company's ongoing cash burn."

A blemish for the entire industry

KiOR's troubles are enhancing an already negative light on the cellulosic industry as a whole, which opponents in the oil industry have sought to exploit.

"If KiOR fails, then one might ask, what is it going to take for a cellulosic biofuel company to succeed?" said Jay Kesan, a law professor who focuses on biofuels at the University of Illinois.

Salo Zelermyer, a senior counsel at Bracewell & Giuliani and a former senior counsel at the Department of Energy, said KiOR's troubles reinforce the view expressed by critics of the RFS program that EPA's annual targets for the industry have been "optimistic at best."

EPA has consistently overestimated the amount of cellulosic biofuel that will be produced each year. The agency lost a court case over its 2012 target.

"The prospect of another cellulosic company not fulfilling the promise that was initially thought of at the start -- I think it's another indication that the cellulosic market is not certainly filling the expectations of the statutory language of the RFS or that the regulatory bodies have set for it," Zelermyer said.

EPA, which relied on KiOR's production in setting last year's cellulosic target, earlier this year said it would reconsider the target, citing the troubles at KiOR.

In its 2014 renewable fuel standard proposal, EPA projected KiOR would this year produce between zero and 9 million ethanol-equivalent gallons. EPA has yet to finalize its 2014 RFS proposal, and industry analysts said they would be watching to see whether the agency lowers its overall 17-million-gallon cellulosic target on the news at KiOR.

Christopher Grundler, director of EPA's Office of Transportation and Air Quality, said recently that the agency has tried to be more conservative.

"I'm not happy that the EPA has been wrong every year about this," Grundler said. "We are looking at what processes we're using to estimate future cellulosic production. And it's hard. There's a considerable amount of uncertainty."

KiOR highlights the perils of setting a mandate based on projected, rather than actual, volumes of production, said Bob Greco, director of downstream activities at the American Petroleum Institute. His group has complained that oil companies have previously paid penalties for not using cellulosic fuels that do not yet exist.

"I think it's one company, clearly it's one company, but it's symptomatic with the problem we're facing with how EPA sets these mandates," Greco said.

Brooke Coleman, executive director of the Advanced Ethanol Council, said he believed the oil industry would go "out of its way" to make KiOR a symbol of the cellulosic biofuel industry.

But Coleman, who represents DuPont, POET and Abengoa, said KiOR was "no more relevant" to other biofuel companies than the BP PLC oil spill was to other oil companies.

His group is more worried about EPA's proposal for 2014, which represents the first overall rollback of the renewable fuel standard (*E&ENews PM*, Nov. 15, 2013). The proposal has slowed investment in advanced biofuel companies.

"What EPA is doing is a much bigger risk from the perspective of advanced biofuels than what is going on with KiOR," Coleman said.

CALIFORNIA:

Utility agrees to $24.5M fine in electrocution, power outage cases

Anne C. Mulkern, E&E reporter

Published: Friday, March 21, 2014

A California utility has agreed to pay $24.5 million for safety failings tied to a power outage affecting more than 440,000 customers and downed equipment that electrocuted three members of a family.

Southern California Edison Co. (SCE) reached the settlement with the California Public Utilities Commission's Safety & Enforcement Division (SED). An administrative law judge still must issue an order in the proceeding, and commissioners would need to approve it. That isn't expected before May or June.

"SCE believes the settlement is in the public interest and allows it to move forward with the utility's principal mission of providing safe, reliable and affordable electric service," the utility said in a statement.

Of the $24.5 million, $15 million would go to the state's general fund and the rest toward safety efforts, with part directed to utility infrastructure improvements, SCE said.

The penalty stems from separate events in 2011. In the first, at 5:41 a.m. PST on Jan. 14 of that year, an overhead electric conductor owned and operated by SCE broke and fell to the ground, starting a small grass fire in a backyard in San Bernardino County, the CPUC said.

A resident there was electrocuted when he tried to put out the fire and came into contact with a section of the conductor, the CPUC said. The man's wife and stepson attempted to assist and also were electrocuted. CPUC did not identify the people who were killed, deleting their names from court documents.

An investigation found that it happened after two SCE 12-kilovolt overhead conductors "came into contact or near contact with each other," which caused one of the two to break and fall off. The probe also uncovered that seconds earlier, one-quarter mile away, the same equipment malfunction had occurred. There were no known fires or injuries at that location.

The inquiry further revealed "that similar conductor failures have been occurring for the past six years on the same circuit and in the proximity of this incident. However, SCE did not take appropriate measures to prevent such recurrences," according to a case document.

SCE in the settlement admitted that it had failed to properly consider the potential significance of the earlier incidents in designing, constructing or maintaining facilities involved in the January 2011 event "to prevent them from failing," CPUC said.

For this part of the proceeding, the utility would pay $16.5 million in shareholder funds with $10 million going to the state's general fund and $6.5 million for "implementing programs to reduce the likelihood of reoccurrence of a similar incident."

The other part of the proposed penalty is related to powerful winds that swept through part of the San Gabriel Valley -- a Los Angeles suburb -- Nov. 30 and Dec. 1, 2011, "uprooting trees and knocking down utility facilities," SED said.

Power outages hit 440,168 SCE customers. The utility gave customers "inaccurate power restoration time estimates," CPUC said.

The SED investigation found that SCE and other owners of the affected power poles violated CPUC safety requirements. The agency's safety arm concluded "that at least 21 poles and 17 guy wires did not meet the safety factor requirements."

SCE in the settlement also would admit that it did not preserve all failed poles and equipment linked to the incident, as required by CPUC. The utility's "collection and cataloguing methodology prevented SED from reconstructing all but five poles for analysis," CPUC said.

"Edison believes that the preservation of all poles, conductors, and other associated equipment may have hindered its efforts to restore power to its customers impacted by the windstorm at some locations," CPUC said.

For these violations, under the proposal, SCE would pay $8 million in shareholder funds, with $5 million going to the state's general fund and $3 million for programs to reduce the likelihood of poles becoming overloaded.

COAL:

Planning commission OKs controversial terminal in Ala.

Published: Friday, March 21, 2014

A Mobile, Ala., commission yesterday approved a controversial coal terminal opposed by local environmentalists.

The Mobile Planning Commission voted 4-2 in favor of the Blue Creek Coal Terminal, which would be part of Walter Energy Inc.'s proposed $1.2 billion mining project in the region.

The coal terminal would use fog control devices, water cannons and other technology to reduce air pollution, said Dan Grucza, Walter Energy's vice president of environment.

"We go above and beyond what is required and are committed to being a good neighbor and a responsible corporate citizen," Grucza said.

But opponents said they were concerned the project could have adverse health impacts, citing Walter Energy's history. A division of the company was involved in a U.S. EPA investigation into potential pollution violations in Birmingham, Ala.

"We are disappointed," said Greg Vaughan, an attorney for opponents of the plan. "We have had a coal problem for quite some time" (John Sharp, *Birmingham News*, March 20). **-- DB**

AIR POLLUTION:

Businesses urge Pa. coke plant to clean up emissions

Published: Friday, March 21, 2014

Several community organizations are pushing Pennsylvania regulators to crack down on an Allegheny County, Pa., coke plant.

The Shenango coke plant in Neville Township, Pa., was in violation of air quality regulations for 330 days in a 432-day period that ended Sept. 30, 2013, according to the groups. The plant has a record of pollution violations going back as far as 35 years and has paid millions of dollars in fines.

The groups are seeking requirements that the plant comply with federal air regulations or be forced to shut down and that it limit coke production on days when air quality is poor.

Many nearby businesses don't understand why the coke plant has been able to continue operating for years in violation of regulations while they feel the impact of state rules every day.

"The state will shut down my barbershop for minor violations like not changing my Barbicide, the blue liquid that cleans the combs," said Aaron Stubna, who owns the nearby Lincoln Barbershop in Bellevue. "What Shenango is doing down there is a lot more dangerous to our health and needs to be addressed."

The plant's operator, DTE Energy, confirmed that it was working with regulators to bring the plant into compliance.

"We're working on our long-term environmental performance as we have been doing since we purchased the plant in 2008," DTE spokeswoman Randi Berris said (Don Hopey, *Pittsburgh Post-Gazette*, March 21). **-- SP**

OIL AND GAS:

N.D. swallows cost of radioactive waste cleanup

Published: Friday, March 21, 2014

North Dakota will foot the bill for the cleanup of radioactive oil field waste that was illegally dumped in an abandoned building in the northwest corner of the state.

In the state's biggest incident of illegal oil waste dumping to date, authorities found hundreds of radioactive oil filter socks in a 4,000-square-foot building in Noonan near the Canadian border (*Greenwire*, March 12).

Officials say the building's owner normally would have to pay cleanup costs, but he is wanted on an unrelated federal larceny charge and can't be found.

The state has faced a rising problem of illegal oil waste dumping since becoming the second-largest oil producer in the United States.

Dave Glatt, a state environmental health chief, said the contractor could begin work on the cleanup as early as 10 days after being announced Monday (AP/*Fuel Fix*, March 20). **-- JL**

NUCLEAR WASTE:

Los Alamos to ship dump-bound backlog to Texas

Published: Friday, March 21, 2014

Los Alamos National Laboratory will shift its growing backlog of nuclear waste to Texas while a cleanup continues at the New Mexico repository that normally would receive the materials.

About 1,000 barrels of radioactive waste is piling up at Los Alamos, and the laboratory faces a strict June 30 deadline to remove the waste or be in violation of state regulations. The lab announced yesterday it had found a solution: sending the waste to the Waste Control Specialists facility in Andrews County, Texas, a sparsely populated West Texas region about 400 miles from Los Alamos.

The waste is expected to remain there temporarily until it can be shipped to the Waste Isolation Pilot Plant near Carlsbad, N.M., about 100 miles away.

Items needing disposal include clothing, tools, rags, debris, soil and other items containing low levels of radiation, according to the lab.

Los Alamos spokesman Matt Nerzig said the waste shipments should begin in early April, well ahead of the state deadline (Joseph Kolb, Reuters, March 20). **-- SP**

ClimateWire -- Mon., March 24, 2014 -- Read the full edition

1. SCIENCE: WMO issues a global climate report, calls for more action by youth

The World Meteorological Organization, marking today's celebration of World Meteorological Day, said there is a need for more focus on the climate issue by young people. The focus comes at a time when most children and young adults in Europe are participating in activities of various organizations, but only a small percentage actively engage in climate issues.

2. TRANSPORTATION: Why smog-bound Chinese cities may have a long wait for their next electric bus

China's clean vehicle promotion has progressed slowly, even in a sector that has been getting the biggest government push. The share of alternative-fuel buses in the country's total fleet remains insignificant, accounting for less than 4 percent last year, according to EVhui, a Chinese business information organization.

TODAY'S STORIES

3. WATER: U.N. projects demand to rise by 40% as supplies dry up

4. ENERGY EFFICIENCY: New report offers consistent metric to compare energy efficiency programs

5. HEALTH: Higher summer temperatures raise the death toll in U.K. -- study

6. AGRICULTURE: Biochar industry braces for the big time

7. ARCTIC: Heavy reindeer grazing appears to reduce warming's effect on tundra -- study

8. NEGOTIATIONS:: E.U. summit agrees on energy independence but postpones climate, energy decisions

9. FOOD SECURITY: Climate change may be shrinking fish

10. CARBON CAPTURE: Rio Tinto exec calls for increased research funding, as company 'pauses' industry fund contribution

11. CHINA: Climate change cost China $2.6B in damage last year

12. SPECIES: Chickadee migration showing increased influence of climate change

E&ETV's OnPoint

13. CLIMATE: NRDC's Lashof discusses new data on economic, climate impacts of existing source proposal

EnergyWire -- Mon., March 24, 2014 -- Read the full edition

1. OIL SANDS: Kochs not No. 1 in Alberta, but tops in political drama

An arm of Koch Industries, the energy conglomerate run by billionaire conservative brothers, operates three crude production facilities and one active project in the Canadian oil sands on a leasehold less than half the size of Canada's largest heavy oil producer, according to Alberta provincial records.

2. REGULATION: Ready or not, Pa. confronts 'forced pooling'

Pennsylvania regulators abruptly postponed a hearing Friday on whether an oil and gas producer can compel property owners to allow drilling beneath their land, the latest twist in an eight-month saga over so-called forced pooling.

TOP STORIES

3. POLICY: Battered by cheap gas, nuclear struggles to make a comeback in Fla.

4. OIL SPILL: Barge collision shuts vital shipping channel

5. HYDRAULIC FRACTURING: Review charts potential paths to water contamination

THIS MORNING'S STORIES

6. OIL: U.S. rig count climbs to new high -- Baker Hughes

7. OIL AND GAS: Refiners ride high on weather-driven demand

8. PEOPLE: Ex-Consol gas chief tapped to be company's next CEO

9. OFFSHORE DRILLING: Specialty training center opens in La.

10. UTILITIES: Steven Chu urges embrace of rooftop solar

11. REGULATIONS: Proposed Nev. fracking rules get warm industry reception

12. POLICY: Enviro group accuses New England governors of backroom energy planning

13. BUSINESS: Chesapeake's CEO says financial recovery all about shale leases

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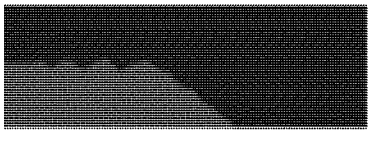

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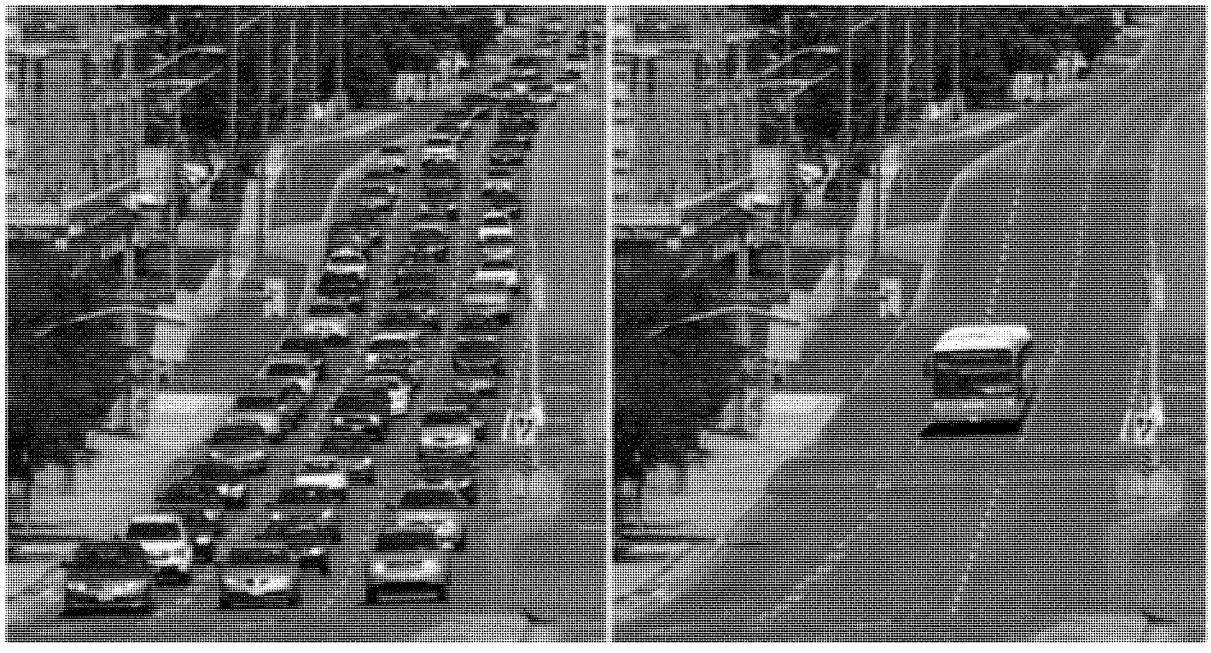

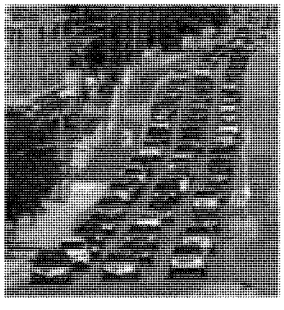

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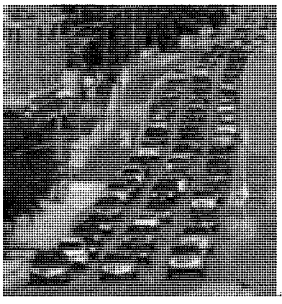

Air & Radiation Law News

for March 20, 2014

Bloomberg BNA Daily Environment Report™

Air Pollution

EPA's Ozone Advisers Have Financial, Ethical Conflicts, House Republican Says

Scientists reviewing the Environmental Protection Agency's upcoming air quality standards for ozone have financial ties to the agency and other ethical conflicts that could jeopardize the impartiality of their work, a House committee...

Air Pollution

Utah Legislature Passes Three of Six Bills Designed to Improve Air Quality in State

The Utah Legislature put clean air in the spotlight during its 2014 regular session, approving three of the six major air quality measures it considered....

Climate Change

Infrared Cameras Can Facilitate Detection, Repair of Methane Leaks, Report Says

Methane leaks from oil and natural gas production can be easily identified using infrared cameras and are highly cost-effective to repair, the Clean Air Task Force said in a report....

Climate Change

Obama Administration Launches Online Hub To Make Climate Data More Accessible

The Obama administration launched a Climate Data Initiative to make federal information more accessible to local communities and businesses preparing for the impacts of climate change....

Energy

Anti-Keystone Views of Obama Advisers Clash With Election-Year Politics, Fight for Senate

President Barack Obama's advisers are lining up against the proposed Keystone XL oil pipeline. ...

Energy

EPA Plans Six-Month Review of Process For Approving Renewable Fuels Pathways

The Environmental Protection Agency will spend six months reviewing its methods for approving new renewable fuels pathways to streamline the application process, the agency announced March 19....

Energy

Member of Nuclear Regulatory Commission To Depart, Take Reins of OECD Agency

Nuclear Regulatory Commission member William D. Magwood plans to leave the commission to become director general of the Organization for Economic Cooperation and Development's nuclear oversight program in Paris....

Energy

Michigan Legislature Passes Bills to Lower Taxes on Oil, Gas From Enhanced Recovery

Michigan's Republican-led Legislature approved a package of bills lowering taxes on oil and gas that is produced using carbon dioxide for enhanced recovery. ...

Energy

Oral Arguments Set in Ralls Wind Farm Case

Oral arguments are scheduled for May 5 before the U.S. Court of Appeals for the District of Columbia Circuit in Ralls Corp.'s constitutional challenge to President Barack Obama's order directing the Chinese-owned firm to divest...

Energy

Senate Finance Committee Expected To Mark Up Wind Power Tax Credit Extender

The Senate Finance Committee is expected to approve reinstatement of the expired wind energy production tax credit among other expired energy incentives as part of a tax bill markup planned for early April. ...

Energy

Two Former Senators Launch Campaign To Build Public Support for Nuclear Power

Former Sens. Evan Bayh (D-Ind.) and Judd Gregg (R-N.H.) are teaming up as co-chairmen of an industry-backed campaign called Nuclear Matters to raise public awareness and support for nuclear energy in the years ahead....

Enforcement

Judge Orders Tonawanda Coke to Pay $24.7 Million in EPA Criminal Case

Tonawanda Coke Corp. has been sentenced to pay a $12.5 million penalty and provide $12.2 million in funding for health and environmental studies for criminal violations of the Clean Air Act and the Resource Conservation and Recovery Act at...

Enforcement

Nitric Acid Maker to Install Pollution Controls
To Settle EPA Case Over Alleged Air Violations

LSB Industries Inc. has agreed to install updated air pollution control equipment costing between $6.3 million and $11.7 million at its nitric acid plants to settle a Clean Air Act lawsuit brought by the Environmental Protection Agency and...

EPA

Involvement of Two Former EPA Officials
In Rules 'Raises Questions,' Vitter Staff Says

The involvement of two former senior Environmental Protection Agency air officials in the rulemaking process "raises new questions about the science underlying" the 1997 national ambient air quality standards for ozone and particulate...

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High Court Urged To Reject Appeal Of Landmark MTBE Liability Decision

New York City is urging the Supreme Court to reject Exxon Mobil's push to reverse a landmark appellate ruling finding it liable $104 million in damages for contaminating groundwater with the fuel additive methyl tertiary butyl ether (MTBE), fighting Exxon's claim that the ruling is flawed because the Clean Air Act effectively mandated MTBE's use.

Latest Blogs

White House Launches Climate Data Initiative

The White House March 19 announced the launch of a new initiative to make "climate-relevant data" more accessible, an effort that officials said is intended . . .

Advocates Seek EPA Rules To Curb Methane Leaks

The Clean Air Task Force (CATF) is calling on the Obama administration to impose leak detection requirements at the majority of oil and gas facilities . . .

Greenwire

EPA:

Senator says Beale had undue influence on air policy

Robin Bravender, E&E reporter

Published: Wednesday, March 19, 2014

A GOP senator is accusing U.S. EPA's fake spy and his best friend of coordinating to spread their "tentacles" throughout the agency, leaving a legacy that still impacts air policy.

Louisiana Sen. David Vitter's office today released a 67-page report depicting former EPA air officials John Beale and Robert Brenner as powerful staffers who set in motion a regulatory "playbook" where the agency relies on "secret science," hurries regulatory review and inflates benefits of proposed rules.

Beale is now serving a prison sentence after pleading guilty last year to stealing his EPA salary while taking time off under the guise of doing secret work for the CIA. Brenner, a longtime EPA air official who retired in 2011, was Beale's best friend who recruited him in the late 1980s to work in the agency's air office (*Greenwire*, March 12).

Vitter, the top Republican on the Environment and Public Works Committee, has kept up pressure to hold current and former EPA officials accountable for Beale's fraud.

In this most recent report, Vitter's office zeroes in on the role Beale and Brenner played in the 1997 development of air quality standards for ozone and particulate matter. Beale and Brenner, the report says, introduced a series of actions -- or a "playbook" -- for pushing through controversial rules.

"These actions include a heavy handed managing of the interagency review process in a way that

compresses timelines through sue-and-settle agreements and deprives other stakeholders of the necessary time to conduct meaningful analysis; it is an outcome driven strategy, not one based in science; and whose ends justify whatever means are necessary to push through EPA staffs' desired outcome," the report says.

Those 1997 rules were established under a timeline agreed to with the American Lung Association. Vitter and other congressional Republicans have taken aim at what has been dubbed a "sue and settle" process, in which outside groups sue an agency and then negotiate a settlement that establishes rulemaking requirements.

Beale was also at the center of a controversy in 1997, when a memo leaked to Congress showed he had objected to the White House review of the proposed air pollution standards, *Platts* reported at the time. According to Vitter's office, Beale "pressured the Office of Information and Regulatory Affairs to back off its criticism" of the air quality standards.

Since the Obama administration assumed power, "EPA's Playbook has been resurrected and implemented with zeal with dire consequences for some Americans," the report says.

EPA spokeswoman Alisha Johnson said it's well known that Beale went to great lengths to criminally defraud the EPA over the course of more than 20 years. "While Mr. Beale did work on the rules mentioned in the report, he was just one of a large number of people from a number of disciplines across the agency who provided input on those rules," she said.

Johnson added that the rules in question were reviewed by the Supreme Court, which concluded in 2001 that costs of implementing the standards couldn't be considered in setting the standards. She added that the particulate matter standard was upheld entirely by the courts and the ozone one was upheld with one minor technical exception. "The standards followed the routine open, transparent and public process, providing opportunities for public and interagency review and comment prior to their finalization."

Paul Billings of the American Lung Association defended the establishment of those air quality standards. Since those standards were set, "we have two complete [particulate matter] reviews, and in both cases the standard was strengthened, not weakened," he said.

Billings called the report "a smokescreen to try to distract attention from facts that are inconvenient to a political agenda that is largely driven by industries that oppose cleaning up air pollution to protect public heath and the environment."

The report quotes Brenner's former colleagues saying he was "fundamentally dishonest" and describing how he developed a "Machiavellian" network throughout EPA during his more than 30 years at the agency. Some of Brenner's other co-workers and friends have painted him as an honest, hardworking career employee who has had his reputation tarnished by the fraud of his longtime friend.

EPA:

House Science chief slams review panel behind new ozone standards

Jason Plautz, E&E reporter

Published: Wednesday, March 19, 2014

The chairman of the House Science Committee today warned that the scientific review for U.S. EPA's

upcoming ozone pollution standards could be marred by issues of transparency and conflict of interest.

Rep. Lamar Smith (R-Texas) is seeking correspondence between EPA staff and members of the Clean Air Scientific Advisory Committee (CASAC) working on the review of the National Ambient Air Quality Standards for ozone. In a letter to EPA Administrator Gina McCarthy, Smith wrote that the committee "appears to violate agency policies designed to ensure balance, independence and impartiality."

The 20-member CASAC ozone review panel, which advises EPA on scientific evidence related to air pollution, is scheduled to meet at the end of this month to weigh scientific evidence for lowering the ozone standard, currently set at 75 parts per billion. Review documents released last month showed the committee was considering tightening the standard to as low as 60 ppb (*Greenwire*, Feb. 3).

"Due to the substantial economic cost associated with finalizing a more stringent ozone standard, EPA should make every effort to ensure the transparency of the regulatory process," Smith said in the letter. "Additional transparency is necessary to assure Congress and the American people that EPA is basing its costly regulatory decisions on the best available science and not a predetermined regulatory agenda."

Smith said 16 of the 20 panel members have had their work cited by EPA in various documents used by the review panel. Fourteen members, he added, have been involved with projects that received EPA grants in the past, and 10 were on EPA's panel for the 2008 ozone review.

Smith, who has long criticized the agency's "secret science" agenda, also rapped the agency for having the CASAC discussion "off-line" and requested it webcast the upcoming March 25-27 review and archive it for public use.

In a statement, EPA said it was reviewing Smith's letter.

"Science and the law are the foundation of EPA's efforts to protect the health of the American people and our environment," the agency said. "We are committed to transparency and reiterate that CASAC provides independent advice to EPA."

A September EPA inspector general report found that the agency had largely followed conflict-of-interest and ethics guidance in selecting CASAC members, although it said the agency could do more to document the decisionmaking process (*E&ENews PM*, Sept. 13).

Click here to read Smith's letter.

AIR POLLUTION:

Fertilizer manufacturer agrees to 'dramatic' emissions cuts

Jason Plautz, E&E reporter

Published: Wednesday, March 19, 2014

North America's largest manufacturer of concentrated nitric acid will lower emissions of nitrogen oxides at 10 plants in four Southern states under a settlement announced today with U.S. EPA and the Department of Justice.

LSB Industries Inc., which produces nitrogen-based fertilizers, will be subject to NOx emission limits that

are among the lowest in the nation under the settlement, which the Obama administration estimates will reduce emissions by more than 800 tons per year. The plan will cost between $6.3 million and $11.7 million.

The administration alleges in a complaint filed concurrently that three subsidiaries constructed or made modifications to plants that resulted in increased NOx emissions without obtaining proper permits or installing pollution controls. Concentrations of NOx emissions can irritate the lungs, lower resistance to respiratory infections and cause respiratory illness in children.

"This case is about cleaner air for people living in communities near manufacturing plants," said Cynthia Giles, head of EPA's enforcement office. "LSB Industries has committed to dramatic cuts in air pollution and ensuring they are in compliance with the law. We expect others in the industry to recognize the imperative to adopt reforms and reduce pollution in communities where they operate."

The settlement applies to 10 nitric acid plants owned or operated by LSB and four subsidiaries: Arkansas-based El Dorado Chemical Co., Alabama-based Cherokee Nitrogen Co., Oklahoma-based El Dorado Nitrogen Co. and Texas-based El Dorado Nitrogen Co. No violations were alleged at the Texas facility.

The companies will also pay a penalty totaling $725,000 to settle violations of the Clean Air Act and of Oklahoma state law. They will also spend $150,000 to remediate and reforest 10 acres of land near El Dorado, Ark., where NOx emissions have contributed to acidified soil.

Click here to read the consent decree.

BIOFUELS:

EPA to update fuel review process

Amanda Peterka, E&E reporter

Published: Wednesday, March 19, 2014

U.S. EPA plans to update its renewable fuel review process with an eye toward cutting down long approval delays that biofuel producers say have stymied investments.

The agency said in a notice posted online that it would make internal processes more efficient and develop a new step-by-step guidance for petitioners. EPA also plans to launch an automated review process for previously approved inputs and technologies.

"We have determined that improvements should be made to the petition process to enable more timely and efficient decision-making," EPA said.

Through the petition process, EPA assesses the life-cycle greenhouse gas emissions of new fuel feedstocks and technologies. Only when a fuel is approved can refiners use it to comply with the federal renewable fuel standard. Approval is generally seen as a catalyst for next-generation biofuels because it creates market demand.

Since 2010, EPA has received more than 50 petitions from companies spanning a variety of feedstocks and technologies, including corn ethanol technologies and biofuels made from advanced feedstocks like giant reed, biomass sorghum and jatropha. The agency has approved 19 pathways covering both ethanol and advanced biofuels. Thirty-six petitions are currently under review.

EPA's process can stretch months, and even years in some cases, for individual fuels. A study last May found that companies that have petitioned the agency for new next-generation fuel types, or fuels other than corn ethanol, have had to wait an average of 1.37 years for a decision (*Greenwire*, May 28, 2013).

The delays have held up projects in the nascent advanced biofuel industry, according to a letter sent last year to the White House from the Advanced Ethanol Council.

"It's absolutely critical for the private investment marketplace to have a transparent, expeditious and predictable resolution process for all proposed pathways," the council told the White House, "or we face the prospect of losing these projects to other countries."

In its notice, EPA said it believes the updates will improve the "long-term performance" of the petition process.

"Our objectives are a more efficient and transparent process with improved public service," EPA said.

The revamp process should take about six months, the agency said. EPA has asked biofuel companies to delay submitting new fuel applications until the process is over.

EPA, though, said it will continue to review high-priority petitions. Those include fuels that have the potential to comply with the cellulosic biofuel mandate, or the annual target for fuels made from agricultural waste, grasses and other plant-based materials. It will also prioritize nonfood feedstocks and those that are easily dropped into the existing fuel distribution network.

Brooke Coleman, executive director of the Advanced Ethanol Council, applauded the agency's action but warned that a six-month delay is a long time for startups and new technologies.

"We will continue to work with EPA to ensure that this process occurs quickly," Coleman said in an email. "The final product needs to triage effectively and make sure that good projects can continue to make progress while critical questions about their respective pathways are answered. We cannot afford to have projects die on the vine or go overseas while waiting for a pathway."

BIOFUELS:

Gator fat's a promising biodiesel feedstock -- La. researchers

Amanda Peterka, E&E reporter

Published: Wednesday, March 19, 2014

University of Louisiana researchers have developed a method to turn alligator fat into biodiesel after gators are processed for food and leather.

"Figuring that it's a waste fat or oil, we decided that it should be able to be converted easily into biodiesel," chemistry professor August Gallo said in a presentation at the 247th national meeting of the American Chemical Society in Dallas.

Most U.S. biodiesel is made from soybean oil, but the fuel is also produced from cooking grease and animal fats.

Gallo said the team hopes to make use of some of the 300,000 alligators harvested annually in his state. About 30,000 of those animals are trapped in the wild, with the rest coming from gator farms, according to Louisiana's Department of Wildlife and Fisheries.

The harvested gators generate about 15 million pounds of waste fat a year.

"We've been approached by our farmers in southwest Louisiana, alligator farmers in particular, because of a waste product," Gallo said. "They'll capture, harvest their wild alligators, and they'll take the hide for purses or leather products. And the meat is quite useful for the local population, but there's a large amount of waste from the alligator."

The Louisiana team has updated research published in 2012 by developing biodiesel processes that don't require a catalyst and don't leave waste products.

They are testing two technologies to produce biodiesel: a flow reactor and a batch reactor.

With a flow reactor, the researchers are able to produce biodiesel in a continuous stream, compared with the batch reactor, in which discrete batches of fat -- the university receives it in 25- to 50-pound batches -- are plugged into the process to produce fuel.

"This approach is not really about a brand-new fuel, but the manufacture of a known type of fuel (biodiesel) using a more efficient, less wasteful process that largely eliminates solid-waste byproducts," Thomas Junk, head of the university's Chemistry Department, said in a statement.

The continuous reactor is able to produce biodiesel from alligator fat in a matter of minutes.

"That's important for commercial manufacturing, where you want to produce as much fuel as quickly as possible," Junk said.

The technology is still in the early stages of development, Gallo said. He estimated it would take at least several more years to have gator-made biodiesel ready for the market.

"It's not going to make that big a dent into the market, but as long as we can keep food products out of the biodiesel formation and continue to use waste products, I think that would be much better," Gallo said.

The scientists' technology works with other types of animal fats, including chicken, pork and beef.

Gallo said there may be the potential to use other animals found in the Southeast for fuel production.

"There may well be," he said. "Louisiana loves to take their animals and do all kinds of things with them."

NUCLEAR WASTE:

N.M. repository springs another 'very small' radiation release

Published: Wednesday, March 19, 2014

New Mexico's Waste Isolation Pilot Plant yesterday said it detected a "very small" radiation release last week and pointed to contamination in the ventilation system as the likely cause.

An air sample taken March 11 found elevated americium levels, but they were not high enough to warrant U.S. EPA action, according to the plant.

The release was "expected, given the amount of contamination captured by the WIPP ventilation system" during an earlier radiation release last month, the plant's operators said in a statement.

The plant near Carlsbad, N.M., is continuing to investigate what caused the original radiation leak (Lauren Villagran, *Albuquerque Journal*, March 19). **-- SP**

COAL:

Mont. board unanimously approves Signal Peak mine expansion

Published: Wednesday, March 19, 2014

Montana's Land Board yesterday voted unanimously to allow a 7,160-acre expansion of the Signal Peak coal mine north of Billings.

The expansion will double the size of the Signal Peak mine, owned by Ohio-based Signal Peak Energy LLC. The site is the only underground coal mine in Montana and employs about 325 people.

Several commissioners cited the mine's economic impact both on the local economy and in fees paid to the state. Workers at the mine together earn about $40 million per year, and the state takes in $127.2 million in taxes and royalties from the facility.

The mine extracted 8.7 million short tons of coal last year and previously received permits to expand from the state's Department of Environmental Quality. The Bureau of Land Management also signed off on the mine's proposal to lease federal land for coal extraction.

The mine is thought to have about 431 million tons of recoverable coal below ground and 109 million tons above ground (Tom Lutey, *Billings Gazette*, March 18). **-- SP**

NUCLEAR POWER:

Small modular reactor startup attracts new partner

Published: Wednesday, March 19, 2014

An Oregon-based startup is finalizing a new strategic partnership to help fund its efforts to develop a small-scale nuclear reactor design.

NuScale Power LLC announced yesterday that technical services company Enercon Services Inc. was taking an equity position in the company. Michael McGough, NuScale's chief operating officer, said there was no cash injection as part of the deal and that terms were still being finalized. Enercon provides licensing and engineering support to roughly 90 percent of nuclear power plants in the United States.

NuScale's project to develop a reactor that's smaller, safer and more economical than conventional reactors is immensely expensive. In December 2013, the company won an award for up to $226 million in matching funds from the Department of Energy, though it's unclear if Enercon's involvement will open up these federal funds to NuScale (Ted Sickinger, Portland *Oregonian*, March 18). **-- HG**

FUEL ECONOMY:

Just 5% of cars sold meet 2025 gas standards -- EPA official

Published: Wednesday, March 19, 2014

A small fraction of cars sold last year met the Obama administration's 2025 fuel economy standard, but the auto industry is still on a "very good path" to meet the regulation, a U.S. EPA official said.

Just 5 percent of cars sold in 2013 had an average fuel economy of 54.5 mpg -- the 2025 standard for light-duty vehicles set by President Obama in 2012 -- according to Michael Olechiw, the director of EPA's light-duty vehicle and small engine center.

Still, Olechiw said there have been signs that automakers are ramping up their production of more fuel-efficient cars, with a particular focus on electric vehicles.

"We're already seeing that there are manufacturers that are producing vehicles in significant numbers which meet the 2025 standards," Olechiw said yesterday at an auto industry forum in Dearborn, Mich.

But analysts adopted a wait-and-see approach, noting that the 2025 standards could be downgraded after a midterm review in 2017.

"We need this midterm review," said Christopher Nevers, director of climate and fuel economy at the Alliance of Automobile Manufacturers. "It's very important" (Michael Wayland, *Ann Arbor News*, March 18). **-- DB**

ALASKA:

State Senate OKs massive natural gas project

Published: Wednesday, March 19, 2014

Alaska lawmakers yesterday approved a controversial natural gas proposal that could become the largest infrastructure project in state history.

The state Senate voted 15-5 in favor of Gov. Sean Parnell's (R) plan to build an 800-mile gas pipeline, North Slope treatment plant, and liquefaction and export facility in Nikiski, Alaska. The bill now moves to the Resources Committee in the state House.

The proposal would make Alaska a partner on the project along with energy giants BP PLC, Exxon Mobil Corp., ConocoPhillips Co. and the pipeline company TransCanada Corp. The state would hold a 25 percent stake but could sell its share of the pipeline and treatment plant to TransCanada.

The complex project, which would cost between $45 billion and $65 billion, would fulfill a long-standing industry goal of bringing Alaskan natural gas to Asian markets, supporters said.

"What I see in this bill is something that provides for hope," said state Sen. Donny Olson (D), who joined two other Democrats in voting for the legislation.

But critics said the project represented a giveaway to TransCanada and expressed doubts it would move forward.

"Alaskans have been waiting for over 30 years for a pipeline," said state Sen. Bill Wielechowski (D), who voted against the project. "This bill does nothing more than create another study" (Lisa Demer, *Anchorage Daily News*, March 18). **-- DB**

IDAHO:

Lawmakers kill bill to nullify EPA regs

Published: Wednesday, March 19, 2014

Idaho's House of Representatives has spiked a bill that would have declared U.S. EPA has no regulatory authority in the state.

While even its supporters admitted the proposal was likely unconstitutional, the fact it was even considered "showed the level of frustration that many of our constituents have and feel about not only the EPA but many of the federal agencies as well," said state Rep. Lawerence Denney (R).

The bill's sponsor, state Rep. Paul Shepherd (R), floated the plan after suction dredge miners in his district told him they were upset EPA was requiring them to obtain a new environmental permit to comply with Clean Water Act regulations.

EPA doesn't allow suction mining in areas of Idaho that are critical habitat for endangered fish, which complicates the miners' efforts.

The state attorney general's office had previously declared in a legal opinion it was a "certainty" Shepherd's bill was unconstitutional. Shepherd acknowledged yesterday that "if we're going to try and have state authority over federal authority, we've run into problems with that before" (Betsy Z. Russell, Spokane *Spokesman-Review*, March 19). **-- SP**

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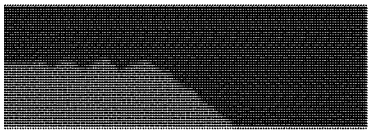

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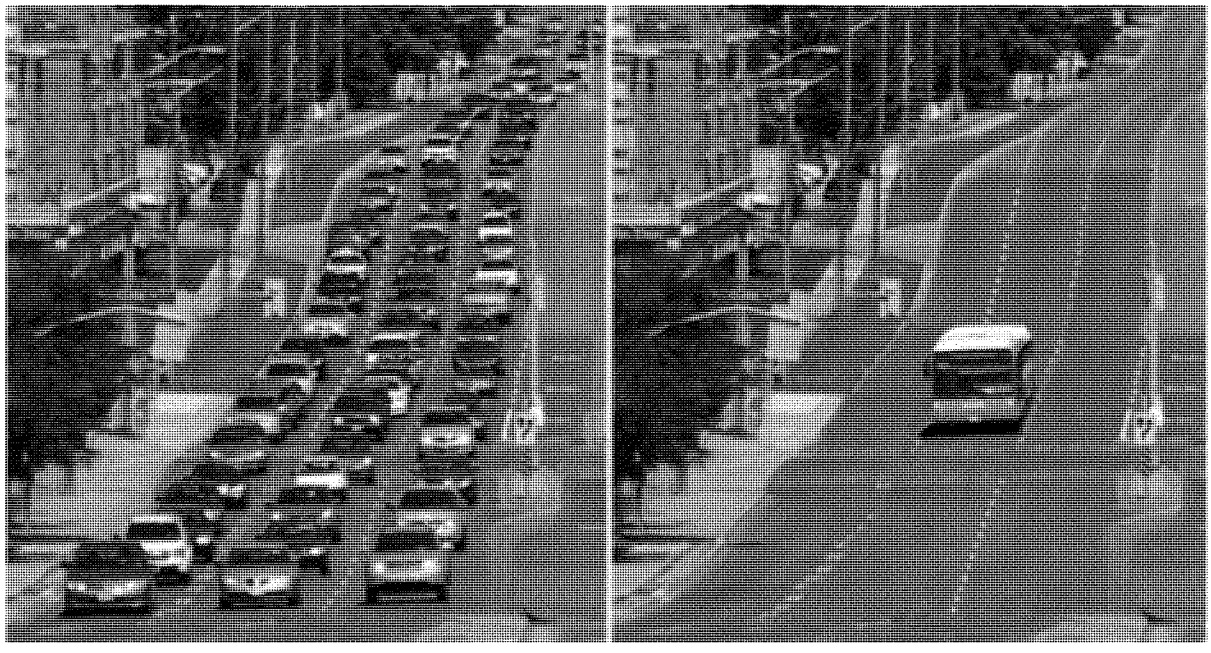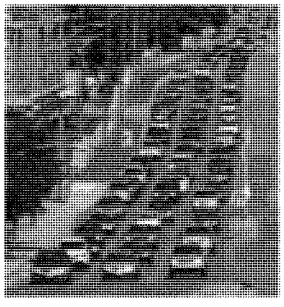
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