To: Bolen, Brittany[bolen.brittany@epa.gov]
From: InsideEPA/climate
Sent: Wed 5/3/2017 8:59:16 PM
Subject: Today on Climate Beat

May 3, 2017

Today on Climate Beat . . .

. . . we went to Congress, where the Senate is struggling to round up the votes to scrap the Bureau of Land Management's methane rule after several corn state Republicans pledged to withhold their support for the repeal effort until they receive a commitment to advance a separate policy lifting restrictions on ethanol.

Over at EPA, a coalition of California trucking, logging, construction and other industry groups are joining efforts by free-market groups urging the agency to revoke its greenhouse gas endangerment finding, putting new pressure on Administrator Scott Pruitt to roll back the trigger for GHG regulation under the Clean Air Act.

In Paris news, environmentalists are charging that legal concerns voiced by some in the Trump administration about remaining in the Paris Agreement are not genuine and that the issue is a "tactic" to justify a "political" move to leave the global climate pact.

And our news roundup looked at reports that the "leave" camp may be gaining momentum in the administration, though the decision will ultimately rest with President Donald Trump.

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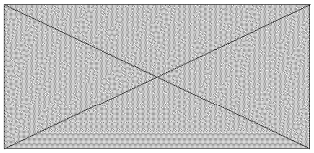
To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Transportation Law360
Sent: Wed 5/3/2017 8:23:45 AM
Subject: [SPAM] House Panel Rips Airline Execs For Customer Service Policies



TRANSPORTATION

Wednesday, May 3, 2017

TOP NEWS

House Panel Rips Airline Execs For Customer Service Policies

House lawmakers warned executives from United Airlines, American Airlines and other airlines Tuesday to re-evaluate their overbooking, add-on fees and other policies to improve customer service or face potential new regulations after the infamous incident involving United forcibly removing a passenger from a full flight stirred public outrage. **Read more »**

Analysis

EPA Dodges Trump's Budget Ax, For Now

The U.S. Environmental Protection Agency's slice of the $1 trillion budget that's now making its way through Congress is only 1 percent smaller than its current funding level, a far cry from the 30 percent cut requested by President Donald Trump in March, and it's not clear such drastic reductions will be achievable in the future. **Read more »**

DC Circ. Backs NLRB Over Freight Co. Pension Plan Violation

The D.C. Circuit held Monday that a freight transporter flouted federal labor law when it stopped contributing to an employee pension fund after negotiations with a Teamsters local on a new collective bargaining pact broke down and when it unilaterally imposed a health plan, upholding National Labor Relations Board rulings. **Read more »**

Judge OKs Coal Dust Suit Deal Between BNSF, Green Groups

A Washington federal judge on Tuesday approved a deal between BNSF Railway Co. and seven environmental groups ending a suit claiming that coal dust regularly flies off the company's trains and into waterways, with BNSF agreeing to put $1 million toward environmental projects and to study methods for covering coal trains. **Read more »**

After Boeing Claim, ITC To Investigate Bombardier

The U.S. International Trade Commission on Tuesday said it is opening an investigation into commercial aircraft imports from Canada, following allegations by U.S.-based The Boeing Co. that rival jet company Bombardier Inc. is dumping its C Series jets in the U.S. market

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with the help of government subsidies. **Read more »**

VW Owners Push For Final Approval Of Emissions Settlement

About 69 percent of those who owned Volkswagens with 3.0-liter diesel engines have registered to receive benefits under a multibillion-dollar settlement resolving class action claims stemming from the automaker's emissions cheating scandal, the owners said, urging a California federal court to finalize the deal. **Read more »**

POLICY & REGULATION

EPA Pushed To Reconsider GHG Endangerment Finding

A Texas-based conservative think tank on Tuesday urged the U.S. Environmental Protection Agency to reconsider its landmark 2009 finding that greenhouse gas emissions endanger public health and welfare, though experts have warned that such a rethink would be a heavy lift for the agency. **Read more »**

14 States Ask Justices To Block Young Immigrants' Licenses

Fourteen states have thrown their support behind Arizona as it asks the U.S. Supreme Court to reconsider a Ninth Circuit decision that permanently barred the state from refusing driver's licenses to immigrants brought to the country illegally as children. **Read more »**

ENFORCEMENT

NJ Freight Payment Co. Owner Gets 4 Years For Ponzi Scheme

The owner of a New Jersey-based freight payment business accused of operating a Ponzi scheme was sentenced to 50 months in prison Tuesday for wire fraud and money laundering, acting U.S. Attorney William E. Fitzpatrick announced. **Read more »**

Citgo $48M Oil Spill Penalty Too Low, US Tells 3rd Circ.

The U.S. government told the Third Circuit on Monday that a lower court wrongly reduced the damages paid by three Citgo units to the federal government to $48 million in an oil spill liability suit brought by the government and a pair of shipping companies. **Read more »**

AVIATION

Construction Co. Fights Order To Pay Philippine Gov't $6M

A company that had accused the Philippine government of reneging on an agreement to construct an airport terminal has asked the country's appeals court to rethink its order for the company to fork over $6 million to the government related to arbitration costs, media reports said Monday. **Read more »**

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CITGO Petroleu Corp.

Centerb Partners LP

Delta Air

AUTOMOTIVE

Car Warranty Co. Accused Of Improperly Using Drivers' Info

A car warranty company has improperly acquired car owners' personal information from state departments of motor vehicles and used it to send advertisements through the mail, according to a proposed class action lawsuit filed Tuesday in Wisconsin federal court. **Read more »**

Navistar Hit With Another Suit Claiming Faulty Engines

An Arkansas trucking company is the latest to allege that Navistar produced faulty engines, filing a complaint in federal court Monday claiming the truck and engine manufacturer actively concealed problems with its Maxxforce diesel engines that caused repeated failures and slashed the value of affected vehicles. **Read more »**

Dutch Bicycle Maker Accell Nixes $951.9M Bike Deal

Dutch bicycle maker Accell Group NV said Tuesday it won't accept rival Pon Holding's €872 million ($951.9 million) takeover bid, saying that even though Pon recently increased its offer, it is still too low and won't win enough shareholder support. **Read more »**

Electronic Vehicle Registration Co. Alleges Antitrust Scheme

Motor Vehicle Software Corp., a provider of electronic vehicle registration and titling services to car dealerships, filed an amended complaint in California federal court on Monday alleging that a pair of software companies is conspiring to prevent it from accessing needed dealership data. **Read more »**

TRUCKING

Grocery Co. Must Face Pension Claim Over Firm Buyout

Grocery distributor C&S Wholesale Grocers Inc. must face a claim it owes $58 million to the New York State Teamsters Conference Pension and Retirement Fund after the collapse of Penn Traffic Co., which C&S bought in part in 2008, triggered its withdrawal liability, a New York federal judge ruled Monday. **Read more »**

DEALS

Zhengzhou Makes Auto Parts Play With $594M Bosch Unit Buy

Zhengzhou Coal Mining and a Chinese private equity shop said Tuesday that they will buy a Robert Bosch GmbH starter motor and generators unit for €545 million ($594.5 million), marking the Chinese mining equipment company's latest foray into the auto parts industry. **Read more »**

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C&S Wholesa Grocers

CDK Global Inc.

CITGO Petroleu Corp.

Centerb Partners LP

Delta Air

Debevoise Guides Elliott's $540M Roadrunner Investment

Private investment firm Elliott Management, with assistance from legal counsel Debevoise & Plimpton LLP, has agreed to make a $540 million redeemable preferred stock investment in Roadrunner Transportation Systems Inc., the companies said Tuesday. **Read more »**

PEOPLE

Dickinson Wright Adds Ex-Fox Rothschild Gov't Relations Atty

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Former Acting Solicitor General Rejoins Jenner & Block

Jenner & Block LLP has tapped an attorney who served as the Obama administration's acting solicitor general to head its appellate and U.S. Supreme Court practice groups, the firm said Monday, marking his return to the firm where he began his private sector career. **Read more »**

Shearman & Sterling Hikes UK Associate Pay

Shearman & Sterling LLP said Tuesday that it has raised the salaries of its associates in the U.K. to between £105,000 and £165,000 ($135,705 and $213,251), with the newest team

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CDK Global Inc.

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members seeing a £10,000 hike, or 10.5 percent. **Read more »**

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The jury weighing the fates of two former top executives of Dewey & LeBoeuf LLP wrapped up its first full day of deliberations without reaching a verdict, but asked for more detail on the fraud and conspiracy charges, as well as exhibits tabulating the purported accounting fraud. **Read more »**

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WilmerHale

Yarmuth Wilsdon

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U.S. Environmental Protection Agency

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U.S. Department of Justice

California Environmental Protection Agency

Department of Commerce

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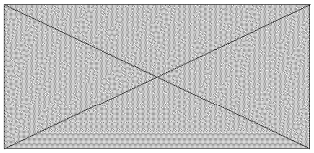
To: Bolen, Brittany[bolen.brittany@epa.gov]
From: Environmental Law360
Sent: Wed 5/3/2017 7:15:00 AM
Subject: [SPAM] EPA Dodges Trump's Budget Ax, For Now



ENVIRONMENTAL

Wednesday, May 3, 2017

TOP NEWS

Analysis

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Enviros Can't Block Idaho Forest Projects, Judge Says

An Idaho federal judge on Monday denied a bid by environmental group the Alliance for the Wild Rockies to block the U.S. Forest Service's plan to allow old-growth logging on land burned by wildfires, saying smart logging of burnt timber can help fund reforestation and make those efforts safer. **Read more »**

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A Texas-based conservative think tank on Tuesday urged the U.S. Environmental Protection Agency to reconsider its landmark 2009 finding that greenhouse gas emissions endanger public health and welfare, though experts have warned that such a rethink would be a heavy lift for the agency. **Read more »**

McAfee & Taft Fights DQ Bid In Soil Contamination Suit

Civil engineering company Stratford Holding LLC told an Oklahoma federal judge on Monday that Summit Investment Management LLC's attempt to eject Stratford's counsel from a soil contamination suit because of a conflict is merely a procedural tactic that should

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not be entertained. **Read more »**

POLICY & REGULATION

Navajo Nation, Utility Say They're Close To Coal Plant Deal

The Navajo Nation and the utility that operates the Navajo Generating Station on the tribe's reservation in Arizona said Monday that they have made "considerable progress" in talks to sign a new lease that would keep the coal-fired power plant open through the end of 2019. **Read more »**

Energy Dept. Must Better Manage Fraud Risks, Watchdog Says

The U.S. Department of Energy is coming up short in its efforts to flag potential contractor fraud, according to a U.S. Government Accountability Office report released Monday, which cited a $125 million settlement to resolve allegations of misspending government dollars at a nuclear site. **Read more »**

Fla. Legislature Faces Session Extension To Complete Budget

The Florida Legislature experienced some ups and downs Tuesday, with gambling legislation dead, water resource and medical marijuana measures moving forward, and leaders all but certain not to finalize the state's roughly $83 billion budget by midnight, in order to finish the session on time Friday. **Read more »**

ENFORCEMENT

Citgo $48M Oil Spill Penalty Too Low, US Tells 3rd Circ.

The U.S. government told the Third Circuit on Monday that a lower court wrongly reduced the damages paid by three Citgo units to the federal government to $48 million in an oil spill liability suit brought by the government and a pair of shipping companies. **Read more »**

Mining Co. Fights Approval Of Superfund Cleanup Deal

A mining company intervening in a suit over cleanup costs at an Oklahoma Superfund site impacting tribal lands has asked a federal judge to nix a proposed deal between the federal government and two other mining companies, saying it is inconsistent with the Comprehensive Environmental Response, Compensation and Liability Act. **Read more »**

LITIGATION

Pa. Justices Won't Hear Fracking Case Appeal

The Pennsylvania Supreme Court declined Tuesday to hear an appeal by a landowner looking to revive claims that hydraulic fracturing activity by Range Resources Corp. near his property led to contamination of his private water supply. **Read more »**

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Davis Wright Tremain

Debevoi & Plimptor

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Alcoa Fights Rehearing Bid In NC Dam Location Row

An Alcoa unit has urged the Fourth Circuit to reject a request to reconsider en banc a split panel ruling affirming a lower court's decision to toss a suit by the state of North Carolina challenging the unit's right to land where the company had built four hydropower dams along the Yadkin River. **Read more »**

ExxonMobil Hit With Kentucky Superfund Site Cleanup Suit

ExxonMobil Oil Corp. was hit with a lawsuit in Kentucky federal court on Tuesday for cleanup costs at a Superfund site in the state so the property can be redeveloped for housing, with the property's current owner saying the oil company is responsible for environmental contamination at the site. **Read more »**

Enviros Look To Step Into Battle Over Atlantic Airgun Tests

Conservation groups asked Monday to join consolidated challenges at the U.S. Department of the Interior Board of Land Appeals to the government's denial of permit applications to conduct seismic testing off the Atlantic coast, seeking to protect their interests by making sure those denials are upheld. **Read more »**

NJ Appeals Court Backs Enviros Over Water Plant Permit

A New Jersey appellate court on Monday ruled that the New Jersey Department of Environmental Protection should not have issued a permit for a proposed water treatment facility to discharge into a local creek without first consulting a regional council, in a decision environmental groups hailed as a first for environmental policy in the Highlands region. **Read more »**

Trenk DiPasquale Doc Response 'Paltry,' NJ Agency Says

A defunct Newark water agency told a New Jersey federal bankruptcy judge Tuesday that Trenk DiPasquale Della Fera & Sodono PC has produced a "paltry number of documents" and that two former firm attorneys have not responded to document requests in a lawsuit alleging the firm and others enabled unlawful and wasteful conduct at the agency. **Read more »**

Nuverra Gets Access To Dual DIP Loans In Ch. 11 Case

Bankrupt oil field services company Nuverra Environmental Solutions Inc. on Tuesday received court approval in Delaware to access borrowing under a pair of debtor-in-possession loans totaling $44 million being provided by prepetition lenders. **Read more »**

Navistar Hit With Another Suit Claiming Faulty Engines

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Tribal Casino Foes Push 9th Circ. For Win On Land Question

Opponents of a California tribe's San Diego-area casino pressed the Ninth Circuit to find that land it sits on isn't eligible for gambling under the Indian Gaming Regulatory Act, saying Monday that the parties defending the facility haven't offered "a scintilla of evidence" to the contrary. **Read more »**

PEOPLE

Environmental Veteran Joins Davis Wright Tremaine

Davis Wright Tremaine LLP announced that it has added an environmental litigation veteran to its Washington, D.C., offices, saying that he is bringing with him nearly four decades of experience in handling trial and appellate work in courts around the United States. **Read more »**

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Fox Rothschild Expands Into Seattle With Riddell Williams

Philadelphia-headquartered Fox Rothschild LLP said Tuesday it is merging with Seattle-based Riddell Williams, in a move that will boost Fox's attorney headcount by 39 and establish its first footprint in the Pacific Northwest. **Read more »**

EXPERT ANALYSIS

New Divisions In Indian Country Over Energy Justice

If energy tribes become greater players in resource extraction, it will only be a matter of time before environmentally oriented tribes begin to challenge them in court and in politics. If so, we will see a terrible battle over competing claims to tribal sovereignty as congressional rhetoric turns more to action, and tribal communities line up against each other, says Matthew Fletcher of Michigan State University College of Law. **Read more »**

The Current State Of Renewable Energy Disputes: Part 3

In part 3 of this series, Justin Tschoepe and William Wood of Norton Rose Fulbright US LLP discuss disputes brought on behalf of the U.S. government under the federal False Claims Act and suits against foreign sovereigns related to the scaling back of state benefits for renewable energy companies. **Read more »**

What Lawyers Should Know To Avoid Online Scams

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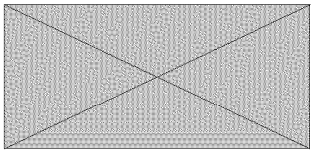

PUBLIC POLICY

Wednesday, May 3, 2017

TOP NEWS

Analysis

Trump May Be Tipping His Hand In Security Trade Probes

With rare national security-based trade investigations of aluminum and steel now underway, President Donald Trump has boasted about his new enforcement actions in a way that experts say may open the door for a previously unforeseen legal challenge at the World Trade Organization. **Read more »**

Analysis

DC Circ.'s Deference To FCC May Boost Open Internet Repeal

The D.C. Circuit's order letting stand a panel decision that upheld the Federal Communications Commission's 2015 Open Internet Order may be a win for net neutrality proponents on first glance, but experts say the deference afforded the agency could actually help it to reverse course. **Read more »**

Analysis

Axing Carried Interest Tax Perk May Create New Loopholes

The favorable tax treatment that private equity and hedge fund managers receive on the profits of successful business ventures may be on the chopping block, but those who benefit from it are likely to see an even bigger tax break if President Donald Trump follows through on his plan to slash tax rates for pass-through entities. **Read more »**

Analysis

EPA Dodges Trump's Budget Ax, For Now

The U.S. Environmental Protection Agency's slice of the $1 trillion budget that's now making its way through Congress is only 1 percent smaller than its current funding level, a far cry from the 30 percent cut requested by President Donald Trump in March, and it's not clear such drastic reductions will be achievable in the future. **Read more »**

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Analysis

Lawmakers Ramp Up Program Scrutiny In $593B Defense Bill

As part of the $593 billion 2017 defense spending bill unveiled Monday, lawmakers criticized the U.S. Department of Defense's handling of several high-profile defense acquisitions, including the F-35 fighter jet and JSTARS replacement aircraft, signaling they intend to give intense oversight to a number of perceived problem programs. **Read more »**

House Panel Rips Airline Execs For Customer Service Policies

House lawmakers warned executives from United Airlines, American Airlines and other airlines Tuesday to re-evaluate their overbooking, add-on fees and other policies to improve customer service or face potential new regulations after the infamous incident involving United forcibly removing a passenger from a full flight stirred public outrage. **Read more »**

House Passes Bill To Give Workers Time Off Instead Of OT

The House passed a bill aimed at changing federal rules for overtime pay and compensation time Tuesday, as Republicans said the measure would give employees in the private sector more flexibility. **Read more »**

BANKING & SECURITIES

Senate Confirms Sullivan & Cromwell Partner To Head SEC

The Senate approved President Donald Trump's pick to lead the U.S. Securities and Exchange Commission on Tuesday, confirming Sullivan & Cromwell LLP partner Jay Clayton's nomination to head the agency. **Read more »**

GOP, Dems Bicker At First Day Of Dodd-Frank Markup

A Tuesday committee markup on a Republican bill to essentially repeal and replace the Dodd-Frank Act began with a bang, with one Democrat calling it a "middle finger" to consumers and taxpayers, but settled down with pleas for bipartisanship on both sides. **Read more »**

CFTC's New Automated Trading Rules Draw Criticism

Industry groups ripped the U.S. Commodity Futures Trading Commission's latest effort to regulate automated trading mechanisms, saying a supplemental proposal calls for burdensome regulations that contrast sharply with the agency's stated aim to "keep it simple, stupid." **Read more »**

ENERGY & ENVIRONMENTAL

Enviros Look To Step Into Battle Over Atlantic Airgun Tests

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Conservation groups asked Monday to join consolidated challenges at the U.S. Department of the Interior Board of Land Appeals to the government's denial of permit applications to conduct seismic testing off the Atlantic coast, seeking to protect their interests by making sure those denials are upheld. **Read more »**

EPA Pushed To Reconsider GHG Endangerment Finding

A Texas-based conservative think tank on Tuesday urged the U.S. Environmental Protection Agency to reconsider its landmark 2009 finding that greenhouse gas emissions endanger public health and welfare, though experts have warned that such a rethink would be a heavy lift for the agency. **Read more »**

Energy Dept. Must Better Manage Fraud Risks, Watchdog Says

The U.S. Department of Energy is coming up short in its efforts to flag potential contractor fraud, according to a U.S. Government Accountability Office report released Monday, which cited a $125 million settlement to resolve allegations of misspending government dollars at a nuclear site. **Read more »**

HEALTH & LIFE SCIENCES

Fla. High Court Grapples With Medical Records Release Row

A woman suing a central Florida hospital for medical negligence told the Florida Supreme Court on Tuesday that an appeals court ruling allowing the hospital to withhold certain incident review documents violates a patients' rights amendment state voters approved in 2004. **Read more »**

IP & TECHNOLOGY

Judiciary Committee Promotes Privacy, Visa, Patent Reforms

The House Judiciary Committee on Tuesday released its "innovation and competitiveness agenda" for the current Congress, which includes efforts to protect email privacy, reform the U.S. Copyright Office, amend work visas and pursue a patent reform bill. **Read more »**

EMPLOYMENT

New Labor Secretary Taps Sidley Austin Lawyer As Adviser

A Sidley Austin LLP associate with experience handling federal administrative law matters and representing large companies has left the firm to become counselor to new Labor Secretary Alexander Acosta. **Read more »**

Trump DOL Asks For More Time In Persuader Rule Cases

The Trump administration has asked a pair of federal courts to allow it two extra months to

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inform them of its position on the U.S. Department of Labor's so-called persuader rule, saying the agency is awaiting key political leadership to be in place following the recent confirmation of labor secretary Alex Acosta before any decisions can be made. **Read more »**

Philly Blasts Biz Group's Standing In Wage Law Challenge

The city of Philadelphia told a federal judge Monday that a regional business group did not have standing to challenge a new ordinance that seeks to address gender-based pay disparities by barring employers from inquiring about a prospective worker's salary history. **Read more »**

PRIVACY & CONSUMER PROTECTION

ACLU Says Merits Win Not Needed For Spy Court Standing

The American Civil Liberties Union continued Monday to press the full Foreign Intelligence Surveillance Court to reconsider an access denial to bulk data collection decisions, arguing its right to reconsideration is based on the underlying injury allegations, not how they'd fare in a merits decision. **Read more »**

TAX

Tobacco Co. Asks Justices To Review Backdated Tax Law

Tobacco giant R.J. Reynolds Tobacco Co. has joined a growing number of companies urging the U.S. Supreme Court to review a Michigan appeals court ruling in favor of the state's decision to retroactively withdraw from a multistate agreement on corporate franchise taxes, saying the decision ignored Supreme Court precedent on the constitutionality of retroactive tax legislation. **Read more »**

IMMIGRATION

New CIS Ombudsman Has Ties To Controversial Group

The U.S. Department of Homeland Security has appointed a new Citizenship and Immigration Services ombudsman who previously held a top post in a conservative group that advocates for strong immigration restrictions. **Read more »**

14 States Ask Justices To Block Young Immigrants' Licenses

Fourteen states have thrown their support behind Arizona as it asks the U.S. Supreme Court to reconsider a Ninth Circuit decision that permanently barred the state from refusing driver's licenses to immigrants brought to the country illegally as children. **Read more »**

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Tribe Members Fight Bid To Nix Cigarette Sales Fight

Native American tribe members have blasted a bid to dismiss the three remaining defendants in their Washington federal court suit seeking to block criminal prosecution for illegal cigarette sales on Indian land, rejecting the contention that two state agents have immunity since they acted as federal agents. **Read more »**

Fla. Legislature Faces Session Extension To Complete Budget

The Florida Legislature experienced some ups and downs Tuesday, with gambling legislation dead, water resource and medical marijuana measures moving forward, and leaders all but certain not to finalize the state's roughly $83 billion budget by midnight, in order to finish the session on time Friday. **Read more »**

TELECOMMUNICATIONS

GOP Senators Float Bill To Nix Net Neutrality Rules

Republican lawmakers introduced legislation Monday that would do away with the Federal Communications Commissions' 2015 open internet rules and prohibit the agency from issuing similar rules in the future, the same day that the D.C. Circuit denied requests for full court rehearing of a panel decision upholding the rules. **Read more »**

PEOPLE

Former Acting Solicitor General Rejoins Jenner & Block

Jenner & Block LLP has tapped an attorney who served as the Obama administration's acting solicitor general to head its appellate and U.S. Supreme Court practice groups, the firm said Monday, marking his return to the firm where he began his private sector career. **Read more »**

Dickinson Wright Adds Ex-Fox Rothschild Gov't Relations Atty

Dickinson Wright PLLC announced Tuesday it hired a long-practicing government relations attorney from Fox Rothschild LLP with experience working for a host of clients on issues including defense, health care, transportation, and energy and the environment as a member in its Washington, D.C., office. **Read more »**

EXPERT ANALYSIS

How The Trump Administration Lost Its Sanctuary City Case

When a federal court recently blocked President Donald Trump's executive order that would deny federal funds to so-called "sanctuary cities," the White House responded with an angry statement and Attorney General Jeff Sessions said the government would continue to litigate the case "to vindicate the rule of law." But for all its bluster, the administration lost the

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case when it filed its brief, says Jeffrey Gorsky of Berry Appleman & Leiden LLP. **Read more »**

Free Speech At Private Universities: Protected Or Not?

Although the First Amendment prohibits the government from infringing on free speech rights, it does not prevent private persons or entities from doing so. Thus, students at private universities have fewer free speech protections than those at public universities. But state laws and university policies may still provide legal cover for students at private institutions, say attorneys from Haynes and Boone LLP. **Read more »**

New Divisions In Indian Country Over Energy Justice

If energy tribes become greater players in resource extraction, it will only be a matter of time before environmentally oriented tribes begin to challenge them in court and in politics. If so, we will see a terrible battle over competing claims to tribal sovereignty as congressional rhetoric turns more to action, and tribal communities line up against each other, says Matthew Fletcher of Michigan State University College of Law. **Read more »**

How Recent Actions Could Limit IRS Regulatory Authority

Several recent developments in all three branches of the federal government suggest that there may be a significant curtailing of regulatory authority. While tax guidance is unlikely to be the primary target, this broad push for regulatory reform could nonetheless have a significant impact on IRS regulations, say attorneys with Steptoe & Johnson LLP. **Read more »**

An Uncertain Future For US-Chile Tax Treaty — Especially Now

Though the future of the bilateral income tax treaty between the United States and Chile remains in limbo largely due to Sen. Rand Paul's objections, another issue taking time and attention away from ratifying such treaties is the debate in the U.S. over comprehensive tax reform, say Brandon Roman and Eugenia Mize of Squire Patton Boggs LLP. **Read more »**

Solving The Uninsured Driver Conundrum With Technology

Nearly a century after Massachusetts enacted the first law mandating the purchase of auto insurance, and despite laws on the books in almost every state, 12 percent of drivers are still uninsured. Kymberly Kochis and Veronica Wayner of Eversheds Sutherland (US) LLP explore why uninsured driver rates are so high, how states are addressing the issue, and consider prospects for future solutions through technological advances. **Read more »**

LEGAL INDUSTRY

Analysis

4 Ways Law Firms Drive Clients Away

There is a "significant and persistent" disconnect between large law firms and their clients, research has shown, a gulf that is driving some legal consumers to ditch their outside counsel. Here, experts discuss the ways law firms are driving a wedge in their client

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relationships. **Read more »**

Shearman & Sterling Hikes UK Associate Pay

Shearman & Sterling LLP said Tuesday that it has raised the salaries of its associates in the U.K. to between £105,000 and £165,000 ($135,705 and $213,251), with the newest team members seeing a £10,000 hike, or 10.5 percent. **Read more »**

Verdict Eludes Dewey 2.0 Jury In Fraud Retrial

The jury weighing the fates of two former top executives of Dewey & LeBoeuf LLP wrapped up its first full day of deliberations without reaching a verdict, but asked for more detail on the fraud and conspiracy charges, as well as exhibits tabulating the purported accounting fraud. **Read more »**

Judge Rips Giuliani, Mukasey For 'Disingenuous' Iran Dodges

A New York federal judge slammed legal titans Michael Mukasey and Rudy Giuliani at a hearing Tuesday, saying they seemed "dismissive" of the serious nature of the charges against their client who is accused of helping Iran dodge U.S. sanctions. **Read more »**

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Federal Reserve System

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Michigan Legislature

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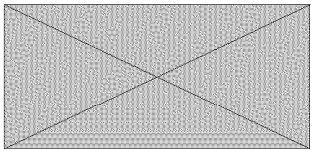

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Wednesday, May 3, 2017

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Judge OKs Coal Dust Suit Deal Between BNSF, Green Groups

A Washington federal judge on Tuesday approved a deal between BNSF Railway Co. and seven environmental groups ending a suit claiming that coal dust regularly flies off the company's trains and into waterways, with BNSF agreeing to put $1 million toward environmental projects and to study methods for covering coal trains. **Read more »**

EPA Pushed To Reconsider GHG Endangerment Finding

A Texas-based conservative think tank on Tuesday urged the U.S. Environmental Protection Agency to reconsider its landmark 2009 finding that greenhouse gas emissions endanger public health and welfare, though experts have warned that such a rethink would be a heavy lift for the agency. **Read more »**

Citgo $48M Oil Spill Penalty Too Low, US Tells 3rd Circ.

The U.S. government told the Third Circuit on Monday that a lower court wrongly reduced the damages paid by three Citgo units to the federal government to $48 million in an oil spill liability suit brought by the government and a pair of shipping companies. **Read more »**

Hess Agrees To $3.75M Deal To End CO2 Royalties Row

Hess Corp. and a group of royalty owners on Monday told a New Mexico federal court that they had reached a $3.75 million deal to wrap up a class action accusing the company of undperpaying carbon dioxide royalties over an eight-year period. **Read more »**

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NATURAL GAS

Gas Cos. Want Arbitration For Pa. Shale Royalty Suits

A group of oil and gas companies including Chesapeake Energy Corp. and Anadarko Energy argued in a flurry of filings in Pennsylvania federal court Monday that a series of lawsuits in which hundreds of Marcellus Shale landowners alleged a monopolistic scheme to improperly deduct royalties belong in individual arbitration. **Read more »**

PETROLEUM

ExxonMobil Hit With Kentucky Superfund Site Cleanup Suit

ExxonMobil Oil Corp. was hit with a lawsuit in Kentucky federal court on Tuesday for cleanup costs at a Superfund site in the state so the property can be redeveloped for housing, with the property's current owner saying the oil company is responsible for environmental contamination at the site. **Read more »**

Pa. Justices Won't Hear Fracking Case Appeal

The Pennsylvania Supreme Court declined Tuesday to hear an appeal by a landowner looking to revive claims that hydraulic fracturing activity by Range Resources Corp. near his property led to contamination of his private water supply. **Read more »**

Energy Co. Wants New Trial In $22M 'Partnership' Fraud Case

A broker who claimed he was selling partnerships in oil and gas drilling projects but was found to have been selling unregistered investment vehicles asked a Texas federal judge Monday for a new trial, arguing the court wrongly focused on post-investment activities in granting the government an early win on the claims. **Read more »**

PE-Backed Solaris Rides Energy Wave With $175M IPO Launch

Solaris Oilfield Infrastructure Inc., a private equity-backed provider of proppant management systems used for hydraulic fracturing, launched an estimated $175 million initial public offering Tuesday under guidance from Vinson & Elkins LLP, adding to the gusher of energy-related IPOs in recent months. **Read more »**

Enviros Look To Step Into Battle Over Atlantic Airgun Tests

Conservation groups asked Monday to join consolidated challenges at the U.S. Department of the Interior Board of Land Appeals to the government's denial of permit applications to conduct seismic testing off the Atlantic coast, seeking to protect their interests by making sure those denials are upheld. **Read more »**

Paragon Offshore Reaches Terms On Consensual Ch. 11 Plan

After months of mediation, bankrupt oil driller Paragon Offshore PLC told a Delaware federal

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judge Tuesday that it had reached an agreement with its creditors on a consensual plan of reorganization that will see creditors receive cash payments and equity in a reorganized company. **Read more »**

Nuverra Gets Access To Dual DIP Loans In Ch. 11 Case

Bankrupt oil field services company Nuverra Environmental Solutions Inc. on Tuesday received court approval in Delaware to access borrowing under a pair of debtor-in-possession loans totaling $44 million being provided by prepetition lenders. **Read more »**

Oil Platform Injury Coverage Suit Sent To Arbitration

A Texas federal judge sided Tuesday with a group of Lloyd's of London underwriters and against a Connecticut insurer fighting over covering an offshore drilling platform injury, sending their dispute to arbitration after already unblocking the arbitral proceedings held as mandated for virtually every dispute between the companies. **Read more »**

UTILITIES & POWER

Alcoa Fights Rehearing Bid In NC Dam Location Row

An Alcoa unit has urged the Fourth Circuit to reject a request to reconsider en banc a split panel ruling affirming a lower court's decision to toss a suit by the state of North Carolina challenging the unit's right to land where the company had built four hydropower dams along the Yadkin River. **Read more »**

NUCLEAR

Energy Dept. Must Better Manage Fraud Risks, Watchdog Says

The U.S. Department of Energy is coming up short in its efforts to flag potential contractor fraud, according to a U.S. Government Accountability Office report released Monday, which cited a $125 million settlement to resolve allegations of misspending government dollars at a nuclear site. **Read more »**

COAL

Navajo Nation, Utility Say They're Close To Coal Plant Deal

The Navajo Nation and the utility that operates the Navajo Generating Station on the tribe's reservation in Arizona said Monday that they have made "considerable progress" in talks to sign a new lease that would keep the coal-fired power plant open through the end of 2019. **Read more »**

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Thompson Knight Adds Litigation Partner In Houston

Thompson & Knight LLP has added a former Schiffer Odom Hicks and Johnson PLLC partner to its Houston office's trial practice group, the firm announced Monday. **Read more »**

K&L Gates Adds Tokyo Corporate Partner From Jones Day

K&L Gates LLP has hired an Asia-based attorney from Jones Day who has spent more than two decades practicing in the region, and has experience doing energy, infrastructure and project finance work, as a partner in its Tokyo office. **Read more »**

Dickinson Wright Adds Ex-Fox Rothschild Gov't Relations Atty

Dickinson Wright PLLC announced Tuesday it hired a long-practicing government relations attorney from Fox Rothschild LLP with experience working for a host of clients on issues including defense, health care, transportation, and energy and the environment as a member in its Washington, D.C., office. **Read more »**

EXPERT ANALYSIS

The Current State Of Renewable Energy Disputes: Part 3

In part 3 of this series, Justin Tschoepe and William Wood of Norton Rose Fulbright US LLP discuss disputes brought on behalf of the U.S. government under the federal False Claims Act and suits against foreign sovereigns related to the scaling back of state benefits for renewable energy companies. **Read more »**

New Divisions In Indian Country Over Energy Justice

If energy tribes become greater players in resource extraction, it will only be a matter of time before environmentally oriented tribes begin to challenge them in court and in politics. If so, we will see a terrible battle over competing claims to tribal sovereignty as congressional rhetoric turns more to action, and tribal communities line up against each other, says Matthew Fletcher of Michigan State University College of Law. **Read more »**

Recent Trends In Enforcement Of Intercreditor Agreements

Three recent cases show that bankruptcy courts are increasingly willing to interpret intercreditor agreements and agreements among lenders and apply their plain language to the facts of the case, say attorneys with Skadden Arps Slate Meagher & Flom LLP. **Read more »**

What Lawyers Should Know To Avoid Online Scams

Hackers are probably more likely to gain access to a lawyer's computer systems through human error, usually when a lawyer responds to a scam, than through a brute force attack on the computer system. The two deceptive methods that hackers usually use are phishing emails, which urge the email recipient to respond, and malware downloaded through infected email attachments, thumb drives or websites, says J. S. Christie Jr. of Bradley Arant

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LEGAL INDUSTRY

Analysis

4 Ways Law Firms Drive Clients Away

There is a "significant and persistent" disconnect between large law firms and their clients, research has shown, a gulf that is driving some legal consumers to ditch their outside counsel. Here, experts discuss the ways law firms are driving a wedge in their client relationships. **Read more »**

Former Acting Solicitor General Rejoins Jenner & Block

Jenner & Block LLP has tapped an attorney who served as the Obama administration's acting solicitor general to head its appellate and U.S. Supreme Court practice groups, the firm said Monday, marking his return to the firm where he began his private sector career. **Read more »**

Shearman & Sterling Hikes UK Associate Pay

Shearman & Sterling LLP said Tuesday that it has raised the salaries of its associates in the U.K. to between £105,000 and £165,000 ($135,705 and $213,251), with the newest team members seeing a £10,000 hike, or 10.5 percent. **Read more »**

Verdict Eludes Dewey 2.0 Jury In Fraud Retrial

The jury weighing the fates of two former top executives of Dewey & LeBoeuf LLP wrapped up its first full day of deliberations without reaching a verdict, but asked for more detail on the fraud and conspiracy charges, as well as exhibits tabulating the purported accounting fraud. **Read more »**

Judge Rips Giuliani, Mukasey For 'Disingenuous' Iran Dodges

A New York federal judge slammed legal titans Michael Mukasey and Rudy Giuliani at a hearing Tuesday, saying they seemed "dismissive" of the serious nature of the charges against their client who is accused of helping Iran dodge U.S. sanctions. **Read more »**

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To: Bolen, Brittany[bolen.brittany@epa.gov]
From: POLITICO Pro Energy
Sent: Tue 5/2/2017 8:21:57 PM
Subject: Afternoon Energy: Texas group joins push against EPA's 2009 finding — Names for NRC — Zinke eyes offshore revenues

By Kelsey Tamborrino | 05/02/2017 04:18 PM EDT

With help from Esther Whieldon and Alex Guillén

TEXAS GROUP JOINS PUSH AGAINST EPA'S 2009 FINDING: The Texas Public Policy Foundation today filed a new petition seeking EPA review of the 2009 greenhouse gas endangerment finding, which underpins much of the agency's climate change work. This is the third known petition on the matter since President Donald Trump took office. The petitions set up Administrator Scott Pruitt to either acquiesce to their demands or face a potential lawsuit. The Texas foundation is representing a collection of oil, trucking, logging and construction companies, and its petition argues that EPA wrongly never had the finding reviewed by the Science Advisory Board. "EPA made no showing that the finding or any of its related greenhouse gas rules will remove any dangers to human health or welfare," something that would have been pointed out by a SAB review, the group writes. The finding survived court challenges years ago unscathed, but TPPF argues that it is giving the Trump administration sufficient reason to revisit and possibly revoke the finding now. "EPA has both the authority and the responsibility to reconsider the Endangerment Finding in light of the previous Administration's errors." The petition asks EPA to respond within 180 days.

Notable: Kathleen Hartnett White, who is not on TPPF's petition but is a senior official with the group, is a leading candidate to run the White House's Council on Environmental Quality. She is a longtime critic of the finding and climate change science generally.

Welcome to Afternoon Energy. I'm your host Kelsey Tamborrino. Send your thoughts, news and tips to ktamborrino@politico.com, mdaily@politico.com and njuliano@politico.com, and keep up with us on Twitter at @kelseytam, @dailym1, @nickjuliano, @Morning_Energy and @POLITICOPro.

NAMES FOR NRC: President Donald Trump is expected to soon announce his nominees for vacant seats at the Nuclear Regulatory Commission, sources say. Nuclear expert Annie Caputo and former South Carolina utility regulator David Wright are expected to be nominated, Darius Dixon reports. The president also plans to tap NRC Chairman Kristine Svinicki for another five-year term after her term expires June 30. The timing of the announcement is unclear.

ZINKE LOOKING TO INCREASE OFFSHORE REVENUES: Interior Secretary Ryan Zinke has suggested in recent speeches that infrastructure needs at national parks could be funded by closing the $15 billion gap in offshore drilling revenues coming to the federal government now, compared with 2008. In a brief interview after he spoke at a tribal energy summit today, Zinke acknowledged that "some" of the decline in offshore revenues was market-driven. But he suggested the agency has let royalties and revenues drop across the board and that he hopes to rectify some of that through his recently launched review of royalties. "I think our

revenue in the next couple of years is going to do a massive turn," Zinke told AE.

WIND POWERS THROUGH FIRST QUARTER: Wind power developers had their biggest first quarter since 2009 during the first three months of 2017, adding 2,000 megawatts of new capacity in the U.S., the American Wind Energy Association said today. Esther Whieldon reports that's nearly four times as much as the industry brought online in the first quarter of 2016, and it lifted the total installed U.S. wind capacity to 84,143 megawatts. According to AWEA, developers also started construction on 668 megawatts of new projects during the quarter.

Also, the Energy Information Administration today said wind last year made up 8 percent of total U.S. generation capacity last year although it accounted for only about 5 percent of the electricity produced in the nation. Five states — Texas, Oklahoma, California and Kansas — comprise more than half of the total installed generation.

THE END OF THE FILIBUSTER? President Donald Trump today seemingly tweeted out a call to end the legislative filibuster in the Senate, in large part due to his frustration that Republicans were unable to include his policy goals in its must-pass spending bill. He also suggested that a government shutdown in September might be "good" in order to accomplish more without interference from Democrats. "The reason for the plan negotiated between the Republicans and Democrats is that we need 60 votes in the Senate which are not there!" Trump wrote on Twitter. "We either elect more Republican Senators in 2018 or change the rules now to 51%. Our country needs a good 'shutdown' in September to fix mess!"

Senate Republicans responded by rejecting Trump's assertion swiftly and decisively, POLITICO's Burgess Everett, Seung Min Kim and Louis Nelson report. "I'm not going to support a change in rules. The Founding Fathers set it up this way," said Sen. John Kennedy (R-La.). "It's worked for centuries. It can still work. We don't have a rule problem, we've got a people problem." Sen. Orrin Hatch , the most senior GOP senator, also took a firm stance. "He and I differ on that because without the filibuster this country would've been gone a long time ago," Hatch said. "I'm gonna talk to him about it. I'll get him back on line." Read more.

MOVER, SHAKER: Benjamin Keel, who was on the Interior Department's landing team in the assistant secretary's office on Indian affairs, has taken a position in the White House's Office of Intergovernmental Affairs on tribal issues, Keel told AE on the sidelines of a DOE tribal energy summit in Washington today. Keel led Trump's presidential campaign in Oklahoma.

MAIL CALL — ABOUT THAT EO: House Energy and Commerce ranking member Frank Pallone and Natural Resources ranking member Raúl Grijalva pressed Zinke today in a letter concerning Trump's recent executive order on oil and gas leasing for offshore drilling. The Democratic ranking members write to the Interior secretary, calling the order "the latest in a series of ill-advised actions by the Trump Administration that favor corporate interests over the safety of the environment and our communities." The two members say that the order overlooks the potential harm that oil and gas disasters could have on marine ecosystems. Read the letter here.

QUICK HITS:

— 23 environmental rules rolled back in Trump's first 100 days, The New York Times.

— Pentagon wants offshore drilling ban maintained in eastern Gulf, The Hill.

— Offshore needs 'sense of urgency,' Chevron VP says, FuelFix.

— How two cutting edge U.S. nuclear projects bankrupted Westinghouse, Reuters.

WIDE WORLD OF POLITICS:

— Trump tries to claim border wall win in budget deal

— House Republicans floundering on Obamacare repeal

— Trump rally altercations could add to legal woes

To view online:
https://www.politicopro.com/tipsheets/afternoon-energy/2017/05/texas-group-joins-push-against-epas-2009-finding-022638

Stories from POLITICO Pro

Petition sets up showdown on endangerment finding Back

By Alex Guillén | 03/30/2017 07:40 PM EDT

A petition asking EPA to revoke its 2009 greenhouse gas endangerment finding has set the agency on a path toward a conflict with conservative groups that Administrator Scott Pruitt has sought to avoid.

The petition, filed last month by the conservative Competitive Enterprise Institute and released to POLITICO today, argues that since EPA declared that carbon dioxide and other greenhouse gases pose a threat to public health and welfare, "evidence has continued to mount that directly contradicts it." The 2009 endangerment finding paved the way for the Obama administration to regulate those emissions from cars, power plants and other sources.

CEI's petition cites an alleged pause in global warming since 1998, argues that warming falls within the Earth's historical temperature fluctuations, and argues that the atmosphere is less sensitive to CO2 buildup than previously predicted in warming models.

The vast majority of climate scientists say those arguments are not borne out by the data. They argue that research shows the "pause" never really happened, note that the rapidity of global temperature changes is unparalleled in the historical record, and say warming has outpaced most models' predictions.

Pruitt personally lobbied to drop language from President Donald Trump's executive order this week calling for a review of the endangerment finding. While groups like CEI and The Heritage Foundation continue to press for a review, many legal observers note that the overwhelming body of evidence on climate change means any such effort would be both difficult and highly vulnerable to a court challenge.

WHAT'S NEXT: EPA must respond to the petition within a reasonable time frame, but there is no specific deadline. The agency may deny CEI's request, cementing the endangerment finding and EPA's obligation to regulate carbon emissions. Or it could launch a new rulemaking to revise or rescind the finding in response to the petition.

Back

Sources: Trump expected to announce NRC nominees Back

By Darius Dixon | 05/02/2017 11:34 AM EDT

President Donald Trump is expected to soon announce nominees for a pair of vacant seats on the Nuclear Regulatory Commission, according to two sources who closely track the agency.

Nuclear expert Annie Caputo and former South Carolina utility regulator David Wright are to be nominated, the sources said. And Trump plans to tap NRC Chairwoman Kristine Svinicki for another five-year term after her term expires June 30.

The timing of the announcement is unclear.

Caputo, who previously worked for Sen. Jim Inhofe and the House Energy and Commerce Committee, has been a subject of nomination chatter among industry and NRC watchers for nearly two years. She joined Sen. John Barrasso's staff when the Wyoming Republican took over the Senate Environment and Public Works Committee earlier this year.

Wright, a former chairman of the South Carolina Public Service Commission and ex-president of the National Association of Regulatory Utility Commissioners, has long been vocal about addressing the nation's stockpiles of nuclear waste stored at reactor sites around the country. He later started his own consulting firm.

The White House did not immediately respond to a request for comment.

WHAT'S NEXT: A formal White House nomination is still needed in order for the Senate Environment and Public Works to process the candidates. Svinicki's term expires on June 30 and, unlike with many other federal boards and commissions, she would have to step down temporarily if the Senate fails to confirm her by that date.

Back

AWEA: Wind power capacity surges in first quarter Back

By Esther Whieldon | 05/02/2017 11:39 AM EDT

Wind power developers posted their biggest first quarter since 2009, adding 2,000 megawatts of new capacity in the U.S. during the first three months of 2017, the American Wind Energy Association said today.

That was nearly four times as much as the industry brought online in the first quarter of 2016, and it lifted the total installed U.S. wind capacity to 84,143 megawatts. Developers also started construction on 668 megawatts of new projects during the quarter, according to AWEA. Under the tax incentive phase-out put in place by Congress in 2015, the federal PTC drops by 20 percent for projects that begin construction this year.

A combined 20,977 megawatts of wind projects are either now under construction or in advanced stages of development, AWEA said.

Last year, output from wind generation rose nearly 19 percent, providing 5.5 percent of the nation's electricity. While utilities took the biggest ownership share of new wind power in the market last year, that trend is not expected to last.

Power purchase agreements "are still projected to be the preferred procurement method for utilities moving forward, primarily for the 6,460 megawatts of undisclosed project capacity currently under construction or in advanced development that is still finalizing offtake agreements," AWEA said.

Back

GOP senators reject Trump's call to end the filibuster Back

By Burgess Everett, Seung Min Kim and Louis Nelson | 05/02/2017 09:31 AM EDT

President Donald Trump on Tuesday seemingly called for an end to the legislative filibuster in the Senate, frustrated that Republicans were unable to include his policy goals in a must-pass spending bill. He also suggested that a government shutdown in September might be "good" in order to accomplish more without interference from Democrats.

Senate Republicans responded by rejecting Trump swiftly and decisively.

"I'm not going to support a change in rules. The Founding Fathers set it up this way," said Sen. John Kennedy (R-La.), who's been in Washington about three weeks longer than Trump. "It's worked for centuries. It can still work. We don't have a rule problem, we've got a people problem."

He and I differ on that because without the filibuster this country would've been gone a long time ago," said Sen. Orrin Hatch of Utah, the most senior GOP senator. "I'm gonna talk to him about it. I'll get him back on line."

Lawmakers on Capitol Hill managed to avoid the imminent threat of a government shutdown late last week and over the weekend, first passing a stopgap one-week funding bill and then agreeing on a deal to fund the government through the end of September. And the GOP is desperate to avoid a shutdown this year while controlling all levers of Washington.

"I don't think the American people elected President Trump and Republican majorities in both houses to shut down the government. I think they expected us to govern. And that's what we're doing," said Senate Majority Whip John Cornyn (R-Texas).

But while Republicans avoided a potentially embarrassing lapse in funding just 100 days into Trump's administration, the president's agenda took a beating in the deal, with no money for his long-promised border wall and no crackdown on federal grant money for so-called sanctuary cities. Democrats, especially Senate Minority Leader Chuck Schumer of New York, swiftly boasted of their wins over Trump, eager to get under his skin.

It seemed to work. At the White House on Tuesday, Trump bashed Democrats for "touting" their victories and laid out his hard-line plan to circumvent any need for future deal-making with the Democrats.

"The reason for the plan negotiated between the Republicans and Democrats is that we need 60 votes in the Senate which are not there!" Trump wrote on Twitter. "We either elect more Republican Senators in 2018 or change the rules now to 51%. Our country needs a good 'shutdown' in September to fix mess!"

Senate rules can be changed by a majority vote using the unilateral "nuclear option." Over the past four years, the Senate has wiped away the 60-vote standard for nominees after more than a decade of wars over judicial and executive branch nominations.

Trump suggested earlier this year that if Democrats blocked his Supreme Court nominee, Senate Majority Leader Mitch McConnell (R-Ky.) should gut the filibuster to approve his high court pick. That's exactly what happened.

McConnell, however, has vowed he would not similarly undo the 60-vote threshold for legislation. Sixty-one senators sent him a letter last month vowing their support for it. And the majority leader opened the GOP's weekly closed-door party lunch on Tuesday by outlining the benefits of the filibuster, including how it had empowered Republicans to stop liberal legislation, according to one person in the room.

"There is an overwhelming majority — on a bipartisan basis — not interested in changing the way the Senate operates on the legislative calendar," McConnell told reporters Tuesday. "And that will not happen."

Vice President Mike Pence, who attended Tuesday's lunch with Senate Republicans, was also asked about Trump's filibuster tweet and said simply that the message demonstrates Trump's resolve to getting things done in Washington, according to the source.

Still, there is growing frustration among conservatives about Democrats' opposition to Trump's agenda, and many House members have chafed for years at the Senate's limitations. Sen. Ted Cruz (R-Texas) said in an interview that while there is not support for a unilateral rules change on the filibuster right now, that could change by September.

"If Democratic senators continue to abuse the filibuster, I think the political pressure to rein in their abuse will only continue to grow," Cruz said.

But the legislative filibuster has historically been used more to the benefit of conservatives than liberals because of its ability to stop bills. During President Barack Obama's term, for example, the threat of a filibuster stopped a cap-and-trade climate change proposal, while actual filibusters stopped new background checks on guns and an increase in the minimum wage.

"I'd love to get 60 [seats]. But if we don't, we're not going to change the rules," said Sen. Jeff Flake (R-Ariz.). "There's no possibility."

Elana Schor contributed to this report.

Back

Trump tries to claim border wall win in budget deal Back

By Louis Nelson | 05/02/2017 12:39 PM EDT

President Donald Trump on Tuesday claimed that the government funding deal reached on Capitol Hill over the weekend includes a "down payment on the border wall," even though the legislation specifically does not allocate money for such a wall.

At a ceremony ostensibly dedicated to honoring the Air Force Academy's football team, Trump devoted a significant portion of his remarks to claiming policy victories in the deal reached to avert a government shutdown. Telling the crowd that his "Republican team had its own victory under the radar," Trump claimed that Democrats had misled Americans about the nature of the funding compromise.

"We have more money now for the border than we've gotten in ten years. The Democrats didn't tell you that. They forgot. In their notes, they forgot to tell you that. With enough money to make a down payment on the border wall," Trump said with blue-uniformed Air Force cadets standing behind him. "we're putting up a lot of new wall in certain areas. We're putting up a tremendous amount of money to fix the existing structures that we have, some of which we can keep into the future."

"And make no mistake, we are beginning to build the wall," he continued.

But while the funding deal does include significant funding for border security, it does not contain money for Trump's long-promised border wall, a point over which Democrats were

seemingly prepared to force a government shutdown. Sen. Patrick Leahy (D-Vt.), the Senate Appropriations Committee's ranking member, quickly chimed in on Twitter to note that, "To be clear, there is NO funding in this bill for ANY kind of down payment on construction of a new border wall."

Back

House Republicans floundering on Obamacare repeal Back

By Rachael Bade, Kyle Cheney and John Bresnahan | 05/02/2017 10:35 AM EDT

House Republicans and the White House kicked off the week thinking they'd finally pass their Obamacare repeal bill. By Tuesday morning, their legislation was once again on life support.

Key GOP leadership allies are dropping their support, sending Speaker Paul Ryan and his team, as well as the Trump administration, into full-fledged damage-control mode. In one sign of the their desperation, leaders agreed to consider additional changes to win more support, after telling rank-and-file members all week they were finished tweaking the bill.

The move came after former Energy and Commerce Chairman Fred Upton — who once authored numerous repeal bills — said he was against the proposal Tuesday. On Monday, longtime Donald Trump supporter Rep. Billy Long (R-Mo.) came out in opposition, rebuffing the president's personal plea to back the bill during a phone call.

Upton (R-Mich.), like Long and a host of other critics of the legislation, said the GOP health care alternative "torpedoes" protections for people with preexisting conditions. GOP insiders on the Hill and in the White House know they cannot lose someone like Upton and still expect to pass the bill. Upton's defection will give more undecided moderates and traditional Republicans cover to bail.

"I told the leadership I cannot support this bill with this provision in it," Upton said on a local Michigan radio program, referring to what could happen to people with medical histories. "I know there are a good number of us who have raised real red flags and concerns. It is not going to get my 'yes' vote the way it is."

House GOP leaders are trying to change a hardening narrative that sicker Americans would suffer under their plan. Ryan argued to lawmakers in a closed-door GOP conference meeting that people with pre-existing conditions would not be harmed by the latest draft. Vice President Mike Pence and Health and Human Services Secretary Tom Price will also huddle with lawmakers to try to win votes on Tuesday afternoon.

Leadership on Tuesday also floated the idea of increasing funding for risk pools that support individuals with pre-existing conditions, three sources told POLITICO. It is unclear if the changes would win over skeptics like Upton and Long. Some also worry that crafting another amendment to the bill could set GOP leaders back several weeks. It's also unclear whether the Freedom Caucus, which currently backs the bill, would approve.

In total, nearly 20 GOP lawmakers, mostly moderate or centrist Republicans worried about sicker Americans paying more for premiums, have now added their names to the "no" column. At the same time, the list of Republicans who say they're "undecided" has grown to at least two-dozen. Even several GOP whips tasked with drumming up support for the bill said Monday night they have not yet made up their minds on whether to support the revised American Health Care Act.

House Republicans, who can only lose 22 votes and still pass the bill, are planning a Thursday members-only meeting to discuss the repeal effort. While top Republicans insist Ryan's leadership team is close to reaching the 216-vote threshold needed for passage, their job is becoming tougher by the day, as more lawmakers publicize their opposition to the latest version of the bill.

Publicly, GOP leaders are projecting an upbeat message. House Majority Leader Kevin McCarthy (R-Calif.) said Monday night that "I actually feel we're in a very good place." Chief Deputy Whip Patrick McHenry (R-N.C.) said "I think we'll pass the bill" as he walked into the GOP conference meeting on Tuesday morning.

House Republican leaders last week asked a number of lawmakers to hold off on releasing statements of opposition the bill. They'd hoped to win some of them back — and knew that would be much tougher once members' positions were made public.

With about 20 lawmakers firmly against the bill, GOP leaders would have to persuade almost every undecided lawmaker to support the legislation on the floor. That's an extremely narrow margin for passage, amounting to something of toss of the dice should Ryan bring the legislation to a vote.

Ryan took questions from concerned lawmakers during a Tuesday morning conference meeting, specifically addressing their concerns about pre-existing conditions protections in the bill. Leaders are emphasizing the protections in the bill, including a requirement that states that opt out of Obamacare regulations create risk pools to help pay the premiums for those with pre-existing conditions.

Leaders are also reminding members that, under the bill, insurance companies could only charge people with pre-existing conditions more if they have a gap in coverage. If they remain on insurance, they cannot be charged more than a healthy person.

"Our bill protects people with pre-existing conditions, and actually provides multiple layers of protections for people with pre-existing conditions in ways that Obamacare doesn't do," argued Majority Whip Steve Scalise in a press conference Tuesday morning. The Louisiana Republican then told a story about a constituent with a medical history who said Obamacare actually hurt him by increasing his premiums.

Complicating leadership's whip effort, Trump, in a Monday interview, suggested the bill was not yet final. A number of undecided voters, including moderate Rep. Mike Coffman (R-Colo.), took

Trump's comments to mean the legislation was once again open for negotiation, though GOP leaders have said the legislative text is set in stone.

On Tuesday, Trump, addressing members of the U.S. Air Force Academy at the White House, greeted several lawmakers in the crowd before prodding them to get health care legislation done.

"How's health care coming folks?" he said to an audience that included Reps. Martha McSally (R-Ariz.), Doug Collins (R-Ga.), Rep. Doug Lamborn (R-Colo.), Rep. Ted Poe (R-Texas) and Rep. Don Bacon (R-Neb.). "How are we doing? We moving along? I think it's time now."

Leadership is operating under a time crunch. The House is scheduled to break for a one-week recess starting Thursday, and Republicans fret that they could lose even more momentum during the break. Some are talking about canceling the recess, though GOP leaders have not yet decided how to proceed.

"If we don't get a 'yes' vote this week, then what happens realistically? We're taking flack back in the districts for not voting for a repeal," said Rep. Dave Brat (R-Va.) "What is the response? The response is: 'Well, if we block this again, then you'll get a scenario like the budget vote: where we go out and get Democratic votes to pass the health care bill, and that is a worse outcome!'... If you don't get this policy passed, you end up with a Democratic bill."

House Freedom Caucus Chairman Mark Meadows (R-N.C.), who negotiated the pending plan, acknowledged that the defections of Long and Upton were "significant" and could convince other wavering members of the GOP conference to reject the health care plan. Upton and Long are both close with House leadership.

"Obviously that's not a move in the right direction," Meadows said.

But, emerging from a meeting with Ryan and leaders of other House blocs, Meadows said the process was still gaining traction among House Republicans.

"There's more attention paid to those who are saying no than to those who are saying yes." He said it's a "critical, critical week" for the fate of the health care push — and delaying action any further could require the House to start all over.

"There comes a point in time where you say, either we continue to move forward with this foundational piece of legislation or you come back and regroup and find another piece of legislation that potentially could bring more people together," he said. "That's why this week is critical."

The White House raised expectations over the weekend that the bill would pass the House on Wednesday, a timeline most on Capitol Hill scoffed at. GOP leaders thought later in the week was more realistic.

Now, they're not so sure.

One senior White House official said "it's probably a toss-up right now" as to whether the plan passes the House this week.

Several House Republicans have signaled support for the measure with the knowledge that the Senate is expected to dramatically rewrite whatever legislation they pass. Rep. Peter King (R-N.Y.) said he's spoken with Republican senators like Shelly Moore Capito (W.V.), Rob Portman (Ohio), Bill Cassidy (La.) and Susan Collins (Maine) about possible adjustments to the bill.

But on Tuesday morning, Sen. Lindsey Graham (R-S.C.) had a message for House Republicans relying on them for an AHCA fix: don't. "I don't think we have a very clear way forward," he said on CNN.

It's becoming increasingly apparent that while House Republicans have campaigned on repeal for years, a large chunk of the party no longer wants to scuttle Obamacare. The law has become more popular, and lawmakers are worried they'll be blamed if constituents lose coverage.

Still, a majority of Republicans believe they have to fulfill their campaign promise — or voters will make them pay in 2018.

"I think we're close; I think we're getting closer by the day," said Vice Conference Chairman Doug Collins (R-Ga.). "Who knows when it will be, but when we get those votes, we'll pass this bill."

Josh Dawsey contributed to this report.

Back

Trump rally altercations could add to legal woes Back

By Kenneth P. Vogel and Ben Schreckinger | 05/02/2017 05:06 AM EDT

A pro-Donald Trump biker gang's physical handling of protesters at a weekend rally could add to the president's legal woes, with one attendee considering a fresh lawsuit as protesters already suing over violence at rallies last year plan to cite the recent events as proof of an ongoing pattern.

Members of a group called Bikers for Trump accosted multiple people at a Saturday night rally in Harrisburg, Pennsylvania, sometimes using their bodies to push or physically detain them until police arrived, after Trump yelled "get him out of here" at one protester waving a Russian flag.

The skirmishes underscored the unique challenges surrounding a president who continues holding campaign-style rallies nearly six months after his election, eliciting equally charged fervor among his supporters and critics — and who hasn't disavowed the violence that characterized much of his campaign.

The scene at the Pennsylvania Farm Show Complex & Expo Center on Saturday in some ways

recalled a series of tense rallies during the bitter GOP primary at which Trump supporters repeatedly clashed with protesters, occasionally with Trump's encouragement, including at a February 2016 rally where the then-candidate suggested his fans should "knock the crap out of 'em" and then offered to pay any resulting legal fees.

"When he sees that the crowd is riled up and he says these types of things, he's sending a message to his supporters," said Richard A. Rice, a lawyer representing two protesters who are suing the Trump campaign, including an African-American man who alleges he was punched, kicked and called racial slurs by Trump supporters at a November 2015 Trump rally in Birmingham, Alabama. During that encounter, Trump similarly yelled "get him the hell out of here!"

Rice said the message directed at his client and the protester in Harrisburg on Saturday was the same: "He wants to use violence as a tool to suppress political dissent."

The lawsuit from Rice's clients, which is awaiting a judge's ruling on motions to dismiss by the Trump campaign and the convention center that hosted the rally, is one of two moving through the federal courts accusing Trump of inciting violence by his supporters against protesters. "If we get past this motion-to-dismiss stage, I would certainly cite (the incidents at the Harrisburg rally) to show that it's an ongoing pattern," said Rice.

The White House did not respond to requests for comment. Neither did the Trump reelection campaign, which hosted the Harrisburg rally.

The responses from Trump supporters to his calls to remove protesters are a source of concern for the local police tasked with keeping the peace at rallies, as well as Secret Service agents tasked with protecting the president.

"There is never a situation where we want anyone to take matters of law enforcement into their own hands," said Troy Thompson, a spokesman for the Pennsylvania Capitol Police, the agency that had primary responsibility for maintaining order at Saturday's rally. "We had enough officers on the scene to handle whatever may have occurred, and it's best to allow the officers to do their jobs."

Thompson said no arrests or citations were issued to Trump supporters, and that there were only two arrests of protesters, both for disorderly conduct. He said he "wasn't aware of anyone being detained or restrained" by Trump voters.

But videos and photos from the event show the bikers intervening in at least one instance, while a POLITICO reporter who covered the rally witnessed other incidents involving the bikers.

"The bikers are a great example of members of the crowd using Trump's words as a call to action. In some instances, they feel like they are instructed to do so, and further feel like their actions to suppress a protest somehow indemnifies their actions," said a law enforcement source who is in contact with Trump's Secret Service detail. "Their actions are wrong, and oftentimes cause more harm than good."

The Secret Service did not respond to a request for comment. Chris Cox, the founder of Bikers for Trump, declined to comment.

One of the protesters arrested on Saturday, a liberal activist named Ryan Clayton, was the one who drew the president's ire by unfurling the Russian flag. As he waved it, he yelled that Trump was a traitor and a puppet of Russian President Vladimir Putin. Clayton said the bikers and other Trump supporters shoved him.

Local police arrived quickly and threw him to the ground. Clayton nevertheless commended their handling of the situation and said he was thankful they reached him when they did, "because it was getting kind of hairy."

Even as he was being escorted out of the arena by law enforcement — which is when Trump bellowed "get him out of here" — Clayton said a member of Bikers for Trump continued "pushing me with his body as I was walking out. He was up against my back, literally breathing down my neck, in some kind of macho man way of exerting his monkey dominance."

In another instance, an Indian-American man named Neil Makhija was cornered and shoved by the bikers, and taunted by other rally-goers who yelled "get him out."

"I was trying to find the police because I wanted [the bikers] to be taken away, not me," said Makhija, a Harvard Law School graduate who is active in Democratic politics in northeastern Pennsylvania. He attended a protest across the street before the rally but said he did not protest inside the rally.

When an officer finally arrived on the scene where the bikers had cornered Makhija, the officer told Makhija he could stay in the arena but suggested that he might want to avoid wading back into the crowd. "It was like, 'This crowd was so uncontrollable that we can't have you here,' which goes against everything we believe in in a democratic society. It's basically saying don't participate because the mob could get violent."

Makhija, who on Twitter called Bikers for Trump "professional thugs," said he is considering suing, explaining: "I'm going to consult people who are well versed in this area of law."

One member of Bikers for Trump who said he was involved in the altercation with Makhija denied any wrongdoing. "We stepped up to help out our brothers, our sisters," said Dennis Egbert. "At no time will you find my DNA on him or any other individual."

And Egbert suggested the bikers' rally security work has the approval of both Trump and the Secret Service. "I've talked to more Secret Service people around Donald Trump than you'll ever see," he said.

Trump's campaign staff last year did allow the group's members to patrol Trump's rallies, where they routinely could be seen conferring with members of Trump's private security team about efforts to identify and remove protesters and suspected protesters.

At Saturday's rally, Cox and other members of the group were given seats on the riser directly behind Trump — prime spots from which they could be seen in telecasts of the president's rally speech.

Egbert was among a handful of veterans who joined Trump last week at the Department of Veterans Affairs for the signing of an executive order related to whistleblower protection.

He said that Trump — who has promoted the biker group on his Twitter account, touting their presence at his inauguration — has personally thanked him for his rally security work on three separate occasions. "If I was doing anything wrong, he would've told me," Egbert said.

Yet, Steve Amitay, executive director of the National Association of Security Companies, said that the bikers' behavior could lead to assault charges against them, as well as potential legal liability for the Trump campaign. "There could be some degree of negligence on the campaign's part if they know that these bikers for Trump folks are assaulting people at the rally who aren't posing any physical harm to anyone else."

A federal judge late last month ruled that Trump's calls of "get 'em out of here!" may have constituted "incitement to riot" at a March 2016 rally in Louisville, Kentucky, at which three protesters allege in a lawsuit they were assaulted by Trump supporters.

Henry Brousseau — one of the three protesters suing Trump, his campaign and the supporters who allegedly assaulted the protesters in Louisville — said the Harrisburg case fits a pattern. "I think it's clear that it's a call to action for his supporters," he said.

Trump's attorneys contended that Trump was calling on his security, not his supporters, to remove the protesters in Louisville. They also argued that Trump had a right to remove protesters because they were infringing on his freedom of speech, and that Trump's calls to remove protesters are protected by the First Amendment and should not be considered incitement.

Lee Rowland, a senior attorney at the American Civil Liberties Union who focuses on First Amendment issues, agreed with Trump's First Amendment claim in the Louisville case, arguing: "Trump has free speech rights, too."

She said that same reasoning applies to the Harrisburg rally as well, adding that "Trump's decision to use his bully pulpit to actually bully protesters and to rile up his crowds against them is morally despicable, but it is constitutionally protected."

Josh Dawsey contributed to this report.

Back

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From: Bowman, Liz
Sent: Fri 4/28/2017 6:52:39 PM
Subject: FW: E&E News: Trump team: Big ambitions but a thin lineup, 4/28/17

Want to make sure y'all saw this one. It's a fair piece and actually pretty favorable, especially for this reporter (considering he has been sending in a FOIA on each of us weekly).

From: McGonagle, Kevin
Sent: Friday, April 28, 2017 1:40 PM
To: AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
Subject: E&E News: Trump team: Big ambitions but a thin lineup, 4/28/17

E&E News

https://www.eenews.net/greenwire/2017/04/28/stories/1060053753

Trump team: Big ambitions but a thin lineup

By Kevin Bogardus 4/28/17

A poster spotted in the lobby of U.S. EPA's Washington headquarters last week trumpeted the agency's "Back-to-Basics" agenda.

With a photo of EPA Administrator Scott Pruitt grinning and shaking the hands of coal miners, the sign outlined the agency mission in three simple bullet points: "Protecting the environment," "Engaging with partners" and "Sensible regulations for economic growth."

The placard — particularly its emphasis on the economy — offers evidence of ground-shifting changes underway at EPA as the Trump administration's first 100 days come to a close. President Trump, who mocked the agency and lambasted environmental regulations as a candidate, has held fast to campaign promises to target EPA for downsizing and turn the tide on its Obama-era rules.

Whether Trump's vision of a smaller, less regulatory EPA hardens into long-term reality depends on how much resistance is offered by Capitol Hill and the courts. Still lacking at the agency are the president's nominees, with Pruitt, the former Oklahoma attorney general who often tangled with EPA, the only one confirmed by the Senate so far.

"They seem to know what they're doing, and they have gotten moving quickly. They're off to a good start," said Myron Ebell, director of the Competitive Enterprise Institute's Center for Energy and Environment, who led Trump's EPA transition team.

"All of that good start is threatened by not having key people in the confirmable positions."

Pruitt's confirmation was drawn out for weeks as Senate Democrats resisted approving the vocal EPA critic to take the agency's reins. On Feb. 17, he was confirmed on a mostly party-line vote, 52-46 — the most recorded "no" votes of any administrator nominee in EPA's history.

Trump hasn't picked anyone yet to join Pruitt, who has been at EPA for more than two months. The president hasn't announced nominees for the other dozen empty seats at the agency, including deputy administrator and general counsel, as well as chiefs for the air, water and enforcement offices.

"I'm very worried that the White House personnel office seems incapable of filling these Senate-confirmable positions. You can't do the business of government for very long if you don't have anyone who can make decisions," Ebell said.

Career EPA officials now hold those top jobs on an acting basis. Many of them helped craft regulations in the Obama administration that are now being rolled back — notably the Clean Power Plan and the Clean Water Rule.

"Those are career civil servants. They are opposed to the president's regulatory agenda," Ebell said. "I give them high marks on what they [the Trump administration] have done, but they have to fix the personnel problem."

Pruitt has begun to surround himself with appointees who don't need Senate confirmation.

Ryan Jackson, a former senior aide to Sen. Jim Inhofe (R-Okla.), is Pruitt's chief of staff at the agency. The EPA administrator also brought on Samantha Dravis, who worked with the ex-Oklahoma attorney general at the Republican Attorneys General Association, as head of EPA's policy shop. Ex-Hess Corp. lobbyist Troy Lyons is leading the agency's congressional relations team, while J.P. Freire, previously Sen. Orrin Hatch's (R-Utah) communications director, is in charge of EPA's public affairs.

There have been bumps in even putting together EPA's small political staff.

Several members of Trump's EPA "beachhead" team have left, including David Schnare, who made allegations about the misuse of federal funds and officials not adhering to Trump's agenda on his way out the door. Don Benton, EPA's senior White House adviser who was reportedly frozen out of meetings by Pruitt, also exited after he was appointed as director of the Selective Service System.

'Where is this going to end?'

On April 13, Pruitt traveled to Sycamore, Pa., to meet with coal miners. He touted Trump's executive order to review the Clean Power Plan as well as end the Obama administration's coal-leasing moratorium and several climate change actions.

"The war on coal is done. It's over," Pruitt said to cheers from the crowd. The photo op, including a trip underground and a hard hat gifted to the EPA chief, was the kickoff of Pruitt's "Back-to-Basics" agenda, later memorialized in the poster in EPA's lobby (E&E News PM, April 13).

That order is one of several moves by the Trump administration's EPA to rein in the agency's regulatory power — many of which have been applauded by industry that chafed under agency rules in the past.

Pruitt turned back a ban on the pesticide chlorpyrifos, despite agency research saying it was a risk to human health. The agency also restarted a review of the Obama administration's tough fuel economy rules for automakers.

The EPA chief delayed by nearly two years implementation of safety rules for chemical plants and industrial facilities to give EPA time to reconsider them.

Pruitt has begun a review of the Clean Water Rule — also known as the Waters of the U.S. rule, or WOTUS — per another Trump executive order, and has pulled back a request to the oil and gas industry for information on methane emissions.

In addition, EPA under Pruitt's command may reconsider several regulations combating air pollution, including standards for ozone and mercury as well as emissions from power plants' startup, shutdown and malfunction events, according to court filings.

Environmental groups have threatened to sue, if they haven't already, in response to many of Pruitt's rollbacks — expect years of litigation until anything is resolved. Still, the scale and speed of the rules' retreat have surprised the EPA chief's critics.

"The list goes on and on. It goes well beyond some of the areas that Trump was expected to target, like the Clean Power Plan and Waters of the U.S. Where is this going to end?" said Bob Sussman, a Clinton-era deputy EPA administrator who also served as a senior policy adviser to President Obama's first EPA chief, Lisa Jackson.

Sussman added, "All of them will end up in litigation. I think you're going to see an agency consumed with rollbacks of these rules and then litigation dealing with those rollbacks."

EPA has only just begun retracting its rules.

Under order from Trump, EPA has set up a regulatory reform task force, led by Dravis. The agency has started soliciting comments and setting up meetings on what rules to kill next.

Pruitt has been front and center in EPA's deregulatory push.

The agency chief has met with governors and business groups as he talked up a kinder, gentler EPA that will work more with state regulators. Along with visiting a Pennsylvania coal mine, he stopped by a Superfund site in Indiana and a Missouri power plant in recent weeks to espouse the agency's new agenda.

That high profile has attracted scrutiny, too.

Democratic senators have questioned whether the EPA chief has sought ethics advice, considering his work in rolling back rules he once litigated against as Oklahoma attorney general. They have also asked him to clarify his Senate confirmation hearing testimony on his use of personal email for official business — he said he hadn't used it but he had, according to press reports.

Further, Pruitt's comments during a television interview that carbon dioxide wasn't a primary contributor to climate change, contrary to EPA's own website, triggered a scientific integrity review. And his expected appearance at an Oklahoma Republican Party fundraiser next week sparked a Hatch Act complaint (E&E Daily, April 26).

Pruitt has decided against attending that fundraiser (Greenwire, April 27).

The administrator has also been subject to some conservatives' grumbling. Though the EPA chief has pushed for the United States to exit the Paris climate change accords, he has been more reluctant to address the agency's 2009 endangerment finding against carbon dioxide and other greenhouse gases, the basis for its global warming rules.

Ebell said he hopes Pruitt will reverse that finding, as some groups have petitioned him to do.

"I would feel more secure if the administration was plowing ahead with the endangerment finding. There is still time," Ebell said.

'You have to think big

EPA has also begun to cut back its workforce.

Last week, EPA said it would start offering employees early retirement and buyout packages to comply with another Trump order to downsize federal agencies. Top officials have already had to deny speculation that they planned to close the Chicago-based Region 5 office — EPA's largest regional office, with more than 1,000 employees.

Anxiety among career employees has been high since Election Day, when Trump won the White House. That nervousness has only increased since last month, when the president proposed a 31 percent or $2.6 billion cut to EPA funding, which could result in 3,200 fewer positions at the agency.

Pruitt initially pushed back on those budget cuts, but the White House responded by slashing

even further into EPA funding. Capitol Hill is expected to resist cuts to the agency, as well, though it's unclear how many programs will be saved in the end.

Ebell, who has championed reducing EPA, believes lawmakers won't entirely accept Trump's budget plan.

"There is going to be a big fight in Congress," Ebell said. "I don't think they will end up with a 31 percent cut, or 3,000 or so positions out. You have to think big if you're going to get anything at all."

Nevertheless, Sussman believes Trump will leave his mark on EPA, and it won't be pretty.

"EPA has already been downsized from its historic peak, and to further emasculate the agency and eliminate major programs as well as fire people involved with enforcement, this is all going to take a heavy toll on the agency's effectiveness and credibility," Sussman said.

"I don't know how far this will go, but I don't think EPA will escape unscathed."

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To: Bolen, Brittany[bolen.brittany@epa.gov]
From: InsideEPA/climate
Sent: Thur 4/20/2017 9:48:57 PM
Subject: Today on Climate Beat

April 20, 2017

Today on Climate Beat . . .

. . . we turned up the heat, reporting that one GOP energy lobbyist is doubling down on a call for the Trump administration to exit the Paris Agreement, as tensions between the remain and leave camps grow after a planned closed-door meeting at the White House was abruptly canceled.

Speaking of Paris, our daily news roundup highlights a series of pointed questions that European countries and China have about the United States' commitment to achieve its Paris greenhouse gas targets.

Looking at the clips, the conservative-leaning editorial board of the Wall Street Journal is rebuking hard-line criticism of EPA Administrator Scott Pruitt's strategy to avoid, for now, targeting EPA's landmark greenhouse gas endangerment finding that forms the basis for all of its climate change regulations.

And on the calendar, we previewed an April 27 event where former state regulators will outline strategies to avoid "inefficient 'stovepiping' of responsibilities" between air quality and energy regulators.

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To: Bolen, Brittany[bolen.brittany@epa.gov]
From: POLITICO Pro Energy
Sent: Tue 4/18/2017 9:51:55 AM
Subject: Morning Energy, presented by Business Roundtable: Showdown over fate of Paris comes today — Could outside lawyers craft WOTUS replacement? — Nevadans grill Heller over EPA, budget cuts at town hall

By Anthony Adragna | 04/18/2017 05:45 AM EDT

With help from Darius Dixon, Annie Snider and Alex Guillén

SHOWDOWN DAY ON PARIS: It's a crucial day for U.S. participation in the international Paris climate change agreement as President Donald Trump's senior staff are expected to gather together early this afternoon for the first time to formally discuss whether to stick with or abandon the deal. A key figure to watch is EPA Administrator Scott Pruitt, who has urged the administration to "exit" the landmark agreement struck by nearly 200 countries in December 2015. Pruitt sees leaving Paris as a key part of his strategy to ensure the administration has a clear path to killing the Clean Power Plan, but the idea the two are related appears to be novel even among some conservatives opposed to the pact, Pro's Eric Wolff and Alex Guillén report.

A final roster of meeting attendees remained unclear, but National Economic Council Director Gary Cohn, Secretary of State Rex Tillerson, National Security Adviser H.R. McMaster, Energy Secretary Rick Perry, senior adviser Jared Kushner, chief strategist Steve Bannon and Pruitt are all expected to attend. Trump's team is expected to take a clear stance on the Paris deal before the G-7 meeting in late May.

More voices weigh in: Meanwhile, a chorus of other voices weighed in with their last-minute pitches on how the administration should approach the climate agreement. Cheniere Energy sent a letter Monday suggesting "domestic energy companies are better positioned to compete globally" if the U.S. sticks with the agreement, which the company described as a "useful instrument" for spurring additional interest in U.S. resources. MSNBC's Joe Scarborough, whose "Morning Joe" Trump watched daily until recent weeks, said Monday withdrawing from the deal would be "stupid and counterintuitive" given the U.S. has "been doing a better job of cutting our carbon emissions" than other developing countries.

But not everyone wants the U.S. to stick it out: The Competitive Enterprise Institute, whose Myron Ebell worked for Trump's EPA transition team, is out with a digital ad and petition urging the president to not "listen to the swamp" and keep his promise of withdrawing from Paris.

WELCOME TO TUESDAY! I'm your host Anthony Adragna, and AGA's Dave McCurdy was first to identify Oklahoma's motto "Labor omnia vincit" is the one that means "Hard work conquers all things." For today: What presidential candidate ran with the slogan "Don't Swap Horses in the Middle of the Stream?" Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

PRIVATIZING THE WOTUS RULEMAKING? Industry groups with close ties to Pruitt are

looking at whether the redo of the Waters of the U.S. regulation could be effectively privatized by hiring outside lawyers to craft it, Pro's Annie Snider reports. But legal experts are already suggesting that such an unusual move would raise a host of ethical questions and likely limit the public's view into how decisions are made about which streams, wetlands and lakes across the country receive federal protection under the Clean Water Act.

The idea is being mulled among members of the Waters Advocacy Coalition, which works to restrain the scope of federal water regulation on behalf of more than 60 industry groups including the American Farm Bureau Federation and National Mining Association. Industry insiders have been reaching out to lawyers to see who may be interested in leading a WOTUS rewrite from outside the agency, according to one attorney who received an overture. Such an approach is seen as a way to help Pruitt quickly replace the most controversial Obama-era waters regulation even as he deals with a dearth of political appointees at EPA to help him, multiple industry sources told Annie. Hunton & Williams LLP, whose lawyers fought Obama-era environmental regulations alongside Pruitt when he was attorney general of Oklahoma, represents the Waters Advocacy Coalition.

Inside the agency, the WOTUS rewrite effort is being shepherded by Sarah Greenwalt, who went to work for Pruitt in Oklahoma just after finishing law school, but the bulk of the workload is currently being carried by career EPA water staffers — a fact that worries some Pruitt allies. Meanwhile, some of the legal experts favored by industry to lead the rewrite, such as Susan Bodine, the chief Republican counsel for the Senate Environment and Public Works Committee, are hesitant to join the agency.

GETTING REAL ON 'BUY AMERICAN': Trump today will launch a Cabinet-wide investigation into government procurement practices as part of an ongoing effort to limit the purchase of goods manufactured abroad, Pro Trade's Megan Cassella reports. ME readers may remember the dust up after the administration ruled, despite the president's pledge, that the Keystone XL did not have to be built with American steel.

REGION 5 PUSHES BACK: EPA's Chicago-based regional office aggressively denied reports the Trump administration is considering consolidating it with another branch of the agency in an email to staff obtained by ME Monday. "At this time, our discussions have not veered into the subject of an office closure. Anyone stating anything to the contrary is spreading false information," Robert Kaplan, acting regional administrator, wrote. "This is about results, not rumors." He added Pruitt would travel to the area this week to discuss efforts to clean up the East Chicago Superfund site.

That comes as The Chicago Sun-Times reported Pruitt might watch the Chicago Cubs play the Milwaukee Brewers on Wednesday after visiting the East Chicago Superfund clean up, but didn't plan to visit the regional office of the agency.

SOLD OUT: If you want to attend any of EPA's public meetings on regulatory reform, you better sign up early. POLITICO asked last week to attend an April 25 meeting for the Office of Small and Disadvantaged Business Utilization, but was told Monday the meeting was full up. There are a few other chances to make yourself heard — here's the list of EPA's upcoming

meetings — but perhaps the most controversial, the Office of Air and Radiation, will be conducted April 24 via teleconference, a handy way to keep photo-op-py crowds of environmentalists from derailing things. You can also file written comments at any time.

STATES DEFEND TRUMP'S 2-FOR-1 REG ORDER: Fourteen states Monday night came to the defense of Trump's executive order directing agencies to identify two regulations for repeal or revision for every rule promulgated. In a "friend of the court" brief, the states — including West Virginia and Pruitt's old stomping grounds, Oklahoma — rely on some Steven Bannon-esque language to argue that "the administrative state has accelerated further the long-term growth of new regulatory burdens, while rarely eliminating unnecessary regulations issued in the past." The two-for-one setup is a "reasonable, easy-to-administer principle" that follows historical norms of centralized regulatory authorities, they argue. "This growth in unnecessary federal regulations has had a deleterious effect on the States and their citizens. The one-in two-out concept properly orients agencies to solving this long-term problem, which has only grown more dire in the past several years, and to lifting unnecessary regulatory burdens on the States."

** **A message from Business Roundtable: Create, Grow, Sustain: Delivering Shared Success** - Explore how companies are promoting sustainable practices in their U.S. and global operations in "Create, Grow, Sustain: Delivering Shared Success." Celebrating its 10th anniversary, the report highlights how America's largest companies make sustainable business investment a priority in supporting economic growth and job creation. https://goo.gl/nm4Dy9 **

HEATED CLIMATE QUESTIONS AT GOP TOWN HALLS: Republican lawmakers are increasingly fielding angry town hall questions on climate change and EPA budget cuts, with Nevada Sen. Dean Heller and Rep. Mark Amodei experiencing that emerging trend firsthand in Reno Monday. Multiple questioners repeatedly tried to pin down Heller, in particular, on whether he supported the Trump administration's proposed EPA budget cuts and Pruitt's actions. "When Scott Pruitt is right I'll support him, when he isn't right I'll change his mind," Heller said, adding he "probably wouldn't support most" of the proposed EPA cuts after being repeatedly booed for indirect answers.

Urge caution on budget: Both Heller and Amodei repeatedly sought to reassure angry constituents the final federal budget would look nothing like what Trump proposed, especially with regard to environmental programs. "The president does not make the budget. It's the Congress that makes the budget," Amodei said. Heller called that comment "absolutely right" and promised the final product would "look nothing like the president's budget."

WIND INCENTIVES AXED: Oklahoma will no longer provide state tax incentives for wind energy generation projects that begin operation later than July 1 after Gov. Mary Fallin signed legislation ending them, Pro's Esther Whieldon reports. Those incentives were originally supposed to sunset in 2021. Projects that started service after 2007 will continue to receive a half-cent-per-kilowatt-hour tax credit for their first 10 years in operation.

THE NRC WAYBACK MACHINE: It was five years ago today that Sen. Mitch McConnell took to the Senate floor and railed against the Obama administration for dragging its feet on officially renominating Kristine Svinicki to the Nuclear Regulatory Commission. Now, Svinicki,

a Republican who is now NRC chairwoman, is waiting for the Trump White House to send her latest nomination sent to Congress. Back in 2012, the nuclear world was all-consumed by the agency infighting under then-Chairman Gregory Jaczko, a former aide to Sen. Harry Reid who would resign less than three months later. Not renominating Svinicki, McConnell said at the time, suggested that "she's being held up in retaliation for speaking up against a rogue chairman who bullies his subordinates."

It's a matter of timing. Unlike most other commissions, NRC leadership members roll off as soon as their term ends. So, come July 1, Svinicki's photo would be pulled from the agency website, her access to the building would be yanked and she couldn't vote on commission business. And, given the two current NRC leadership vacancies, that could temporarily give the gavel to one of the Democratic commissioners. Of course, this can all be quickly reversed if the issue is about "when" rather than "if" she's got a future at the agency. Svinicki was reconfirmed in 2012 with less than 48 hours left on her term. The calculus is different now too: Republicans now control the Senate and Svinicki's main antagonists in the chamber — Harry Reid and Barbara Boxer — have retired, but the Senate isn't moving any faster on nominations and Svinicki doesn't appear to have a Democrat to be paired with to reduce the partisan flack like she did in 2012.

BALANCE IT ON OUT NOW: After teetering on the brink of a water shortage declaration in recent years, the Southwest finally has some good news: Hefty snowfall in the West has led to strong flows in the upper Colorado River basin. Under a 2007 agreement among the states, the surplus is to be shared between the river's two main reservoirs, Lake Mead and Lake Powell. The Bureau of Reclamation announced Monday it will send roughly 800,000 acre feet of "bonus" water over the next year from Lake Powell to dwindling Lake Mead — enough water to supply more than 3 million families in the region for a year — but less than some water experts predicted could be sent south.

The extra water is a boon for Arizona, California and Nevada, which have been preparing for water levels at the reservoir to dip to the point it triggers the first mandatory delivery cuts. But even this good news has water managers worried: They argue we're still looking at a future of scarcity, thanks to climate change and population growth, and fear that a plentiful year could derail major progress the lower basin states have been making toward a new Drought Contingency Plan.

GET A JOB: The Sierra Club unleashed a detailed tweet storm Monday examining the 351 positions EPA could not fill during Trump's federal hiring freeze. Some key takeaways: EPA's Office of Air & Radiation and Office of Water both had 22 jobs caught up in the freeze, and 140 people selected as final candidates were temporarily blocked.

TAKING STOCK: The Federalist Society hosts a noon event today at the National Press Club examining "legal and regulatory issues facing the states, the FERC, the courts and the entire electricity industry." Acting FERC Chairman Cheryl LaFleur gives keynote remarks, followed by an expert discussion. More details here.

TECH WORLD'S TO-DO LIST: The Information Technology and Innovation Foundation

released its to-do list Monday with a section devoted to clean energy. The group called for energy efficiency and carbon reduction efforts to be set in "a predictable, innovation-inducing manner" and "permanent and technology-neutral" low-carbon tax credits.

ARCHITECTS TOUT CLIMATE PRINCIPLES: The American Institute of Architects released eight principles governing how their profession can help address climate change. Among other suggestions, the group calls for the federal government to maintain "global leadership in the design and construction of carbon neutral buildings" and for policymakers to "protect financing and incentives" for energy retrofitting buildings in cities.

FOR YOUR READING COLLECTION: Former New York City Mayor Mike Bloomberg and Carl Pope, former executive director of the Sierra Club, are out today with a new book, *Climate of Hope*, with strategies for cities, businesses and citizens to take action on climate change regardless of the national political climate.

MOVING IN JAPAN? Four Senate Republicans — John Barrasso, Steve Daines, John Kennedy and Rob Portman — toured Isogo Power Station in Tokyo on Monday. "A clean coal-fired power plant," Daines tweeted.

ENDORSED: Count former Obama administration climate aide Brian Deese among the fans of former Interior Secretary Sally Jewell's ongoing cross-country trip to national parks. "Sally — keep the pictures coming. You are having one hell of a trip!" he tweeted Monday.

MOVERS, SHAKERS: Kevin Borgia started Monday as Midwest policy director for Cypress Creek Renewables. He previously was manager of public policy and membership at Wind on the Wires and executive director of the Illinois Wind Energy Association.

Amy Graham has joined EPA as a deputy associate administrator for public engagement; before making the jump she worked for Sen. Shelley Moore Capito and also spent three years as a spokesperson for the Florida Department of Environmental Protection.

QUICK HITS

— Justin Trudeau A 'Stunning Hypocrite' On Climate Change, Says Top Environmentalist. Huffington Post.

— Climate change causes glacial river in Yukon to change direction. CBC.

— Big Business Pushes Coal-Friendly Kentucky To Embrace Renewables. WOSU.

— Kasich: I sent Ohio troopers to assist with security at Dakota Access Pipeline. Cincinatti.com.

— Saudis Target 30 Solar, Wind Projects in $50 Billion Pledge. Bloomberg.

HAPPENING TODAY

12:00 p.m. — "State 'Around Market' Action and FERC: The End of Competitive Wholesale Electric Markets?" The Federalist Society, Holeman Lounge, National Press Club, 529 14th Street, NW

12:00 p.m. — Atlantic Council Task Force launches report on reform of the global energy architecture, 1030 15th Street NW, 12th Floor

1:30 p.m. — "Sustainable Now: Securing Energy and Water Access for our Vulnerable Communities," Sustainable Capital Advisors, National Press Club, 14th and F streets NW

THAT'S ALL FOR ME!

** **A message from Business Roundtable: Create, Grow, Sustain: Delivering Shared Success** - For the past ten years, business leaders have been coming together to speak on the importance of the environment and our responsibility to each other in Business Roundtable's sustainability reports. In that time, we've made great strides in our commitment the environment, the communities in which we do business and our people. Explore how companies are promoting sustainable practices in their U.S. and global operations in "Create, Grow, Sustain: Delivering Shared Success:" https://goo.gl/BjUBmh **

To view online:
https://www.politicopro.com/tipsheets/morning-energy/2017/04/showdown-over-fate-of-paris-comes-today-022396

Stories from POLITICO Pro

Pruitt's link between carbon rule and Paris deal draws scrutiny Back

By Eric Wolff and Alex Guillén | 04/17/2017 06:26 PM EDT

EPA Administrator Scott Pruitt's effort to pull the U.S. out of the Paris climate pact is part of his strategy to ensure the administration has a clear path to killing the Clean Power Plan — but experts say there is no clear legal link between the two climate change actions.

President Donald Trump's top advisers, including Pruitt, are expected to convene on Tuesday to decide whether to recommend that Trump withdraw from the agreement struck by nearly 200 countries in December 2015. Trump is expected to announce a position on the Paris deal before the G-7 meeting in late May.

While some Trump advisers are pushing to remain in the deal but to weaken the U.S. commitment to reduce carbon emissions, Pruitt has emerged as a force for exiting the Paris agreement, calling it "a bad deal for America" in an interview last week. White House sources have said that, privately, Pruitt has cited another reason for wanting to pull out of Paris: So that it cannot interfere with his effort to halt litigation over the Clean Power Plan and repeal the regulation.

The idea that the Paris agreement and the Obama administration's carbon rule — or the Endangerment Finding underpinning EPA's climate regulation — are legally connected appears to be novel even among conservatives who opposed the international pact.

"Nothing in the Paris Agreement is dependent on either the Endangerment Finding by U.S. EPA or on the Clean Power Plan," wrote Sheila Harvey, Jeff Merrifield, and Meghan Claire Hammond, all attorneys in the energy practice at the law firm Pillsbury Winthrop Shaw Pittman, wrote in a memo published last week.

Scott Segal, who leads the policy division of Bracewell, said in a memo released on April 7 that the Paris agreement "is silent on what mechanisms" countries can use to reduce their emissions, and therefore neither the Clean Power Plan nor the endangerment finding are mandated by the agreement.

"In short, the Paris Agreement imposes no enforceable obligations on the United States that would require particular regulatory outcomes or strategies," he writes.

Pruitt's legal argument surprised legal experts when POLITICO reported it on Friday.

Nick Loris, an energy and environment fellow for the conservative Heritage Foundation, which has called for Trump to pull the U.S. out of Paris, said he hasn't seen anyone else raise that concern. Even environmental groups have not cited a link between the power plant regulation and the Paris deal in their attempts in recent weeks to keep the CPP lawsuit alive, essentially guaranteeing the court won't factor it into their decision.

Some experts said Pruitt's argument appears to have significant flaws.

For starters, the Clean Power Plan was conceived well before the Paris deal was struck, and has a legal justification based on Section 111 of the Clean Air Act, which requires EPA to take action on pollutants not addressed elsewhere in the act — including carbon dioxide.

In addition, the carbon reduction commitments in the Paris deal are not legally binding in large part because international negotiators knew any binding treaty would be blocked in the Senate by Republicans.

The agreement also falls under the "non-self-executing treaty doctrine," meaning Congress or the president have to take action to put it into effect. Without such action, courts are unlikely to take the deal into account, said Dan Bodansky, law professor and expert in international climate law at Arizona State University's Sandra Day O'Connor College of Law.

Sean Donahue, an attorney who is helping greens to defend the Clean Power Plan, agreed while it was not directly tied to the Paris deal, repealing the carbon rule would affect the U.S. pledge to lower emissions under the Paris framework, he added.

"There's not a formal legal link between Paris and CPP, but the CPP is an important part of the United States' Paris commitment, the emissions reductions," Donahue said. "So if you are going

to abandon the CPP, you would need to find those big emissions reductions somewhere else."

Trump made withdrawal from the international agreement to combat climate change one of his campaign promises, but White House aides have been divided on the issue, with chief Trump adviser Steve Bannon and Pruitt at odds with Secretary of State Rex Tillerson and Jared Kushner, who are said to favor remaining in the pact.

Still, Pruitt's position has a few allies. Mike McKenna, a former member of Trump's transition team, released a lengthy statement over the weekend pressing the case for withdrawal.

"Remaining in Paris poses a significant and ongoing legal risk," he said. "The Agreement requires signatories to routinely increase the level of greenhouse gas reductions. There is little doubt that if left in place, the Agreement will be used both in litigation (immediately) and by the next Democratic Administration (at some point) to argue for and justify expanding new and aggressive regulatory regimes."

This isn't the first time that the Paris deal and the Clean Power Plan have been connected.

In December 2015, just as the Paris talks kicked into high gear, the Obama administration urged the court not to freeze the regulation. It included a statement from Todd Stern, then the State Department's climate negotiator, saying the Clean Power Plan was helping the global pact come together by demonstrating America's resolve.

A group of utilities that support the regulation briefly cited the Paris talks in urging the Supreme Court not to stay the rule.

Clinton-era Secretary of State Madeleine Albright later brought up the climate deal in April 2016 when she filed a brief arguing that the rule's "successful implementation will support U.S. efforts to ensure that others follow through on those commitments" made under the Paris deal.

It remains unclear to what extent, if any, the judiciary was persuaded by those arguments. The D.C. Circuit did not explain its decision not to stay the rule, nor did the Supreme Court when it did stay the rule, which has left experts in the dark about precisely what legal justifications the justices relied upon.

Back

Industry groups explore outsourcing EPA water rule rewrite Back

By Annie Snider | 04/18/2017 05:01 AM EDT

Industry groups with close ties to EPA Administrator Scott Pruitt are studying whether he could hire lawyers from the private sector to redo the Obama administration's most controversial water rule.

Such an approach would effectively privatize the rulemaking process, allowing Pruitt to sidestep

career bureaucrats who spent the last five years writing the Waters of the U.S. regulation, which President Donald Trump has promised to swiftly replace. But legal experts say the unusual move also would raise a host of ethical questions and likely limit the public's view into how decisions are made about which streams, wetlands and lakes across the country receive federal protection.

The idea is taking shape in discussions among members of the Waters Advocacy Coalition, which advocates to restrain the scope of federal water regulation on behalf of more than 60 industry groups including the American Farm Bureau Federation and National Mining Association. The coalition is represented by Hunton & Williams LLP, whose lawyers fought Obama-era environmental regulations alongside Pruitt when he was attorney general of Oklahoma.

The discussion is driven by a desire to help Pruitt quickly replace the rule while he deals with a dearth of political appointees at the agency to help him, multiple industry sources said, requesting anonymity to divulge private conversations. Industry insiders have been reaching out to lawyers who may be interested in leading a WOTUS rewrite from outside the agency, according to an environmental lawyer who served in a previous Republican administration and recently received one such overture.

But members of the coalition appear to be torn on whether privatization is the right approach, according to sources familiar with the internal debate. And it is unclear whether anyone has taken the idea to Pruitt or his staff, and whether the administration would be open to it. EPA did not respond to multiple requests for comment.

EPA and other agencies routinely hire contractors to produce technical analyses or sort through public comments related to rulemakings, but it is rare that they are tapped to write the actual rules. Legal experts say it would be possible for EPA to outsource the WOTUS rewrite, although doing so would stretch the limits of federal contracting law and present ethical questions for any lawyer who took on the work.

Environmentalists decried the possibility that the Trump administration would outsource work that is supposed to be done by people in Senate-confirmed positions in order to ensure a transparent, accountable rulemaking process.

"To then say it's OK for a cabal of industry groups to put some gun for hire in charge of writing the rule, that just seems absolutely, wildly unethical," said John Rumpler, who directs the clean water program for Environment America.

While it remains to be seen if Pruitt brings in an outside attorney to help rewrite the water rule, doing so would not be out of character. As Oklahoma's attorney general, he regularly hired outside counsel to work on litigation and worked closely with industry groups to challenge environmental rules. In some cases he took industry-drafted language almost verbatim and sent it out on his office's letterhead, a 2014 New York Times article found.

Pruitt also has a history with Hunton & Williams, the water coalition's law firm. In 2013, the firm's senior director of governmental relations, Roderick Hastie, prepared talking points against

an EPA rule that he encouraged Pruitt's deputy solicitor general to "cut and paste," according to emails released following an open-records lawsuit in Oklahoma. Pruitt also invited one of the firm's top attorneys to a 2013 "Summit on Federalism and the Future of Fossil Fuels" he hosted in Oklahoma City.

Don Parrish, senior director for regulatory relations at the American Farm Bureau Federation, said the idea has not been discussed at formal meetings of the Waters Advocacy Coalition, which he chairs.

"That's something that our coalition has not talked about nor would we take a position on," he said.

But Pruitt has touted the administration's move on the water rule to industry groups. He vowed "relief" was coming soon to farmers when he spoke at the Farm Bureau's Washington-based Advocacy Conference in February, just hours after Trump signed the executive order directing his agency to review and rewrite the Obama administration's water rule. Parrish said the coalition as a whole has not met with Pruitt or his team, but would not address whether individual members have.

It is not unusual for EPA to hear from experts representing both industry and environmental groups when writing rules, although the agency generally tries to avoid getting too close so as not to violate the Administrative Procedure Act, which requires a transparent rulemaking process.

Past administrations were accused of getting too close to that line. For example, The Wall Street Journal editorial page blasted the Obama administration for its relationship with the Natural Resources Defense Council when writing its climate change rules, and former Vice President Dick Cheney faced criticism for stacking his energy task force with pro-industry voices.

Trump has not nominated anyone to lead Office of Water and Office of General Counsel — two positions that were critical to writing the Obama-era rule — and it is an open question whether he will. That has motivated some of the desire for Pruitt to bring in outside firepower.

Right now, the rewrite effort is being shepherded by Sarah Greenwalt, who went to work for Pruitt in Oklahoma just after finishing law school. The bulk of the work of rewriting the rule is being done by career staffers in EPA's Office of Water. Nearly all of those staffers spent years building the Obama administration rule, raising concerns among some of Pruitt's allies about whether they can be trusted to dismantle it.

Some of the legal experts industry groups would like to lead the rewrite are hesitant to join the agency. Sources say that is the case for Susan Bodine, the chief Republican counsel for the Senate Environment and Public Works Committee. Bodine did not respond to a request for comment Monday.

Working as outside counsel on the rewrite could offer a seasoned lawyer more flexibility and more money than a government position would, while sidestepping a Senate confirmation fight.

And experts say there is little in the law to prevent the agency from tapping an outside lawyer for the task.

Regulations governing federal contracting bar the government from hiring out for "inherently governmental functions ... such as determining the content and application of regulations."

But agencies typically deal with this by writing contracts that say the outside entity will be only assisting, and the final decision will be made by federal officials, said Dan Guttman, an expert on federal contracting at New York University Shanghai.

"You end up with this fiction that as long as the official signs the final document, it doesn't matter," Guttman, who investigated federal contracting as an aide to then-Sen. David Pryor. "You deal with this by wordsmithing."

Laws designed to prevent conflicts of interest among federal contractors also may not prove much of a barrier, despite the likelihood that any law firm with the requisite Clean Water Act expertise would have a long roster of clients with a stake in a new regulation's outcome.

Potential conflicts must be disclosed, but a firm can still win a contract by demonstrating that it will take sufficient steps to avoid any impropriety and convincing Pruitt that its work would be in the government's interest.

Meanwhile, rules governing individual conflicts of interests, rather than corporate conflicts of interest, wouldn't apply to a contractor unless it was written into the contract, said Kathleen Clark a Washington University Law School professor. For example, a federal employee with a weekend job working for a coal company would be automatically barred from working on a regulation that affected the coal industry, but a contractor in the same position would not, she said.

"As a policy matter, I think this would be a terrible mistake, but as a legal matter, it may be possible," said Emily Hammond, an expert on environmental and administrative law at George Washington University Law School.

Still, a bigger challenge could be finding a lawyer willing to do the work.

Attorneys risk being disbarred if they represent opposing sides in litigation, and they take pains to avoid conflicts among their clients. Taking on a WOTUS rewrite could raise red flags at some of the firms with the most expertise in the Clean Water Act.

While industries ranging from agriculture to oil and gas to homebuilding to golf courses were united in their opposition to the Obama administration rule, when it comes down to the technical details of writing a new rule, those groups will have different interests.

Even within the agricultural sector, not everyone is on the same page, said Michael Formica, lead counsel for the National Pork Producers Council, a member of the Waters Advocacy Coalition. For example, farmers who plan to continue working the land for generations may be

willing to cut a deal with federal regulators to exempt farm ditches from regulation in exchange for preserving a plot of land, but that would be a no-go for landowners who hope to someday turn their property into a subdivision or shopping center, he said.

"Some people are gentleman farmers — their farm land is really just an investment, but they want a right to develop that down the road," Formica said. "My people are real farmers and they want to buy more farmland."

Even if all of these hurdles could be overcome, it's not clear that hiring an outside lawyer to run the EPA rulemaking would get the agency anything it couldn't get otherwise, except for a giant headache, said Cary Coglianese, who leads the University of Pennsylvania Law School's Program on Regulation. He said the rulemaking process already allows ample opportunities for industry groups to weigh in, often in less obvious ways.

"What good lawyers always worry about is not only real conflicts of interest, but the appearance of conflicts of interest," Coglianese said. "If indeed you've got someone who looks too partisan and the agency's trying to basically circumvent the nomination and confirmation process by having a general counsel that's essentially on retainer — that's just the kind of swampy arrangement that the administration has claimed it wants to drain."

Back

Trump to sign executive order reviewing 'Buy American, Hire American' practices Back

By Megan Cassella | 04/17/2017 09:00 PM EDT

President Donald Trump on Tuesday will sign an executive order aimed at bolstering his pledge to "buy American and hire American" by directing federal agencies to probe government procurement practices and re-examine all programs under which workers enter the United States from abroad — including H-1B visas, a key priority for tech companies.

The "Buy American" aspect of the order will focus primarily on "the twin pillars of maximizing 'Made in America' content and minimizing waivers and exceptions to 'Buy American' laws," a senior administration official told reporters late Monday afternoon.

Commerce Secretary Wilbur Ross will coordinate an effort across all government agencies to root out weak monitoring, enforcement and compliance efforts relating to procurement practices, the official said. Ross will then advise Trump on how to close any existing loopholes in a report due 220 days from now — Thanksgiving Day — though the official noted recommendations could also come sooner.

The executive order will also direct the Commerce Department and the Office of the U.S. Trade Representative to "comprehensively assess" the procurement provisions of trade agreements, which allow foreign companies to bid on U.S. government contracts, in an effort to "determine which deals may actually be working for America and which may not," the official said.

"It is simply unfair for government contracts to be awarded to low bidders that use dumped or injuriously subsidized, foreign-source content to push out domestic producers," the official said. "This portion of the executive order is an innovative step to stop the foreign cheaters from using taxpayer funds to steal our jobs, to shutter our steel mills and offshore our factories."

The "Hire American" side of the order will re-examine all programs that govern the entry of foreign labor into the United States, with the goal of reforming current practices to grant visas to higher-skilled and higher-paid workers, a second senior administration official said.

The order will also direct the departments of Labor, Justice, Homeland Security and State to examine their various programs and explore various ways to crack down on "fraud and abuse ... in our immigration system in order to protect workers in the United States and their economic conditions."

While the order broadly calls for greater enforcement of all visa programs, the official said only one is specifically mentioned by name: the H-1B visa program, which allows companies to bring highly skilled foreign workers to the U.S. on a temporary basis.

The official criticized the H-1B system for awarding visas randomly, without taking into account an applicant's skill or salary level. "The result of that is that workers are often brought in at well below market rates," the official said.

The official emphasized that while each department will need a "full legal analysis" to determine what changes can be made to existing programs, the administration believes there are steps that can be taken both administratively and legislatively. Some potential changes to the H-1B program included weighting the lottery to give an advantage to applicants who hold higher education degrees, for example, or to increase the application fee.

"If you change that current system that awards visas randomly, without regard or skill or wage, to a skill-based awarding, it makes it extremely difficult to use the visa to replace or undercut American workers, because you're not bringing in workers at beneath the market wage," the official said. "So it's a very elegant way of solving systemic problems in the H-1B guest worker visa."

Trump has long promised to pursue a "Buy American, Hire American" initiative, which aims to limit the purchase of goods manufactured abroad and the use of foreign workers. He included the goal in two of his highest-profile speeches since entering the Oval Office — his inaugural address in January and his joint address to Congress in February — and tweeted last month that the initiative represents "the core of [his] agenda."

While the executive order will not immediately change any specific policies, it represents a concrete and symbolic step toward achieving that goal.

"Some changes will come quickly, some will take more time," the official said, adding that there was "great appetite" within the various agencies to move "expeditiously."

"I don't want to tell you exactly how long it's going to take," the official added, "but the point is that it's a clear statement from the president of the United States to begin shoring up these abuses and to do so immediately."

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White House: Keystone exempt from 'Buy American' requirements Back

By Ben Lefebvre | 03/02/2017 09:41 PM EDT

The Keystone XL Pipeline will not be subject to President Donald Trump's executive order requiring infrastructure projects to be built with American steel, a White House spokeswoman said today.

Trump signed the order calling for the Commerce Department to develop a plan for U.S. steel to be used in "all new pipelines, as well as retrofitted, repaired or expanded pipelines" inside the U.S. projects "to the maximum extent possible."

By the White House's judgment, that description would not include Keystone XL, which developer TransCanada first proposed in 2008.

"The Keystone XL Pipeline is currently in the process of being constructed, so it does not count as a new, retrofitted, repaired or expanded pipeline," the White House spokeswoman said.

That interpretation removes one potential hurdle for Keystone, and it clarifies shifting rhetoric from Trump on the order.

"We put you heavy into the pipeline business because we approved, as you know, the Keystone Pipeline, but they have to buy ... steel made in this country and pipelines made in this country," Trump told U.S. Steel Chief Executive Mario Longhi at a Feb. 23 meeting.

However, in his address to Congress earlier this week, Trump spoke of the order in the same sentence as Keystone but carefully described it as directing "that new American pipelines be made with American steel."

Removing the steel condition could help persuade TransCanada to fully drop the $15 billion NAFTA complaint against the U.S., which it suspended earlier this week.

A TransCanada spokesman declined today to comment on the NAFTA lawsuit.

Back

Oklahoma governor signs bill curbing wind tax incentives Back

By Esther Whieldon | 04/17/2017 04:00 PM EDT

Oklahoma Republican Gov. Mary Fallin today signed a bill to end state tax incentives for wind energy generation this year instead of in 2021.

Under the bill, H.B. 2298, any wind project that begins operations after July 1 will not qualify for state tax breaks. Projects that started service since 2007 will continue to receive a half-cent-per-kilowatt-hour tax credit for their first 10 years in operation.

Despite being ranked third in the nation in total wind generation in 2015, the state took aim at the technology's tax incentives to help address a nearly $900 million deficit for 2018.

A state commission last year estimated the tax incentives could approach $100 million a year by 2021 and found that in the first 11 years of the program, eligible facilities had claimed a combined $113 million in credits.

"The zero emissions tax credit was key to the growth of wind energy in Oklahoma, and I'm grateful to the industry for their ambitious successes, as well as their willingness to work with the state to address our challenging budgetary circumstances," Fallin said in a statement.

Fallin has largely refused to roll back tax breaks for the oil and gas industry that also contributed to the state's budget shortfall, although last year she signed a bill to cut the rebate program for economically at-risk wells to $12.5 million per year from $25 million.

Back

McConnell blasts W.H. on NRC renomination Back

By Dan Berman | 04/18/2012 02:23 PM EDT

Senate Minority Leader Mitch McConnell took to the Senate floor Wednesday to blast President Barack Obama for not yet renominating Kristine Svinicki to the Nuclear Regulatory Commission.

Svinicki has been at the center of the NRC's infighting with Commission Chairman Gregory Jaczko, and McConnell suggested that Obama is punishing her for being a "whistleblower." Her term expires June 30.

"Commissioner Svinicki stood up to this guy, who somehow managed to avoid being fired in the wake of all these revelations, in an effort to preserve the integrity of the agency, and to protect the career staffers who were the subject of the chairman's tactics," McConnell said. "And now, for some mysterious reason, she's being held up for renomination."

If she's not renominated, "we will be forced to conclude that the reason is related to her honorable actions as a whistleblower — that she's being held up in retaliation for speaking up against a rogue chairman who bullies his subordinates."

According to McConnell, the FBI completed a background check on Svinicki more than a year

ago, and her ethics agreement has also long been completed.

Last month, Sen. Jeff Sessions (R-Ala.) said it would be a "travesty" if Svinicki did not stay on the commission. And nuclear safety subpanel Chairman Tom Carper (D-Del.) said he also supports her renomination.

The White House did not immediately comment.

Back

Senate confirms Macfarlane, Svinicki: Back

06/29/2012 04:30 PM EDT

The Senate on Friday by unanimous consent confirmed Allison Macfarlane and Kristine Svinicki as commissioners of the NRC. President Barack Obama has indicated that he intends to appoint Macfarlane to chair the agency once she has been officially sworn in to fill the remainder of current NRC Chairman Gregory Jaczko's term through June 2013. Svinicki's current term expires Saturday, with her new term lasting through June 2017.

Back

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Sent: Thur 4/13/2017 9:52:33 AM
Subject: Morning Energy: Contender for CEQ gig emerges — Secretaries all traveling outside of Washington today — EPA again urges court to freeze Clean Power Plan litigation — Another EPA regulation set for reconsideration

By Anthony Adragna | 04/13/2017 05:44 AM EDT

With help from Alex Guillén and Annie Snider

TOP CEQ CONTENDER EMERGES! Kathleen Hartnett White, a vocal critic of climate change science who says carbon emissions are harmless and should not be regulated, may be tapped to lead the White House Council on Environmental Quality, Pro's Alex Guillén and Andrew Restuccia report , citing sources close to President Donald Trump's administration. If White's name sounds familiar, that's because Trump interviewed her at Trump Tower in November to potentially become EPA administrator. She interviewed late last month for the CEQ post, though administration officials are divided over whether White is the best person for the job and continue to consider other candidates. White is a former chairwoman of the Texas Commission on Environmental Quality, and Energy Secretary Rick Perry is said to be pushing her candidacy behind the scenes.

PRUITT DIGS COAL, TOO: EPA Administrator Scott Pruitt will appear at noon at the Harvey Mine in southwest Pennsylvania, where he will launch a "Back to Basics" campaign that "refocuses the EPA on protecting the environment, promoting economic and job growth, and returning power to the states," per the agency. ME will wager that Pruitt also says it's been a while since an EPA administrator visited an active coal mine. Harvey Mine can produce as much as 5.5 million tons of bituminous coal annually, according to owner CONSOL Energy, though production records from the Mine Safety and Health Administration indicate its best year since opening in 2014 was 2015, when the mine produced 3.6 million tons. It's part of a complex that also includes the Bailey and Enlow Fork mines, as well as a processing station and train loading facility.

CELEBRATING CARBON CAPTURE: Perry is in Texas today for the ribbon cutting on the Petra Nova carbon capture and enhanced oil recovery project, which received $190 million from the U.S. Department of Energy and began commercial operation in January. The world's largest post-combustion carbon-capture system, operated by NRG Energy and JX Nippon, aims to capture 1.6 million tons of carbon per year from an existing coal-fired power plant.

RYAN ZINKE, SOCIAL MEDIA SUPERSTAR? Pro's Esther Whieldon looks at the social media habits of Interior Secretary Ryan Zinke, who's traveling in California today, and has embraced Twitter as a forum to appear more approachable and raise the profile of his agency. Land Tawney, president and CEO of Backcountry Hunters and Anglers, said the social media embrace by Zinke sends the message that "he's kind of the new sheriff in town and he wants to be as accessible as possible." More here from Esther.

WELCOME TO THURSDAY! I'm your host Anthony Adragna, and Devin Mogler, from Sen.

Joni Ernst's office, gets a tip of the hat for identifying that 23 states have never had a female governor. For today: What are the only two states to have ***elected*** female governors from both major political parties? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

EPA AGAIN URGES COURT TO FREEZE CARBON RULE SUIT WITHOUT RULING: EPA Wednesday night told the D.C. Circuit Court of Appeals that it would be improper for the court to issue its ruling on the Clean Power Plan while the Trump administration works to undo the rule. Responding to a filing from pro-CPP states and environmentalists, EPA urged the judges to reject EPA's request to freeze the case, arguing that "it is not the proper role of this Court to try to shape a potential forthcoming rulemaking through an advisory opinion, particularly where doing so would intrude upon EPA's authority to interpret and implement a statute it administers and upon a new Administration's authority to change legal and policy positions." Federal judges are prohibited from issuing advisory opinions, essentially legal advice from the judicial branch outside the scope of an actual case, by the Constitution's "Case or Controversy" Clause.

The part greens should note: From EPA's brief: "If the Court does face some of the same issues in the future, those issues might well be presented in a completely different context and posture, with potentially different administrative interpretations supporting EPA's legal judgments and a different administrative record supporting revised scientific conclusions." That last part is key: EPA is saying a future rulemaking may well have a record supporting "revised scientific conclusions" on climate change or other issues. This all comes on top of Pruitt's statement last month that carbon dioxide doesn't drive climate change — despite the extensive scientific research to the contrary — and conservative groups' work to force EPA to repeal or defend the endangerment finding, something Pruitt has pushed back on.

EPA TO RECONSIDER COAL PLANT TOXIC DISCHARGE RULE: In yet another win for the coal industry, EPA has accepted its request to reconsider a 2015 regulation governing toxic discharges from coal-fired power plants into American waterways, Annie Snider reports. The rule sets the first updates in 30 years on facilities' discharges of heavy metals and other toxics into rivers and streams, and would require capital investments at nearly every plant across the country. In a letter sent Tuesday to the president of the Environmental Council of States, Pruitt said "EPA intends to consider the petitioner's request for relief from the deadlines in the Final Rule."

More waiting for the courts: The regulation is facing litigation from both industry groups and environmentalists at the 5th Circuit Court of Appeals, where the Trump administration's brief is due May 4th. The Justice Department informed attorneys Tuesday that it will today ask the court to hold that case in abeyance, according to Earthjustice attorney Thomas Cmar, who said his group will oppose the request. "We think the record doesn't support any stay of the rule, and we want the case to move forward; we want our claims to be heard, not just industry's," he said.

WHAT DO YA THINK? EPA wants to know what states and local governments think about WOTUS, and has invited representatives to EPA headquarters for a confab next Wednesday. The invite was extended to a number of groups, including the National Governors' Association, the

U.S. Conference of Mayors, the National Association of Counties and the Environmental Council of the States, some of whom objected to the process or the content of the Obama administration rule that the Trump administration is looking to replace.

About that replacement: The Trump administration has settled on a two-step process, using one rule to repeal the Obama administration's rule, and a second to set its own definition of which streams and wetlands are protected under the Clean Water Act that hews to the late Justice Antonin Scalia's more restrictive interpretation. That approach offers more security to opponents of the Obama rule in the event that a Supreme Court ruling on which court has jurisdiction over the legal challenges dissolves the 6th Circuit Court of Appeals' nationwide stay of the rule, but it could also take the pedal off the gas of the agency's work to write a replacement.

MULVANEY: 'VERY LOW' CHANCE OF SHUTDOWN: Don't count OMB Director Mick Mulvaney as among those worried about a government shutdown at the end of the month. "We've gone to the appropriators and said, 'Look, if y'all can figure out a way to do this, let's do it together,'" Mulvaney said during an interview at Georgetown University's legendary "Tombs" with CNBC. "Shutdown is never a desired end." He pegged the chances of a shutdown as "very low."

Defends cuts in Appalachia: Challenged by interviewer John Harwood about why Trump's budget deeply cut programs such as the Appalachian Regional Commission, Mulvaney defended them as going after inefficient programs. "I was able to convince him, 'Mr. President, this is not an efficient use of the taxpayer dollars. This is not the best way to help the people in West Virginia,'" Mulvaney said. "He goes, 'OK, that's great. Is there a way to get those folks the money in a more efficient way?' And the answer is yes. And that's what we're going focus on doing." Senate Majority Leader Mitch McConnell is among the high-ranking officials who oppose the cut.

MAIL CALL! GREENS CONCERNED OVER ZINKE ORDERS: Sixteen leading environmental groups are today sending Zinke a letter expressing concern his March 29 secretarial order fails to incorporate adequate stakeholder engagement, public forums and comment periods into its reviews of past agency actions. "The original policies in place took many years to develop," says the letter signed by groups such as the Wilderness Society, NRDC, Greenpeace and American Rivers. "They were crafted out in the open, with comment periods, public forums and multi-agency reviews. It is vital that any policies that affect lands owned by all Americans give everyone the ability to weigh in and voice suggestions or concerns."

LAWSUIT CHALLENGES TRUMP'S WALL: The Center for Biological Diversity and House Natural Resources ranking Democrat Raúl Grijalva filed a lawsuit Wednesday against Trump's proposed southern border wall, Pro's Esther Whieldon reports. They're asking a federal court to order DHS to update a 16-year-old environmental assessment on the effect of the agency's border enforcement and they want the agency to review how its operations could impact wildlife and endangered species.

But, wait, there's more: Grijalva sent a letter to acting BLM Director Michael Nedd over the internal talking points he said would prioritize "leasing and permitting for oil, gas and coal" over

public land conservation. He requested information on the number of pending and approved applications for permits to drill at the end of fiscal 2016.

SIGNAL SMOKED OUT? Judicial Watch filed a lawsuit Wednesday seeking to compel the release of EPA records detailing employee use of the encrypted Signal messaging app, in what the group says is an attempt to undermine Pruitt's agenda and skirt record-keeping requirements. The group originally filed a FOIA seeking those records after POLITICO reported a small group of agency employees used the app to organize letters, talk strategy, or contact media outlets and other groups to express their dissent. "This new lawsuit could expose how the anti-Trump 'deep state' embedded in EPA is working to undermine the rule of law," Judicial Watch President Tom Fitton said in a statement.

REPORT: MAJOR MANAGEMENT PROBLEMS AT YELLOWSTONE: A "men's club" culture allowed sexual harassment to persist for more than a decade at Yellowstone, according to a rather salacious report from Interior's inspector general out Wednesday. It concluded there was "credible evidence that male supervisors and staff in the Maintenance Division unit created a work environment that included unwelcome and inappropriate comments and actions toward women." The investigation also found a supervisor allowed employees to make purchases on his government-issued credit card, in violation of agency policy.

SOLAR COMPANY STAFFS UP: Sunrun has hired Brownstein Hyatt Farber Schreck to lobby on issues related to solar energy and tax incentives for renewable energy, according to a filing. As Pro Tech's Li Zhou notes, the San Francisco-based solar energy company competes directly with Elon Musk's SolarCity.

STEYER'S LATEST MOVE: NextGen Climate created a searchable database it hopes will help citizens turn up at local town hall events to pressure lawmakers. "The American people are still the strongest force in our democracy," Tom Steyer, the group's president, said of the effort, launched in partnership with Town Hall Project.

REPORT: TAKING STOCK OF CONGRESSIONAL VOTES: The Center for American Progress is out with an analysis today concluding the Republican-led Congress has held a series of votes that show they're bent on "dismantling the democratic foundations of America's environmental laws and executing a radical and unprecedented transfer of policymaking power to corporations."

SPOTTED: At a National Geographic Society dinner that featured a conversation between Interior Secretary Ryan Zinke and National Geographic explorers Arthur Middleton and Erika Larsen on Monday night in National Geographic's Hubbard Hall, according to a PI tipster: Gary Knell, the president and chief executive of the National Geographic Society, and his wife, Kim Larson, and Jean Case, the chairwoman of the National Geographic Society's board of trustees, and her husband, Steve Case (h/t POLITICO Influence).

MOVER, SHAKER: Marcus Peacock, former EPA deputy administrator during the Bush administration, will leave his position as a policy expert at OMB to become second in command at the Business Roundtable, Bloomberg reports.

QUICK HITS

— Legendary Climate Scientist Likes a GOP Proposal on Global Warming. Live Science.

— Portland commits to 100 percent renewable energy by 2050. CNBC.

— EPA Administrator Scott Pruitt: We can develop our natural resources, and protect environment. Fox Business.

— Deputy Energy Secretary Pick Has Lobbying, Capitol Hill Ties. Bloomberg BNA.

— Cybersecurity attacks could sink a largely unprepared energy industry. The Advocate.

— EPA: US Steel leaks chemical into Lake Michigan tributary. AP.

HAPPENING TODAY

9:30 a.m. — "Tracking China's Global Energy Finance," The Wilson Center, One Woodrow Wilson Plaza, 1300 Pennsylvania Ave. NW

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Trump eyes climate skeptic for key White House environmental post Back

By Alex Guillén and Andrew Restuccia | 04/12/2017 05:11 PM EDT

President Donald Trump may tap a vocal critic of climate change science to serve as the highest-ranking environmental official in the White House.

Kathleen Hartnett White, who says carbon emissions are harmless and should not be regulated, is a top contender to run the Council on Environmental Quality, the White House's in-house environmental policy shop, sources close to the administration told POLITICO.

White House officials brought White in for an interview late last month, according to a person familiar with the hiring process, and Trump met with White at Trump Tower in November when she was under consideration to lead the EPA.

Adding White to the administration would be a major win for Steve Bannon, Trump's chief strategist, and other hardline conservatives in the White House, who have been feuding behind

the scenes for weeks with the more moderate forces in the West Wing over issues like climate change. And her nomination could appease climate skeptic Trump supporters, who have criticized EPA Administrator Scott Pruitt for hesitating to revisit his agency's conclusion that global warming threatens public health.

Trump administration officials are divided over whether White is the best person for the job, and they are also considering other candidates to lead CEQ, sources said. A White House spokeswoman declined to comment, saying, "We will let you know when we have an announcement."

Like Pruitt, the former Oklahoma attorney general and fossil fuel ally, White would be another voice from a large oil and gas producing state in charge of climate change and environmental policy.

White is a former chairwoman of the Texas Commission on Environmental Quality who now works for a conservative think tank in the Lone Star state. Energy Secretary Rick Perry, a former Texas governor, is said to be advocating for White behind the scenes.

Tapping White would only deepen environmentalists' fears that the new administration will implement a wholesale reversal of Barack Obama's approach to climate change as a serious, long-term threat to the environment and national security.

White sat on Trump's economic advisory council during his campaign and since 2008 has worked at the Austin-based conservative think tank Texas Public Policy Foundation, which has received funding from Koch Industries, Exxon Mobil, Chevron, ConocoPhillips, Devon Energy and other energy companies and utilities. White, who was a registered lobbyist with the group until Nov. 29, has long been a major voice in the niche cottage industry of public figures who question climate science data or downplay the risks of global warming.

"Carbon dioxide is not a pollutant, and carbon is certainly not a poison. Carbon is the chemical basis of all life on earth. Our bones and blood are made out of carbon," White wrote in a June op-ed. She added that CO2 is the "gas of life" because it is a nutrient used by plants — an argument frequently raised by climate skeptics that most scientists say distracts from the climate-changing components of the gas.

White's position contrasts sharply with established climate science. In its most recent comprehensive report, the United Nations' Intergovernmental Panel on Climate Change, the leading scientific body on global warming, concluded that the Earth is warming because of human-generated emissions — and that time is running short to stave off the worst risks of climate change, including increased temperatures, more extreme weather, sea level rise and ocean acidification.

Similar findings have been reached by U.S. authorities, including EPA, NASA and NOAA — all agencies that would be subject to guidance White would issue as CEQ chair, if she were confirmed by the Senate.

In an interview with POLITICO in September, White proposed establishing a "blue ribbon commission" to re-litigate climate science, underscoring her unorthodox belief that the science showing human-induced climate change is unsettled.

The commission, she said, would develop an "alternative scientific methodology" to the IPCC, whose usefulness she said has "reached its peak."

If nominated, White would likely be an advocate within the administration of reopening the foundation of Obama's climate change agenda: EPA's 2009 "endangerment finding," a scientific conclusion that greenhouse gases constitute a threat to public health or welfare.

Trump told an industry-backed think tank last year that he will "review" the endangerment finding, a potentially difficult task given the scientific consensus on the issue. Any withdrawal of the finding would be challenged by environmentalists in court.

Pruitt has so far declined to reopen the endangerment finding, a decision that has infuriated some of Trump's conservative supporters.

White would be able to play a key role in shaping the Trump administration's overall approach to climate change, and she has been clear that she does not think the issue should be addressed by EPA. In 2015, she argued that Obama's rules to limit carbon emissions from power plants marked "an unprecedented expansion of federal administrative power" with "no measurable climate benefits." And last May, she urged House Speaker Paul Ryan to pass a bill that would block EPA from regulating carbon dioxide, methane, hydrofluorocarbons or other greenhouse gases.

At CEQ, White could direct other agencies to turn their attention away from climate change and would be in charge of implementing recent executive orders on energy development and regulatory streamlining. Last month, Trump ordered the council to revoke recently issued guidance directing all federal agencies to consider climate change when they conduct environmental reviews under the National Environmental Policy Act, a decision that would be difficult to challenge in court. And in January, the president told CEQ to come up with a plan to expedite environmental reviews for major infrastructure projects.

While environmentalists have long accused GOP officials of dragging their feet on climate change, White is by far the most outspoken critic of the underlying science — and the most ardent defender of fossil fuels — that Trump has considered to serve in his administration.

In a 2014 blog post, White took aim at an article in the Nation by MSNBC host Chris Hayes, whose "recommendation to avert global warming, like most warmist policies, toys with the greatest advance made by mankind," she wrote. In White's view, there is a connection between "the abolition of slavery and humanity's first widespread use of energy from fossil fuels." The rise of coal and oil, she argued, provided economic incentive to end the practice of slavery in the U.S. and elsewhere. (One critic fired back that the industrial revolution actually "exacerbated" slavery by increasing the demands for slave-produced goods such as cotton.)

Putting a permanent CEQ chair in place would also raise the question of where Trump wants decision-making on environmental issues to happen — in the White House or at agencies.

The Obama administration shifted major environmental responsibilities from CEQ to EPA and some other agencies as it sought aggressive action on climate change. It remains unclear whether Trump's CEQ will continue in that vein or have a greater role in policy making, though outside Republicans have encouraged Trump aides to grant the council wide latitude.

The council was run from 2015 through the end of Obama's term by Christy Goldfuss, an unconfirmed managing director. Obama never nominated a replacement for his first CEQ chair, Nancy Sutley, who left in 2014.

White's criticism of Obama environmental regulations goes beyond climate change.

She said in 2015 that EPA's Waters of the U.S. rule, which determines which bodies of water are subject to federal oversight, "is about amending the definitions of well understood words into tortured versions of themselves so that the EPA can seize control of dry land where water may flow after heavy rains."

She also criticized the new ozone standard of 70 parts per billion, calling the rule's scientific conclusions "a statistical house of cards" and predicting it "may be the straw that breaks the back of our struggling economy."

White, who received her bachelor and master's degrees from Stanford University, was a commissioner at the Texas Commission on Environmental Quality from 2001 to 2007, serving as chairman for the last four years of that term. She previously sat on the Texas Water Development Board.

Environmentalists do give White some credit for advances made during her tenure at TCEQ.

Luke Metzger, the director of Environment Texas, told POLITICO that she helped implement a legislative order to create an online reporting system for major emissions events, which is still used by green activists to track noncompliance by major energy companies. Metzger also credited her with a "slightly improved" enforcement policy, though he noted that she blocked an effort by a fellow TCEQ commissioner in 2006 to boost penalties.

In 2008, White joined the Texas Public Policy Foundation, where she directs its Armstrong Center for Energy & the Environment.

Back

Zinke carves out social media persona Back

By Esther Whieldon | 04/13/2017 05:00 AM EDT

Interior Secretary Ryan Zinke's real-life domain includes dozens of national parks, millions of

acres of land across the West and vast areas of federal waters — but he's also carved out a big presence on Twitter.

Starting with his first day six weeks ago when he headed to work astride a National Park Service horse, Zinke sent the message that "he's kind of the new sheriff in town and he wants to be as accessible as possible," said Land Tawney, president and CEO of Backcountry Hunters and Anglers, a sportsman group that helped Zinke land his job.

As of Wednesday, Zinke had tweeted 300 times — at least 100 more tweets than his next most Twitter-active Cabinet colleague, Veterans Department Secretary David Shulkin, not to mention the four members who have yet to create an official account.

He sported American flag socks on the day Trump signed his "energy independence" executive order and brought to the office his dog Ragnar — who's been featured in at least three tweets. Zinke has also showed off memorabilia he's redecorated his office with: a grizzly bear, Rosie the Bison, a mounted elk hunting trophy (named Ron), leather riding gloves given to him by members of the Blackfeet nation, and a portrait of President Teddy Roosevelt he picked up at an estate sale.

"I know the D.C. press corps is dying to know..... today it's #TheGipper," he said in a March 8 tweet showing his socks printed with a picture of President Ronald Reagan.

Zinke, who declined to comment on his Twitter habit, has gone on a ride-along tour of the D.C.-area with park police and a reporter on a snow day, plowed roads at Yellowstone National Park, and helped military veterans scrub down the Vietnam Veterans Memorial on the National Mall.

"As a leader, he's spending time with the rank-and-file members of the staff and that speaks volumes when you have the leader who is not some distant person who stays in the ivory tower all day behind some office," said Sen. Steve Daines (R-Mont.) who has been friends with Zinke for almost four decades.

But Lori Brainard, a George Washington University associate professor focused on social media issues, said having an active social media presence can be a double-edged sword for government officials.

While Zinke can use Twitter as a forum to appear more approachable and raise the profile of his agency, "any time a public official posts anything it triggers a backlash of sorts," Brainard said. Among other things, Zinke is "being personal but without sharing his personal positions," which "can make him look like he's not being as substantive on the issues."

And Zinke isn't winning over green groups who worry he'll lead President Donald Trump's charge to advance fossil fuel energy development on public lands and in now-protected offshore areas and chip away at environmental protections.

"I think it's window dressing," Noah Greenwald, endangered species director at the Center for Biological Diversity, said of Zinke's social media game. "Zinke's record shows that he's hostile

to the mission of a number of agencies within the Department of Interior, but most notably the Fish and Wildlife Service."

Zinke has already started implementing major policy changes at the Interior, revoking the agency's moratorium on new coal leases, directing the Bureau of Land Management to rescind its rules on hydraulic fracturing as soon as possible and shifting the agency's decision on whether to charge more for coal leases back to a reinstated policy committee.

Green groups have already sued over the coal moratorium decision and are likely to continue their legal challenges as Zinke takes more steps to promote fossil-fuel production on federal lands and waters.

Daines contends Zinke's actions are not part of some "well-orchestrated" strategy but instead were a result of his military experience as a Navy SEAL commander and Zinke's heritage as a fifth-generation Montana native.

"The best leaders in the military are those who spend time and are in the foxhole," Daines said. Moreover, "Montanans aren't afraid to throw on their jeans and boots and to get dirt under their fingernails and you're seeing that with Ryan Zinke. It's instinctive for Ryan."

Back

EPA to reconsider coal plant toxic discharge rule Back

By Annie Snider | 04/12/2017 04:13 PM EDT

EPA has accepted industry's request to reconsider a 2015 regulation governing toxic discharges from coal-fired power plants into American waterways, according to a letter sent from Administrator Scott Pruitt to state regulators.

Last month, a coalition of coal industry groups petitioned EPA to reconsider the rule, arguing it "is inconsistent with the President's regulatory reform agenda." The rule updates limits set 30 years ago on discharges of heavy metals and other toxics into rivers and streams that have increased as air pollution regulations have shifted the waste stream from air to water.

In a letter sent Tuesday, Pruitt informed John Linc Stine, Minnesota's top pollution regulator and president of the Environmental Council of the States, that "EPA intends to consider petitioner's request for relief from the deadlines in the Final Rule for both direct and indirect dischargers along with the request for reconsideration of certain substantive aspects of the Rule."

The letter does not state whether the agency will suspend implementation of the rule while it reconsiders it, as industry had requested. Some upgrades required under the rule could go into effect as soon as November of next year. However, Pruitt did "remind" state regulators that the rule offers states and EPA regional offices that would implement the new requirements flexibility on the deadline for individual plants to meet the stricter limits.

The rule is currently facing legal challenges on both sides, with environmental groups arguing some aspects are not stringent enough, and industry groups arguing it is unjustifiably aggressive.

WHAT'S NEXT: EPA's brief in appellate court litigation over the rule is due May 4. The Trump administration may seek to put the case on hold while it reconsiders the rule, as it has done with other Obama-era regulations it is seeking to roll back.

Anthony Adragna contributed to this report.

Back

CBD, Grijalva sue Trump over planned border wall's environmental impacts Back

By Esther Whieldon | 04/12/2017 02:42 PM EDT

The Center for Biological Diversity and House Natural Resources Committee ranking Democrat Raúl Grijalva of Arizona have sued the Trump administration over its plans to build a wall along 1,900-mile U.S.-Mexico border.

In the lawsuit, CBD and Grijalva asked the U.S. District Court for the District of Arizona to order the DHS to update a 16-year-old environmental assessment on the effect of the agency's border enforcement, and they want DHS to review how the operations, including wall construction, could impact wildlife and endangered species.

CBD and Grijalva contend the enforcement program has changed since 2001, when the previous programmatic environmental impact statement was conducted, and more data is available now that shows how a border wall can affect wide-roaming species such as jaguars, ocelots, Mexican gray wolves and birds such as pygmy owls.

Congress in the 2005 REAL ID Act authorized DHS to waive environmental and other laws to build at least 700 miles of wall along the southern border. DHS secretaries have used the waiver five times. CBD and Grijalva contend in the lawsuit the agency's wall-building waiver authority does not exempt it from performing a programmatic EIS.

"American environmental laws are some of the oldest and strongest in the world, and they should apply to the borderlands just as they do everywhere else," Grijalva said in a statement.

Back

Federal workers turn to encryption to thwart Trump Back

By Andrew Restuccia, Marianne LeVine and Nahal Toosi | 02/02/2017 05:07 AM EDT

Federal employees worried that President Donald Trump will gut their agencies are creating new email addresses, signing up for encrypted messaging apps and looking for other, protected ways to push back against the new administration's agenda.

Whether inside the Environmental Protection Agency, within the Foreign Service, on the edges of the Labor Department or beyond, employees are using new technology as well as more old-fashioned approaches — such as private face-to-face meetings — to organize letters, talk strategy, or contact media outlets and other groups to express their dissent.

The goal is to get their message across while not violating any rules covering workplace communications, which can be monitored by the government and could potentially get them fired.

At the EPA, a small group of career employees — numbering less than a dozen so far — are using an encrypted messaging app to discuss what to do if Trump's political appointees undermine their agency's mission to protect public health and the environment, flout the law, or delete valuable scientific data that the agency has been collecting for years, sources told POLITICO.

Fearing for their jobs, the employees began communicating incognito using the app Signal shortly after Trump's inauguration. Signal, like WhatsApp and other mobile phone software, encrypts all communications, making it more difficult for hackers to gain access to them.

One EPA employee even got a new, more secure cellphone, and another joked about getting a "burner phone."

"I have no idea where this is going to go. I think we're all just taking it one day at a time and respond in a way that seems appropriate and right," said one of the EPA employees involved in the clandestine effort, who, like others quoted in this story, was granted anonymity to talk about the sensitive discussions.

The employee added that the goal is to "create a network across the agency" of people who will raise red flags if Trump's appointees do anything unlawful.

The White House did not immediately respond to a request for comment.

While many workers across the federal government are still in wait-and-see mode, the first two weeks of the Trump administration — with its flurry of executive orders that have in some cases upended lives — have sent a sobering message to others who believe they must act now.

In recent days, career employees at the State Department gathered nearly 1,000 signatures for what's known as a "Dissent Channel" memo, in which they express their anger over a Trump executive order that bars immigrants from seven Muslim-majority countries and halts refugee admissions to the country. The number of signatures was extraordinarily high, even though the letter was submitted after White House spokesman Sean Spicer essentially warned the dissenting diplomats they were risking their jobs.

The executive order on immigration and refugees caused widespread panic at airports, spurring protests and outrage around the world.

It also led to what has been the most high-profile act of defiance yet from a Trump administration official: Acting Attorney General Sally Yates on Monday ordered the Department of Justice's lawyers not to defend the order in court. Yates was fired that same night.

Current and former employees of the Labor Department, meanwhile, are using their private email accounts to send around a link to a letter asking senators to oppose the nomination of Andrew Puzder for secretary of their agency. The employees may sign on to the letter using Google Docs. The letter will not be submitted to the Senate HELP Committee, and the signatures will not be made public, unless 200 current employees sign on.

A federal worker familiar with the letter's circulation said that it's being signed by hundreds of current and former DOL employees.

According to a draft of the letter obtained by POLITICO, the employees write that they have "serious concerns" about the fast-food magnate's willingness to protect the rights of workers given some of his past comments and actions.

The draft of the letter criticizes Puzder's comments about women, and cites his restaurants' advertisements, some of which feature women in bikinis eating burgers. Puzder has defended the ads.

"One of us once heard a colleague ask, quite seriously, whether it would violate workplace rules of civility and prohibitions against sexual harassment to view Mr. Puzder's ads on a government computer," the letter says. "We think the question is a good one."

The federal employees interviewed for this story stressed that they see themselves as nonpartisan stewards of the government. But several also said they believe they have a duty to speak out if they feel a policy is undermining their mission.

Drafts of the Dissent Channel memo signed by the State Department employees insist, for instance, that instead of protecting U.S. national security through his new executive order on refugees and immigrants, Trump is endangering the United States by bolstering the terrorists' narrative that the West hates Muslims.

"I think we all have to look within ourselves and say 'Where is that line that I will not cross?'" one Foreign Service officer said.

Since Trump was elected in November, many State Department employees have also met quietly for other reasons. Groups of Muslims who work at Foggy Bottom, for instance, have held meetings to discuss fears that they could be subject to witch hunts and see their careers stall under the new administration. A few of Trump's top aides have spoken out against radical Islamism in such harsh terms that some Muslims believe the aides are opposed to the religion of Islam as a whole.

Steven Aftergood, who directs the Project on Government Secrecy at the Federation of American

Scientists, indicated that it's too soon to say whether there's a broad trend of bureaucratic resistance to Trump taking hold.

"Quite a few federal employees seem to be looking for constructive ways to express discontent," he said. "Meanwhile, tension is still growing, not subsiding."

EPA employees are uniquely concerned about their future, having faced barbs from Trump advisers who have toyed with cutting the agency's staff by two-thirds and from other Republicans who want to eliminate the agency altogether. So career staffers are discussing the best way to alert the public to what's happening behind the scenes.

"I'm suddenly spending my days comparing the importance of the oath I took when I started my career service and the code that I have as an American," an EPA employee said.

EPA employees have started reaching out to former Obama administration political appointees, who they hope will help them spread the word about any possible improper conduct at the agency.

"It's probably much safer to have those folks act as the conduit and to act as the gathering point rather than somebody in the agency," the employee said. "You're putting your career and your livelihood and your paycheck at risk every time you talk to somebody."

Organizations such as the Government Accountability Project, which advocates for whistleblowers, have been busy as federal employees fret about what their new bosses may ask them to do.

"We've had a significant number of federal employees who have contacted us in recent weeks," said Louis Clark, the nonprofit's CEO. "It has to be the largest influx of people trying to reach us that we've seen."

The largest group of callers? "The people who want to know what to do if they're asked to violate the law," Clark said.

Jeff Ruch, executive director of Public Employees for Environmental Responsibility, said EPA employees are in perhaps the "deepest pit of despair" among his group's membership.

He said his group has been fielding calls on everything from what triggers a reduction in the federal workforce to how long they can carry health insurance benefits if they are pushed out.

Asked how EPA employees are feeling, Ruch said, "In the broadest sense, scared and depressed."

Rachael Bade contributed to this report.

Back

Sunrun, a SolarCity competitor, hires new lobbyists Back

By Li Zhou | 04/12/2017 02:38 PM EDT

Sunrun, a solar energy company based in San Francisco that competes directly with Elon Musk's SolarCity, has hired Brownstein Hyatt Farber Schreck to lobby on issues related to solar energy and tax incentives for renewable energy, according to a filing.

Lobbyists listed on the account include former Democratic and Republican congressional staffers. The lobbyists have worked for members on the House Ways and Means and Budget committees.

Both SolarCity and Sunrun have worked with the Podesta Group.

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Subject: Morning Energy: Impacts felt from FERC's missing quorum — EPA seeks pause on ozone legal fight — Brown declares California's drought over

By Anthony Adragna | 04/10/2017 05:46 AM EDT

With help from Ben Lefebvre and Alex Guillén

FERC VACANCIES TAKING A TOLL: As Congress begins its two-week recess today, Washington is still waiting for President Donald Trump to formally issue nominations for the three vacancies at FERC, and the impacts of the prolonged absences are becoming clearer, Pro's Darius Dixon reports. FERC has been unable to act on its high-profile work ever since former Commissioner Norman Bay's resignation deprived it of a quorum in February.

As the wait for nominees continues, controversies are swirling around the final decisions FERC made while it still had a functioning majority, with green groups challenging a wave of last-minute decisions. For example, the Sierra Club asked a federal court to block the commission's approval of the Williams' Atlantic Sunrise pipeline expansion project on the grounds that the decision was rushed through on Bay's last day in office. Several challenges remain in their infancies, but legal questions are already popping up over whether it is fundamentally unfair to project opponents to let rehearing requests expire after 30 days or extend them indefinitely while a project is built.

The FERC vacancy also exacerbates uncertainty surrounding the commission's work to protect energy markets against alleged manipulation since the agency is unable to levy new fines or sign off on settlements without a quorum. A string of recent losses in court have hammered FERC's current approach to enforcement cases and its new leadership will have to debate any overarching change to its enforcement strategy. "The new commissioners are inevitably going to think about that," David Applebaum, who spent four years working in the agency's enforcement office, told Darius.

AMERICA'S NEXT JUSTICE: Neil Gorsuch formally becomes the newest member of the U.S. Supreme Court this morning at two ceremonies. Chief Justice John Roberts swears in Gorsuch at 9 a.m. at the court, followed by Justice Anthony Kennedy doing the honors at an 11 a.m. event in the Rose Garden.

WELCOME TO MONDAY! I'm your host Anthony Adragna, and LCV's Tiernan Sittenfeld was first to identify New Hampshire's Chris Sununu as our nation's youngest governor. For today: What were the only two states created during the U.S. Civil War? Send your tips, energy gossip and comments to aadragna@politico.com, or follow us on Twitter @AnthonyAdragna, @Morning_Energy, and @POLITICOPro.

BRACING FOR CHANGES: Dramatic shifts are coming to the State Department, including how it approaches its international work on climate change, POLITICO's Nahal Toosi and Andrew Restuccia report . Trump's team will not name a special envoy for climate change, a key

role during international negotiations that helped ink the Paris agreement during the Obama administration. And much of the State Department's work on international climate change issues has already gone to the White House, according to two people briefed on the arrangement, giving warring factions heavy influence on whether the U.S. should leave the landmark climate agreement.

EPA SEEKS DELAY IN OZONE ARGUMENTS: EPA asked a federal appeals court on Friday night to postpone April 19 oral arguments over the 2015 ozone standard, Pro's Alex Guillén reports. "At this time, EPA officials appointed by the new Administration are closely reviewing the 2015 Rule to determine whether the Agency should reconsider the rule or some part of it," EPA wrote in its filing. Trump called for rescinding those tightened standards during the campaign, but a recent executive order did not address the issue.

DEMS TO PRUITT: WHAT'S YOUR PLAN POST-CPP? A cavalcade of Senate Democrats want EPA Administrator Scott Pruitt to explain how he plans to dismantle the Clean Power Plan and what he plans to put in its place, given EPA's obligation to regulate greenhouse gases. In a Friday letter , 23 Democrats give Pruitt a month to answer eight questions about his future plans — including "how an alternative to the Clean Power Plan would achieve the full range of public health, economic, and environmental benefits that would have resulted from Clean Power Plan." They also ask Pruitt to provide the scientific sources he used to come to his televised conclusion that carbon dioxide is not the primary driver of global warming. Pros will recall POLITICO broached the question of future GHG regs back in January, after Pruitt said he didn't feel the need to go after the endangerment finding.

ASSUME DROUGHT DEAD: California Gov. Jerry Brown announced Friday the end of his state's historic drought in all but Fresno, Kings, Tulare and Tuolumne counties — though he's leaving in place a number of water reporting requirements and prohibitions on wasteful practices. "This drought emergency is over, but the next drought could be around the corner," he said in a statement. "Conservation must remain a way of life." The executive order lifting the order is available here.

KEYSTONE BATTLE GOES LOCAL: The Nebraska Public Service Commission plans a series of public hearings on whether to approve the route the Keystone XL pipeline would take through the state. The five-person commission — the final regulator to weigh in on the controversial pipeline now that the State Department granted it a cross-border permit — will hold five days of hearings starting August 7, according to an update on the NPSC website. Prior to that, the commission will hold public meetings on Keystone XL between April and June at various sites near the proposed route. The commission has to make a final call no later than November.

DEADLINE APPROACHING FOR CRA EFFORTS: The Senate has only a few more weeks before reaching a critical deadline for passing Congressional Review Act resolutions on Obama-era rules, Pro's Alex Guillén reports in Energy Regulation Watch . By mid-May — May 9 or 10, depending on who you ask — the use of the law that enables the chamber to bypass a 60-vote filibuster threshold will end for Obama-era regulations, essentially closing the door on Congress's anti-rule onslaught. Lawmakers have already sent Trump 13 resolutions, and the

White House last week called for Congress to send them as many as possible before time runs out.

OMB DEPUTY PICKED! Russ Vought, formerly vice president of grassroots outreach for Heritage Action for America and a member of the Trump transition team, has been nominated to serve as deputy director of OMB, the White House announced Friday. As Pro Budget & Appropriations Brief's Sarah Ferris notes, Vought would be second-in-command to OMB Director Mick Mulvaney and would play a key role in next month's rollout of the White House budget if confirmed.

OIRA, TOO! Neomi Rao, a law professor at George Mason University's Antonin Scalia Law School with a focus on constitutional and administrative law, has been picked to serve as the nation's regulatory gatekeeper as the director of the Office of Management and Budget's Office of Information and Regulatory Affairs, Pro's Alex Guillén reports. She was previously an associate White House counsel for George W. Bush, an aide on the Senate Judiciary Committee and a clerk for Justice Clarence Thomas. She's been critical of *Chevron* deference, arguing judicial deference has created a "significant expansion" of executive branch authority at the cost of Congress's power and asked lawmakers to pass more specific laws.

CALIFOIA — BECERRA SEEKS PRUITT DOCS: California Attorney General Xavier Becerra on Friday filed a lengthy and complex records request seeking various communications and documents from Pruitt on ethics issues. "The public has a right to know whether Administrator Pruitt and EPA are complying with federal ethics laws," Becerra said. Most of the request deals with Pruitt's ethical reviews, which he has said will be conducted on a case-by-case basis, but Becerra also seeks information about vacancy and recusal issues.

BRING ME SOME GELATO BACK? ME readers learned Friday of Energy Secretary Rick Perry's plan to bring his wife to Rome for the G7 energy ministers meeting this weekend — and he confirmed the trip in a tweet Sunday. "Proud of my amazing wife," he said. She was invited through the Enel Foundation, the nonprofit arm of an Italian energy company.

CONFLICT MINERAL REQUIREMENTS WAIVED: The SEC announced Friday it was starting work to rewrite its 2012 conflict minerals rule that required companies to file special disclosures if their products contain minerals from the Democratic Republic of Congo or nine neighboring countries, POLITICO's Patrick Temple-West reports. In addition, the agency announced it would spare certain disclosure requirements for companies that need to comply with the rule.

GERMANY SCOFFS AT TIGHTER POWER PLANT LIMITS: Citing technical challenges, Germany won't support a more ambitious European Union cap on nitrogen oxide emissions from lignite power stations, POLITICO Europe's Marion Solletty and Kalina Oroschakoff report. National representatives are currently in the final stages of technical negotiations to set binding emissions standards based on the best available techniques to limit power plant emissions.

MENENDEZ TARGETS RUSSIAN ENERGY TIES: Sen. Robert Menendez will hold a

press conference today at 11:45 a.m. in New Jersey to "address serious national security concerns over the potential acquisition of critical U.S. energy infrastructure" by Russia's state-controlled oil company.

MAIL CALL! COALITION URGES PERRY TO BACK EFFICIENCY PROGRAMS: A broad coalition of 40 groups sent Secretary Perry a letter Friday asking him to show continued support for energy efficiency programs at the agency. "The importance of DOE's leadership in research, technical assistance, and market integration efforts that have driven gains in energy efficiency cannot be overstated," they wrote. Signatories include everyone from Ceres to Dow Chemical Co. to the National Association of State Energy Officials.

LYNCH WANTS FERC TO STEP IN: Rep. Stephen Lynch has asked FERC to stop the operation of the West Roxbury Lateral pipeline and pump the brakes on the proposed Weymouth Compressor Station project until the recent natural gas pipeline rupture in Providence, R.I. has been fully investigated.

LIGHTER CLICK: Saturday Night Live's opener involves Trump, coal jobs and Kentucky. The full segment is here.

QUICK HITS

— California is getting so much power from solar that wholesale electricity prices are turning negative. Quartz.

— Appalachia's new trail: finding life after coal. Christian Science Monitor.

— Northern Access Pipeline comes to a halt. WVIB.

— Nebraska law enforcement, Keystone XL pipeline foes prepare for possible protests. Omaha World-Herald.

— Rollback of EPA's lead-paint efforts chills state officials. Portland Press Herald.

HAPPENING THIS WEEK

MONDAY

12:30 p.m. — "Downstream Oil Theft: Implications and Next Steps," The Atlantic Council, 1030 15th ST NW, 12th Floor

TUESDAY

3:00 p.m. — Environmental and Energy Study Institute and the Henry M. Jackson Foundation are holding a briefing on foreign climate aid, 485 Russell

WEDNESDAY

10:00 a.m. — Environmental Protection Agency holds a meeting on finalizing a Safe Drinking Water Act rule, Obsidian, a Cadmus Company, 1776 Eye St NW, 4th Floor

THURSDAY

9:30 a.m. — "Tracking China's Global Energy Finance," The Wilson Center, One Woodrow Wilson Plaza
1300 Pennsylvania Ave. NW

FRIDAY

12:30 p.m. — "Trump's Approach to the Future of the Fuel Economy and Emissions Regulation-And Some Alternatives," The R St. Institute, SVC-215

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To view online:
https://www.politicopro.com/tipsheets/morning-energy/2017/04/impacts-felt-from-fercs-missing-quorum-022268

Stories from POLITICO Pro

FERC struggles mount as seats remain empty Back

By Darius Dixon | 04/10/2017 05:01 AM EDT

President Donald Trump's failure to promptly fill vacancies at FERC has provided an opening for environmentalists hoping to undermine recent natural gas pipeline approvals and left the hobbled agency unable to address recent setbacks over its ability to police energy markets.

FERC has been unable to act on its high-profile work since its third vacancy opened up in February, and the White House has given no indication of when it might announce nominees, although sources close to the process say the administration has identified its picks.

In the meantime, controversies will continue to swirl around to the final decisions FERC made while it still had a functioning majority. And the commission will be unable to decide whether to change how it handles fraudulent energy traders in response to mounting court decisions that undercut its legal approach to enforcement.

Just before former Chairman Norman Bay's resignation deprived it of a quorum, FERC issued several last-minute decisions, including orders approving interstate natural gas pipeline projects and delegating routine authority to agency staff until a third commissioner is in place.

Staff generally handle most of the agency's day-to-day business, but they cannot make final decisions on contested electric rate plans and pipelines, nor can they hear appeals of previous

rulings.

It is an unprecedented situation that has given new ammo to FERC's green opponents, many of whom have spent years fighting approvals of natural gas infrastructure they say drives up demand for fracking and worsens climate change.

The Sierra Club, which has unsuccessfully sued FERC for green-lighting liquefied natural gas export terminals, last month asked a federal court to block the commission's approval of the Williams' Atlantic Sunrise pipeline expansion project on the grounds that the decision was rushed through on Bay's last day in office.

"FERC's decision to prioritize industry timelines over the public interest underscores the arbitrary and capricious nature of its decision-making," the Sierra Club and six other organizations wrote in a February rehearing request to the commission.

In a separate lawsuit challenging FERC's approval of the Atlantic Sunrise gas project, the same green groups say they are being deprived of an ability to fully weigh in on the project because FERC staff cannot do anything about that rehearing request except delay it. Agency staff lack "authority to 'act' [on a rehearing request] because the Commission lacks a quorum, and the staff lacks authority to issue an order that the Commission itself cannot issue," the groups argue to the D.C. Circuit Court of Appeals.

Construction on Atlantic Sunrise has already started, and a Williams' spokesman said the green groups' claims were baseless.

"This action reeks of desperation and is an obvious attempt by natural gas opponents to delay much-needed energy infrastructure that will help millions of Americans gain access to affordable, reliable, environmentally responsible Pennsylvania-produced natural gas," company spokesman Christopher Stockton said in an email.

The Sierra Club's challenge to the authority of FERC staff echoed arguments that had previously been floated and then withdrawn by an industry-friendly group.

The state-chartered Wyoming Pipeline Authority launched the only direct challenge to the FERC order that delegated responsibilities to staff, calling it "invalid." But late last month, the organization yanked its protest without explanation.

The pipeline authority "decided it was best not to pursue the petition at this time" after discussing it with aides to Republican Wyoming Gov. Matt Mead, according to David Bush, a spokesman for the governor. Bush blamed the decision on limited resources "due to the recent budget reductions across state government," but the Husch Blackwell attorney who represented the authority said he did not charge for his work on the case.

The Sierra Club lawsuit and the WPA's withdrawn petition have cast legal questions over any pipeline approved less than a month before Bay resigned by raising uncertainty over whether it is fundamentally unfair to project opponents to let rehearing requests expire after 30 days or extend

them indefinitely while a project is built. Sierra Club's lawsuit is still at an early stage. The court is collecting initial statements through mid-May but hasn't yet indicated whether it will take the case.

The FERC vacancy also exacerbates uncertainty surrounding the commission's work to protect energy markets against alleged manipulation. FERC is unable to levy new fines or sign off on settlements with only two members, and once a new commissioner is confirmed, leaders will have to decide how to respond to recent court losses over how they run enforcement cases.

FERC investigators who suspect firms of fraudulent activity on the nation's power markets toil away for months to produce lengthy documents for the agency leadership to review. (A FERC order in June assessing fees and detailing its evidence against financial trading firm ETRACOM runs 248 pages, for example).

When companies refuse to pay, FERC takes them to court and has essentially asked judges to approve or deny those lengthy orders without considering much additional evidence. But judges have recently hammered the point that that approach is insufficient.

Two weeks ago, a judge in the U.S. District Court for the Eastern District of California said he would not immediately approve FERC's massive $453 million penalty against Barclays. First, the judge said the bank deserved an opportunity to conduct routine "discovery" — a process that could give it access to materials FERC used to build its case.

That decision followed a similar ruling from another federal judge making it more difficult for FERC to extract $2.5 million from ETRACOM for allegedly manipulating prices in California's energy market.

Judges in three other cases over the last year have ruled against FERC's requests to limit companies' discovery rights. And adding insult to injury, there are still two more lawsuits where FERC's prescriptive request on discovery is expected to lose: a case against Powhatan Energy Fund, run by attention-getting hedge fund twins, and another against Coaltrain Energy.

Courts have not decided the merits of any of the recent enforcement cases, but the string of procedural losses suggests that FERC leadership may want to reconsider how much blood, sweat and tears they put into crafting their penalty decisions before heading to court, said David Applebaum, who spent four years working in the agency's enforcement office up until last summer.

"Right now, the courts have not said anything to cast doubt on FERC's theories," he said, noting that every judge has so far shot attempts by FERC's targets to dismiss the agency's lawsuits.

While FERC lawyers handle the particulars of each case, Applebaum said the commission leadership would have to debate any overarching change to its enforcement strategy, particularly if judges are going to force them to practically build the cases from scratch again anyway.

"The new commissioners are inevitably going to think about that," said Applebaum, who is now

a partner at Akin Gump. "It's a very busy commission with many things to do — a huge amount of complicated matters before it. Do you want spend months and months and months with 100 pages of briefs and 100-page orders on an issue in light of these court rulings?"

Back

Nervous State Department workers prepare for major restructuring Back

By Nahal Toosi and Andrew Restuccia | 04/09/2017 07:34 AM EDT

President Donald Trump came into office promising to run the federal government like a private business, and, like almost any new chief executive officer, he's looking to restructure.

One of his biggest targets? The State Department.

Conversations with more than a dozen people in and outside of State who are involved in or monitoring the administration's plans suggest some broad outlines are emerging about State's future, including from proposed budget cuts accepted by Secretary of State Rex Tillerson and from a 2016 Heritage Foundation report that laid out some dramatic ways to reshape the department.

Deep cuts are expected to hit State's environmental and cultural programs, while divisions that deal with arms control and military affairs may see consolidation. The number of special envoys, who focus on everything from climate change to LGBT issues, will be pared down. The counterterrorism bureau will likely escape unscathed, but diplomats who deal with economics or women's issues may see some changes.

Although it's still early and much is in flux, anxiety is rife at State. That's because, unlike in the past, the staffers are expecting not simply reshuffling or additional departments, but rather large cuts and the elimination of entire divisions. Even if Congress rejects the budget cuts proposed by the administration, as several leading lawmakers have indicated it will do, Tillerson is still expected to make major changes.

"I think there are some in the administration who are looking at this like a corporate reorganization, but one of the problems with a corporation, a business, is that the bottom line is earnings. But at the State Department, what is your bottom line?" asked Ronald Neumann, president of the American Academy of Diplomacy. "Your bottom line involves the political part of security operations, the possibility of an unknown future crisis. It involves the protection of American citizens abroad and the promotion of American business. It's very difficult to quantify."

The prospect of reorganization is especially weighing on staffers dealing with issues that don't seem to be a top priority for the Trump administration, such as human rights. While many career officials said they're not reflexively opposed to restructuring some operations, many are worried about shielding programs that have long been considered core to the U.S. diplomatic mission — and some "are creatively trying to figure out how to make a case for keeping some of the

programs running that they built," said a former State official who regularly speaks to current employees.

Every new secretary of state wants to make his or her mark on the department, which employs about 75,000 people worldwide. In a 2006 speech, Condoleezza Rice outlined a plan to shift hundreds of diplomatic positions from Europe to countries like China, India and Lebanon. And Hillary Clinton established a number of new positions at the department, including the ambassador-at-large for global women's issues and the Office of Global Youth Issues.

"My sense is that Tillerson wants to go big," said a State Department official who's familiar with the discussions. "In terms of streamlining, he seems to like straight lines, direct lines, clear hierarchies with a small number of people reporting to him."

Trump issued an executive order in mid-March asking Cabinet leaders for proposals by mid-September on how to restructure their agencies. The State Department declined to comment on Tillerson's plans.

In the meantime, U.S. diplomats and others in the foreign policy realm are reading up on Trump's budget proposals, looking for clues in administration officials' public and private statements and leafing through the Heritage report to game out likely scenarios. In some cases, Trump aides are willing to confirm their guesses.

A Trump administration official told POLITICO that the president will not name a special envoy for climate change. The climate envoy helped lead international global warming talks during the Obama administration and played a central role in clinching the nearly 200-nation Paris climate agreement.

Already, State's political appointees have largely ceded their work on international climate issues to the White House, according to two people briefed on the arrangement, a move that gives warring factions in the West Wing heavy influence over whether the United States should pull out of the Paris deal.

There's plenty of support across the State Department for scaling back the overall number of special envoys. Depending on how you count such envoys — a category some take to include so-called special representatives, coordinators and other advisers — there are about five dozen. Many of the slots have stayed vacant under Tillerson.

The envoys tend to reflect an administration's priorities, so few expect the Trump team to keep the one dedicated to, say, closing the prison at Guantanamo Bay. But Congress may intervene to protect some of the slots: On March 10, a bipartisan group of about 170 lawmakers wrote to Trump urging him to fill and keep the special envoy position dedicated to combating anti-Semitism, calling it a "crucial office."

People familiar with Trump transition talks told POLITICO earlier this year that there was a belief that State should focus more on fighting terrorism and less on "soft power" subjects such as democracy promotion. And in proposing cutting the State Department's fiscal year 2018

budget by about 30 percent, Trump aides specifically cast it as a "hard power" blueprint focused on boosting military might.

But former and current State officials say they don't expect the elimination of the Bureau of Democracy, Human Rights and Labor — the very embodiment of "soft power" Trump aides dismiss. That's because there's strong support in Congress for that bureau, especially among Republicans worried about the rights of Christians in the Middle East.

"You can imagine a very long line of Democratic and Republican members of the Senate that would be very concerned" if that bureau were axed, said a Senate Democratic aide who's been in touch with Trump transition and administration officials about reorganization plans.

Multiple sources pointed to the Bureau of Conflict and Stabilization Operations as one ripe for elimination. The bureau was established in 2011 under Clinton with the goal of trying to prevent and defuse conflicts. But critics say its role has never been well-defined, concerns echoed in a 2014 inspector general's report.

The administration last month also proposed cutting some $2.9 billion from what remains of the current fiscal year's budget for State and related programs. That proposal, which also has met resistance in Congress, includes plans to whack State's educational and cultural programs, its reproductive health initiatives, which affect many women, and its spending on international organizations.

Already, Tillerson has made what appear to be permanent changes to State's top leadership. He has emptied the slots of the department's deputy secretary for management and its counselor position and has indicated he will not fill those roles.

Tillerson is expected to appoint a policy-focused deputy secretary for the department — the choice is reported to be GOP attorney John J. Sullivan. But Tillerson has left most of the other leadership slots at State vacant, another reason employees suspect he is pondering serious restructuring.

The Democratic Senate aide stressed that it's very early days and it's not clear where some of the possibilities bandied about presently stand.

But some of the changes that have been discussed include streamlining what's known at State as the "T" family, which includes bureaus that deal with arms control, political-military affairs and nuclear nonproliferation, the aide said. Another idea floated is bringing the U.S. Agency for International Development entirely under the purview of State, the aide said.

The aide also noted that there's been talk of rejiggering the State Department bureaus devoted to specific regions of the world to be more aligned with the Department of Defense's Combatant Commands.

This is not a new idea unique to the Trump administration, but it could mean major shifts in which desk officers and deputy assistant secretaries report to which division. For example, South

America falls under the Pentagon's Southern Command, while Canada and Mexico are under its Northern Command. But at State, the Bureau of Western Hemisphere Affairs includes South America as well as Canada and Mexico.

Some of the changes, such as making USAID part of State, will likely require authorization from Congress, officials and analysts said. The exact level of congressional involvement will depend in part on whether bureaus or various functions were somehow mandated by legislation.

"We're not reflexively or allergically against changes," the Democratic Senate aide said. "But exactly what they propose and the logic for it is something that we need to see."

Various stakeholders nearly all mentioned the 2016 report by the Heritage Foundation's Brett Schaefer. A former senior State Department official said Trump transition aides were "enamored" of the report and took it into meetings.

The report has numerous recommendations, including culling the number of special envoys, eliminating the slot of deputy secretary for management and resources, and bringing USAID under the leadership of an undersecretary of state. It also suggests changes to State's Bureau of Economic and Business Affairs that include limiting activities that are primarily the responsibility of other U.S. agencies, such as the Treasury Department.

Schaefer said he talked to a range of people as he prepared his recommendations and found there was a broad consensus that State could be more efficient.

"Every administration makes changes, but I suspect there's going to be a little bit more along the way of changes under this administration than in previous ones," he said.

Even if every idea the Trump administration proposes doesn't become a reality, Schaefer added, it's worth simply having the debate. "Ultimately, in the end this is a healthy process," he said.

Back

EPA seeks to delay arguing ozone lawsuit Back

By Alex Guillén | 04/07/2017 07:22 PM EDT

EPA on Friday evening asked the D.C. Circuit Court of Appeals to postpone April 19 oral arguments over the 2015 ozone standard, saying it needs time to review the rule.

"At this time, EPA officials appointed by the new Administration are closely reviewing the 2015 Rule to determine whether the Agency should reconsider the rule or some part of it," EPA wrote in its filing.

President Donald Trump called for repealing the updated ozone standard on the campaign trail and returning to a 2008 version, although his recent energy executive order did not explicitly address the ozone issue.

Environmental and public health groups plan to oppose the request.

The court has already put off arguments over the carbon rule for future power plants originally scheduled for April 17 while the agency reviews and likely repeals that rule.

Back

Pruitt's new problem: How to regulate carbon Back

By Alex Guillén | 01/20/2017 05:06 AM EDT

Scott Pruitt, President-elect Donald Trump's pick to run EPA, acknowledges it will be his responsibility to regulate carbon emissions, which he says are at least partially responsible for heating up the planet — but he also wants to scrap the Obama administration rules aimed at doing just that.

So what will Pruitt actually do once his nomination to run EPA is confirmed by the Senate?

That's the question experts are grappling with following Pruitt's Wednesday testimony to lawmakers that he does not plan to reverse the agency's 2009 conclusion that climate change is a threat.

After Trump promised on the campaign trail to review and possibly revoke the so-called endangerment finding, which created a legal obligation for EPA to regulate greenhouse gases, Democrats pressed Pruitt at his confirmation hearing on whether he would follow through. But the Oklahoma attorney general sought to assuage their concerns.

"The endangerment finding is there and needs to be enforced and respected," Pruitt told Sen. Ed Markey (D-Mass.) on Wednesday. "There is nothing that I know that would cause a review at this point."

Pruitt also acknowledged that the EPA administrator "has a very important role to perform in regulating CO2," thanks to the Supreme Court's 2007 ruling in *Massachusetts v. EPA*.

Left unsaid was that Pruitt will have wide leeway to determine just how far he thinks EPA should go in curbing carbon dioxide and other greenhouse gas emissions.

Despite Pruitt's acknowledgment that he has to do something, his promises to work with the Republican-led Congress and not pursue regulations that would unduly damage the economic prospects of oil, gas or coal companies do not have environmentalists ready to pop any champagne corks.

"He didn't say anything to suggest that he was going to move forward to curb any carbon pollution," said David Doniger, director of the NRDC's Climate and Clean Air Program.

EPA in 2009 issued an endangerment finding for cars and trucks, leading the Obama administration to regulate their carbon emissions for the first time ever, in conjunction with tighter fuel-economy standards. The agency later expanded that finding to include power plants, which until recently were the No. 1 sector for carbon dioxide emissions, and used that to justify the Clean Power Plan and other rules. And EPA last year issued a new endangerment finding for aircraft, but has yet to move toward a follow-up rule despite a newly established international standard.

Opponents of EPA's climate rules argued that the Clean Air Act was never meant to apply to carbon dioxide or other greenhouse gases, and that the Obama administration was twisting the law to fit. Revoking the endangerment finding, they have long argued, would be the quickest way to stamp down the various climate rules that followed and prevent the agency from acting again.

But environmentalists warn such an approach would almost certainly fail. The Trump administration would have to present detailed evidence to justify its decision to walk away from the lengthy scientific record EPA used to establish its 2009 finding, which already won in court. "This is how science works. EPA is not required to re-prove the existence of the atom every time it approaches a scientific question," D.C. Circuit Court of Appeals judges wrote in a 2012 ruling siding with EPA against Pruitt and other endangerment finding challengers.

Nonetheless, some Trump backers point to Pruitt's "at this point" qualifier to hold open hope that he decides to revisit the finding once in office.

"At the end of the day, Pruitt is going to be carrying out President Trump's policies and agenda," said Chris Warren of the American Energy Alliance, the energy industry-backed conservative think tank that secured Trump's campaign promise last year to review the endangerment finding. "He's not in the agency yet, he doesn't have all the information that will be available to him once he gets in the agency."

Still, even if the endangerment finding stays, it does not mean Pruitt will go nearly as far as his predecessors in regulating carbon. His pace will depend on how quickly the courts dispense with ongoing arguments over Obama's Clean Power Plan, but sooner or later it will be up to Pruitt to write a climate change rule for a president who has called the issue a "hoax."

Under the Clean Air Act, the process would begin with a rule setting emissions limits for newly built power plants, and he may decide to rely just on the most efficient technology available, but not partial carbon capture, as Obama's EPA required. That rulemaking process would likely take at least a year or two.

Then Pruitt could move on to a rule for existing plants, although his approach could mean much less CO2 savings than Obama's plan, which directed states to look for ways to reduce emissions by pursuing new natural gas and renewable power projects — going "beyond the fence line" of traditionally regulated coal power plants.

Nick Loris of The Heritage Foundation, which has called for revoking the endangerment finding,

said that Pruitt's "aggression" toward the Clean Power Plan indicates he would likely go for the "bare minimum" required by the law.

Such an approach could simply require efficiency improvements at coal plants, according to Jeff Holmstead, a former EPA air chief turned industry attorney.

"I think ... they will look at what can be done within the fence line, meaning things you can actually do at coal-fired power plants to reduce those CO2 emission rates," he said. "That will be steps that can be taken to improve the efficiency of those plants."

Such a strategy could satisfy the Supreme Court's ruling and the endangerment finding, although it would surely be challenged by environmentalists in court.

Doniger of the NRDC suggested there could be other "inside-the-fence-line" strategies to secure even more savings, including mandating carbon capture technology be installed where possible and requiring coal plants to co-fire with natural gas.

But those would not achieve the same emissions savings as the Clean Power Plan. Even though scientists say carbon emissions need to decrease rapidly to avoid the worst effects of climate change, there's nothing in the Clean Air Act strictly requiring such drastic action, according to Holmstead.

"The idea that there's some particular amount of reduction that has to take place is incorrect. There's nothing like that under the Clean Air Act," Holmstead said.

The process of repealing the Clean Power Plan and writing new rules for new and existing plants at best would take two to three years, according to Holmstead, although the ensuing litigation would stretch beyond Trump's first term.

Ultimately, environmentalists are ready to push for deeper cuts, whatever Pruitt does.

"We haven't gamed out all the moves they could make and all the moves we could make, but it's going to remain controversial through their term," Doniger said. "And people need to keep their eye on the ball, which is climate change is real, carbon pollution is driving it and what are they going to do about the carbon pollution."

Back

White House picks Heritage Action alumnus for OMB deputy Back

By Sarah Ferris | 04/07/2017 05:38 PM EDT

President Donald Trump has nominated Russ Vought to serve as deputy director of the Office of Management and Budget, the White House announced today.

Vought, who was formerly vice president of grassroots outreach for Heritage Action for

America, has been serving as a member of the president's transition team.

As deputy director, he would be second-in-command to OMB Director Mick Mulvaney, playing a key role in next month's rollout of the White House budget.

Vought also served as a top budget aide to then-House Republican Chairman Mike Pence. And he was also executive director of the House GOP's in-house policy shop, the Republican Study Committee.

Back

Trump picks law professor for OIRA post Back

By Alex Guillén | 04/07/2017 05:10 PM EDT

President Donald Trump plans to nominate law professor Neomi Rao to run the Office of Management and Budget's Office of Information and Regulatory Affairs, putting her in charge of government-wide regulatory efforts.

Rao is a law professor at George Mason University's Antonin Scalia Law School, with a focus on constitutional and administrative law.

Previously, Rao was an associate White House counsel for George W. Bush and an aide on the Senate Judiciary Committee. She also clerked for Justice Clarence Thomas.

Rao testified last year at a Senate hearing on judicial deference, including the Chevron doctrine, under which judges are supposed to defer to reasonable agency interpretations of ambiguous laws. She argued that judicial deference has created a "significant expansion" of executive branch authority at the cost of Congress's power. She called on Congress to pass more specific laws.

Rao also wrote a blog post in December suggesting the White House should exercise greater control over independent agencies such as FERC.

Back

SEC exempts companies from some 'conflict minerals' reporting Back

By Patrick Temple-West | 04/07/2017 04:04 PM EDT

Companies that need to comply with the so-called conflict minerals regulation imposed by the SEC to curb human rights abuses will be spared certain disclosure requirements, the agency's acting chief said, drawing a rebuke from the SEC's Democratic commissione.

The SEC is also starting work to rewrite its 2012 conflict minerals rule that was included in the 2010 Dodd-Frank Act, acting SEC Chairman Michael Piwowar said.

The rule requires companies to file special disclosures if their products contain minerals from the Democratic Republic of Congo or nine neighboring countries. Companies were required to file for the first time by June 2014.

But parts of the rule were struck down in court for violating the First Amendment, throwing the required compliance for companies into uncertainty. The SEC said its disclosure requirements struck down in court will no longer be enforced.

"In light of the foregoing regulatory uncertainties, until these issues are resolved, it is difficult to conceive of a circumstance that would counsel in favor of enforcing Item 1.01(c) of Form SD," Piwowar said. He was referring to the form the agency created in 2012.

In a rare display of animosity between the SEC's two collegial commissioners, Democrat Kara Stein argued that Piwowar's action didn't comply with the Administrative Procedure Act.

"It is unprecedented for one commissioner, acting alone and without official notice and comment, to engage in de facto rulemaking," Stein said. "It represents a troubling attack not only on the Commission process, but also on the restraints of government power."

While the conflict minerals provision was aimed at reducing human rights abuses in the DRC, its impact has drawn criticism. Piwowar said in January that it's uncertain whether the rule has eased suffering for people in the Congo and surrounding areas.

"The disclosure requirements have caused a de facto boycott of minerals from portions of Africa," he said. "The withdrawal from the region may undermine U.S. national security interests by creating a vacuum filled by those with less benign interests."

But the rule's supporters said companies may decide to continue reporting their conflict minerals.

"Whichever direction the SEC goes, no end-user is going to go back to their supply chain and say, 'You can now buy on whatever terms you want,'" said Benjamin Clair, founder and managing director of Better Sourcing Program, which identifies and supports conflict-free mining operators in Central Africa.

"Even if it is not imposed by regulation anymore, end-users will continue to act on due diligence as a way to preserve their reputation," he said.

Back

Germany balks at ambitious coal pollution limits Back

By Marion Solletty and Kalina Oroschakoff | 04/09/2017 06:57 PM EDT

Germany won't support a more ambitious EU cap on nitrogen oxide (NOx) emissions from lignite power stations in negotiations on limiting pollutants from large plants, citing technical

challenges, according to a German parliamentary letter seen by POLITICO.

German lawmaker Annalena Baerbock of the Greens asked the government whether Germany will support the Commission's proposed NOx emissions standard of 175 milligrams per cubic meter of air for lignite power plants. In a reply, dated Thursday, the government effectively said no, arguing it would require additional technical measures to hit the limit.

"According to the assessment of the federal environment agency, the Commission's proposed limit does not appropriately reflect the [current] state of technology," said Rita Schwarzelühr-Sutter, parliamentary state secretary for the environment ministry. "The government will thus continue to work toward a limit that is appropriate." For Germany, that is 190 milligrams per cubic meter.

National representatives are currently in the final stages of technical negotiations to set binding emissions standards based on the best available techniques to limit power plant emissions. They are due to vote on the proposed standards on April 28. This would conclude a three-year process, aimed at defining what emissions standards would be technically and economically achievable across the EU.

This article first appeared on POLITICO.EU on April 8, 2017.

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This email was sent to bolen.brittany@epa.gov by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Bolen, Brittany
Sent: Fri 5/5/2017 3:48:11 PM
Subject: FW: Thanks! And Ozone Modeling at the HEI Annual Conference...

FYI on below. Can tell you more about them. I've met with these guys a couple times on the Hill and the other week with Al.

From: Robert O'Keefe [mailto:ROKeefe@healtheffects.org]
Sent: Friday, May 5, 2017 9:24 AM
To: dgreenbaum@healtheffects.org; Bolen, Brittany <bolen.brittany@epa.gov>; McGartland, Al <McGartland.Al@epa.gov>
Subject: RE: Thanks! And Ozone Modeling at the HEI Annual Conference...

Brittany

Thanks from me as well, as I know how busy you are.

I also had a chance to chat briefly with Mandy yesterday as we were both presenting at the ICAC meeting.

When the smoke clears a little at EPA we spoke about stopping by to check in with her as well,

Will keep you posted.

Best

Bob

From: Dan Greenbaum
Sent: Friday, May 05, 2017 7:24 AM
To: Brittany Bolen (bolen.brittany@epa.gov); Al McGartland (McGartland.al@Epa.gov)
Cc: Robert O'Keefe
Subject: Thanks! And Ozone Modeling at the HEI Annual Conference...

Dear Brittany…

Thanks for taking a few moments out of your crazy days to met with Bob O'Keefe and me the other week; we hope the "fire hose" begins to abate a bit, but suspect it will be a while before that happens…

As we discussed, we would be pleased, given HEI's track record for producing quality, credible science, to help any thinking going on about how science can be enhanced going forward.

And wanted to follow up on your question about "models". While HEI does not do this work ourselves, we did as I had mentioned, have a great session at our just completed annual conference (summarized below) which discussed some of the biggest challenges with these models today… The Good news? Vehicle NOx emissions have actually gone down much more than had been predicted before… The Challenge? Getting the models that are used for ozone to reflect that better-than-expected performance. If it is of interest, let us know and we can connect with you with some of the experts who might help explain this and/or answer your questions…

All the best

Dan

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NOx Air Data Flaws Revive Debate On EPA Regulating Vehicles And Utilities

May 03, 2017

Academics are touting new research that they claim shows EPA has massively overestimated the amount of nitrogen oxides (NOx) emissions that vehicles emit, reviving a debate over whether the agency and states should target emissions reduction rules on mobile sources or shift their focus to power plants as the alternative largest NOx source.

Although auto sector groups and others might support the findings in order to fight against potential new EPA rules targeting vehicle NOx emissions, utilities could counter that they have already been subject to a series of Obama-era regulations aimed at cutting their NOx pollution and that any further such measures would be unreasonable.

It is unclear whether EPA will accept the conclusions because agency staffers are pushing back on the claims of major overestimates in the data, and at least one other prominent air quality expert is also downplaying the findings.

Speaking at the annual conference of the Health Effects Institute (HEI) in Alexandria, VA, May 2, Russell Dickerson, a professor at the University of Maryland, unveiled new air quality data gathered using aircraft showing that emissions estimates by EPA may dramatically overstate NOx levels in the atmosphere. HEI is a joint EPA and auto industry-funded research body focused mainly on vehicle air pollution research.

Dickerson's team found that EPA's computer modeling may be doubling the real level of NOx found in the vicinity of Baltimore, where NOx and the ozone it forms has been a persistent problem. Dickerson said the error appears to apply to EPA's modeling of vehicle emissions, which are in fact far lower than previously thought. This impacts EPA's National Emissions Inventory (NEI), used by regulators to devise emissions control strategies.

The apparent error does not necessarily impact EPA's overall projections of ozone levels in the future and states' likely attainment of national ambient air quality standards (NAAQS), but it could have implications for which sources -- **vehicles or power plants** -- states target for emissions cuts, Dickerson told *Inside EPA*.

NOx is one of several “precursors” that lead to ozone formation in addition to volatile organic compounds found in sources such as consumer products, and carbon monoxide (CO) from vehicles.

Air quality researchers at the HEI conference outlined how challenging it still is to accurately analyze the complex atmospheric chemistry of ozone formation. Experts differ over how much to reduce one precursor or another to achieve the maximum ozone reduction in specific locations where climate, topography and the type of local sources differ.

Ozone formation is highly influenced by factors such as temperature and the ratio of precursors to each other. Under certain conditions, high NOx levels actually reduce ozone, but in general NOx is seen as a key driver of ozone on a regional scale. States

will have to account for such factors as they craft plans for attaining the 2015 ozone NAAQS of 70 parts per billion (ppb), which is stricter than the 75 ppb standard EPA issued in 2008.

EPA has said it wants to review and potentially reconsider the 2015 standard in line with President Donald Trump's order on reducing regulatory burdens on the energy sector, but for now it remains in place.

Potential Error

At the HEI conference, Dickerson's conclusions prompted some push-back from EPA staff present at the meeting, who suggested the apparent margin of error is likely too large.

Also, North Carolina State University air quality expert Chris Frey, a former chairman of EPA's Clean Air Scientific Advisory Committee, questioned some of Dickerson's conclusions and assumptions, such as the Maryland team's handling of emissions driven by air conditioning in vehicles, which boosts fuel consumption and emissions.

If the overall NOx level, at least in Maryland, is lower as Dickerson believes, regulatory measures to target NOx will in fact be more effective than thought because of the ratio of NOx to other precursors, Dickerson said. This means a continued emphasis on reducing NOx would probably be effective in reducing ozone. EPA has said the vast majority of areas of the country can attain the agency's toughened 2015 ozone NAAQS, set at 70 parts per billion (ppb), by 2025 without taking additional measures beyond federal regulations now in effect or slated to come into effect.

The main implication of Dickerson's finding, if true, appears to be that regulators may focus again on stationary sources of NOx, such as power plants, that have already reduced their emissions substantially. A combination of EPA regulation, state initiatives and cheap natural gas displacing coal combustion have slashed emissions from the sector.

Utility industry groups have for some time urged regulators to focus instead on vehicle emissions. States' powers to regulate mobile sources are much more limited than those for stationary sources under the Clean Air Act, making federal action vital to attain large emissions cuts from vehicles. For example, the Obama EPA's “Tier 3” fuel and vehicle standards are now in effect, reducing not only sulfur emissions from vehicles but also NOx.

The 12 Mid-Atlantic and Northeast states in the Ozone Transport Commission (OTC) region, where emissions controls are tougher than elsewhere, have joined California in pressing EPA to toughen federal NOx limits for heavy trucks, which the agency last updated in 2010. State regulators from the OTC region often stress the need to get additional emissions cuts through mobile source measures, such as a new truck rule.

However, OTC regulators have also noted that NOx emissions from some power plants in upwind states are higher than they need be because some power plants with emissions controls, such as selective catalytic reduction, are not running them. Under emissions trading, this is legal, as plants can purchase emissions credits to comply with regulations instead of cutting emissions.

Stationary Sources

Dickerson's finding could boost calls for these stationary sources to do more to curb emissions, and mute calls for tougher mobile source measures. Under the Trump administration's deregulatory philosophy, tougher federal measures for any class of sources appear unlikely, however.

EPA has introduced a series of rules aimed at curbing NOx from stationary sources that drifts downwind and causes problems attaining NAAQS in other states. The rules are aimed at helping states to satisfy their requirements under the Clean Air Act's "good neighbor" obligation that states mitigate such pollution.

One example of such a rule is the Obama administration's **2016 "update" to the Cross-State Air Pollution Rule** (CSAPR) power plant emissions trading program, which is now being litigated in the U.S. Court of Appeals for the District of Columbia Circuit in *State of Wisconsin, et al. v. EPA. The updated rule tightened state NOx emissions caps* for 22 states participating in NOx trading, in order to help states meet the 2008 Bush EPA ozone NAAQS of 75 ppb. The original CSAPR rule was geared to meeting the 1997 NAAQS expressed as 84 ppb.

States and industry groups opposed to the update rule say EPA's methodology is flawed and needlessly forces upwind states to cut emissions because of downwind states' problems. However, OTC officials and environmentalists note that the 2016 CSAPR update does not even purport to help states meet the current 2015 ozone NAAQS of 70 ppb, or even fully comply with the weaker 2008 standard of 75 ppb.

States have already clashed over data the Obama EPA released in January on interstate pollution that contributes to violations of the 2015 ozone NAAQS. For example, in comments on that data, upwind states criticized EPA's methods once again for overstating their responsibility for downwind problems, while OTC-area states also attacked the data, but they did so because they believe it understates transported emissions.

Meanwhile, some OTC states including Connecticut, Delaware and Maryland have also petitioned EPA under Clean Air Act section 126 to directly regulate NOx emissions from power plants in upwind states that they claim contribute to NAAQS violations on the East Coast. So far, EPA has not yet responded to those petitions.

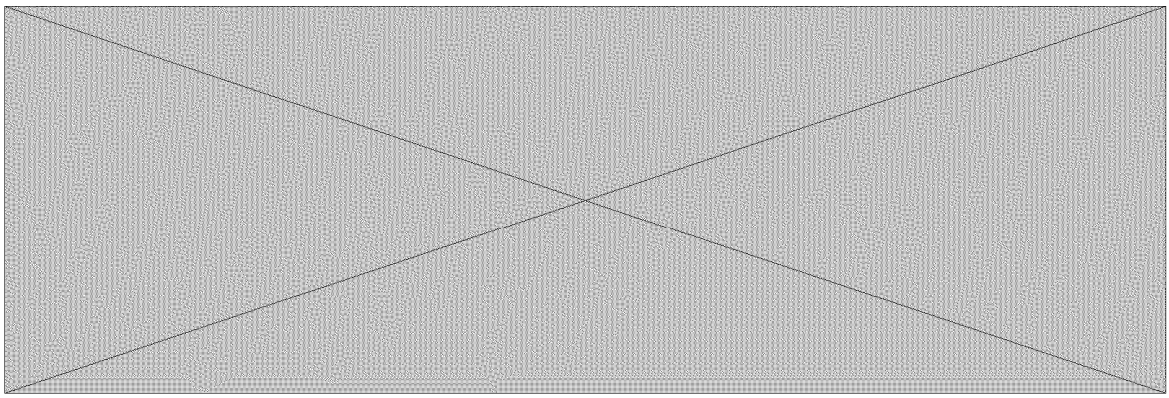
The agency has proposed, however, to reject a separate petition from nine OTC states to massively expand the OTC. Filed in 2013 by current OTC members Connecticut,

Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont, the petition asked EPA to dramatically expand the OTC area, which includes the nine petitioning states states, as well as Maine, New Jersey, the northern part of Virginia, and Washington, D.C.

The petitioning states argue that curbing ozone in their jurisdictions also requires reductions of ozone-forming emissions from Midwestern and Southern states upwind. They therefore urged EPA to expand the OTC area to include Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia, and the rest of Virginia.

States in the OTC must impose tough pollution controls, such as reasonably available control technology, on their pollution sources. The Obama EPA, however, already said the move is unnecessary and there are better air law mechanisms to achieve ozone reductions, such as the good neighbor provision. -- *Stuart Parker* (sparker@iwpnews.com)

From: InsideEPA.com [mailto:epa-alerts@iwpnews.com]
Sent: Thursday, May 04, 2017 7:10 AM
To: Dan Greenbaum <DGreenbaum@healtheffects.org>
Subject: The Morning Headlines from InsideEPA.com -- May 4, 2017



TRUMP'S EPA: Agency at a crossroads -- Complete coverage

May 4, 2017

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NOx Air Data Flaws Revive Debate On EPA Regulating Vehicles Or Utilities

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EPA Warned Against Corporate Guarantees As Agency Eyes Mining Rule Options

Oklahoma regulators and environmentalists are urging EPA to eschew the use of corporate guarantees as a means of complying with its first-time rule requiring financial assurances from hardrock mining companies to show they can pay for potential hazardous substance releases, calls that could limit the agency's options as it crafts the rule.

States Predict 'Severe Impact' To Waste Programs Under EPA FY18 Budget

State officials are warning that President Trump's fiscal year 2018 plan to slash EPA's budget would harm federal waste programs and “severely impact” environmental and public health protections and local economies, in some cases straining state programs so greatly that they risk returning delegated programs back to EPA.

Biomass Sector Backs FY17 Bill's Carbon Neutral Tag But Others Query Need

Biomass industry groups are welcoming legislative language in the fiscal year 2017 spending bill that directs EPA and other agencies to treat the renewable fuel as carbon neutral, but other fossil energy sectors question the need for such legislation when the Trump administration is undoing requirements to limit power sector greenhouse gas emissions.

First Trump EPA Rule For OMB Review Would Repeal Obama CWA Policy

EPA has sent its first new proposed rule for mandatory White House Office of Management & Budget (OMB) policy review since the Trump administration began, seeking approval of a regulation that would repeal the Obama-era Clean Water Act (CWA) jurisdiction rule as the first step in the process of rewriting the policy to narrow the water law's reach.

California Panel OKs Bill Locking In Federal Rules Despite Citizen Suit Fears

California's Senate Judiciary Committee has approved a bill that would lock in to state law EPA and other federal environment standards as they existed before the Trump administration took office, despite fears among businesses that the measure includes citizen suit provisions that could lead to scores of new lawsuits under both federal and state law.

Daily Feed

Is industry ready to capitalize on deregulatory opportunities?

Industry groups are holding a meeting to strategize on how to best capitalize on regulatory reform efforts as one source warns that many may not be prepared to deal with the onslaught of opportunities.

Ethanol supporters push for E15, threatening methane rule repeal

Four corn-state Republican senators have conditioned support for scuttling the BLM rule on congressional action to waive EPA rules that limit higher concentrations of ethanol.

California firms join push to reverse GHG endangerment finding

The petition puts new pressure on Administrator Scott Pruitt to reconsider EPA's greenhouse gas endangerment finding.

Environmentalists challenge delay of power plant ELG

The suit claims EPA's delay of compliance deadlines in its effluent guideline for the power sector violated a host of Administrative Procedure Act requirements.

Quote-Unquote: All about changing climate-change policy

Much of the talk over the past week focused on the climate-change debate and Trump's first 100 days.

Ewire: A daily news roundup

Pruitt's camp may be gaining the upper hand in his push to get the US out of the Paris climate deal. Plus: EPA gets an earful on plans to roll back water rules and the ethanol sector plays hardball in the Senate.

EPA receives 43 WIFIA letters of interest

The letters of interest demonstrates the high demand from entities seeking credit assistance from EPA's new water infrastructure funding program.

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To: Fotouhi, David[fotouhi.david@epa.gov]
From: Schwab, Justin
Sent: Thur 3/30/2017 5:01:18 PM
Subject: Fwd: OPA Clips 3/30/17

Sent from my iPhone

Begin forwarded message:

From: "So, Katherine" <so.katherine@epa.gov>
Date: March 30, 2017 at 12:40:54 PM EDT
To: "McGonagle, Kevin" <mcgonagle.kevin@epa.gov>, "Jefferson, Gayle" <Jefferson.Gayle@epa.gov>, "Mccabe, Catherine" <McCabe.Catherine@epa.gov>, "Reeder, John" <Reeder.John@epa.gov>, "Flynn, Mike" <Flynn.Mike@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Hull, George" <Hull.George@epa.gov>, "Slotkin, Ron" <slotkin.ron@epa.gov>, "Sowell, Sarah" <Sowell.Sarah@epa.gov>, "Hart, Daniel" <Hart.Daniel@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Benton, Donald" <benton.donald@epa.gov>, "Bangerter, Layne" <bangerter.layne@epa.gov>, "Davis, Patrick" <davis.patrick@epa.gov>, "Ericksen, Doug" <ericksen.doug@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Greaves, Holly" <greaves.holly@epa.gov>, "Kreutzer, David" <kreutzer.david@epa.gov>, "Munoz, Charles" <munoz.charles@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Sugiyama, George" <sugiyama.george@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Valentine, Julia" <Valentine.Julia@epa.gov>, AO OPA Media Relations <AO_OPA_Media_Relations@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Freire, JP" <Freire.JP@epa.gov>, "Bowman, Liz" <Bowman.Liz@epa.gov>
Cc: "So, Katherine" <so.katherine@epa.gov>
Subject: RE: OPA Clips 3/30/17

Below: Politico (2), New York Magazine, The Daily Caller, The Hill, CNN, Mother Jones, Mother Jones (3/29), NPR (3/29), Bloomberg BNA, Politico, The Hill, LA Times, Bloomberg BNA (3), Bloomberg, E&E News (4), Washington Post (2), Huffington Post, Daily Caller, New York Times (3/29), Washington Post (3/29), InsideEPA (3/29), Agri Pulse (3/29), DTN (3/29), Washington Examiner (3/29), AP (2) (3/29), Reuters (2) (3/29), Bloomberg (3/29), The Hill (3/29), Politico (3/29), InsideEPA (3/29), Huffington Post (3/29), Washington Examiner (3/29)

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Politico

https://www.politicopro.com/energy/whiteboard/2017/03/epa-climate-release-tries-to-praise-

trump-but-blasts-him-instead-085685

EPA climate release tries to praise Trump but blasts him instead

By Alex Guillen 3/30/17, 11:51AM

An EPA effort to showcase praise for President Donald Trump's climate moves went awry today — and instead accused Trump of choosing "to recklessly bury his head in the sand."

The criticism came in a quote from Democratic Sen. Tom Carper of Delaware, which EPA inaccurately attributed to Sen. Shelley Moore Capito (R-W.Va.), a strong supporter of the coal industry and Trump's order.

"President Trump has chosen to recklessly bury his head in the sand," said the quote, which appeared at the top of the EPA press release's litany of reactions to Trump's climate order. The quote added that the order "calls into question America's credibility," and said the president and Administrator Scott Pruitt "have chosen to shirk our responsibility, disregard clear science and undo the significant progress our country has made."

Carper is the top Democrat on the Environment and Public Works Committee. Capito's actual statement, of course, praised Trump and the executive order, which instructed the agency to roll back a series of former President Barack Obama's most important climate change initiatives.

An EPA spokesman said the mix-up was a mistake. "We apologize for the error and are making sure that our process is improved as we build our team," he said. The agency swiftly issued a new version of the email, which also corrected the spelling of Capito's first name.

Trump specifically named Capito at the signing Tuesday at EPA headquarters in thanking various lawmakers, Cabinet members and industry leaders for their work.

"And Shelley, thank you very much also, I spotted you in the audience. Thank you," Trump

said.

EPA's list also included praise from Kentucky Gov. Matt Bevin and West Virginia Attorney General Patrick Morrisey, as well as various industry groups, including the American Coalition for Clean Coal Electricity and the American Petroleum Institute.

Politico

https://www.politicopro.com/agriculture/whiteboard/2017/03/pruitt-pesticide-decision-shows-epas-new-direction-085686

Pruitt: Pesticide decision shows EPA's new direction

By Jenny Hopkinson 3/30/17, 11:39AM

EPA Administrator Scott Pruitt is pointing to the denial of a petition from environmentalists that sought to ban the pesticide chlorpyrifos as an example of the new direction he has set for the agency.

In remarks this morning to the National Cattlemen's Beef Association's Legislative Conference in Washington, D.C., Pruitt said he plans to lead EPA by closely following the law, restoring the rulemaking process to what he sees as its rightful place and working in conjunction with the states.

Pruitt said he denied the longstanding request from Pesticide Action Network North America and the Natural Resources Defense Council — a request that was followed by the Obama administration's finding that the pesticide could pose health risks to children — because, in his view, the petition took regulation of the pesticide out of the process that Congress instructed EPA to follow. A federal court had given EPA until the end of the week to make a decision on the 2007 petition.

"Because that process was breached, we said no; we denied that petition," Pruitt said. "It's not going to be regulated. … Process is going to be respected."

New York Magazine

http://nymag.com/daily/intelligencer/2017/03/epa-chief-declines-to-ban-pesticide-linked-to-fetal-damage.html

EPA Chief Overrules Own Scientists, Declines to Ban Pesticide Linked to Fetal Damage

By Eric Levitz 3/30/17, 10:05AM

In 2015, scientists at the Environmental Protection Agency advised the Obama administration to ban one of the nation's most popular pesticides, chlorpyrifos, after concluding that the chemical impaired fetal brain and nervous-system development. Specifically, the children of farm workers exposed to heavy doses of the product appeared to suffer aberrantly high rates of learning, memory, and behavioral problems. The chemical had already been banned for indoor use, in 2001, due to similar concerns.

But Dow Chemical, which makes chlorpyrifos, wasn't convinced. Nor were many farm groups that rely on the pesticide. And they began lobbying the Obama administration to reject the environmentalists' supposed alarmism.

Last July, an EPA scientific-review panel scrutinized the agency's research on chlorpyrifos, and identified some causes for skepticism about the conclusiveness of its findings. This led to revisions in the researchers' report. Still, as of late last year, EPA staff maintained that the chemical should be prohibited.

But the agency's new leader, Scott Pruitt, who built his national profile by suing the EPA on behalf of industrial interests, decided to err on the side of birth defects Wednesday night.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a written statement. "By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather than predetermined results."

In rejecting the ban, Pruitt took "final agency action" on the question of chlorpyrifos's

safety, a move that suggests the EPA will not revisit the matter until 2022.

It's worth noting that the Obama administration seems to have dragged its feet on this ban, and that there were some quibbles with the initial, underlying research within the EPA. But it is rather difficult to give Pruitt the benefit of the doubt, given the Trump administration's broader contempt for scientific inquiry.

The day before Pruitt's announcement, Trump issued a series of executive orders reversing Barack Obama's Clean Power Plan, and other climate-change policies. He did this without soliciting any advice or guidance from scientists and engineers inside the White House, according to the New York *Times*. That same day, according to *Politico*, staffers at the Department of Energy's climate office were told not to use the words "climate change" or "Paris Agreement" in any written memos — or else the DOE's new chief, Rick Perry, would have a "visceral reaction."

Meanwhile, Trump has failed to appoint anyone to the White House's top advisory positions on technology or science. The administration's Office of Science and Technology Policy is becoming a ghost town.

Daily Caller

http://dailycaller.com/2017/03/30/trumps-epa-wont-ban-a-pesticide-obama-really-wanted-banished/

Trump's EPA Won't Ban A Pesticide Obama Really Wanted Banished

By Andrew Follett 3/30/17, 8:33AM

President Donald Trump's Environmental Protection Agency (EPA) rejected environmentalists' demands to ban a pesticide crucial to U.S. agriculture.

EPA administrator Scott Pruitt formally rejected a petition to ban the pesticide chlorpyrifos Wednesday evening.

During the Obama administration, heavy environmentalist pressure caused the EPA to consider banning chlorpyrifos over concerns that it contaminates drinking water and food. However, the EPA's own analysis found that "there do not appear to be risks from exposure to chlorpyrifos in food." The agency's own website says chlorpyrifos is safe for humans in "standard" amounts.

"We need to provide regulatory certainty to the thousands of American farms that rely on

chlorpyrifos, while still protecting human health and the environment," Pruitt said in a press statement. "By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results."

Chlorpyrifos has been used on citrus fruits, apples, broccoli and various other crops since 1965. U.S. farms use about 6 million pounds of chlorpyrifos each year. If nothing had changed legally, the EPA would no longer have allowed incredibly small trace amounts of chlorpyrifos in food, effectively banning the pesticide in the U.S.

Industry groups strongly opposed the EPA's attempts to ban the pesticide.

"Dow AgroSciences supports U.S. Environmental Protection Agency's (EPA) decision to deny the petition to revoke U.S. food tolerances and cancel the registration of chlorpyrifos," the company said in a statement. "Dow AgroSciences remains confident that authorized uses of chlorpyrifos products offer wide margins of protection for human health and safety. This is the right decision for farmers who, in about 100 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops."

Environmentalists pushed heavily for a ban, as did major media outlets — The New York Times, for example, ran an ominous opinion piece titled "Protect Our Children's Brains."

The Natural Resources Defense Council and Pesticide Action Network North America, filed a federal lawsuit seeking a national ban on chlorpyrifos over theoretical risks of drinking water contamination and alleged contamination of food by the pesticide. But, the EPA admits that it hasn't completed its assessment of the pesticide's effects on drinking water and that "certain science issues" regarding chlorpyrifos are "unresolved."

The environmental groups also claim that the pesticide interferes with the brain development of fetuses, infants and children. This claim goes against the American Academy of Pediatrics, which states, "the risks of pesticides in the diet are remote, long-term, and theoretical, and there is no cause for immediate concern by parents." Green objections are largely based on a Columbia study that a toxicologist at Harvard University previously told the The Daily Caller News Foundation was "not even accurate."

"This is a welcome decision grounded in evidence and science," Sheryl Kunickis, pesticides

director at the U.S. Department of Agriculture (USDA), said in a press statement. "It means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation and the world. This frees American farmers from significant trade disruptions that could have been caused by an unnecessary, unilateral revocation of chlorpyrifos tolerances in the United States."

It is one of the first time environmental groups were unable to convince the EPA to ban a substance through a process of "legal collusion" called "sue and settle." The EPA has frequently been sued by environmental groups for failing to meet regulatory deadlines, then the agency agreed to settle the dispute with these groups out of court. Settlements are written behind closed doors with no input from affected parties, but still having the full force of law. This effectively allowing the EPA to write its own rules with only environmental groups having input.

Between 2009 and 2012, the EPA chose not to defend itself in over 60 lawsuits from special interest groups, resulting in settlement agreements and more than 100 new EPA regulations.

The Hill

http://thehill.com/policy/energy-environment/326472-house-approves-epa-science-committee-overhaul

House approves EPA science committee overhaul

By Devin Henry 3/30/17, 10:42PM

The House on Thursday approved a bill to overhaul the Environmental Protection Agency's (EPA) scientific advisory committee.

The legislation from Rep. Frank Lucas (R-Okla.) would change membership requirements for the EPA's Science Advisory Board to include more industry voices, expanding financial and conflict of interest disclosure requirements and giving the public the chance to more readily comment on the board's actions.

The bill is similar to one that passed last Congress, and it comes one day after the House approved another bill aimed at the EPA's use of science. Lucas's bill passed on a 229-193 vote.

"This is a bill that is built on the policies we should uphold regardless of which side of the political aisle we are on, or who happens to be president," Lucas said.

The bill "ensures the best experts are free to undertake a balanced and open review of regulatory science."

The EPA's Science Advisory Board reviews the scientific and technical research that goes into the agency's rulemaking process, and it advises the agency on other scientific matters.

Democrats broadly opposed Lucas's bill, saying its requirements would undermine EPA's research by allowing more industry influence over the scientific process.

Rep. Eddie Bernice Johnson (D-Texas) said the bill would restrict the agency's rulemaking by giving too much influence to regulated industries.

She contended that if the bill had been law during fights over tobacco regulations in the 1990s, "Big Tobacco likely would have succeeded in cooping the Science Advisory Board."

The bill "is designed to harm the EPA's ability to use science to make informed decisions," she said. "This is not the best interest of the American public."

Thursday's vote comes after the House passed a bill to restrict the type of science and data the EPA uses to write new regulations.

The House voted 228-194 on Wednesday to prohibit the EPA from writing rules using science that is not publicly available. That legislation is similar to measures passed in previous Congresses.

CNN

http://www.cnn.com/2017/03/29/opinions/trump-signs-earth-death-warrant-jones/index.html

Van Jones: Trump may have signed Earth's death warrant

By Van Jones 3/30/17, 10:31AM

As usual, Donald Trump is completely upside down on the facts.

In 2015, President Barack Obama created the Clean Power Plan to slow climate disruption. It was the first action ever taken by the US government to cut carbon pollution from existing power plants.

And this week, with the stroke of a pen, President Trump directed the Environmental Protection Agency (EPA) to take steps to end it.

Trump may have just signed a death warrant for our planet (at least, for a planet that is liveable for humans). And the lies he told to justify it have real consequences for real Americans, here and now.

First, Trump says he wants to dismantle the Clean Power Plan because it represents what he calls "job-killing regulation." False -- limited losses in some sectors are dwarfed by gains in others.

The potential for job growth in the clean energy sector dwarfs any potential job growth in the fossil fuel economy. For example, Trump promised the Keystone XL pipeline would create 28,000 jobs when he approved the project. But he had to use a huge multiplier to get to even that low number. In fact, it would create about 3,000 temporary construction jobs and only 35 permanent jobs. That's right: 35 permanent jobs.

By comparison, in 2016 the number of jobs in solar grew 25% from the year prior, according to figures from the nonprofit Solar Foundation, while jobs in the rest of the economy had less than 2% growth. Renewable energy jobs now create jobs 12 times faster than the rest of the economy.

For Trump to ignore this fact is inexcusable and irresponsible. He's actually hurting the people he claims to help by refusing to invest in opportunities for more jobs in the booming clean energy sector.

By the way, if Trump really cares about those coal miners he invited to the signing ceremony, he should be doing something about the 20,000 who are sick, retired, and within weeks of losing their health benefits if Congress doesn't act. When will Trump call a press conference about them?

Second, Trump claims that the Clean Power Plan was an EPA overreach -- an abuse of its authority. Again, false. The plan is based on Republican President Richard Nixon's Clean Air Act. And the EPA's authority to fight climate disruption was established by a ruling of conservative Chief Justice John Roberts' Supreme Court, under President George W. Bush. In Massachusetts v. EPA (2007), five justices determined that EPA not only has the authority but also the responsibility to cut pollution if it endangers public health -- which it does.

Curbing carbon pollution -- and defending America's land, water and people from other potentially lethal threats -- is neither a liberal value nor a conservative value. Protecting Americans from climate chaos is in everyone's interest.

Third, Trump says eliminating environmental regulations will make America great again. Remember when we had burning rivers? That wasn't so great.

If we follow the Trump trajectory, we're going to be bringing smog back to American cities, accelerating asthma rates in children, putting more poison in the groundwater and costing a lot of Americans their lives.

Trump wants to focus on "job-killing regulations." We should be equally concerned about potentially child-killing de-regulation.

Government must balance the interests of people's ability to earn a living ... against their ability to actually live. Trump seems to have completely forgotten this.

For example, Kamita Gray in Brandywine, Maryland is living on the frontlines of some of the worst pollution in America. Brandywine is in Prince George's county, which has a population that is 65% African American. This community has three power plants in its backyard already. Two more are being developed. The air quality is so bad there that when the wind blows, people do not leave their homes.

It will be communities like Brandywine that are left to deal with the brunt of fossil fuel

pollution from power plants in their neighborhoods. If Trump wants to make America great again, he needs to remember that Brandywine is a part of America, too.

Mother Jones

http://www.motherjones.com/environment/2017/03/pruitts-epa-capito-carper-lol

"Irrational,' 'Reckless,' Irresponsible': The EPA Just Accidentally Told the Truth About Trump's Climate Plan

By Rebecca Leber 3/3/0/17, 11:06AM

On Tuesday, President Donald Trump visited the Environmental Protection Agency, where he signed an executive order dismantling key Obama-era policies aimed at fight climate change. On Thursday morning, the EPA sent out a press release highlighting some wonderful praise that Trump's order has received from groups such as the Chamber of Commerce, the American Petroleum Institute, the American Coalition for Clean Coal Electricity, and—of course—Republican politicians. But the top quote in the EPA's email, attributed to Sen. Shelley Moore Capito (R-W.Va.), had an unexpected message:

With this Executive Order, President Trump has chosen to recklessly bury his head in the sand. Walking away from the Clean Power Plan and other climate initiatives, including critical resiliency projects is not just irresponsible— it's irrational. Today's executive order calls into question America's credibility and our commitment to tackling the greatest environmental challenge of our lifetime. With the world watching, President Trump and Administrator Pruitt have chosen to shirk our responsibility, disregard clear science and undo the significant progress our country has made to ensure we leave a better, more sustainable planet for generations to come.

(Hat tip to Pat Ambrosio).

This is obviously not the glowing review Trump was hoping to get from a coal-state Republican senator. Alas, it appears that someone at the EPA screwed up. That statement actually comes from a Democrat, Sen. Tom Carper (Del.)—not from Capito. If the EPA press release continued to quote from Carper, this would have been the next line:

This order clearly proves that this administration is not serious about protecting jobs and our environment. As a West Virginia native, I understand the plight of coal miners in today's day and age. But the Clean Power Plan isn't the coal industry's problem—market forces are. Let's be perfectly clear: this executive order will not bring back the coal industry. It is an insult to the men and women who voted for him for Donald Trump to say otherwise.

Trump recognized Capito, the West Virginia senator, multiple times in his speech at the EPA Tuesday. He also declared that coal is clean. At the same event, Interior Secretary

Ryan Zinke declared the so-called "war on coal" to be over.

The EPA has now sent out a revised version of the press release, correctly quoting Capito's praise of Trump's order. And this time, the agency even spelled her name correctly.

Update: I reached out to some environmental groups and Carper's office over email for comment.

"Senator Carper is happy to lend his words to a good cause," the senator's spokesman said.

Sierra Club Executive Director Michael Brune said, "That quote is the first true thing Scott Pruitt's office has put out yet."

"MWAHAHAH," 350.org's communications director Jamie Henn began. "The Trump Administration's actions are so outrageous and counter-intuitive that even they can't keep up with the lies that they're spinning out to the public. For once, Capito sounds like she's right on: these executive orders are reckless, irrational, and wildly damaging."

Mother Jones

http://www.motherjones.com/environment/2017/03/trump-epa-brain-damaging-pesticide

UPDATED: Trump's EPA Just Greenlighted a Pesticide Known to Damage Kids' Brains

By Tom Philpott 3/29/17

UPDATE (3-29-2017): EPA director Scott Pruitt signed an order denying the agency's own proposal to ban chlorpyrifos, according to a Wednesday afternoon press release. "We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a written statement. "By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results."

By Friday, President Donald Trump's Environmental Protection Agency will have to make a momentous decision: whether to protect kids from a widely used pesticide that's known to harm their brains—or protect the interests of the chemical's maker, Dow AgroSciences.

The pesticide in question, chlorpyrifos, is a nasty piece of work. It's an organophosphate, a class of bug killers that work by "interrupting the electrochemical processes that nerves use to communicate with muscles and other nerves," as the *Pesticide Encyclopedia* puts it. Chlorpyrifos is also an endocrine disrupter, meaning it can cause "adverse developmental, reproductive, neurological, and immune effects," according to the National Institutes of Health.

Major studies from the Mount Sinai School of Medicine, the University of California-Davis, and Columbia University have found strong evidence that low doses of chlorpyrifos inhibits kids' brain development, including when exposure occurs in the womb, with effects ranging from lower IQ to higher rates of autism. Several studies—examples here, here, and here—have found it in the urine of kids who live near treated fields. In 2000, the EPA banned most home uses of the chemical, citing risks to children.

Stephanie Engel, an epidemiologist at the University of North Carolina and a co-author of the Mount Sinai paper, says the evidence that chlorpyrifos exposure causes harm is "compelling"—and is "much stronger" even than the case against BPA (bisphenol A), the controversial plastic additive. She says babies and fetuses are particularly susceptible to damage from chlorpyrifos because they metabolize toxic chemicals more slowly than adults do. And "many adults" are susceptible, too, because they lack a gene that allows for metabolizing the chemical efficiently, Engel adds.

But even after banning chlorpyrifos from the home, the EPA allowed farms to continue spraying it. While US farmers eased up on it in recent years, they're still using quite a bit, mainly on corn and soybeans in the Midwest and on fruit, vegetable, and orchard crops in Washington, California, and the Southeast. About a fifth of all the chlorpyrifos applied on US farms happens in California. There, the main target crops are alfalfa, almonds, pistachios, walnuts, tomatoes, and strawberries.

In October 2015, after a review spanning more than a decade, the EPA concluded that exposure to chlorpyrifos posed an unacceptable risk to human health, both from residues on food and in drinking water, and proposed a new rule that would effectively ban farm use of it. The agency also expressed concern about "workers who mix, load and apply chlorpyrifos to agricultural and other non-residential sites and workers re-entering treated areas after application."

The EPA then dragged its feet on finalizing the rule; but in August 2016, a US Federal Appeals court demanded that a decision be made by March 31, 2017, chastising the agency for its "continued failure to respond to the pressing health concerns presented by chlorpyrifos."

A few months after that order, of course, Trump won the presidency, and so his EPA team will make the final decision on chlorpyrifos. Uh-oh. Trump often trumpets his own hostility to regulation and has backed it up by proposing a 31 percent cut in the EPA's budget. Before taking office, Trump looked to Myron Ebell of the hyper-libertarian Competitive Enterprise Institute to lead the EPA's transition. Ebell focuses mainly on denying climate change and promoting fossil fuels, but as I noted in November, CEI runs a website, SafeChemicalPolicy.org, that exists to downplay the health and ecological impacts of pesticides.

Trump's pick to lead the EPA, former Oklahoma Attorney General Scott Pruitt, is a non-scientist with little track record in assessing the health risks posed by chemicals. But he does hew to Trump's general hostility to regulation. At his confirmation hearings, Pruitt

couldn't name a single EPA regulation he supports, and he even declined to say whether he'd finalize the EPA's proposed ban on asbestos.

Meanwhile, Dow and the pesticide industry trade group CropLife America are pushing the EPA to backtrack on the chlorpyrifos ban. "The court ordered EPA to make a final decision on the petition by March 31, 2017, but did not specify what that decision should be," Dow noted in a November 10 press release urging the agency to maintain the status quo.

Dow AgroSciences' parent company, Dow Chemical, has also been buttering up Trump. The company contributed $1 million to the president's inaugural committee, the Center for Public Integrity notes. In December, Dow Chemical Chairman and CEO Andrew Liveris attended a post-election Trump rally in the company's home state of Michigan, and used the occasion to announce plans to create 100 new jobs and bring back another 100 more from foreign subsidiaries. Around the same time, Trump named Liveris chair of the American Manufacturing Council, declaring the chemical exec would "find ways to bring industry back to America." (Dow has another reason beside chlorpyrifos' fate to get chummy with Trump: its pending mega-merger with erstwhile rival DuPont, which still has to clear Trump's Department of Justice.)

Kristin Schafer, policy director for the Pesticide Action Network, says it would be highly unusual for the EPA to backtrack on a decision to ban a chemical after so strongly signaling that it would. (PAN is one of the advocacy groups that sued the EPA way back in 2007 over its previous lack of action on chlorpyrifos.) But she added that "all bets are off with this administration."

She pointed out that the EPA and Dow have been battling over the chemical since the Clinton administration. Back in 1995, the agency fined the company $732,000 for failing to disclose more than 100 reports of chlorpyrifos poisoning. "These reports are particularly important," the agency complained, because chemicals enter the marketplace without any human testing, and poisoning notices "may document effects not seen in animal studies, or indicate areas which warrant further research." Most of those alleged poisoning incidences involved exposure in the home—chlorpyrifos was then the most-used household and yard insect-killer. By 2000, as noted above, the EPA had seen fit to ban most home uses of the insect killer.

In an analysis of the risks posed by chlorpyrifos released in November 2016, the EPA crunched data on residues found in food and compared them to the levels at which the chemical can harm the most vulnerable populations: kids and women of child-bearing age. The results (found on page 23 of the EPA doc) are startling. Natural Resources Defense Council researchers turned them into this handy graphic:

It would be quite something for the Trump administration to dismiss such overwhelming evidence from EPA scientists and continue allowing chlorpyrifos to be sprayed on crops with few restrictions. But he has already displayed a willingness to trash the agency's rule-making process to placate his Big Ag supporters.

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NPR

http://www.npr.org/sections/thesalt/2017/03/29/521898976/will-the-epa-reject-a-pesticide-or-its-own-scientific-evidence

EPA Decides Not To Ban A Pesticide, Despite Its Own Evidence Of Risk

By Dan Charles 3/29/17, 7:06PM

Update 7:06 P.M. Eastern: The EPA says it's reversing course and keeping chlorpyrifos on the market.

That's despite the agency's earlier conclusion, reached during the Obama administration, that this pesticide could pose risks to consumers. It's a signal that toxic chemicals will face less restrictive regulation by the Trump administration.

In its decision, the EPA didn't exactly repudiate its earlier scientific findings. But the agency did say that there's still a lot of scientific uncertainty about the risks of chlorpyrifos, and it said that because of that uncertainty, the court had no right to set a firm deadline for a decision. A federal court had ordered the EPA to decide by midnight on Friday whether to ban chlorpyrifos. The Obama administration proposed this ban back in 2015.

The EPA says it will keep studying the chemical.

Patti Goldman, from the environmental group Earth Justice, calls the decision "unconscionable," and says that her group will fight it in court.

New EPA Administrator Scott Pruitt made his reputation opposing the agency's regulations, and many farm organizations expected him to renounce the proposed ban. But doing so would mean disregarding a substantial pile of scientific evidence that his agency has assembled on the risks of this chemical.

Our original story continues.

Farmers have been using chlorpyrifos since 1965. Most of them know it by its trade name, Lorsban. When Wesley Spurlock, a farmer in the panhandle of Texas, sees worms on his corn or aphids on his wheat, this is the chemical that he typically loads into his sprayer.

"This chemical doesn't scare us at all," he says.

He does wear special clothing to protect himself, though. Because this chemical attacks the nervous systems of insects and people. It can cause dizziness, vomiting and diarrhea. So he's careful when handling it. "You don't spill any of it. It goes into the sprayer, we don't splash it around and make a mess," he says.

If he's spraying near the house, he might tell the kids to say inside until the job is done. "By doing all this, it's a safe product," he says. "It's doing it's job and it's doing it well."

Fruit and vegetable farmers use this chemical on citrus trees, strawberries, broccoli and cauliflower. This can leave residues on those foods in the supermarket. Several environmental advocacy groups have gone to court to force the EPA to ban the use of chlorpyrifos by farmers because of the risks that the chemical poses to consumers and to people who live near fields where it's used.

"Based on the harm that this pesticide causes, the EPA cannot, consistent with the law, allow it in our food," says Patti Goldman, an attorney with the environmental advocacy group Earthjustice.

More than a decade ago, the EPA banned the spraying of chlorpyrifos indoors to get rid of household bugs.

At that time, though, the EPA thought that use on the farm posed little risk. The agency was relying on scientific studies that directly measured the immediate effect of chlorpyrifos on the nervous system. Residues on food weren't nearly enough to keep nerves from working normally.

But then new evidence surfaced. Jim Jones, who was assistant administrator of the EPA and responsible for pesticide regulation before he left the agency in January, says the new evidence came from studies in which scientists followed hundreds of mothers and their newborn children, monitoring their exposure to lots of chemicals. One of these studies, by researchers at Columbia University, measured the levels of chlorpyrifos in blood taken from umbilical cords when babies were born.

While the study was going on, the ban on indoor uses of chlorpyrifos came into effect. So over the course of those years, scientists were able to gather data on children who had been exposed to very different levels of the pesticide.

They found that exposure to chlorpyrifos caused small but measurable differences in brain function. At age 7, the average IQ of children who had been exposed to high levels of chlorpyrifos was a few percentage points lower than children who hadn't been exposed to much of the chemical at all. Other studies showed that some people are much more vulnerable to chlorpyrifos because of their genetic makeup.

The studies suggested that this chemical was more dangerous than people had previously realized.

Jones says the EPA struggled to translate the findings of these studies into a prediction of risk from chlorpyrifos residues on food. For one thing, the agency had to come up with an estimate of how much chlorpyrifos the women had been exposed to, based on levels of chlorpyrifos in their blood.

"But once we cracked that nut, and you had the risk evaluated and in front of you, it became, in my view, a very straightforward decision, with not a lot of ambiguity in terms of what you would do," he says.

The law on pesticides is very strict: It requires "a reasonable certainty that no harm will result" to consumers or people living in the areas where pesticides are applied.

In 2015, the EPA proposed a ban on chlorpyrifos.

Dow Agrosciences, the company that sells chlorpyrifos, insists that a ban is unjustified.

Jim Aidala, a former pesticide regulator at the EPA who now works as a consultant to Dow, says that many scientists — including those on a committee that the EPA asked to look at this question — aren't convinced by the scientific methods the EPA used. "There's a lot of controversy about this," he says.

But the EPA is facing a deadline, because of legal challenges from environmental groups, including Earthjustice, which have submitted a petition that the EPA ban chlorpyrifos. A federal judge ordered the agency to make a final decision on this petition by March 31.

"I'm waiting with bated breath for Friday, to see what they're going to go," Jones says. "I just don't know what basis they would have to deny the petition [to ban the chemical], given the vast scientific record that the EPA's got right now."

Bloomberg BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=108215045&vname=dennotallissues&wsn=499505

EPA Won't Ban Controversial Dow Pesticide

By Tiffany Stecker 3/230/17

The EPA has reversed course in its effort to restrict a widely used, insect-controlling pesticide, backpedaling on one of the Obama administration's key initiatives to lower pesticide exposure.

The Environmental Protection Agency will deny a decade-old petition from environmental groups to revoke all uses, called “tolerances,” of chlorpyrifos on food, EPA Administrator Scott Pruitt announced March 29. The insecticide is an important crop protection tool for fruit, vegetable and row crop growers.

“We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment,” Pruitt said in a statement. “By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making—rather than predetermined results.”

The agency released its decision two days before a court-ordered deadline to act on the 2007 petition from the Pesticide Action Network and the Natural Resources Defense Council. The Department of Justice is expected to file its response to the U.S. Court of Appeals for the Ninth Circuit by the end of the week.

Another Blow to Obama's Green Legacy

The farm and landscaping insecticide was developed by Dow AgroSciences and first registered by the EPA in 1965. Environmentalists have sought to end use of the chemical, which they say has been linked to neurodevelopmental delays in children, for decades.

In denying the petition, the EPA said it disagreed with the methodology used by the previous administration to justify what amounts to a near-ban of the chemical.

The agency issued a proposed rule to revoke the tolerances in 2015, using its authority in the 1996 Food Quality Protection Act. The agency based part of its scientific justification for doing so on epidemiological studies that measured levels of the chemical in exposed women and children.

Under former Administrator Gina McCarthy—President Obama's second nominee to run the agency—the EPA worked to solidify the scientific justification for revoking the tolerances, including a human health risk assessment that relied in part on a controversial epidemiological study from Columbia University on children's health effects.

Epidemiologists say these population studies record changes in learning and behavior that can't be traced in the rodent experiments that historically serve as the basis for the EPA's pesticide regulations. But the chemical industry argues that epidemiological studies are difficult to control, and adverse outcomes can be attributed to a range of diet, lifestyle and other environmental factors.

Dow criticized the EPA for relying specifically on an epidemiological study from Columbia University that found that chlorpyrifos affected brain development in New York City children exposed in utero. The study's data was kept confidential by the university, prompting Dow and other industry groups to ask the EPA not to rely on the observations.

The company swiftly applauded the EPA decision.

“Dow AgroSciences remains confident that authorized uses of chlorpyrifos products offer wide margins of protection for human health and safety,” spokesman David Sousa said in a statement.

Politico

https://www.politicopro.com/agriculture/story/2017/03/epa-pursuing-mindboggling-timeline-in-wotus-rewrite-154724

Sources: trump admin aiming for new WOTUS rule by year’s end

By Annie Snider 3/30/17, 5:01AM

The Trump administration is pressing EPA to replace the Obama administration's Waters of the U.S. rule by the end of this year, according to multiple sources with knowledge of the plan — a lightning-speed timeline that legal experts say could shortcut key steps and make the effort vulnerable in court.

EPA Administrator Scott Pruitt recently convened a meeting on the future of the WOTUS rule, where he told agency water staffers to have an initial rewrite ready by this summer, according to one source with knowledge of his instructions. Agency employees have been have been telling states, environmentalists and industry groups to expect things to move "on a very fast pace." The source called the expectation to issue a proposed rule within a few months "mind-boggling."

Pruitt's predecessors took a much more deliberate approach, knowing that any rule attempting to clarify the legal morass of Clean Water Act jurisdiction would almost certainly end up at Supreme Court.

The Obama administration spent years grappling with where to draw the lines, crafting a legal rationale, and building a mass of scientific and technical reports to back up their approach before ultimately proposing its rule in April 2014. EPA then took 14 months to collect and respond to more than one million public comments, meet with more than 400 outside groups, draft changes to the rule and shepherd it all through the interagency review process.

The timeline being mulled by the Trump administration would give agency staff just a few months to put the foundation of the rule in place. An EPA spokeswoman said only that "discussions are ongoing."

Part of the reason the Obama administration took so long is because it produced lengthy supporting documents, even though most were not mandated by law. Those included a 90-page regulatory impact analysis and an exhaustive scientific report and technical support document, both of which clocked in around 400 pages each.

Trying to finish a new rule this year means the Trump administration would have to skip most of those steps, potentially making its rule more vulnerable to being overturned in

court, said Patrick Parenteau, a Vermont Law School professor.

"The more they start cutting corners and not going back through the same process they did to do the [Obama administration] rule, the greater risk they're going to be overturned," he said.

Making EPA's job even more difficult is the fact that the agency is being asked to base its new rule on a potentially shaky legal interpretation.

The last time the Supreme Court weighed the limits of the Clean Water Act's jurisdiction was in the 2006 case *Rapanos v. United States*, where justices failed to reach a majority decision. The late Antonin Scalia led the court's four conservative justices in a plurality opinion setting a restrictive test for waterways to fall under federal protection, while the court's four liberal justices voted for broad federal jurisdiction. Justice Anthony Kennedy, the court's traditional swing vote, joined the conservative justices in their ruling, but he wrote his own, stand-alone opinion setting a broader test that would make streams and wetlands jurisdictional if they have a "significant nexus" to larger downstream waters.

None of the nine federal appeals courts that have weighed the issue have decided that Scalia's line of reasoning would stand on its own. But President Donald Trump directed EPA to look to Scalia's opinion in his executive order requesting a WOTUS rewrite, and sources familiar with instructions to agency staffers say they've been told to rely solely on Scalia's test.

Courts have generally ruled that Kennedy's test is the one that must be followed, although a handful have concluded that if a waterway meets either the Kennedy or the Scalia test, it falls under federal power. The Obama administration wrote its rule to meet Kennedy's test, and the George W. Bush administration had also focused on Kennedy in its 2008 guidance on the topic.

Legal experts generally argue that it will take some fancy footwork for the Trump administration to argue that Scalia's test should take precedence.

But Reed Hopper, an attorney for the Pacific Legal Foundation who has successfully argued the *Rapanos* case before the Supreme Court, said that rewriting the rule doesn't have to be that complicated.

"I think there isn't going to be much of a problem: Look at the act, see what it says, recognize that there are constitutional constraints," he said. He also pointed out that the Supreme Court has overturned lower courts on several recent wetlands cases, including one he argued last year in which the justices ruled that courts can review the federal government's jurisdictional determinations.

Reed argued that EPA could quickly rewrite WOTUS if it throws enough manpower into the effort.

But that could pose a challenge, since the Trump administration has been slow to staff up. Pruitt has only a small cadre of political allies at the agency so far, and key slots in the Office of Water and General Counsel's office are sitting empty. The Army Corps of Engineers, which will need to at least supply data for the rewrite effort, is likewise without a political leader.

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The Hill

http://thehill.com/policy/energy-environment/326465-epa-head-wont-ban-controversial-pesticide

EPA head won't ban controversial pesticide

By Timothy Cama 3/30/17 9:31 AM

The head of the Environmental Protection Agency (EPA) on Wednesday decided against banning the use of the pesticide chlorpyrifos on fruits and vegetables.

EPA Administrator Scott Pruitt's decision represents a course reversal from the Obama administration, which proposed the ban in 2015, based on its scientific findings of neurological harm from exposure to it.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a late Wednesday statement.

"By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather than predetermined results," he said.

Pruitt's decision matches what Dow Chemical Co., which sells the pesticide under the brand name Lorsban, sought in a January letter to the agency. Dow accused the Obama EPA of short-circuiting its scientific review process for pesticides, including in areas like transparency and peer review.

Farmers use chlorpyrifos to kill insects and some plant pests on numerous crops, including some meant for human consumption. It has been in use since 1965, but most household uses were phased out in 2001.

Research in recent years has linked the pesticide to nervous system and brain problems, including lowered brain function in some children exposed to it before birth.

The EPA under Obama proposed in 2015 to ban chlorpyrifos's use on food crops, responding to a petition and lawsuit from the Natural Resources Defense Council (NRDC) and other groups.

"With each year of delay in canceling food tolerances and agricultural and other uses of chlorpyrifos, more children are unnecessarily at elevated risk for problems in learning, social skills, motor function, and other developmental domains," a coalition wrote to the agency this year.

But Dow objected, as did agricultural interests.

"EPA's proposal appears to be a retreat from its statutory obligation that, when evaluating pesticides for registration, it balances the risk of those active ingredients against their benefits to farmers specifically, and to the public generally, when they do not pose an unreasonable risk to health or the environment," the American Farm Bureau Federation told the agency.

Groups that pushed for the ban slammed Pruitt's decision

"The Trump administration is putting the needs of chemical corporations before children's health," NRDC senior scientist Miriam Rotkin-Ellman said in a statement.

"Parents shouldn't have to worry that a dangerous chemical might be lurking in the fruits and veggies they feed their kids," she said. "We will hold EPA accountable to protecting the American people from industries that can do us grave harm. The health of our children depends on it."

NRDC and its could ask the Court of Appeals for the Ninth Circuit, the court where it previously sued the EPA to force a decision, to review Pruitt's final determination.

LA Times

http://www.latimes.com/business/la-fi-pesticide-epa-201703230-story.html

Trump administration reverses course on nerve-agent pesticide

By Geoffrey Mohan 3/30/17, 4:00AM

The U.S. Environmental Protection Agency on Wednesday reversed an Obama administration recommendation to ban a pesticide linked to nervous system damage in children.

Newly installed EPA administrator Scott Pruitt signed an order that would allow farmers to continue using chlorpyrifos, which is sprayed on more than a dozen crops, including tree nuts, soybeans, corn, wheat, apples and citrus.

The Obama administration had announced in 2015 that the agency would adopt a "zero tolerance" policy for residue of the chemical on food, a move that effectively would have ended its use.

"By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather than predetermined results," Pruitt said of the decision.

Pruitt's action came in response to complaints by the agricultural and chemical industries that the Obama administration had cut short a review of the scientific evidence about the chemical's effects on humans. The administration was under pressure from an order by the U.S. 9th Circuit Court of Appeals to speed up its ruling on the safety of the chemical.

The court order sprang from lawsuits by the Pesticide Action Network and Natural Resources Defense Council, which had petitioned the EPA in 2007 to ban the chemical. Pruitt denied that petition Wednesday.

Kristin Schafer, policy director at Pesticide Action Network, accused EPA of caving to corporate pressure.

"The new administration's agency ignored their own findings that all exposures to chlorpyrifos on foods, in drinking water, and from pesticide drift into schools, homes and playgrounds are unsafe," Schafer said.

The U.S. Department of Agriculture praised Pruitt's action.

"This frees American farmers from significant trade disruptions that could have been caused by an unnecessary, unilateral revocation of chlorpyrifos tolerances in the United States," said Sheryl Kunickis, director of the USDA's Office of Pest Management Policy. "It

is also great news for consumers, who will continue to have access to a full range of both domestic and imported fruits and vegetables."

About 5 million to 10 million pounds of chlorpyrifos, manufactured by DowAgroSciences, are used annually on crops nationwide. The chemical is an organophosphate, a class of chemicals originally designed as a nerve agent weapon.

Chlorpyrifos has been banned from consumer products and residential use nationwide for more than 15 years. Several studies have suggested it can impair cognitive development in children. A UC Berkeley study found that 7-year-old children in the Salinas Valley who were exposed to high levels during pregnancy had slightly lower IQ scores than their peers. A Columbia University study showed similar effects at lower exposure.

In 2006, the EPA revised its tolerance levels for the chemical and limited the crops on which it can be applied.

In California, the Department of Pesticide Regulation restricted use of chlorpyrifos in 2015, requiring licensing, training and oversight by county agriculture commissions. It also tightened buffer zone requirements around fields where the chemical was applied, and banned its use near schools and other facilities when winds exceed 10 miles per hour.

Use of the chemical in California declined from a peak of more than 2 million pounds in 2005 to about 1.1 million in 2012, but rose to nearly 1.5 million pounds in 2013, the last year for which complete data were available, according to the state Department of Pesticide Regulation.

Environmental activists attribute the increase to the rise in almond production, which has been increasing rapidly in counties where the chemical is most heavily applied, according to the National Agricultural Statistics Service.

More than 500,000 pounds of the chemical were applied to crops in Kern and Fresno counties in 2013, by far the biggest users of the pesticide, according to the state Department of Pesticide Regulation.

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http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=108215030&vname=dennotallissues&wsn=499491

Trump's Climate Order Didn't Touch Several Obama-Era Programs

By David Schultz 3/30/17

The Trump administration rolled back many of its predecessor's signature climate change measures with an energy-focused executive order, but the order was notably silent on several Obama-era climate programs that don't affect the energy industry.

Trump's March 28 order either rescinded or began the process of rescinding numerous

regulations on power plants, oil and gas drillers, coal miners and others in the energy sector.

But his executive order left untouched several other Obama-launched initiatives meant to combat climate change. These include measures that affect the chemicals, waste management, agriculture and aviation industries, and some of these measures impose significant costs on those industries.

The fact that Trump is willing to let these Obama-era measures stand—at least for now—indicates his White House may be taking a less dogmatic stance toward climate change than one would expect, given the many statements of climate skepticism that have come from administration officials and from the president himself.

The Trump administration did not respond on the record to a request for comment for this story.

Chemicals

The executive order leaves intact the Obama administration's ban on a type of refrigerant chemical called hydrofluorocarbons, or HFCs. These chemicals were targeted in Obama's 2013 Climate Action Plan because, while they are a small contributor to climate change, they are also highly potent greenhouse gasses that trap 1,000 times more heat in the atmosphere than the same amount of carbon dioxide.

The ban's exclusion from the executive order comes as little surprise, since just weeks earlier Trump administration attorneys went to court to defend it against a legal challenge from HFC manufacturers (Mexichem Fluor Inc. v. EPA, No. 15-01328 (D.C. Cir. 2/17/17)).

David Doniger, an attorney with the Natural Resources Defense Council, said Trump's defense of his predecessor's HFC ban betrays the White House's contradictory stance toward the issue of a warming planet.

"They seemed to a draw distinction: 'Climate change is a hoax when it involves the energy industry, but not a hoax when it involves the chemicals industry,'" Doniger said at a March 22 D.C. Bar panel discussion.

Landfills

Though Trump's executive order took aim at a number of regulations on methane emissions, it didn't address a particular regulation on methane emissions from landfills that the Environmental Protection Agency finalized last year. The waste management industry is challenging this regulation in federal court, arguing that its emissions thresholds are too difficult to meet (Nat'l Waste and Recycling Ass'n v. EPA, No. 16-01371 (D.C. Cir. 10/27/16)).

The lead plaintiffs in this case said they didn't anticipate the Trump administration to pull back this EPA landfill rule in his executive order.

"There wasn't a big expectation on our part," Anne Germain, a director with the National Waste and Recycling Association, told Bloomberg BNA. "The president is really trying to focus [deregulation efforts] on energy production and isn't targeting methane holistically."

Aviation

Significantly, Trump's executive order did not instruct the EPA to rescind its 2009 finding that carbon dioxide is a pollutant, a landmark document that laid the basis for nearly all of the agency's climate regulations during the Obama era.

The order also did not nullify a much narrower EPA finding from last year on the pollution effects of greenhouse gas emissions from airplanes. This finding triggers a legal requirement that the EPA establish limits on airplane emissions.

The aviation industry has come out in favor of imposing these regulations on its own planes. It wants U.S. rules on greenhouse gases to be harmonized with soon-to-be-established international standards, which the industry will have to comply with regardless of what Trump's EPA does.

Agriculture

The executive order also gave no indication that Trump will put a halt to the work federal agencies have been doing on promoting biogas generation, another of the priorities listed in Obama's Climate Action Plan.

Since 2014, the EPA has been working with the Departments of Agriculture and Energy to help livestock farmers turn the waste from their animals into biogas fuel, rather than allowing it to decompose into climate-harming methane. A joint 2014 report from the agencies laid out a plan to promote this practice by allocating loans to farmers and grants to biogas researchers, among other measures.

Patrick Serfass, head of the trade group American Biogas Council, said his emerging industry was likely excluded from the executive order because of many other economic benefits to biogas generation, aside from reducing methane emissions.

"We don't have to talk about the climate benefits to make a really compelling point as to why it's important," he told Bloomberg BNA. "We've stopped using our climate-related messages because the other ones are resonating more."

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http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=108215035&vname=dennotallissues&wsn=499495

Trump Administration Asks Court to Halt Clean Power Plan Review

By Andrew Harris and Jennifer A Dlouhy 3/30/17

President Donald Trump took yet another step toward dismantling his predecessor's climate change legacy, asking a federal appeals court halt its review of carbon-emission rules for power plants (West Virginia v. EPA, D.C. Cir., No. 15-1363, motion filed 3/28/17).

Trump, who famously called climate change a hoax in a 2012 tweet, signed an executive order March 28 that starts unraveling a raft of rules and directives to combat climate change. That's now been followed by a bid to temporarily place on hold a 26-state suit challenging the centerpiece of President Barack Obama's environmental agenda—the Clean Power Plan—so the new administration can dismantle it ahead of a ruling on its legality.

The request is the strongest sign yet that the U.S. may back away from Obama's commitment to a 197-nation climate change accord, though the White House hasn't taken that step.

Asking the court to halt its review is the easy part. The next steps could be more difficult. Since the rule was finalized, the new administration can't kill it out right and instead must go through the rule-making process again to undo it, said Villanova University law professor Todd Aagaard. The Trump administration is arguing that the court shouldn't waste resources deciding the case, when the EPA plans to revise or undo the rule anyway.

“The case is not moot simply because EPA is considering undoing the Clean Power Plan,” he said. “It won't be moot unless and until EPA actually finalizes a new rule to undo the plan.”

The Environmental Protection Agency will need about a year to administratively remove the CPP from the federal regulatory landscape, while justifying that reversal, allowing for public comment and still meeting its Clean Air Act obligations. The result will almost certainly be challenged by the same green groups and states that initially defended the rule.

“The EPA cannot simply dismantle the Clean Power Plan and leave nothing in its place,” New York Attorney General Eric Schneiderman, a Democrat, said Tuesday on behalf of 18 states that intervened in the court case in support of the rule. “This is not a situation where they can just junk the regulations.”

The Obama rule was designed to limit polluting coal-fired power plants in favor of green energy, such as wind and solar. Trump's EPA Administrator, Scott Pruitt, has asked the court, which heard arguments over the plan's merits in September, to put the case on hold while his agency and the administration review it.

“The Clean Power Plan is under close scrutiny by the EPA, and the prior positions taken by the agency with respect to the rule do not necessarily reflect its ultimate conclusions,” the EPA said in its court filing late Tuesday.

The Republican Pruitt, while serving as Oklahoma attorney general, was one of the first officials who sued in October 2015 to strike down the former president's plan to reduce carbon emissions to 32 percent below what they were in 2005. While 27 states had been part of that effort, North Carolina—whose new governor and attorney general are both Democrats—dropped out of the case.

Not Without Risk

New York, 17 other states and the District of Columbia intervened in that suit in the plan's defense.

The Pruitt-led EPA is essentially telling the court not to bother deciding the case because the plan won't go into effect. Judges don't have to agree. Schneiderman has promised to press for a ruling, a move that is not without risk for the plan's supporters.

If the Clean Power Plan is ultimately upheld by the courts, the Trump administration would have to acknowledge that it could stick with the plan but, as a matter of policy discretion, decided not to do so, Villanova's Aagaard said.

“Of course, if either the D.C. Circuit or Supreme Court were to hold that the Clean Power Plan is invalid, EPA wouldn't even have to undertake a rule-making to kill the plan -- it would already be dead,” he said.

The plan is “legally valid,” Schneiderman said, and it's “extraordinarily unusual” for one party to say it doesn't want a ruling so far along in the case.

Roiled Industry

The Obama rule roiled the energy industry when it was unveiled in 2015. The plan dictates specific carbon-cutting targets based on the amount of greenhouse gases states released while generating electricity in 2012. It followed the EPA's landmark 2009 determination that greenhouse-gas emissions endanger the public's health and welfare.

Pruitt, who has also discounted the role of carbon dioxide as the main driver for climate change, helped lead the charge for states opposing the plan in arguing that its goal to shift power generation away from coal and toward cleaner sources would force the creation of a “new energy economy.”

First to sue, though, was West Virginia Attorney General Patrick Morrisey, who hailed Trump's decision to roll back the regulations. In a phone interview, Morrisey called the plan “one of the most egregious and unlawful regulations that we've seen in many many years.”

Trump campaigned on a vow to bring back coal jobs. He told a crowd in Kentucky on March 20 that the administration will turn the EPA “from a job killer into a job creator.”

The Justice Department late March 28 also asked the D.C. Circuit to halt progress in litigation over EPA's carbon standards for new power plants, which established a requirement that any new coal-fired power plant be equipped with carbon capture technology (North Dakota v. EPA, D.C. Cir., No. 15-1381, motion filed 3/28/17).

The administration's request comes about three weeks before the court is scheduled to hear oral arguments over the regulation on new power plants. The Clean Air Act required the EPA to establish standards for new power plants as a prerequisite for regulating existing plants through the Clean Power Plan.

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House Passes Bill Requiring Science in EPA Rules to Be Public

By Rachel Leven 3/30/17

A House-passed bill would require science and data used in EPA regulations or assessments to be made public.

The 228-194 vote March 29 was an unsurprising outcome, given passage of a similar bill by a 241-175 House vote last session.

Supporters of the Honest and Open New EPA Science Treatment Act of 2017 (H.R. 1430), sponsored by House Science, Space, and Technology Committee Chairman Lamar Smith (R-Texas), said it would provide transparency into science used in certain Environmental Protection Agency actions. Critics said the bill would bog down further an already slow regulatory process and block the agency from using important science in its decisions.

The bill now heads to the Senate, where new Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) has indicated an openness to addressing the issue, a Barrasso spokesman said. The committee never held a hearing on last session's version of the bill, the Secret Science Reform Act of 2015 (H.R. 1030).

The measure, which would amend the Environmental Research, Development, and Demonstration Authorization Act of 1978, is supported by groups including the American Chemistry Council, U.S. Chamber of Commerce and American Farm Bureau Federation. Opponents include the American Lung Association, Environmental Defense Action Fund and American Geophysical Union.

The House Science, Space and Technology Committee approved H.R. 1430 March 9 by a 17-12 vote along party lines. The Congressional Budget Office hasn't released a cost estimate related to the bill.

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https://www.bloomberg.com/politics/articles/2017-03-29/volkswagen-says-it-has-epa-approval-to-sell-repaired-diesels

Volkswagen Says It Has EPA Approval to Sell Repaired Diesels

By Ryan Beene 3/30/17 3:30 AM

Volkswagen AG will soon do what's been impossible since its emissions crisis began: sell diesel-powered cars in the U.S.

The company received approval from the Environmental Protection Agency for its dealers to sell 2015 model year diesels after updating the vehicles' emissions software, VW Group of America spokeswoman Jeannine Ginivan said.

The software update is part of a required emissions repair approved by the EPA and California Air Resources Board. The repair will also include changes to diesel engine hardware, but dealers do not have to wait until the repair parts become available early next year, Ginivan said.

"We are still finalizing the details of this program and will provide more information on its implementation at the appropriate time," Ginivan said in a statement.

Volkswagen admitted 18 months ago to rigging nearly 500,000 diesel cars to pass U.S. emissions tests. The Wolfsburg, Germany based company froze sales of new and certified used diesels in the U.S. while it worked with regulators on an approved fix. The company has put aside $24 billion (22.6 billion euros) to cover costs and fines related to the scandal.

The shares were little changed at 136.50 euros at 9:19 a.m. in Frankfurt trading, bringing the decline since the scandal broke in September 2015 to about 16 percent.

Significant Milestone

Reviving diesel sales marks a significant milestone in VW's efforts to recover from the scandal and rebuild its relationship with environmental regulators. It also returns a key product to dealer showrooms that attracted a cult-like customer base and accounted for about 20 percent of the VW brand's pre-scandal sales.

Yet it's a mostly symbolic step. The sales approval only applies to about 67,000 diesels from the 2015 model, about 12,000 of which are currently in dealer inventory, Ginivan said.

An EPA spokeswoman didn't immediately return messages seeking comment.

Volkswagen has also said no new diesel models will be offered in the U.S. at least through model year 2018. The company is moving aggressively toward electric vehicles, signaling a diminishing role for diesel engines in the company's portfolio, especially in the U.S.

The program will also eventually include used 2015 diesels the company has repurchased from owners through the 2016 settlement with U.S. regulators and owners, Ginivan said. Some customers have elected to keep their cars and receive restitution and an emissions repair under the terms of its $10 billion buyback.

While diesel engines are more fuel efficient than their gasoline counterparts and are found in about half of new passenger cars sold in Europe in part due to tax breaks, they never fully caught on in the U.S., accounting for less than three percent of deliveries.

E&E News

http://www.eenews.net/climatewire/2017/03/30/stories/1060052328

On balance, the world wants Trump to stay

By Jean Chemnick 3/30/17

The world is prepared to put up with quite a lot to keep the United States in the Paris climate deal.

If White House officials who want the United States to remain part of the 2015 agreement prevail in what appears to be an ongoing tug of war within the administration, the trade-off is likely to be weaker emissions commitments and no new climate aid for the remainder of President Trump's term. Even then, the administration could make new demands in forthcoming negotiations that could complicate the delicate deal among nearly 200 nations.

Still, most climate diplomats and environmentalist observers say they would rather deal with a Trump team than lose the United States altogether.

"I don't think it would be seen as an advantage to have the United States out, if for no other reason than that countries will be very hopeful that this is a time-limited bump in the road," said former State Department Special Envoy for Climate Change Todd Stern. "And it is a lot more useful to have the U.S. still in the regime, so that when things eventually turn around in Washington, then the U.S. is there, rather than you've got to go through the whole aggravation of them not being there."

Trump this week essentially hollowed out the U.S. Paris pledge when he signed an executive order rolling back Obama-era greenhouse gas regulations that formed the basis of America's international commitments. A new target, or "nationally determined contribution" (NDC), to Paris would likely accompany any decision to stay in the deal, and analysts believe it will be an emissions range consistent with a business-as-usual scenario.

The next weeks are expected to settle whether Trump will stay or go. But a State Department team will attend the next midyear climate talks in Bonn, Germany, a first foray that might shed some light on whether the new administration would assume a role of benign neglect or of outright obstruction if it stays. Even if Trump does move to withdraw soon, the process will take four years, during which time his team could still attend talks and play an active, if diminished, role in setting the rules of the road.

Battle lines within and around the administration are not clearly drawn. Over the weekend, U.S. EPA Administrator Scott Pruitt dismissed Paris as a "bad deal" in on interview on ABC's "This Week," while EPA transition team leader Myron Ebell attacked Secretary of State Rex Tillerson as a "swamp creature" in remarks at a Washington conference for saying during his Senate confirmation process back in January that the United States should maintain a "seat at the table" on Paris.

It's unclear what role, if any, Tillerson is playing in this decision, which will ultimately be made by Trump himself, either with the usual input from advisers or without it. But Trump's daughter Ivanka Trump and son-in-law Jared Kushner were instrumental in slashing language from yesterday's executive order rolling back domestic climate regulations that would have set the wheels in motion for a withdrawal from Paris. And several members of Trump's National Security Council argue for remaining in the deal for pragmatic reasons. Senior adviser Steve Bannon does not.

Still, Stern said he assumes that if the United States remains in the deal, it will not try to ruin it from within.

"I don't think that they're going to diabolically say, 'Let's stay in so we can throw bombs,'" he said.

"A seat at the table doesn't generally mean a seat at the table with a grenade in your hand," Stern added. Still, he acknowledged, if the new negotiating team were extraordinarily unconstructive, that might prompt some partners to wish it had just made an exit.

Should the U.S. help write the rulebook?

But a future administration might find it complicated to re-enter Paris, while an exit from the underlying U.N. Framework Convention on Climate Change (UNFCCC) would likely mean the United States would have to stay out of the deal for good. It would be very difficult for a future administration to wrangle 60 Senate votes in the future to rejoin the treaty.

And a regime without the United States is likely to be less effective in the long run.

"I can't envision a world in which it would be better for the U.S. to pull out in terms of keeping the agreement together or keeping others on board," said Kate Larsen, climate director of the Rhodium Group and a former State Department negotiator during both the George W. Bush and Obama administrations.

"If the U.S. were to pull out, you would have to believe that at some point, later in the future, when a more sympathetic president is in place, that we'd be able to either rejoin the agreement or negotiate a whole new one," she added.

Paris was the culmination of more than two decades of negotiations that eventually included 196 parties, and that included many setbacks and false starts along the way that threatened to capsize the process.

The United States was frequently a pariah in the process, but usually for arguing, across Democratic and Republican administrations alike, for provisions on transparency, common responsibility across developed and developing countries, and the avoidance of binding language that would require Senate approval for the United States to join.

If the United States were to suddenly withdraw from the process, Larsen said, "the voices for including elements that are problematic for the U.S. get stronger and ultimately win out."

If the United States is not active over the coming two years as the Paris rulebook is being negotiated and written, the next administration could return to a process that has become difficult to join.

Stern noted that the Paris accord made substantial new progress in breaking down past barriers between what the process demanded of developed and developing participants and on transparency — gains he said the United States should continue to guard in the implementation phase.

World waits, strategizes

Climate diplomats and negotiators approached for this story were generally reticent to speak on the record about the future of U.S. participation in Paris. Some worried about being seen to weigh in on domestic U.S. politics, while others feared weighting the scales toward a U.S. exit.

Officials from Europe and elsewhere say they're still assessing who their counterparts are within the Trump White House and State Department.

"It's not under discussion with key climate diplomats," said Christoph Bals of Germanwatch. "They have lots of problems at the moment to find a person in the U.S. government who has a mandate to negotiate this with them. And they are absolutely frustrated in our chancellery that they don't know who the right person [is] to negotiate those kinds of things."

Maros Sefcovic, vice president for the compact's Energy Union, did meet with White House officials earlier in the month, and German Foreign Minister Sigmar Gabriel met with Tillerson and Vice President Mike Pence in February to discuss the agenda his country has set for its presidency of the Group of 20 nations this year, which includes climate change.

German Chancellor Angela Merkel is said to have a personal stake in a strong climate outcome for the G-20, but has so far avoided putting Trump on the spot. She raised climate change during a closed-door lunch with the president during her visit to Washington earlier this month, but did not make a public statement about it. And the Germans watched as Treasury Secretary Steven Mnuchin stripped long-established language from this year's financial ministers' communiqué for the G-20 that called for the removal of trade barriers, while he banded together with Saudi Arabia's minister to cancel all reference to climate

finance. Greens hope climate aid will reappear at the leader-level summit in July, together with a reaffirmation of the Paris deal, but Maeve McLynn of CAN Europe said Mnuchin's heavy-handedness did not bode well for how the United States might perform in upcoming climate talks.

"This is what I'm kind of fearing, that the U.S. will come in and not be willing to compromise on certain things," she said. Both the G-20 and the climate talks operate on consensus, and the United States plays an outsized role.

McLynn said that Europeans are dealing with the uncertainty in Washington by engaging more deeply with other countries. The 28-nation bloc could announce new bilateral efforts with China, Latin America and other nations at summits later this year, and is weighing whether to increase its commitment to climate finance in response to a retreating United States. Outreach to Canada and Mexico is also part of the strategy.

"The message we're getting is, 'Let's not focus too much on Trump and the Trump administration, but then let's start building and strengthening the alliances with the countries around the U.S.,'" said McLynn.

Foreign officials are not offering direct criticism so far of Trump's domestic climate moves, though they seem to be holding fire until the Paris announcement is out.

Jake Schmidt, international climate change director for the Natural Resources Defense Council, said Europe, small island states and other members of the so-called high ambition coalition would be unlikely to accept a weaker NDC without comment.

"Pretending like there's no blowback to changing how you act on climate change is a bit delusional," he said, predicting that a change in Paris commitment would spark a diplomatic pushback.

Dennis Clare, who has negotiated on behalf of small island states within the UNFCCC process, said a major emitter like the United States would set a dangerous precedent if it were to pare back its already-insufficient NDC, though an exit from the deal would "go one step further."

"Most countries would surely lament any diminishment of the collective global response to climate change and the increased human suffering that would cause," he said.

E&E News

http://www.eenews.net/eedaily/2017/03/30/stories/1060052317

Democrats press Pruitt to address conflict of interest

By Ariel Wittenberg 3/20/17

U.S. EPA Administrator Scott Pruitt hasn't responded to requests from Senate Democrats that he address an apparent conflict of interest caused by President Trump's executive order that directs the agency to review and possibly rescind the Clean Water Rule.

Environmental and Public Works Committee Democrats asked him last week to confirm that he has either recused himself from actions related to the regulation or received permission from ethics officials to remain involved in the rule review (*Greenwire*, March 21).

The letter requested a response "by no later than March 29." A Democratic aide said neither Pruitt nor EPA has responded.

EPA didn't respond to repeated requests for comment for this story.

At issue is a lawsuit Pruitt filed as Oklahoma attorney general against the Obama administration's Clean Water Rule.

The regulation, also known as the Waters of the U.S. rule, or WOTUS, aims to clarify the reach of federal regulations over wetlands and waterways under the Clean Water Act. It was strongly opposed by farmers, land developers and energy companies that said it amounted to federal overreach.

Trump's executive order directs EPA to rescind the regulation and to "promptly notify the Attorney General of the pending review" so that the Department of Justice can decide how to proceed on lawsuits filed against the litigation.

Two days after that order was signed, Pruitt himself signed a notice indicating EPA had begun its review of the regulation.

But Senate Democrats say the executive order creates a conflict of interest for Pruitt because it includes "explicit direction" regarding the lawsuit he filed as Oklahoma attorney general.

Pruitt has signed an ethics agreement stating he would seek authorization from EPA's designated ethics official to "personally and substantially" participate in "particular matters involving the specific parties in which I know the State of Oklahoma is a party or represents a party."

Pruitt also told the committee during his confirmation hearing he would recuse himself from matters related to litigation he filed as attorney general unless he had permission from ethics officials.

Senate Democrats are asking for proof Pruitt has done that.

"Although we all continue to believe," they wrote, "that you should have made more extensive recusals than the ones you committed to, the specific language in section 2(c) of the Order should have trigged even the more limited recusal policy to which you have already and repeatedly agreed."

E&E News

http://www.eenews.net/eedaily/2017/03/30/stories/1060052312

House OKs 'secret science' bill; advisory board bill up today

By Sean Reilly 3/30/17

The House has again passed legislation that would bar U.S. EPA from pursuing new regulations based on science that is not "transparent or reproducible," brushing aside critics' warnings that it would hamstring the agency's ability to protect public health and the environment.

The bill, H.R. 1430, won approval late yesterday by a 228-194 margin after a perfunctory one-hour debate under a closed rule that barred amendments. Three Democrats voted yes; seven Republicans were opposed.

The House approved similar measures titled the "Secret Science Reform Act" in 2014 and 2015. Both then died in the Senate following Obama administration veto threats. Although the latest version, dubbed the "Honest and Open New EPA Science Treatment Act," is certain to play better with President Trump, it still faces uneven odds in the Senate, where 60 votes are needed to move legislation of any significance.

Potentially raising the bar further is a Congressional Budget Office forecast released after yesterday's vote that estimated that annual implementation costs over the next few years could range from a few million dollars to around $100 million.

The bill, sponsored by House Science, Space and Technology Chairman Lamar Smith (R-Texas), would require online availability of the research data used in studies undergirding new regulations as a means of allowing independent analysis. "Our goal is to help advance not just any science, but the best science," Smith said during yesterday's floor debate.

As they have in the past, Smith and other Republicans portrayed the bill as an open-government measure intended to shed light on the research behind EPA rules that can sometimes carry a considerable economic wallop.

"It's like they have a little black box over there; they don't ever let anyone else look into it," said Rep. Brian Babin (R-Texas). "Show us your data."

Critics, however, see the legislation's purported purpose as anything but honest. Instead, they have argued, it would make it easier for industry to bring lawsuits against new rules, while making it harder for EPA to tap important research because the results of studies based on large data sets aren't easily reproducible.

Rep. Eddie Bernice Johnson (D-Texas), the Science Committee's ranking member, described the bill as even worse than its two predecessors and said it would stifle EPA's ability to protect public health. "Unfortunately in this case," Johnson said, "the third time is not the charm."

Democrats also questioned the value of a newly added exemption for personally identifiable and sensitive business information from the internet posting requirements, given that the data could still be obtained through a confidentiality agreement with the EPA administrator.

An even bigger question mark hovers over the bill's potential cost.

A 2015 Congressional Budget Office analysis of a similar measure pegged the annual price tag for the first couple of years at $250 million. During yesterday's debate, Smith said that reading was a misinterpretation of the implementation requirements.

But the CBO score for H.R. 1430, released after yesterday's vote, signaled that the expense for EPA could still be substantial, even as the agency faces a 31 percent cut under Trump's proposed budget for next year.

Although the final tab would hinge in part on how much money EPA chooses to invest in "infrastructure" to make researchers' data more widely available, the overall amount could range from several million dollars per year to more than $100 million per year "to ensure that data and other information underlying studies are publicly available in a format sufficient to allow others to substantially reproduce the results," the CBO analysis said. Based on the "minimal" approach that EPA officials say they plan to take, however, the budget office pegged total spending from 2018 through 2022 at $5 million.

Earlier this week, Smith had predicted the implementation cost would be "minuscule" (*E&E Daily*, March 28). His legislation would cap EPA's annual spending at $1 million, or roughly in line with what agency officials told CBO they would use.

Smith's bill is traveling in tandem with H.R. 1431, a separate measure by Rep. Frank Lucas (R-Okla.) to revamp membership requirements for EPA's Science Advisory Board. Earlier in the day, the House cleared the latter bill on a 232-188 vote for debate this morning. It will probably pass by lunchtime.

Washington Post

https://www.washingtonpost.com/news/morning-mix/wp/2017/03/30/new-trailer-for-al-gores-inconvenient-truth-shows-president-trump-as-climate-change-villain/?utm_term=.775755b36688

New trailer for Al Gore's 'Inconvenient Truth' sequel shows President Trump as climate change villain

By Ben Guarino 3/30/17, 3:01AM

The trailer for "An Inconvenient Sequel: Truth to Power," the second film in Al Gore's franchise of climate change documentaries, depicts President Trump as an antagonist. The clip that Gore shared via Twitter on Wednesday shows the president at an airport rally held last April in Rochester, N.Y., where then-candidate Trump mocks the climate science consensus.

"It's supposed to be 70 degrees today," Trump says. "It's freezing here! Speaking of global

warming, where is — we need some global warming!"

As for Gore, the trailer vindicates the former vice president's climate change predictions. Gore says that the most criticized part of 2006's "Inconvenient Truth," which won a documentary feature Oscar in 2007, was the notion that the World Trade Center Memorial could flood from rising sea levels and stronger storm surges. Smash cut to 2012 — "Hurricane Sandy slammed into New York City last night, flooding the World Trade Center site," a newscaster says in the trailer.

The trailer jumps from the devastation wreaked by extreme weather events to shots of green energy infrastructure and Gore pumping the hand of Canadian Prime Minister Justin Trudeau.

And then, halfway through, the screen goes to black. Enter Trump.

The trailer showcases another Trump campaign rally speech. "It's time to put America first," he says. "That includes the promise to cancel billions in climate change spending."

Trump's statements have frequently missed the mark on climate change. In a December interview with Fox News, Trump said he was "open-minded" on the subject. But his other stances have veered from conspiracy — Trump infamously called global warming a Chinese hoax, in a Twitter post that he later shrugged off as a joke — to skepticism. He told The Washington Post editorial board in March 2016 that he was "not a great believer in man-made climate change."

At least one of his businesses, however, acknowledges the threat posed by rising oceans; the Trump International Golf Links Ireland cited global warming in its 2016 application seeking a permit for a protective sea wall.

Gore has frequently demurred from attacking Trump's climate change views. In fact, he characterized a December meeting with Trump at Trump Tower in Manhattan as constructive. "I had a lengthy and very productive session with the president-elect. It was a sincere search for areas of common ground," Gore said of his 90-minute lunch meeting, as The Washington Post reported at the time. "I had a meeting beforehand with Ivanka Trump. The bulk of the time was with the president-elect, Donald Trump. I found it an extremely interesting conversation, and to be continued, and I'm just going to leave it at that."

When "An Inconvenient Sequel: Truth to Power" debuted at the 2017 Sundance Film Festival in January, Variety commented on the fact that Gore did not mention Trump by name. Gore told the Sundance crowd only that, in the realm of climate change setbacks, "now we have another," as Variety reported. Gore also opposed Trump's decision to appoint Scott Pruitt, a critic of climate change science, to head the Environmental Protection Agency.

Al Gore meets with Donald Trump

Former vice president Al Gore spoke to reporters Dec. 5 about his meeting with President-elect Donald Trump at Trump Tower in New York, calling their conversation "extremely interesting." (The Washington Post)

Former vice president Al Gore spoke to reporters Dec. 5 about his meeting with President-elect Donald Trump at Trump Tower in New York, calling their conversation "extremely interesting." Former vice president Al Gore speaks to reporters Dec. 5 about his meeting with President-elect Donald Trump at Trump Tower in New York. (Photo: AP/The Washington Post)

In mid-March, Gore expressed optimism that Trump would not withdraw the U.S. from the 2015 Paris climate accord, an agreement in which the country would curb greenhouse gas emissions. Trump has wavered between a public declaration to "cancel" the agreement and saying he had an "open mind" on pulling out.

On the same day that Gore tweeted the new trailer, the House Science Committee held a climate change panel thick with political theater, as The Post reported, but scant by way of practical solutions. The day prior, Trump signed an executive order to boost the coal industry that also allows federal officials to disregard a previous requirement to consider climate change during decision-making processes.

Washington Post

https://www.washingtonpost.com/news/fact-checker/wp/2017/03/30/the-white-houses-claim-that-the-carbon-emissions-rule-could-cost-up-to-39-billion-a-year/?utm_term=.947656cfb127

The White House's claim that the carbon emissions rule 'could cost up to $39 billioin a year'

By Michelle Ye Hee Lee 3/30/17, 3:00AM

"The previous administration's Clean Power Plan could cost up to $39 billion a year … according to NERA Economic Consulting."
–White House fact sheet, March 28, 2017

President Trump has started rolling back Obama-era environmental protections, including directing federal regulators to rewrite federal rules to reduce carbon emissions.

The Clean Power Plan, a flagship environmental regulatory rule of the Obama administration, proposes to cut carbon emissions from existing power plants 30 percent below 2005 levels by 2030. It has been placed on hold while under litigation.

Proponents of the rule say it will improve public health and the United States would set an example for other countries to curb carbon emissions. Opponents say the plan will have minimal impact on the environment while driving up costs for consumers. The Fact Checker obviously takes no position on the rule.

A fact sheet about the March 28 executive order on Obama-era climate protections estimated the cost of the Clean Power Plan at up to $39 billion. How accurate is this estimate? Who exactly is NERA Economic Consulting? And why isn't the White House using estimates by the Energy Information Administration (EIA) or the Environmental Protection Agency?

The Facts

Studies on the cost impact of the rule are built on different sets of assumptions, making it hard to make apples-to-apples comparisons. These studies compare how the energy industry and consumers would be affected in the absence of the new carbon emissions rule.

States have wide latitude in complying with the federal rule. Costs can vary depending on state, regional or local policymakers' decisions. Emissions and power plants can cross state boundaries, so states can coordinate with each other to lower costs.

There are assumptions made about the types of actions states will take after the rule takes effect, and what role renewables and natural gas energy will play. That means there are a lot of unknowns in cost estimates. That's an important caveat.

The NERA Economic Consulting's November 2015 study that the White House cites is commissioned by the American Coalition for Clean Coal Electricity, which opposes the Clean Power Plan. The Fact Checker always warns readers to be skeptical of industry-funded research. The $39 billion is the high end of the $29 billion-to-$39 billion range of potential costs on the U.S. fossil-energy sector, under one method of compliance in the emissions rule.

Critics of the study say there are key assumptions that inflate costs.

It makes conservative baseline calculations about the impact of renewable energy policies, said David G. Victor, director of the Laboratory on International Law and Regulation at University of California-San Diego. Those policies would reduce the amount of emissions even before any costs of the Clean Power Plan are incurred. NERA Economic Consulting said that the cost of renewables do not actually have a major effect on its estimates of the rule's costs.

The study relies on outdated cost figures for renewable energy and energy efficiency, according to the National Resources Defense Council, which is critical of this study. Its modeling is based on figures published by the EIA in its 2015 report, which "severely underestimates renewable growth and overestimates costs of new renewable generation," according to the environmental group, which supports the Clean Power Plan.

The study also makes different assumptions about allocations of allowance costs for the electricity companies. This may have led to higher electricity price increases compared to the assumptions in other studies, including one by the EIA. However, EIA's study is not an apples-to-apples comparison to the one by NERA Economic Consulting.

Clean energy advocates say the study ignores long-term benefits of energy efficiency programs, and that the rule could even lead to people saving money. The EPA and EIA fall somewhere in between those advocates and the study by NERA Economic Consulting; those agencies estimate that electricity prices would rise slightly at first but fall later, according to E&E News.

The EPA estimates that by 2030, the benefits of the rule ($34 billion to $54 billion) will outweigh the costs of complying with new regulations ($8 billion).

The White House did not respond to our request for comment.

The Pinocchio Test

The White House used a statistic by an industry-backed study to claim that the Clean Power Plan could cost "up to $39 billion a year." While this wording indicates that it's the highest end of the spectrum of costs, it creates a misleading impression that this is a definitive cost.

In reality, there are too many unknowns to cite a statistic like this with no context. The study the White House cites is based on a series of assumptions that are not comparable to ones made by the EIA, a credible government agency of career statisticians and researchers crunching data. We know the new White House isn't a fan of government statistics produced under the previous administration, but eventually, the administration won't be able to just rely on industry estimates and claims.

Huffington Post

http://www.huffingtonpost.com/entry/heartland-institute-climate-pack_us_58db4c63e4b05463706323d4

Climate Change-Deniers 'Spam' Thousands Of Teachers With Anti Global Warming Packages

By Nick Visser 3/30/17, 7:15AM

One of America's most prominent climate-denying groups, galvanized by the Trump administration listening to their claims, has set it sights on a new target: teachers.

The Heartland Institute, a conservative think tank that's become one of the loudest voices when it comes to climate denial, has sent more than 25,000 science teachers across the country a package of material it hopes they'll use in the classroom, according to a report from PBS Frontline.

Alongside a note from Lennie Jarratt, the group's project manager for transforming education, the package contains a book called *Why Scientists Disagree About Global Warming* and a 10-minute video about using their guidance.

"I'm writing to ask you to consider the possibility that the science in fact is not 'settled,'" Jarratt says in the memo. "If that's the case, then students would be better served by letting

them know a vibrant debate is taking place among scientists on how big the human impact on climate is, and whether or not we should be worried about it."

However, there's near universal consensus among climate researchers that the planet is warming — rapidly — and human-induced greenhouse gas emissions are the primary cause. Earth experienced its hottest year on record in 2016, and officials have warned we're running out of time to address the threat of climate change.

Jim Lakely, the Heartland Institute's director of communications, confirmed thousands of copies of the group's book have been sent out, and more are yet to come.

"The number put out by PBS Frontline might be low before it's all done. We'll see," he said in an email. "We're mailing out the material because the science is not 'settled' when it comes to what are the causes and consequences of climate change."

The packages have already drawn swift rebuke.

"It's not science, but it's dressed up to look like science," Ann Reid, the executive director of the National Center for Science Education told Frontline. "It's clearly intended to confuse teachers."

The National Council for Special Education published survey findings this month that 75 percent of public science educators devote time to teaching about climate change. But around 30 percent of the 1,500 teachers surveyed cast doubt on the cause, disputing scientific consensus about the phenomenon.

Some teachers expressed their dismay on Twitter at receiving the Heartland Institute packages:

@Matthewrcover: Received this junk in my university mailbox today. Thanks but no thanks #HeartlandInstitute

@sustainteach: After teaching about #climatechange all day, it was kind that the Heartland Institute, an organization funded by petroleum, sent me this.

@SanRaider25: Oh look, the Heartland Institute sent me a care package. And they want my feedback. #science #ActOnClimate

@CityLightsUF: The Heartland Institute is spamming my workplace with b******t.

Heartland has been riding high since the election of President Donald Trump, a who's called climate change a hoax invented by the Chinese. The group hosted its 12th annual conference on climate denial this month. The event drew pro-Trump billionaire Robert Mercer and his daughter Rebekah Mercer, along with Myron Ebell, the man in charge of the Trump campaign's transition at the Environmental Protection Agency.

Lakely said the group has been "meeting a demand" with the packages and that it's been "contacted by many teachers who've asked us for science-based materials that will help them tell their students the truth."

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The Daily Caller

http://dailycaller.com/2017/03/30/trumps-epa-wont-ban-a-pesticide-obama-really-wanted-banished/

Trump's EPA Won't Ban A Pesticide Obama Really Wanted Banished

By Andrew Follett 3/30/17 8:33 AM

President Donald Trump's Environmental Protection Agency (EPA) rejected environmentalists' demands to ban a pesticide crucial to U.S. agriculture.

EPA administrator Scott Pruitt formally rejected a petition to ban the pesticide chlorpyrifos Wednesday evening.

During the Obama administration, heavy environmentalist pressure caused the EPA to consider banning chlorpyrifos over concerns that it contaminates drinking water and food. However, the EPA's own analysis found that "there do not appear to be risks from exposure to chlorpyrifos in food." The agency's own website says chlorpyrifos is safe for humans in "standard" amounts.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a press statement. "By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results."

Chlorpyrifos has been used on citrus fruits, apples, broccoli and various other crops since 1965. U.S. farms use about 6 million pounds of chlorpyrifos each year. If nothing had changed legally, the EPA would no longer have allowed incredibly small trace amounts of chlorpyrifos in food, effectively banning the pesticide in the U.S.

Industry groups strongly opposed the EPA's attempts to ban the pesticide.

"Dow AgroSciences supports U.S. Environmental Protection Agency's (EPA) decision to deny the petition to revoke U.S. food tolerances and cancel the registration of chlorpyrifos," the company said in a statement. "Dow AgroSciences remains confident that authorized uses of chlorpyrifos products offer wide margins of protection for human health and safety. This is the right decision for farmers who, in about 100 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops."

Environmentalists pushed heavily for a ban, as did major media outlets — The New York Times, for example, ran an ominous opinion piece titled "Protect Our Children's Brains."

The Natural Resources Defense Council and Pesticide Action Network North America, filed a federal lawsuit seeking a national ban on chlorpyrifos over theoretical risks of drinking water contamination and alleged contamination of food by the pesticide. But, the EPA admits that it hasn't completed its assessment of the pesticide's effects on drinking water and that "certain science issues" regarding chlorpyrifos are "unresolved."

The environmental groups also claim that the pesticide interferes with the brain development of fetuses, infants and children. This claim goes against the American Academy of Pediatrics, which states, "the risks of pesticides in the diet are remote, long-term, and theoretical, and there is no cause for immediate concern by parents." Green objections are largely based on a Columbia study that a toxicologist at Harvard University previously told the The Daily Caller News Foundation was "not even accurate."

"This is a welcome decision grounded in evidence and science," Sheryl Kunickis, pesticides director at the U.S. Department of Agriculture (USDA), said in a press statement. "It means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation and the world. This frees American farmers from significant trade disruptions that could have been caused by an unnecessary, unilateral revocation of chlorpyrifos tolerances in the United States."

It is one of the first time environmental groups were unable to convince the EPA to ban a substance through a process of "legal collusion" called "sue and settle." The EPA has

frequently been sued by environmental groups for failing to meet regulatory deadlines, then the agency agreed to settle the dispute with these groups out of court. Settlements are written behind closed doors with no input from affected parties, but still having the full force of law. This effectively allowing the EPA to write its own rules with only environmental groups having input.

Between 2009 and 2012, the EPA chose not to defend itself in over 60 lawsuits from special interest groups, resulting in settlement agreements and more than 100 new EPA regulations.

New York Times

https://www.nytimes.com/2017/03/29/us/politics/epa-insecticide-chlorpyrifos.html

E.P.A. Chief, Rejecting Agency's Science, Chooses Not to Ban Insecticide

By Eric Lipton 3/29/17

WASHINGTON — Scott Pruitt, the head of the Environmental Protection Agency, moved late on Wednesday to reject the scientific conclusion of the agency's own chemical safety experts who under the Obama administration recommended that one of the nation's most widely used insecticides be permanently banned at farms nationwide because of the harm it potentially causes children and farm workers.

The ruling by Mr. Pruitt, in one of his first formal actions as the nation's top environmental official, rejected a petition filed a decade ago by two environmental groups that had asked that the agency ban all uses of chlorpyrifos. The chemical was banned in 2000 for use in most household settings, but still today is used at about 40,000 farms on about 50 different types of crops, ranging from almonds to apples.

Late last year, and based in part on research conducted at Columbia University, E.P.A. scientists concluded that exposure to the chemical that has been in use since 1965 was potentially causing significant health consequences. They included learning and memory declines, particularly among farm workers and young children who may be exposed through drinking water and other sources.

But Dow Chemical, which makes the product, along with farm groups that use it, had argued that the science demonstrating that chlorpyrifos caused such harm is inconclusive — especially when properly used to kill crop-spoiling insects.

An E.P.A. scientific review panel made up of academic experts last July also had raised questions about some of the conclusions the chemical safety staff had reached. That led the staff to revise the way it had justified its findings of harm, although the agency employees as of late last year still concluded that the chemical should be banned.

Mr. Pruitt, in an announcement issued Wednesday night, said the agency needed to study the science more.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Mr. Pruitt said in his

statement. "By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather than predetermined results."

The United States Department of Agriculture, which works close with the nation's farmers, supported Mr. Pruitt's action.

"It means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation," Sheryl Kunickis, director of the U.S.D.A. Office of Pest Management Policy, said in a statement Wednesday.

Dow Agrosciences, the division that sells the product, also praised the ruling, calling it in a statement "the right decision for farmers who, in about 100 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops."

But Jim Jones, who ran the chemical safety unit at the E.P.A. for five years, and spent more than 20 years working there until he left the agency in January when President Trump took office, said he was disappointed by Mr. Pruitt's action.

"They are ignoring the science that is pretty solid," Mr. Jones said, adding that he believed the ruling would put farm workers and exposed children at unnecessary risk.

The ruling is, in some ways, more consequential than the higher profile move by Mr. Trump on Tuesday to order the start of rolling back Obama administration rules related to coal-burning power plants and climate change.

In rejecting the pesticide ban, Mr. Pruitt took what is known as a "final agency action" on the question of the safety and use of chlorpyrifos, suggesting that the matter would not likely be revisited until 2022, the next time the E.P.A. is formally required to re-evaluate the safety of the pesticide.

Mr. Pruitt's move was immediately condemned by environmental groups, which said it showed that the Trump administration cared more about catering to the demands of major corporate players, like Dow Chemical, than the health and safety of families nationwide.

"We have a law that requires the E.P.A. to ban pesticides that it cannot determine are safe, and the E.P.A. has repeatedly said this pesticide is not safe," said Patti Goldman, managing attorney at Earthjustice, a San Francisco-based environmental group that serves as the legal team for the Natural Resources Defense Council and the Pesticide Action Network of North America, which filed the petition in 2007 to ban the product.

The agency had been under court order to issue a ruling on the petition by Friday. The environmental groups intend to return to the Ninth Circuit Court of Appeals in San Francisco to ask judges to order the agency to "take action to protect children from this pesticide" Ms. Goldman said on Wednesday.

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2017/03/29/trump-epa-declines-to-ban-pesticide-that-obama-had-proposed-outlawing/?utm_term=.f43b3a7e2977

Trump EPA declines to ban pesticide that Obama had proposed outlawing

By Brady Dennis 3/29/17, 5:20PM

The new head of the Environmental Protection Agency refused Wednesday to ban a commonly used pesticide that the Obama administration had sought to outlaw based on mounting concerns about its risks to human health.

The chemical compound chlorpyrifos, also known as Lorsban, has been used by farmers for more than a half-century to kill pests on crops including broccoli, strawberries and citrus. The EPA banned its spraying indoors to combat household bugs more than a decade ago. But only in recent years did the agency seek to ban its use in agriculture, after mounting scientific evidence that prenatal exposure can pose risks to fetal brain and nervous system development.

Under President Barack Obama, the EPA proposed in 2015 to revoke all uses of chlorpyrifos on food — a move taken in response to a petition filed by the Natural Resources Defense Council and Pesticide Action Network North America. A federal judge had given the EPA until Friday to decide whether to finalize its ban of the pesticide.

On Wednesday, EPA Administrator Scott Pruitt decided the answer would be no.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a statement. "By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making — rather than predetermined results."

His statement argued that the "public record lays out serious scientific concerns and substantive process gaps in the proposal."

Sheryl Kunickis, director of the Office of Pest Management Policy at the Department of Agriculture, agreed with the decision.

"It means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation and the world," she said in a statement. "This frees American farmers from significant trade disruptions that could have been caused by an unnecessary, unilateral revocation of chlorpyrifos tolerances in the United States."

The chemical industry also pushed hard against a chlorpyrifos ban. Dow AgroSciences, which manufactures the pesticide, said late last year that the Obama administration's assessment of its safety "lacks scientific rigor." The company said it "remains confident that authorized uses of chlorpyrifos products, as directed, offer wide margins of protection for human health and safety."

But dozens of scientific researchers, doctors and public health professionals had joined the environmental groups in urging the EPA to prohibit all use of chlorpyrifos.

"With each year of delay in canceling food tolerances and agricultural and other uses of chlorpyrifos, more children are unnecessarily at elevated risk for problems in learning, social skills, motor function, and other developmental domains," a group of supporters wrote in a letter to the agency early this year. "We strongly urge EPA to finalize its assessment and cancel all remaining uses of chlorpyrifos as expeditiously as possible."

Environmental activists were incensed Wednesday, saying that Pruitt had ignored substantial evidence of potential harms.

"The chance to prevent brain damage in children was a low bar for most of Scott Pruitt's predecessors, but it apparently just wasn't persuasive enough for an administrator who isn't sure if banning lead from gasoline was a good idea," Environmental Working Group president Ken Cook said in a statement. "Instead, in one of his first major decisions as head of the EPA, like a toddler running toward his parents, Pruitt leaped into the warm and waiting arms of the pesticide industry."

InsideEPA

https://insideepa.com/daily-news/pruitt-woos-conservatives-ghg-risk-finding-offers-no-firm-promise

Pruitt Woos Conservatives On GHG Risk Finding But Offers No Firm Promise

By Doug Obey 3/29/17

EPA Administrator Scott Pruitt is offering assurances to his most conservative critics that he is committed to scuttling numerous Obama-era climate policies -- while leaving the door open to efforts to repeal the agency's landmark greenhouse gas endangerment finding -- after a conservative columnist called for his resignation because of a lack of action so far on the finding.

In a March 28 interview with *Breitbart* -- the hard-line conservative news outlet formerly run by White House chief strategist Steve Bannon -- Pruitt said he will eventually respond to petitions that have been filed seeking to roll back the GHG endangerment finding, the legal basis for EPA's climate rules and an effective requirement of the Supreme Court's ruling in *Massachusetts v. EPA*.

"I think that if there are petitions for reconsideration for the [endangerment finding], we'll have to address those at some point," Pruitt said in the interview. "Our objective, and our role, is to do what the law requires."

He does not mention that there are currently as many as three petitions pending at the agency to reconsider the landmark risk finding.

Pruitt's comments underscore the political and legal awkwardness of President Donald Trump's executive order to review or scrap numerous climate policies, such as EPA's Clean Power Plan, but not the endangerment finding.

Many of the administration's most conservative supporters are concerned that the order does not go far enough in calling for officials to reconsider the endangerment finding, fearing it

will undercut administration efforts to rescind climate rules.

Many observers have long asserted that the Clean Air Act still obligates the agency to act on GHGs even in the absence of the regulations Trump is seeking to roll back, meaning that the conservatives' hope of scrapping the GHG risk finding might be legally infeasible.

One of those critics, *Breitbart* columnist James Delingpole in a March 27 column argued that Pruitt should resign if he cannot follow through with efforts to scrap the finding.

He cited reports that Pruitt resisted including a reference to the endangerment finding in the executive order and suggested that he may have done so because he wants to appear more moderate as he is interested in running for the Senate seat expected to be vacated by Sen. James Inhofe (R-OK).

Awkward Line

Pruitt in the interview with *Breitbart* emphasizes themes likely to appeal to a conservative audience amid an ongoing Senate confirmation battle over Trump's Supreme Court pick, defending "EPA originalism," defined as adhering to Congress' original authorities.

Pruitt also touts plans to rein in alleged agency overreach. "We're going to roll it back, those things that were unlawful, we're going to roll back those things that were an overreach, we're going to roll back the steps taken by the previous administration."

Pruitt has walked an awkward public line on the GHG finding even while repeatedly criticizing specific Obama climate change programs, suggesting during his Senate confirmation process that getting rid of the finding is not a priority.

At the time, Pruitt did not rule out any EPA action on the issue but called the finding the "law of the land," appearing to offer a political shield to lawmakers that they would not be branded climate skeptics simply for voting for him.

But since his confirmation, Pruitt declared in a *CNBC* interview that carbon dioxide is not a "primary contributor" to global warming, sparking widespread blowback from scientists and others and appearing to refute the EPA finding.

His *Breitbart* interview also wades into non-climate topics, including a stated goal of refocusing the agency away from climate change and on to 1,300 Superfund sites that have lingered on the agency's National Priorities List.

That goal, however, appears to clash with preliminary Trump administration budget requests that would impose a massive 31 percent cut on the agency and appears to include significant cuts to both Superfund and brownfields programs, based upon analysis by former EPA employees.

Sources outside the agency say they believe that Pruitt has successfully fought off some proposed brownfields-related cuts, but that budget threats in those areas remain. -- *Doug Obey* (dobey@iwpnews.com)

Agri-Pulse

https://www.agri-pulse.com/articles/9113-epa-rejects-petition-to-revoke-chlorpyrifos-tolerances

EPA rejects petition to revoke chlorpyrifos tolerances

By Steve Davies 3/29/17, 10:03PM

WASHINGTON, March 29, 2017 - The Environmental Protection Agency has decided to continue allowing the use of the insecticide chlorpyrifos, stating that the science surrounding human health effects is too uncertain to justify its own proposed ban on food tolerances.

The agency announced the decision late today, two days ahead of a court-ordered deadline. The Natural Resources Defense Council and Pesticide Action Network had petitioned the agency 10 years ago to ban Dow AgroSciences' organophosphate insecticide (tradename: Lorsban), which is used to control a variety of crop pests, including corn rootworm and soybean aphid.

The groups have argued that food residue levels are high enough to pose a risk to the developing brain and nervous system.

But EPA said in its news release that its October 2015 proposal to revoke food tolerances "largely relied on certain epidemiological study outcomes, whose application is novel and uncertain, to reach its conclusions."

An EPA Scientific Advisory Panel convened to examine the epidemiological data used by the agency questioned the agency's use of a Columbia University study that relied on umbilical cord blood data from pregnant women to extrapolate exposure levels for children. The SAP released its report last summer.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," EPA Administrator Scott Pruitt said. "By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results."

The National Association of State Departments of Agriculture (NASDA) was quick to praise the decision.

"By maintaining the Maximum Residue Limits for chlorpyrifos, agricultural use of this important tool will continue, significant disruption of international trade is avoided, and harmonization efforts may continue globally," NASDA President and Louisiana Commissioner of Agriculture & Forestry Mike Strain said. "As state regulatory partners with EPA, we look forward to continuing to work with the agency to ensure current and future tools are reviewed in a rigorous, scientifically sound, and transparent manner."

USDA also was pleased. Sheryl Kunickis, director of the department's Office of Pest Management Policy, said the decision "means that this important pest management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation and the world."

Kunickis also said it was "great news for consumers, who will continue to have access to a full range of both domestic and imported fruits and vegetables," and added, "We thank our colleagues at EPA for their hard work."

Chlorpyrifos is used on more than 50 crops, including soybeans, alfalfa, wheat, citrus, fruit, tree nuts, vegetables, sugarbeets and cotton, CropLife America said in a brief filed in the 9th Circuit Court of Appeals. It is "the leading insecticide active ingredient to control a number of different insects in crops, including soybean aphids in soybeans, aphids and armyworm in alfalfa, European asparagus aphid and cutworm in asparagus, corn rootworm and lesser cornstalk borer in peanuts, and leafrollers and San Jose scale in apples."

"The public record lays out serious scientific concerns and substantive process gaps in the proposal," EPA said in its release. "Reliable data, overwhelming in both quantity and quality, contradicts the reliance on – and misapplication of – studies to establish the end points and conclusions used to rationalize the proposal."

In its order denying the petition, EPA said it has "concluded that, despite several years of

study, the science addressing neurodevelopmental effects remains unresolved and that further evaluation of the science during the remaining time for completion of registration review is warranted to achieve greater certainty as to whether the potential exists for adverse neurodevelopmental effects to occur from current human exposures to chlorpyrifos."

The agency "has therefore concluded that it will not complete the human health portion of the registration review or any associated tolerance revocation of chlorpyrifos without first attempting to come to a clearer scientific resolution on those issues. As noted, Congress has provided that EPA must complete registration review by October 1, 2022."

In the days leading up to the decision, environmental groups had mobilized to muster support for the proposed tolerance revocation. The Environmental Working Group collected signatures for an online petition, saying that "research has linked chlorpyrifos to nervous system damage, behavioral problems and lower IQ in young children whose mothers were exposed during pregnancy. In adults, low-level exposure to chlorpyrifos can cause nausea, headaches and dizziness. Farmworkers and others who are severely exposed have suffered vomiting, muscle cramps, diarrhea, blurred vision, loss of consciousness and even paralysis."

DTN

https://www.dtnpf.com/agriculture/web/ag/news/crops/article/2017/03/30/epa-disagrees-previous-tact

EPA: No Chlorpyrifos Ban

By Todd Neeley 3/29/17, 7:38PM

OMAHA (DTN) -- The pesticide ingredient chlorpyrifos will not be banned by the U.S. Environmental Protection Agency, according to a news release issued by the agency late Wednesday afternoon.

EPA Administrator Scott Pruitt announced the agency denied a petition filed by environmental groups to ban the pesticide outright, saying in a statement that farmers need chlorpyrifos.

"We need to provide regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment," Pruitt said in a statement.

"By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making rather than predetermined results."

Chlorpyrifos is the main ingredient in Lorsban, Dow AgroSciences' organophosphate insecticide targeting pests such as soybean aphids, spider mites and corn rootworm.

Since being sworn in as EPA administrator, Pruitt has begun the process of turning back

regulations created during the previous administration.

Dow AgroSciences said in a statement to DTN Wednesday evening that the company was pleased with EPA's decision.

"Dow AgroSciences supports U.S. Environmental Protection Agency's decision to deny the petition to revoke U.S. food tolerances and cancel the registration of chlorpyrifos," the company said in its statement.

"Dow AgroSciences remains confident that authorized uses of chlorpyrifos products offer wide margins of protection for human health and safety. This is the right decision for farmers who, in about 100 countries, rely on the effectiveness of chlorpyrifos to protect more than 50 crops. We will continue to cooperate with EPA under the established regulatory process in its scientific review of this vital crop protection solution."

Sheryl Kunickis, director of the Office of Pest Management Policy at USDA, said in a statement it was important to keep chlorpyrifos available to farmers.

"This is a welcome decision grounded in evidence and science," she said. "It means that this important pest-management tool will remain available to growers, helping to ensure an abundant and affordable food supply for this nation and the world.

"This frees American farmers from significant trade disruptions that could have been caused by an unnecessary, unilateral revocation of chlorpyrifos tolerances in the United States. It is also great news for consumers, who will continue to have access to a full range of both domestic and imported fruits and vegetables."

In a news release Wednesday evening, EPA said "the public record lays out serious scientific concerns and substantive process gaps in the proposal. Reliable data, overwhelming in both quantity and quality, contradicts the reliance on, and misapplication of, studies to establish the end points and conclusions used to rationalize the proposal."

The EPA said USDA "disagrees with the methodology" used by the previous administration.

"Similarly, the National Association of State Departments of Agriculture also objected to EPA's methodology," EPA said in its release.

"The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) also expressed concerns with regard to EPA's previous reliance on certain data the agency had used to support its proposal to ban the pesticide."

The road to the proposed chlorpyrifos ban began when the Pesticide Action Network North America and Natural Resources Defense Council filed a petition in 2007 to force EPA to take action on chlorpyrifos, based on concerns over drinking water. In June 2015, the U.S. Ninth Circuit Court of Appeals issued a ruling pressuring EPA to make a decision by Oct. 31, 2015, on whether or not it would establish food tolerances for the insecticide. EPA stated it did not have the data needed to do so and instead would pursue a ban.

Last summer, EPA asked the court for a six-month extension to take final action.

In a final order issued Aug. 12, 2016, the court ruled against the request by EPA and ordered the agency to take action by March 31, 2017.

Most recently, the EPA revised its human health risk assessment for chlorpyrifos in November 2016 to state that residues on food crops and in water are at unsafe levels.

There was concern that doing away with chlorpyrifos could at some point complicate the battle against insects, especially when growers are being encouraged to rotate chemistries to guard against insect resistance.

Corn accounts for chlorpyrifos' largest agriculture market as far as total pounds used because, overall, there are more corn acres than soybean acres, according to EPA. However, in recent years, use of chlorpyrifos has expanded in soybeans and has been on the decline in corn.

According to Dow AgroSciences' website, chlorpyrifos use in soybeans expanded from about 200,000 acres in 2004 to about 8 million acres in 2008. Dow estimated chlorpyrifos was applied to about 11% of soybean acres planted in 2008.

Washington Examiner

http://www.washingtonexaminer.com/pruitt-epa-returning-to-using-sound-science-on-pesticide-ban-reversal/article/2618829

Pruitt: EPA 'returning to using sound science' on pesticide ban reversal

By John Siciliano 3/29/17 8:05 PM

Environmental Protection Agency chief Scott Pruitt slammed the brakes on an environmentalists' push to ban a commonly used pesticide, saying the decision marks the return of sound science to the agency.

"By reversing the previous Administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results," Pruitt said on Wednesday in announcing that he is terminating the proceedings to ban the pesticide chlorpyrifos.

He said the decision maintains "regulatory certainty to the thousands of American farms that rely on chlorpyrifos, while still protecting human health and the environment."

The large environmental activist group Natural Resources Defense Council had petitioned that the chemical be banned from use in the United States. The Obama EPA took up the petition in October 2015 and was in the middle of finalizing a ban on the substance when the Trump administration took the reins of government in January.

Pruitt pointed out that the public record showed "serious scientific concerns and substantive process gaps in the proposal," making the previous administration proposed action unreliable.

EPA said in a release that the U.S. Agriculture Department disagreed with the scientific methodology the Obama administration used in making its determination.

"Similarly, the National Association of State Departments of Agriculture also objected to EPA's methodology," it said. "The Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel also expressed concerns with regard to EPA's previous reliance on certain data the Agency had used to support its proposal to ban the pesticide."

The Agriculture Department welcomed EPA's decision, saying it will prevent major disruptions for farmers trying to find a replacement for the pesticide.

"It is also great news for consumers, who will continue to have access to a full range of both domestic and imported fruits and vegetables. We thank our colleagues at EPA for their hard work," said Sheryl Kunicki, the agency's director of pesticide control.

AP

http://hosted.ap.org/dynamic/stories/U/US_ENVIRONMENTALISTS_CLIMATE_PLAN?SITE=AP&SECT

Environmental groups file lawsuit over Trump climate actions

By Tammy Webber and Matthew Brown 3/29/17 6:20 PM

CHICAGO (AP) -- Environmental groups that vowed to fight President Donald Trump's efforts to roll back his predecessor's plans to curb global warming made good on their promise Wednesday, teaming up with an American Indian tribe to ask a federal court to block an order that lifts restrictions on coal sales from federal lands.

The Interior Department last year placed a moratorium on new coal leases on federal lands to review the climate change impacts of burning the fuel and whether taxpayers were getting a fair return. But Trump on Tuesday signed a sweeping executive order that included lifting the moratorium, and also initiated a review of former President Barack Obama's signature plan to restrict greenhouse gas emissions from coal-fired power plants.

Environmentalists say lifting the moratorium will worsen climate change and allow coal to be sold for unfairly low prices.

"It's really just a hail Mary to a dying industry," said Jenny Harbine, an Earthjustice attorney who filed the lawsuit in U.S. District Court in Montana on behalf of the Northern Cheyenne Tribe, Sierra Club, and Center for Biological Diversity.

The White House did not immediately respond to an email seeking comment on the lawsuit. The Department of Justice declined comment.

Environmental groups have been preparing for months to fight the Trump administration's environmental rollbacks, including by hiring more lawyers and raising money. Trump, who has called global warming a "hoax" invented by the Chinese, said during his campaign that he would kill Obama's climate plans and bring back coal jobs.

Advocates said they also will work to mobilize public opposition to the executive order, saying they expect a backlash from Americans who worry about climate change.

"This is not what most people elected Trump to do," said David Goldston, director of government affairs at the Natural Resources Defense Council. "Poll after poll shows that the public supports climate action."

A poll released in September found 71 percent of Americans want the U.S. government to do something about global warming, including 6 percent who think the government should act even though they are not sure that climate change is happening. That poll, which also found most Americans are willing to pay a little more each month to fight global warming, was conducted by The Associated Press-NORC Center for Public Affairs Research and the Energy Policy Institute at the University of Chicago.

While Republicans have blamed Obama-era environmental regulations for the loss of coal jobs, federal data show that U.S. mines have been losing jobs for decades because of automation and competition from natural gas; solar panels and wind turbines now can produce emissions-free electricity cheaper than burning coal.

But many people in coal country are counting on the jobs that Trump has promised, and industry advocates praised his orders.

"These executive actions are a welcome departure from the previous administration's strategy of making energy more expensive through costly, job-killing regulations that choked our economy," said U.S. Chamber of Commerce President Thomas J. Donohue.

Trump's order also will initiate a review of efforts to reduce methane emissions in oil and natural gas production, and will rescind Obama-era actions that addressed climate change and national security and efforts to prepare the country for the impacts of climate change. The administration still is deciding whether to withdraw from the Paris Agreement on climate change.

And on Wednesday, the administration asked a federal appeals court to postpone a ruling on lawsuits over the Clean Power Plan, the Obama initiative to limit carbon from power plants, saying it could be changed or rescinded.

A coalition of 16 states and the District of Columbia said they will oppose any effort to

withdraw the plan or seek dismissal of a pending legal case, while environmental advocates said they're also ready to step in to defend environmental laws if the U.S. government does not.

"The president doesn't get to simply rewrite safeguards; they have to ... prove the changes are in line with the law and science," said the NRDC's Goldston. "I think that's going to be a high hurdle for them."

Environmentalists say Trump's actions will put the U.S. at a competitive disadvantage to other countries that are embracing clean energy, which they say could create thousands of new jobs.

Even so, they believe efforts to revive coal ultimately will fail because many states and industries already have been switching to renewable energy or natural gas.

"Those decisions are being made at the state level and plant by plant," said Earthjustice President Trip Van Noppen, who said his group is "continuing to work aggressively to retire dirty coal plants."

"Coal is not coming back," Van Noppen added. "While the president is taking big splashy action, he is actually doomed to fail."

AP

http://hosted.ap.org/dynamic/stories/U/US_CONGRESS_EPA?SITE=AP&SECTION=HOME&TEMPLATE

House approves bill to force public release of EPA science

3/29/17 5:56 PM

WASHINGTON (AP) -- House Republicans are taking aim at the Environmental Protection Agency, targeting the way officials use science to develop new regulations.

A bill approved Wednesday by the GOP-controlled House would require that data used to support new regulations to protect human health and the environment be released to the public.

Rep. Lamar Smith, R-Texas, said "the days of 'trust me' science are over," adding that the House bill would restore confidence in the EPA's decision-making process.

Connecticut Rep. Elizabeth Esty and other Democrats said the bill would cripple EPA's ability to conduct scientific research based on confidential medical information and risks privacy violations by exposing sensitive patient data.

The bill was approved 228-194 and now goes to the Senate.

Reuters

http://www.reuters.com/article/us-usa-pesticide-epa-idUSKBN17039F

U.S. EPA denies petition to ban pesticide chlorpyrifos

3/29/17 7:55 PM

The U.S. Environmental Protection Agency said on Wednesday it had denied a petition by environmental groups that sought to ban the agricultural pesticide chlorpyrifos.

In October 2015, the Obama administration proposed to revoke all food residue tolerances for chlorpyrifos, an active ingredient in insecticides. The proposal was issued in response to a petition from the Natural Resources Defense Council and Pesticide Action Network North America, the EPA said in a statement.

"By reversing the previous administration's steps to ban one of the most widely used pesticides in the world, we are returning to using sound science in decision-making – rather than predetermined results," EPA Administrator Scott Pruitt said in the statement.

Reuters

http://www.reuters.com/article/us-volkswagen-emissions-idUSKBN17102C

Volkswagen says U.S. approves sale of modified diesel vehicles

By Daivd Shepardson 3/30/17 9:59 PM

Volkswagen AG (VOWG_p.DE) said the U.S. Environmental Protection Agency has approved its request to sell up to 67,000 diesel vehicles from the 2015 model year, including about 12,000 currently in dealer inventory with approved emissions modifications.

The vehicles in inventory were held when the company issued a stop sale in September 2015, Volkswagen spokeswoman Jeannine Ginivan told Reuters.

Ginivan said the company was finalizing details of the program.

The EPA approved a fix for about 70,000 Volkswagen diesel vehicles in January.

An EPA spokeswoman declined to comment on the matter.

Bloomberg

https://www.bloomberg.com/view/articles/2017-03-29/trump-s-coal-revival-will-make-it-harder-to-breathe

Trump's Coal Revival Will Make It Harder to Breathe

By David Shipley 3/29/17 5:06 PM

President Donald Trump's effort to prop up the coal industry will not, over the long run, succeed -- the energy market will make sure of that. But it could impede America's progress toward stabilizing the climate, and it will certainly harm public health.

Burning coal, after all, releases a lot more bad stuff into the air than just carbon dioxide. There's also mercury, which makes its way into rivers and streams, where it's eaten by fish and, in turn, by people -- poisoning brains and nervous systems, especially those of developing fetuses.

And then there's sulfur dioxide, nitrogen oxide, any number of other volatile compounds, and particles of metal and chemicals. Aloft, this mess combines with sunlight to form smog. More than 7,500 Americans die from breathing it every year.

The Clean Power Plan -- an initiative of former President Barack Obama, and the principal target of Trump's efforts -- would have prevented as many as 3,600 premature deaths a year by 2030, according to the Environmental Protection Agency. That plan is now tied up in litigation, but Trump proposes to do away with it altogether.

It's not clear that he can, because it will require making a reasonable argument for why the EPA should suddenly stop regulating greenhouse gases. But it's a bad idea even to try.

Coal power is already dying of other causes, including the Sierra Club's Beyond Coal campaign effort (funded by Michael R. Bloomberg) to close coal-fired energy plants, and coal's failure lately to stay competitive with natural gas and even wind and solar power.

With his executive order doing away with most of the Obama administration's efforts to discourage coal use, Trump may be able to slow coal's slide. But he can't return it to its former status as America's main power source. And, because of increasing automation, he won't save coal-mining jobs. Even judged by the claims Trump makes for it, this policy is poised to accomplish nothing at all.

The Hill

http://thehill.com/policy/energy-environment/326380-house-votes-to-restrict-epas-use-of-science

House votes to restrict EPA's use of science

By Timothy Cama 3/29/17 4:57 PM

The House voted Wednesday to restrict the kind of scientific studies and data that the Environmental Protection Agency (EPA) can use to justify new regulations.

The Honest and Open New EPA Science Treatment Act, or HONEST Act, passed 228-194. It would prohibit the EPA from writing any regulation that uses science that is not publicly available.

It's the latest push by House Republicans to clamp down on what they say has turned into an out-of-control administrative state that enforces expensive, unworkable regulations that are not scientifically sound.

Even with President Trump in the White House, the GOP feels it's important to make lasting changes to how regulations are written and justified.

The House earlier this year passed a pair of bills to rein in regulations across government — the Regulations from the Executive in Need of Scrutiny (REINS) Act and the Regulatory Accountability Act.

But Democrats, environmentalists and health advocates say the HONEST Act is intended to handcuff the EPA. They say it would irresponsibly leave the EPA unable to write important regulatory protections, since the agency might not have the ability to release some parts of the scientific data underpinning them.

The HONEST Act is similar to the Secret Science Act, which leaders in the House Science Committee sponsored in previous congresses and got passed.

"This legislation ensures that sound science is the basis for EPA decisions and regulatory actions," Rep. Lamar Smith (R-Texas), chairman of the Science Committee, said on the House floor Wednesday.

"The days of 'trust-me' science are over. In our modern information age, federal regulations should be based only on data that is available for every American to see and that can be subjected to independent review," he said. "That's called the scientific method."

Smith framed his bill as an extension of the highly-regarded quest to use the best science to inform regulators.

He said the EPA — particularly under former President Obama — often hid the data it used in regulations, preventing the public and peer scrutiny that helps ensure the science is the best available.

"We all care about the environment," he said. "But if policies are not based on legitimate science, regulations will result in economic hardship with little or no environmental benefit. In other words, the regulations would be all pain and no gain."

The bill would also require that any scientific studies be replicable, and allow anyone who signs a confidentiality agreement to view redacted personal or trade information in data.

Rep. Eddie Bernice Johnson (D-Texas), the Science Committee's top Democrat, slammed her GOP colleagues for what she called a "misguided" effort to stop sensible EPA regulations.

She denied that the EPA is overly secretive with its science, saying it often doesn't own the information and has no right to release it.

"The secret science bills the Republicans tried to enact over the previous two congresses were insidious bills, designed from the outset to prevent EPA from using the best available science to meet its obligations under the law. Those bills were constructed to hamstring the ability of EPA to do about anything to protect the American public," she said.

The latest iteration adds the redactions and the ability to view redacted information, which Johnson called "a Pandora's Box, which could have untold consequences for the EPA, industry and the general public," including restricting the EPA's ability to gather information.

"In reality, this bill isn't about science. It's about undermining public health and the environment," she said.

Republicans on the Science Committee passed the bill earlier this month, alongside another bill to reform the EPA's Science Advisory Committee. The advisory panel would be required to have geographic diversity and representatives from certain stakeholder groups.

The full House is likely to consider that bill soon.

Politico

https://www.politicopro.com/agriculture/whiteboard/2017/03/epa-denies-chlorpyrifos-petition-085664

EPA denies chlorpyrifos petition, scrapping Obama era finding of health risks

By Jenny Hopkinson 3/29/17, 7:51PM

The EPA has denied a petition from environmentalists calling for a ban on the pesticide chlorpyrifos, bucking the Obama administration's findings that the chemical poses health risks.

In a notice posted to its website Wednesday evening, the agency says it will address the questions raised in the petition during a broader review of the pesticide that it expects to finish in 2022. That review will consider the concerns about potential neurodevelopmental toxicity in children that were raised in the 2007 petition from the Pesticide Action Network North America and the Natural Resources Defense Council.

The decision is a reversal from a November 2016 proposal from the EPA under then-President Barack Obama that called for revoking the pesticide's permitted tolerances — the amount of residue that can be found on crops and produce — which would have effectively banned chlorpyrifos in agricultural uses. The agency was under a court-ordered deadline to respond to the petition by Friday.

"Despite several years of study, the science addressing neurodevelopmental effects remains unresolved," EPA wrote in the notice. It said that "further evaluation of the science during the remaining time for completion of registration review is warranted to achieve greater certainty as to whether the potential exists for adverse neurodevelopmental effects to occur from current human exposures to chlorpyrifos."

The decision added that "EPA has therefore concluded that it will not complete the human health portion of the registration review or any associated tolerance revocation of chlorpyrifos without first attempting to come to a clearer scientific resolution on those issues."

InsideEPA

https://insideepa.com/daily-news/epa-weighs-tapping-superfund-site-accounts-offset-fy18-budget-cuts

EPA Weighs Tapping Superfund 'Site' Accounts To Offset FY18 Budget Cuts

By Suzanne Yohannan 3/29/17

EPA officials are considering offsetting massive proposed cuts to the Superfund cleanup program in fiscal year 2018 by borrowing from "special accounts" -- site-specific accounts funded from settlements with responsible parties -- to offset any cuts and apply the money more broadly to pay for cleanup needs in the coming year.

EPA's acting waste chief Barry Breen told a Senate panel hearing March 29 on cleaning up Cold War legacy sites that the agency is "looking for ways we can go deeper into using accounts that the Treasury Department has allowed us to set up."

"These are interest-bearing savings accounts with the U.S. Treasury where we have put money that defendants have given us we've deposited there and we can draw on," he said in response to a question from Sen. Mike Rounds (R-SD).

Breen said the agency is eyeing the approach because Congress has labeled Superfund "no-year money," noting that the agency does not have to spend all that it is given in a particular year. "So we can look to prior years' funding in order to fund needs in future years," he said.

He added that EPA will also "be looking for efficiencies administratively, efficiencies in the way we move funding among accounts, and more, in order to get as much progress for the public as we can."

While it is not clear how the agency plans to repay any funds it taps, advancing the approach may be crucial for Administrator Scott Pruitt, who has pledged to speed cleanups and delist sites from the National Priorities List. But he may be stymied by White House plans to slash $330 million, or 30 percent, from Superfund cleanup spending in FY18.

The administration has also proposed to cut $30 million from the $500 million the program was slated to receive in FY17, saying the additional cuts "will ease the program into further reductions in FY 2018."

Given such cuts, the special accounts could prove to be a significant source of funds. A 2009 report from EPA's Office of Inspector General (OIG) said at that time there was a surplus of $1.1 billion spread over 819 special accounts.

Sources now say the surpluses may be even larger. For instance one account alone, stemming from the Obama administration's settlement with Anadarko Petroleum Corp., includes more than $1 billion intended to address abandoned uranium mining sites on tribal land.

Special Accounts

But the plan to tap funds from the special accounts is drawing mixed reviews from attorneys and some private parties.

One attorney questions whether taking money dedicated to a particular site through a special account and using it for other sites would be a breach of contract, or in effect violate specific settlement terms. Special accounts “have been able to insulate these sites from the vagaries of the budgetary process,” the attorney says.

The attorney says the goal is to raid special accounts and move that money over to the Superfund trust fund, which would allow for the administration to request lower budgets from congressional appropriators. “It takes away money dedicated for sites that would not be available for the [Superfund] trust fund,” the source says.

An industry source downplayed such concerns but nevertheless acknowledged potential “risk” that the money would not be easily repaid if the budget were not to stabilize in future years.

“It’s an accounting matter, not a welching on the deal matter,” the source says. The money

could be used now, with the understanding that it will not void future obligations by EPA to repay accounts from which it has borrowed money. This source says that obviously this could not be done every year because of the risks of being unable to pay back the accounts.

The industry source concedes EPA's approach assumes that the budget will become more stable over time so the funds can be repaid, but that there is a risk with taking this position because EPA's budget may not be restored. The source says EPA is probably “making a reasonable risk calculation."

Cleanup Appropriations

Superfund special accounts are separate from the appropriations EPA receives for the cleanup program. Funds appropriated by Congress are dedicated to fund-lead site cleanups, removal actions, pre-remedial work and personnel, the attorney says.

Superfund special accounts, by contrast, are often set up in response to court-sanctioned settlement agreements, where settlement monies from potentially responsible parties (PRPs) are placed into a special account, to be drawn from for cleanup at the specific site for which the PRPs were liable, according to sources familiar with the mechanism.

Section 122(b)(3) under the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA) authorizes EPA to retain and use settlement funds to address cleanups specified in the settlement agreement, EPA’s OIG says in the 2009 report on the topic.

It notes that the agency places these funds in interest-bearing, site-specific accounts known as “special accounts."

For instance, these can include situations where smaller contributors at a site cash out and settle with EPA for their share of cleanup costs, according to an industry source. The money is then put into a special account.

The major PRPs at the site then perform 100 percent of the cleanup, and are supposed to be reimbursed from the account for the portion of cleanup for which they were not responsible, although EPA has often been slow to reimburse due to claims of further cleanup requirements at the specific site, the industry source says.

But the accounts and EPA's handling of them has come in for criticism. For example, the OIG has pressed EPA to “reclassify” at least some special account funds -- specifically those the agency held as “reserves” -- to support other priority sites, particularly sites for which human exposure is not under control.

In the 2009 report, the OIG sought improvements to the agency’s handling of special accounts, saying its uncoordinated approach “led to missed opportunities to fund needed Superfund cleanups” and previously had recommended that $59 million of “idle special account funds be reclassified or transferred” to the Superfund trust fund.

'External Audit'

The accounts have also drawn criticisms from top former Trump transition team officials, who are urging the administration to tap the funds.

“EPA should review the Superfund special accounts and probably then commission an external audit,” Myron Ebell, who led the Trump transition team at EPA, told *Inside EPA*. Ebell, who has now returned to the free-market Competitive Enterprise Institute, said he does not know Pruitt’s views on the matter or what EPA is planning.

Ebell had previously told the *Daily Caller*, a conservative news organization, in 2016 that the special accounts are “the very definition of an out-of-control agency, if they can raise their own money and not have to go to Congress to have it appropriated."

The news outlet had labeled the accounts “akin to slush funds,” which may have been the impetus for the Trump beachead team to collect information on the accounts from EPA staff during the transition, informed sources say.

Despite such criticism, the attorney says the site-specific accounts have provided benefits.

In addition to funding cleanups, the special accounts have been used to pay for EPA employees. These employees would likely have to be let go, while cleanup at the special account sites "could slow depending on how much money is made available to the site from the trust [fund] and who is doing the cleanup" -- whether EPA or PRPs.

This source believes that sites where PRPs are responsible for conducting cleanups may not be affected because money from settlements with smaller PRP contributors is being used to reduce the liability of PRPs performing the full cleanup. But this source foresees problems at sites where EPA is performing the work, paid for by PRPs into a settlement special account. If the money is transferred, then EPA will not be able to pay the cleanup contractors, the source says. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

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Huffington Post

http://www.huffingtonpost.com/entry/epa-air-quality-studies_us_58dc3a27e4b08194e3b71ab3

Top Scientists Defense EPA Air Pollution Studies As Politicians Attack Science

By Alexander C Kaufman 3/29/17, 7:39PM

Over a year ago, the Environmental Protection Agency asked the country's top scientific body to pore over six years of studies into how air pollution affects human health. It was a move meant to quell critics who questioned the safety of conducting such research.

The National Academies of Sciences, Engineering, and Medicine finally released its findings on Tuesday, offering a resounding endorsement of the EPA's protocol for conducting tests on human subjects, along with a few suggestions on how to make the tests safer.

The 159-page report makes for humdrum reading, but its timing injects the analysis with a sense of urgency. Lawmakers emboldened by the Trump administration's assault on environmental regulations have moved to change the way science is used to draft policy to open the door to more industry-friendly or ideologically driven research.

Last month, the House Committee on Science, Space and Technology invited a coal lawyer, a chemical industry lobbyist and a libertarian scholar who has accused the EPA of "regulatory terrorism" to testify alongside a lone advocate for science as witnesses before a congressional hearing titled "Making EPA Great Again." On Tuesday, the committee's chairman, Rep. Lamar Smith (R-Texas), convened another hearing, "Climate Science: Assumptions, Policy Implications, and the Scientific Method," will "examine the scientific method and process as it relates to climate change" and "focus on the underlying science that helps inform policy decisions," according to a hearing charter. To do that, Smith fleshed out his four-person panel with a trio of prominent, like-minded climate change

skeptics and attacked the credibility of Science magazine.

The report released Tuesday assesses the treatment of more than 800 participants across 21 studies the EPA conducted from 2009 to 2016, and how that research influenced policies to protect the public from toxic air pollution. But the takeaway can be applied to the agency's overall use of science in rule-making, according to Robert Hiatt, chair of the epidemiology and biostatistics department at the University of California, San Francisco.

"The studies the EPA conducts are valuable," Hiatt, the report's lead author, told The Huffington Post by phone Monday. "They contribute knowledge to making important decisions for the public."

He said the timing of the report, commissioned roughly 18 months ago by the Obama administration's EPA, was a fluke.

"It is totally bizarre and coincidental that, at the same time, this issue has come to the floor on the national political scene," Hiatt said. "The fact that they're colliding this week is totally by chance. But the relevant information is still important."

Hiatt and his team of 14 other researchers dug deep into eight experiments in particular, called controlled human inhalation exposure, or CHIE, studies that typically subject participants to hours of a pollutant to see how it affects lung function. The results of those studies are used to set EPA standards for air quality under the Clean Air Act.

The agency's scientific methods, however, weren't without flaw. In one study, Hiatt found that a 58-year-old woman suffered an irregular heartbeat during a test. Doctors immediately hospitalized her, and she was discharged two hours later when she was determined to be fine. It's not clear whether her heart rate hastened by exposure during the test or by chance due to chronic disease. Hiatt recommended EPA researchers increase the amount of information given to participants before tests. But the incident marked the only one of 845 cases that went awry, and Hiatt said researchers handled it appropriately.

"The safety of the individual was never in question," Hiatt said. "It now becomes a political decision by the country's deciders about what to do with this information."

Washington Examiner

http://www.washingtonexaminer.com/trump-asks-federal-judges-to-delay-ruling-on-obama-era-climate-plan/article/2618799

Trump asks federal judges to delay ruling on Obama-era climate plan

By John Siciliano 3/29/17 3:44 PM

The Justice Department is prodding federal appeals court judges to delay their ruling on the Obama-era Clean Power Plan until the Environmental Protection Agency has time to tweak the plan itself using President Trump's latest executive order as a guide.

A delay would help the Trump administration ensure that the judges don't rule favorably on any aspect of the rule that they are likely to gut in the coming months.

"EPA should be afforded the opportunity to fully review the Clean Power Plan and respond to the president's direction in a manner that is consistent with the terms of the executive order, the Clean Air Act, and the agency's inherent authority to reconsider past decisions," federal attorneys argued in a brief sent to the court Wednesday.

Deferral of further judicial proceedings is thus warranted," the brief said.

Trump's energy independence order signed on Tuesday directed EPA chief Scott Pruitt to begin a review of the Obama administration's climate plan toward the eventual goal of rescinding it. Meanwhile, a 10-judge panel of the D.C. Circuit Court of Appeals is reviewing a lawsuit by 28 states and hundreds of industry groups opposing the regulation.

The court is expected to issue a decision in the coming months, and it is unclear if it will grant the Justice Department's request.

The brief explained to the court that the EPA is closely evaluating the Clean Power Plan, in which "the prior positions taken by the agency with respect to the rule do not necessarily reflect its ultimate conclusions."

The prior positions of the EPA represented in the court were that of the Obama administration, which was defending the regulation from states' claims that the EPA overstepped the limits of it authority in drafting the regulation, and that the climate plan was unconstitutional.

Pruitt, who was formerly the attorney general of Oklahoma, was a lead voice in opposing the Clean Power Plan in the litigation before the D.C. Circuit court ahead of becoming the administrator of the EPA.

The Clean Power Plan was halted by the Supreme Court over a year ago, which states suing the agency took as vindication that the high court agreed with its claims, though the court did not lay out the reasons fro staying the plan.

The plan requires that states reduce their greenhouse gas emissions a third by 2030 to help curb the effects of global warming.

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TO: ADMINISTRATOR AND SENIOR EXECUTIVES
DATE: FRIDAY, MARCH 10, 2017 7:00 AM EST

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• Source: Trump To Order Repeal Of Clean Power Plan Without Replacement. (EECLMTWR)

Administrator

Pruitt: CO2 Not A "Primary Contributor" To Global Warming.

Coverage of EPA Administrator Pruitt's comments in an interview with CNBC's Squawk Box during which he claimed that carbon dioxide is not the "primary contributor" to global warming is

almost universally negative, saying his statement is at odds with scientific consensus on the matter as well as the EPA's own website.

The AP (3/9, Daly) reports that Pruitt "said measuring the effect of human activity on the climate is 'very challenging' and that 'there's tremendous disagreement about the degree of impact' of carbon dioxide and other greenhouse gases." Pruitt added, "So, no, I would not agree that (carbon dioxide) is a primary contributor to the global warming that we see." The AP says that view "is at odds with mainstream climate science, including NASA and the National Oceanic and Atmospheric Administration," and adds that environmental groups "seized on Pruitt's comments as evidence he is unfit for the office he holds."

In a brief report, ABC World News Tonight (3/9, story 7, 0:35, Muir) described Pruitt as "challenging the widely-held belief that carbon dioxide from human activity is a major cause of climate change" and "disputing the consensus of most of the scientists around the world, and the EPA itself under several Administrations now." On the CBS Evening News (3/9, story 6, 1:55, Pelley), Chip Reid said Pruitt "dropped a verbal bomb on the environmental community," while Reuters (3/9, Chiacu, Volcovici) calls Pruitt "a climate change denier" and reports that scientists criticized his statement, "saying it ignores a large body of evidence collected over decades that shows fossil fuel burning as the main factor in climate change." Meanwhile, the Daily Caller (3/9, Bastasch) argues that Pruitt's comments "are no different than what he's been saying for a long time," and criticizes the media for "com[ing] out guns blazing when Pruitt says the same thing he's been on record saying for months."

The Washington Post (3/9, Mooney) calls the comment one of Pruitt's "strongest statements yet rejecting the science of human-caused climate change." The Post adds that the statements "fly in the face of the international scientific consensus on climate change" and contradict the EPA's "Climate Change" website, which states: "Research indicates that natural causes do not explain most observed warming, especially warming since the mid-20th Century. Rather, it is extremely likely that human activities have been the dominant cause of that warming." The New York Times (3/9, DAVENPORT) quotes a climate researcher at the Energy Department's Lawrence Livermore National Laboratory, who said flatly, "Mr. Pruitt is wrong." Noting that the "scientific community has studied this issue for decades," he concluded "a large human influence on global climate is the best explanation for the warming we've measured and monitored."

Bloomberg BNA (3/9, Childers) reports on concerns that the EPA under Scott Pruitt's leadership could target the agency's endangerment finding, which in 2009 determined carbon dioxide and five other greenhouse gases "pose a risk to the environment and human health." The New York Post (3/9, Moore) reports that Pruitt "suggested Congress should take another look at" the finding. Said Pruitt, "I think all those things need to be addressed as we go forward but not least of which is the response by the legislative branch with respect to the issue."

In an analysis for the Washington Post (3/9, Bump), Philip Bump calls the exchange during the CNBC interview "truly remarkable," and argues that there is a "real risk" that "a Pruitt-led EPA will bury accurate information about the link between carbon dioxide emissions and warming for the benefit of the American fossil fuel industry." A Washington Post (3/9) editorial says Pruitt's statement does not represent "'skepticism,' a term that implies reasonable doubt in the face of inadequate information." Rather, it is "denial of a scientific consensus built on ample evidence that gets stronger every year, and it is denial of Mr. Pruitt's essential responsibilities as the nation's chief environmental watchdog."

On CNN's Situation Room (3/9), Sen. Bernie Sanders called Pruitt's comments "pathetic. The debate is over." Sanders added that the fact that the head of the EPA "denies that in the face of overwhelming scientific evidence is not only sad but a threat to the well-being of this country and

the world."

EPA Chief Questions Agency's Authority To Regulate Carbon Emissions.

The Wall Street Journal (3/9, Matthews, Ailworth) reports that Pruitt also questioned the EPA's legal right to regulate carbon dioxide emissions. In a speech to energy executives at CERAweek on Thursday, Pruitt said utilities should be able to choose which type of fuels they want to burn without a dictate from regulators mandating traditional versus renewable use. He also stressed the need for more cooperation between the EPA and state, and derided previous top-down efforts to regulate air and water emissions.

Pruitt also told attendants at CERAWeek conference, "the future ain't what it used to be at the EPA," according to E&E Publishing. (3/9) He told energy leaders that they should be optimistic about the Trump administration's environmental policy.

Pruitt Calls Paris Climate Agreement A "Bad Deal."

The Daily Caller (3/9, Bastasch) reports that EPA Administrator also told CNBC's "Squawk Box" that he thought the Paris Climate agreement was a "bad deal" that "should have been treated as a treaty, should have gone through senate confirmation." Pruitt's comments are the "first time a top Trump administration official has weighed in on the agreement since January."

Pruitt Met With NAM On Tuesday.

Politico Morning Energy (3/8) reports EPA Administrator Scott Pruitt "met with the National Association of Manufacturers Tuesday" in a private meeting. EPA tweeted "that Pruitt 'shared about his vision of a smarter EPA' while NAM CEO Jay Timmons said both were working to 'rethink red tape.'"

Additional Reading.

- **EPA Administrator Scott Pruitt Is Dangerous.** GQ. (3/9, Willis)

Air

Additional Reading.

- **Bill Could Make It Even Harder To Oppose TCEQ Air Quality Permits.** Houston Press. (3/9)

Brownfields/Superfund/Other Cleanups

Additional Reading.

- **Fire At Former Lawrence Aviation, A Superfund Site, Authorities Say.** Newsday (NY). (3/10)

Budget

Daily Caller Scorns Outcry Over EPA Budgets.

An article in the Daily Caller (3/9, Treacher) sarcastically laments deep cuts in the EPA budget that are expected to close down the agency's environmental justice program.

Additional Reading.

- **Concerns About Reported Plans To Eliminate 97% Of Great Lakes Restoration Initiative's Annual Budget.** Cleveland Plain Dealer. (3/9)

Other News

House Science Committee Approves Bills Addressing EPA Scientific Research.

The Hill (3/9, Cama, Henry) reports the House Science Committee on Thursday approved three pieces of legislation "overhauling the way the EPA conducts its scientific research." A bill authored by Rep. Lamar Smith "would require the EPA to release the scientific data it uses to write regulation." The bill "is designed to cut down on what he and Republicans call 'secret science' coming from the agency." The "Morning Energy" blog of Politico (3/9) previewed the committee hearing yesterday morning.

Head Of EPA's Office Of Environmental Justice Resigns.

The Washington Post (3/9, Dennis) reports that Mustafa Ali, the head of the EPA's office of environmental justice has resigned "as the White House is seeking to close his office." In a letter to Pruitt, Ali wrote "that a recent budget proposal to end its work would harm the people who most rely on the EPA."

E&E Publishing (3/9) reports that in an interview, Ali said he couldn't "in good conscience be supportive" of the Trump administration's agenda. CNN International (3/9, Marsh) also provides coverage.

EPA Inspector General To Investigate Travel Program.

E&E Publishing (3/9, Bogardus) reports EPA's inspector general announced Thursday that it will investigate possible "illegal, improper or erroneous purchases and payments" within EPA regarding its travel card program.

Additional Reading.

- **Now Under Attack, EPA's Work On Climate Change Has Been Going On For Decades.** The Conversation (US). (3/9)
- **Why EPA's Science And Tech Office No Longer Has 'Science' In Its Mission.** Christian Science Monitor. (3/9)

Rules/Regulations/Policy

California Gears Up For Potential Legal Battle Over Auto Emission Standards.

McClatchy (3/9, Cockerham) reports that the while it initially seemed imminent that the EPA could act to revoke California's waiver to impose its own stricter auto emission standards, "now there is some uncertainty, in part because the action would set up a legal showdown with California that President Donald Trump could lose." California has "signaled its willingness to fight Trump in court" by hiring former Attorney General Eric Holder. Sen. Dianne Feinstein and ten other senators have

also written to Secretary Pruitt urging him to keep auto pollution standards in place.

Administration Officials Consider Weakening Climate Pledge But Keeping Paris Accord.

Politico (3/9, Restuccia) reports multiple sources say that Administration officials are considering "weakening former President Barack Obama's pledge to reduce" greenhouse gas emission while remaining within the Paris climate change agreement, but "the plan has not yet won the buy-in of key Trump aides" or the President. Politico says that maintaining part of the pact "would be a victory for" the president's daughter Ivanka and his son-in-law Jared Kushner, as well as other advisers concerned "that withdrawing altogether would greatly damage U.S. diplomatic relations with other countries." However, Politico adds that "weakening Obama's pledge would probably frustrate many American allies," and Trump chief strategist Steve Bannon is believed to favor withdrawing from the agreement.

Shultz, Baker Dispute WSJournal Editorial On Carbon Tax. In a letter to the editor of the Wall Street Journal (3/9), George Shultz and James Baker – each a former secretary of the Treasury and of the State Department – blast the paper's Feb. 25 editorial "The Carbon Tax Chimera," calling its concerns speculative or wrong. The authors note that a levy on carbon whose revenue would be returned to Americans through a dividend is supported by some of the industries that would pay the tax. Shultz and Baker deny the tax would be regressive, and deny it taxes fossil fuels, adding that if they can be made to emit less carbon, fossil fuel use could rise. The authors also dispute that Canada and Mexico would take exception to the tax, as both have some forms of it.

Pruitt Says Announcement On Fuel Economy Standards Coming "Very Soon."

Reuters (3/9) reports that on Thursday, EPA Administrator Scott Pruitt said he would reduce regulatory uncertainty on fuel efficiency standards by releasing an announcement "very soon." The New York Daily News (3/9, Campbell) reports that regarding the fuel economy standards, he commented, "What was concerning to me and, I think, concerning to the president is how that process occurred, what comments were taken through the end of last year and within 10 days they celebrated their decision to say those standards should be adopted or continued and increased. So that's something we're going to address very, very soon."

Source: Trump To Order Repeal Of Clean Power Plan Without Replacement.

ClimateWire (3/9, Lehmann) reports that a source says the White House intends to repeal the EPA's Clean Power Plan without providing a replacement. An executive order expected next week will instruct DOJ to effectively withdraw its legal defense of the CPP, freezing the case and preventing a federal court from issuing an opinion this spring. Some legal experts say the case could continue if defense of the rule is taken up by states or other groups. The source said the there is no guarantee the circuit court will not issue an opinion. ClimateWire reports withdrawing the CPP "raises questions about whether EPA would fail to satisfy legal requirements to regulate carbon dioxide and other climate pollutants" as the Supreme Court has obliged the EPA to do.

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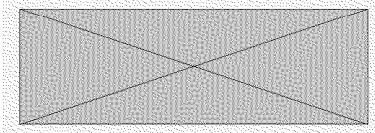

REGULATORY AND GOVERNMENT AFFAIRS

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April 3, 2017

Energy and Environment Alert

Trump Order Ushers in the Future of US Energy and Environmental Regulation

By Robert J. McKeehan and Nathaniel B. Custer

On March 28, President Trump launched a sweeping overhaul of US energy and environmental policy. The presidential Executive Order on Promoting Energy Independence and Economic Growth (Order) repeals several policies of the Obama Administration and represents a dramatic shift in direction for the development of energy and other infrastructure projects in the United States. Some immediate changes include:

- **National Environmental Policy Act (NEPA) Reviews. The Order repeals the Council on Environmental Quality (CEQ) final guidance requiring**

consideration of climate change as part of agency NEPA reviews.

- Mitigation. The Order repeals the presidential memorandum on mitigating the impacts of development and encouraging private investment in conservation to achieve a "net benefit" or at a minimum a "no-net loss" for natural resources.

- Social Cost of Carbon. The Order replaces the estimate of the potential economic harm from climate change—known as the "Social Cost of Carbon"—developed by the Interagency Working Group on Social Cost of Greenhouse Gases with an older estimate developed in 2003, and also disbands the working group.

- Coal Leasing. The Order directs the Secretary of the Interior to repeal the moratorium on the sale of new coal leases on federal land and to reevaluate the need for a programmatic environmental analysis of the federal coal leasing program.

The Order potentially implicates other federal policies by directing agencies to review regulations and "suspend, revise, or rescind" those determined to "unduly burden" domestic energy development. Most notably, the Order directs the Environmental Protection Agency (EPA) Administrator to review and, if appropriate, take lawful action to amend or revoke the Clean Power Plan and the New Source Performance Standards for greenhouse gas emissions from power plants, as well as any associated guidance or other agency actions.

The Order also requires agencies to reevaluate key regulations related to oil and gas development, including the Department of the Interior's recently finalized rules for hydraulic fracturing on federal land, methane emissions from oil and gas facilities, oil and gas development in national parks and wildlife refuges, and oil and gas royalties. The Order directs Interior to review the final rules and any guidance issued pursuant to them, and, if appropriate, to suspend, revise or rescind them. Any effort to amend or repeal the formal regulations themselves will require the same notice-and-comment process by which the rules were promulgated in the first place.

The Order also launches a 180-day government-wide review of "all agency actions" that "potentially burden" domestic energy development, with a focus on oil, natural gas, coal and nuclear energy. Agencies have 45 days to prepare a plan for completing this review, followed by a draft final report detailing specific agency actions within 120 days and a final report within 180 days of the Order. The director of the Office of Management and Budget will coordinate this effort in consultation with the assistant to the president for economic policy.

Because so much of the practical effect of the Order is to launch this series of reviews and reconsiderations of Obama-era policies, the specific changes to existing policy will play out over the coming months (and years). While there will be opportunities for public participation of interested stakeholders where notice-and-comment rulemaking is required to alter an existing regulation, the agencies will have broad discretion to alter their less formal policies without significant stakeholder input.

For now, the Trump Administration is focused on the previous administration's efforts to increase the regulation of domestic energy production and generation. The Order does not address other elements of the Obama Administration's environmental initiatives, including the presidential directive for sustainable planning, which requires federal agencies to reduce their own greenhouse gas emissions and to engage in sustainable acquisition and procurement by favoring energy- and water-efficient products and "environmentally preferred" products that meet certain criteria established by EPA. Agencies and government contractors have already taken significant steps to implement the directive.

Interior Initiates Regulatory Overhaul

Interior Secretary Zinke has already taken steps to implement Tuesday's Order. The day after the Order was released, he signed Secretary Order 3348, which cancels the ongoing review, initiated by the previous administration, to consider reforms to the federal coal leasing program and lifts the moratorium on new federal coal leasing that had been put in place during that review. In place of the Obama-era program review, Secretary Zinke reestablished the dormant Royalty Policy Committee. The Royalty Policy Committee will "advise on current and emerging issues related to the determination of fair market value, and the collection of revenue from energy and mineral resources," and will include both federal officials and nonfederal members, including representatives of states, Indian tribes, industry, academia and public interest groups.

Secretary Zinke also signed Secretary Order 3349 to begin the process that the Executive Order requires to reverse actions taken by Interior under the previous administration's Executive and Secretarial Orders. Order 3349 calls on Interior bureaus and offices to identify "Department Actions" (i.e., "regulations, orders, guidance documents, policies, instructions, notices, implementing actions, and . . . similar actions") related to climate change and mitigation policies. Order 3349 also calls on the Bureau of Land Management to rescind the "Hydraulic Fracturing on Federal and Indian Lands" rule and identifies other final rules, which the relevant bureau or office will review to determine whether they are "fully consistent with the policy set forth" in the Executive Order. Among those other rules is the "Waste Prevention, Production Subject to Royalties, and Resource Conservation" rule, which regulates methane emissions on federal oil and gas leases.

Legal Road Ahead

The Executive Order and corresponding agency actions are likely to be the beginning of a new series of legal processes, not the end. First, as the Order itself acknowledges, efforts to revise or repeal finally promulgated rules will require notice-and-comment rulemaking and, in many cases, environmental, economic and other related analyses.

Second, these new rulemaking actions are nearly certain to prompt new litigation. Moreover, as long as EPA's 2009 finding that carbon dioxide and other greenhouse gases threaten public health—the so-called endangerment finding—still stands, the agency is obligated to regulate carbon dioxide in some fashion.

Finally, Tuesday's Order and the subsequent agency action it will prompt occur in the context of already pending litigation challenging the same Obama-era reforms that the Order seeks to roll back. For example, the Clean Power Plan has already been challenged and, after having been stayed by the US Supreme Court, is back at the US Court of Appeals for the DC Circuit, where the court is currently assessing its validity. Just hours after the Order was released, the Department of Justice (DOJ) requested that the DC Circuit halt the lawsuits over the Clean Power Plan, noting that President Trump had directed EPA to take "all steps necessary" to review the rule and potentially initiate a new rulemaking. DOJ told the court that prior positions taken by EPA with respect to the rule "do not necessarily reflect its ultimate conclusion." EPA also filed a motion to suspend legal proceedings related to challenges to the New Source Rule. As with the Clean Power Plan, EPA argued that federal agencies have "inherent authority" to reconsider and revise past decisions.

Defenders of the Clean Power Plan, including some state attorneys general, are likely to file a response—perhaps as early as this week—urging the court to let the case move forward and issue an opinion based on arguments presented to the court *en banc* in September 2016. The DC Circuit now must decide whether to rule, pause or take some other action. There is no deadline by which the court must act, and any decision by the DC Circuit is likely to generate a petition for review by the Supreme Court.

Conclusion

President Trump's Executive Order combines immediate repeal of certain Obama-era actions; the identification of specific regulations that should be reconsidered; and a general call for Interior, EPA and other relevant agencies to scrub their books for any other actions taken under the previous administration that burden domestic energy development, particularly fossil fuel production and use. Among other things, the Order lifts the moratorium on federal coal leasing, rolls back requirements that the NEPA process account for climate change, and likely will result in the repeal of the rules regulating hydraulic fracturing and methane emissions on federal oil and gas leases. The Order is likely to result in numerous legal challenges as agencies take actions to repeal or roll back Obama-era rules while shifting the ground on which ongoing challenges to the existing regulations will be fought. While much of the impact of the Order is still to play out over the coming months and years, President Trump has taken a decisive step regarding regulation of energy development in the country.

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To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
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Sent: Thur 10/12/2017 2:55:21 PM
Subject: Hugh Hewitt Show: EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking, 10/12/17

Hugh Hewitt Show

http://www.hughhewitt.com/epa-administrator-scott-pruitt-clean-power-plan-rulemaking/

EPA Administrator Scott Pruitt On Clean Power Plan Rulemaking

By Hugh Hewitt, 10/11/17

EPA Administrator Scot Pruitt joined me this morning to discuss the new rulemaking on the Obama Era "Clean Power Plan," which was enjoined by federal courts:

Transcript:

HH: In the swirl of breaking news, including the awful smoke hanging over Northern California, where the destruction of 2,000 homes, the death of 17 Americans, the missing of 240 other Americans, is obscured a lot of important news. One of those, the announcement yesterday by U.S. Environmental Protection Agency Administrator Scott Pruitt, of the rulemaking to reverse the Clean Power Plan rule, which was originally promulgated on October 23rd, 2015 by the EPA. Administrator Pruitt joins me now. I always say when he does come on he is my friend. My son works at EPA. That's called self-regulation, so people don't suggest that I am keeping other than transparent disclosure from you. Administrator Pruitt, welcome back.

SP: Good morning, Hugh.

HH: I have to begin with the Congressional Research Service assessment of the Clean Power Plan. It says on October 23rd, 2015, the U.S. Environmental Protection Agency published its final Clean Power Plan rule to regulate emissions of greenhouse gasses, specifically carbon dioxide. The Clean Power Plan would require states to submit plans to achieve state levels specific CO2 goals, reflecting emission performance rate, and that the Clean Power Plan has been one of the more singularly controversial environmental regulations ever promulgated by the EPA. The Congressional Research Service goes on to discuss how it has been enjoined by the courts. So what did you do yesterday against that backdrop?

SP: Well, breathtaking in light of what the previous administration did, Hugh, because for the first time ever, the EPA took its authority and said we can dictate, really coerce states and utility companies across the country and tell them how to generate electricity. You know, when you look at how we generate electricity in this country, we obviously use multiple energy sources. Fuel diversity is very key and important to keep costs down, but also stability and resiliency of the grid. That's coal, oil, natural gas, hydro, renewables, an entire mix of energy sources. What the last administration did is no, we're going to dictate to you. We're going to use our authority to say fossil fuels should not be used. We're going to shift to renewables across the country, and really is was a power grab over the power grid, Hugh. And so it had never been done in history. And so it's so unprecedented, that the U.S. Supreme Court, you mentioned October of 2015. In February of 2016, the U.S. Supreme Court entered an historic and unprecedented stay against the rule going into effect, because it was so breathtaking as to how the previous administration interpreted their authority. So what we did yesterday is begin the process, propose a rule to withdraw that very deficient rule, and provide clarity to folks across the country with respect to how we generate electricity, and really, respect mostly, Hugh, the statutory framework that Congress has given us to regulate.

HH: Now Administrator Pruitt, when you roll back something called the Clean Power Plan, or put it in peril of roll back, which is what you did as you began the rulemaking to change the Clean Power Plan, immediately, the kneejerk reaction is oh, my gosh, Team Trump is rolling back clean air in America. That is not what happened yesterday. Would you explain to people what the rulemaking process is, and why in fact this rule has never gone into effect in the first place?

SP: Yeah, there's been no effect whatsoever. No impact other than negative impact and uncertainty across the country. It's never truly been used or even complied with. So the supposed benefits of the rule, we have not obviously received those. And there was a great amount of questions, Hugh, to begin with about the cost benefit analysis about the cost, extraordinary cost this was going to cost consumers, utility consumers across the country. In some states, it was going to increase utility rates upwards of 40-50%. So this was a tremendously costly rule with very little benefit to the environment. In fact, right now, Hugh, this is what's lost in this whole discussion. We're at pre-1994 levels with respect to our CO2 footprint. And we have done that largely through technology and innovation, not government mandate. You know, when we talk about the results we have as a country, we ought to celebrate the progresses we've made. Those pollutants, as an example, that we regulate under the Ambient Air Quality Program have been reduced over 65% since 1980. So we are making tremendous progress, because industry and states and citizens and innovation and technology are truly being utilized today than ever before. And we need to always keep in mind as we generate electricity, it serves the manufacturing base, the jobs base in this country, an economy that needs robust growth. And we need reliability in the power grid to achieve that. And the past administration just simply ignored all aspects of the

statute, all aspects of how we've done regulation historically, and then tried to impose their will upon this country in a way that was entirely deficient under the law. So the U.S. Supreme Court intervened, stopped that from happening, and what we are now doing is responding from a regulatory perspective to hopefully, as we go forward, do it the right way, as opposed to the overreach that we saw in the past administration.

HH: Because I know you know from your time as Attorney General of Oklahoma that the Agency is obliged to take seriously the comments it receives during this process, you will not prejudge the conclusion. But I am curious about the debate in the media and what you think of it. There are some critics who say you ought to have proposed a new rule, and you ought to have withdrawn the so-called Endangerment Finding at the same time. I replied to them, no, there's an A-B-C order here. The first thing is you have to revoke a deficient rule if indeed it is found by the notice and comment process to be deficient. Is that in fact correct, Scott Pruitt? Is that the order you're following?

SP: Yes. Yes, yes, Hugh, I think that as we look at the sequencing of this, I mean, you've got a rule that's been stayed by the U.S. Supreme Court. But you don't know how long that stay is going to, you know, remain in place. And as such, those folks that are regulated across the country, they don't want the uncertainty, because what did the rule require? It actually required them to displace certain investments that they had made in coal generation facilities. I mean, let's make no mistake about it. The last administration declared a war on coal. Now that is amazing in and of itself. You know, for a president and for an EPA, a federal body, a federal agency to declare war on any sector of our economy is absolutely astounding. But they did it unapologetically, and they made tremendous progress in reducing and contracting mining jobs in this country. That's wrong. A regulatory body ought never engage in a war on any sector of our economy. We're to make things regular for those across the country so that they know what's expected of them as they invest money, allocate resources, and try to achieve good outcomes on behalf of the environment. So this is a situation, Hugh, that we had to provide clarity first and foremost about the deficiency of this particular rule. But we have also been doing our work to prepare for, you know, what does the statute allow us to do? I actually introduced something in June of 2015, Hugh, called the Oklahoma Plan. I went through a Section 111 of the Clean Air Act and evaluated what authority existed to regulate CO2 under Section 111, which deals with power generation facilities. I was at the National Press Club that very month about five or so days before the Clean Power Plan came out, and was debating someone from the NRDC, and shared this entire plan with them. There are steps that we can take with respect to this issue. But they are modest. They are humble, because frankly, when you look at the Clean Air Act and the tools that Congress has given us, it is, they're not robust in dealing with this issue. And the reason that is, is because the Clean Air Act hasn't been amended since 1990. It's been 27 years ago, and the folks that were involved in amending the Clean Air Act in 1990 were very, very clear that they saw the Clean Air Act as focused on regional and local air pollutants, to reduce those air pollutants, and not this global phenomena called GHG, or CO2 reductions. And so we only have the tools that Congress give us, Hugh. You know that. That's 5th grade civics. We

can't reimagine authority.

HH: I also know, I also know the power of the market is much more extraordinary than the power of regulation, and that natural gas is displacing other sources of energy on its own in accord with the market forces driving it, but that interventions by the government in the acceleration in some areas can be counterproductive, in fact. Administrator Pruitt, the regulatory reform agenda overall, I've told people that you're going through it with Waters of the United States, the WOTUS rule. I believe the market is up, because it's pricing regulatory reform into it. Other people think it's because it's pricing the tax cut in. But these rule reforms do have enormous impacts on the GDP of the United States.

SP: Look, I mean, if you ask folks over the last several years what has been the greatest impediment to economic growth, they would tell you regulatory uncertainty. And that's not just in the energy and environmental space. That's in the finance area, that's in health care. It was across the full spectrum of the past administration, because we all know this. The previous administration ruled by executive order. And when you rule by executive order, when you actually legislate in the executive branch, you tell your administrative agencies, executive branch agencies that you govern to say go out and make the law, that that created tremendous uncertainty, because those that are regulated look at a statute passed by Congress, and it says one thing. And then an executive branch agency is passing regulation that says exactly the opposite. So what do you do if you're in the finance, health care, energy area? You don't invest money. You don't put money at risk, because if you put money at risk, that means you may lose it because of the arbitrary type of response of the executive branch agencies. So what we're trying to get back to today, Hugh, is sending a message across the country that we are going to do what the statute requires. And when we do what the statute requires, that provides certainty to those that are regulated, and here's the real important thing. It benefits the environment, because it allows people to then invest and deploy resources to achieve outcomes and not face the prospects of displacement of capital, uncertainty, and litigation. When you think about the WOTUS rule, CPP, these plans we're talking about, every one of them was subject to litigation and a stay of a federal court. And they never went into effect, because the past administration simply made it up. And that's just, that's not our authority to do that, and we're not going to do that.

HH: Scott Pruitt, it is always good to talk to you, Administrator. Press on. I am sure the process will be long and arduous, but legal in the end and upheld by the courts because it's being administered by a former state Attorney General.

End of interview.

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Politico

https://www.politicopro.com/energy/whiteboard/2017/10/epa-draft-questions-greenhouse-gas-authority-considers-state-written-plans-for-coal-plants-094177

EPA draft questions greenhouse gas authority, ponders state rules for coal plants

By Emily Holden, 10/11/17

EPA's proposal to consider a replacement to the Clean Power Plan will question whether the agency has authority to regulate greenhouse gases from power plants, and how it should let states write their own plans to upgrade coal plants, according to excerpts of the draft notice obtained by POLITICO.

The 34-page EPA document is currently under review by the White House and other agencies, and administration officials have said it will be released in a few weeks.

Any replacement EPA might propose is expected to achieve modest greenhouse gas reductions, especially compared to the Obama administration rule, which sought to shrink carbon dioxide levels from the power sector by 32 percent from 2005 levels by 2030.

Some conservatives are lobbying EPA Administrator Scott Pruitt to forego a replacement and instead challenge the legal finding that requires the agency to regulate emissions. The draft may leave that option open.

EPA is still considering "whether it is appropriate to propose a rule," and must "ascertain the scope of legal authority that Congress conferred to EPA," before determining how best to implement a policy, according to the document.

On Tuesday, EPA proposed to withdraw the Obama-era power plant standards, arguing they exceeded the agency's authority by pushing electricity companies away from coal and toward natural gas and renewable power.

In the advanced notice of proposed rulemaking, or ANPR, EPA refers to itself as "a creature of statute," and notes that the Clean Air Act delegates air pollution control to states and local governments.

"States will have the primary role in deciding who gets regulated and the scope of that regulation," the document says. "While the CAA is a source of authority, it is also a source of carefully crafted limitations, which this agency must and will respect."

The agency interprets Section 111 of the Clean Air Act, the part used to write the Clean Power Plan, as requiring EPA to rely on a demonstrated system for curbing greenhouse gas emissions and to consider the costs of achieving those reductions and any "non-air quality" health effects. In Tuesday's draft withdrawal of the Clean Power Plan, EPA discounted many of the health benefits the Obama administration had cited in 2015 from cutting air pollutants other than carbon dioxide.

"Each state then develops a plan with its own legally enforceable emission standards to implement the emission guidelines, with flexibility to accommodate the State's particular needs and circumstances," the draft ANPR explains.

The ANPR asks for feedback on "several technologies and equipment upgrades—as well as good operating and maintenance practices," that coal plants could pursue to reduce emissions. The draft also considers in detail whether making those changes would trigger a "new source review," which would require plants to obtain air pollution permits. It covers ways that coal plant operators could avoid those reviews.

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The New York Times

https://www.nytimes.com/2017/10/10/climate/epa-pruitt-climate-rule.html

E.P.A. Says It Will Write a New Carbon Rule, but No One Can Say When

By: Lisa Friedman, 10/10/17

WASHINGTON — When Scott Pruitt, the administrator of the Environmental Protection Agency, signed a blueprint Tuesday to eliminate a major Obama-era climate change regulation, the text said the agency would at some point consider a new rule to ratchet down greenhouse gas emissions.

But those adept at reading between the lines of dense federal documents say the subtext reads more like: "Don't hold your breath."

Industry leaders and environmental activists predict that when the Trump administration formalizes its plan to repeal the Clean Power Plan, nothing will take its place for possibly years to come. The E.P.A. said it would seek public comment on how to fashion a more modest measure to address pollution from power plants, although the agency has not said when it would do so.

"I suspect this will drag out for years, many years," said Robert Murray, chief executive of Murray Energy Corp. and a vocal opponent of carbon regulations. "They need to take the time to study this and see if they come up with anything to substitute. I hope they come up with nothing."

Mr. Pruitt previewed his plan on Monday at a coal equipment supply company in Hazard, Ky., where he declared, "The war on coal is over." There and in the repeal proposal, Mr. Pruitt accused the Obama administration of favoring renewable energy over coal and violating the

Clean Air Act when it established state-by-state targets for carbon emission reductions.

"The last administration just simply made it up," Mr. Pruitt said. "When you think about the Clean Power Plan, it was not about regulating to make things regular. It was about regulating to pick winners and losers." He said the Obama administration overstepped its authority in order to favor renewable energy over fossil fuels.

"We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate," Mr. Pruitt added in a statement Tuesday. "Any replacement rule will be done carefully, properly, and with humility, by listening to all those affected by the rule."

Under the proposed repeal, the bureaucratic process of unraveling the Clean Power Plan could take months, and that is before any court challenges. Separately, the E.P.A. said it would ask the public for ideas about how to write a different, more tapered regulation. It gave no indication, however, of when it would do so or even whether it actually intended to create such a new rule. Moreover, soliciting public comment — in federal jargon, an "advance notice of proposed rule making" — is usually used by an agency to test ideas far in advance of even putting forward a proposed new regulation.

"I think they're just dragging their feet," said Vicki Arroyo, executive director of the Georgetown Climate Center at Georgetown Law School.

"They've had all this time to figure out what it is they would do if they were in charge, and they've been in charge since January, and they've known since November. So it's literally been a year and they really don't have anything to come up with other than kicking the can down the road?" she said. "They're basically running out the clock."

Business leaders from the Chamber of Commerce and leading utility companies have urged the E.P.A. in recent months to design a replacement for the Clean Power Plan. The groups, all opponents of the Obama-era plan, have argued that some type of regulation must exist to protect the E.P.A. from lawsuits. Even if the Trump administration succeeds in killing the Clean Power Plan, a 2009 agency determination known as the endangerment finding still compels the agency to regulate carbon dioxide and other greenhouse gases.

The E.P.A. administrator, Scott Pruitt, speaking before the Senate in June. Credit Saul Loeb/Agence France-Presse — Getty Images

"When they finalize the repeal, there will certainly be a lawsuit. And separate and apart from that, if they don't move forward with a replacement rule they will also have a lawsuit," said Jeff Holmstead, a lawyer with Bracewell LLP, a firm representing energy companies that sued to overturn the Clean Power Plan.

Mr. Holmstead said challenging the E.P.A. will not be easy because there is no specific deadline for the agency to move forward with a replacement. But, he added, "I think there will be pressure from the business community for the E.P.A. to do something so there is a regulation in place."

"We are concerned legally that not having a replacement regulation in place opens them up to liability," said Ross Eisenberg, vice president of energy policy at the National Association of Manufacturers, which applauded Tuesday's repeal. Mr. Eisenberg said he was not concerned that the agency appears to want some time to consider a replacement. But, he said, companies are eager to see that effort move forward.

Industry isn't all on the same page. Mr. Murray said he didn't believe a replacement was necessary. "Right now, there's no urgency to do anything in my opinion," he said.

Supporters and opponents alike point out that the E.P.A. may not have enough senior officials in place to design a new rule. President Trump only last week nominated a deputy administrator to the agency, and other key appointees are awaiting senate confirmation. Another factor is Mr. Pruitt himself, a vocal denier of the scientific consensus that human-caused greenhouse gas emissions are the main cause of climate change. Policy analysts said they did not believe Mr. Pruitt wanted his name attached to any greenhouse gas regulation, even a weak one.

"It's very clear that this administration has no interest in seriously taking on climate change, be it in the power sector or other sources of emissions," said David Konisky, an associate professor in the School of Public and Environmental Affairs at Indiana University. "Delaying is the policy."

But where some see cynical strategy, Mr. Pruitt's supporters see considered reasoning. David T. Stevenson, policy director at the Center for Energy Competitiveness at the Caesar Rodney Institute in Delaware and a member of Mr. Trump's E.P.A. transition team, said smart policy takes time. Designing and moving forward a replacement for the Clean Power Plan could take as long as two years, he said.

"If you do it right that's how long it takes," he said. "These kinds of rules were put in place for a reason, so you couldn't just willy-nilly regulate the heck out of things."

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BNA

http://esweb.bna.com/eslw/1245/split_display.adp?fedfid=121963289&vname=dennotallissues&fn=121963

Coal Gets Nod Over Renewables in Repeal of Clean Power Plan

By: Jennifer A. Dlouhy and Jim Polson, 10/11/17

The Trump administration began the process Oct. 10 of repealing former President Barack Obama's plan to cut greenhouse gas emissions from power plants, opening a small window for a revival of coal while prolonging uncertainty over the U.S. electricity mix.

The proposal to rescind the Clean Power Plan leaves unanswered major questions about what utilities will have to do over the coming decades to address climate change and cut carbon dioxide generated by burning fossil fuels.

The Obama administration "pushed the bounds of their authority" with the Clean Power Plan that forced states to change their power mix, Environmental Protection Agency Administrator Scott Pruitt said in a news release. "We are committed to righting the wrongs of the Obama administration by cleaning the regulatory slate."

It will take months, if not longer, for President Donald Trump's EPA to formally end the regulation, much less decide on whether—and how—to replace it. And even that action won't decide the issue, as environmental activists and state leaders, including New York Attorney General Eric Schneiderman, have already vowed to challenge the rollback in court.

"It extends a cloud over a whole lot of investment for the next couple of years," said Kit Konolige, a Bloomberg Intelligence analyst. Coming on top of weak growth in demand for electricity, "it's more uncertainty that you really didn't need."

The Oct. 10 notice of proposed rulemaking is the EPA's formal first step toward delivering on Trump's campaign promise to rip up the Clean Power Plan, which served as the cornerstone of Obama's climate change agenda and anchored a U.S. pledge to slash emissions. Trump has already moved to withdraw from the Paris climate accord.

Specific Carbon-Cutting Targets

Obama's Clean Power Plan dictated specific carbon-cutting targets for states based on a complex formula tied to their 2012 power plant emissions—and then gave them broad latitude in deciding how to meet the rule, such as by retiring coal-fired plants, adding renewable power and promoting energy conservation.

The initiative, which was designed to cut U.S. carbon dioxide emissions by 32 percent from 2005 levels by 2030, never actually took effect because the U.S. Supreme Court put it on hold in February 2016.

With its proposed repeal, Trump's EPA is siding with the plan's critics in arguing that the regulation dictated overly broad changes to the U.S. energy system, going beyond the bounds of federal law and flouting traditional practices of setting specific mandates for individual power plants.

The agency is not committing to writing a new regulation governing greenhouse gas emissions from power plants. Instead, it plans to formally ask the public to weigh in on whether a replacement is warranted, and, if so, how it should be designed.

“EPA will respect the limits of statutory authority,” Pruitt said. “We can now assess whether further regulatory action is warranted; and, if so, what is the most appropriate path forward, consistent with the Clean Air Act and principles of cooperative federalism.”

“Any replacement rule will be done carefully, properly, and with humility, by listening to all those affected by the rule,” he said.

Halfway There

The U.S. was already more than halfway toward meeting the Clean Power Plan's headline goal of slashing carbon dioxide emissions 32 percent from 2005 levels by 2030, as utilities retire coal plants and add more natural gas, wind and solar power to their portfolios.

Repealing it preserves the opportunity for utilities to keep coal-fired power plants running longer and even add more of the fossil fuel to their system if prices spike for natural gas, a chief competitor.

The action offers “a glimmer of hope” for coal producers, said William Nelson, a power analyst with Bloomberg New Energy Finance. The Clean Power Plan capped coal's upside “in the event of an unforeseen, prolonged gas-price spike,” Nelson said. “The cap on that upside is now washed away.”

Some renewable power developers fear the repeal could dampen demand, especially without a clear signal from the Trump administration on future emission curbs.

“This is going to have extreme impact on everything that we've built up,” Troy Van Beek, owner of the Fairfield, Iowa-based solar power installer Ideal Energy Inc., said on a conference call with reporters. “We need that security in the investment dollar to grow our businesses. It's been noticeable this year how badly this administration has affected our opportunities.”

While some utilities and power producers, including Houston-based Calpine Corp., PG&E Corp. and Dominion Resources Inc., backed the Obama-era approach, others welcomed the EPA's shift.

“National energy policy should be set by Congress and the states, which have the ability to balance the responsibility to provide customers clean, safe, reliable and affordable energy,” said

Schuyler Baehman, a spokesman for Southern Co.

The resulting uncertainty threatens to put a cloud over utilities making decades-long investment decisions right now, analysts said.

Road Rules

"If I'm a utility and I think there's a certain set of rules for the road and those rules are removed and replaced with nothing but questions, that's going to definitely influence what my next several multibillion dollar investments are going to be," John Larsen, director for U.S. power sector work at Rhodium Group LLC, a New York-based consultant, told reporters on a conference call. "This doesn't help steady the waters at all with regard to where the next billion dollars will be spent."

To help justify the Clean Power Plan reversal, the Trump administration has redone the Obama administration's economic modeling of its potential costs, health benefits and environmental gains.

The Trump analysis estimates repealing the plan could yield as much as $33 billion in avoided compliance costs in 2030. But that calculation is based on a shift in accounting—effectively ignoring the potential cost reductions that could come from corresponding energy efficiency gains.

The EPA said in a news release that the updated calculations are appropriate because the Obama-era cost-benefit analysis was "highly uncertain and/or controversial."

The EPA's action does not end a federal lawsuit by more than two dozen states challenging Obama's Clean Power Plan. In August, the Washington-based U.S. appeals court renewed an earlier order putting the states' legal challenge on hold, ordering updates every 30 days. The court now can choose to continue the hold, pending the formal repeal, or, less likely, issue a ruling on the merits.

Still, the absence of the Clean Power Plan does not relieve the EPA of its obligation to regulate power plant emissions the agency has already said endanger public health and the environment. The Supreme Court ruled in 2007 that EPA has authority to regulate those emissions, and it issued that so-called endangerment finding early in the Obama administration.

If the EPA rescinds the Clean Power Plan and doesn't replace the regulation, it will be in violation of its obligations under the Clean Air Act, said Joanne Spalding, chief climate counsel for the Sierra Club. “It is arbitrary and capricious to rescind standards that are legal and reasonable and not replace them.”

The rescission process is likely to take months, if not longer, with the Oct. 10 proposal followed by a public comment period and later final action. In the meantime, the repeal plan can't be challenged directly.

“You can't challenge a proposed rule,” Spalding said, noting Pruitt tried and failed to do so multiple times in his previous role as Oklahoma's attorney general. “We're not going to do that.”

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E&E News

https://www.eenews.net/climatewire/stories/1060067961/search?keyword=EPA

Pruitt on climate science: 'I have a whole plan'

By Niina Heikkinen, 12/4/17

U.S. EPA's transition team had planned a much harder attack on the agency's ability to address climate change, according to a former member.

A draft of President Trump's "energy independence" executive order had initially directed EPA to reconsider the endangerment finding, said David Schnare, a transition and "beachhead" team member at EPA who helped draft the order.

In an interview with E&E News, Schnare recounted being disappointed as he reviewed the final order with EPA Administrator Scott Pruitt. References to the endangerment finding had been removed, and Schnare raised objections.

"And he said, 'Dave, I'm way ahead of you on that; I have a whole plan,'" Schnare said, quoting Pruitt. "Well, he didn't have a plan. He didn't know what he was going to do, and whatever he thought he was going to do he has had to change his mind on a couple of times now."

The endangerment finding provides the scientific basis for the agency's climate regulations, stating that greenhouse gas emissions are harmful to human health and welfare. If the Trump administration fails to undo it, conservatives fear that rules to reduce emissions could be resurrected under future presidents.

"The endangerment finding is a critical policy finding because it drives an enormous number of

mandates," said Schnare.

Trump signed the final version of the executive order at the end of March, leading to a wide-reaching regulatory review that sparked the reconsideration of the Clean Power Plan and the end of a federal methane-reduction target, among other actions.

Schnare, who worked at EPA for more than 30 years, gained notoriety for questioning mainstream climate science and for a series of lawsuits aimed at obtaining the emails of individual climate scientists. Schnare abruptly left the beachhead team at EPA, citing conflicts in leadership style with Pruitt.

More recently, Schnare has spoken at meetings organized by the Heartland Institute for potential participants in a "red team, blue team" debate on mainstream climate science.

While the endangerment finding didn't make it into the final executive order, discussions around it reached high into the White House. The transition team spoke with the staff of then-White House Chief of Staff Reince Priebus and "had the ear" of former chief strategist Stephen Bannon, Schnare said. The team did not discuss the issue directly with the president, his children or his son-in-law, Jared Kushner, according to Schnare. However, Kushner was briefed on the issue, Schnare added.

Schnare said he now agrees with the decision to omit the endangerment finding from the executive order. But he wasn't happy with the decision at first.

"At the time, I wasn't thinking clearly enough that you have to start with the science. I was just thinking we could just go back and look at the endangerment finding. Well, you can't. And so taking that out of there bothered me but probably wasn't a bad idea," he said.

Schnare said he considers the recently released Fourth National Climate Assessment a major, but not insurmountable, legal obstacle to reviewing the endangerment finding. The report says man-made climate change is an imminent threat. Schnare said that after he left the transition team, he urged the White House to delay releasing the assessment report, but the White House declined,

saying it would look like "political malingering."

"The only way, with this other report in place, for EPA could do it would be a point-by-point refutation of each of the points made [in the endangerment finding]. That's a lot of work; it could be done," he said.

Schnare said that the White House Office of Science and Technology Policy, rather than EPA, would be better-suited to reviewing climate science. The office is currently without a director. He noted the importance of filling that position in order to begin reviewing climate science.

Ultimately, discussion on the transition team shifted away from the endangerment finding to focus on exiting the Paris Agreement, the landmark international climate accord. This action was also poised to be included in the "energy independence" executive order but was split off into a separate order that both the Department of Energy and EPA transition teams worked on.

"It really came down to — nothing to do with environmental quality — it had to do with, is this or is this not a treaty and what does it commit us to, and that's how the decision got made," he said. "So this whole issue of endangerment finding is out there, people are concerned about it on both sides, but there is no obvious path at this point that anyone has sorted."

Myron Ebell, the former head of the transition team at EPA and director of global warming and international environmental policy at the Competitive Enterprise Institute, declined in an email to confirm discussions about the endangerment finding with the White House or EPA. However, he noted that the plan was written to implement "every promise" made by Trump during the campaign.

"Getting out of the Paris Climate Treaty was a top line promise that Mr. Trump made repeatedly. Re-opening the Endangerment Finding was a lower level campaign commitment that was to my knowledge only made once in a questionnaire that Mr. Trump submitted to the Institute for Energy Research," Ebell said. "So I would say that re-opening the Endangerment Finding was definitely a campaign promise, and therefore you can infer that it was contained in the transition plan."

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Subject: E&E News: Pruitt 'guaranteeing' debate on climate science soon, 12/1/17

E&E News

https://www.eenews.net/climatewire/2017/12/01/stories/1060067811

Pruitt 'guaranteeing' debate on climate science soon

By: Scott Waldman, 12/1/17

The conservative Heritage Foundation might have just previewed the Trump administration's arguments against climate science.

U.S. EPA appears to be close to unveiling its program to question mainstream research on global warming, referred to as a "red team" exercise, and several candidates for that role cast doubt on the extent of climate change at the Heritage Foundation yesterday.

One theme they expressed is that carbon dioxide emissions from fossil fuels should no longer be considered a pollutant but instead an essential ingredient in maintaining a global population boom. They described potentially catastrophic impacts of human-caused warming as "alarmism."

EPA Administrator Scott Pruitt could announce the red team within weeks, according to Bob Murray, a key ally of the administration and the CEO of Murray Energy Corp. The coal boss said in an interview at yesterday's event that he has been personally pushing Pruitt to challenge the endangerment finding, the scientific underpinning for past and future regulations on greenhouse gas emissions.

Murray, who met with Pruitt last week, said the administrator told him the red-team debate is imminent. Pruitt also said the exercise is the first step toward a possible challenge to the endangerment finding, Murray told E&E News.

"They're laying groundwork for it, they want to do this red, blue study, debate on science before we get there," Murray said of the endangerment finding. "I said, 'You need to get it done; if you don't get it repealed, you're going to have this climate agenda forever. It needs to be repealed.'"

Murray added of Pruitt: "He's not guaranteeing me. He's guaranteeing to do the red-blue climate debate and then go from there."

The Trump administration has been aggressive in its efforts to rescind policies restricting greenhouse gases. It's working to reverse the Clean Power Plan, which sought to cut power-sector emissions 32 percent by 2030, and President Trump has announced a withdrawal from the global Paris climate accord.

But the administration has stopped short of promising to challenge the endangerment finding. That stands to be a major fight in the courts, and many administration officials anticipate defeat. Yet if President Trump skips that fight, he would anger staunch conservatives who see the endangerment finding as the cornerstone of future climate regulation.

"We're going to have a mess until that endangerment finding is overturned," Murray said.

The red-team, blue-team exercise is coming early next year, Pruitt said recently. It will pit a team of skeptical researchers against the findings of mainstream scientists. Critics have said the exercise could cherry-pick data in an effort to elevate doubt and give unequal weight to skeptics.

An EPA spokesman said there are "no updates" when asked about the timing of the exercise.

One panel at the Heritage Foundation event yesterday could offer a prelude to the scientific arguments that would be pursued by the red team. Several skeptical scientists picked apart the general consensus of their peers, who say humans are warming the Earth at an unprecedented pace. The panelists claimed that the attention given to rising global temperatures is overwrought. Craig Idso, who founded the Center for the Study of Carbon Dioxide and Global Change, said the world food supply will fall short of demand by 2050 unless more CO2 is pumped into the atmosphere.

Roy Spencer, a climate scientist at the University of Alabama, Huntsville, said researchers who could be selected for the red team have met a few times in recent weeks in different cities. He said more government research needs to be conducted on the natural causes of climate change. That could be done if congressional budget appropriators divert a portion of the research funding for human-caused climate change toward research on natural causes.

"There are chaotic variations internal to the climate system, and that is something that has been totally swept under the rug," Spencer said. "The red team could look at all kinds of things, but if I'm part of the red team, that would probably be the top thing I would emphasize."

The researchers, all of whom are possible candidates for the red team, attacked the findings of mainstream science that humans are the primary cause of climate change. They criticized climate models, laughed at former Vice President Al Gore's advocacy and portrayed the vast majority of colleagues in their field who disagree with them as "alarmists."

The "smoking gun" that could undo the endangerment finding is to find flaws in the climate models, said Pat Michaels, director of the Center for the Study of Science at the Cato Institute. He said yesterday's panel is a prelude to the red team and an attack against the endangerment determination. He cautioned EPA against using researchers with extreme positions.

"The red team members are going to have to be very carefully selected," Michaels said. "My fear is that red team will have this tinge of 'Oh, there is no such thing as global warming; there is no such thing as carbon dioxide greenhouse gas effect.' If the red team goes there, it might as well be considered that they are working for the blue team."

Scientific consensuses are often wrong, said William Happer, an emeritus physics professor at Princeton University and a contender to become Trump's science adviser. He criticized the "preening virtue signaling" of environmental groups and compared the attitude of those who craft climate policy to lawmakers who were swept up in the temperance movement before Prohibition was enacted.

"Climate models don't work; they're predicting much more warming than has been observed," Happer said.

Richard Lindzen, a retired meteorology professor from the Massachusetts Institute of Technology, blamed "climate alarmism" on educated elites who don't want to admit their limited understanding of science. He said fossil fuels will benefit humans and that reduced Arctic sea ice will open the Northwest Passage.

After a lunch from Chick-fil-A, Murray shared the Heritage stage with Bud Brigham, who founded several successful hydraulic fracturing companies.

As Brigham sat silently, Murray largely blamed policies by the Obama administration for the decline of coal, rather than the natural gas boom associated with fracking. Murray said that despite the Trump administration's efforts, financing for coal projects is extremely hard to obtain. He said he abandoned a project last week because he failed to find funding. He blamed it on climate science, socialists and liberal policies.

"The global alarmists, the politics is still shutting us down in spite of the Trump administration's efforts. It is still getting worse; they are winning," Murray said.

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NY Times

https://www.nytimes.com/2017/12/17/us/politics/epa-pruitt-media-monitoring.html?rref=collection%2Ftimestopic%2FEnvironmental%20Protection%20Agency

E.P.A. Employees Spoke Out. Then Came Scrutiny of Their Email.

By Eric Lipton and Lisa Friedman, 12/17/17

WASHINGTON — One Environmental Protection Agency employee spoke up at a private lunch held near the agency headquarters, saying she feared the nation might be headed toward an "environmental catastrophe." Another staff member, from Seattle, sent a letter to Scott Pruitt, the E.P.A. administrator, raising similar concerns about the direction of the agency. A third, from Philadelphia, went to a rally where he protested against agency budget cuts.

Three different agency employees, in different jobs, from three different cities, but each encountered a similar outcome: Federal records show that within a matter of days, requests were submitted for copies of emails written by them that mentioned either Mr. Pruitt or President Trump, or any communication with Democrats in Congress that might have been critical of the agency.

The requests came from a Virginia-based lawyer working with America Rising, a Republican campaign research group that specializes in helping party candidates and conservative groups find damaging information on political rivals, and which, in this case, was looking for information that could undermine employees who had criticized the E.P.A.

Now a company affiliated with America Rising, named Definers Public Affairs, has been hired by the E.P.A. to provide "media monitoring," in a move the agency said was intended to keep better track of newspaper and video stories about E.P.A. operations nationwide.

But the sequence of events has created a wave of fear among employees, particularly those already subject to special scrutiny, who said official assurances hardly put them at ease.

"This is a witch hunt against E.P.A. employees who are only trying to protect human health and the environment," said Gary Morton, an E.P.A. employee in Philadelphia, who works on preventing spills from underground storage tanks. His emails were targeted seven days after he participated in a union rally in March challenging proposed budget cuts. "What they are doing is trying to intimidate and bully us into silence," he said.

The contract with Definers comes at a time of heightened tension between the news media and the Trump administration. Within the E.P.A., the move is also part of a bellicose media strategy

that has been helped at key moments by America Rising — even before its affiliate was hired by the agency.

An E.P.A. official vehemently defended the $120,000 contract to Definers, saying it filled a need in the media office for an improved clipping service.

"Definers was awarded the contract to do our press clips at a rate that is $87,000 cheaper than our previous vendor, and they are providing no other services," a spokesman for the E.P.A., Jahan Wilcox, wrote in an email.

Joe Pounder, a founder of Definers Public Affairs, said several government agencies had contacted his firm about its news-tracking tool, called Definers Console, because they were seeking a service that does a better job of keeping up with the fast-paced news cycle, including tracking of live-streamed videos. He said that agency staff members familiar with the company's work approached the firm about putting forward a bid and that Mr. Pruitt himself was not, to his knowledge, involved in the decision to select Definers.

"I hope E.P.A. employees realize after a few months that we are providing a really great and invaluable service that advances their mission," Mr. Pounder said.

Joe Pounder's company, Definers Public Affairs, has been hired to do media monitoring for the Environmental Protection Agency.

He and Matt Rhoades, his partner at Definers Public Affairs, also started America Rising. The two entities share several top executives, including Allan L. Blutstein, the lawyer who prepared the Freedom of Information Act requests aimed at the E.P.A. employees.

Some Republicans who previously worked for the agency said the hiring of Definers Public Affairs sent a worrisome message to employees already on edge and fearful of retaliation.

"Mr. Pruitt appears not to understand that the two most valuable assets E.P.A. has is the country's trust and a very committed professional work force," said William K. Reilly, the E.P.A. administrator under George Bush. "This shows complete insensitivity, complete tone-deafness, or something worse."

Liz Mair, president of a Republican consulting firm, said that the relatively small dollar amount of the contract was an indication that all the agency was buying was a clipping service, and not some kind of sophisticated intelligence-gathering on employees. But she added that certain E.P.A. staff members actually merited more scrutiny.

"A lot of funky stuff has been going on with E.P.A. staff," she said.

Mr. Blutstein said in an interview on Friday that his requests to the agency tracked employees who had made public statements critical of Mr. Pruitt. He said he wanted to know if any of them had used agency email inappropriately, or had violated agency rules in some other way — findings that he could use to compromise efforts to undermine Mr. Pruitt's work.

"It was more of a fishing expedition on my part," he said of the at least 20 Freedom of Information requests he submitted, most for E.P.A. employees who were union leaders or had spoken critically of agency management since Mr. Pruitt's arrival.

Even before the E.P.A. hired Definers, the group of companies, political action committees and nonprofit organizations affiliated with America Rising had frequently drafted news releases that put Mr. Pruitt and his policies in a positive light and attacked the administrator's critics. Many items, including video clips, also appeared on NTK Network, a for-profit digital news aggregator that Mr. Pounder founded.

In addition to sharing at least nine current and former executives, Definers Public Affairs shares an office building in Arlington, Va., with the multiple arms of America Rising and NTK Network.

E.P.A. staff members said in interviews that they had the right, as private citizens or members of a federal employees' union, to publicly discuss concerns about changes taking place at the agency under Mr. Pruitt's management. Some noted that "media monitoring" could be expected to include tracking of statements made on Twitter and other social media platforms, including potentially critical comments agency staff members make about E.P.A. management.

Tracking E.P.A. Employees

The Environmental Protection Agency has hired a new contractor, Definers Public Affairs, to do media monitoring for the agency. But before the contract was awarded, staff members who work for the contractor had been conducting surveillance-type work on E.P.A. employees critical of Scott Pruitt, the E.P.A. administrator, and President Trump.

Michael Cox, who worked at the E.P.A.'s Seattle regional office for 25 years, learned this weekend from an article in The New York Times that he had been among the employees under scrutiny.

Mr. Cox wrote to Mr. Pruitt in March — on the day of Mr. Cox's retirement from the agency — to tell him that he was "increasingly alarmed about the direction of E.P.A. under your leadership," and to urge Mr. Pruitt to "step back and listen to career E.P.A. staff," the letter said.

Just 10 days later, a Freedom of Information request came in seeking Mr. Cox's correspondence on the day of his resignation. The request led to the production of 62 documents, detailing the names of dozens of agency officials, as well as a note he sent to his work colleagues specifically noting that he knew they shared his concerns with how the agency is being managed — names that would now be listed for anyone reviewing the response.

Some of the emails requested under the Freedom of Information Act were efforts to find documents critical of the head of the Environmental Protection Agency, Scott Pruitt. Credit Pete Marovich/Getty Images

"That does not make me feel very good," he said, knowing that his emails could potentially be used against other employees.

Nicole Cantello, an E.P.A. lawyer in Chicago who has helped lead a series of enforcement actions against major air polluters in the Midwest, and whose emails also were requested, said the agency's decision to hire Definers caused great concern.

"Now that they are working for the agency, will they have access to agency computers and perhaps try to come after me in a whole bunch of different ways?" she said. "And will they turn over their opposition research materials on us to agency officials? I just don't know. It is very scary. Very, very scary."

Several of the Freedom of Information requests submitted by Mr. Blutstein ask for correspondence between agency employees and members of Congress — such as Senator Sheldon Whitehouse, Democrat of Rhode Island, and Elizabeth Warren, Democrat of Massachusetts — who have been critical of Mr. Pruitt.

"We have seen a lot of nefarious activities from Trump," Mr. Whitehouse said. "But hiring a fossil fuel front group that specializes in political hits and is doing F.O.I.A. investigations of your agency's own employees is a new low."

E.P.A. employees are not the only ones who have been subjects of the group's Freedom of Information Act requests. Mr. Blutstein also has sought emails and other information from at least two climate scientists, Katharine Hayhoe of Texas Tech University and Robert Kopp of Rutgers University, who worked on a sweeping government climate change report. The Trump administration cleared the report for publication earlier this year.

"They're asking for emails related to a document that has already been public and has been reviewed twice by E.P.A. and was ultimately approved by E.P.A.?" Ms. Hayhoe asked. "What do they think they're going to find?"

The nonprofit arm of America Rising, known as America Rising Squared, oversees some of the group's most controversial work on climate change: deploying "trackers" to videotape activists like Bill McKibben, founder of 350.org, and Tom Steyer, the billionaire investor and Democratic donor.

"This is classic propaganda from an authoritarian regime," Mr. Steyer said. "It's distressing that it would even happen in the United States of America."

Brian Rogers, executive director of America Rising Squared and a senior vice president at Definers, would not say who paid for the surveillance. In an emailed statement, he said that the firm had focused on Mr. Steyer and Mr. McKibben because they "aggressively target conservative thought leaders" for scrutiny.

"America Rising Squared is committed to ensuring a balanced debate, and providing a conservative perspective on the issues and actors involved," Mr. Rogers said.

Mr. Reilly, the former E.P.A. administrator, said the whole sequence of incidents — and now the agency's involvement in it — was deeply disturbing.

"These are committed people," he said of the agency employees. "It's not just a job for them. To put their morale and their good standing in danger is going to risk losing something very valuable to the government and to the country."

The Hill

http://thehill.com/policy/energy-environment/365379-epa-employees-who-criticized-administration-had-emails-scrutinized

EPA employees who criticized administration had emails scrutinized: report

By Brett Samuels, 12/17/17, 8:30 PM

Employees of the Environmental Protection Agency (EPA) who spoke up about Trump administration policies had their emails scrutinized by a lawyer working for a Republican campaign research group, according to a report published Sunday by The New York Times.

That research group, America Rising, is affiliated with another company that has been hired by the EPA to do "media monitoring," raising concerns among agency employees that the agency is clamping down on those with dissenting views, the newspaper reported.

According to The Times, three employees said they spoke up, either during meetings, in letters or through public demonstrations, to express concerns about the direction of the EPA under Trump. Days later, the lawyer affiliated with America Rising submitted requests for the employees' emails that mentioned either EPA chief Scott Pruitt, the newspaper reported.

"This is a witch hunt against EPA employees who are only trying to protect human health and the environment," one employee told The Times.

America Rising is affiliated with Definers Corp., a research firm based in Arlington, Va. The EPA is paying that company $120,000 to use a media-tracking tool to follow media coverage of its clients.

The Times reported on Saturday that Allan Blutstein, a vice president for Definers Public

Affairs, has submitted dozens of Freedom of Information Act (FOIA) requests to the EPA since the beginning of Trump's presidency, many of which target agency employees who are known to be critical of the administration.

The moves come amid heightened tensions between the media and President Trump's administration. The president frequently refers to mainstream media outlets as "fake news.

Former White House Press Secretary Sean Spcier earlier this year denied that Trump administration officials were keeping "dossiers" on White House reporters.

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The Hill

http://thehill.com/policy/energy-environment/365222-epa-consultant-executive-is-investigating-employees-critical-of

EPA consultant is investigating anti-Trump 'resistance' within the agency: report

By Max Greenwood, 12/16/17, 8:26 AM

A top executive at a consulting firm hired by the Environmental Protection Agency (EPA) has been investigating agency employees critical of the Trump administration.

The New York Times reported that Allan Blutstein, a vice president for Definers Public Affairs, has submitted dozens of Freedom of Information Act (FOIA) requests to the EPA since the beginning of Trump's presidency, many of which target agency employees who are known to be critical of the administration.

"I wondered if they were emailing critical things about the agency on government time and how frequently they were corresponding about this," Blutstein told the Times in an interview. "And did they do anything that would be useful for Republicans."

He said he was looking into "resistance" figures in the government. But Blutstein said that his FOIA requests were not related to the work his firm is doing for the agency, and that he took on what he described to the Times as the "antiresistance" effort on his own.

"I am not doing mole hunts, or whatever," Blutstein said. "I am almost always doing that research on my own."

Definers, which specializes in opposition research, was hired by the EPA earlier this month on a $120,000 contract to help monitor media coverage at the agency. Mother Jones first reported the

contract award.

Jahan Wilcox, a spokesman for the EPA, said in a statement to the Times that the decision to hire Definers was because the firm was significantly less expensive than the firm previously contracted to do the work.

"Definers was awarded the contract to do our press clips at a rate that is $87,000 cheaper than our previous vendor and they are providing no other services," he said. "If you have questions regarding how Definers operates, we encourage you to contact them."

CNN

http://www.cnn.com/2017/12/17/opinions/cdc-banned-words-opinion-fisher/index.html

OPINION: Trump's administration's seven banned words are an attack on science

By Nicole Alexander Fisher, 12/17/17, 6:59 PM

On Thursday, according to the Washington Post, policy analysts at the Centers for Disease Control and Prevention were told by others in the Trump administration that the use of seven specific words and phrases would be prohibited. On the list are the words "vulnerable," "diversity," "entitlement," "transgender," "fetus," "evidence-based," and "science-based." The decision has not only been deemed as reckless and dangerous, but an offense to the scientific community.

This goes far beyond an attack on lexicon or word-choice. A ban on words not only creates barriers for scientists who need to communicate, but also breaks public trust in the areas they are meant to investigate and research.

Banning the word "fetus" will embolden the pro-life communities who oppose abortion, while at the same time jeopardizing some of critical studies from the CDC that study the effects of disease, such as Zika, on the fetus specifically. Similarly, banning "transgender" and "diversity" energizes the ideals of white nationalism and attacks on already vulnerable communities. It also ignores or diminishes the health regimens that are specific to transgender individuals -- and may only create further complications for them.

The current director of the CDC, Dr. Brenda Fitzgerald, who was appointed by the Trump administration in July, has since responded on Twitter, claiming that there are "no banned words at the CDC", and that "the CDC has a long standing history of making public health and budget decisions that are based on the best available science and data for the benefit of all people."

A spokesman of the Department of Health and Human Services, the parent department of the CDC, responded similarly, saying that a 'word ban' was a "complete mischaracterization."

Despite these denials, it's not hard to believe the Washington Post story. After all, this would not be the Trump administration's first attack on scientists or their abilities to communicate to the public. Since his days on the campaign trail, Donald Trump has denied, belittled or argued against the impacts of climate change. And ever since he assumed the office of the presidency, he has not only surrounded himself and his cabinet with climate change skeptics, but has taken action to suppress scientific action and thought.

In January, the Trump administration issued a gag order on Environmental Protection Agency (EPA) employees, making it much harder for them to communicate with the public. Memos were issued that forbid any officials from making social media posts or speaking with journalists. While it is standard for a new administration to make changes to websites to reflect policy positions, nearly all mentions of climate change policy were scrubbed from the websites and replaced with statements regarding the roll back of climate change regulation.

In March, the Department of Energy (DOE) banned staff members from using the phrases "climate change" or "Paris Agreement" within any of their communications. The DOE and the Department of Interior further scrubbed information about renewable energy and climate change from their websites.

The Trump administration has also been notoriously aggressive on environmental regulations, repeatedly rolling back, rejecting or delaying environmentally related protections or funding. Climate change language has been removed from reports, such as a United States Geological Survey report that linked sea level rise and climate change. And, in June, President Donald Trump announced that the United States would formally withdraw from the Paris Climate Agreement, making the US one of the only countries not a signatory to the accord.

The attack on science plays into this administration's assault on facts. By bolstering conspiracy theories, riling up white nationalists and declaring war on various news outlets, Trump has created an environment where science can be politicized, where environmental regulations are simply more burdensome governmental overreach and where any disagreement or dissatisfaction with facts and figures can be decried as "fake news."

As long as the Trump administration is willing to cater to fear and bigotry, religious zealots, and a hatred or distrust of government, Trump's base will continue to vote for elected officials who actively work against the safety and well-being of our environment. And, in turn, this will leave elected officials free to act in the interests of any corporations or individuals who may have contributed to their campaigns.

As Americans, we must hold strong to the ideals of education, research, science and innovation -- and not backpedal any further to appease the potential financial gains of wealthy individuals or the narrow-minded conscience of an uninformed electorate. Censoring language, hampering research and suppressing scientific endeavors will only cripple our country and harm the planet. We cannot erase the already-fatal impacts of climate change by simply removing the words from a governmental website.

"To distribute a list of banned words to a scientific agency is simply not what we do in the United States of America," said Sen. Brian Schatz, D-Hawaii. "Every American has to stand up against this. Republicans too, and maybe especially."

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Washington Examiner

http://www.washingtonexaminer.com/daily-on-energy-trump-to-ignore-climate-change-in-national-security-strategy/article/2177064

TRUMP WILL IGNORE CLIMATE CHANGE IN NEW NATIONAL SECURITY STRATEGY

By John Siciliano and Josh Siegel, 12/18/17, 11:18 AM

President Trump will call for greater border security and better trade deals, but ignore climate change, in a national security strategy document to be released Monday.

Unlike Obama: The strategy document, which administrations must send to Congress, drops former President Barack Obama's description of climate change as a national security threat.

Limited climate references: Instead of describing climate change as a national security threat, the document will discuss “environmental stewardship.”

Trump also will mention climate change in a section on embracing U.S. "energy dominance," according to the New York Times.

Mixed signals: The release of the strategy comes after Trump last week signed into law the National Defense Authorization Act, which called climate change a "direct threat" and requires the Pentagon to create a list of the top 10 most at-risk bases.

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Washington Examiner

http://www.washingtonexaminer.com/daily-on-energy-trump-to-ignore-climate-change-in-national-security-strategy/article/2177064

GROUPS SUE EPA'S PRUITT OVER DELAY OF COAL POLLUTION RULES

By John Siciliano and Josh Siegel, 12/18/17, 11:18 AM

Conservation groups and national park advocates joined with environmentalists in suing Environmental Protection Agency Administrator Scott Pruitt over his delay in enforcing the Obama administration rules to reduce regional haze that place coal plants in the crosshairs.

"In 2016, EPA proposed a strong plan to clean up dangerous pollutants from more than a dozen Texas coal plants and other polluting facilities," the National Parks Conservation Association said Friday. "Administrator Pruitt's EPA abandoned the proposal by October 2017, instead putting forward a plan that grants polluters a license to emit even more pollution into the air despite vocal opposition."

Detailing their legal claims: The parks group will hold a call with reporters Monday to discuss its legal strategy in opposing Pruitt, as well as pushing back against Texas' coal plans that they argue avoid pollution standards.

Green lawyers level suit: The national park group is represented by environmental lawyers with Earthjustice and the Sierra Club's Environmental Law Program in filing their challenge in the 5th Circuit Court of Appeals.

Texas is 'unlawful:' They also filed a petition for reconsideration to the EPA that asserts that the agency's Texas Regional Haze plan "is unlawful and will do little to actually clean up pollution

from Texas' coal plants as it was originally intended to do."

Bloomberg Environment

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=125183580&item=408&prod=deln&cat=A

EPA to Kick Off Clean Power Plan Replacement Squabble

By Abby Smith, 12/18/17

The fate of the first-ever carbon limits for power plants will get clearer soon, as the EPA invites recommendations on how or whether to replace one of the Obama administration's signature environmental regulations.

The Environmental Protection Agency's advance notice seeking comment on any possible replacement for the Clean Power Plan cleared White House interagency review Dec. 14, signaling its imminent release.

The EPA proposed Oct. 10 to repeal the Clean Power Plan, arguing the regulation exceeded the agency's authority by basing standards on measures beyond steps utilities could take to curb emissions at individual power plants.

The agency said then it hadn't determined whether it will replace the Obama-era rule but indicated it would seek comment on options that fit within the EPA's narrower interpretation of its Clean Air Act authority.

Many utility and industry groups, including the U.S. Chamber of Commerce, have in recent months urged the EPA to craft a narrow replacement rule to lock in regulatory certainty.

Environmentalists and other Clean Power Plan supporters, however, argue any Trump EPA replacement would not achieve sufficient emissions reductions, and they have vowed to defend the Obama administration's rule.

E&E News

https://www.eenews.net/climatewire/stories/1060069221/search?keyword=EPA

White House huddles with industry on climate deal

By Zack Colman, 12/18/17

A White House official met with an industry group last week to discuss how to move forward on an international treaty to phase out greenhouse gas emissions from refrigerants, sources told E&E News.

Representatives from the Air-Conditioning, Heating and Refrigeration Institute (AHRI) met with White House energy aide George David Banks and John Thompson, a State Department official, regarding the Kigali Amendment, named for the Rwandan capital where it was finalized in 2016 with the support of the Obama administration.

AHRI supports the amendment.

The White House has not yet submitted the amendment for Senate ratification. But the path forward for the amendment got complicated in August when a federal court scrapped an Obama-era rule to limit hydrofluorocarbons (HFCs), a class of climate superpollutants that the Kigali policy targets.

While the Trump administration signaled support for the treaty last month, it still must either issue a new rule through U.S. EPA or seek to overturn the federal court decision, which is being appealed (*Climatewire*, Nov. 29). Congress also could pass legislation to that effect (*Climatewire*, Aug. 9).

What EPA intends to do is unclear. The agency didn't have a representative in the meeting.

"The only thing I would say is if you think about who should be there and who is not there, then you know who they have to get through," AHRI spokesman Francis Dietz said.

Some familiar with the matter say EPA has been more difficult to court because Kigali is about climate change, a topic EPA Administrator Scott Pruitt has been keen to avoid. The amendment to the Montreal Protocol seeks a drawdown of HFCs on a tiered approach. Developed countries like the United States must begin hitting goals in 2019 that gradually grow more stringent.

Proponents have instead framed the issue as a business opportunity, as U.S. air conditioning manufacturers contend they're poised to benefit in the marketplace because they have the global lead in substitute technology.

"I think that the industry is doing a fantastic job of making the business case for this, which I think is the strongest case," said Andrew Light, a former State Department climate adviser who is now at the World Resources Institute.

EPA referred E&E News to the White House for comment.

"No announcements at this time," White House spokeswoman Kelly Love said in an email.

E&E News

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Interview: Wyo. Governor wants to address climate to help coal

By Benjamin Storrow, 12/18/17

Few politicians love coal more than Matt Mead.

The Republican governor of Wyoming has made a career of championing the industry, and for good reason. His state is the country's largest coal producer — in 2016, Wyoming accounted for about 40 percent of U.S. production. One of his biggest talking points during his 2014 re-election campaign was the number of lawsuits (12) he'd filed against U.S. EPA.

Still, he's something of an outlier among national Republicans, in that he's actively searching for solutions to address concerns about climate change. That's not to say he believes human beings are contributing to a warming planet. The governor studiously avoids that question.

Instead, Mead has long argued that it's irrelevant whether he believes in climate change. More importantly, he says, is the fact that most of the world believes climate is an issue. Coal producers and coal-reliant states need to address those concerns if they are to stay in business, Mead says.

The hallmark of the governor's quest for a coal-climate solution is the integrated test center, or the ITC. It's essentially a laboratory attached to Basin Electric Power Cooperative's Dry Fork Station, a relatively new coal-fired power plant outside the mining community of Gillette. Its purpose is to experiment with the plant's carbon emissions in hopes researchers can find some economic use for the pollution.

There already is a global market for carbon, which is used in everything from carbonation in Coke cans to graphite. Some scientists remain doubtful that carbon utilization is a solution to climate change, however. While there is a market for carbon, they note, it is relatively small compared with what coal plants emit each year.

Mead, who is in his second term and leaving office next year, is pushing ahead. His efforts are aided by the XPRIZE foundation, which is perhaps best-known for helping launch the private space industry. At its most basic, the foundation offers a prize to researchers seeking to solve a global challenge. Teams of scientists compete to develop a solution to the challenge, and the winner gets a cash prize. The hope is to spur innovation that can be adopted at a wider scale.

In the case of carbon emissions, teams are competing for total prizes worth $20 million. The prize will be split between teams researching how to use emissions from coal and natural-gas-fired power plants.

The coal research is being done at the ITC. Construction on the facility itself is nearing completion, and teams are expected to begin research next year. The prize is scheduled to be awarded in 2020.

With the ITC nearing completion and coal dominating national headlines this year, E&E News caught up with Mead last week to talk about his efforts to promote coal as a potential solution to the climate conundrum.

Can you give an overview of where we are with the ITC today?

They're still anticipating they'll have construction completed in the next couple weeks. By the end of 2017 was their goal, and I think that's where they are.

The XPRIZE finalists are expected to be in the facility sometime next year through 2020. In addition to the construction itself, symbolically it's helped us gain some interest. I recently signed an MOU [memorandum of understanding] with a province in Canada [Saskatchewan] and North Dakota. It's a generalized MOU, I don't want to make too big a deal of it, to continue to collectively work on carbon capture and utilization.

It's been really nice for me as we address issues of coal to show that Wyoming's really taken a proactive stance in trying to address this issue. I'm pleased where it is. I'll be out of office when we see what the results are from the teams competing against each other.

For folks who are unaware of what the ITC is, why is this so important?

A couple of things. One, as the leading producer of coal and as we recognize that coal is still a major component of electricity production in this country and the world, we think there is not only an opportunity, but need for leadership on CO2 capture and sequestration. As you and I've discussed before, people have different positions on whether climate change is man-made or not.

My resolve coming into office is I suspect that debate may go on for a period of time. But for coal companies that are having trouble getting insurance, for coal companies that are having trouble getting finance, for coal companies that are challenged by presidential administrations that are very concerned about this issue and want to see coal diminished as a source of electricity, this is really the only way I see for Wyoming to continue to have a robust coal industry. For us to not only be leaders in production, but leaders in innovation and technology.

You and I last visited in person, I think, at Little America [a Cheyenne, Wyo., hotel and conference center], but now we're not only having these conversations with Canada, but with Japan and Taiwan, to tell them what we're working on and their interest in energy and energy sources.

It's not only going to provide us with a leadership role and what we want to do in Wyoming, it really provides us an opportunity for partnerships in the United States and many other countries in the world.

I've always felt that the political discussion and debate may continue for years, but the solution is going to come from good science, good innovation, good technology. The ITC is the program where we're hopeful the solution or part of the solution comes from.

There's a division in the coal community. Some, like Murray Energy Corp. CEO Bob Murray, say carbon capture and sequestration is a scam. What do you say in response?

Absolutely, I've heard it many times from people who do not believe in climate change, people who believe there is climate change but it is not man-made, and who do not believe, even if you assume those things are true, we ought to spend time and resources capturing CO2.

As I've said, you may not believe it. You may not want to go down that road. But when a coal company can't get insurance, when a coal company can't get financing, when globally you see with the Paris accord, almost every nation is concerned about it and does believes climate change is man-made. If we want to still sell our coal in the United States, and, equally important, if we want to sell our coal globally, we have to recognize our consumers and potential consumers are concerned about this.

You can be a complete nonbeliever, a complete skeptic, and believe in your head it's completely bogus about man-made climate change, but our consumers don't. And if you want to sell coal, you have to address at some point what consumers want.

Even if you throw all that to the side, even if we arrive at a day when CO2 is not a problem, we still have an opportunity to have a product. That's CO2 for the production of algae used in artificial sweetener, whether it's graphite, whether it's a feedstock in types of chemicals. There is a value to that we're not using now.

In a non-elegant fashion, I've said we're throwing out part of the cow here and we have a chance to utilize the whole thing. Outside the discussion of climate change and CO2's effect, if we can use more of the coal product, and it's a valuable product, why not?

Sen. Heidi Heitkamp (D-N.D.) has a CCS bill. How important is the role of the federal government, and what are your thoughts on that particular bill?

I won't comment on that particular bill. I've not read it. I'm not trying to avoid the question, just haven't read it personally. But I will say this. A month or so ago, I was in Austin, Texas, and I had a chance to visit with Energy Secretary [Rick] Perry about this. My point, and he knows this, if you look historically over the last eight years of DOE funding, renewables have gotten the benefit of a lot more funding for research than have traditional fossil fuels.

I still think renewables play an important part, they will continue to play a part in our energy portfolio, but there ought to be some parity in research dollars between renewables and fossil fuels.

I do think it is important to have presidential administrations recognize that with such a large

percent of electricity coming from coal, we want to be in the business for the long term, not eight years or one administration, but for the next 100-plus years. As the federal government allocates resource dollars, it's important to look at one of the leading sources of electricity. That is coal.

As we've closed down coal-fired plants, as we see fuel switching to gas, I think there is an opportunity for participation on the part of the federal government. We know from the Petra Nova plant in Texas, the capture and utilization in enhanced oil recovery, that technology is there. It's doable, it will continue to be an opportunity to prove effective. But the opportunity for other products, as well, will make an additional difference in the future of coal.

It's been a busy year for coal. There's been a lot of good news on the regulatory front, and production is up. On the other hand, we continue to see plant shutdowns. How do you process these signals, and what they mean for coal and where Wyoming is headed?

I think about it a lot. Some of it is just natural competition. The amazing abundance of natural gas, which we love in Wyoming, as well, because we are a producer of natural gas, the amount of production means the price is very competitive. It's certainly better economically than coal, depending on where you are. So we'll continue to see that being a factor.

But the question is long term. Thirty percent-plus of electricity is produced by coal. That will fluctuate some in the short term, but it's still going to be a major player. As people look at this, whether it's on a short-term basis or a long-term basis, I still think coal has a future, partially just because of the amazing abundance.

And in addition to the ITC, what they're doing at the University of Wyoming is looking at coal in terms of its individual components. Not through a thermal process, but just looking at the individual chemical components and how they can be used for other things, as well. When you have this amazing resource, I think if we can find solutions with the ITC, the University of Wyoming or anywhere in the world, coal is made up of components, and how do you use those, because they're so abundant.

I am pro-coal. And when I see any coal-fired plant shut down, I do wonder about it. What I don't want is that a plant shuts down because it looks like there is no future for coal because we, collectively, are not making the necessary investment in all the improvements we can in utilization of coal.

That's why Wyoming is leading and is proud to take that step.

Eastern coal exports are up at the moment. Western exports are up, too, but it's constrained by port capacity. How much hope do you have for building coal terminals on the West Coast?

The quick answer is I do continue to hope for those Western ports. Obviously on the Longview port, we've had some stumbles and setbacks. In addition to coal-producing state interests pushing, in Montana and Wyoming, I think we'll have some additional pull from our trading partners such as South Korea and Taiwan, as they move away, Taiwan in particular, from

nuclear power. The scare from Fukushima. Their pull along with our push will provide some opportunities for those ports to open.

But simultaneously to that, the better story we can provide from research that has developed at the ITC or anywhere, I think that too will help provide some more opportunities for ports to open, where we can show we've addressed this issue in a responsible way.

How well is President Trump doing his job, and how much more can he be expected to deliver on coal?

We started at the end of President Obama's administration with the moratorium on new coal mines. And where we are now, that's gone. President Trump, certainly on the issue of coal, I think he and his administration have really provided a better news story for Wyoming and Wyoming coal.

I do hope as we look at the Clean Power Plan, 111(d), there is still, the nature of the law is, we have to come up with a plan. Companies as you saw, there was a mixed reaction to getting rid of the Clean Power Plan. Some of the companies said the law requires us to do something, let's make improvements instead of getting rid of it.

There's work to do there on where we go from here. How do we have a reasonable versus what I felt was an unreasonable plan, the Clean Power Plan. The administration is working on that now.

The other I already mentioned, if you want coal to succeed, be looking for opportunities exactly like the ITC, Tri-State Generation, the rural electric cooperatives and the state of Wyoming, because there are answers to be found. I think Wyoming can help provide those answers. (*Editor's note: Tri-State Generation and Transmission Association Inc., a Colorado-based electric cooperative, and the National Rural Electric Cooperative Association have both contributed financially to the ITC.*)

You mentioned the Clean Power Plan. You're a former U.S. attorney, is it worth trying to tackle the endangerment finding or avoid that fight and replace the CPP?

I thought there were so many fundamental flaws in the Clean Power Plan. So I think there needs to be a plan, because we'll have a change in administration at some point in the future, and they may have a different idea. The more we can do in a favorable administration, the better we will be prepared to address an administration that may not be as favorable to coal.

The Clean Power Plan, the way it was designed, the initial take was Wyoming had to reduce emissions, I'm going from memory, 23 percent. I expressed my concerns, and we went up to like a 48 [percent] reduction. We were not given credit for the improvements our coal-fired plants had made in the past. As we looked at it, we weren't going to get credit for shipping wind-generated electrons to other states. And we were going to be punished for shipping coal-generated electrons to other states. So Wyoming, I think, was in a really untenable position with that Clean Power Plan.

So starting over may be the way to go. As I said, there was fundamental flaws with that one. But that doesn't mean we shouldn't have a plan. I think there should be a plan, and better to develop it under an administration that is favorable to coal rather than one that is not. (*Editor's note: Wyoming reduction under a mass-based approach in the initial version of the Clean Power Plan was 19 percent. It was 43 percent under the final version of the rule.*)

We often hear from environmentalists that Wyoming has a tremendous wind resource and that it could benefit the state as coal use subsides. What do you say to that, and, more broadly, how much should Wyoming be planning for a low-carbon future?

I think most people talk about how we do need an all-of-the-above approach, and wind needs to be a part of that. We have the best modular wind in the 48 states, and that provides opportunity for development.

But in Wyoming, we also recognize that you have a coal-fired plant producing X amount of megawatts, to replace that with wind, the footprint is going to be much larger with wind turbines. It brings in issues of viewsheds, it brings in issues of endangered species, like the sage grouse. And so it has to be a balanced approach.

On top of it, you have a transmission issue, which has the same viewshed, endangered species issues.

I think it is appropriate that Wyoming look at wind. But what I want to see on wind, I don't just want to have the wind farms. I want to see if there is an opportunity to develop the expertise to be making the components that make up the wind turbines and towers to maximize economic opportunity. Just putting up wind farms and taking them down, I think we're missing the bulk of what those wind farms can provide.

The footprint of a coal-fired plant and the equivalent footprint of a wind farm of the same size, it is something Wyoming should keep in mind, as some place that values outdoor recreation and views.

Let me ask you about some bills in Congress. One would eliminate the Obama administration's social cost of carbon calculation. Another, from Wyoming's Rep. Liz Cheney (R), would prevent another leasing moratorium. How important are those to the state?

Well, I think starting with the leasing moratorium: That was problematic in a number of ways. Current time and place, what's happening. But for companies that are looking for investment, money and insurance, from people who are saying, "Where should we go do research?" — that is a very bad sign. It sort of looks like there won't be things to research because coal is shutting down.

If you really care about global climate, that would be a bad news story to have a moratorium on coal, because what you're doing is shutting down the place best suited to find innovation. That's the United States, and you're leaving it to China and India and other places to find the solution.

If the environment is your issue, I think it's bad for the environment because you're sending out a big disincentive for people to continue to address the solutions for coal.

What was the other one?

The social cost of carbon.

I've not read that. The balance where I would be in Wyoming is the best way to go on CO2 is find a commercial use for it. Rather than just saying it's a burden and we're going to tax it, the better thing to do is to utilize it.

The Hill

http://thehill.com/policy/energy-environment/365163-week-ahead-arctic-drilling-measure-nears-finish-line

Week ahead: Arctic Drilling measure nears finish line

By Timothy Cama, 12/18/17, 6:00 AM

Congress is expected to vote in the coming week on final passage of Republicans' tax reform bill, which would also open Alaska's Arctic National Wildlife Refuge (ANWR) to oil and natural gas drilling.

The conference committee responsible for reconciling the House and Senate tax bills -- which includes top ANWR drilling proponents Sen. Lisa Murkowski (R-Alaska) and Rep. Don Young (R-Alaska), is due to unveil their final bill late Friday, setting up potential votes for next week.

Murkowski and Senate Majority Leader Mitch McConnell (R-Ky.) have said ANWR drilling would be in the legislation.

Since the bill is being considered under budget reconciliation rules, it only needs 51 votes to pass.

Some House Republicans expressed concern about opening up ANWR, but in recent days have said its inclusion in the tax bill would not be a deal breaker.

The GOP is eager to pass the tax bill before Christmas to secure a major legislative victory for the year.

Under the initial proposal that passed the Senate, the Interior Department would be required to hold at least two auctions for drilling rights leases in ANWR's Coastal Plain area in the next 10 years.

The vote would cap off decades of advocacy by most Alaska leaders, some Alaska Native groups, the oil industry, Republicans and others to open up ANWR for drilling.

Environmentalists have been furiously fighting the proposal at every step, arguing that drilling would be devastating for AWNR's ecology, its imperiled fauna and the climate.

But greens and Democrats have recognized that their time and options for stopping drilling are running out, particularly since the drilling provision is in a budget bill.

The Senate also could act on Trump administration nominees who are pending before the year ends.

The nominees still in the Senate's hopper include Andrew Wheeler to be the Environmental Protection Agency's deputy administrator, Kathleen Hartnett White to be chairwoman of the Council on Environmental Quality, Barry Myers to be the National Oceanic and Atmospheric Administration's administrator and Jim Bridenstine to be the National Aeronautics and Space Administration's administrator.

A Senate panel cleared Myers on Wednesday. Myers was, until recently, the CEO of AccuWeather, Inc., which he co-founded. The company provides weather forecasting information similar to the National Weather Service. Democrats had raised concerns that Myers would be conflicted.

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Bloomberg Environment

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Farmworker Protection Rule Rewrite Could Stall Pivotal Funding

By Tiffany Stecker, 12/18/17

The EPA will propose changes to Obama administration rules to protect farmworkers and applicators from pesticides next week, in what is expected to be an arduous task for the agency.

The move could also stall passage of critical legislation to keep one office afloat.

The agency announced Dec. 14 that it would begin revising certain requirements in the Worker Protection Standard, a 2015 rule that updated standards for reducing pesticide exposure to nearly 2 million farmworkers nationwide, and a January 2017 rule to certify the applicators of the most restricted-use pesticides.

Although the implementation dates for the rules won't change, the move invites industry to lobby for changes in regulations that took years to negotiate.

Tough Spot

The announcement also could place the agency in a difficult position.

The Office of Pesticide Programs is eager for Congress to reauthorize the Pesticide Registration Improvement Act, a bill that allows the office to collect industry fees to complete pesticide registrations and other work.

But Sen. Tom Udall (D-N.M.) has placed a hold on the legislation (H.R. 1029) in the Senate since July, stating that he will lift his hold when the EPA commits to fully implementing the farmworker rules.

“The EPA is saying that they won't revoke these rules while they consider revoking them,” Udall told Bloomberg Environment in an emailed statement. “That isn't comforting, and it doesn't resolve my concerns.”

“I haven't yet heard a reasonable answer to my requests from the EPA. They have told me repeatedly that they don't have the resources to carry out essential functions,” Udall added. “Yet at the same time, they have chosen to undergo an expensive and labor-intensive rewriting of crucial aspects of these worker protection rules.”

Changes 'Puts Children at Risk'

By the end of fiscal year 2018, the agency will request comments from the public on three aspects of the rule—the minimum age of 18 to apply pesticides, the allowance for a "designated representative" to obtain pesticide use information on a farmworker's behalf, and buffer zones around pesticide-spraying equipment meant to shield farmers from chemicals.

The EPA will solicit comments by the end of FY 2018 to change the minimum age requirement of 18 for the certification and training rule, which covers applicators for the most restricted types of pesticides.

The implementation dates for the Jan. 4, 2017, rule will remain unchanged.

Andrea Delgado, legislative director for the advocacy organization Earthjustice, slammed the announcement as an attempt to weaken important farmworker protections.

"Gutting the basic safeguards provided by these two rules will deny farm workers the right to access pesticide information via a farm worker representative and put children at risk of pesticide misuse, injury, illness, and death," Delgado said in a statement. "Whether it's in Congress or in the courtroom, we'll defend these crucial protections every step of the way."

'It Is Kind of Discouraging'

The top EPA career official for worker safety in the Office of Pesticide Programs expressed frustration last month that the Trump administration was considering re-opening the rules for examination.

"I thought we reached a good position in both regulations, so it is kind of discouraging to have it still second-guessed at this stage," Kevin Keaney, branch chief of the Certification and Worker Protection Branch, told an EPA advisory committee Nov. 30.

"We're in a new environment," Keaney added. He was not authorized to comment to Bloomberg Environment on the Dec. 14 announcement.

Earlier this year, the National Association of State Departments of Agriculture petitioned the EPA to extend the compliance date for the Worker Protection Standard from Jan. 1, 2017, to at least February 2018. The EPA granted its request, saying it would extend the date "until the necessary guidance and training have been completed."

Charlotte Bertrand, acting principal deputy assistant administrator for the EPA Office of Chemical Safety and Pollution Prevention, told NASDA Dec. 13 that the implementation date for the rule would not be delayed beyond Jan. 2, 2018, but that the EPA would reconsider certain aspects of the rule in response to concerns that came out of President Donald Trump's Feb. 24 executive order on regulatory reduction.

The agricultural pesticide trade association CropLife America met with Udall for months to convince him to lift his hold on the legislation.

Although the existing authorization is being extended through the current resolution to fund the federal government that expires Dec. 22, the industry is eager to pass the bill, which would keep the Office of Pesticides Programs afloat for three years. About one-third of the office's work is funded by Pesticide Registration Improvement Act fees.

CropLife America didn't respond to a request for comment.

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E&E News

https://www.eenews.net/climatewire/stories/1060069219/search?keyword=EPA

The man who stormed out of Pruitt's EPA

By Niina Heikkinen, 12/18/17

David Schnare was 26 years old and just out of the U.S. Navy Reserves in 1974 when he had an unforgettable encounter with a dead horse.

Awaiting the start of a master's degree program that fall, Schnare took an internship working with Minnesota's public health department. What he saw shocked him. There were communities with raw sewage running down the streets, and a woman and her children living in a home with cracks in the wooden floorboards wide enough to see the ground beneath, he said.

He recounts one particularly gruesome sight. That woman's husband had put a horse carcass under his neighbor's window because they were having an argument, Schnare said. Rats had started to nest in the dead animal's body.

Schnare thought at the time, "This is what real public health is about."

These days, Schnare is best known for his attacks on mainstream climate science and his litigation against scientists doing the research.

As a former member of U.S. EPA's transition team who stayed at the agency after President Trump's inauguration, Schnare proved to be polarizing for his focus on re-examining the cornerstone of EPA's climate regulations, the endangerment finding for greenhouse gases. He is among a vocal minority of conservatives who see such a review as possible and necessary for undoing regulations on greenhouse gases. He had pushed unsuccessfully for the new EPA administrator, Scott Pruitt, to include reconsideration of the endangerment finding as part of the agency's transition plan.

Schnare later left the agency in dramatic fashion, citing conflicts in management styles with Pruitt and later publishing an op-ed criticizing his former boss.

Beyond his most recent work with the Trump administration, Schnare has publicly fought for access to climate scientists' emails in a number of lawsuits. He describes the litigation as an effort to increase transparency, although the targets of his efforts contend that it's an attempt to harass and intimidate them.

Schnare isn't one to call climate change a "hoax," as the president once did. Like Pruitt, he does not reject outright humans' impact on the climate, but he has doubts about how serious that impact will be.

"My examination of climate science suggests that we are not facing a cataclysmic problem. I'm one of those that says, 'Yes, greenhouse gases do have an effect on the climate. The newest and best data we have show that it's a much smaller effect than we thought a decade ago, by a factor

of four,'" he said.

In other words, it's not as pressing a problem as a rotting horse with rats nesting in its carcass.

'In the weeds' of climate science

Schnare, 69, is easy to pick out of a crowd. He stands over 6 feet tall and sports a silvery-white goatee.

He's given to writing short, sometimes abrupt emails, but in person Schnare is a storyteller, offering anecdotes from conversations decades earlier. He diverts onto seemingly unrelated tangents that ultimately illustrate his thinking on a given issue. He speaks in a soft, measured voice, periodically punctuating important points with sharp raps on the table in front of him.

Schnare first became interested in climate science about a decade ago, when he was a staffer at EPA, he said during a recent interview with E&E News. He recalled conversations with two of his colleagues at the agency, John Davidson and Alan Carlin.

"I respected John's intellect enormously, and Alan Carlin, as well. They are just very bright people. So I decided to take a hard look," he said. "My approach has always been you have to get in the weeds, you have to go look at the data."

Carlin's name has been floated by the conservative Heartland Institute as a potential member of a team to critique climate science — an idea Pruitt is advocating. Both Carlin and Davidson co-authored a report in 2009 that was critical of EPA's use of Intergovernmental Panel on Climate Change data to develop the agency's endangerment finding. Al McGartland, then the director of EPA's economics office, declined to forward the report to the office managing the development of the finding (*Greenwire*, June 26, 2009).

Republicans at the time and recently have called the episode an example of the Obama EPA suppressing science. Pruitt recently echoed Carlin's and Davidson's critiques in testimony before the House Energy and Commerce Committee (*Climatewire*, Dec. 8).

Carlin and Davidson weren't the only ones casting doubt on the science behind the endangerment finding. According to emails obtained by E&E News, Schnare also urged EPA staff working on the endangerment finding to consider two different studies that took a divergent view on climate science. In an email exchange with Steve Newbold, an economist at the agency, Schnare said the research cast "significant doubt" on whether man-made greenhouse gases significantly contributed to temperature changes in recent decades.

In the years after EPA published the endangerment finding, Schnare became increasingly interested in speaking out publicly about his views on climate change, a topic that was not a part of his work at the agency.

One of Schnare's main arguments against mainstream climate science is what he describes as an overreliance on climate modeling over empirical temperature data. He questions the way

researchers track temperature changes and often points to the benefits of carbon dioxide to plant life and the perils to the planet if atmospheric CO2 fell too low. Climate scientists repeatedly note that other effects of climate change may outweigh the benefits that a CO2 uptick might offer vegetation (*Climatewire*, Oct. 17).

His targets complain of harassment

Inspired by the "Climategate" scandal, in which hacked climate scientists' emails fed fringe theories of a climate conspiracy, Schnare began sending out Freedom of Information Act requests for the emails of a number of government and university climate scientists. If the scientists were too slow to respond or refused his request, Schnare took them to court to get the emails. Schnare describes these lawsuits as part of an effort to publicly reveal the data and people guiding policymaking decisions on climate change.

Those who have been on the receiving end of his lawsuits see matters quite differently. A number of people who spoke to E&E News described Schnare's legal actions as an attempt to harass and silence climate scientists.

Some questioned whether Schnare was following EPA's ethics guidelines when he started pursuing the emails of climate scientist Michael Mann from Mann's time at the University of Virginia. Schnare brought the case while working with a group he helped found, the American Tradition Institute. ATI is the precursor to Schnare's later group, the Energy and Environment Legal Institute, where until recently Schnare served as general counsel. In an Oct. 24, 2011, affidavit, Schnare states he had permission to do pro bono work with ATI before he retired from EPA on Sept. 30, 2011.

Others have critiqued the strength of Schnare's legal arguments and the intent behind his lawsuits.

In one case, Schnare was part of a lawsuit that sought to stop EPA researchers at the University of North Carolina from conducting human trials of air pollutions' impacts. The study tested the temporary impact of inhaling low concentrations of ozone or particulate matter. Schnare had tried unsuccessfully to argue that he had standing as a concerned citizen to bring the case himself, as well as to act as a lawyer. He even referenced the starvation death of his great-uncle and namesake, David Steiner, in a Nazi concentration camp, and the horrors of the human testing done there. This was meant to establish why he could bring the lawsuit, according to Steve Milloy, who worked on the case with Schnare.

Steve Silverman, an attorney for EPA at the time, said EPA's controlled human-exposure studies followed strict ethical and scientific guidelines. He noted subjects were exposed to pollution levels "equivalent to that experienced in domestic urban areas." Silverman slammed the reasoning behind the lawsuit.

"I've never seen anything like it, both the level of malice and baseless legal theories. The District Judge hearing the case dismissed it out of hand," Silverman said in an email.

Gavin Schmidt, a NASA scientist whom Schnare sued to obtain his private emails in a separate lawsuit, derided the suggestion that obtaining those emails would lead to greater transparency in policymaking. In this case, which extended over five years, Schnare was part of a legal team that sought NASA emails on surface temperature records, as well as Schmidt's nonofficial emails.

"The idea that they need to see my personal emails in order to improve transparency in policymaking is transparently bullshit," Schmidt said. "My personal emails, how is that involved in policymaking? I don't work for a policy agency, I've never made policy in my life. And so why are they targeting me? It's just because I'm a scientist in the public eye."

Schmidt noted that now that he has had some distance from the case, he doesn't see the lawsuit as a personal attack, but he and others Schnare had sued became representative of the larger scientific community.

"It is very, very transparent that it's supposed to be a chilling effect on scientists speaking out in public," he said.

3 decades at EPA

A longtime Northern Virginia resident, Schnare grew up in the suburbs outside Chicago. His father worked as an accountant for General Electric, and his mother stayed at home to care for Schnare, his twin sister and two brothers. He left Illinois for Mount Vernon, Iowa, where he got an undergraduate degree from Cornell College in 1970.

Schnare had been accepted into a chemistry Ph.D. program at the State University of New York at Buffalo when he got a call from a Navy recruiter. With the Vietnam draft looming (he remembers his draft number: 29), Schnare joined the Navy Reserve and sailed around the Mediterranean instead.

Schnare credits his time in the Navy in part for pushing him into the government.

"You're making a commitment to the American people that goes beyond yourself. And you are around people who have, as well. So there's an ethic there that you get into," he said.

Afterward, Schnare obtained a master's degree in public health and a Ph.D. in environmental management from UNC. Doctorate in hand, Schnare quickly landed a job working on policy in the office of drinking water at EPA, where he launched what would be a 33-year career at the agency that included work in regulatory analysis and enforcement. After about 14 years at EPA, Schnare began taking evening classes at George Mason University's law school and obtained a law degree while still working full time.

Those close to Schnare are quick to mention his intellect, wry sense of humor and love of dogs. For many years, Schnare and his wife, Marlae, bred and showed Labrador retrievers.

Wade Miller, a consultant on water issues who has known Schnare professionally and personally for more than 40 years, equated Schnare's commitment to the environment to that of Bill Reilly,

Russell Train and Lee Thomas, former EPA administrators under Presidents George H.W. Bush, Nixon and Reagan, respectively.

"He is one of the most honest, ethical people I've ever met, and he is more dedicated to the protection of public health and protection of the environment than almost anyone I've ever met," said Miller.

'Licking his wounds'

Last year, Myron Ebell, the head of then-presidential candidate Donald Trump's EPA transition, offered Schnare a position on the team. Schnare would later go on to join the "beachhead" team — the first wave of Trump political staffers at EPA — after he said he was assured a position at the agency.

But that never materialized. While Schnare brought decades of experience working at EPA, he said he wasn't able to work effectively with Pruitt (*Climatewire*, Dec. 8).

The abrupt exit from the agency was not a first for Schnare. In the mid-1990s, Schnare described leaving EPA for a period of time on detail to another federal office after he had conflicts with then-office director Mike Cook. Now, Schnare counts Cook as a personal friend. And Schnare cited conflicts over the proper degree of enforcement actions as one of the reasons he finally left the agency in 2011.

"I don't believe it's appropriate to bang your head against the wall and make a lot of noise and be an aggravation. I believe in team play, and I believe in supporting the people in charge, and if you can't do that, then you don't belong there," he said.

Miller, the consultant who has known Schnare since his days in the office of drinking water, advised his longtime friend to remain at the agency this time, despite conflicts with Pruitt. He noted that Schnare would have been a "tremendously valuable resource" at EPA had he stayed.

"He's still licking his wounds from his parting from EPA; I think he's trying to figure out what to do next," Miller said.

Schnare says he's focusing his attention forward. He sees part of his time in retirement going to some pro bono work, and he is also looking to return to water issues. He is particularly concerned about the blue green algae that is de-oxygenating the Chesapeake Bay.

Outside of work, Schnare plans to get his hands dirty. A potter in his spare time with a pottery wheel and kiln at home, Schnare says he is going to go into crystalline pottery this winter.

"This is what true retirement is, when you quit your job, the kids leave home, the dog dies, and then you can do anything you want and you don't have to worry about it. We are fast approaching that," he said.

E&E News

https://www.eenews.net/eedaily/stories/1060069237/search?keyword=EPA

Congress faces another shutdown deadline this week

By George Cahlink, 12/18/17

Congress this week will have to pass another temporary spending measure to keep federal agencies from shutting down late Friday evening.

The House Rules Committee will meet at 3 p.m. tomorrow to send the latest stopgap, known as a continuing resolution, to the floor.

Capitol Hill is eyeing a CR that would extend funding through Jan. 19, buying lawmakers time to negotiate an elusive final fiscal 2018 compromise.

A major sticking point is that the parties and the House and Senate have different approaches for those negotiations.

The House is expected to move legislation that would increase funding for the Pentagon for all of fiscal 2018 but provide level spending for all other agencies through mid-January. It would also extend the politically popular Children's Health Insurance Program.

That strategy is designed to appease conservatives who say they would be reluctant to support another CR that does not increase military dollars.

They are eager to separate Defense Department funding from the rest of government to avoid having to provide a similar boost for domestic coffers.

Under the House plan, U.S. EPA and the Interior and Energy departments would be largely level-funded until mid-January.

The Senate, however, is certain to reject the House approach. Already, Senate Democrats there have said they have the votes to filibuster any spending bill that does not provide parity between defense and non-defense accounts.

Sen. Richard Shelby (R-Ala.), a senior appropriator, said the Senate is eyeing returning a CR to the House that would sidestep the defense increase and keep spending steady into the next year. He added he supports a Pentagon hike but wants some domestic increases too.

Shelby conceded there is not enough time to negotiate a broad deal on spending before Christmas, especially with Republicans in both chambers moving to pass tax reform legislation

also this week (*see related story*).

Rep. Mike Simpson (R-Idaho), chairman of the House Energy and Water Appropriations Subcommittee, said he's frustrated that some House members believe they can "jam" the Senate by adjourning for the year after they move a CR with a defense hike.

"If you are going to do that, you better have a return flight because I don't think the Senate is going to take it up just because we have gone home," he said.

Simpson also expressed frustration that now, almost halfway into fiscal 2018, which began Oct. 1, agencies are being funded at last year's levels. He said a series of CRs are an "irresponsible way" to run government.

"It means you are addressing the issues that existed in last year's budget, not this year's budget. In other words, you are addressing the priorities of the previous administration and not this administration because our appropriations bills [for fiscal 2018] changed a lot of the focus," Simpson added.

Despite the mounting frustration over incomplete spending, it's widely expected Congress will find a way around a shutdown by passing a CR that treats all agencies equally. The expectation is it will not move until later in the week, after lawmakers move their tax overhaul.

Treasury Secretary Steven Mnuchin told "Fox News Sunday" about the possibility of a shutdown: "I can't rule it out, but I can't imagine it occurring."

Disaster funding

Lawmakers are also wrestling with how to provide aid for victims of recent hurricanes and wildfires before leaving for the holidays.

Rep. Dennis Ross (R-Fla.) said lawmakers from Texas and Florida, the states hit hardest by recent storms, have talked about opposing any CR without a commitment to the relief this year.

He said the emergency supplemental spending could be attached to the CR or move as stand-alone legislation this week.

Congressional leaders for now have not said how disaster aid will move, although both chambers favor a package that would be above the $44 billion in relief sought by the White House last month.

"This is not going to be the last supplemental," said Rep. Ken Calvert (R-Calif.), chairman of the House Interior and Environment Appropriations Subcommittee.

Calvert declined to offer a dollar figure for a supplemental, but he suggested it would be a down payment on aid to avoid shortfalls until final spending is worked out in the larger omnibus next year.

Washington Examiner

http://www.washingtonexaminer.com/a-zero-tolerance-policy-for-trumps-zero-experience-nominees/article/2643681

OPINION: A zero-tolerance policy for Trump's zero-experience nominees

By Washington Examiner, 12/17/17, 12:01 AM

One week after President Trump won the election, some Washington residents protested against him on the Capitol grounds. One sign, illustrated with an outline of the District of Columbia, read, "Don't Drain my Swamp."

The federal capital's incestuous network of revolving-door cronies and entrenched bureaucrats have so protected and increased their own power in recent years that the five wealthiest counties in America are all within commuting distance of Capitol Hill.

These swamp creatures complain that Trump is bringing in too many outsiders. Beltway insiders consider it a crime that the president has nominated critics of agencies to head those very agencies — see Scott Pruitt at the Environmental Protection Agency and Scott Garrett at the Export-Import Bank — when in truth, it's praiseworthy. Trump should wear those criticisms as a badge of honor.

But he seems in some areas to have confused the value of bringing in outsiders with a disregard for expertise. On more than one occasion, the president has hired or nominated people clearly unqualified for the job.

We're not talking only about Trump's "Apprentice" co-star Omarosa Manigault Newman, who was run out of the White House last week, but she is a fine example. She has a Ph.D., and is ordained as a minister, but how she was qualified for a top job in the Office of Public Liaison was never explained. She seemed to lack the relevant networks, personality traits, and experience to do the job well. She was blasted as having "absolutely no standing in the Black community, nor any institutional knowledge of Black Republicans or the Republican Party."

Personal loyalty and name recognition are no substitute.

Of more consequence have been Trump's nominees to lifetime appointments requiring Senate confirmation. Matthew Spencer Petersen, Trump's nominee to the U.S. District Court for the District of Columbia, put on an embarrassing performance last week before the Senate Judiciary Committee. He admitted under Republican questioning to having no courtroom experience — as in, none — and to a glaring ignorance of common principles of legal doctrine.

This sort of nomination is damaging, first and most simply because the country needs qualified judges and administrators.

Second, filling a district court slot with a subpar conservative shrinks the high-caliber conservative bench for higher court openings in the future.

Third, it gives ammunition to the Left. Liberals assert speciously that any judge disapproved of by the left-leaning American Bar Association shouldn't be confirmed. They even tried to say this year that devout Catholicism disqualifies a nominee. Putting up unqualified nominees makes it easier for the Left to confuse the friendly mainstream media that a *good* nominee is similarly not up to snuff.

Ideology or personal loyalty aren't enough. The Trump administration needs to demand relevant experience and knowledge before hiring or nominating anyone. Until the administration starts maintaining such standards, it will be up to Republicans in the Senate to enforce them.

Washington Examiner

http://www.washingtonexaminer.com/green-groups-threaten-lawsuits-to-fight-epa-reorganization/article/2643698

Green groups threaten lawsuits to fight EPA reorganization

By John Siciliano, 12/16/17, 12:01 AM

Environmental groups are looking at a new wave of lawsuits and pressure campaigns to counter Environmental Protection Agency Administrator Scott Pruitt's plans to reorganize the agency and get businesses to not cooperate with him.

The Natural Resources Defense Council is looking at options to sue Pruitt over his enforcement policy after last week's reporting by the New York Times that showed the Trump administration is penalizing polluters at a much lower level than previous Republican and Democratic administrations.

The EPA said the Times "distorted" the facts. "The reality is that Environmental groups are looking at a new wave of lawsuits and pressure campaigns to counter Environmental Protection Agency Administrator Scott Pruitt's plans to reorganize the agency and get businesses to not cooperate with him.

The Natural Resources Defense Council is looking at options to sue Pruitt over his enforcement policy after last week's reporting by the New York Times that showed the Trump administration is penalizing polluters at a much lower level than previous Republican and Democratic administrations.

The EPA said the Times "distorted" the facts. "The reality is that Administrator Scott Pruitt is committed to enforcement [and] has repeatedly underscored the need to continue to vigorously enforce against polluters."

The NRDC cites a memorandum that lays out Pruitt's enforcement strategy, which the group said could form the basis of a major new lawsuit charging that his new direction for the agency violates the Clean Air Act.

“An agency like EPA may not issue guidance that relieves regulated industries of legal obligations, unless the agency first undertakes notice-and-comment rulemaking that provides the public fair opportunities to comment and oppose unlawful or harmful actions. The Trump EPA did not do this,” according to John Walke, NRDC’s director for clean air policy, in a recent post.

While NRDC mulls its options, “nothing in the administrator’s action stops states, public health and environmental groups, and ordinary citizens from bringing enforcement lawsuits to uphold clean air protections that the Trump administration proclaims it will not,” Walke wrote.

The group also plans to submit a Freedom of Information Act request soon to obtain all records related to the development of Pruitt’s enforcement policy contained in a memo issued earlier this month after the EPA chief appeared before the House energy committee for the first time as administrator.

“Congress and EPA’s Office of Inspector General also should investigate these deeply troubling actions,” according to Walke.

Other environmental groups are going after large companies that have been offered a chance to collaborate with Pruitt, because they believe it is cover for "destroying the agency's ability to do its job," according to the Environmental Working Group.

Environmental Working Group President Ken Cook sent an aggressively worded letter to James Lentz, the CEO of Toyota North America, to reject any partnership with Pruitt or risk betraying the company's commitment to good environmental stewardship.

Pruitt had told the Energy and Commerce Committee that he was asking Toyota to partner with him on improving management effectiveness at the agency.

"Nothing in Mr. Pruitt's actions or public statements to date as head of the EPA, or in his prior role as Oklahoma's attorney general, suggests that he comes to issues of EPA's performance, management and effectiveness with an impartial interest in improving the agency through any management techniques," Cook wrote. "To the contrary, Mr. Pruitt already has an overarching objective for the EPA: to destroy its ability to achieve its mission."

The group urged Lentz to "immediately and unambiguously announce Toyota's rejection of any partnership with EPA" or Pruitt, according to the letter. "To do otherwise risks irreparable harm to Toyota's brand and reputation in the American marketplace."

Townhall

https://townhall.com/tipsheet/cortneyobrien/2017/12/16/heres-how-many-people-have-left-the-epa-since-scott-pruitt-took-over-n2423067

Here's How Many People Have Left the EPA Since Scott Pruitt Took Over

By Cortney O'Brien, 12/16/17, 12:00 PM

The Environmental Protection Agency has shrunk considerably since Scott Pruitt took over as administrator. In fact, the agency is back to President Reagan-era staff levels.

Over 700 EPA personnel have either retired, quit, or taken voluntary buyouts since Pruitt took over, Think Progress found after combing through federal employment statistics. Some are quitting in "disgust."

"There has been a drop of employees of 770 between April and December. While several hundred of those are buyouts, the rest of those are either people that are retiring or quitting in disgust," Kyla Bennett, director of New England Public Employees for Environmental Responsibility (PEER), told ThinkProgress. "Is that number higher than it would normally be? I think it is."

Liberals were outraged over Pruitt's nomination last year, labeling him a "climate skeptic" and criticizing his ties to the fossil fuel industry.

"Having Scott Pruitt in charge of the US Environmental Protection Agency is like putting an arsonist in charge of fighting fires," Michael Brune, executive director of the Sierra Club, said of the nomination.

Famous environmentalist Leonardo DiCaprio brought his concerns straight to President-elect Trump at Trump Tower, where he and activist Terry Tamminen reportedly prepared a presentation explaining how preserving the environment has a positive effect on the economy.

Pruitt has been credited with influencing Trump's decision to pull the U.S. out of the Paris Climate Agreement. He has also targeted the Obama-era Clean Power Plan and Clean Water Rule. *Rolling Stone Magazine* accused Pruitt of "quietly tearing down decades of environmental progress."

CNN

http://www.cnn.com/2017/12/16/opinions/epa-cuts-make-public-health-emergency-krupp-opinion/index.html

OPINION: EPA cuts could risk a public health emergency

By Fred Krupp: 12/16/17, 8:46 PM

With time running out for Congress to reach an agreement on the budget, lawmakers are advancing a quiet but crippling assault on the Environmental Protection Agency (EPA), which has already suffered years of hollowing out from budget cuts. At stake is the EPA's fundamental ability to carry out its most basic public health and environmental missions. Without full funding for the agency, the health of our children, our seniors and our communities are at risk.

President Donald Trump, who pledged as a candidate to reduce EPA down to "little tidbits," asked for around 30% cuts to the agency this spring — deeper than any other agency and enough to cut its funding to 1970s levels in real dollars. The potential real-world result will be more asthma attacks, more heart attacks, and more pollution in our lives. And if all that isn't enough, the administration also wants to cut support for critically needed research into alternative energy sources and innovations to protect the water we drink from physical, chemical, and biological threats.

Congress, which has traditionally provided bipartisan support for environmental safeguards that protect constituents, is falling out of step with public support for a fully capable EPA. In September, the House of Representatives voted to cut the EPA budget by $528 million in 2018 , less radical than Trump's proposal but deeply damaging. And just days before Thanksgiving, the chairman of the Senate Appropriations Committee hustled through cuts of his own, choosing to "release" the chairman's recommendation, without so much as a public hearing.

This kind of secrecy is not surprising when you consider what is being proposed. Remarkably, the Senate proposal would eliminate EPA's Integrated Risk Information System (IRIS) program, which provides foundational assessments of chemical toxicity needed to protect American families. And it would cut "green chemistry" research designed to produce safer chemicals while improving the safety of production and disposal of chemicals.

Congress is also proposing major cuts to EPA's enforcement budget, making it harder to hold polluters accountable when they use hazardous pesticides inside nursing homes, release dangerous chemicals into the air, dump oil and hazardous waste into the ocean and sludge into storm drains. The EPA already has about 50 fewer criminal investigators than the 200 required by law. Further cuts would send the wrong message to polluters who flout the law—and be a slap in the face to the majority of businesses who work hard to deal properly with hazardous

materials.

Read More

Also on the chopping block are critical clean-air programs, like pollution monitoring, that have helped states and communities make historic strides in fighting air pollution. Congress would also cut support for monitoring of greenhouse gases, harmful particulates, and other pollutants.

The White House, House and Senate budget cuts all would require EPA to continue to lay off public health experts, environmental engineers, scientists, and other vital staff members. They would also slash the agency's science and technology work, which helps states and localities fight and clean up pollution. They would even cut support for environmental justice efforts that help the country's most disadvantaged communities whose children are at a disproportionate risk of health problems like asthma, lead poisoning, and other serious ailments.

As William Ruckelshaus, EPA's administrator under Presidents Nixon and Reagan, put it, in response to Scott Pruitt's secrecy in managing the agency under Trump, "It appears that what is happening now is taking a meat ax to the protections of public health and environment and then hiding it."

In addition to worrying about our children's health, members of Congress ought to consider the effects of rolling back environmental safeguards on their political health as the voting electorate grows younger and greener. More than 85% of Americans call the environment a top or important priority, according to Pew Research Center, and over 60% want the EPA preserved or strengthened. And as former GOP Governor Thomas Kean pointed out recently, as of August, fewer than 1 in 4 independents approve of President Trump's handling of environmental issues.

Whether lawmakers strike a deal now, or delay decisions until early in the new year, it's time to pick a side. The frightening truth is this: If the EPA is forced to continue cutting corners, the chances of a horrifying environmental disaster will only grow. Every child, from Alaska to Maine to Tennessee, and everywhere in between, deserves to grow up with clean water, food and air.

Inside EPA

https://insideepa.com/daily-feed/ewire-pruitts-red-team-climate-debate-hold

Pruitt's 'red team' climate debate on hold

Inside EPA, 12/18/17

EPA Administrator Scott Pruitt for months has touted his plan to publicly debate mainstream climate change science using a "red team, blue team" format, but one news report says the idea is "on hold" due to splits within the Trump administration on several issues.

One source tells *E&E News* that following a meeting last week with White House officials and EPA air chief Bill Wehrum, the "red team" project is paused. Even before the meeting, an official said there are "many issues to be ironed out."

Pruitt recently testified to House members that the public debates could begin "early next year" and as soon as January.

Hard-line conservative groups opposed to greenhouse gas regulation hope that Pruitt's "red team" effort will highlight sufficient uncertainty in mainstream scientific findings about anthropogenic climate change that it could allow EPA to reverse the Obama administration's GHG endangerment finding, which forms the foundation for EPA's climate rules.

During the hearing, the administrator criticized the prior administration's process for crafting the GHG risk finding, charging it was "accelerated" and wrongly used work by the Intergovernmental Panel on Climate Change.

However, he stopped short of agreeing with one lawmaker's call to reconsider the finding, and he has several times previously hedged on the issue.

Regarding the "red team" idea, *E&E* quotes one source close to the administration as saying it is possible that Pruitt and the White House "have differences of opinion over how it should be launched and what part of the government should be in charge of it."

Some groups have pushed for the effort not to be led by EPA, but rather the White House Office of Science and Technology Policy, which would allow it to convene an inter-agency group to

look at the issue.

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To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
From: Hassell, Emily
Sent: Fri 1/19/2018 8:00:40 PM
Subject: News Clips - 19 January 2018

(Full stories, highlights, and details are listed further down in the email, and can be jumped to by clicking on any of the links below.)

Politico - EPA says contingency shutdown plan may not reflect current plans

Wall Street Journal - Much of the Federal Government Wouldn't Shut Down in a Government Shutdown

E&E Daily - Pruitt's cleanup plans puzzle Democrats, Republicans

E&E Climatewire - Pruitt jetting to Japan, Israel on latest energy tour

AP - EPA official speaks on risk of climate change to toxic sites

BNA - States Take Lead in Preparing Toxic Sites for Climate Change

Washington Post - The planet just had its hottest 4 years in recorded history. Trump is dismantling efforts to fight climate change.

E&E Greenwire - Pruitt forced her out. Now she's suing.

BNA - EPA to Reopen Obama-Era Visibility Improvement Rule

BNA - With Pesticide Fee Bill Treading Water, Industry Eyes Alternatives

E&E Greenwire - In win for utilities, EPA to revisit haze regulations

BNA - EPA Aids Chemical Makers as Listing Deadline Looms

E&E Greenwire - Court won't rethink challenge to EPA 'hot-spot' guidance

The Hill - Overnight Energy: Last year was second-hottest on record

BNA - Planned Truck Rule Exemption Will Test EPA's Policy Defenses

E&E Energywire - Okla. AG opposes release of Tar Creek audit

News Channel 9 Chattanooga - Chattanoogans concerned proposed EPA cuts will affect lead contamination cleanup efforts

Reuters - Philadelphia refiner's woes pose test for U.S. biofuel policy

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Politico

https://www.politicopro.com/energy/whiteboard/2018/01/epa-says-contingency-shutdown-plan-may-not-reflect-current-plans-429459

EPA says contingency shutdown plan may not reflect current plans

By Alex Guillen, 1/19/18, 1:04 PM

An EPA spokesman said today that the agency's publicly available contingency shutdown plan does not necessarily indicate what EPA will do if the government shuts down at midnight.

"The plan on the website is required to be put on the site as a contingency plan, but it doesn't necessary accurately reflect what our current plans will be," spokesman Jahan Wilcox said in a statement. "To take that plan and deduce what is actually going to happen is not accurate reporting. Our plans are in flux and we are doing what is consistent with other agencies."

The document was most recently updated on Dec. 5 and signed by Donna Vizian, EPA's principal deputy assistant administrator for the Office of Administration and Resources Management. EPA routinely updates the plan, and the previous version was issued in April 2017.

EPA on Thursday directed questions about the shutdown plan to the White House OMB. An OMB official today directed POLITICO back to EPA's Dec. 5 contingency plan.

The plan is also a key source of information for EPA employees. An email sent to Region 5 workers this morning directed them to read the contingency plan for "important information about what would occur in the event of a shutdown."

WHAT'S NEXT: Government funding runs out at midnight tonight unless Congress passes an appropriations package. In the event of a shutdown, many EPA employees will report to work for a brief period on Monday to secure their work stations.

Wall Street Journal

https://www.wsj.com/articles/much-of-the-federal-government-wouldnt-shut-down-in-a-government-shutdown-1516357801?mod=searchresults&page=1&pos=1

Much of the Federal Government Wouldn't Shut Down in a Government Shutdown

By Louise Radnofsky, 1/19/18, 5:30 AM

WASHINGTON—If the federal government shuts down at midnight Friday, much of its work will continue, according to carefully laid plans that have become a familiar part of agency life amid regular political brinkmanship.

Social-security payments will be deposited as 53,000 workers for that agency stay on the job, because the payments don't rely on an annual appropriation and by "necessary implication," government lawyers have decided, the Social Security Administration should make sure they go out.

The planned Women's March on the National Mall should be able to go ahead, as the National Park Service says it has special provisions for First Amendment activities that require crowd control. Meat, poultry and egg inspections will continue, because they are considered by the U.S. Department of Agriculture to be essential to safeguarding human life.

And so, too, will the work of special counsel Robert Mueller investigating potential Russian interference in the 2016 election, since that doesn't rely on an annual funding appropriation. Mr. Mueller's team will join around 95,000 Justice Department employees continuing law-enforcement activities, because, the agency says: "The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired."

The detailed picture, including the myriad justifications for shutdown exceptions, comes from hundreds of pages of contingency plans updated by federal agencies in 2017 and published online.

There is still work that will go undone, the plans show, and that comes with costs.

In December, S&P Global Ratings estimated a fresh shutdown "could shave approximately 0.2 percentage points, or $6.5 billion, off of real fourth-quarter GDP growth for each week it drags on."

Beth Ann Bovino, U.S. chief economist for S&P Global Ratings, said the impact would be lower in January because the holiday spending season was over and a shutdown wouldn't immediately run into federal workers' vacation time, giving them a chance to make up some lost ground, but that it would still likely knock off 0.1 percentage point for each week it lasted.

President Barack Obama's Office of Management and Budget issued a detailed report after the 16-day shutdown in 2013 that concluded its impact had been worse than realized—including a loss of 6.6 million work days from furloughed employees who were paid around $2 billion for work not performed.

If the government shuts down again, Americans who need a new or replacement social-security card will have to wait. The National Gallery of Art and Smithsonian museums have enough money to stay open Saturday and Sunday and would close thereafter. Some federally produced economic reports won't be released.

The Federal Mine Safety and Health Review Commission will keep five presidential appointees, one administrative judge, two employees and a computer expert on the job in case of an emergency, telling everyone else to stay home. The Environmental Protection Agency will shrink from a staff of more than 14,000 to three presidential appointees and 781 other employees to "protect life and property," including by working on Superfund hazardous waste sites and securing EPA laboratories.

While many agencies have posted their most recent shutdown contingency plans, some have only older versions on the books. It wasn't immediately clear, for example, what would happen to the Executive Office of the President.

Under the Obama-era plan for the White House set in 2015, 545 out of 1,263 staffers would stay on the job, including 125 presidential appointees and other staff considered exempt from shutdown rules, as would 42 aides on the National Security Council and 128 officials at the Office of Management and Budget who can "assist in providing direction to the executive branch for the duration of any shutdown."

Among the other effects of the 2013 shutdown cited by the Obama administration: 1.2 million mortgage and loan applications delayed because lenders couldn't verify income and social-security numbers from the Internal Revenue Service, 200 drilling permits that languished at the Bureau of Land Management, and two million liters of U.S. beer, wine and distilled spirits that sat at ports because the Treasury Department's Alcohol and Tobacco Tax and Trade Bureau couldn't issue export certificates.

The Park Service lost around $7 million in revenue from entrance fees, campgrounds, tours and special uses, Mr. Obama's OMB said. The October jobs report and consumer-price index weren't released, and around $3.7 billion in tax refunds were stalled.

Without Head Start appropriations, some grantees in the program providing early-childhood education to low-income families temporarily closed. A similar situation now awaits enrollees in the Children's Health Insurance Program, which has been without a reauthorization for three months, and has become a major sticking point in negotiations.

After the shutdown in October 2013, many federal workers now know the drill: Report to work for four hours of the first working day of a shutdown to learn whether they are subject to furloughs or considered exempt, put up "out of office" notices, secure property and tie up loose ends for an indefinite period.

And unlike in past iterations of shutdowns, federal workers can now readily access detailed guides from the Office of Personnel Management explaining that in some states they can file for unemployment compensation while going without paychecks, but will have to pay it back if they

are awarded back pay—which Congress authorized in 2013, though not everyone on Capitol Hill is convinced that would happen again in 2018.

E&E Daily

https://www.eenews.net/eedaily/stories/1060071389/search?keyword=EPA

Pruitt's cleanup plans puzzle Democrats, Republicans

By Corbin Hiar, 1/19/18

A House subcommittee hearing yesterday revealed bipartisan confusion about the leadership, priorities and funding of U.S. EPA's program for cleaning up the nation's most polluted tracts.

Barry Breen, principal deputy assistant administrator of EPA's Office of Land and Emergency Management, did his best to answer questions from members of the Energy and Commerce Subcommittee on Environment. But some Democrats asked why the career civil servant was even there.

They had been preparing to grill Albert Kelly, a banker who was banned from the financial industry before being chosen to lead a Superfund task force established by Administrator Scott Pruitt. While Kelly was a no-show, two of his closest aides sat behind Breen during his time at the witness table.

New Jersey Rep. Frank Pallone, the top Democrat on the full committee, was skeptical that Kelly wasn't able to make the hearing, as EPA apparently claimed.

"I believe that Mr. Kelly's 'unavoidable conflicts' have nothing to do with scheduling and everything to do with his troubling financial ties," Pallone said.

"Mr. Kelly owes this committee and the public a thorough explanation of his past misdeeds, an explanation that EPA's career staff cannot provide," he added, before calling on Republicans to hold another Superfund hearing that includes the missing witness.

EPA didn't respond to questions about why the task force leader didn't appear. But spokesman Jahan Wilcox said, "The House Committee on Energy and Commerce requested a witness for this hearing, and EPA offered Principal Deputy Assistant Administrator Barry Breen from the Office of Land and Emergency Management, which oversees the [Superfund] program."

Republicans argued that Breen was the best person to field the committee's questions because he — as the highest-ranking career official in an office with no political leader yet nominated — would be implementing 42 recommendations the task force produced last year (E&E News PM, July 25, 2017).

"For the time being, you're the man," said Rep. Joe Barton (R-Texas).

After the hearing, Environment Subcommittee Chairman John Shimkus (R-Ill.) told reporters he was glad EPA sent Breen instead of Kelly.

"I'd rather have the professional, the guy who really knows the agency," he said. "I thought, this is great. You don't have to listen to the political b.s. You can listen to a guy who actually just has given his whole life to the agency."

Shimkus couldn't commit to revisiting the topic with the task force leader, whom he described as "a disruptive force to try to move this program forward."

"We'll see," he said of a follow-up hearing. "That's above my pay grade."

Shimkus also dismissed Democratic concerns about Kelly, who was fined $125,000 by the Federal Deposit Insurance Corp. and banned from banking activities, working on a multibillion-dollar cleanup program (Greenwire, Aug. 28, 2017).

"That was then, this is now," Shimkus said. "He's got a job. Let's see what he's doing. I don't think there's any nefariousness going on here."

Lists

But Shimkus and other members on the subcommittee remain unclear about how and why Pruitt is overhauling the Superfund program.

For instance, Republican Reps. Greg Walden of Oregon, chairman of the full committee; Fred Upton of Michigan, who leads its Energy Subcommittee; and Shimkus asked EPA last month how the agency crafted its list of Superfund sites requiring "immediate, intense action" (Greenwire, Dec. 21, 2017).

After receiving a response letter and leading a nearly three-hour hearing, Shimkus was still unclear about the purpose of that list, created by Kelly's task force, or another release the day before the hearing highlighting sites with redevelopment potential (Greenwire, Jan. 17).

"We have a national priorities list," Shimkus told reporters. "Now we have another list. Now we have another list. Now we're trying to figure out what differentiates one from the other."

Democrats at the hearing were similarly perplexed. Breen promised to provide them with documentation on how the lists were developed.

EPA previously told the Associated Press that it kept no internal records of the task force's

activities (Greenwire, Dec. 20, 2017).

Funding and reform

Republicans and Democrats also pressed Breen on the finances of the Superfund program.

GOP members focused on the $3.2 billion EPA has on hand from settlement agreements with responsible parties. Some of them wanted to know why that money wasn't going to cleanup sites in their districts, for example.

Democrats, on the other hand, focused on the cuts to the program the White House budget requested. They asked if reducing Superfund appropriations would reduce the number of sites that were cleaned up.

Breen answered obliquely, noting only that in 14 of the past 17 years the agency has been unable to begin cleanups on some sites due to funding shortfalls.

Shimkus downplayed the parties' divergent focuses on Superfund finances. "We're always going to fight about funding," he told reporters.

Still, the subcommittee leader is hopeful lawmakers can come together on a package of bipartisan reforms for the program.

Shimkus went on to express support for "early money in some of the programs that do remediation," "ensuring the state and federal partnership," and "delineating" when EPA can provide more cleanup oversight authority to states.

"This is nothing that I've gamed out," he added. "It's the staff now that hopefully can find areas of agreement on both sides."

E&E Climatewire

https://www.eenews.net/climatewire/stories/1060071413/search?keyword=EPA

Pruitt jetting to Japan, Israel on latest energy tour

By Jean Chemnick, 1/19/18

U.S. EPA Administrator Scott Pruitt is preparing for another turn as ambassador for U.S. energy interests abroad — this time to Japan and Israel.

President Trump's environmental chief will discuss "general environment cooperation" on next week's trip to Japan, Politico reported yesterday. He'll then end the week in Israel.

While the agency refused to offer details of an agenda, Pruitt is widely expected to tout U.S. energy again as he did during a December trip to Morocco focused on expanding the export of U.S. natural gas to the North African country.

That's somewhat unusual.

While EPA chiefs often travel internationally, those trips are usually confined to the agency's purview of environmental monitoring and protection. But Pruitt's Rabat trip doesn't seem to have touched directly on either.

"To have an EPA administrator carrying water on non-environmental issues, or even on issues like oil and gas production that might have negative environmental implications, is pretty

unprecedented," said Bob Sussman, a senior policy counsel at EPA under Administrator Lisa Jackson.

Sen. Tom Carper (D-Del.) made the same point, arguing in a letter to the agency's inspector general last month that the $40,000 spent on the Morocco foray was misspent because it didn't advance EPA's mission (Greenwire, Dec. 19, 2017).

"Specifically, I request that you review the purpose of Administrator Pruitt's travels to determine whether his activities during each trip are in line with EPA's mission 'to protect human health and the environment,'" said Carper, who is ranking member on the Senate Environment and Public Works Committee. The IG is looking at the trip to the North African country as part of an audit of Pruitt's travel.

Sarah Ladislaw, director of energy and natural resource security at the Center for Strategic and International Studies, agreed that Pruitt's focus on liquefied natural gas in Morocco was unusual, though it could be framed in an environmental light if it displaces more-emitting fuels, bringing down emissions.

But she said the pro-energy message espoused by the Trump administration overall showed the same kind of united front demonstrated by the Obama administration — including Obama's two EPA administrators, Jackson and Gina McCarthy. They touted greener energy as part of a response to climate change on visits to foreign capitals and the Paris climate talks.

"When I talk to folks in this administration, the idea for everybody who's dealing with regulation and energy is make an economic opportunity out of energy, in much the same way that the bottom line of the Obama administration was make an economic opportunity and show leadership on climate change," she said. "So if that's kind of what they think they're doing, he may very well think that it is within his purview to do that."

Ladislaw said that because Pruitt lacks federal government experience, he may not understand the usual division of responsibilities between federal agencies.

Energy Secretary Rick Perry has racked up the most frequent flyer miles touting fossil fuels, nuclear power and other U.S. energy interests. The greatest surprise might be that Secretary of State Rex Tillerson has been largely quiet on the issue, despite being a former CEO of Exxon Mobil Corp. He has recused himself from dealing with issues directly related to the oil giant until his first anniversary in office, which is Feb. 1. But he could have been more active in energy and climate issues writ large throughout his first year at State, Ladislaw said, including the president's decision to leave the Paris Agreement.

Pruitt, who was credited with helping persuade Trump to leave the compact, has shown little appetite otherwise for engaging the world on climate issues. He ultimately did not attend climate talks in Bonn, Germany, in November. In June, he met with the Group of Seven's environment ministers in the immediate wake of the president's Paris decision, making pasta with the Italian environment minister and meeting with U.S. companies in Italy but ultimately leaving the two-day meeting more than a day early to attend Trump's first Cabinet meeting.

Pruitt's visits follow a 2015 McCarthy visit to Japan to discuss mercury abatement and a 2012 Jackson visit to Israel to discuss environmental sustainability and innovation.

American energy interests have long eyed the Asian market. EPA will have a role in permitting the Jordan Cove LNG export project in Oregon, which would ship gas to Asia. And Cloud Peak Energy Inc. this week reached a deal to supply coal for two integrated coal gasification combined-cycle power plants being built near Japan's shuttered Fukushima Daiichi nuclear facility (Greenwire, Jan. 17). Pruitt's Japan trip could touch on either of those projects, Japan's financing of coal plants abroad or any number of other issues.

The Obama administration's State Department helped foster both renewables and gas development in Israel for geopolitical reasons related to regional security. The country may be curious about whether the Trump administration maintains those interests, which would do little to advance U.S. fossil fuel export ambitions.

AP

https://apnews.com/15e553a1e5b645da9d731bbe96b8d222/EPA-official-speaks-on-risk-of-climate-change-to-toxic-sites

EPA official speaks on risk of climate change to toxic sites

By Michael Biesecker, 1/19/18

WASHINGTON (AP) — A top manager who supervises the Environmental Protection Agency program responsible for cleaning up the nation's most contaminated properties and waterways told Congress on Thursday that the government needs to plan for the ongoing threat posed to Superfund sites from climate change.

The testimony by EPA Principal Deputy Assistant Administrator Barry Breen before a House oversight subcommittee conflicts with the agency's policy positions under President Donald Trump, who has called climate change a hoax. Breen's boss, EPA Administrator Scott Pruitt, is an ardent fossil fuel promoter who questions the validity of mainstream climate science.

During a hearing Thursday, Rep. Jerry McNerney, a California Democrat, asked Breen whether extreme weather events like hurricanes and wildfires could damage the highly toxic sites and cause contamination to spread.

"We have to respond to climate change, that's just part of our mission set," replied Breen, a career official who leads EPA's Office of Land and Emergency Management. "So we need to design remedies that account for that. We don't get to pick where Superfund sites are. We deal with the waste where it is."

There are more than 1,300 Superfund sites in the U.S.

Under the Obama administration, EPA issued a robust plan for prioritizing cleanup and protection of toxic sites located in flood zones and areas vulnerable to sea level rise. However, a Superfund Task Force appointed by Pruitt last year issued a 34-page list of recommendations that makes no mention of climate change, flooding risks from stronger storms or rising seas.

EPA spokesman Jahan Wilcox did not respond to questions Thursday about whether Pruitt agreed with Breen's testimony or precisely what the agency is currently doing to address to risks posed to Superfund sites by climate change.

The Associated Press first reported in September that more than a dozen Superfund sites in the Houston area were flooded by heavy rains from Hurricane Harvey. Spills of potentially hazardous waste were reported at two of those sites, including a release of cancer-causing dioxin into the San Jacinto River.

A subsequent AP review of EPA records and census data revealed that more than 2 million Americans live within a mile of 327 Superfund sites located in flood-prone areas or those at risk from rising sea levels.

The Government Accountability Office told Congress earlier this month it was assigning investigators to study the risks to human health and the environment posed to Superfund sites by natural disasters.

EPA's 2014 Climate Adaptation Plan noted that prolonged flooding at low-lying Superfund sites could cause extensive erosion, carrying away contaminants as waters recede.

Pruitt says he has made faster Superfund site cleanups a high priority for the agency. Pruitt's task force on the issue is led by Albert "Kell" Kelly, a former Oklahoma banker with no experience as an environmental regulator.

Kelly had been expected to testify at Thursday's hearing, but was replaced by Breen due to what EPA told the House committee was a scheduling conflict.

AP reported in August that Pruitt hired Kelly as a senior adviser at EPA after federal financial regulators cited Kelly for unspecified violations while serving as the top executive at a

community bank in Oklahoma. Kelly previously served as chairman of Tulsa-based SpiritBank, which provided a $6.8 million financing when Pruitt and his business partners purchased Oklahoma City's minor league baseball team in 2003.

Asked by Democrats for details about why Kelly was barred by the Federal Deposit Insurance Corporation from working for any U.S. financial institution, Breen said Thursday that Kelly had elected to settle the case against him and "is fully willing to discuss this matter."

An email and voicemail to Kelly seeking comment on Thursday received no response. Wilcox also did not respond to a request seeking details about why the FDIC barred Kelly from the banking industry.

BNA

https://bnanews.bna.com/environment-and-energy/states-take-lead-in-preparing-toxic-sites-for-climate-change

States Take Lead in Preparing Toxic Sites for Climate Change

By Sylvia Carignan, 1/18/18, 9:01 AM

States and cities are proactively adapting their contaminated sites for severe weather amid federal reluctance to plan for risks related to climate change.

Several states are drafting plans, assembling panels, and writing new guidance to keep toxic chemicals contained at contaminated sites and waste sites during severe weather.

"We need to make sure that any type of environmental change [at the site] is accounted for, and

climate change is one of those," Chance Asher, toxicologist for the Washington State Department of Ecology, told Bloomberg Environment.

Alaska's approach to climate change risks is specific to the conditions at each site, but the state has been considering the effects of climate change for decades.

Some coastal villages were already eroding as early as the 1990s, Bill O'Connell, environmental program manager at the Alaska Department of Environmental Conservation, told Bloomberg Environment.

The latest action by state and local governments comes at a time of skepticism at the federal level. President Donald Trump and EPA Administrator Scott Pruitt are reluctant to acknowledge predominantly human-caused climate change, an about-face from the Obama administration.

In a House Energy and Commerce committee hearing Jan. 18, an EPA official signaled that nonpolitical EPA staff are still considering the effects of climate change at contaminated sites.

"We have to respond to climate change," said Barry Breen, principal deputy assistant administrator for EPA's Office of Land and Emergency Management, which handles the Superfund program. "We have to design remedies to account for that."

Developing a Plan

The Washington State Department of Ecology published guidance in November on what climate change and severe weather-related risks to consider for sites under remediation, such as those with soil and groundwater contamination.

For example, severe storms may knock out developed shorelines along Washington's Puget Sound, one of the largest estuaries in the state. Along its shore, structures are supported by artificial fill, such as wood waste. The waste can be toxic to aquatic life if released, the guidance states.

The state's contaminated sites guidance, released in November, also warns of the consequences of sea level rise, flooding along rivers, landslides and wildfires.

"Some of them are natural environmental changes," Asher said, "but what we're finding is that they're more severe, and they're becoming more severe, as a result of climate change."

Vulnerable Sites

Massachusetts is keeping a close eye on contaminated sites and how climate change may affect them. Extreme heat, storms and flooding could disrupt treatment systems and cause storage containers to leak hazardous material, according to Thomas Potter, chief clean energy development coordinator for the Massachusetts Department of Environmental Protection.

There are almost 450 sites under active remediation in the state, and 52 of them are at risk for hurricane damage, while 50 are at risk for flooding, according to the department.

To adapt remediation technology for climate change, the state recommends choosing off-grid power sources in case of a power outage, designing remedies to protect aboveground equipment from wind damage, and placing critical equipment out of the path of a potential flood.

Those upgrades, especially those that cut down on energy usage, can save property owners money while adapting the site for severe weather, Potter told Bloomberg Environment.

"A lot of people are spending money on cleanup and they feel that it's money thrown out the door, but this way it's going somewhere," he said.

The state is considering a pilot program that would encourage potentially responsible parties to make those changes to their contaminated sites, Potter said.

Facing Flooding

The city of Chester, Pa., sits on the bank of the Delaware River, southwest of Philadelphia. The city's 2020 Vision plan acknowledges that its brownfields sites could contaminate adjacent communities if flooded.

Brownfields are underutilized properties that may be contaminated by hazardous materials. Developers invest in brownfields to remediate and redevelop them, usually with the help of incentives from local and federal government.

Pennsylvania Sea Grant College, part of Pennsylvania State University, has funded a research project looking into Chester's brownfields. The majority of them are along the city's waterfront, Peter Rykard, the city's planning director, told Bloomberg Environment.

Researchers are building a model of how storm surge and sea level rise may affect brownfields and the contaminants present. Since the city is assessing the potential for development along its waterfront, the research is important to the city's economic development, according to Chad Freed, a principal investigator studying Chester at Widener University.

Finding Higher Ground

Alaska's coastline is eroding quickly, O'Connell said.

"There are some stretches along the Arctic coast where it might erode several hundred feet a year," he said.

Alaska and the Defense Department have had to move some landfills inland due to the threat of coastal erosion.

"Relocating a landfill is not an inexpensive proposition," O'Connell said.

The state reconvened its panel on climate change in October 2017, which will review climate change risks as related to emergency response, health, infrastructure and other issues. The panel is expected to create a plan of action for the state by Sept. 1.

(Updated to add information from Jan. 18 hearing.)

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2018/01/18/2017-was-among-the-planets-hottest-years-on-record-government-scientists-report/?utm_term=.6c48d20ed34f

The planet just had its hottest 4 years in recorded history. Trump is dismantling efforts to fight climate change.

By Chris Mooney, 1/18/18, 4:20 PM

2017 was among the hottest years ever recorded, government scientists reported Thursday.

The year was the second-hottest in recorded history, NASA said, while scientists from the National Oceanic and Atmospheric Administration reported 2017 was the third-warmest they have ever recorded.

The two government agencies use different methodologies to calculate global temperatures, but by either standard, the 2017 results make the past four years the hottest period in their 138-year archive.

"The planet is warming remarkably uniformly," Gavin Schmidt, director of NASA's Goddard Institute for Space Studies, told reporters Thursday.

The renewed evidence of climate change, driven by human emissions of greenhouse gases, comes as the Trump administration moves to open new areas for oil drilling and rolls back regulations that sought to reduce global warming, most prominently by moving to repeal the Obama administration's Clean Power Plan. The administration said it would withdraw from the Paris climate agreement last year.

This has prompted a counter-reaction — with some states, like California, doubling down on climate policies, such as the state's cap-and-trade system — but the fact remains that it is far from clear at the moment whether a recent trend of slowly declining U.S. greenhouse gas emissions will continue. In 2018, the U.S. Energy Information Administration just predicted, emissions should actually rise by about 1.7 percent.

"The climate has changed and is always changing," said White House principal deputy press secretary Raj Shah in a statement in response to the new temperature findings. "To address climate change as well as other risks, the U.S. will continue to promote access to affordable and reliable energy and support technology, innovation and the development of modern and efficient infrastructure in order to reduce emissions and effectively address future climate related risks."

"To answer your question, no this report does not affect [Energy Secretary Rick Perry's] beliefs on climate change," said Shalyn Hynes, press secretary at the Department of Energy. "He is already on record saying that he believes that the climate is changing and that man is having an impact. As the Secretary of Energy he is focused on the ways we can use innovation and technology to expand American energy production in a cleaner way so that the United States can continue to lead the world in our reduction of emissions."

The Environmental Protection Agency referred the Post to a recent interview with Reuters in which administrator Scott Pruitt also acknowledge that the climate "is changing" but said, "That's not the debate. The debate is how do we know what the ideal surface temperature is in 2100?… I think the American people deserve an open honest transparent discussion about those things."

A number of scientists have faulted Pruitt's idea of hosting a government-wide debate about climate change this year, which may be through a "red team/blue team" exercise in which outside scientists would challenge and critique the work of government researchers.

Further stirring the climate debate, 2017 was a year of record breaking disasters affecting the United States, including devastating California wildfires and a trio of hurricanes that cost over $200 billion — events of the sort many experts fear may worsen as the planet warms.

2017 achieved a temperature of 1.51 degrees Fahrenheit (0.84 degrees Celsius), above the average temperature seen in the 20th century, according to NOAA's National Centers for Environmental Information.

NASA found that 2017 was 1.6 degrees Fahrenheit (.9 degrees Celsius) above the average temperature from 1951 through 1980. 2016 was .99 degrees Celsius higher, and 2015 just .86 degrees Celsius higher, according to the agency.

"The annual change from year to year can bounce up and down. There is year to year variability, but the long term trends are very clear," said Deke Arndt, who heads the global monitoring branch at NOAA's National Centers for Environmental Information.

Before 2017, the years 2014, 2015, and 2016 had set new all-time temperature records in stepwise fashion — culminating in a dramatic new high in 2016 — and NASA and NOAA had both agreed on their rankings as they occurred. 2017, in contrast, merely stayed within the elevated temperature range these prior years had already established.

Here's a month by month visualization of how the warming has grown dating all the way back to 1880, based on NASA's data:

The difference between the two agencies in ranking 2017 is somewhat driven by the different methodology the two agencies use to measure temperatures in the Arctic, the fastest-warming part of the planet, said Zeke Hausfather, a climate scientist who also closely tracks annual temperatures with Berkeley Earth.

2017 was unequivocally the warmest year on record that was not substantially influenced by the periodic El Niño phenomenon, which releases added warmth from the Pacific Ocean and was present in the record warm years of 2015 and 2016.

1998, for instance, was at the time a record year for global temperatures, as it coincided with a very strong El Niño — but 2017's temperature now comfortably surpasses it.

NASA and NOAA presented the following slide in a briefing Thursday to show the planet has continued to warm throughout fluctuations in this cycle in the Pacific Ocean:

NASA's Schmidt noted El Nino probably boosted the temperatures of the warmest year on record, 2016, by .12 degrees, but did not affect 2017 at all — suggesting if not for natural variability, 2017 might have been the warmest year on record.

"This kind of analysis really brings it home that the warmth that we're seeing are independent of this variation in the Pacific," he said.

In another striking analysis of 2017's heat, NOAA's Arndt pointed out that according to his agency, the amount of heat being stored in the upper layer of the global ocean, between the surface and about 700 meters depth, was at its highest on record last year.

"It's unlikely we'll ever see temperatures as cool as we had back before 2014 again," said Hausfather, who commented on the NASA and NOAA numbers and also released his own group's temperature record Thursday.

The result come in a big year for global climate diplomacy as countries seek to hew to the Paris climate goals of holding warming below 2 or perhaps 1.5 degrees Celsius above preindustrial levels.

2017 was 1.12 degrees Celsius above late 19th century temperatures, according to NASA's Schmidt. It is the third straight year in NASA's records temperatures have eclipsed 1 degree Celsius above temperatures in the late 19th century.

"This year governments are due to start the process of assessing the size of the gap between their collective ambitions for reducing greenhouse gas emissions and the goals of the Paris agreement," said Bob Ward, policy and communications director at the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science, in a statement.

"The record temperature should focus the minds of world leaders, including President Trump, on the scale and urgency of the risks that people, rich and poor, face around the world from climate change."

NASA and NOAA, which both keep independent records of the Earth's temperature, have adopted a practice in recent years of jointly announcing their numbers, even though they can differ.

In addition to the official U.S. agencies, a number of additional expert outlets have tracked temperatures and found results consistent with those of NOAA and NASA.

Hausfather's group, Berkeley Earth, also found 2017 was the second-hottest year on record.

"The Arctic has warmed 2 and a half degrees C since the middle of the century," he said. "It's really warming faster than anywhere on earth. So much of the difference in 2017 between the groups that find it in second place and third place has to do with how the Arctic is handled."

NOAA, NASA, and Berkeley Earth track temperatures at the surface of the Earth, over both land and oceans. Another way to track the planet's warming is to analyze the temperature of the atmosphere at a significantly higher elevation, in the so-called "lower troposphere" extending

from a little above the planet's surface to several miles into the air.

Here, too, assessments of 2017 differ.

Remote Sensing Systems, which studies lower tropospheric temperatures using satellites, found 2017 was the second-hottest year in a record dating back to 1979, a pretty striking finding in that El Niño events tend to be amplified in the troposphere, and 2017 was not one.

"The near-record warmth of 2017 is notable because an El Niño event did not occur in 2017," wrote RSS physicist Carl Mears. "The other 3 warmest years, 1998, 2010, and 2016, were El Niño years."

A group of scientists at the University of Alabama-Huntsville who also track tropospheric temperatures by satellite instead put 2017 at 3rd place, rather than 2nd, behind 1998.

E&E Greenwire

https://www.eenews.net/greenwire/2018/01/19/stories/1060071443

Pruitt forced her out. Now she's suing.

By Hannah Northey, 1/19/18

Robyn Wilson never dreamed she'd be locked in a court fight with U.S. EPA.

But the Ohio State University associate professor of risk analysis and decision science quickly

filed suit after EPA Administrator Scott Pruitt showed her the exit from the agency's high-profile Science Advisory Board because she'd taken federal research grants.

The 39-year-old mother of two young boys who grew up on a rural farm in northern Ohio is front and center in the U.S. District Court for the District of Columbia lawsuit calling Pruitt's directive on advisory boards arbitrary, capricious and blatantly political (*E&E News PM*, Dec. 21, 2017).

EPA says the directive would depoliticize science and make members of advisory committees "financially independent."

Says Wilson, "I didn't feel like I had a choice. Science is being attacked. There are people in the government saying things that are unethical — probably illegal. If you're in a position to do something, you should."

Since filing the lawsuit, Wilson says, she's received "nothing but love mail." Emails, she says, have come from across the country and abroad supporting her positions. She's received handwritten cards, including one that reads, "I will resist, I will persist." One person called to say Wilson provided a lesson in "doing the right thing" for a teenage daughter.

As one of many scientists dismissed from EPA's advisory boards under Pruitt, Wilson doesn't expect to regain her position on the EPA board. The legal brawl will likely last long after the end of September, when her current term is slated to end.

Instead, she's pushing back on what she sees as Pruitt's attempt to replace scientists who could challenge his deregulatory agenda.

Wilson recently talked to E&E News about her legal fight, growing up on a farm and hiking in Ohio.

Where did you grow up?

I grew up on a farm in northwest Ohio, in a very rural community. My address was Rawson, Ohio, which is west of Findlay. My parents were schoolteachers; my dad's a farmer. My family had been there for generations. My grandfather was a dairy farmer, but the majority of the farm as I was growing up was corn and soybeans; it's a conventional commodities farm.

Did you always love science?

I was a nature-loving kid. I was outside all day; I took care of the animals on the farm. I wanted to be a veterinarian my whole life, but then got to college and started to realize my interest in nature and wildlife aligned more with environmental studies and sciences. I decided to study risk and decisionmaking; I realized wildlife conservation problems are people problems.

What does your husband do?

Brian is a firefighter for the city of Columbus.

What do you do for fun?

We're outdoorsy people. We go hiking, camping. I have two young sons at home. My husband is a mountain climber, too; he's "Mr. Risk." He does glacier mountaineering; that's his legitimate hobby.

What's your favorite spot for hiking in Ohio?

Hocking Hills is where we go, where you start to get into pretty hills, caverns and cliffs.

What does the bulk of your work consist of these days?

Climate adaptation. So a lot of what I'm looking at in the agricultural systems is the idea that the way we manage systems isn't good enough anymore, given the changing conditions. In the Midwest, that's bigger variability in spring rains and warmer temperatures from the lake in the summer, which is creating these harmful algal blooms.

I'm from a rural community; I've gotten into some interesting conversations with family and friends about things like climate change.

You've been a member of the EPA's Science Advisory Board since 2015. Are you still on?

Unofficially, I'm not on the Science Advisory Board.

If you go to the website and look at the current list of members, it's the new list that came out end of October, beginning of November when the administrator released the new directive about conflict of interest.

But I've never officially heard anything from them on that. I received a blanket "thank you for your service" email back around Halloween. That's when I replied and the story came out about the EPA essentially putting people in the position of having to step down or give up their grants.

Will you attend the next meeting?

I don't know when the next meeting is; I would assume they would plan to meet late winter, early spring, based on past patterns of meetings. Those are publicly announced. ... I'm sure I won't be personally informed of it, as I'm not officially on it.

I guess it depends on when it is and what else I have going on. If I have the ability to show up, with my teaching schedule and other commitments, I may just do it. I assume if I do, they'll just say, "You're not allowed to be here."

What issues did you advise on the board?

It's a general science advisory board, so we get asked to comment on a wide range of issues, of which not everyone will have specific expertise. At the end of the day, they don't have to do anything with our advice. We don't make policy; we just comment on the science behind any decision the agency is contemplating, and they can do what they want with that advice.

I, for example, served as a lead reviewer on the models that informed the 40 percent reduction targets that were placed out there for Lake Erie in regard to phosphorus concentrations. I'm not a physical scientist; I'm a behavioral scientist, but I work on integrated models looking at farmer decisionmaking, nutrients and water quality.

Questions from the agency included "To what extent are these models state-of-the-art; to what extent is this 40 percent reduction target accurate," that sort of thing.

Why didn't you just return the $150,000 EPA grant money?

The Great Lakes Commission brought me on as part of a $750,000 grant as the behavioral scientist lead, and there's no one else to replace me. As this was happening, we were literally finalizing the financial agreements between Ohio State and the Great Lakes Commission.

Taking me off that project in some ways would kill what they promised to do on that project. To me, that's a bigger ethical issue.

Have you ever received other grants from EPA?

No. I typically don't apply for EPA funding. Most of my funding is through the [Department of Agriculture].

The irony of receiving my first EPA grant because I came in kind of last-minute as a behavioral specialist for this bigger team, the timing was poor, I guess.

Why did you decide to sue?

I'm not a lawyer, and I don't know all the avenues for doing this, but the logic behind this is it's perhaps the only way to overturn a directive like that, to take it to court and argue that essentially conflict-of-interest policies were already in place.

So if there is a legitimate conflict of interest, whether that's based on having EPA funding or something else, that we already had processes in place to control for that. So to then pass this directive that says having agency funding is this blanket conflict of interest, again, arbitrary and capricious, unnecessary.

It implies, in my opinion, there's something else going on. The intention behind it isn't as honest as it claims to be.

Why aren't more scientists suing?

From what I've heard, no one else was really willing to get involved in the lawsuit, which surprised me a little bit. I know in one particular person's case, their institution basically said, "This isn't in the interest of our institution, and we don't want you to do it"; it was a smaller institution. In some of the other cases, I was surprised people weren't willing to stand up for this and get involved.

I'm doing this as an individual, not as a representative of Ohio State, so they're not going to tell

me I can or I can't do it; they don't really see it as their business. But they've been very personally supportive of me doing it.

Isn't it Pruitt's prerogative to pick and choose who he wants?

The administrator has always had the right to not renew someone for a second term, and to me, that makes sense. In the past, the status quo has been to keep people for two terms; he clearly is acting on his ability to not do that. As soon as a term ends, he's been getting rid of people this past year.

What becomes nefarious in the eyes of a lot of people is he's gone a step farther, created this pseudo-conflict-of-interest policy that is repetitive, redundant, unnecessary, which I would probably go further and say is unethical. He's looking for ways to get more people off the board to replace them with people he thinks are going to promote his current agenda.

What are your chances for winning?

I actually did some homework talking to our legal counsel at the university, with an environmental law professor here familiar with these sorts of things. ... Most of the feedback I got was that it's quite legitimate, and some of the individuals, like Mike Burger at Columbia University [Law School], who originally put these ideas out there, are well-respected and thoughtful people in the field.

I think there is a legal basis for this being arbitrary and capricious by legal definitions. I hope that it is successful; I think it has a good chance. If it is overturned, then I think that does a lot to protect the voice of independent science in the policy process.

Had you filed a lawsuit before?

I have not. Not really my thing. I'm a little personally opposed to lawsuits. I think the world is a little sue-happy, if you will, and that seems to be the first place people turn.

When I first signed on, I made clear I'm only doing this because I want that policy overturned; I think it's an attack on science.

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http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127174830&item=408&prod=deln&cat=A

EPA to Reopen Obama-Era Visibility Improvement Rule

By Jennifer Lu, 1/19/18

The EPA said it would "revisit aspects"of a 2017 regulation that aims to reduce visibility-inhibiting air pollution in national parks and wilderness areas.

The Environmental Protection Agency announced its plans in three letters posted on its website. The letters, dated Jan. 17, were sent to Alaska and power industry groups that petitioned the EPA to reconsider aspects of the regulation.

The Obama administration issued the regulation updating its regional haze requirements on Jan. 10, 2017, a little more than a week before the inauguration of President Donald Trump. Critics of the Obama-era changes included EPA Administrator Scott Pruitt, who in his capacity as Oklahoma attorney general signed on to a comment letter that identified various alleged legal flaws in the agency's proposal.

Parts of the rule up for review include the Reasonably Attributable Visibility Impairment provision, or RAVI, according to the letters. Federal land managers, who are in charge of protected national parks and wilderness areas, can require states to control sources of air pollution contributing to regional haze through determinations under the RAVI provision. These determinations take place outside of the plans that states make with input from federal land managers, which occur on a 10-year cycle.

The Environmental Protection Agency also indicated that it will look at the consultation process

by which states interact with federal land managers to reduce air pollution that contributes to haze. The agency said it also plans to issue one or more guidance documents to aid states in crafting changes to their regional haze implementation plans.

BNA

https://bnanews.bna.com/environment-and-energy/with-pesticide-fee-bill-treading-water-industry-eyes-alternatives

With Pesticide Fee Bill Treading Water, Industry Eyes Alternatives

By Tiffany Stecker, 1/18/18, 4:40 PM

The pesticide industry is hesitantly looking at new ways to pass a crucial bill to keep afloat the EPA office that registers their products.

The reauthorization of the Pesticide Registration Improvement Act was supposed to be a noncontroversial bill that would breeze through Congress and on to President Donald Trump's desk. But the legislation (H.R. 1029), which would authorize a fee structure to fund part of the EPA's Office of Pesticide Programs' work, has been caught in the political crosshairs of the Trump administration's regulatory overhaul.

PRIA has been on life support since it expired Sept. 30, 2017, clinging on to short-term funding bills, or continuing resolutions. The current authorization of PRIA will expire Jan. 19 with the latest continuing resolution, unless it is taken up in another stopgap spending measure—a big unknown as Washington girds for a government shutdown.

Supporters of the bill are looking, albeit reluctantly, at the farm bill or spending bills to be the next vehicle to keep the authorization going as the PRIA legislation stalls.

Sen. Tom Udall (D-N.M.) placed a hold on the legislation six months ago to protest recent decisions from the Office of Pesticide Programs. Specifically, he objects to EPA Administrator Scott Pruitt's decision to reject a proposed ban on chlorpyrifos, an insecticide linked to neurodevelopmental delays, and the agency's stalled implementation of two rules to shield farmworkers from pesticide exposure.

Rep. Rodney Davis (R-Ill.), author of the House PRIA reauthorization bill and chairman of the House Agriculture Subcommittee on Biotechnology, Horticulture and Research, said Udall is derailing an important measure that could threaten up to 200 jobs at the EPA over time.

"I think it's a sad state of affairs that we've got one senator who has decided to hijack a bill that's got such bipartisan unanimous support from Republicans, Democrats, environmentalists, and the pesticide manufacturers," Davis told Bloomberg Environment.

Doubly Ironic

Tacking PRIA onto legislative vehicles to bypass Udall's opposition has risks. The renewal of the farm bill, which expires at the end of September, is particularly fraught.

The farm bill, which authorizes spending for everything from agricultural payments to farmers to food stamps for the poor, is hotly debated about every five years. Adding PRIA to the mix could only complicate the process, Beau Greenwood, executive vice president of government affairs for the agricultural pesticide trade association CropLife America, told Bloomberg Environment.

"The farm bills are complex, comprehensive pieces of legislation with competing interests," Greenwood said. "It is my sincere hope that PRIA is resolved long before the farm bill comes into play."

Inserting PRIA into the fiscal 2018 spending bill for the EPA, Interior Department, and related agencies is also dicey, given that Udall is ranking member of the Senate subcommittee that handles those appropriations.

"It's doubly ironic that we find ourselves at odds with him in this way," Greenwood added.

The PRIA reauthorization has received support from pesticide friends and foes: industry wants their products to swiftly come on the market, and environmentalists want the process of evaluating those pesticides to be thorough. Farmworker advocates also support the law because it ensures money for worker safety programs.

Environmental groups successfully got lawmakers to shorten the duration of PRIA's reauthorization in the latest bill from seven to three years. With a shorter commitment period, organizations can reassess their support for the law if the Trump administration continues to alter farmworker protection rules. The groups, which include the Natural Resources Defense Council and Farmworker Justice, continue to back a swift passage of the reauthorization, but also stand by Udall's reasons for the hold.

"The easiest way forward would be for EPA to address Udall's concerns," Virginia Ruiz, a director at Farmworker Justice, told Bloomberg Environment. "I certainly would love to see EPA be more reasonable about worker protection rules. I don't know if that will happen."

"I Don't Think It Will Hurt Anything"

Udall doesn't think his hold will affect the EPA's ability to regulate pesticides.

"I think we're going to get action by Pruitt on our three things," Udall said, referring to the chlorpyrifos decisions and the two farmworker rules. "That's where we are now and I don't think it will hurt anything."

PRIA, first passed in 2003, allows the EPA to collect fees from pesticide manufacturers to license chemicals. The latest bill would, if signed into law, increase the amount of licensing fee

revenue the agency could generate by almost 12 percent. The licensing fees fund between 20 percent and 40 percent of the Office of Pesticide Programs' budget. The bill also would set aside up to $1 million for farm worker safety training.

The fees help the EPA register pesticides for agriculture, but also disinfectants for hospitals and mosquito-killers to control outbreaks of Zika, West Nile virus, and other diseases.

Forcing EPA's Hand

Former Office of Pesticide Programs Deputy Director Bill Jordan, who oversaw the Obama administration's actions to restrict chlorpyrifos and tighten farmworker safety standards, sees value in Udall's hold.

A failure to reauthorize the law won't automatically kill the agency's ability to do its work, Jordan said, although it will hamper its budget.

According to PRIA, the EPA is entitled to collect registration fees for another two years at reduced levels. However, it cannot collect maintenance fees, the payments companies pay to maintain existing pesticide registrations, that make up about 60 percent of PRIA fee income.

"I think the senator is taking a very thoughtful approach here, trying to pressure the agency on taking a decision on chlorpyrifos [and the two farmworker rules] without starving the agency of funds to do its work," Jordan said.

The PRIA coalition met with Senate Agriculture Committee ranking member Debbie Stabenow (D-Mich.) Jan. 12 to discuss the standstill. Neither Stabenow's office nor the Agriculture Committee Democrats responded to Bloomberg Environment's requests for comment.

If PRIA were to expire, the EPA would revert to its pre-2003 system. The agency would no longer be legally required to make decisions on most of the pesticide applications that it receives within a certain time frame, Jordan said.

Absent a new bill, registration fees in 2018 would drop to 60 percent of the fiscal year 2017 fees. It would drop to 30 percent of 2017 levels next year. After Sept. 30, 2019, the requirement to pay and collect registration service fees under PRIA would terminate, according to the EPA.

The EPA could then set up its own system for setting priorities that would likely reflect the political viewpoint of the current administration, Jordan said.

Davis sees this as counterproductive to Udall's aims.

"Does Sen. Udall really want Administrator Pruitt prioritizing pesticide applications?" he said.

E&E Greenwire

https://www.eenews.net/greenwire/2018/01/19/stories/1060071465

In win for utilities, EPA to revisit haze regulations

By Sean Reilly, 1/19/18

U.S. EPA is embarking on a potentially open-ended rewrite of its 2017 update to regional haze regulations, injecting fresh uncertainty into a program already plagued by years of delays and legal fights.

Barely 12 months after the amended regulations were published in the Obama administration's final days, the agency said yesterday it will launch a new rulemaking that will address the role of federal land managers, assessments of "visibility impairment" and "any other elements of the rule

we may identify for additional consideration," according to a notice posted to its website yesterday.

In a court filing last fall, EPA attorneys had signaled the move was under consideration (Greenwire, Sept. 29, 2017). The decision by EPA chief Scott Pruitt to now press ahead followed requests from the utility industry and the state of Alaska for administrative reconsideration filed last year.

While the agency isn't acting on those petitions at this point, it will be issuing final guidance that may address "some or all" of the issues raised by industry, Pruitt said in letters to the Utility Air Regulatory Group and other petitioners also released yesterday.

The planned rulemaking is the latest in a series of measures to reopen or roll back Obama-era regulations opposed by power producers or other business lobbies. In a news release, the National Parks Conservation Association, a nonprofit advocacy group, condemned the move as another win for polluters.

Rather than standing up for the changes put in place last year, Pruitt "is advancing his agenda to undermine air protections that safeguard the health of our parks, their visitors and wildlife," Stephanie Kodish, senior director and clean air counsel for the association, said in a news release.

The haze program, dating back to 1999 in its current form, is geared toward clearing the air in 156 national parks and wilderness areas by 2064. Among other provisions, the amended rule published in January 2017 sought to bring National Park Service employees, as well as other land managers, earlier into the haze reduction planning process.

It also bolstered requirements for states to confront pollution sources contributing to visibility problems in specific areas.

The update pushed back the deadline for states to turn in the next round of regional haze implementation plans from this year until 2021.

While Pruitt did not give a timetable for the upcoming rulemaking, "it really doesn't change the fact that we have to keep moving forward" to make the 2021 deadline, Mary Uhl, executive director of the Western States Air Resources Council, a consortium of 15 air agencies, said in an interview.

The council, often known by its acronym WESTAR, helped host a three-day conference in Denver last month on the revised regulations.

Congress had initially authorized the regional haze program in 1977 out of alarm that dirty air was besmirching iconic locales such as the Grand Canyon. The bulk of that pollution comes from older coal-fired power plants. If the goal of restoring natural visibility to parks and wilderness areas has widespread support, the means of accomplishing that objective have often been bitterly contested.

After more than three-quarters of states missed a 2007 deadline for submitting the first round of implementation plans, EPA — sometimes prodded by lawsuits from environmental groups — began imposing federal substitutes.

Critics faulted the agency for requiring new power plant emission controls over the objections of state regulators. Among the detractors was Pruitt. As Oklahoma's attorney general, he waged an unsuccessful three-year legal battle earlier this decade to block an EPA haze plan for the state (Greenwire, Feb. 14, 2017).

Those clashes continue to play out. In Arkansas, for example, Entergy Corp. is threatening to close two plants if it doesn't get a break on sulfur dioxide reduction requirements set by EPA in 2016 (see related story).

Defenders of the Obama administration's handling of the haze program say that it is spurring significant cuts in releases of both sulfur dioxide and nitrogen oxides and that federal intervention was sometimes needed to counter utilities' political influence.

In its reconsideration petition, filed last March, the Utility Air Regulatory Group asked for changes to underscore state decisionmaking authority. Alaska complained the updated regulations did not account for the effects of airborne dust wafting in from Russia and China.

The revised regulations are also the subject of almost a dozen consolidated lawsuits brought by states, power producers and environmental groups.

The U.S. Court of Appeals for the District of Columbia in September agreed to an almost 90-day timeout in legal proceedings so EPA could decide on its longer-term strategy. That hold expired last month and proposed briefing formats are due Monday, according to the latest filing in the litigation as of this morning.

BNA

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127174831&item=408&prod=deln&cat=A

EPA Aids Chemical Makers as Listing Deadline Looms

By Pat Rizzuto, 1/19/18

The EPA is promising chemical makers last minute assistance by posting additional resources online to help them get their products on a crucial inventory needed to allow chemical sales.

Companies are facing a Feb. 7 deadline to get their products on the agency's official list of chemicals that are in U.S. commerce. Before that deadline, the Environmental Protection Agency will provide and update a list of frequently asked questions it has received and agency answers it has provided, agency staff told Bloomberg Environment.

"EPA will be as transparent and helpful as possible as the deadline approaches," Jahan Wilcox, an agency spokesman, told Bloomberg Environment.

The agency Jan. 18 posted online slides and transcripts from three webinars it held last year. The webinars offered companies compliance assistance so they would know how to notify the EPA of chemicals they've made or imported since 2006.

The EPA will use the notices companies file to establish an official inventory of commercial and industrial chemicals that have been in active commerce since that year, which marks 10 years before the Toxic Substances Control Act was amended. The revised statute required the EPA—for the first time since the 1980s—to update its chemical inventory, which consists of tens of thousands of chemicals, and separate it into two parts: a list of chemicals active in commerce and a list of chemicals that used to be made in or imported into the U.S., but no longer are.

Chemical manufacturers and importers must notify the EPA by Feb. 7 of any chemical that needs to be on the active list. Paint, cleaning product, glue, and other manufacturers that mix, or "process," chemicals have until Oct. 5 to notify the EPA about chemicals they've used since 2006, although they are not required to do so.

Any chemical that is not on the active inventory may not be made, imported, or used in the U.S. without companies taking additional steps.

Crafting an Up-to-Date List

"The key audience for the Q&A are manufacturers and importers—the regulated entities for whom reporting is mandatory by Feb. 7," Karyn Schmidt, senior director of regulatory and technical affairs at the American Chemistry Council, told Bloomberg Environment.

"With this deadline looming, it is essential that EPA offer guidance and clarifications well before this date to be most useful," Schmidt said, repeating a request companies have been making for

some months.

The American Chemistry Council has already created a new website to help chemical manufacturers comply with EPA's rule. The site allows manufacturers, importers, and processors to upload and share the receipts they receive from the EPA when they notify it about a chemical. Having such a receipt exempts other companies from also having to notify the EPA that they too make, import, or process the same chemical.

Although EPA's most recent efforts are coming late in the process, they're needed, Martha Marrapese, a partner in the Washington office of Wiley Rein LLP, told Bloomberg Environment.

"There are still many companies out there that will benefit from published guidance to file or check their reports," she said Jan. 18.

The agency received about 8,000 notifications just last week, Marrapese said.

Clarification Please

Schmidt said the agency could be helpful if it clarified as quickly as possible a question chemical manufacturers and importers have been asking about joint submissions they're allowed to file.

The EPA's final rule establishing the inventory notification process (RIN:2070-AK24) allows companies to file a joint submission when needed to protect their trade secrets. For example, a domestic importer of a chemical mixture and its foreign suppliers can jointly notify the EPA about the constituents in that mixture. That way the EPA knows the specific identities, but the companies keep proprietary information to themselves.

Domestic importers know they must meet the Feb. 7 deadline, but can't control whether their suppliers comply, Schmidt previously told Bloomberg Environment.

Chemical manufacturers repeatedly have urged EPA to clarify that a manufacturer or importer will be deemed to have met the deadline if it has submitted its portion of the notification, even if the other parties portion has not yet been filed, she said.

"We continue to urge that this clarification be made immediately," Schmidt said.

E&E Greenwire

https://www.eenews.net/greenwire/2018/01/19/stories/1060071435

Court won't rethink challenge to EPA 'hot-spot' guidance

By Amanda Reilly, 1/19/18

A federal court won't reconsider an earlier decision upholding U.S. EPA's "hot-spot" guidance designed to show whether transportation projects violate air quality standards.

The U.S. Court of Appeals for the District of Columbia Circuit today issued an order denying environmentalists' request for a rehearing en banc, or in front of the full court. No judge voted in favor of rehearing.

At issue was EPA's 2015 decision to modify a guidance that spells out methods for calculating whether a transportation project will not cause or contribute to violations of federal air quality standards for either coarse particles or fine particles. The guidance applies to areas that already

have compliance problems with air standards.

EPA's modifications made it less likely that a project would be found in violation of particle limits. Environmentalists challenged it in court.

In October, a three-judge panel of the D.C. Circuit threw out the case, finding that the Sierra Club couldn't show that its members had suffered any adverse effect from EPA's changed guidance on fine particulate matter. The court also found that the agency's guidelines weren't legally binding (Greenwire, Oct. 24, 2017).

The Hill

http://thehill.com/policy/energy-environment/overnights/369650-overnight-energy-last-year-was-the-second-hottest-on

Overnight Energy: Last year was second-hottest on record

By Timothy Cama and Miranda Green, 1/18/18, 6:08 PM

Markey cites report to press Pruitt on climate: Sen. Ed Markey (D-Mass.) quickly used NASA's report to press Environmental Protection Agency (EPA) head Scott Pruitt on his climate change policies.

Markey sent Pruitt a letter in advance of his planned Jan. 31 testimony in front of the Senate Environment and Public Works Committee, asking specific questions not just on Pruitt's climate policies but on other concerns like Superfund, fuel efficiency standards and scientific integrity.

"NASA has declared 2017 the second-hottest year in history, and Administrator Pruitt is in the hot seat to explain the EPA's refusal to act on climate change," said Markey, who sits on the panel.

"Administrator Pruitt is not only abdicating his responsibility to the American people, he seems to be showing willful neglect of the EPA's mission. It is past time to explain to the American people why he continues to endanger public health and give corporate polluters a free pass."

Read the letter here.

BNA

http://esweb.bna.com/eslw/display/no_alpha.adp?mode=si&frag_id=127174821&item=408&prod=deln&cat=A

Planned Truck Rule Exemption Will Test EPA's Policy Defenses

By Abby Smith, 1/19/18

Only a few truck and engine makers cheered the EPA's plans to park some Obama-era truck emissions limits, so now the agency must decide whether to listen to the niche equipment makers that its plan would benefit, or to the rest of the trucking industry.

“That's the million-dollar question. How do you go against all the comments saying, ‘Do not change the language in the final rule’?” Glen Kedzie, energy and environmental counsel for the American Trucking Associations, told Bloomberg Environment.

The Environmental Protection Agency in November proposed to exempt “glider kits"—which are new truck chassis and cab assemblies built for used engines and transmissions—from Obama-era greenhouse gas standards for heavy-duty trucks. That move has since sparked sharp backlash from almost all corners.

Environmental groups and former EPA staffers say the plans have little legal standing and no rational justification, given the significant negative public health impacts such an exemption would cause.

State regulators say the move will hamper their ability to meet federal air quality standards, and that they could move to control glider kits in the agency's place if the EPA backs away from the regulations.

And the country's largest truck and engine manufacturers, including companies like Daimler Inc., and Volvo Group North America, say the EPA's move mocks the millions in investments they've made to clean up their engines and fleets and undercuts the regulatory compromise they struck with the Obama EPA.

“If there was any rational policymaking going on, this proposal wouldn't have gone out. And in light of all the opposition and dearth of real basis supporting it, it would never go final,” John Hannon, a former assistant general counsel in the EPA's Air and Radiation legal office, told Bloomberg Environment.

“If it does, some political reason has overridden all of that,” Hannon, who retired from the agency in 2014, said.

Legal Reinterpretation

The 2016 regulation placed first-time emissions limits on vehicles that use glider kits, requiring rebuilt engines installed in those trucks to meet pollution standards applicable in the year the glider kit was made. The Obama-era rule allowed a yearly 300-glider kit exemption until 2021.

The Trump administration's November proposal, however, adopts a legal interpretation pushed by glider kit makers that the EPA only has authority to regulate “showroom new” vehicles under the Clean Air Act. A glider vehicle, because it uses a rebuilt engine, wouldn't fall within that definition.

Major truck and engine manufacturers warn that that legal interpretation sets up a slippery slope that could have impacts far beyond glider kits.

The “illogical extreme” of the EPA's proposal is any engine with one non-new part would essentially fall out of the agency's authority, Jed Mandel, president of the Truck and Engine Manufacturers Association, told Bloomberg Environment. “It would be a disaster.”

His group's members, which include Caterpillar Inc., Cummins Inc., and PACCAR Inc., have invested hundreds of millions to meet the EPA's emissions limits. “They would not like to see unscrupulous competitors or importers from overseas now being able to enter the U.S. market” without having to meet emissions requirements, he said.

Both Mandel and Kedzie said their groups didn't meet with the EPA before it decided to move forward with plans to scrap the glider kit limits.

Regulatory Overreach?

But glider kit makers and their supporters argue the Obama-era rule is an example of overreaching regulation.

The justification for regulating glider kits is “completely bogus,” Joe Rajkovacz, director of governmental affairs and communications for the Western States Trucking Association, told Bloomberg Environment. He said the EPA's data on public health impacts from glider vehicles is false.

"We actually think that we might have some more reasoned people at the head of EPA," Rajkovacz said. "This might be one of those rare victories for small businesses against government intrusion, unwarranted government intrusion into the marketplace based on ideology."

Though basing its decision on the change in legal interpretation, the EPA also incorporated in its November proposal a report from Tennessee Technological University that found rebuilt engines used in glider vehicles were as clean as new truck engines that meet the EPA's standards. The study was funded by Fitzgerald Glider Kits, the largest maker of the equipment in North America.

Environmental and trucking industry groups alike have torn apart that study. Tommy Fitzgerald, founder of Fitzgerald Glider Kits, met privately with EPA Administrator Scott Pruitt in May, just a few months before the agency indicated it planned to repeal the glider kit limits.

Competing Data

"In my private discussions with member companies, they scoffed at that study. Engineers that have been working on these issues their entire lifetime, who know all the ins and outs of the modeling ... they chuckled when they looked at that study," the American Trucking Associations' Kedzie said.

And an EPA report released Nov. 20 directly contradicted the Tennessee Tech study. According to the new agency data, glider vehicles tested at the EPA's Ann Arbor, Mich., vehicles lab emitted generally four to 40 times more nitrogen oxides and 50 to 450 times more particulate matter than new model year 2014 and 2015 trucks.

The EPA report is "littered with significant and fatal flaws," including that the agency doesn't incorporate data to reflect the use of cleaner diesel, the Glider Kits Association of America, a trade group formed in September 2017, said in Jan. 5 comments.

"The timing of the report's release reveals the true agenda of certain EPA career employees," the group wrote.

Glider kit makers' criticisms of the EPA report have no real footing, Dave Cooke, senior vehicles analyst with the Union of Concerned Scientists, said. For example, Cooke said, the use of cleaner diesel results in a emissions difference of only a few percentage points—a small impact given the large pollution profile of glider vehicles' engines.

"It's clear they are grasping at straws to discredit EPA technical staff," Cooke told Bloomberg Environment. Trying to suggest agency career staff are under political influence "is pretty rich coming from the company that bought and paid for the Tennessee Tech study and provided the testing facility."

In Come the States

Hannon, the former EPA staffer, said the EPA's proposal lacks other elements that would make it legally defensible. Those include a failure to conduct an analysis of the environmental impact of eliminating the glider kit requirements and a realistic analysis of the burden an exemption would place on states and others in the trucking industry.

"This is deadly stuff," Steven Silverman, who was a staff attorney at the EPA for 37 years and worked on the 2016 truck rule, told Bloomberg Environment. "To say the Clean Air Act, designed to keep this kind of thing from happening, can't reach it is legally very, very far fetched. It's outrageous."

Silverman, now a consultant with the Environmental Defense Fund, also said the impacts of EPA's plans could cascade to other sources.

State regulators have included emissions reductions from limits on glider kits in their budgets for meeting federal air quality standards. If those limits are lifted, states will have to "ratchet down not just on other mobile sources, but also stationary sources" to get the reductions they need, Silverman said.

States also could step in to regulate glider vehicles on their own. “If EPA's legal authority does not extend to the regulation of glider vehicles, glider engines and glider kits, then state and local agencies are not preempted from regulating them and may do so,” the National Association of Clean Air Agencies, which represents air regulators from 40 states, said in Jan. 5 comments.

That could prompt a regulatory “patchwork,” Kedzie said. “If you have a glider and authority goes to the states, I don't know how you'll get across the country. It could force you into a situation where you'll have to get rid of gliders anyways.”

Is Compromise Possible?

It's unlikely at this point the EPA could escape a legal challenge, Kedzie said, adding that if it finalizes the glider kit exemption, he thinks the agency would lose. It's possible the agency could offer a compromise, but it's unclear whether that would be successful, either in garnering enough support or in withstanding legal scrutiny.

The agency's November proposal offers two alternative options: increasing the yearly glider exemption for small businesses or allowing glider kit makers a longer phase-in period before emissions limits take effect.

Mandel said if the EPA wants to consider those options, it should put forth a new, “more thoughtful” proposal to fully examine their impacts, including “what any potential downside risk would be.”

The agency also would have to explain why it was again proposing options it already considered—and shot down—in crafting the original 2016 regulation, Cooke of the Union of Concerned Scientists said.

“Those arguments have already been hashed out,” he added, noting the 300 glider kit cap was

"literally a number that Fitzgerald said they can be profitable at."

Rajkovacz said he didn't directly respond to the alternative options offered by the EPA because to him, it's "all or nothing. I'm not interested in negotiating a halfway point."

E&E Energywire

https://www.eenews.net/energywire/stories/1060071371/search?keyword=EPA

Okla. AG opposes release of Tar Creek audit

By Mike Soraghan, 1/19/18

Oklahoma's attorney general is asserting grand jury secrecy as the reason to keep secret an investigative audit looking into corruption allegations at the Tar Creek Superfund site.

In its response to an open records lawsuit seeking release of the audit, the office of Attorney General Mike Hunter said that the documents are protected from disclosure by the state's Multicounty Grand Jury Act.

But the filing doesn't say the audit was presented to the grand jury. It says the audit was reviewed by the "Multi-County Grand Jury Unit," which is a group of staffers in the attorney general's office. State auditor Gary Jones, whose staff conducted the audit, has said that to his knowledge it was not presented to the grand jury.

More broadly, the response says the Office of Attorney General, or OAG, is allowed to keep secret records of criminal investigations.

"It is up to the discretion of the OAG, and the OAG has determined that these records be kept confidential," stated the filing, signed by Assistant Attorney General Lauren Ray.

The attorney general's filing came a day after Jones asked for a court order to release the documents. He also accused EPA Administrator Scott Pruitt, then Oklahoma's attorney general, of releasing the audit without authorization to the government board they'd been investigating (Energywire, Jan. 18). Pruitt then declined to bring charges and kept the audit report secret.

Campaign for Accountability, a Washington watchdog group, sued for the audit and related documents in November. The audit was done in response to allegations of corruption at the Tar Creek Superfund site near Miami, Okla. As EPA administrator, Pruitt is now in charge of Superfund.

E&E News has also requested the Tar Creek audit but is not involved in the lawsuit.

Tar Creek is a 40-square-mile site in the far northeastern corner of Oklahoma where land and water were contaminated by decades of lead and zinc mining that ended in the 1950s. In the early 1980s, EPA deemed it the most contaminated site in the country.

As part of the cleanup, the federal government provided money in 2009 to buy out homeowners and demolish the homes. The work was overseen by a board of area residents called the Lead-Impacted Communities Relocation Assistance Trust. But companies that sought demolition work complained that contracts were being unfairly steered to companies favored by board members.

Pruitt requested the audit from Jones' office in April 2011 after the staff of then-Sen. Tom Coburn (R-Okla.) forwarded the corruption allegations. Pruitt decided against prosecution and refused Jones' request to release the audit.

At the time, Pruitt said he was concerned the audit contained "unsubstantiated criminal accusations" against "private citizens." Jones called that reasoning "baffling," saying the claims

were substantiated and involved public officials.

The attorney general's office, now headed by Hunter, reviewed Jones' request again this summer after E&E News and another media outlet asked for the audit documents. Hunter's office also said no, but the reason changed. This time, the response was grand jury secrecy and an assertion that any report of a criminal investigation remains confidential.

News Channel 9 Chattanooga

http://newschannel9.com/news/local/chattanoogans-concerned-proposed-epa-cuts-will-affect-lead-contamination-cleanup-efforts

Chattanoogans concerned proposed EPA cuts will affect lead contamination cleanup efforts

By Katherine Marchand, 1/18/18

CHATTANOOGA, Tenn. — Congress has yet to approve President Trump's proposed 2018 budget, instead passing short-term fixes to keep things up and running.

The President's original proposal includes a 30% cut to the Environmental Protection Agency (EPA), and Chattanooga activists have concerns about how that could impact the cleanup of a lead-contaminated site if it ever is passed.

Last week, the EPA proposed adding the Southside neighborhood to a list of the country's most hazardous sites.

Only sites added to that list are eligible to receive federal funding for long-term cleanup.

"Lead is a highly toxic substance and it can especially affect children with their developing neurological systems," said Sadie McElrath, a family nurse practitioner at LifeSpring Pediatrics.

As a mom and medical professional, Sadie worries about the health of her own kids and children all across Chattanooga.

"Everyone deserves to be able to have a child play in the yard or grow a vegetable garden without being worried the soil in their very own yard is going to poison them," said McElrath.

That's why she and other concerned Chattanooga citizens say as the federal budget continues to be debated, EPA funding is extremely important to people who live in this community.

"The EPA's current budget only allows us to clean up the places where children are living," said McElrath. "If it keeps getting cut, what are we going to keep cutting out?"

Rodney Simpson says he was informed by the EPA that his property is contaminated with lead.

During the day, he takes care of his grandson, but he says the EPA told him that since no kids live there full-time, cleaning-up his property isn't a priority.

"But I was concerned because I have COPD and I sometimes grow a garden in my back yard," said Simpson. "As of yet, they haven't came back and did nothing to it."

Like the activists, he just wants to see his yard cleaned up so he can know his family is safe.

The lead contamination came from the waste of factories that used to be in operation in that area.

We reached out to the EPA to ask if budget cuts would affect their ability to clean things up.

A spokesperson sent us the following statement:

EPA's FY 2018 budget maintains core environmental protections and regulatory obligations while focusing on the Agency's core statutory work. As laid out in the Agency's draft FY 2018-2022 Strategic Plan, the Administrator's goals are designed to transform the way the Agency does business and more efficiently and effectively deliver human health and environmental results.

Administrator Pruitt has set the expectation that there will be a renewed focus on accelerating work and progress at all Superfund sites across the country.

Reuters

https://www.reuters.com/article/us-refinery-biofuels-bankruptcy/philadelphia-refiners-woes-pose-test-for-u-s-biofuel-policy-idUSKBN1F81AE

Philadelphia refiner's woes pose test for U.S. biofuel policy

By Jarrett Renshaw, 1/19/18, 7:06 AM

NEW YORK (Reuters) - The worsening financial condition of East Coast oil refiner Philadelphia Energy Solutions will present a new test for America's controversial biofuels policy, legal experts say, revealing whether the government can collect a massive biofuels-related debt from a company in distress.

The outcome could have implications for other refiners struggling to cope with the Renewable Fuels Standard, a law administered by the Environmental Protection Agency that requires refiners to blend biofuels into the nation's fuel supply every year, or buy credits from those who do.

PES, the oldest and largest refiner on the East Coast, is carrying a shortfall of such credits owed to the EPA likely worth over $100 million, while its management also considers filing for bankruptcy ahead of a separate $550 million short-term loan that comes due in March.

If the company goes bust, it would be the first test of how courts and the EPA treat the outstanding credit obligations of a bankrupt company under the RFS.

An EPA official did not say if the agency would pursue the credits, saying "EPA cannot comment on potential future bankruptcy proceedings."

PES also declined to comment.

Robin Phelan, a veteran bankruptcy attorney and head of Dallas-based Phelan Law, said the answer may come down to the discretion of the EPA, which he said would be legally permitted to pursue the claim in court but which has in the past shown flexibility in collecting from distressed companies.

"In my experience, sometimes they are totally inflexible and other times they will work with you," Phelan said.

The administration of President Donald Trump has already demonstrated a willingness to consider the concerns of the refining industry, and is mediating talks between representatives of the refiners and ethanol producers aimed at coming up with tweaks acceptable to both sides.

The political stakes are high, observers say. PES employs thousands of blue-collar workers from various trades, such as pipefitters and sheet metal workers, and sits in the key electoral state of Pennsylvania.

Chris Ward, chair of the Polsinelli law firm's bankruptcy group, said EPA is likely to deal with a biofuel credit situation less aggressively than it would, say, an urgent waste cleanup or some other threat to public safety, but said there was no clear precedent to look at either.

Manny Grillo, chair of the financial restructuring practice at the Houston-based Baker Botts law firm, said that whatever the outcome, it would be widely watched, as other refining companies like PBF Energy (PBF.N) and Valero (VLO.N) also gripe about the financial strains of the RFS.

"The government could... allow the cost to be discharged. The question is how the government treats the compliance issues moving forward," he said.

"The EPA could be violating the Equal Protection clause if they grant relief to one refiner without giving it to all of them. It's a slippery slope," said Ed Hirs, an energy economist at the University of Houston.

PES, majority owned by the Carlyle Group (CG.O), entered 2017 with a $111.4 million short position in the biofuels credit market, federal filings show. In recent months, it has been adding to that short position by selling credits, two sources say.

The Philadelphia refinery's struggles have emerged as a potential flashpoint in the ongoing debate between Big Oil and Big Corn over the future of the RFS.

Critics have argued the company's woes are an example of what is wrong with the program, while supporters say the company's troubles are more closely related to its lack of access to cheaper crude oil supplies.

To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
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Sent: Mon 11/6/2017 3:50:03 PM
Subject: Bloomberg: How the Trump White House Wound Up Releasing Dire Climate Report, 11/6/17

Bloomberg

https://www.bloomberg.com/news/articles/2017-11-06/how-the-trump-white-house-wound-up-releasing-dire-climate-report

How the Trump White House Wound Up Releasing Dire Climate Report

By Eric Roston and Christopher Flavelle, 11/6/17

The Trump administration has dismissed the threat of climate change, proposed cuts to climate research and remade scientific advisory boards. Yet it released a report on Friday that said climate change is real, dangerous and man-made.

Don't read much into it.

"There's not too much tinkering or changes that can be made," said Ann Bartuska, who until September helped lead the Global Change Research Program, the 13-agency group that produces the National Climate Assessment.

The 477-page report -- mandated by law to be issued every four years -- was written by dozens of scientists from government agencies, national labs and universities. It concluded, "this period is now the warmest in the history of modern civilization," and documented how that's leading to melting glaciers, extreme storms and sea-level rise.

Public drafts of the report have circulated for months, making it politically perilous to tinker with the findings. So, with editing a high-risk affair and the report required by Congress, the administration may have just decided to downplay it, said John Holdren, who ran the Office of Science and Technology Policy under President Barack Obama.

"It would do more harm to block this report than to let it out," Holdren, now a Harvard University environmental policy professor, said in an interview. "They're letting it out on a Friday afternoon, which is pretty much the standard approach for letting out something that you don't want to get a lot of attention."

Some critics blamed the findings on the previous administration.

"It is unfortunate that the Trump Administration has released these Obama-era climate reports, without attempting to remove the junk science — and the reports are full of junk science," said Myron Ebell, the director of the Competitive Enterprise Institute's Center for Energy and Environment, which doesn't accept the scientific consensus about climate change.

There are prior examples of a president dismissing the findings of government scientists. President George W. Bush in 2002 dismissed a multi-agency climate science report by saying, "I read the report put out by the bureaucracy."

As under Bush, it's unlikely the findings will shift any policy decisions, such as that by President Donald Trump to exit the Paris climate accord or by the Environmental Protection Agency head Scott Pruitt to ax the first rules to curb greenhouse gases from power plants.

While the report has gained public attention, its findings matter less than what the federal government is actually doing, according to David Doniger, director of the Natural Resources Defense Council's Climate and Clean Air Program.

The office that released the report "has no ability to take action based on its findings," Doniger said. "The ability to act on climate change is in the hands of Pruitt and other Trump administration appointees. And I think they will do nothing in response to this report."

The EPA referred questions to the White House science office, which didn't return emails requesting comment.

The report might cause legal headaches for the administration.

Former members of Trump's transition team have pushed the EPA to rescind the so-called endangerment finding, issued in 2009, which said climate change is a threat to human health and welfare. So far, Trump and Pruitt haven't acted to change that finding. With this report, any move to do so might not hold up in court.

Legal Suicide

"It would be a legal suicide mission to try to rescind the endangerment finding in the face of a comprehensive report issued by multiple federal agencies in late 2017," said Michael Gerrard, director of Columbia's Sabin Center for Climate Change Law. "I don't see how a lawyer could keep a straight face saying there are solid grounds to rescind, which is what the courts would require."

And there is another way this report could have a practical impact. Both Pruitt, the head of the EPA, and Rick Perry, the Energy secretary, have responded to questions about climate change by saying that the the climate is changing, but it's not clear how much of a role humans are having on it.

Now the government's own report has dismissed that formulation.

"It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century," the document reports. "For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence."

Bartuska, who is now head of the Land, Water and Nature program at Resources for the Future, said that so far, "this administration is not impeding the production of solid scientific facts around climate change."

Still, the statements and policies from some senior administration officials "call into question what beliefs some of the individuals have," she said.

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Washington Examiner

http://www.washingtonexaminer.com/humans-dominant-cause-of-climate-change-government-report-says/article/2639584

Humans 'dominant cause' of climate change, government report says

By: Josh Siegel, 11/3/17, 2:47 p.m.

A major climate change report released Friday afternoon by the Trump administration says that it is “extremely likely” that human activities are the “dominant cause” of global warming.

“For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence,” the report says.

In addition, the report says that the past 115 years are “the warmest in the history of modern civilization."

The comprehensive study of climate science by U.S. government researchers across 13 federal agencies, known as the Climate Science Special Report, is part of a larger scientific review called the fourth National Climate Assessment. It is mandated by Congress to be released every four years.

The findings contradict the Trump administration’s doubts about climate science and most scientists' belief that humans are the largest contributor of greenhouse gases that cause global warming.

"This new report reaffirms the overwhelming consensus of the world’s scientists, namely that

climate change is real, human-caused, and already having dramatic impacts on us and our planet," said Michael Mann, a professor of atmospheric science at Penn State University, in an email to the Washington Examiner. "Whether it's unprecedented superstorms, more intense heat waves, epic drought or the inundation of our coastlines from the sea level rise, the impacts of climate change are no longer subtle. We are seeing them play out in real time, as this report makes clear."

The scale of climate change beyond the next few decades will depend primarily on the amount of greenhouse gases emitted globally, the report said.

Without major reductions in emissions, the increase in annual average global temperature relative to pre-industrial levels could reach 9° Fahrenheit, or 5° Celsius, or more by the end of the century.

But with significant reductions in emissions, the increase in annual average global temperature could be limited to 3.6°F, or 2°C, or less, the report said.

The Trump administration has repealed or moved to review a number of Obama-era regulations intended to reduce emissions, including the Clean Power Plan restrictions on power plants.

EPA Administrator Scott Pruitt last month announced his intent to repeal the Clean Power Plan and said the Obama administration had exceeded its legal authority in creating it. The plan, which was stayed by the Supreme Court in February 2016 and never implemented, required states to reduce carbon emissions by 32 percent below 2005 levels by 2030, with a focus on preventing pollution from coal-fired power plants.

Pruitt also has removed an EPA web page focused on climate change and is encouraging the concept of a "Red Team/Blue Team" exercise, in which two groups of experts debate the science behind climate change.

The White House on Friday downplayed the report's findings.

In a statement, White House Principal Deputy Press Secretary Raj Shah said that “the climate has changed and is always changing.”

“The administration supports rigorous scientific analysis and debate and encourages public comment on the draft documents being released today,” Shah said. “To address climate change as well as other risks, the U.S. will continue to promote access to the affordable and reliable energy needed to grow economically, and to support technology, innovation and the development of modern and efficient infrastructure that will reduce emissions and enable us to address future risks, including climate related risks."

The new government report says the effects of a warming climate are already clear.

It says thousands of studies conducted by researchers around the world have documented changes in surface, atmospheric and oceanic temperatures, melting glaciers, diminishing snow cover, shrinking sea ice; rising sea levels, ocean acidification, and increasing atmospheric water vapor.

For example, global average sea level has risen by about seven to eight inches since 1900, with almost half of that rise occurring since 1993.

Global average sea levels are expected to continue to rise, by at least several inches in the next 15 years and by one to four feet by 2100.

Heatwaves have also become more frequent in the United States since the 1960s, while extreme cold temperatures are less common.

In addition, wildfires have occurred more often in the western United States and Alaska since the early 1980s and are projected to further increase in those regions as the climate changes, the report says.

This year has been the most expensive firefighting season ever recorded for the federal government.

Joseph Majkut, director of climate policy at the Niskanen Center, a free market think tank, said he doesn't expect the Trump administration to change its approach despite the report's conclusions.

“I don't sense the release of this report is a big watershed moment, and I and don't think it will put anyone in a political jam," Majkut told the Washington Examiner in an interview. “This is stuff we know already. I would like to see it inspire some more consideration of climate risk. But I am not holding my breath. My guess is it's a relative non-event."

The report has been submitted to the Office of Science and Technology Policy at the White House. Trump has yet to nominate anyone to run that office.

A group of Democratic senators this week called on the Trump administration to refrain from "political interference" and not suppress the report. The New York Times had previously reported that many scientists who worked on the climate report feared that the Trump administration would try to suppress it.

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Subject: Washington Post: Trump administration releases report finding 'no convincing alternative explanation' for climate change, 11/3/17

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2017/11/03/trump-administration-releases-report-finds-no-convincing-alternative-explanation-for-climate-change/?utm_term=.7ee57b6e930f

Trump administration releases report finding 'no convincing alternative explanation' for climate change

By: Chris Mooney, Juliet Eilperin, and Brady Dennis, 11/3/17, 2:00 p.m.

The Trump administration released a dire scientific report Friday detailing the growing threats of climate change. The report stands in stark contrast to the administration's efforts to downplay humans' role in global warming, withdraw from an international climate accord and reverse Obama-era policies aimed at curbing America's greenhouse-gas output.

The White House did not seek to prevent the release of the government's National Climate Assessment, which is mandated by law, despite the fact that its findings sharply contradict the administration's policies. The report affirms that climate change is driven almost entirely by human action, warns of potential sea level rise as high as 8 feet by the year 2100, and enumerates myriad climate-related damages across the United States that are already occurring due to 1.8 degrees Fahrenheit of global warming since 1900.

"It is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century," the document reports. "For the warming over the last century, there is no convincing alternative explanation supported by the extent of the observational evidence."

The report's release underscores the extent to which the machinery of the federal scientific establishment, operating in multiple agencies across the government, continues to grind on even as top administration officials have minimized or disparaged its findings. Federal scientists have continued to author papers and issue reports on climate change, for example, even as political

appointees have altered the wording of news releases or blocked civil servants from speaking about their conclusions in public forums. The climate assessment process is dictated by a 1990 law that Democratic and Republican administrations have followed.

Environmental Protection Agency Administrator Scott Pruitt, Energy Secretary Rick Perry and President Trump have all questioned the extent of humans' contribution to climate change. One of EPA's Web pages posted scientific conclusions similar to those in the new report until earlier this year, when Pruitt's deputies ordered it removed.

The report comes as President Trump and members of his Cabinet are working to promote U.S. fossil fuel production and repeal several federal rules aimed at curbing the nation's carbon output, including ones limiting greenhouse-gas emissions from existing power plants, oil and gas operations on federal land and carbon emissions from cars and trucks. Trump has also announced he will exit the Paris climate agreement, under which the U.S. has pledged to cut its overall greenhouse-gas emissions between 26 percent and 28 percent compared to 2005 levels by 2025.

The report could have considerable legal and policy significance, as the scientific matter provides new and stronger support for EPA's greenhouse gas "endangerment finding" under the Clean Air Act, which lays the foundation for regulations on emissions.

"This is a federal government report whose contents completely undercut their policies, completely undercut the statements made by senior members of the administration," said Phil Duffy, the director of the Woods Hole Research Center.

The government is required to produce the National Assessment every four years. This time, the report is split into two documents, one that lays out the fundamental science of climate change and the other that shows how the United States is being impacted on a regional basis. Combined, the two documents total over 2,000 pages.

The first document, called the Climate Science Special Report, is now a finalized report, having been peer reviewed by the National Academy of Sciences and vetted by experts across government agencies. It was formally unveiled Friday.

"I think this report is basically the most comprehensive climate science report in the world right now," said Robert Kopp, a climate scientist at Rutgers who is an expert on sea-level rise and served as one of the report's lead authors.

It affirms that the U.S. is already experiencing more extreme heat and rainfall events and more large wildfires in the West, that more than 25 U.S. coastal cities are already experiencing more flooding, and that seas could rise by between 1 and 4 feet by the year 2100, and perhaps even more than that if Antarctica proves to be unstable, as is currently feared. The report says that a rise of over 8 feet is "physically possible" with high levels of greenhouse-gas emissions, but there's no way right now to predict how likely it is to happen.

When it comes to rapidly escalating levels of greenhouse gases in the atmosphere, the report states, "there is no climate analog for this century at any time in at least the last 50 million years."

Most striking, perhaps, the report warns of the unpredictable — changes that scientists cannot foresee that could involve tipping points or fast changes in the climate system. These could switch the climate into "new states that are very different from those experienced in the recent past."

Given these strong statements — and how they contradict Trump administration statements and policies — some members of the scientific community had speculated that the administration might refuse to publish the report or alter its conclusions. During the last Republican presidential administration, that of George W. Bush, the national assessment process was highly controversial, and a senior official at the White House Council on Environmental Quality edited aspects of some government science reports.

Yet multiple experts, as well as some administration officials and federal scientists, said that Trump political appointees did not change the special report's scientific conclusions. While some edits have been made to its final version — for instance, omitting or softening some references to the Paris climate agreement — those are focused on policy.

A senior administration official, who asked for anonymity because the process is still underway,

said in an interview that top Trump officials decided to put out the assessment without changing the findings of its contributors even if some appointees may have different views.

A federal scientist involved in writing the report, who asked not to be identified because he was not authorized to speak to the press, said that political appointees made no effort to change the scientific findings after being briefed on them.

Glynis Lough, who is deputy director of the food and environment program at the Union of Concerned Scientists and had served as chief of staff for the National Climate Assessment at the U.S. Global Change Research Program until mid-2016, said in an interview that the changes made by government officials to the latest report "are consistent with the types of changes that were made in the previous administration for the 2014 National Climate Assessment, to avoid policy prescriptiveness."

Perhaps no agency under Trump has tried to downplay and undermine climate science more than the EPA. Most recently, political appointees at the EPA instructed two agency scientists and one contractor not to speak as planned at a scientific conference in Rhode Island. The conference marked the culmination of a three-year report on the status of Narragansett Bay, New England's largest estuary, in which climate change featured prominently.

The EPA also has altered parts of its website containing detailed climate data and scientific information. As part of that overhaul, in April the agency took down pages that had existed for years and contained a wealth of information on the scientific causes of global warming, its consequences and ways for communities to mitigate or adapt. The agency said it was simply making changes to better reflect the new administration's priorities, and that any pages taken down would be archived.

EPA Administrator Scott Pruitt has repeatedly advocated for the creation of a governmentwide "red team/blue team" exercise, in which a group of outside critics would challenge the validity of mainstream scientific conclusions around climate change.

Other departments have also removed climate change documents online: Interior's Bureau of Land Management, for example, no longer provides access to documents assessing the danger that future warming poses to deserts in the Southwest.

And when U.S. Geological Survey scientists working with international researchers published an article in the journal Nature evaluating how climate change and human population growth would affect where rain-fed agriculture could thrive, USGS published a news release that omitted the words "climate change" altogether.

The Agriculture Department's climate hubs, however, remain freely available online. And researchers at the U.S. Forest Service have continued to publish papers this year on how climate change is affecting wildfires, wetlands and aquatic habitat across the country.

While the Trump administration has not altered the new climate science report substantially, it is already coming under fire from some of the administration's allies.

The day before it was published, Steven Koonin, a New York University physicist who has met with EPA administrator Scott Pruitt and advocated for the "red team/blue team" exercise, pre-emptively criticized the document in the Wall Street Journal, calling it "deceptive."

Koonin argued that the report "ominously notes that while global sea level rose an average 0.05 inch a year during most of the 20th century, it has risen at about twice that rate since 1993. But it fails to mention that the rate fluctuated by comparable amounts several times during the 20th century."

But one of the report's authors suggested Koonin is creating a straw man. "The report does not state that the rate since 1993 is the fastest than during any comparable period since 1900 (though in my informal assessment it likely is), which is the non-statement Steve seems to be objecting to," Kopp countered by email.

Still, the line of criticism could be amplified by conservatives in the coming days.

Meanwhile, the administration also released, in draft form, the longer volume 2 of the National

Climate Assessment, which looks at regional impacts across the United States. This document is not final, but is now available for public comment and will itself now begin a peer review process, with final publication expected in late 2018.

Already, however, it is possible to discern some of what it will conclude. For instance, a peer reviewed Environmental Protection Agency technical document released to inform the assessment finds that the monetary costs of climate change in the U.S. could be dramatic.

That document, dubbed the Climate Change Impacts and Risk Analysis, finds that in a high end warming scenario, high temperatures could lead to the loss per year of "almost 1.9 billion labor hours across the national workforce" by 2090. That would mean $ 160 billion annually in lost income to workers.

With high levels of warming, coastal property damages in 2090 could total another $ 120 billion annually, and deaths from temperature extremes could reach 9,300 per year, or in monetized terms, $ 140 billion annually in damages. Additional tens of billions annually could occur in the form of damages to roads, rail lines, and electrical infrastructure, the report finds.

This could all be lessened considerably, the report notes, if warming is held to lower levels.

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Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2017/11/13/these-people-think-trump-is-too-liberal-on-climate/?utm_term=.be8b24d65243

These people think Trump is too liberal on climate

By: Ramin Skibba, 11/13/17, 7:00 a.m.

In the first year of his presidency, Donald Trump has withdrawn the United States from the Paris climate agreement, scrapped the Clean Power Plan that sought to cut greenhouse gas emissions from power generation, pushed to open up new areas of the Arctic and Gulf of Mexico to oil drilling, and blocked government climate scientists from presenting at professional conferences.

But for fossil fuel advocates, deregulation crusaders and climate skeptics who gathered in Houston last week for the Heartland Institute's America First Energy Conference, Trump has still not gone far enough.

What Heartland, a free-market think tank based in Chicago, really wants is to revoke the "endangerment finding," which since 2009 has served as the basis for climate policies and regulations.

That includes the Clean Power Plan, the main plank of Barack Obama's climate program, which would have brought the United States within reach of meeting its commitments to the Paris agreement.

So far, however, Trump and Environmental Protection Agency Administrator Scott Pruitt have not tried to overturn the endangerment finding. And that is a mistake, according to several people at the Heartland conference.

However, Trump and Pruitt are coming under growing pressure to try to scrap the finding from a number of figures who have played an influential role in the administration's thinking about climate change — including two members of the president's transition team who spoke at the Heartland conference: Steve Milloy and David Schnare.

"The endangerment finding is the root of all global warming evil at the EPA, and we're trying to figure out here what is the best way to get that thing reconsidered and undone," Milloy, an attorney and long-time opponent of the EPA who runs the website JunkScience.com, told the Heartland conference.

"It's not really clear that the administration views this with the same urgency that we do," he added.

The endangerment finding states that emissions of greenhouse gases such as carbon dioxide and methane from burning fossil fuels count as air pollutants under the Clean Air Act and endanger public health and welfare. It provides the legal justification for the EPA to regulate these harmful gases.

The finding has been repeatedly upheld by the U.S. Court of Appeals for the District of Columbia Circuit and other jurisdictions. Recent scientific studies, including the National Climate Assessment report released earlier this month, have also helped reinforce the finding.

Michael Gerrard, a director of the Sabin Center for Climate Change Law at Columbia University and who was not at the conference, said there is little chance of overturning the finding.

"Those who favor its repeal probably see it as their Hail Mary play — the odds are low, but if they win, they win big," Gerrard said.

But that did not deter the speakers at the Heartland conference, including Milloy and Schnare.

"The goal here is not to change the policy but to correct the science," said Richard B. Belzer, an independent consultant on regulatory economics and a fellow at the free-market R Street Institute think tank.

Belzer has also previously worked with the Competitive Enterprise Institute, which, like the Heartland Institute, was once merely a right-wing outlier. The organizations' libertarian positions put them in the fringe of U.S. politics — only 1 in 10 Americans consider themselves libertarians and know what the term means, according to Pew Research Center survey — yet they have effectively become policy brain trusts of the Trump administration.

Schnare, former director of the Free Market Environmental Law Clinic, called on Trump and Pruitt to coordinate their approach toward the endangerment finding.

"You're only going to be successful if you get the EPA and [White House's] Office of Science and Technology Policy working together," Schnare said.

However, Trump has yet to appoint a White House science adviser.

Schnare argued that to remove the endangerment finding, each line of evidence supporting it needs to be challenged.

Other speakers went on to attack the science behind the finding.

Harry MacDougald, an attorney at an Atlanta law firm who previously worked with the Competitive Enterprise Institute to challenge the endangerment finding, disputed the mainstream scientific consensus that global temperatures have exceeded natural variation and that oceans have become more acidic due to climate change.

The Competitive Enterprise Institute filed a petition to the EPA to reconsider the endangerment

finding earlier this year while making similar claims.

Even if climate scientists are right, MacDougald argued, climate regulations would impose a "colossal expenditure."

That argument — about the costs of cutting emissions — could be gaining traction in Pruitt's EPA, said Holly Doremus, an environmental law professor at the University of California at Berkeley who was not a participant at the conference. "The EPA is sympathetic to that argument now in a way that it wasn't in 2009," she said.

However, Gerrard argued that, for the time being at least, the endangerment finding is on firm ground and that as a result the EPA is legally required to cut greenhouse gas emissions that cause climate change. "I think that Pruitt is being advised that trying to revoke the endangerment finding would be a clear legal loser," he said.

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Bloomberg

https://www.bloomberg.com/news/articles/2017-10-25/epa-s-pruitt-denies-he-s-an-ally-of-polluters-vows-to-get-tough

EPA's Pruitt Denies He's an Ally of Polluters, Vows to Get Tough

By: Jennifer A. Dlouhy and Jennifer Jacobs, 10/25/17, 2:42 p.m.

•□□□□□□□ Cites decision to force toxic cleanup at Texas Superfund site

•□□□□□□□ Critics say agency chief is too cozy with oil, coal industry

Scott Pruitt, the head of the Environmental Protection Agency, vowed that he will get tough on corporate polluters, dismissing critics who cast him as too cozy with industry.

"They don't know me," Pruitt said, during an interview with Bloomberg News in his Washington office. "I've led a grand jury. We are going to do enforcement, to go after bad actors and go after polluters."

Pruitt, the former Oklahoma attorney general, is leading the efforts to roll back Obama-era environmental regulations, including the first limits on carbon dioxide emissions from power plants and an overhaul of clean-water rules. Despite moving to rescind those measures, those that remain in place will be fully enforced, he said.

"I know what it means to prosecute people," he said. "And we've got some of those folks across the country -- those people that are intentionally taking steps to pollute our water, to pollute our air."

While coal miners, manufacturers and oil companies have praised Pruitt's efforts to halt or rescind regulations, environmental advocates say he's the leading example of a Trump

administration appointee who has an agenda that conflicts with the very nature of the agency he leads.

Under former President Barack Obama, the EPA played a pivotal role in the government's fight against climate change, proposing sweeping rules to limit on methane leaks from oil wells and carbon-dioxide emissions from coal plants. Pruitt, who sued the EPA more than a dozen time to challenge those and other regulations, by contrast, is pursuing what he calls a "back to basics" agenda that he says will prioritize action on traditional pollutants.

Eric Schaeffer, a former director of civil enforcement at the EPA under former President Bill Clinton, says Pruitt's environmental record as attorney general Oklahoma -- where "he didn't do bupkis for enforcement" -- makes him skeptical the administrator is going to be "very good on enforcement" now.

"But it would be great to be wrong," Schaeffer said in an interview. "So far, the EPA's enforcement record is thin."

The Environmental Integrity Project, a watchdog group led by Schaeffer, reported in August that during President Donald Trump's first six months in office, civil penalties paid for environmental violations were 60 percent smaller on average than for comparable periods in the administrations of presidents Obama, George W. Bush and Clinton.

In Oklahoma, Pruitt pursued fraud cases against some insurers and claims of unfair and deceptive practices by mortgage servicers, yielding a multimillion dollar payout for victims in the state. But he also dismantled a unit in Oklahoma dedicated to enforcing environmental violations and built his political career challenging what he termed the "EPA's activist agenda" under Obama.

Pruitt highlighted the EPA's decision earlier this month to approve a plan for removing toxins from the San Jacinto Waste Pits, a Superfund site near Houston that began leaking cancer-causing dioxin after flooding from Hurricane Harvey.

That included ordering two companies -- International Paper Co. and a subsidiary of Waste Management Inc. -- to pay an estimated $115 million toward excavating more than 212,000 cubic yards of contaminated waste from the site. Both companies have objected to the cleanup plan.

"And they are already barking down there," Pruitt said, referencing those companies' complaints. Pruitt said he was told some people would be "surprised" he would seek to hold Fortune 500 companies accountable.

Another example: In June, the Trump administration filed a lawsuit alleging that a Colorado-based oil company repeatedly violated clean air rules by allowing volatile organic compounds to escape from dozens of storage-tank batteries. According to the complaint filed in that civil case, the EPA alleged that PDC Energy Inc. failed to adequately design, operate and maintain control systems on those tanks., resulting in those leaks. That case is ongoing.

"I am here because I really feel called to it," Pruitt said. "My desire each day is to bless the president and the decisions he's making."

Pruitt said he is still making plans for a "red team, blue team" exercise to examine the scientific research around climate change, with skeptics squaring off against scientists who say data overwhelmingly prove carbon dioxide emissions drive the phenomenon.

That effort -- which Pruitt likened to "peer review happening in real time" -- would be separate from any formal review of the EPA's landmark 2009 conclusion that greenhouse gases endanger human health and welfare. Some conservatives have argued that unless the EPA reverses that endangerment finding, as it is known, his regulatory repeals will not endure.

Pruitt didn't explicitly detail plans for a review of the endangerment finding -- or commit to one -- instead suggesting that regulatory action around the EPA's proposed repeal of the Clean Power Plan should come first.

"Any type of review of endangerment findings would take time -- it would take meaningful

time," Pruitt said. "You can't in the midst of that have confusion created by a vacuum because you are not addressing the Clean Power Plan, the 2015 rule or any authority you have" under the Clean Air Act to address greenhouse gas emissions.

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WJCN 2502J

To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
From: Daguillard, Robert
Sent: Fri 1/5/2018 8:23:56 PM
Subject: News Clips, 5 January 2018

NY Times - Expect Environmental Battles to Be 'Even More Significant' in 2018

Reuters via NY Times - Can't Please Everyone: Trump Energy Policy Riles Competing Sectors

Politico: EPA chief Pruitt is said to be eyeing attorney general job

Politico: EPA coal jobs study

AP via Chicago Tribune - Superfund work touted by Trump EPA was completed years ago

AP via New York Times - Watchdog to Investigate Flood Risks to Superfund Sites

Washington Examiner - EPA sets hard deadline for enforcing Obama-era ozone restrictions

Bloomberg Environment - Climate Advisers Exiled by Trump Form Panel to Continue Work

Bloomberg Environment - All About: Delaware's Air Pollution Woes

Inside EPA - Fluoride Case Ruling May Open Door To More TSCA Petitions, Attorneys Say

Inside EPA - High-Level 'Awareness Reviews' Stall EPA's FOIA Releases, Prompting Suits

EE Greenwire - Politics killed newspaper grant — ex-Bay Program chief

NYT Opinion - Trump's Disdain for Science

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Politico: EPA coal jobs study
https://www.politico.com/newsletters/morning-energy/2018/01/05/zinkes-drilling-plan-lands-with-a-thud-065911
Morning Energy, 1/5/18

Murray Energy is appealing the 4th Circuit ruling from last year that said EPA was not legally obligated under the Clean Air Act to produce a study specifically considering coal industry job

losses caused by its regulations. The Trump administration opposes requiring EPA to produce the study Murray wants and has urged the Supreme Court not to take the case. But EPA Administrator Scott Pruitt said in October that his agency will give greater consideration to coal jobs via some type of study in the future. The case is 17-478, *Murray v. Pruitt*.

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Bloomberg Environment - Climate Advisers Exiled by Trump Form Panel to Continue Work

https://bnanews.bna.com/environment-and-energy/climateadvisersexiled-by-trump-form-panel-to-continue-work
By Eric Roston, 1/4/18

Scientists who sat on a federal climate change committee weren't deterred after the Trump administration disbanded the advisory panel in 2017: now they're taking their research elsewhere.

Columbia University's Earth Institute hired one of the committee's researchers, Richard Moss of the University of Maryland, who will reconvene most of the former panel members and produce the same reports.

The shadow panel, announced Jan. 4, is the latest example of how President Donald Trump's antipathy toward climate change research and policy is pushing scientists into internal exile.

As a visiting scientist, Moss and the panel will produce the report, which is an addendum to the government's quadrennial National Climate Assessment—released in early November—that focuses on local impacts of a changing climate.

The effort is expected to receive some financial backing from New York State as well as administrative support from the American Meteorological Society, a professional group based in Boston. The report will be available for public and peer review in June.

New York State wants the committee to "continue its critical work without political interference and provide the guidance needed to adapt to a changing climate," it said in a statement.

Other non-federal institutions also have taken on climate science research dropped by the Trump administration.

Social Cost of Carbon

Resources for the Future, a 65-year-old policy research organization based in Washington, launched a three-year effort in June to update and maintain a central element of climate economics, known as the social cost of carbon.

The measure is an estimate in today's dollars of the projected economic impact of climate change—elements that could include, for example, the health risks associated with air pollution or the cost of coastal flooding from rising sea levels.

RFF estimates that every metric ton of carbon-dioxide pollution represents roughly $40 in future damage. In 2017, the world released an estimated 37 billion tons of CO2, a 2 percent increase over the previous year.

The social cost of carbon was used in Obama-era climate regulation, when it received backing of a federal court, and the methodology behind it is still put to use in U.S. states, companies, and other countries in determining future costs and benefits of regulations.

France Steps Up

When it launched the project, RFF cited Trump's executive order in March rescinding Obama-era climate-economics research and use of the social cost of carbon in regulatory cost-benefit analyses. Based on assumptions put forward by the Trump administration—which are outside mainstream published economic research and government practice—the social cost of carbon is as low as $1 a ton.

Other nations may use the U.S.'s new lack of interest in climate to their own advantage.

French President Emmanuel Macron earned headlines in June by expressing interest in luring American scientists to Europe, and followed up with an announcement in December that 13 U.S.-based researchers were among 18 who'd been awarded $70 million in French research grants.

Other U.S. scientists may be finding their way to Europe on their own.

Before Trump took office, scientists raced to download and save scientific data from the Environmental Protection Agency and Department of Energy, on fears the incoming administration would remove it or make it harder to access.

The EPA itself eventually got in on the act. A permanent banner across the top of www.epa.gov and an item at the bottom of the page link readers to the agency's site as it existed on Jan. 19, 2017—the day before Trump took office.

"The banner shows that not only have we properly archived Obama's EPA website, it's still accessible," EPA spokesman Jahan Wilcox said.

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Bloomberg Environment - All About: Delaware's Air Pollution Woes
https://bnanews.bna.com/environment-and-energy/energy-and-environments-impact-in-five-house-races-delaware-americas-tailpipe-3
1/5/18

Delaware said this week that it intends to sue the EPA for allegedly failing to curb pollution that blows into the state from out-of-state power plants. It's not the first time the First State has taken such an action—and it probably won't be the last.

"Delaware is, unfortunately, located at the end of what I call America's tailpipe,'' says Tom Carper, the state's senior senator and the top Democrat on the Senate's environment committee. "Other states' dirty emissions from cars and power plants drift east, causing pollution that Delaware cannot regulate. This dirty air negatively impacts the health of Delawareans."

Ozone pollution has been a persistent problem in Delaware, which is part of the ozone transport region of states from Virginia to Maine. Delaware says 94 percent of its ozone levels are caused by pollutants blowing in from out of state.

It's suing the EPA over pollution blowing in from upwind power plants in neighboring Pennsylvania and West Virginia, which emit ozone precursors, including nitrogen oxides and volatile organic compounds.

Wilmington, the state's largest city, was named the second-worst city in the Northeast for smog pollution in an April 2017 report by the environmental group Environment America Research & Policy Center. Local officials say the number of neighborhoods surrounded by industrial companies and contaminated brownfields has only worsened pollution levels.

Meanwhile, to reduce in-state pollution from car exhaust, Delaware adopted California's motor vehicle emissions standards, which are stricter than the federal emissions standards for volatile organic compounds. Medium- and heavy-duty vehicles are restricted from idling longer than three minutes, and the cities of Newark and Wilmington have anti-idling ordinances to reduce air pollution from cars. — *Jennifer Lu*

Other Stories We're Covering

- Comments are due today on the EPA's proposal to exempt glider kits—new truck chassis and cab assemblies built for the installation of a used engine and transmission—from Obama-era greenhouse gas standards for heavy-duty trucks. The plan drew widespread opposition at a public hearing last month, including from major truck engine manufacturers such as Volvo that argue an exemption undercuts investments that they've made in cleaner vehicles. Abby Smith is monitoring.
- The arguments of Pacific Legal Foundation senior attorney M. Reed Hopper, who died on Christmas day, form the basis of the EPA's plans to roll back the Clean Water Rule.
- California's decision to label a common herbicide as carcinogenic unconstitutionally forces businesses to issue "false and misleading" statements about their products, 11 other states tell a federal court.

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Inside EPA - Fluoride Case Ruling May Open Door To More TSCA Petitions, Attorneys Say
https://insideepa.com/daily-news/fluoride-case-ruling-may-open-door-more-tsca-petitions-attorneys-say
By Maria Hegstad, 1/4/18

The recent federal court ruling allowing environmentalists to sue EPA for rejecting their petition seeking Toxic Substances Control Act (TSCA) rules on fluoridation could open the door to new citizen petitions to the agency under section 21 of the law seeking rules on other substances.

"The fluoridation case may signal to environmental groups that the courts may be receptive to granting section 21 petitions or at a minimum that EPA's reasons for a denial will be closely

scrutinized," Herb Estreicher, an attorney and chemist with the law firm of Keller and Heckman, tells Inside EPA.

"As a result, we may see more section 21 petitions from environmental groups and a greater willingness to challenge an EPA denial in the courts."

An environmentalist attorney appears to echo Estreicher's view. "The judge squarely rejected EPA's approach and underscored the important role of section 21 under the law. I think the decision will be very helpful in future section 21 cases," the attorney tells Inside EPA.

At the same time, several attorneys say they expect that the decision will have a limited effect on environmentalists' ongoing challenges to framework rules implementing TSCA reform, where, like the fluoride case, the court is weighing the question of which uses EPA must consider when assessing chemicals for possible regulation. They say the ruling in the fluoride case will have little bearing in the framework rules cases because they hinge on different sections of the statute.

"I'm not concerned that the decision will somehow undermine the position in the framework rule challenges that the law requires risk evaluations to address all conditions of use. That issue was not before the court and wasn't decided," the environmentalist lawyer says.

Late last month, Judge Edward Chen of the U.S. District Court for the Northern District of California denied EPA's request to dismiss Food & Water Watch Inc., et al, v. EPA, the suit challenging it's petition's denial.

Chen ruled that the new TSCA law allows citizens to petition EPA under TSCA section 21 to regulate single uses of substances, a stance at odds with the agency's position in this case that petitioners must address all uses of a substance when bringing a petition to the agency.

This argument, included in the denial issued early in the Trump administration, is consistent with the Obama EPA interpretation that the agency must evaluate all conditions of use when evaluating chemicals' risks.

But in overruling EPA, Chen's decision in the fluoride case appears to support the agency's framework rules that grant EPA discretion to determine which uses to evaluate for possible regulation under section 6 authority.

'Fairly Scathing Rebuke'

Since the ruling, some observers have indicated that Chen's approach could have bearing in environmentalists' pending challenge to the framework rules.

In those cases, a key question is what "uses" EPA must consider when evaluating chemicals for possible regulation.

While the Obama EPA's proposed section 6 rules required the agency to assess all uses, the Trump EPA's final version grants EPA discretion to determine which uses to consider, though agency officials have largely ruled out assessing legacy uses as well as uses regulated by other agencies, such as the Occupational Safety and Health Administration.

The law firm Bergeson & Campbell describes the ruling as a "fairly scathing rebuke of EPA's legal positions," in a Dec. 22 blog post, adding that it "essentially rejected EPA's interpretation that a citizen petition must evaluate all conditions of use of a chemical substance in a TSCA Section 6(b) risk evaluation."

The blog also notes "interesting issues" the ruling raises for the environmentalists' challenges to the TSCA framework rules. Those suits "challenge EPA's view that fewer than all conditions of use must be considered in a risk evaluation, the very position the court in Food & Water Watch rejected for purposes of Section 21 petitions challenging EPA's interpretation of a citizen's legal burden under TSCA Section 6(a). Given that the judicial challenge to the risk evaluation final rule is being heard in the U.S. Court of Appeals for the Ninth Circuit, this district court decision is particularly relevant."

But others argue the section 21 case will have little significance in environmentalists' challenges to EPA's framework rules, issued under section 6. Several attorneys say they consider Chen's ruling specific to TSCA section 21 citizens' petitions.

They questioned whether the ruling could be applied more broadly to EPA's risk evaluation and management responsibilities contained in section 6, even though environmentalists' challenges to the framework rules will be heard in the same Ninth Circuit.

"I think the decision is cogent and persuasive on the statutory construction issues it addresses, but I question whether it will have much collateral effect on cases not involving a Section 21 petition," one attorney familiar with the fluoride suit tells Inside EPA. "Perhaps it may provide some modest support for EPA's construction that EPA may focus a section 6(b) risk assessment on, or a manufacturer may request such a risk assessment for, only those conditions of use that are of particular interest or concern."

And Estreicher says the decision "provides Judge Chen's interpretation of 'conditions of use' but the 9th Circuit will make its own decision."

No Conflict

Michael Connett, the plaintiffs attorney in Food & Water Watch suggested even before the judge ruled that the case would not be at cross purposes with other environmental groups who have challenged the Trump EPA's final framework rules.

There isn't "any conflict between the position taken by the environmentalists (i.e., that EPA must consider all uses when conducting risk evaluations under 6(b)), and our position here that citizen petitioners need only address one use," Connett says now.

Two of the environmental groups suing EPA over the framework rules, the Natural Resources Defense Council and Safer Chemicals Healthy Families, filed an amici brief in the fluoride case, joining plaintiffs in opposing EPA's motion to dismiss the suit.

Connett points to the amici arguments that "if EPA determines that a chemical does not present an unreasonable risk under the conditions of use, then section 18 of TSCA limits the ability of states to regulate or restrict any use of that chemical. It is imperative, therefore, that EPA consider all conditions of use as a finding of no risk will impact the right of state to regulate all uses. By stark contrast, any ruling by the EPA (or a district court) on a specific use identified in a citizen petition will have NO effect whatsoever on the rights of states to regulate uses not at issue in the petition."

Connett adds that the state pre-emption issue isn't the only reason his clients' suit harmonizes with environmentalists' suits on the rules.

Similarly, the environmentalist attorney says that the fluoride case, "EPA's interpretation of 'conditions of use' under section 6(b) was not the basis for the court's reading of section 21, nor was it endorsed by the court. I think the main relevance of that interpretation in the decision was to highlight the contradictions in EPA's arguments and to explain why its reading of section 21 was not entitled to deference." -- Maria Hegstad (mhegstad@iwpnews.com)

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High-Level 'Awareness Reviews' Stall EPA's FOIA Releases, Prompting Suits
https://insideepa.com/daily-news/high-level-awareness-reviews-stall-epas-foia-releases-prompting-suits

By Dawn Reeves, January 04, 2018

Senior EPA officials are reviewing some documents before their release to environmentalists under the Freedom of Information Act (FOIA), delaying the documents' release and prompting new suits from several groups seeking to challenge the delays as unlawful and win the documents release.

Late last month, the Natural Resources Defense Council (NRDC) sued EPA to force the agency to respond to a request seeking information on such "awareness reviews" being conducted in at least two separate undisclosed FOIA requests.

At the same time, Waterkeeper Alliance and several other groups are suing EPA alleging the

agency is violating FOIA by conducting "senior management reviews'" of their requests for data on power plant effluent discharges.

Together, the groups are suggesting that EPA is inserting an unlawful, higher level of review to FOIA requests that is delaying the data's release. EPA's FOIA office is supposed to assess requests filed under the information law on the merits of the law and agency implementing rules, without other considerations, they say.

The term "awareness reviews" in particular could raise eyebrows and smack of political influence in releasing public information as a way to curb transparency or address EPA's image under Administrator Scott Pruitt, who has been criticized for being secretive and opaque.

EPA's press office did not respond to a request for comment from InsideEPA about awareness reviews, who conducts them and where they are authorized. And the agency has yet to defend its senior management review in the Waterkeeper Alliance case though in a recent amended response to the complaint, the agency appears to confirm the review is occurring.

The answer says EPA asserts that "staff have provided Plaintiff's counsel with periodic updates regarding EPA's progress in processing the FOIA request, indicating that certain responsive hard copy records were under management review."

One NRDC source says that awareness reviews or senior management reviews are not "mentioned in FOIA, EPA's FOIA regulations, or in any publicly available information about EPA's FOIA procedure. We think it might involve review of records in proposed FOIA productions by higher level officials at EPA, the White House, or both, to give those officials notice that the documents are going to be released."

The dispute over the high-level reviews comes as EPA's FOIA office under the Trump administration faces a significant backlog of requests dating back years, and is generally not responding to requests unless a party sues in federal district court to enforce statutory deadlines.

The agency has said it is working to clear a backlog of FOIA request responses left over by the

Obama administration.

EPA Sept. 30 released a 114-page document listing all outstanding FOIA requests the agency is processing , including NRDC's Sept. 5 FOIA request seeking information about the awareness reviews.

'Unusual Circumstances'

The NRDC suit, NRDC v. U.S. EPA, filed Dec. 21 in the U.S. District Court for the District of Columbia, seeks a deadline for EPA to respond to the group's Sept. 5 request.

“EPA sought to delay responding to at least two of NRDC's recent FOIA requests beyond the statutory deadline so that the agency could conduct what it called an 'awareness review.' This case involves a document request seeking information about the nature of these awareness reviews,” the complaint says.

The compliant does not identify the two specific FOIA requests that may have been delayed as a result of the awareness reviews.

NRDC sources declined to specify what the requests cover since the information was gathered in conversations with NRDC and EPA attorneys.

The complaint says that the group's Sept. 5 FOIA request sought documents dating back to Jan. 1 related to “any awareness review carried out while processing a FOIA request, including information about EPA policies governing awareness reviews, criteria for selecting responses subject to review, and the time required to complete the reviews."

EPA said in a Sept. 28 email to NRDC that “unusual circumstances” required an extension to its statutory deadline to respond, and said it would need to search for records and may need to consult “with another agency having a substantial interest in the determination of the request,”

according to the complaint.

EPA and NRDC conferred on the scope of the request that same day, the complaint says, and then on Nov. 20 EPA said in another email that it had a backlog of FOIA requests and could not provide an estimated response date for this request. The complaint notes its statutory deadline to originally respond was Oct. 3.

NRDC asks the court to find that EPA has violated FOIA by failing to respond by the statutory deadline, order it to release the records immediately, and order it to produce an index of anything withheld under claimed FOIA exemptions.

The other suit, Waterkeeper Alliance, et al. v. EPA, filed Sept. 28 in the U.S. District Court for the Southern District of New York, seeks a deadline for the agency to respond to the groups' April 3 FOIA request for information about EPA's effluent limitation guidelines (ELGs) for power plants, a rule developed by the Obama administration that the Trump EPA is reconsidering.

In it, the groups charge that the release of documents has been delayed in part because of senior management reviews.

"Since the FOIA request was submitted, EPA has only provided one document to Plaintiffs in response to the request. EPA has acknowledged that it has numerous other agency records in its possession that are responsive to the request. However, EPA staff have informed Plaintiffs that EPA will not release additional records to Plaintiffs until the Agency completes a 'senior management review' of whether to release the records. EPA has been unable to provide

Plaintiffs with any date certain by which this "senior management review" will be completed and EPA will comply with its obligations under FOIA," the complaint says.

It also includes as exhibits correspondence between EPA and the requestors, including one document where EPA says the 20-day "processing clock is stopped" for the FOIA request until it receives clarifying information, and a response from environmentalists saying, "We do not

believe that EPA has the authority under FOIA to grant itself an indefinite delay in responding to our FOIA request, nor does the letter attempt to cite to any such authority."

The final exhibit is a letter from EPA providing "two pages of releasable records" as an interim response.

None of the pages use the term "senior management review" in writing.

EPA in a Nov. 22 amended answer denies portions of environmentalists allegations but acknowledges that "certain hard copy records were under management review and that EPA's initial review of electronic documents was ongoing." -- Dawn Reeves (dreeves@iwpnews.com)

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EE Greenwire - Politics killed newspaper grant — ex-Bay Program chief
https://www.eenews.net/greenwire/2018/01/04/stories/1060070101

Ariel Wittenberg, E&E News reporter

Published: Thursday, January 4, 2018

A 26-year old government-backed newspaper is in peril after EPA decided to pull its funding. EPA/Flickr

The Trump administration's decision to yank funding for a 26-year-old newspaper focused on the Chesapeake Bay was "totally ideologically driven," according to the recently retired head of the U.S. EPA bay cleanup effort.

Nicholas DiPasquale, who retired after six years at the helm of the U.S. EPA-led Chesapeake Bay Program last week, discussed the decision to cut funding for the *Bay Journal* in an interview Monday.

A week before EPA cut funding last August, he said, he had a "very disturbing" phone call with John Konkus, the agency's associate administrator for public affairs, who wanted to discuss the newspaper's grant. Toward the end of their talk, DiPasquale said, Konkus questioned why the government was providing the paper a six-year grant worth up to $1.95 million.

"His response was, 'Well, everybody knows that the American public doesn't trust the press' and

he saw no reason for us to fund the Bay Journal," DiPasquale said.

EPA told the Journal staff on Aug. 23 that funding was cut "due to a shift in priorities."

DiPasquale disputed the agency's assertion in an interview this week. "There was no change in priorities," he said. EPA would have had to discuss any change in priorities with six states and the District of Columbia in the Chesapeake Bay cleanup before making changes.

"This was totally ideologically driven, totally unilateral," he said in an interview. "I think it's driven by the ideology of the Trump administration, which is you discredit any news source that happens to print anything you find disagreeable."

Konkus declined to comment when asked about his conversation with DiPasquale and related emails. EPA's press office didn't respond to multiple requests for comment. The agency did acknowledge that Konkus has reviewed grant decisions, including the Bay Journal award, in a Dec. 21 court filing.

The day after his call with Konkus, DiPasquale reported his conversation to Cecil Rodrigues, who was then-acting administrator in EPA's Philadelphia-based Region 3 office, which oversees the Bay Program. He later filed a complaint with EPA's Office of Inspector General, saying that yanking Bay Journal funding violated EPA grant regulations.

The IG's office said its policy prohibits confirming or denying receipt of a complaint.

Terri White of EPA Region 3's press office — who joined DiPasquale on the call with Konkus and was copied on the memo to Rodrigues — replied to the agency email chain that DiPasquale's account of the call was accurate.

"I agree with Nick's summary of the call," she wrote.

White didn't respond to requests for additional comment.

Konkus is a former congressional staffer who managed the North Florida field office for then-presidential candidate Donald Trump's campaign in 2016. He has reportedly canceled almost $2 million in competitive EPA grants to nonprofit groups and universities (Greenwire, Aug. 17, 2017).

EPA gave the six-year grant to the Bay Journal in 2015, with the agency agreeing to pay $325,000 to the newspaper annually through 2021. The agency agreement says the grant was to be used to produce content "to raise public awareness of issues concerning to the Chesapeake Bay and its health" for the newspaper's website and 10 print editions.

'Strong First Amendment concerns'

Founded in 1991, the nonprofit Bay Journal has a print circulation of 50,000 and employs some name-brand journalists, including managing editor Tim Wheeler and columnist Tom Horton, who were longtime environmental reporters at The Baltimore Sun .

EPA has been providing grants to the Bay Journal for 25 years.

Bay Journal editor Karl Blankenship estimated that EPA grants make up 45 percent of the newspaper's budget. Since funding was pulled, he said, the paper has been unable to replace two staff members who left, shrinking its newsroom to eight employees.

Blankenship says the paper has funding to run through "the mid-part of the year, and then it is uncertain after that." He said he has been speaking with foundations across the sprawling bay watershed to try to raise money, but said that effort is stymied by uncertainty surrounding whether the Bay Journal's administrative appeal and lawsuit will be successful.

"It's been a tough thing to communicate to people," he said. "The uncertainty is actually a big issue."

Josephine Morse, an attorney for government watchdog group Democracy Forward, which is representing the Bay Journal, said EPA's decision to pull the paper's funding "raises strong First Amendment concerns."

She noted that EPA has pushed back against the press in other ways, issuing releases slamming reporters' coverage of agency issues (Greenwire, Sept. 5, 2017).

"Certainly, when you put this together with many other actions the administration has taken, it raises a strong concern," she said.

DiPasquale's memo on Aug. 15 said Konkus began the discussion by raising concerns about a 2012 inspector general's audit of a grant awarded to the Alliance for the Chesapeake Bay that the nonprofit then used to fund the Bay Journal as a subcontractor. The audit faulted the Annapolis, Md.-based alliance for failing to follow federal accounting requirements in justifying $1.3 million related to the cost of publishing the newspaper.

The IG ultimately determined that the group "may not have the capacity to manage current and future grant awards."

In the memo, DiPasquale says he told Konkus that the IG audit didn't fault the accounting practices of the Bay Journal itself.

He also told Konkus that since the audit, the alliance has brought on a manager with financial experience who was able to track down the funds in question. Ultimately, the alliance and IG agreed that $10,000 in costs could not be justified.

Konkus then questioned "whether EPA should be providing funding for a newspaper," DiPasquale wrote.

When DiPasquale responded that EPA is required by the Clean Water Act to educate the public about the Chesapeake Bay Program, Konkus reportedly questioned "whether the Bay Journal has adequately indicated that it receives federal funds."

DiPasquale says he noted that the Bay Journal discloses its funding sources on the second page of its print editions and in the "About Us" section of its website.

"Then John made the most outrageous comment of all in saying that 'the American people have major concerns with newspapers and the media,'" DiPasquale told EPA Region 3 chief Rodrigues. He added that Konkus had said that "this issue has gotten the attention of higher levels of the agency."

In her reply supporting DiPasquale, White added that Konkus had said Holly Greaves, a member of Trump's beachhead team at EPA now stationed at the Office of the Chief Financial Officer, was also concerned by the grant.

"He said, 'on its face, this one is troubling and we will need to have a larger conversation in HQ with the Chief of Staff and Holly's input,'" White wrote.

'Not an EPA publication'

After the conversation with Konkus, DiPasquale said, he heard rumors that EPA political appointees were unhappy with the Bay Journal's coverage of the Trump administration's plan to eliminate funding for the Chesapeake Bay Program, which oversees and coordinates the estuary cleanup.

The newspaper published four news stories and two opinion pieces about the budget cuts

between March and August.

DiPasquale followed up with Konkus by sending an email reiterating the Bay Journal's editorial independence.

"This is not an EPA publication," he wrote. "While EPA provides the grant funds, we are not allowed by law to direct what goes into the Bay Journal as if it were an EPA publication produced under a procurement contract."

DiPasquale also wrote that cutting the newspaper's funding would likely violate EPA grant policies. He attached to his email copies of the Bay Journal's work plan, which had been approved by the agency, as well as the section of the Clean Water Act directing EPA to use grant funds to inform and educate the public about the cleanup.

The next week, EPA notified the Bay Journal that the agency "has decided not to provide funds for your project." The three-sentence email doesn't mention the 2012 IG audit, nor does a follow-up email sent Sept. 20, 2017.

In an interview, DiPasquale said he believes Konkus wasn't troubled by the 2012 IG's audit but was grasping for reasons to yank funding from the newspaper.

"On the face of it, this action was wrong. They didn't seem to be interested in understanding that," he said. "We told them everything we could about the fact that the Bay Journal has always performed well financially."

The Bay Journal, he said, had published articles critical of prior administrations, DiPasquale said, but "there has never been a threat of retaliation in terms of threatening to cut off their funding."

'Do not mail it out'

DiPasquale wasn't alone in questioning Konkus' interest in the Bay Journal grant.

Emails obtained by E&E News show confused career staff in the grants office reacting to Konkus' initial request to delay funding the newspaper until he could review the grant.

On Aug. 8, he emailed Denise Polk, the director of grants, about funding the Bay Journal: "I need more info on this grant before we move it any further please."

Polk forwarded Konkus' email to a dozen EPA employees, saying "this grant cannot move forward" until Konkus' questions were addressed.

Lisa White, acting chief of grants and audit management, replied to Polk noting that the grant had already been awarded. In a second email to Polk, White mentioned that the latest funding installment was about to be sent to the Bay Journal that same day. She also said she did not realize Konkus had been tasked with reviewing "incremental" grants awarded years before.

"Did the process change?" White asked.

"No, the process has not changed. I'm not sure how this one came to his attention," Polk replied. "Please do not mail it out."

Konkus first raised concerns about the 2012 IG report in a separate email to White, before the phone call with DiPasquale. Konkus had apparently learned about the audit from a 5-year-old article from the Washington Times.

White replied, "The audit did not question the quality or value of the Bay Journal."

When White informed DiPasquale of Konkus' email and that funding had not yet been sent to the Bay Journal, his initial response was, "Is that legal?"

"To put it on hold — I would say yes," White replied. "Terminating may be different but hopefully we won't get there."

White and Polk did not respond to requests for comment.

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Politico - EPA chief Pruitt is said to be eyeing attorney general job

https://www.politico.com/story/2018/01/05/scott-pruitt-us-attorney-general-position-326373
By Andrew Restuccia, 1/5/2018

Scott Pruitt, the administrator of the Environmental Protection Agency, has told friends and associates that he's interested in becoming attorney general, according to three people familiar with the internal discussions.

With rumors swirling that Jeff Sessions could depart the administration and two members of the House Freedom Caucus calling on the former Alabama senator to resign, Pruitt is quietly positioning himself as a possible candidate for the job.

"Pruitt is very interested," a person close to him said. "He has expressed that on a number of occasions."

It's unclear whether Pruitt would be on the shortlist for the position, but people close to the president said Trump has grown to like him. Pruitt has emerged as the face of Trump's deregulatory agenda, taking steps to overturn former President Barack Obama's climate change regulations. He was also a leading advocate for pulling out of the Paris agreement on climate change.

Pruitt has developed a reputation in Washington as one of the most ambitious members of Trump's Cabinet, and people close to him have long suspected that he harbors bigger aspirations in politics, perhaps as governor or senator. Two people close to him also said he has toyed with the possibility of running for president someday.

The EPA denied that Pruitt is eyeing the attorney general position.

"No, this is not true," agency spokesman Jahan Wilcox said in a statement. "From creating regulatory certainty to cleaning up toxic superfund sites, Administrator Pruitt is solely focused on implementing President Trump's agenda to protect the environment."

Pruitt's allies stressed that he is happy at the EPA and, in the words of one person who has talked to him, "feels he's doing nation-changing work."

Before joining the Trump administration in February, Pruitt served as Oklahoma's attorney general, and he was a state senator before that.

A prominent Washington attorney advising one member of the administration said choosing Pruitt to replace Sessions would make sense because, as a member of the Cabinet who has already been confirmed by the Senate, Pruitt could serve in an acting capacity while he awaits lawmakers' formal approval.

But a Pruitt nomination for attorney general would face fierce resistance from Democrats, who have criticized his tenure at the EPA, arguing that he is too closely tied to the oil industry and has weakened crucial environmental protections.

Sessions' relationship with Trump has ebbed and flowed in recent months. It reached a low point over the summer, when Trump called Sessions out on Twitter, publicly wondering why the attorney general wasn't investigating Hillary Clinton — and people close to the president said his relationship with Sessions has never fully recovered.

The president has also complained about Sessions' decision to recuse himself from the Russia

investigation.

"Sessions should have never recused himself, and if he was going to recuse himself, he should have told me before he took the job and I would have picked somebody else," Trump said in a July interview with The New York Times.

The Times published an article on Thursday that said a top White House lawyer tried to persuade Sessions not to recuse himself. The Times also reported that a Sessions aide asked a congressional staffer whether he had damaging information about the director of the FBI at the time, James Comey.

Trump fired Comey in May, a move that is under scrutiny by special counsel Robert Mueller as he investigates whether the president obstructed justice.

It's unclear how the Times article will influence Sessions' status in the White House. A White House spokeswoman and several senior administration officials did not respond to requests for comment on the issue.

In an op-ed published on Thursday, Republican Reps. Mark Meadows and Jim Jordan, the chairman and former chairman of the conservative House Freedom Caucus, appeared to channel Trump's frustrations. The lawmakers called on Sessions to step down, railing against intelligence leaks to the press.

"Attorney General Jeff Sessions has recused himself from the Russia investigation, but it would appear he has no control at all of the premier law enforcement agency in the world," the lawmakers wrote. "It is time for Sessions to start managing in a spirit of transparency to bring all of this improper behavior to light and stop further violations.

"If Sessions can't address this issue immediately, then we have one final question needing an answer: When is it time for a new attorney general? Sadly, it seems the answer is now."

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Associated Press via Chicago Tribune - Superfund work touted by Trump EPA was completed years ago
http://www.chicagotribune.com/news/nationworld/ct-trump-epa-superfund-20180105-story.html
By Michael Biesecker and Jason Dearen

The Environmental Protection Agency is touting cleanups at seven of the nation's most polluted places as a signature accomplishment in the Trump administration's effort to reduce the number of Superfund sites, even though records show the physical work was completed before President Donald Trump took office.

The agency earlier this week credited the leadership of EPA Administrator Scott Pruitt with tripling the number of sites fully or partially removed from the Superfund's National Priorities List in 2017, compared with the two sites taken off in the Obama administration's last year.

"We have made it a priority to get these sites cleaned up faster and in the right way," said Pruitt.

He said that, with the agency's moves to create a task force and make those responsible for contamination pay for cleanup, "the Superfund program is carrying out the agency's mission of protecting human health and the environment more every day."

Cleanups of Superfund sites usually take decades, spanning presidential administrations. An analysis of EPA records by The Associated Press shows that overall the seven Superfund sites delisted last year fell short of the average pace set under both the administrations of Barack Obama and George W. Bush, even in their opening years.

All told, EPA averaged delisting more than 10 sites a year under the eight years Obama was in the White House. EPA under Bush delisted nearly 18 sites on average annually during his two terms.

Still, the EPA said Pruitt's initiatives had resulted in "significant improvement."

EPA declined Friday to provide details of procedural changes under Pruitt that led to the seven

sites being delisted faster. "In 2016, President Obama's EPA cleaned up two Superfund sites, but rather than cherry-pick individual years, it would only be fair to judge us upon the completion of our tenure," said Jahan Wilcox, an EPA spokesman. "Under Administrator Pruitt's leadership, we've completed the cleanup of seven toxic land sites and this is just the beginning."

Records show that construction work at all seven sites hyped by Pruitt's EPA, such as removing soil or drilling wells to suck out contaminated groundwater, was completed years before Pruitt was confirmed as the agency's chief in February. Removing sites from the list is a procedural step that occurs after monitoring data show that remaining levels of harmful contaminates meet cleanup targets, which were often set by EPA decades ago.

Further, entries in the U.S. Federal Register showed that EPA announced its move to withdraw four of the seven sites in 2016. The planned deletions of two others were announced prior to Pruitt's May 22 directive establishing the Superfund task force.

Notice of EPA's intent to remove the last of the seven sites was Aug. 21.

There are currently more than 1,300 Superfund sites on EPA's National Priorities List at various stages in the cleanup process, and sites are routinely added to or deleted from the list each year. Sites are fully deleted after contamination is addressed across an entire property, often a former industrial site. Partial deletions occur when part of a larger site is cleaned up, but work remains to be completed on other sections.

Sites removed from the list are sometimes clean enough to be used for new housing or commercial development, though many still have levels of contamination that require deed restrictions on how the land can be used in the future.

Pruitt, a former Oklahoma attorney general who has moved to roll back dozens of EPA regulations intended to reduce future pollution, has said increasing the number of sites deleted from the priority list and cleared for redevelopment will be a focus of the agency under his watch. To lead his task force on the issue, Pruitt tapped Albert "Kell" Kelly, a former Oklahoma bank executive who now serves as a senior adviser at EPA, despite having no prior experience as an environmental regulator.

A former EPA official said the agency's work was underway before Pruitt acted. "The agency was already doing what's in the task force report," said Phyllis Anderson, former associate director of the EPA division that manages Superfund cleanups. She retired in 2013 after 30 years at the agency, serving in Republican and Democratic administrations.

Records show the Bush administration's higher count of delistings was largely the result of work EPA completed in the 1990s, when federal spending on Superfund cleanups was roughly twice what it is now.

President Donald Trump's proposed 2018 budget seeks to cut the Superfund program by 30 percent, though Congress has not yet approved a budget for the year. Pruitt says he will accomplish more with less money through better management.

Dearen reported from Gainesville, Florida.

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Washington Examiner - EPA sets hard deadline for enforcing Obama-era ozone restrictions
http://www.washingtonexaminer.com/epa-sets-hard-deadline-for-enforcing-obama-era-ozone-restrictions/article/2645034
By John Siciliano, 1/4/18

The Environmental Protection Agency has set a hard spring deadline for listing regions of the country that cannot meet the Obama administration's strict rules for smog-forming ozone emissions.

The EPA plans to complete designations for all of the non-compliant areas no later than April 30, the agency announced in the Federal Register Thursday.

The Trump EPA had tried to delay formally designating the regions as non-attainment zones, which would force some cities and other areas to establish special pollution control plans that critics of the rule have argued would deter development and economic growth.

A court blocked EPA Administrator Scott Pruitt's delay strategy and directed the agency to enforce the regulations. Since the court order, environmentalists have held the agency to meeting deadlines for designating the non-attainment regions, which is a key part of implementing the regulations.

EPA has missed the deadlines, saying it needs more time to collect data from states.

Thursday's notice ends that data collection period.

In November, the EPA said 2,646 counties, including Indian country in those counties, are meeting the ozone standards, and listed three other counties as unclassifiable. Thursday's notice means the EPA intends to designate all of the remaining areas as non-attainment regions.

In a separate action, EPA also proposes taking a large area that includes Missouri, including St. Louis, and Illinois off the non-attainment list for related rules for controlling soot pollution.

The action is meant to get feedback from stakeholders on the EPA's proposed plan to designate the large bi-state area as meeting the rules based on new pollution data from 2017.

"EPA expects to approve the area's re-designation," the agency said. The proposal becomes effective Friday.

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AP via NY Times - Watchdog to Investigate Flood Risks to Superfund Sites
https://www.nytimes.com/aponline/2018/01/05/us/politics/ap-us-flooding-toxic-sites.html
By AP Staff – 1/5/18

WASHINGTON — A federal government watchdog agency will investigate the threats from flooding and other natural disasters to the nation's most polluted places.

The Government Accountability Office says it assigned investigators to study the risks to human health and the environment posed by natural disasters at the more than 1,300 sites in the Environmental Protection Agency's Superfund program.

The GAO's probe came after 10 senators in December requested a study of risk to the sites by natural disasters intensified by climate change.

Reporting by The Associated Press in September found more than a dozen Superfund sites flooded by Hurricane Harvey in the Houston area. A subsequent AP data review revealed that more than 2 million Americans live within a mile of 327 Superfund sites in zones at risk from flooding.

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Reuters via NY Times - Can't Please Everyone: Trump Energy Policy Riles Competing Sectors
https://www.nytimes.com/reuters/2018/01/05/us/politics/05reuters-usa-trump-energy.html
Reuters Staff, 1/5/18

WASHINGTON — When the administration of U.S. President Donald Trump proposed new subsidies for coal and nuclear plants, it seemed like an obvious way to deliver on campaign promises to boost the nation's energy industry.

And yet the plan, announced in September, set off sharp criticism from other sectors that Trump has also vowed to help, such as natural gas and utilities.

“Subsidies don’t make you competitive - and don’t make you great again,” said Robert Flexon, the president and chief executive of Dynegy Inc, a Houston-based utility that owns both coal- and gas-fired power plants.

Squabbling over the proposal exemplifies the administration's larger struggle to deliver on

promises of a sweeping "energy renaissance" across the coal, oil, gas and nuclear industries.

Trouble is, policies that help one of those sectors often hurt another, illustrating the complexity of energy regulation and the difficulty in appeasing competing interests. While election campaigns often seek to neatly divide voters into two camps - those supporting energy vs. those supporting the environment - such rhetoric fails to capture the messier policy impacts on profits, hiring and emissions reductions across the energy landscape.

There is little evidence that Trump's moves so far have aided energy firms of any stripe; some administration proposals have languished amid divisive politics, while other regulatory changes have seen their impact muted by market forces.

Utilities, for instance, have shown little interest in buying more coal-fired power despite the regulatory rollbacks in Trump's pro-coal push.

A broader measure of investor sentiment on the energy industry - the Standard & Poor's 500 energy index - lost more than 7 percent in 2017 even as stock markets soared.

White House and Energy Department officials did not respond to requests for comment.

Another political flashpoint has been the administration’s waffling over proposed changes to biofuels policy.

Trump's Environmental Protection Agency initially entertained a plan from oil refiners to upend regulations requiring them to blend ethanol into their gasoline - then rejected it after a backlash from the ethanol industry, rooted in Midwest corn-growing states that supported Trump's election.

The dispute sparked open warfare among the congressional backers of various industry interests, including threats to block Trump's agency nominations and accusations he had welched on campaign promises.

Even the coal industry, which played a starring role in Trump's campaign, has seen a marginal return on its lobbying efforts. It has, for instance, had little success so far in attacking subsidies for wind and solar power.

Trump and others in his administration have criticized renewable energy as expensive and dependent on government support. But the White House has not sought to repeal tax breaks expected to provide $12.3 billion to renewable energy firms by 2020, which other Republicans continue to support.

Fossil-fuel firms clearly have more influence on policy under Trump and easier access to decision makers. Coal, oil, and gas company executives have met regularly with senior administration officials, according to official agency schedules.

Their policy victories include rollbacks of regulations limiting emissions of carbon, methane and other pollutants; the opening of Alaska's Arctic National Wildlife Refuge to drilling; and the lifting of a coal-mining moratorium on federal lands.

But the impact of these moves on production, profits and jobs remains uncertain. Demand for additional drilling and mining leases on federal lands has been thin, and top U.S. oil and gas companies have told shareholders in regulatory filings that environmental regulations have little impact on their business.

While coal advocates have generally cheered Trump's ascension, White House policies have so far had little effect on U.S. coal consumption.

Robert Murray, chief executive of private coal company Murray Energy Corp., said Republican efforts to boost coal have addressed only the "low hanging fruit" of overturning a few environmental regulations while avoiding tougher issues.

The oil and gas industry, also championed by Trump, similarly feels let down by an

administration it had hoped would strip away government interference, said Susan Ginsburg, a senior vice president of regulatory affairs for the Independent Petroleum Association of America, which represents small oil and gas companies.

The industry, she said, expected that "markets would be allowed to work."

HELP FOR COAL HURTS NATURAL GAS

For the coal industry - which has seen a decade of decline amid competition from cheap natural gas - the wish-list for the Trump administration is long.

In the months after Trump was elected, Trump and senior cabinet members including Energy Secretary Rick Perry met with mining executives such as Murray. Other administration officials met with lobbyists for coal firms including Peabody Energy Corp, the nation's largest miner.

Murray handed the White House a long list of recommendations, including rescinding pollution controls, slashing the EPA's size and ending green energy incentives.

Emails obtained by the Sierra Club in October revealed that Peabody had also given the administration a list of proposals, including a controversial electricity pricing measure based on the argument that coal and nuclear plants improve grid reliability.

Perry proposed in September that the Federal Energy Regulatory Commission reward coal and nuclear plants that have 90 days of fuel supply in reserve by covering their operating costs through power pricing changes. FERC is expected to decide on the request by Jan. 10.

That proposal irritated oil and gas producers, along with renewable energy firms. Both were caught off guard, said a Washington-based oil-and-gas lobbyist who spoke on condition of anonymity out of concern over offending the administration.

"Nobody in the oil and gas industry, or in the renewables industry for that matter, was consulted," the lobbyist said. "It just came out of nowhere."

The American Petroleum Institute, which represents major U.S. oil and gas companies, wrote that the plan “upsets the very foundations of the competitive wholesale electricity markets.”

Michael Steel, a spokesman for the Affordable Energy Coalition, which has oil major BP as a member, called the proposal an unfair subsidy.

"The Department of Energy is trying to pick winners and losers in a way that will raise costs for consumers by billions of dollars," Steel said.

'BROKEN PROGRAM'

The political dustup over biofuels policy provides another telling example of the difficulty appeasing competing industry camps.

The Renewable Fuel Standard was introduced under former President George W. Bush as a way to help farmers and reduce oil imports. But refining companies say it costs them a fortune and threatens their survival.

Refiners expected changes to the policy after Trump named billionaire investor and refinery owner Carl Icahn as an unofficial adviser on regulation. Icahn and others proposed shifting the blending requirement to other businesses and reducing biofuels blending quotas.

But the proposals drew heavy fire from the ethanol industry and its backers. Republican Senators Chuck Grassley and Joni Ernst of Iowa in October threatened to block a key EPA nomination until the administration rejected the proposals - which it did days later, at Trump's direction.

The refining industry, in turn, was outraged by the reversal. Republican Senator Ted Cruz of

Texas and other lawmakers from states with refineries demanded a meeting with Trump. Cruz later said he would block a nomination to the Department of Agriculture over the issue.

The White House is now mediating talks between both sides.

EPA spokeswoman Liz Bowman, asked if the agency could have handled the situation differently, said: "It is good public policy to vet our options with all stakeholders, which is what we have – and will continue – to do."

Follow Trump's impact on energy and environment at The Trump Effect https://www.reuters.com/trump-effect. For an interactive graphic charting the policy changes, see: https://www.reuters.com/trump-effect/energy-environment

(Additional reporting by Richard Valdmanis; Editing by Richard Valdmanis and Brian Thevenot)

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NYT OPINION – Trump's Disdain for Science
https://www.nytimes.com/2018/01/04/opinion/trump-disdain-science.html
By Neal F. Lane and Michael Riordan

After almost a year in office, President Trump has yet to name a science adviser and director of the White House Office of Science and Technology Policy. Since World War II, no American president has shown greater disdain for science — or more lack of awareness of its likely costs.

The O.S.T.P. was authorized by Congress in May 1976 to give the president "independent, expert judgment and assistance on policy matters which require accurate assessments of the complex scientific and technological features involved." It has played an important role in coordinating national science and technology activities and policies among federal agencies.

The director of the office, who is nominated by the president and requires Senate approval, typically serves as the president's science adviser, providing him with confidential, unbiased counsel. Much of what the federal government does and the many policy changes the president and his appointees are now making or hope to make have scientific and technological underpinnings.

The science adviser is the one individual who can quickly pull all the relevant information together for the president, cut through conflicting advice coming from other senior advisers and Cabinet secretaries, and get evidence-based options in front of him. Especially important has been the adviser's role in helping the president deal with crises — Sept. 11, the subsequent anthrax attacks, the Fukushima nuclear nightmare in 2011, the Ebola and Zika outbreaks, hurricane devastation and cyberattacks.

The previous O.S.T.P. director, John Holdren, a physicist and energy-policy expert from Harvard, was named to the position hardly a month after the 2008 elections and was then quickly approved by the Senate. He served throughout President Barack Obama's two terms. In June 2001, five months into his first term, George W. Bush nominated the physicist John Marburger, then director of Brookhaven National Laboratory, to the post; he served until Dr. Holdren stepped in.

Today, the O.S.T.P. maintains only a skeleton staff led by the deputy chief technology officer, Michael Kratsios, a technologically inexperienced Silicon Valley financier holding just a bachelor's degree in political science. The posts of deputy director and four congressionally mandated associate directors remain vacant.

It's difficult to know what Mr. Trump really thinks about scientific issues of public concern, but he has rejected the scientific arguments for human-caused climate change and questioned the public-health case for vaccinations. And he has ignored the negative impacts of his immigration bans on American science and technology.

But the lack of good science advice has not slowed the president and his administration in their assaults on health and environmental policy and in weighing in on national-security issues involving science and technology. His decision to pull the nation out of the Paris climate agreement is one example. So was his appointment of Scott Pruitt, a lawyer with little real understanding of climate science, as administrator of the Environmental Protection Agency.

Under Mr. Pruitt, the agency has been systematically excluding good science and scientists from

its decision-making processes. He ignored strong recommendations of E.P.A. staff scientists in his decision against banning all uses of the pesticide chlorpyrifos, which research strongly suggests damages the developing nervous systems of children. Many accomplished scientists are meanwhile being removed from the agency's advisory boards.

Sound science advice was also conspicuously absent from the president's revised budget for the fiscal year 2018, which features draconian cuts at the E.P.A., the Department of Energy, the National Institutes of Health, the National Oceanographic and Atmospheric Administration, the National Science Foundation and other federal agencies — especially those sponsoring climate-change research. Congress has largely refused to go along with the drastic cuts, but significant reductions will almost inevitably occur this year.

The assaults by Mr. Trump and his administration on American science and technology might have been avoided, or at least tempered, had the president already named, and the Senate confirmed, a distinguished scientist as his science adviser — especially if that individual had direct presidential access.

Nowhere is this need for advice more crucial than in the arena of nuclear weaponry. In fact, most presidential science advisers have been physicists, who can knowledgeably address the technologically sophisticated questions that always arise in this arena. For instance, in the case of the 2015 international nuclear agreement with Iran, President Obama benefited from the trusted advice of Dr. Holdren and his energy secretary, Ernest Moniz, an M.I.T. nuclear physicist, both experts on the science, technology and policy of nonproliferation. It's unclear whose advice Mr. Trump relied on when he refused last year to certify Iran's compliance with that deal. This is an exceedingly dangerous situation, particularly in view of the looming threat of a nuclear confrontation with North Korea.

No president in recent history has needed a capable science adviser more while apparently wanting one less. But given Mr. Trump's obvious disdain for science — and for evidence in general — it will be difficult at this point, if not impossible, to find an accomplished, reputable scientist who would agree to work with him.

Neal F. Lane, a former science adviser to President Bill Clinton, is a senior fellow in science and technology policy at the Baker Institute at Rice University. Michael Riordan, author of "The Hunting of the Quark," has taught the history of physics at Stanford and the University of California, Santa Cruz

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NY TIMES - Expect Environmental Battles to Be 'Even More Significant' in 2018

https://www.nytimes.com/2018/01/05/climate/trump-environment-2018.html
By Lisa Friedman, 1/5/18

WASHINGTON — If 2017 was the Trump administration's year of grand pronouncements declaring an end to environmental regulations, 2018 will be the year of trying to finish what it started.

Despite President Trump's proclamation in the Rose Garden that the United States will withdraw from the Paris climate agreement, the United States is still in the Paris agreement. Despite a trip by Scott Pruitt, the head of the Environmental Protection Agency, to Kentucky coal country to announce an end to the Clean Power Plan rule curbing coal plant emissions, the Clean Power Plan still stands. And a host of other federal regulations, from controls on methane emissions to protections for wetlands, remain on the books despite executive orders declaring them void.

The administration opened the new year by proposing to reverse a ban on offshore oil and gas drilling in most United States coastal waters. But environmentalists and proponents of deregulation alike say they expect fewer high-profile announcements over all and more action in the courts, where both sides will fight over the future of deregulation.

"You may not see as many fireworks as there were in the past, but I think it's going to be an even more significant year," predicted Representative Rob Bishop, Republican of Utah and the chairman of the House Natural Resources Committee.

The Clean Power Plan isn't dead yet

Mr. Pruitt put forward a formal plan in October to eliminate the Clean Power Plan, the Obama-era regulation restricting emissions from new coal-fired power plants. But analysts say the road to getting rid of the regulation is still a long one.

The public has a chance to weigh in on the effort until Jan. 16. But the E.P.A. recently announced that new hearings would be held in San Francisco, Gillette, Wyo., and Kansas City, Mo. The dates have not been scheduled, but the meetings could push back the comment period

and by extension progress on the full repeal.

The agency has indicated it plans to devise a new, narrower version of the regulation. Yet so far, all it has done is ask the public for thoughts on what a new rule should look like.

"They're nowhere near the end of the line on the Clean Power Plan," said David Doniger, director of the Climate and Clean Energy Program at the Natural Resources Defense Council. If the E.P.A. kills the regulation before it moves forward with a replacement, Mr. Doniger said, the agency could be vulnerable to lawsuits because under the Clean Air Act it will still be obligated to address carbon dioxide.

"They have a long way to go to finish their rollback goals," Mr. Doniger said. "And when they finish, we will see them in court."

Scott H. Segal, a lawyer with the firm Bracewell who supports rolling back the Clean Power Plan, said replacing the rule — presumably with one that merely directs coal plants to enact efficiency measures — would allow utilities to plan ahead and would serve "as a bulwark against frivolous litigation."

How far is Pruitt willing to go?

Mr. Pruitt told coal industry executives in June that he wanted the E.P.A. to conduct a "red team-blue team" debate to raise questions about climate science. But there has been no public announcement about such an effort to date.

That might not stop a broader inquiry into the legal underpinning of E.P.A. climate regulations, a 2009 document known as the endangerment finding.

The endangerment finding concludes that greenhouse gas emissions pose a threat to human health and must be regulated under the Clean Air Act. As long as it stands, the E.P.A. will be obligated to address climate change, even without the Clean Power Plan.

Legal experts agree that challenging the endangerment finding will be an uphill battle. But it

may be one Mr. Pruitt wants to wage. In several interviews last year Mr. Pruitt cast doubt on the document, and he has faced pressure from his supporters to overturn it. Yet he has avoided declaring definitively whether he will do so.
Repealing the Clean Power Plan may force Mr. Pruitt to make a decision one way or another by the end of the year.

Keep an eye on the infrastructure bill

With a major tax bill out of the way, Mr. Trump has said he hopes to tackle infrastructure next. That could create an opening for some of the year's biggest environmental changes.

Mr. Bishop said he hoped any infrastructure bill would incorporate changes to the Endangered Species Act, which many conservatives argue has been used to thwart development. He also wants to overhaul a 1969 law that requires federal agencies to assess the environmental effects of their proposed actions.

"People have realized over and over again how that bill that was supposed to be passed so there is local input is being used to stop progress," Mr. Bishop said of the law, the National Environmental Policy Act. He has previously introduced legislation that would make the endangered species law more friendly to landowners and industry.

"If there is a big infrastructure bill we will try to put those all in a big package," Mr. Bishop said. "If not we will try to move them in pieces."

Christy Goldfuss, who led the White House Council on Environmental Quality in the Obama administration, said she expected a bruising battle.

"The infrastructure fight will be very much set up as a false choice between putting people to work and destroying the bedrock environmental laws," she said. Efforts to weaken rules on the construction of roads and bridges, she said, do not draw attention like debates over climate change. But she asserted that undermining fundamental environmental safeguards will do long term damage.

"This is going to be a big fight for the environmental community," she said.

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Ex. 6 - Personal Privacy

To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
From: Lynn, Tricia
Sent: Tue 12/19/2017 7:20:36 PM
Subject: Media Clips, 12/19/17

AP

https://apnews.com/2578d43daa054f91aea98d5168bd6b65/EPA-orders-6-companies-to-clean-up-East-Chicago-soil,-dust

EPA orders 6 companies to clean up East Chicago soil, dust

By AP, 12/18/17

EPA orders 6 companies to clean up East Chicago soil, dust

EAST CHICAGO, Ind. (AP) — The U.S. Environmental Protection Agency is ordering six companies to clean up contaminated soil and indoor dust at a federal Superfund site in northwestern Indiana.

The EPA said Monday it issued two unilateral administrative orders for residential areas slated for cleanups in East Chicago's USS Lead Superfund site.

The (Northwest Indiana) Times reports the agency says the soil cleanups could cost about $24 million, while the indoor dust cleanups could cost about $2.25 million.

Potentially responsible parties include USS Lead, Atlantic Richfield Co., E.I. du Pont de Nemours and Co., The Chemours Co., U.S. Metals Refining Co. and Mueller Industries.

The USS Lead Superfund site is tainted with lead and arsenic left by a lead-salvage company. The EPA added the site to its list of priority cleanups 2009.

AP (via madison.com)

http://host.madison.com/news/local/clean-car-standards-needed-to-maintain-health-save-money-local/article_d6199276-6ab6-5eb6-ac2e-55d8269719f0.html

Clean-car standards needed to maintain health, save money, local officials tell Trump

By Bill Novak, 12/19/17

Bottom of Form

Local leaders are calling on the Trump administration to maintain federal clean-car standards for the sake of public health and to save money and help the economy.

The Sierra Club held a news conference at Madison's City-County Building on Monday to bring community leaders together to support the standards.

The clean-car standards help ensure vehicles are more fuel-efficient, saving drivers money every trip to the gas station.

"Maintaining our commitment to fuel-efficient vehicles is an effective, common-sense approach to addressing climate change and air pollution," Dane County Executive Joe Parisi said. "These standards also save us money at the pump and are good for our health and the local economy."

U.S. Environmental Protection Agency Administrator Scott Pruitt directed the agency to review clean-car standards, and many believe the standards will be weakened.

Speakers urged the Trump administration to keep the standards and point to local efforts to protect public health and save taxpayers money.

"This issue is about much more than economics and the auto industry," Madison Mayor Paul Soglin said. "It is about sustainability and social justice. Air pollution disproportionately affects the elderly and low-income, and those people do not have a voice in this process. We all need to stand up and oppose these changes."

Bill Davis, director of the Sierra Club's John Muir chapter, said the standards are necessary to save money and cut air pollution.

"Rolling these standards back would damage Wisconsin's economy and the health of its citizens," Davis said.

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Reuters

https://www.reuters.com/article/us-usa-epa-carbon/epa-seeks-comment-on-carbon-rule-replacement-idUSKBN1EC2FN

EPA seeks comment on carbon rule replacement

By Valerie Vocovici, 12/18/17, 2:13 PM

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency on Monday issued a notice that it wants public input for a possible replacement of Obama-era regulations on carbon dioxide emissions from power plants that the agency is repealing.

The agency's advance notice kicks off a 60-day comment period on "specific topics for the Agency to consider in developing any subsequent proposed rule," according to an EPA release.

The move comes after the agency proposed in October to repeal the Obama administration's Clean Power Plan, a collection of emissions standards for U.S. states intended to reduce pollution from power plants - the largest emitters of greenhouse gases - by 32 percent below 2005 levels by 2030.

ADVERTISING

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The EPA sets out and requests comment on the roles, responsibilities, and limitations of the federal government, state governments, and regulated entities in developing and implementing such a rule, and the EPA solicits information regarding the appropriate scope of such a rule and associated technologies and approaches," the notice says.

When EPA Administrator Scott Pruitt first announced he planned to repeal the Clean Power Plan, it was not clear whether the agency intended to replace it. At his first congressional hearing earlier this month, Pruitt said he planned to replace it.

The notice specifically asks for comment on measures to reduce carbon emissions directly at a power plant.

Obama's Clean Power Plan allowed states to reduce power plant emissions by using a series of different measures across their plant fleets, which some industry groups said went beyond the scope of the federal Clean Air Act.

The EPA is also asking for comment on the role and responsibility of states in regulating power plants for greenhouse gas emissions.

The notice said EPA also wants to hear from states including California and New York, which already have programs to reduce emissions from power plants, to see how their programs could interact with a replacement rule.

Environmental groups, who plan to continue challenging the agency's moves against the CPP in court, said on Monday the agency is not serious about offering a valid replacement to the Obama-era regulation.

"A weaker replacement of the Clean Power Plan is a non-starter. Americans - who depend on EPA to protect their health and climate - deserve real solutions, not scams," said David Doniger, director of climate and clean air at the Natural Resources Defense Council.

Reuters

https://www.reuters.com/article/us-usa-epa-lng/democratic-u-s-senator-seeks-audit-of-epa-chiefs-trip-to-morocco-idUSKBN1EC2MB

Democratic U.S. senator seeks audit of EPA chief's trip to Morocco

By Reuters Staff, 12/18/17, 3:59 PM

WASHINGTON - The top Democrat on the Senate environment committee on Monday asked the Environmental Protection Agency's internal watchdog to audit a recent trip to Morocco by the agency's head to determine if it was in line with the EPA's mission.

EPA Administrator Scott Pruitt, in a trip to Morocco last week, promoted U.S. liquefied natural gas.

Senator Tom Carper asked EPA Inspector General Arthur Elkins to expand its current audit of Pruitt's travel to include the trip to Morocco as part of a U.S. trade mission.

"I request that you review the purpose of Administrator Pruitt's travels to determine whether his activities during each trip are in line with EPA's mission 'to protect human health and the environment,'" Carper wrote in the letter to Elkins.

Traditionally, the EPA, which regulates clean air and water, does not promote the U.S. energy industry.

Last week, the EPA announced that Pruitt attended bilateral meetings in Morocco where he "outlined U.S. environmental priorities for updating the Environmental Work Plan under the U.S.-Morocco Free Trade Agreement and the potential benefit of liquefied natural gas (LNG) imports on Morocco's economy."

Liquefied natural gas is produced by cooling natural gas until it is condensed into a liquid, allowing it to be shipped via tanker instead of moved by pipeline. It is reconverted into gas at the other end.

When asked why the head of the EPA was involved in touting LNG, EPA spokesman Jahan Wilcox said Pruitt discussed the role of U.S. technology and innovation abroad, "including but not limited to LNG."

It "only serves to emphasize the importance this administration has placed on promoting U.S. businesses," Wilcox said.

Carper said the Morocco travel has cost taxpayers $40,000 and that gas exports do not fall within the agency's jurisdiction.

The Inspector General's office is already reviewing all travel by Pruitt conducted until Sept. 30 after Democratic lawmakers asked for a review of Pruitt's frequent travels to Oklahoma, his home state.

Reuters

https://www.reuters.com/article/usa-epa-carbon/epa-asks-for-public-input-on-possible-clean-power-plan-replacement-idUSL1N1OI1ET

EPA asks for public input on possible Clean Power Plan replacement

By Reuters Staff, 12/18/17, 2:08 PM

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WASHINGTON, Dec 18 (Reuters) - The U.S. Environmental Protection Agency on Monday issued a notice that it wants public input for a possible replacement of Obama-era regulations on carbon dioxide emissions from power plants that the agency is repealing.

The agency issued an Advance Notice of Proposed Rulemaking, kicking off a 60-day comment period on "specific topics for the Agency to consider in developing any subsequent proposed rule," according to an EPA release. (Reporting by Valerie Volcovici; Editing by Chris Reese)

Bloomberg

https://www.bloomberg.com/news/articles/2017-12-19/ground-zero-for-flooding-washington-s-trump-international-hotel

Ground Zero for Flooding: Washington's Trump International Hotel

By Christopher Flavelle and David Ingold, 12/18/17, 4:00 AM

The worst hurricane season in memory has spurred President Donald Trump to consider new ways to prod private homeowners to move out of flood plains. But many of the federal government's own buildings are also at risk of flooding, including the one that Trump has leased for his Washington hotel.

The U.S. General Services Administration, which runs most non-defense federal facilities, owns or operates 14.3 million square feet of buildings in the flood zone. That's equivalent to nearly three Pentagons, spread across 14 states, the District of Columbia and the Virgin Islands.

Unlike private buildings, those structures aren't required to follow local permitting rules for flood risk. And they don't carry flood insurance.

The greatest concentration of flood-exposed federal civilian buildings is in Washington, according to documents obtained by Bloomberg News through a government-records request.

In Washington, the list of properties in the 100-year flood plain includes the headquarters of the Environmental Protection Agency, the Department of Commerce, the Internal Revenue Service and the Justice Department, the government data shows. The EPA's headquarters alone has sustained $1.6 million in flood or wind damage over the past decade.

The headquarters of the Federal Emergency Management Agency—the agency responsible for responding to floods, hurricanes and other disasters—sits just outside the floodplain.

The list of government-own properties in the 100-year flood zone also includes the Old Post Office Pavilion, which the Trump Organization leased and has opened as Trump International Hotel.

Patricia Tang, director of sales and marketing for the hotel, said she didn't know whether the company's management was aware the building was in a flood plain when it pursued the lease. However, "I would assume that it wouldn't have been an issue, otherwise they wouldn't have gone forward."

Tang said the hotel has "a lot of plans" to deal with flooding and other security risks. She declined to say what those plans were.

Unlike homeowners with federally backed mortgages, government buildings in flood zones aren't required to carry flood insurance. So, when those buildings get flooded, taxpayers shoulder the cost. For example, the U.S. Post Office in Galveston, Texas, flooded during Hurricane Harvey and also during Hurricane Ike in 2008; the two events cost taxpayers $1.5 million.

As warmer temperatures lead to more frequent and severe hurricanes, rainstorms and other types of extreme weather, the number of federal properties exposed to flooding is likely to grow.

The risk has already started to spread: While the most expensive damage to federal facilities over the past decade occurred at buildings in the flood plain, an even greater number of buildings hit by floods or wind damage were outside that zone.

The GSA says its policy is to avoid putting new properties in the flood plain unless there are no alternatives in the area. For buildings that are in a flood plain, GSA has a process to identify and mitigate adverse impacts from flooding, the agency said.

Yet the federal government's own rules for reducing flood exposure have been weakened under this administration. In August, President Donald Trump reversed an Obama-era rule that required federally funded buildings and other government projects to account for future flood risks.

That leaves federal agencies poorly equipped to protect their buildings against the risks, said Chad Berginnis, executive director of the Association of State Flood Plain Managers.

The federal government needs to follow "a robust examination of flood risk" when it decides where and how to build new facilities, Berginnis said in an email. "The 100-year floodplain was not enough.

Bloomberg

https://www.bloomberg.com/news/articles/2017-12-18/pruitt-s-epa-turns-to-lean-manufacturing-to-speed-up-reviews

Pruitt's EPA Turns to 'Lean Manufacturing' to Speed Up Reviews

By Eric Roston & John Lippert, 12/18/17, 10:44 AM

President Donald Trump's bid to speed up regulatory approvals is relying on a "lean manufacturing" approach inspired by Toyota Motor Corp.

The Environmental Protection Agency's chief of operations has a long history of implementing

Toyota's concept, which focuses on labor-management dialogue to curb defects and cut delays. The agency is in discussions about entering into a contract with Toyota's management spinoff to help it accomplish its goals.

"It's not about policy. It's not about specific decisions," Henry Darwin, the EPA operations chief, said in an interview. It's "about the process that we use in order to basically eliminate waste and maximize customer value."

Before joining the EPA, Darwin had a 20-year career in Arizona where he served as director of the Department of Environmental Quality and then as chief of operations. He led development of the state's management strategy for Governor Doug Ducey before leaving at the end of June.

Still, overhauling how the agency works may face difficulties at the EPA where many members of the 15,000 workforce have bristled under the leadership of Trump and Administrator Scott Pruitt. This year EPA ranked 22nd out of 23 mid-size federal agencies in how its employees rate the effectiveness of its senior leaders, according to a survey by the Partnership for Public Service.

EPA is a sprawling organization, offering everything from advice on eradicating bedbugs to state-by-state data showing the first frost of autumn comes later than it ever has historically. Pruitt, who sued the agency a number of times while attorney general of Oklahoma, came into the agency pledging to scale-back its reach, leave more rulemaking and enforcement to states and get "back to basics." Critics, including Democrats in Congress, have said he's too cozy with the industries he's supposed to regulate and wondered about the need for a $25,000 soundproof "privacy booth."

Pruitt dropped Darwin's name this month at a congressional oversight hearing when explaining that the agency is "actually partnering with Toyota to begin a 'lean' process at the agency to evaluate management practices."

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"The agency for many years — and this is something I found surprising — has not measured outcomes consistently," he added.

Toyota introduced lean manufacturing into the U.S. in the 1980s when it began building factories outside Japan for the first time. For a quarter century, Toyota has also had a non-profit affiliate, called the Toyota Production System Support Center, that consults with Toyota suppliers and outside manufacturers, and provides advice to organizations, such as hospitals, food banks and governments.

The EPA and several other agencies are in talks with the TSSC about a contract on how they could redesign the way they conduct environmental reviews and permit "high-priority" infrastructure projects -- pipelines, ports, bridges and the electricity grid.

Pruitt's name check of Toyota raised some initial concerns that EPA was partnering with a company that it also regulated. Since the contract under discussion would be with a non-profit affiliate, the risks aren't as great, said George Wyeth, a career EPA attorney who retired this year.

"There is a potential ethics issue here, but not a big one," Wyeth said in an interview.

Still, longtime staff members are skeptical. It's not the first time the agency has tapped a management trend, according to John O'Grady, a 31-year EPA veteran who spoke in his capacity as president of Council 238 of the American Federation of Government Employees.

"I've been through too many flavors-of-the-month, of-the-year, whatever it is. They do it intensely for a while -- and then it just goes away," he said. "I'm very skeptical."

O'Grady said he's concerned that, because the agency hasn't conducted a true workforce analysis in 20 years, any decisions about the organization won't have sufficient data. And that could lead to staff cuts when more staff may be necessary to work on the EPA's growing portfolio, he said.

Darwin said that "lean" is in some ways a misnomer, and the goal of the process at EPA isn't to cut staff.

"It's not about creating the ability to reduce the size of an organization," Darwin said. "What it can do is allow it to become more effective and more efficient so that if we do create a capacity to do more with less."

Bloomberg Environment

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EPA Sued Over Texas Air Pollution Trading Program

By Nushin Huq, 12/19/17

Environmental groups asked a federal appeals court to review the EPA's final plan to reduce visibility-impairing air pollution in Texas, where the state has a trading program for utility emissions.

The National Parks Conservation Association, the Sierra Club, and the Environmental Defense

Fund argue the Environmental Protection Agency's plan, which allows power plants in Texas to join an intrastate sulfur dioxide emissions trading program instead of installing pollution controls, isn't sufficient to protect the environment.

The National Parks Conservation Association and the Sierra Club supported a previous plan by the EPA, created under the Obama administration, that would have required the individual plants to install the pollution controls.

The decision to allow the coal plants to participate in an intrastate trading program instead won't reduce sulfur dioxide emissions, Chrissy Mann, senior campaign representative for Sierra Club's Beyond Coal Campaign, told Bloomberg Environment.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the ultimate owner of Bloomberg Environment.

“The EPA essentially created a rule that didn't do anything,” Mann said. “The emission limits allowed by the new rule are higher than emissions that were released last year.”

Haze Rule

The regional haze program's purpose is to reduce haze and increase visibility at national parks and monuments, such as Big Bend National Park in Texas.

The Obama administration, in its initial rule, singled out eight Texas coal plants owned by Vistra Energy, Dynegy Inc., and Xcel Energy Inc. and required them to install pollution controls, known as Best Available Retrofit Techonology, to reduce sulfur dioxide emissions.

The Trump administration switched gears and allowed the Texas plants to participate in the trading program instead.

Industry applauded the new sulfur dioxide emissions trading program, saying it will be less costly to coal-fired power generators than retrofitting the plants with pollution controls. Some Texas coal plants have shut down as a result of low wholesale power prices.

EPA Petitioned

The three environmental groups also filed a petition Dec. 15 with the EPA, asking the agency to reconsider the emissions trading rule. They said the trading rule was adopted without notice or ability to comment, the EPA provided no rationale for abandoning its January 2017 pollution-control rule, and the trading program won't be better in improving visibility than installing pollution controls.

The case is *Nat'l Parks Conservation Ass'n v. EPA*, 5th Cir. App., docket number unavailable, *filed* 12/15/17.

Bloomberg Environment

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Yeast Manufacturers Sue Over New Air Pollution Rules

By Jennifer Lu, 12/19/17

The American Bakers Association is challenging air pollution rules for bread yeast cultivation the EPA issued in October.

The Environmental Protection Agency rule, which affects four facilities across the country, changes how yeast manufacturers report emissions released during unplanned equipment startup, shutdown and malfunction. Under the new rule, emissions from batches of yeast produced are no longer excluded from emission limits during malfunction periods.

It also establishes monitoring equipment requirements for volatile organic compounds and sets data collection and reporting requirements for yeast manufacturers.

Annual compliance costs to the companies, represented by Williamson Law + Policy, PLLC in Washington, are estimated at less than 0.1 percent of company sales.

The case is *Am. Bakers Ass'n v. EPA*, D.C. Cir., No. 17-1264, 12/15/17.

Bloomberg Environment

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EPA Floats Muted Agency Role in Any Power Rule Replacement

By Abby Smith, 12/19/17

The EPA is questioning whether it has authority to set "binding" power sector greenhouse gas limits, opening the door to a more limited agency role in any replacement of Obama-era carbon controls.

In a highly anticipated advance notice released Dec. 18, the Environmental Protection Agency seeks input on a number of issues related to a potential replacement of the Clean Power Plan, the Obama administration's first-ever greenhouse gas limits for existing power plants.

The EPA proposed Oct. 10 to kill the Obama-era rule, arguing that it exceeded the agency's authority by basing standards on reduction measures taken beyond what can be accomplished at an individual power plant.

Agency Dialing Back?

Beyond the EPA's narrower interpretation of how it can set standards, the advance notice also signals that officials are weighing a muted agency role in any replacement policy—prompting the question of whether the EPA has authority under the Clean Air Act to set a required floor that states must meet.

That state-driven approach was the "linchpin" of a plan EPA Administrator Scott Pruitt floated when he was Oklahoma's top litigator and one of the Clean Power Plan's staunchest critics, Avi Zevin, an attorney with New York University's Institute for Policy Integrity, told Bloomberg Environment.

And though the EPA doesn't specifically cite Pruitt's 2014 plan—known as the "Oklahoma Plan"—Zevin said, "There are hints in the [advance notice] that they are seriously thinking about that and asking for comment on that."

For critics of the Obama administration's Clean Power Plan, this is welcome news. Jeff Holmstead, an attorney with Bracewell LLP and former Bush EPA air chief, said the distinction between EPA and state authority is the "fundamental" question as the agency considers a replacement policy.

"Can EPA under [Clean Air Act] Section 111(d) require states to meet a minimum level of stringency? That's the way the regulations now read, but I think there are many of us who think that is not consistent with the statute," Holmstead told Bloomberg Environment.

'States Have All the Authority'

The EPA hasn't yet formally decided whether it will pursue a replacement policy, but Holmstead said the advance notice is more "substantive" than he was expecting, and it telegraphs that the agency is leaning heavily toward ultimately issuing its own power sector carbon controls.

"It's clear from the level of technical detail that they've given this a lot of serious thought," he said.

Environmentalists, however, argue the advance notice is a delay tactic, particularly given the amount of

time and expertise the EPA has devoted to this issue over the years.

"EPA went through literally four years of outreach, and all of the industry stakeholders that EPA is here representing already raised all the kinds of issues they are now seeking comment on," Joanne Spalding, chief climate counsel for the Sierra Club, told Bloomberg Environment.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the ultimate owner of Bloomberg Environment.

The notice "twists" the Clean Air Act's language, Spalding said. The agency "is laying the groundwork for new regulations where EPA has hardly any power and states have all the authority and flexibility where they can do something less stringent than what EPA develops," she said.

In that scenario, she added, "there's no way to actually ensure that any greenhouse gas emissions reductions really happen."

Industry critics of the Clean Power Plan, however, view a state-driven framework as preferable and most consistent with the statute.

For example, Holmstead said, the EPA specifically floats an option in which states would "go out and set plant-by-plant standards," but the agency also seeks input on whether that would be too time-consuming or burdensome for state agencies.

Tension Possible

Despite seeking comment on a narrower role for the agency, the EPA doesn't limit the scope of states' authority under any future regulation. Such a framework would give states flexibility to choose from a range of compliance options, including emissions trading.

But that could set up some "tension" with the EPA's revised interpretation of its statutory authority, outlined in its proposed repeal of the Obama-era rule, compared with the wide range of measures states would have to meet those standards, Zevin said.

Zevin said the EPA doesn't address this tension in its notice, but it "tees up the question" for the comment process. And that is likely to open the agency up to attacks from environmental groups, which argue if the EPA includes a measure as a compliance option, it should be able to base emissions standards on those options, as well.

"It's like [industry groups] want to have their cake and eat it, too," Spalding said. "They want to not have a stringent standard, but also use all the compliance mechanisms that would enable them to comply more cheaply."

Holmstead also pointed to some potential tension were the EPA to allow emissions trading or a mass-based compliance approach in any replacement rule.

"It might be possible to harmonize" those options with the EPA's interpretation of its authority, "but it raises some pretty significant issues," he said.

The EPA will take comment on for 60 days, once the advance notice is published in the Federal Register.

Bloomberg Environment

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Washington Bureaucrats Are Chipping Away at Trump's Agenda

By Christopher Flavelle and Benjamin Bain

In report after report following President Donald Trump's election, career staffers at the National Oceanic and Atmospheric Administration kept saying the same thing: climate change is real, serious and man-made.

That's surprising because Trump has called global warming a hoax. His political appointees at the Commerce Department, which oversees NOAA, have complained to its staff, but stopped short of demanding changes or altering the findings. So the reports, blog posts and public updates kept flowing. The bureaucrats won.

"Everything coming out of NOAA does not reflect this administration," said David Schnare, a retired lawyer for an industry-backed think tank who served on Trump's transition team and is skeptical about climate change. "It reflects the last one."

That's true across the government as some of the roughly two million career staff have found ways to obstruct, slow down or simply ignore their new leader, the president.

Staff at the Securities and Exchange Commission, for example, issued a report contradicting the White House's position about the negative effects of banking regulations. The State Department's embassy staff preserved Obama-era programs to boost the economies of developing countries—at odds with Trump's "America First" campaign pledges—not by changing the substance of the programs but merely by relabeling them as a way to create markets for U.S. exports.

Perhaps no policy area better illustrates the dynamic than climate change. A report commissioned by the energy secretary to explore the dangers of wind and solar energy to the power grid initially found just the opposite. Pentagon staffers effectively stalled a Trump reversal of an Obama policy on climate change and national security by initiating a review that's apparently still underway nine months later. Federal procurement officials have kept promoting zero-emission vehicles but by focusing on economic gains rather than environmental benefits.

Two factors may be making it harder for this White House to impose order: a desire to reorient major agencies from their traditional missions and the slow pace at which it has filled key posts. Less than two-thirds as many appointments have been submitted and won Senate confirmation as were in place at this time during the Obama administration.

But even that wouldn't fully tame the “permanent government” layer of bureaucrats who stay on from president to president, burrowed deep in agencies across Washington.

“It's an enormous challenge for a new president and administration to exert influence over the bureaucracy,” said David Lewis, chairman of the political science department at Vanderbilt University. “They know a lot more than the political appointees who come into the agencies. That gives them an advantage.”

Before taking office, Trump repeatedly dismissed global warming as a hoax—a position at odds not only with the vast majority of scientists, but also with the longstanding policy of the U.S. government.

In 1990, Congress directed the executive branch to research the effects of global warming, and convey that research at regular intervals. Since then, the federal government's involvement in fighting climate change has grown, to include regulating emissions and working to mitigate their consequences.

Trump has used his executive authority to reverse some of the most prominent environmental policies initiated by President Barack Obama, including rolling back limits on greenhouse gas emissions from power plants, pulling out of an international agreement to cut carbon emissions signed in 2015 in Paris and effectively opening up more public land to oil drilling and coal

mining.

But when it comes to the endless number of more mundane policies and decisions farther from the spotlight, Trump and his appointees have met with resistance—some of it subtle, some of it not.

“The bureaucracy is generally resistant, no matter what the hell you're trying to do,” Leon Panetta, who guided presidents Bill Clinton and Barack Obama through transitions, said in an interview. But when a president sets out to be as disruptive as Trump has, Panetta added, getting career staff to implement those policies “is gonna take a hell of a lot longer.”

As the case of NOAA illustrates, the most radical example of bureaucratic resistance may also be the simplest: continuing to issue information or reports that are factually accurate, even when they clash with the administration's policies.

Different agencies have taken different approaches to the reports written. Commerce Secretary Wilbur Ross told Bloomberg in a statement, “I have not suggested one word of change to any NOAA research report on any topic.” But political officials in other departments have been more willing to get involved—sometimes triggering pushback from civil servants.

Just ask Rick Perry.

In April, Perry, Trump's secretary of energy, directed career staff at his agency to write a report on the question of whether the expansion of wind and solar power threaten the stability of the electricity grid, by reducing the amount of “critical baseload resources”—in other words, power generated by coal, nuclear and other traditional sources.

With Trump pledging to reverse regulations that have harmed coal, the study was viewed by critics as a way the administration would justify curtailing the surging expansion of wind and solar power and provide help to coal plants and coal miners.

But the career staff that drafted the report reached a surprising conclusion: the growth in renewables wasn't endangering the reliability of electric power after all. “Grid operators are using technologies, standards and practices to assure that they can continue operating the grid reliably,” concluded the draft report, obtained by Bloomberg in July.

Trump appointees at the agency pushed back on the draft's conclusions; one official called some of its findings “unacceptable” and “inflammatory,” according to a copy of the draft marked up by the official. Drafts of the report soon leaked out, making it harder for political staff to alter them.

Officials eventually unveiled a version of the report that hewed closely to the initial draft, but with policy recommendations that supported Perry's stated goal of preserving the nation's coal and nuclear fleet. Travis Fisher, a political appointee in Perry's office and a lead author of the study, said in an interview that the leak “didn't have an effect on the overall posture” of the report. “It was always going in the direction that it ended up,” he said.

But career staff, who asked not to be identified, viewed the episode as a qualified success, arguing that report's findings would otherwise have been even more hostile to renewables.

Bureaucrats can also continue programs or initiatives that pre-date Trump by calling them something new or describing them in different ways.

Take the General Services Administration, which manages the federal government's fleet of more than 640,000 cars, trucks and other vehicles. Since 2011, GSA has added more than 1,000 electric vehicles to the fleet—a policy that was presented in distinctly environmental terms.

“The Federal Government is leading by example,” the GSA boasted when it announced the electric-vehicle program in 2011. The goal was “to build a 21st century clean energy economy.”

Those goals are now squarely at odds with the Trump administration's view on climate change, which strongly favors fossil fuels.

Rather that cutting the program, GSA staff have focused on its contributions to jobs and cost cutting, rather than reducing emissions.

That messaging workaround was on display in late summer when the GSA promoted National Drive Electric Week, whose presenters include the Sierra Club. “Welcome to National Drive Electric Week!” the agency said in a September blog post that it said was to celebrate the benefits of alternative-fuel vehicles.

“GSA recognizes that emerging technologies play a significant role in our mission to save taxpayer dollars, create obs and stimulate economic growth in the United States; which is one reason we provide the federal fleet with vehicles that offer the latest and most efficient transportation technologies available, including electric vehicle (EV) technology,” the agency wrote on its website in a post promoting the event.

The post made no mention of environmental benefits. If the agency had any non-economic reasons for using electric vehicles, they went unmentioned.

A GSA spokeswoman, Pamela Dixon, didn't respond to emails seeking comment.

“The career bureaucracy is seen by many in the administration, and by the president himself, as sort of the problem,” said Paul Verkuil, who served under Obama as chairman of the Administrative Conference of the United States, an independent federal agency charged with improving the efficiency of the bureaucracy. “The irony is, because they're not confirming their own policy people, the quote-unquote ‘problem’ is running the government.”

In other agencies, officials have found it best to simply delay implementation of new initiatives in hopes they may be modified or canceled.

In March, for example, Trump, flanked by Environmental Protection Agency Administrator

Scott Pruitt and coal miners, signed an order that rescinded some Obama policies to fight climate change. “You're going back to work,” Trump told the men around him.

Among the policies Trump reversed was Obama's 2016 Presidential Memorandum on Climate Change and National Security, which had instructed the Defense Department to account for the effects of global warming. Those effects include rising sea levels that threaten U.S. naval facilities; stronger and more frequent heat waves, which interfere with the military's ability to train its personnel; and the interplay between extreme weather events and conflicts overseas, which risks entangling U.S. forces.

The department was aware of those threats, and had already started putting Obama's policy into effect through a directive called “Climate Change Adaptation and Resilience.”

But rather than reverse or alter that directive after Trump's order, staff at the Pentagon launched what it called a review, which served to forestall changes. Adam Stump, a department spokesman, refused to say whether that review has concluded, or what it found. For now, he said, the directive issued under Obama's administration remains current.

Defense Secretary James Mattis has said that “Climate change can be a driver of instability and the Department of Defense must pay attention to potential adverse impacts generated by this phenomenon.”

Even seemingly insignificant actions by civil servants can add up to a meaningful difference in federal policy, according to Anna Aurilio, director of the Washington office at Environment America, a nonprofit.

“I don't think it's a silver bullet, unfortunately,” Aurilio said. Still, “It can be very helpful for career staff to actually do their jobs properly, and not rubber stamp the rollback or weakening of regulations.”

Career staff who slow down policy directives are sometimes justified in doing so, according to Lewis, the Vanderbilt professor. For example, they may feel that stalling gives political

appointees, some of whom are new to the policy areas they're responsible for, time to consider other options.

"To carry out your job faithfully requires you to balance sometimes conflicting demands — from the president, from Congress and from the law itself," Lewis said. "What can be seen as slow-walking something, and has a nefarious meaning, also has a charitable interpretation."

In the long run, career staff can face consequences. While it's hard to outright fire a civil servant, congressional Republicans in January gave themselves the ability to reduce the annual pay for any individual federal employee to $1.

An administration can also punish bureaucrats through punitive reassignments, designed to make them quit. Joel Clement, a senior policy manager at the Department of Interior, was moved to the accounting office in June — retaliation, he alleged, for speaking out about the risks of climate change.

A department spokeswoman, Heather Swift, denied that, telling Bloomberg the move was "to better serve the taxpayer and the Department's operations."

Clement, who has since left the agency, described a checklist he said bureaucrats should follow before acting to impede a political directive.

Clement said career staff should first consider whether they simply didn't like the new policy, which he said wasn't a reason to get in its way. But if the new policy put public health and safety at risk, for example, or was based on deliberately inaccurate information, Clement argued staff should then try to raise their concerns through internal channels. "You first have to try a legitimate approach before you obstruct," he said.

Only if that didn't work, Clement said, should civil servants take action outside of normal channels—leaking documents, for instance, or slowing down the implementation of the policy. But he said he expects more career staff to start doing so, as more of the Trump administration's specific policy initiatives make their way through the bureaucracy.

"The tide is rising on that kind of resistance," Clement said. "Whether it's public or not."

The Hill

http://thehill.com/policy/energy-environment/365454-trump-epa-floats-possible-replacement-for-obama-climate-rule

Trump EPA floats possible replacement for Obama climate rule

By Timothy Cama, 12/18/17, 2:00 PM

The Trump administration is kicking off the process to formally consider replacing former President Barack Obama's climate change rule for power plants.

The Environmental Protection Agency (EPA) put out a notice Monday asking the public to submit ideas for what such a replacement rule would look like.

The replacement would almost certainly be less ambitious than Obama's Clean Power Plan, which envisioned a 32 percent cut in the power sector's carbon dioxide emissions by 2030.

The Monday notice, known as an advanced notice of proposed rulemaking, comes more than two months after the EPA formally proposed repealing the Clean Power Plan on the basis that it exceeded the authority Congress gave the EPA under the Clean Air Act.

"Consistent with our commitment to the rule of law, we've already set in motion an assessment of the previous administration's questionable legal basis in our proposed repeal of the Clean Power Plan. With a clean slate, we can now move forward to provide regulatory certainty," EPA Administrator Scott Pruitt said in a statement.

"Today's move ensures adequate and early opportunity for public comment from all stakeholders about next steps the agency might take to limit greenhouse gases from stationary sources, in a way that properly stays within the law, and the bounds of the authority provided to EPA by Congress."

Pruitt at a House hearing this month committed for the first time to pursuing a replacement climate rule. He had only brought it up only as a possibility previously.

The EPA already decided, in its proposal to repeal Obama's rule, that any replacement standards would have to apply solely to the coal- or natural gas-fired power plants themselves, such as improving the efficiency of the generators.

That restriction would make the replacement rule far less ambitious than the Clean Power Plan, which was based on the ability of plant operators to switch their power generation to less-polluting sources, like natural gas or renewables.

Industry and business groups have advocated for Pruitt to replace the climate rule, arguing that it would give businesses more certainty, particularly if environmental groups or Democratic states sue the EPA to force a rule to limit greenhouse gases from power plants.

"Our hope is that today's request for input will begin a true collaboration between the federal government, states, and all stakeholders to develop a more durable and achievable approach to addressing carbon emissions," Karen Harbert, president of the Chamber of Commerce's Global Energy Institute, said in a statement.

"The new approach should lower emissions, preserve America's energy advantage, and respect the boundaries of the Clean Air Act."

Environmental groups, meanwhile, have argued that a weaker replacement rule would fall far short of the EPA's responsibilities under the Clean Air Act, and they are likely to sue to stop such a rule.

"By slow-walking its legal duty to protect our climate, EPA panders to fossil fuel polluters at the expense of communities around the nation," said Trip Van Noppen, president of Earthjustice.

"EPA's misguided strategy not only fails to tackle the carbon pollution that is driving climate change, but also would produce 4,500 premature deaths each year from other pollutants the Clean Power Plan would cut."

The Hill

http://thehill.com/opinion/energy-environment/365450-returning-to-reagan-era-principles-to-the-epa

OPINION: Returning Reagan-era principles to the EPA

By J. Winston Porter, 12/18/17, 3:00 PM

I was a President Reagan appointee to the Superfund assistant administrator position, where I was guided by his view that "preservation of our environment is not a liberal or conservative challenge, it's common sense."

EPA's Superfund program identifies and cleans up contaminated land and responds to environmental emergencies, oil spills and natural disasters.

Unfortunately, over more than 30 years many Superfund site cleanups now take too long and cost too much to clean up

I've previously proposed setting of firm deadlines to complete Superfund sites, better management of the interminable site studies, and more use of cost-effective "emergency removals" to deal with obvious environmental issues.

Fortunately, EPA Administrator Scott Pruitt has already taken on the challenge of reversing the meandering and costly pace of Superfund cleanups. His approach is to identify sites that require his personal attention to ensure that such sites are completed in a common sense, scientific and cost-effective manner.

Recently, the administrator and his staff have named 20 sites for which he will expedite their final remedies. Naming these sites "targeted for immediate and intense attention," is not necessarily a commitment to increased funding.

Along with the list, EPA notes, "Pruitt has set the expectation that there will be a renewed focus on accelerating work and progress at all Superfund sites across the country."

One of these sites has a particularly high profile due to its complexity and many decades of investigations. It is the West Lake Landfill in Bridgton, Missouri. Pruitt intends to approve a "proposed plan" for this site before the end of January 2018.

Pruitt must decide whether to cap the site (covering contaminated material), partially excavate it or fully excavate it. Unfortunately, pressure from activist groups will make an option of complex excavation seem like safe politics. But a decision based on activists' pressures is a decision that often ignores real science.

The overwhelming evidence at West Lake Landfill favors a cap-in-place solution. The site does contain radioactive waste from the Manhattan Project, but extensive government testing has shown that the waste is contained and safe for nearby residents. The cost and timeline for a cap are reasonable and the solution is safe for residents and environmental workers.

Excavation of any kind will risk harm to the environment, local residents and taxpayers because the radioactive material deep within West Lake cannot be removed easily. It is not simply a layer that can be exposed and scraped away, but a mixed, compacted jumble of waste that, if unearthed, will require expensive and dangerous handling and relocation. It is also impossible to know, prior to digging, how much excavation will be needed, meaning "partial excavation" is a misleading definition.

Very importantly, the capping remedy is expected to cost about $70 million, while the excavation-type option more like $600 million and a much longer timeframe to complete.

Pruitt will have to show common-sense leadership and make sure he is making a decision based on science, timeliness and economics.

Looking forward, Pruitt also needs to carefully select a new Superfund chief who will oversee an increasingly efficient Superfund process. Remediation efforts must be protected from politics and time-consuming bureaucracy.

It is instructive to go back to the Reagan days and note that the Superfund law specifically requires that the government select a protective and cost-effective clean-up plan. Hopefully, Pruitt will return to these basic principles.

J. Winston Porter, Ph.D., is a national environmental and energy consultant, based in Savannah, GA. Porter previously served as an assistant administrator of the U.S. EPA in Washington DC.

The Hill

http://thehill.com/policy/energy-environment/365495-epa-chief-pruitt-had-office-swept-for-surveillance-bugs

EPA chief Pruitt had office swept for surveillance bugs

By Timothy Cama, 12/18/17, 8:01 PM

The head of the Environmental Protection Agency (EPA) had his office professionally examined earlier this year to look for covert surveillance devices.

The EPA paid $3,000 in March to Edwin Steinmetz Associates to do a "sweep for covert/illegal surveillance devices" in Administrator Scott Pruitt office at the agency's Washington, D.C., headquarters, documents provided to The Hill show.

The EPA source who provided the documents on the condition of anonymity said the sweep, which came weeks after Pruitt's arrival at the agency, did not uncover any bugs.

Pruitt, Oklahoma's former attorney general, has taken a number of steps to guard his security and privacy in his time as EPA head.

He is the first EPA administrator to have a 24-hour security detail, encompassing a staff of dozens of agents at a six-figure annual cost, often pulling agents away from environmental enforcement matters. He paid nearly $25,000 for a secure phone booth in his office, despite an existing secure compartmentalized information facility elsewhere in the building.

Pruitt's staff has declined to release his schedule in advance over security concerns, and The New York Times reported that he asks some employees to leave their phones behind when meeting with him.

Like other security measures, the EPA defended the surveillance sweep as a response to unprecedented threats against Pruitt, whose aggressive deregulatory agenda has angered environmentalists and many others.

"Administrator Pruitt has received an unprecedented amount of threats against him and security decisions are made by EPA's Protective Service Detail," EPA spokesman Jahan Wilcox said.

Lisa Jackson, who was EPA administrator from 2009 to 2013 under former President Obama, also had a similar security sweep undertaken in the office, Wilcox said.

A person who worked at the EPA during Jackson's tenure said she never requested a surveillance sweep, but it may have been part of a standard protocol when she became the new administrator. Jackson now oversees environmental initiatives at Apple.

The Washington Post reported in September that the EPA had seen more threats against Pruitt than any previous administrator.

Doug Parker, who worked at the EPA for 25 years, mostly as a special agent in the criminal investigation division, said a bug sweep of the administrator's office is unusual.

"It doesn't strike me as completely out of left field, but it's certainly not routine, even in the administrator's office," said Parker, who retired in 2016 and now leads Earth & Water Strategies, a D.C. consulting firm.

"There could be valid concerns," Parker said, pointing to national security-related conversations and foreign delegations that sometimes come to the EPA building.

"But it is certainly not something that was a routine occurrence in past administrator's offices," he said.

E&E News

https://www.eenews.net/greenwire/stories/1060069307/search?keyword=EPA

Groups sue, petition EPA in Texas haze fight

By Sean Reilly, 12/18/17

Environmental groups are opening two new fronts in the long-festering battle over cleanup requirements for coal-fired power plants in Texas under U.S. EPA's regional haze program.

In a lawsuit filed late Friday, the National Parks Conservation Association and two other groups asked the 5th U.S. Circuit Court of Appeals to review what they called a "do-nothing" plan published by EPA in October.

In a separate administrative petition, the group asked EPA to reconsider the plan, which differs dramatically from the proposal unveiled last December in the final weeks of the Obama administration.

While the proposal would have required nine coal-fired plants to adopt new controls to reduce sulfur dioxide releases, the final version substitutes a statewide emissions trading program that would instead allow an increase in SO2 emissions from the Texas power sector over last year's levels, the petition charged.

Under the Trump administration, EPA "did an about-face," Stephanie Kodish, senior director of the parks group's clean air program, said in a conference call with reporters today.

Texas' electricity sector ranks first in the nation for releases of SO2, an acrid pollutant linked to a host of heart and lung problems.

"This action is important to make sure we move forward to address these emissions," John Hall, associate vice president for clean energy for the Environmental Defense Fund, another plaintiff, said on the call.

An EPA spokeswoman, citing the agency's policy on pending litigation, had previously declined to comment.

The fresh legal challenges come as the same groups are awaiting a ruling in a separate U.S. district court lawsuit over whether the October plan meets the terms of a 2012 consent decree.

EPA attorneys argue that the agency satisfied the settlement simply by submitting the plan by a court-ordered deadline and that any dispute over the details has to be addressed at the appellate court level. U.S. District Judge Amy Berman Jackson of the District of Columbia has not yet ruled.

While the environmental groups disagree with EPA's interpretation, they brought the 5th Circuit suit as a fallback in case Jackson rules against them, Sierra Club attorney Elena Saxonhouse indicated today.

The plan is required under EPA's regional haze program, which aims to restore natural views in 156 national parks and wilderness areas, the bulk of them in the West, by 2064. But enforcement has come at a glacial pace; an approved Texas haze plan was originally due in 2007.

Emissions from the Texas power sector contribute to hazy conditions in at least 15 parks and other protected areas in seven states, Saxonhouse said on the call.

EPA is obliged to grant administrative reconsideration, the petition said, because the grounds for the objections arose after the end of the public comment period on the initial proposal.

Because EPA's adoption of the statewide trading system violates the Clean Air Act, the petition adds, "EPA should discard its unlawfully adopted trading scheme" and instead make final the pollution controls proposed last December.

Texas power producers have recently announced plans to close four of the coal-fired plants in question. Last year, those facilities accounted for a little more than one-third of the approximately 246,000 tons of industry SO2 emissions in the state, according to an analysis by Dan Cohan, an associate professor of environmental engineering at Rice University.

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Pebble finds partner to help jump-start contentious mine

By Dylan Brown, 12/18/17

Backers of the Pebble mine have found a partner to help foot the bill for permitting the controversial copper and gold project in southwestern Alaska.

Northern Dynasty Minerals Ltd. announced an agreement today that will give fellow Canadian mining company First Quantum Minerals Ltd. a chance to eventually share ownership of Pebble LP.

"Just as importantly, the immediate capital contribution from First Quantum will allow Northern Dynasty to execute on its plan to move the Pebble Project forward to initiate federal and state permitting in the very near-term," Northern Dynasty CEO Ron Thiessen said in a statement today.

Under the deal, First Quantum will make a payment of $37.5 million each year for the next four years to help navigate environmental analysis and public review of Pebble.

The $150 million will give First Quantum the option to acquire a 50 percent share in the project for $1.35 billion.

With mine critics promising fierce opposition throughout permitting, First Quantum can extend the option period for up to two years, with the amounts deducted from the purchase of the ownership stake.

The option agreement is expected to be finalized before July, but the companies cautioned investors the deal does not guarantee a partnership to develop one of the world's "outstanding unmined" deposits, containing an estimated 26 million metric tons of copper, 70 million ounces of gold and 1.5 million metric tons of molybdenum.

"We are very aware of the environmental and social sensitivity of this project and will utilize the lengthy option period to apply our extensive project development and operating experience to ensure that this project can be developed with the support of stakeholders," Quantum CEO Philip Pascall said in a statement.

Pascall said that his company's main objectives remain developing a major copper mine in Panama and managing its six copper, gold and zinc mines in Australia, Zambia, Mauritania, Spain, Finland and Turkey, but that Pebble could sustain the company "well into the future."

"This initial investment by a well-established copper mining company speaks volumes about the economic opportunity Pebble represents to Alaska," Pebble CEO Tom Collier said. "Pebble development could make a significant contribution to Alaska's economy and provide year-round jobs for Southwest Alaska."

The region's existing central industry, fishing, has vehemently opposed the project alongside many Alaska Native and environmental organizations. Concerns center on the mine's footprint in the headwaters of Bristol Bay, the world's largest sockeye salmon fishery.

The Obama administration proposed pre-emptive restrictions on mining to protect Bristol Bay, but U.S. EPA Administrator Scott Pruitt moved to abandon them within an hour of meeting with Collier and Pebble officials in May (*E&E News PM*, Dec. 12).

Mining giant Anglo American PLC used to be the major Pebble backer until it pulled out in 2013 amid scrutiny of the project. Rio Tinto PLC, which had a much smaller stake, abandoned the venture soon after.

Northern Dynasty has since worked to keep costs low, secure new investors and search for a new partner. First Quantum is the most significant announcement on that front.

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White House reviews EPA bid to repeal oil and gas guidelines

By Sean Reilly, 12/18/17

U.S. EPA is proceeding with its planned repeal of Obama-era guidelines intended to curb smog-forming emissions from existing oil and gas operations.

The agency forwarded a proposed withdrawal notice Friday of the "control techniques guidelines" to the White House Office of Management and Budget for a standard review, according to the Reginfo.gov website. That was one day after the agency leaders telegraphed their interest in repeal with a short notice in their latest rundown of planned regulatory actions (*Greenwire*, Dec. 15).

EPA is set to formally seek public comment on the proposal as early as next month. While agency spokesmen have declined to comment for the record on the move, it would mark another step in the Trump administration's quest to roll back restrictions on energy producers over objections from public health and environmental groups.

Industry groups, citing the guidelines' potential expense to small producers, back the repeal. But at the American Lung Association, Senior Vice President for Advocacy Paul Billings in an email today called it "another reckless step" to "undermine state efforts to protect the public from dangerous ozone pollution."

EPA had issued the guidelines in October 2016 as part of a strategy to cut releases of volatile organic compounds from existing oil and gas facilities.

Strictly speaking, they are not regulations but recommendations for states to consider in implementing pollution control requirements in areas that are in "moderate nonattainment" or worse for the 2008 ground-level ozone standard of 75 parts per billion. They also apply in the Ozone Transport Region, which encompasses 11 Northeastern states, the District of Columbia and Northern Virginia.

Ozone, the main ingredient in smog, is a lung irritant produced by the reaction of volatile organic compounds and nitrogen oxides in sunlight. While implementation of the 2008 standard is continuing, EPA in 2015 tightened the threshold to 70 ppb.

The agency is now facing lawsuits from Democratic-led states, as well as the lung association and other advocacy groups, over its failure to meet a statutory Oct. 1 deadline for making all attainment designations for the 2015 standard.

In a brief interview last week, Bill Wehrum, EPA's recently installed air chief, predicted the process would be completed by next spring (*E&E News PM*, Dec. 12).

E&E News

https://www.eenews.net/climatewire/stories/1060069311/search?keyword=EPA

EPA moves to replace Obama-era climate rule

By Robin Bravender, 12/18/17

U.S. EPA today is taking a first step toward potentially replacing the Obama administration's signature climate rule.

The agency released a notice asking the public for comment on what a replacement rule for Obama's Clean Power Plan should look like.

"EPA is considering proposing emission guidelines to limit greenhouse gas (GHG) emissions from existing electric utility generating units (EGUs) and is soliciting information on the proper respective roles of the state and federal governments in that process, as well as information on systems of emission reduction that are applicable at or to an existing EGU, information on compliance measures, and information on state planning requirements under the Clean Air Act (CAA)," says the notice released by EPA, known as an advance notice of proposed rulemaking.

The Trump administration has signaled that if it replaces the Clean Power Plan, it would do so with a much narrower rule aimed at boosting the efficiency of specific plants, instead of the broader approach taken by the Obama administration.

Separately, EPA has proposed repealing the Clean Power Plan, which sought to cut power plants' greenhouse gas emissions 32 percent below 2005 levels by 2030.

"Consistent with our commitment to the rule of law, we've already set in motion an assessment of the previous administration's questionable legal basis in our proposed repeal of the Clean Power Plan. With a clean slate, we can now move forward to provide regulatory certainty," EPA Administrator Scott Pruitt said today in a statement.

"Today's move ensures adequate and early opportunity for public comment from all stakeholders about next steps the Agency might take to limit greenhouse gases from stationary sources, in a way that properly stays within the law, and the bounds of the authority provided to EPA by Congress," Pruitt added.

E&E News

https://www.eenews.net/eenewspm/stories/1060069329/search?keyword=EPA

Trump team signals replacement rule

By Robin Bravender & Niina Heikkinen, 12/18/17

The Trump administration today released the most comprehensive look to date on its plans to replace President Obama's signature climate change rule.

EPA issued a formal document this afternoon asking for the public to comment on what a possible replacement for the Clean Power Plan might look like. The notice, known as an advanced notice of proposed rulemaking, offers the latest indication that the administration would prefer a scaled-back regulation that targets specific power plants' emissions, and touts the role of state regulators in the process.

The agency is also in the process of repealing the Obama-era rule, arguing the previous administration overstepped its legal authority under the Clean Air Act when it issued the regulation in 2015.

"EPA continues to consider the possibility of replacing certain aspects of the CPP in coordination with a proposed revision," the notice says. Specifically, EPA said it wanted feedback on the roles of the federal and state governments and information about the appropriate scope of a replacement rule and technologies that could be required.

The agency has left the door open to not replacing the rule at all, which is the preferred approach by some conservatives who would like to see EPA blocked from regulating greenhouse gas emissions entirely. However, EPA seems to be planning to issue a replacement. EPA said last week in a regulatory planning document that it plans to release a proposed replacement rule in

June 2018 (*Climatewire*, Dec. 15).

In its proposed repeal of the Clean Power Plan, the Trump administration said it believes EPA only had the authority to require source-specific emission limits, rather than the more flexible approach taken by the Obama administration. In today's notice, EPA said it wants comment on "how the program should be implemented assuming adoption of that proposed interpretation."

EPA is asking for information about "the burden that it would create for states to determine unit-by-unit emission standards" for each electric generating unit. And given that some states have already developed programs to limit power plants' greenhouse gas emissions, EPA wants to know how those programs could interact with a potential new rule.

Notably, the agency pointed to the process that North Carolina used to develop its draft rule in response to the Clean Power Plan. EPA said that state's plan "may provide a useful example of a process a state could go through to determine unit-level emission standards based on technology that can be applied at or to a source." The state developed a menu of potential heat-rate improvements, then examined potential opportunities on a unit-by-unit basis, determining that some units could make cost-effective improvements and developing specific standards based on those rates, EPA said.

EPA said it's "mindful that its regulatory powers are limited to those delegated to it by Congress," as the agency maintains the Obama administration exceeded its authority.

"Consistent with our commitment to the rule of law, we've already set in motion an assessment of the previous administration's questionable legal basis in our proposed repeal of the Clean Power Plan. With a clean slate, we can now move forward to provide regulatory certainty," EPA Administrator Scott Pruitt said in a statement.

"Today's move ensures adequate and early opportunity for public comment from all stakeholders about next steps the Agency might take to limit greenhouse gases from stationary sources, in a way that properly stays within the law, and the bounds of the authority provided to EPA by Congress."

No 'shocking plot twists'

Energy and environmental lawyers are scrambling this afternoon to digest the 44-page document. Advocates of repealing the rule welcomed the opportunity for a redo, while environmentalists assailed the Trump administration's plan.

Joe Stanko, an industry attorney at Hunton & Williams LLP, said his takeaways were that "EPA recognizes the original, state-led intent of 111(d), with states having broad authority to design a program" and flexibility for implementation. He noted EPA was advocating "a return to an inside-the-fence-line analysis of controls," and a future rule would have "engineers looking at controls actually used at power plants, as opposed to the prior rule's use of computer modelers projecting future economywide reductions."

Karen Harbert, president and CEO of the U.S. Chamber of Commerce Global Energy Institute, said the notice "starts the process of developing a better way to approach greenhouse gas regulations than the Clean Power Plan."

She added, "Our hope is that today's request for input will begin a true collaboration between the federal government, states and all stakeholders to develop a more durable and achievable approach to addressing carbon emissions. The new approach should lower emissions, preserve America's energy advantage and respect the boundaries of the Clean Air Act. We look forward to participating in the process."

David Doniger, director of the Natural Resources Defense Council's climate and clean air program, called the notice a "scam."

"Everyone knows President Trump and Scott Pruitt want to gut the Clean Power Plan, taking our best fire truck away from a blazing fire. They should be strengthening, not killing, this commonsense strategy to curb the power plant carbon pollution fueling dangerous climate change," he said in a statement.

Miles Keogh, executive director of the National Association of Clean Air Agencies, wasn't surprised by the document. "There are not a lot of things that are shocking plot twists," he said. He commended EPA for seeking to incorporate more state and local input into the rulemaking process. NACAA includes 156 state and local members. "We see their interest as being very positive and feel it's a real opportunity to use that expertise usefully for whatever goes forward," he said.

Keogh noted the agency "played very carefully" around how a Clean Power Plan replacement might interact with the New Source Review and New Source Performance Standards for new and highly modified power plants.

A footnote of the document also noted the agency wasn't taking a position one way or the other on whether to review the endangerment finding for greenhouse gases.

"These were areas where EPA could have taken a very definitive stance in another direction. They chose not to take a provocative stance on it," he said.

E&E News

https://www.eenews.net/eenewspm/stories/1060069325/search?keyword=EPA

Trump critics cite regulatory agenda to keep ozone suit alive

By Sean Reilly, 12/18/17

Some oddly worded language in U.S. EPA's semiannual rulemaking agenda has quickly become

grist for a previously filed legal challenge to the agency's delay in making all attainment designations for its 2015 ground-level ozone standard.

The lawsuit, brought in July by the American Lung Association and other advocacy groups, challenged EPA Administrator Scott Pruitt's June decision to push back the deadline for making the designations from October 2017 until October 2018.

In August, Pruitt reversed himself and dropped plans for the blanket extension; the agency is now striving to have the lawsuit, pending before the U.S. Court of Appeals for the District of Columbia Circuit, thrown out as moot.

Attorneys for the advocacy groups argue the litigation should be kept alive until EPA finishes work on the designations, which were statutorily due at the beginning of October but are still not complete.

As part of their latest semiannual agenda released Thursday, however, agency officials appeared to suggest the designations extension remains in effect, writing they intend to use the added time to "finalize" guidance documents, along with an implementation rule for the 70-parts-per-billion standard.

In a court filing this afternoon, lawyers for the American Lung Association and other advocacy groups seized on that wording as evidence that the extension "continues to have effects, and thus is not moot."

They again urged the court to officially vacate the delay "to ensure it has no continuing effects that harm" the plaintiffs or their members.

From a practical standpoint, the attainment decisions are important because they start the clock for states to draft cleanup plans for out-of-compliance areas. In a brief interview Tuesday, EPA air chief Bill Wehrum said he expects to wrap up work on the designations process by this coming spring.

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https://www.eenews.net/eenewspm/stories/1060069319/search?keyword=EPA

EPA seeks long-term hold on suit over Ark. haze plan

By Sean Reilly, 12/18/17

U.S. EPA attorneys are citing a newly signed deal with Arkansas regulators as grounds for putting a long-term freeze on litigation surrounding an Obama-era haze reduction plan.

With EPA's blessing, the Arkansas Department of Environmental Quality is now proceeding with proposed changes to that plan, which is mainly intended to curb pollution from coal-fired power plants in the state. The memorandum of understanding between EPA and the Arkansas agency lays out a timetable for final federal action on that rewrite by the end of next year.

The MOU was signed late last week by acting EPA Region 6 Administrator Sam Coleman and Becky Keogh, head of the Arkansas Department of Environmental Quality. In a Friday status report with the 8th U.S. Circuit Court of Appeals, EPA pointed to the agreement as reason for "complete abeyance" of legal proceedings until the rewrite is complete.

"EPA and the state have a clear path forward and have embarked on a long-term process for administratively replacing the final rule," agency attorneys wrote.

The litigation, dating back to last year, has already been on hold since March (*Greenwire*, Nov. 1). In their own status report Friday, the National Parks Conservation Association and Sierra Club urged resumption of the proceedings and said the proposed state plan "unlawfully and arbitrarily fails to control sulfur dioxide pollution" from two Entergy Corp. plants.

E&E News

https://www.eenews.net/climatewire/stories/1060069349/search?keyword=EPA

6 takeaways as Trump moves toward replacement

By Robin Bravender, Niina Keikkinen & Zack Coleman, 12/19/17

After spending most of its first year tearing down climate rules, the Trump administration is now taking steps to write its own.

U.S. EPA Administrator Scott Pruitt yesterday asked for wide-ranging comment about how to replace the Obama administration's signature climate change rule, the Clean Power Plan. In the lengthy document known as an advance notice of proposed rulemaking (ANPR), the administration offered important clues about the way forward, claimed that the Obama rule was illegal and gave critics fodder for counterattacks.

"This notice is a lot more substantive than a lot of us expected," said Jeff Holmstead, an industry attorney who served as EPA's top air official during the George W. Bush administration. "The expectation was the EPA was going to do a short ANPR and say, 'Send us your ideas,'" he added. But the level of detail in the 44-page document "suggests they're serious about coming up with a replacement rule."

Here are six takeaways from EPA's notice:

Trump's first climate rule?

If the administration finalizes a replacement rule, as it's signaling it will do, President Trump would be the first chief executive to regulate greenhouse gas emissions at power plants.

Obama's Clean Power Plan was halted by the Supreme Court last year, well before states would have been required to write plans to comply with it and years before reductions were mandated.

Trump — who has previously called global warming a "hoax" — may not want the distinction of regulating carbon, but he could get it as early as next year if EPA finalizes a replacement rule. The administration said last week that it plans to issue a draft replacement rule by June.

That may be the inevitable outcome as Trump and his team try to walk a fine line between showing the courts that they're meeting its Clean Air Act obligations, appeasing conservatives who want to see climate rules torn down and satisfying industry constituents who say having a rule would give them certainty (*Climatewire*, Sept. 27).

Dodging the endangerment finding

The notice doesn't ask for comment on repealing the endangerment finding, the scientific determination that underpins EPA's climate rules.

In a footnote, EPA says that nothing in the document "should be construed as addressing or modifying the prior findings made under titles I and II of the [Clean Air Act] ... with respect to endangerment and the requirements under 111."

Some conservatives are pushing for EPA to repeal the endangerment finding, arguing that future administrations will be able to reconstruct EPA climate rules more easily if that finding isn't unraveled.

But other conservatives and industry representatives caution against that approach, arguing that it's a losing legal battle.

"I think the Trump folks at EPA have decided that they want to focus on regulatory reforms that will be durable," Holmstead said. "By doing a substantive, meaningful replacement rule, they can provide long-term certainty for the industry and also make it clear what EPA can and cannot do under the Clean Air Act. ... If the Trump folks tried to reverse the endangerment finding, this wouldn't be durable. It probably wouldn't stand up in court, and it would be easy for a future administration to put the endangerment finding back in place again."

North Carolina as a model?

EPA pointed to North Carolina as a state whose draft rule to comply with the Clean Power Plan might offer a "useful example" to limit emissions.

North Carolina's draft plan was an "inside the fence line" approach that focused on power plants

making efficiency improvements for coal plants (*Energywire*, Nov. 5, 2015). The state's plan included a list of highly specific technical fixes like "air heater leakage reduction" and "intelligent soot blowing." The effectiveness of those fixes would be measured based on the manufacturers' "performance acceptance test procedures."

Under the Obama administration, the state raised strong objections to the Clean Power Plan's legality. North Carolina was among two dozen states that challenged the rule in a federal lawsuit that's been stalled as the Trump administration decides how to proceed.

David Doniger, director of the Natural Resources Defense Council's climate and clean air program, said that the state's draft rule, developed under former Republican Gov. Pat McCrory, "was deliberately designed to let states decide to require no carbon reductions. It makes a mockery of the Clean Air Act and of cooperative federalism."

Holmstead said North Carolina's "approach is certainly one option that EPA could adopt. It's interesting because N.C. essentially did a unit-by-unit evaluation of potential energy efficiency upgrades and then decided which ones would be cost-effective for each unit. There are pro and cons to this approach, and it will be interesting to see what states and power companies have to say about it."

He added, "I wouldn't say it's necessarily EPA's preferred option at this point."

Wades into New Source Review fight

The notice also opens the door for changes to a program that requires new permitting at power plants that have undergone significant upgrades and modifications that would lead to increased emissions of a regulated pollutant.

Known as "New Source Review," the program has been a political football between parties over the years. EPA in its notice signaled it would field questions on whether New Source Review would conflict with an inside-the-fence rule.

According to its detractors, the logic for changing New Source Review is that it deters power plant operators from making energy efficiency upgrades because they fear it would compel a round of costly permitting.

That's because under Obama, the Clean Power Plan suggested that efficiency upgrades would cause a power plant to run more frequently — and therefore emit more pollutants that compel New Source Review permitting, Holmstead said. Improved efficiency would have lowered operational costs, in turn moving those units to the front of the electricity dispatch line under the Obama system, he said.

"Even the Obama folks knew this was an issue, so it's something I think they're going to have to deal with," said Holmstead.

But supporters of the current New Source Review program say it's a crucial check on pollution

from power plants. Changing the program is therefore likely to draw lawsuits, Jody Freeman, a former Obama climate adviser, said in a recent interview.

"That's been a moving target, and we always expect a Republican administration to give the old coal plants more room," said Freeman, who is now a professor at Harvard Law School. "Then it becomes a legal battle ... that gets into the trench warfare that's always been true of New Source Review."

The U.S. Court of Appeals for the District of Columbia Circuit in 2006 struck down a George W. Bush EPA rule that tried to carve out exceptions to New Source Review for certain upgrades at power plants. But, as the law firm Marten Law wrote in its March 2006 summary of the case: "[O]ne thing is clear: controversy over interpretations of the [New Source Review] rules will continue."

Holmstead, who oversaw the implementation of those court-rejected policies, said the Pruitt-led EPA could try to initiate a wholesale shake-up of New Source Review. The Trump administration appears to already be heading in that direction, as EPA has convened a New Source Review task force to explore alterations.

The notice released yesterday also offered hints that alterations could become part of the approach to replace the power plant rule.

"Over the years, some stakeholders have expressed concerns that NSR regulations do not adequately allow for some sources to undertake changes to improve their operational efficiency without being 'penalized' by having to get a major NSR permit," the notice said. "In the context of [electricity generating units], stakeholders have asserted that heat rate improvement projects could result in greater unit availability and increase in dispatching, which under the NSR program might translate into projected increases in emissions that trigger major NSR permitting."

Focus on heat rate improvements

Yesterday's document also seeks comment on the potential for additional heat rate improvements.

A power plant's efficiency is often referred to as its heat rate. A low heat rate means a plant is an efficient producer of power, using less energy to generate electricity and producing fewer emissions as a result. A high heat rate, by contrast, means just the opposite.

Heat rate improvements were one of the three proposed emission reduction strategies outlined in the final version of the Clean Power Plan released under Obama. EPA initially targeted a 6 percent improvement in heat rate efficiency for coal plants in the draft rule. The agency later reduced that target to account for regional discrepancies in the age of plants and the type of coal they burn. Older, less efficient plants in the eastern U.S. that generally burn a dirtier form of coal were given a target of 4.1 percent; the West's younger and, by comparison, cleaner coal plants were given a target of 2.1 percent.

Experts say it is not entirely clear how much more can be done to improve coal plant efficiency, at least not without dramatically raising plants' costs. While gas plants have seen their heat rate decrease by 7 percent between 2005 and 2016, coal plant heat rates increased by 1 percent, according to Energy Department data.

"The operating utilities, the power companies have really done a great job of harvesting that low-hanging fruit," Sam Korellis, principal project manager at the Electric Power Research Institute, told E&E News in October (*Climatewire*, Oct. 25).

"That's how they're staying alive, that's how they're staying competitive. So eight to nine years ago, there was much more available than there is today."

Foes prepare for legal fight

Green groups are gearing up for a legal fight against an efficiency-focused rule, as some trade groups praised the possibility of a Clean Power Plan reboot.

NRDC's Doniger called a weaker replacement of the Clean Power Plan a "non-starter."

"Americans — who depend on EPA to protect their health and climate — deserve real solutions, not scams," he said in a statement.

While a final replacement rule and subsequent court battles are still a long way off, lawyers for environmental groups have already begun to craft their arguments. They note that a plan that has a limited impact on cutting carbon emissions would not stand up in court. They also argue that a limited plan for restricting emissions would not meet the Clean Air Act's standard of implementing the "best standard of emissions reductions."

Vera Pardee, senior attorney for the Center for Biological Diversity, argues that technology improvements don't necessarily have to be cheap to pass federal muster, just as long as they doesn't break the industry financially (*Climatewire*, Oct. 25).

"The most frustrating thing about this is that the ANPR asks precisely the questions that have been fully litigated and briefed and are pending before the D.C. Circuit," Pardee said.

She noted that EPA under the Trump administration had worked to prevent the D.C. Circuit from deciding the case.

"It makes it absolutely clear the agenda is to do as little as possible," she said.

Washington Post

https://www.washingtonpost.com/news/energy-environment/wp/2017/12/19/epa-to-end-

controversial-contract-with-conservative-media-monitoring-firm/?utm_term=.264129c10f63

EPA to end controversial contract with conservative 'media monitoring' firm

By Brady Dennis, 12/19/17

The Environmental Protection Agency is canceling a $120,000 contract it recently signed with a Republican media-tracking and opposition-research firm, amid questions about the firm's political work and outrage from lawmakers on Capitol Hill.

The EPA had defended the no-bid contract with Definers Public Affairs, saying it had hired the firm merely to act as a news clipping service. But an agency spokesman on Tuesday confirm that the EPA and the company had agreed to terminate the contract.

"Definers offered EPA a better and more efficient news clipping service that would give EPA's employees real-time news at a lower cost than what previous administrations paid for more antiquated clipping services," Joe Pound, the president of Definers, said in a statement to the Post. "But it's become clear this will become a distraction."

Pounder also said the firm would no longer offer the service to government agencies, despite the fact several had express interest in similar contract.

Washington Post (via AP)

https://www.washingtonpost.com/politics/epa-chief-sweeps-office-for-bugs-installs-high-tech-locks/2017/12/19/19a629f2-e4dd-11e7-927a-e72eac1e73b6_story.html?utm_term=.e13bbae36d96

EPA chief sweeps office for bugs, installs high-tech locks

By Michael Biesecker, 12/19/17

WASHINGTON — The head of the Environmental Protection Agency used public money to have his office swept for hidden listening devices and bought sophisticated biometric locks for additional security.

The spending items, totaling nearly $9,000, are among a string of increased counter-surveillance precautions taken by EPA Administrator Scott Pruitt, who also requires around-the-clock

protection by an armed security team. The EPA's Office of Inspector General is already investigating Pruitt's $25,000 purchase of a custom-made soundproof privacy booth for his office to deter eavesdropping on his phone calls.

An accounting of Pruitt's spending for the bug sweep and pricey locks was provided to The Associated Press by an EPA employee who spoke on condition of anonymity, citing concerns of retaliation.

EPA spokesman Jahan Wilcox defended the spending.

"Administrator Pruitt has received an unprecedented amount of threats against him and while The Associated Press attempts to trivialize his safety, there is nothing nefarious about security decisions made by EPA's Protective Service Detail," Wilcox said Monday.

EPA's headquarters in Washington is a secure building, with armed guards posted at the entrances and metal detectors and X-ray machines for scanning visitors and their bags.

EPA paid $3,000 in April to Edwin Steinmetz Associates to conduct the bug sweep. The purchase of the biometric locks, which typically work by electronically scanning a person's fingerprint, was spread over two transactions earlier this year of $3,390 and $2,495.

Expenses under $3,500 are not typically listed on a federal contracting website that provides public disclosure of government spending.

EPA employees don't typically deal with government secrets, though the agency does occasionally receive, handle and store classified material because of its homeland security, emergency response and continuity missions.

In an interview last week, security contractor Ed Steinmetz declined to comment on his work for specific clients, citing non-disclosure agreements. He confirmed, however, that $3,000 is his standard rate for a one-day job.

Steinmetz said he specializes in using sophisticated detectors to scan for tiny listening devices hidden in furniture or walls, as well as in other electronic devices such as computer mice or phone chargers. He can also runs checks to see if a phone line is tapped.

"I can't confirm or deny EPA," said Steinmetz, a former police officer who said he has worked as a contractor for about 15 federal agencies. "However, that would be an agency that if you have confidential information being discussed that could negatively impact their operation, they would want to know about it."

Wilcox said that under the Obama administration, then-EPA Administrator Lisa Jackson also had her office swept for listening devices. Wilcox declined to provide the specific details of that spending, including the year and amount.

Asked about the special phone booth in his office during a congressional oversight hearing

earlier this month, Pruitt said the purchase was justified because he needs a secure phone line in his office to communicate with officials at the White House, located just a few blocks away.

None of Pruitt's predecessors installed a similar phone setup.

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Daily Caller

http://dailycaller.com/2017/12/19/report-epas-scott-pruitt-hired-firm-to-sweep-office-for-surveillance-bugs/

Report: EPA's Scott Pruitt Hired Firm To Sweep Office For Surveillance Bugs

By Chris White, 12/19/17

The Environmental Protection Agency (EPA) paid an outside group to professionally examine agency chief Scott Pruitt's office for covert surveillance devices, according to a Monday night report from The Hill.

The EPA paid $3,000 to Edwin Steinmetz Associates earlier this year to do a "sweep for covert/illegal surveillance devices" in Pruitt's office weeks after he became administrator, the report notes. The sweep did not find any bugs.

Pruitt is the first EPA chief to use a 24-hour security detail. The Hill's report, which is based on documents from an unnamed agency employee, comes after reports earlier this year showing the EPA spent $25,000 on a soundproof phone booth for the chief's office, preventing outsiders from eavesdropping on communications.

EPA officials signed a $24,570 contract earlier this summer with sound canceling company Acoustical Solutions for a "privacy booth for the administrator." The agency sought a customized version that Pruitt can use to communicate without fear of being monitored, a Washington Post report from September notes.

Agency officials argue the precautions are necessary, because of the serious threats Pruitt and his family face. EPA's Office of Inspector General, for instance, launched more than 70 investigations into threats against Pruitt and others at the agency, an NBC report from October noted. None of the threats resulted in injuries, but they were deemed legitimate risks to officials.

One former EPA agent said the bug sweep was unusual, but perhaps necessary depending on the kind of threats Pruitt might be facing.

"It doesn't strike me as completely out of left field, but it's certainly not routine, even in the administrator's office," Doug Parker, a former agency official who retired in 2016, told reporters.

"There could be valid concerns," Parker said, pointing to national security-related conversations that sometimes take place at EPA headquarters. "But it is certainly not something that was a routine occurrence in past administrator's offices."

Daily Caller

http://dailycaller.com/2017/12/19/the-renewable-fuel-standard-belongs-on-the-naughty-list/

OPINION: The Renewable Fuel Standard Belongs On The Naughty List

By Philip Rossetti, 12/19/17, 2:01 AM

It's that time of year again: holiday music, festive beverages, and the EPA's release of its latest requirements for blending biofuels with gasoline to meet the Renewable Fuel Standard (RFS). Sadly, the latter is not the wondrous gift we'd been promised: It didn't make us safer, it didn't benefit the environment, it didn't drive down fuel prices—but it did drive up global food prices for everything from corn flakes to dog food. Now, as the United States is the most energy secure it has been since the 1990s, it is time to end this ill-designed and costly policy.

The RFS is a decade-old government requirement that biofuels (mostly from corn-based ethanol) be blended into gasoline. The idea behind the mandate was straightforward: It was a few years after the Sept. 11 attacks, and the U.S. feared that its purchase of foreign oil was an important revenue stream for the very forces America was combating. With oil prices also on the rise, the

idea of being able to replace a portion of oil consumption with home-grown—and ostensibly environmentally friendlier—biofuels was very attractive. Since its inception, however, the program has had a litany of failures and unintended consequences.

In 2007, Congress set requirements for how much biofuel would be blended with gasoline through 2022, and those requirements are still the law of the land today. Unfortunately, when those targets were set it was assumed that production of all biofuels, including corn-based but especially cellulosic fuels (from inedible plant matter) and "advanced" fuels (from waste sources), would take off. But the hoped-for production growth of biofuels, especially advanced ones, never happened—they're just not cost competitive with gasoline.

When there is not enough biofuel to meet Congress' targets, EPA has the authority to set a reduced requirement. The recently released blend requirements for 2018 put cellulosic and advanced biofuels at less than a third of what Congress required. Even including corn-based ethanol, the EPA requirements fell more than 25 percent (or seven billion gallons) short of Congress' expectation. An inadequate supply, and a government policy that inflates demand, has put an upward pressure on biofuel prices, and the high costs are passed on to consumers at the pump.

Blending ethanol into gasoline also raises costs for drivers by decreasing fuel efficiency. Exactly how much more Americans pay at the pump because of the RFS is somewhat disguised by the fact that it takes 1.5 gallons of ethanol to match the energy in a gallon of gasoline. Back-of-the-envelope math suggests that, at current prices, Americans will pay $4 billion more at the pump next year than they would without the RFS.

Moreover, the RFS has had an enormous impact on food prices, since it inflates the demand for corn. Resources for the Future estimates that by 2022, food prices will be 17 percent higher because of the U.S. and E.U. RFS policies.

RFS proponents who had hoped for environmental benefits only get more disappointed with each study. Analyses that fully account for lifecycle pollution from agriculture and biofuel production show that it is not much cleaner than gasoline. One analysis even found that ethanol fuel causes 80 percent *more* pollution than gasoline.

The RFS has also failed as a national security policy. True, gasoline prices and foreign oil imports are relatively low—but that has little to do with the RFS. Fracking has allowed U.S. oil production to increase by nearly 5 million barrels per day. To put that in perspective, at current refinery yields, that is about 36 billion gallons annually of gasoline. It would take an RFS requirement of 54 billion gallons of ethanol to match that energy production – more than double what Congress even hoped for. If anything, the RFS has delayed the realization of those benefits, as it creates a government preference for domestic biofuels over other methods of cutting foreign energy dependence.

Unfortunately, this Christmas carol does not seem headed for a happy ending. The warnings from the Ghost of Christmas Past seem to have fallen on deaf ears, as the Trump Administration has avowed continued support for the RFS and EPA Administrator Scott Pruitt has promised minimal changes to the program. The RFS has offered little benefit to Americans while imposing enormous costs everywhere from the gas pump to the grocery aisle.

It is time for the Renewable Fuel Standard to be held to the same level of accountability and scrutiny as any other failed regulation. It needs to be significantly reformed or ended.

Philip Rossetti is the director of energy policy at the American Action Forum.

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Washington Examiner

http://www.washingtonexaminer.com/epa-appoints-region-head-to-cover-home-of-lead-contamination-crisis/article/2643923

EPA appoints region head to cover home of lead-contamination crisis

By John Siciliano, 12/19/17, 12:25 PM

Environmental Protection Agency Administrator Scott Pruitt appointed Cathy Stepp to become regional administrator for Region 5, which includes the home of the lead contamination crisis in Flint, Mich., the agency announced Tuesday.

Stepp will oversee EPA efforts in Indiana, Illinois, Michigan, Minnesota, Ohio, and Wisconsin.

The Region 5 office has become of critical political importance in recent years after the Flint

drinking water crisis captured national attention during last year's presidential election.

The drinking water crisis in the working-class city north of Detroit also became a focal point in congressional oversight last year and in major spending bill fights. The crisis started after Republican Gov. Rick Snyder appointed a project manager to find more cost-effective ways of supplying water to Flint.

The appointee signed off on a plan to divert the city's water supply from Lake Michigan to the Flint River, which caused the drinking water pipes in the city to corrode, sending large amounts of lead into residents' drinking water.

Stepp is coming from the EPA Region 7 office, where she serves as principal deputy regional administrator. Region 7 serves Iowa, Kansas, Missouri, Nebraska and nine tribal nations.

She previously served in the Midwest region as the secretary of the Wisconsin Department of Natural Resources from 2011 to 2017. She also served as a state senator in Wisconsin.

Pruitt said her experience brings "a fresh perspective to EPA as we look to implement President Trump's agenda."

Susan Hedman, the Region 5 head who served under the Obama administration's EPA, resigned over the Flint water crisis after it was reported that she refused to provide information on the lead contamination crisis after being contacted by the mayor.

Washington Examiner

http://www.washingtonexaminer.com/daily-on-energy-coal-giant-shakes-up-business-groups-over-climate-change/article/2177067

Daily on Energy: EPA'S CLEAN POWER PLAN ACTION SHOWS AGENCY IS 'SERIOUS' ABOUT A REPLACEMENT

By John Siciliano and Josh Siegel, 12/19/17, 11:22 AM

The Environmental Protection Agency took its first step of replacing the Obama-era Clean Power Plan on Monday, initiating a public comment process on new regulations for carbon pollution.

What the EPA did: The EPA issued an advanced notice of proposed rulemaking, which seeks public comment for 60 days "on the proper and respective roles of the state and federal governments" in establishing limits on greenhouse gas emissions.

The move was expected, coming after the EPA earlier this year began the process of repealing the Obama administration's Clean Power Plan.

Why it matters: But it's also significant, says Jeff Holmstead, a former deputy administrator of the EPA in the George W. Bush administration, who notes that critics doubted the Trump administration would be serious about issuing its own rule.

'Serious, substantive' approach: "Today's notice certainly suggests that the Trump folks are serious about coming up with a rule to replace the CPP," Holmstead told the *Washington Examiner*. "It's a very substantive document, and it makes clear that they have spent some time thinking about the key issues that would be involved with a replacement rule. The Trump folks at EPA have decided that they want to focus on regulatory reforms that will be durable."

Legal considerations: Holmstead said the EPA under Administrator Scott Pruitt likely will issue a replacement meant to hold up to legal scrutiny. The Obama Clean Power Plan was stayed by the Supreme Court, and Pruitt said it took too expansive a view of the Clean Air Act.

"By doing a substantive, meaningful replacement rule, they can provide long-term certainty for the industry and also make it clear what EPA can and cannot do under the Clean Air Act," Holmstead said. "This will make it much harder for a future administration to misuse the act, as the Obama administration tried to do with the CPP."

Endangerment finding safe: Pruitt's action also shows the EPA is not planning to challenge the 2009 agency rule known as the endangerment finding, which binds the EPA to regulate emissions of carbon and other greenhouse gases. Critics have suggested Pruitt would seek to have the rule re-evaluated as a mechanism to not issue a regulation to replace the Clean Power Plan.

"If the Trump folks tried to reverse the endangerment finding, this wouldn't be durable," Holmstead said. "It probably wouldn't stand up in court, and it would be easy for a future administration to put the endangerment finding back in place again."

Washington Examiner

http://www.washingtonexaminer.com/the-great-rethink-of-ethanol/article/2643808

OPINION: The great rethink of ethanol

By Wayne Allard, 12/19/17, 12:01 AM

For the first time in years, there is an emerging consensus that the biggest racket in national politics deserves to end.

Earlier this month, Sen. Ted Cruz, R-Texas, and 10 other Republican senators held a luncheon summit at the White House with President Trump with the goal of drastically reforming the Renewable Fuel Standard, the federal mandate that annually funnels $13.5 billion from the

wallets of American fuel and food consumers into the coffers of agribusiness giants.

Before the national nightmare of Obamacare, there was the RFS, the most sweeping and intrusive federal intervention in the American economy undertaken in modern history. Enacted under President George W. Bush in 2005 and expanded in 2007, the RFS requires that biofuels, mainly ethanol, be increasingly mixed with gasoline in greater proportions each year until 2022.

Every November, the EPA is required to announce that it is mandating even higher levels of ethanol in our fuel supply. Recently, the Trump Administration and EPA Administrator Scott Pruitt bravely defied cronyism by freezing the current RFS levels for 2018 — a first step in relieving Americans of this Washington-built burden.

What was the thinking behind this monumental government directive, this freakish experiment in state-planning that arbitrarily picked winners and losers? Its proponents — namely Big Corn and hard-line environmentalists — argued that using more ethanol rather than gasoline would benefit the environment, boost the economy, and bolster national security by reducing our reliance upon foreign oil.

Twelve years later, we have three empty checkmark boxes.

Burning ethanol adds more hydrocarbons to the atmosphere than burning gasoline and, in turn, creates more air pollution. Meanwhile, fertilization from increased corn acreage is driving nitrogen and phosphorus runoff into lakes and streams. Blends excessively high in ethanol are destroying engines and fuel systems while the forced diversion of corn into the fuel markets is raising the cost of food.

Further, American energy independence came about due to the revolution in domestic oil production, and had nothing to do with ethanol or the RFS at all.

There's simply no disputing the RFS has failed to deliver on every single one of its promises.

And yet the biofuel increases have kept coming, despite the fact that Americans are driving less and modern motor vehicles are more fuel efficient. The result of injecting more biofuels into the smaller amounts of fuel being consumed is that in 2016, the overall percentage of ethanol in transportation fuel sold in the U.S. exceeded 10 percent.

With almost all U.S. gasoline now being sold as E10 (10 percent ethanol by volume), according to the U.S. Energy Information Administration, the only way to increase ethanol in the fuel supply is to push the content to 15 percent ethanol (E15) or higher — a 50 percent increase in ethanol compared to E10.

Particularly affected are the consumers whose vehicles and small engines are only engineered to operate on E10, or fuel with no ethanol at all. Motorcycles, marine engines, and lawn mowers cannot perform properly on fuel containing more than 10 percent ethanol. In fact, they can suffer fuel system and engine damage, and their warranties may be voided.

On the other side, a market has sprung up in Renewable Identification Numbers, the certificates refiners must buy if their ethanol output is below the EPA mandate. The biofuel mandates and the RIN market have distorted the U.S. fuel marketplace, and the consumers are the ones who suffer.

Still, the most stunning aspect of the RFS story has been the recent turn by America's leading conservationist organizations against the legislation: Mighty Earth, National Wildlife Federation, American Forests, and Sierra Club, just to name a few.

It's always important to go by the numbers, and the numbers now clearly paint an ugly picture: RFS is not only bad for business, it's terrible for the environment.

When the Left and Right line up against a major federal initiative, you know it's time for serious change. Alongside the tax overhaul, this seemingly wonky reform has the potential to be one of the Trump Administration's signature achievements.

With billions of dollars in payoffs to big agriculture and shameless speculation on RIN certificates by Wall Street titans, the corporate welfare program that is the RFS has become needs to end. There are currently bills in Congress that offer solutions. For those Americans who have been fighting to drain the Swamp, direct your ire at and attention toward the biofuel ruse of the century.

Dr. Wayne Allard, a former U.S. senator, currently serves as the vice president of Government Relations for the American Motorcyclist Association and spokesperson for Rethink Ethanol.

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Talking Points Memo

http://talkingpointsmemo.com/livewire/pruitt-epa-office-checked-surveillance-devices

Pruitt Had His EPA Office Checked For Surveillance Devices in March

By Caitlin MacNeal, 12/19/17

Shortly after Scott Pruitt began as the administrator of the Environmental Protection Agency, Pruitt had his office in the agency's Washington, D.C., headquarters checked for covert surveillance devices, The Hill reported Monday evening.

The EPA paid $3,000 to Edwin Steinmetz Associates to conduct the sweep in March, according to documents obtained and reviewed by The Hill. The person at the EPA who gave the documents to The Hill said that the search did not uncover any devices.

Pruitt has taken unprecedented steps to secure himself and his conversations as EPA

administrator. He has a 24/7 security details with 18 agents, perhaps in part due to the high number of threats he has received. The EPA also spent $25,000 to build a sound-proof booth for Pruitt.

Asked about the sweep for surveillance devices, EPA spokesperson Jahan Wilcox stressed in a statement security decisions are made by the EPA's Protective Service Detail and that at least one previous administrator had a similar sweep done.

"Administrator Pruitt has received an unprecedented amount of threats against him and security decisions are made by EPA's Protective Service Detail," Wilcox said in a statement to TPM. "A similar security sweep was done for EPA Administrator Lisa Jackson."

LA Times

http://www.latimes.com/business/la-fi-pesticide-cancer-20171218-story.html

EPA says herbicide in Roundup weed killer doesn't cause cancer, contradicting California regulators

By Geoffrey Mohan, 12/19/17

The federal Environmental Protection Agency on Monday said glyphosate, the primary ingredient in the weed killer Roundup and one of the most widely used herbicides in agriculture, likely does not cause cancer.

The assessment contradicts the conclusion of a European scientific panel as well as California regulators, who have included the chemical on the Proposition 65 list of probable carcinogens.

Environmentalists worldwide have fought to encourage governments to ban the pesticide.

The European Union in November voted to extend the license of the chemical for five years. EPA will be considering a similar extension of the product's registration for use in 2019, and Monday's draft assessment is a foundational document in that process.

The controversy over the chemical is tied to opposition to genetically modified crops — Monsanto (which is merging with agrochemical giant Bayer) has patented versions of several major commodity crops that have been altered to resist its patented Roundup weed killer.

The Center for Biological Diversity, one of the groups fighting for a glyphosate ban, said EPA had been unduly swayed by the chemical's manufacturer.

"The only way the EPA could conclude that glyphosate poses no significant risks to human health was to only analyze industry studies and ignore its own guidelines when estimating cancer risk," said Nathan Donley, a senior scientist for the group.

The National Association of Wheat Growers, one of several groups suing California over its Proposition 65 decision, said EPA's conclusion further isolates the state, which relied on "unscientific findings" from the World Health Organization's cancer review panel.

Glyphosate is sprayed on more than 200 crops across 4 million acres in California, including 1.5 million acres of almonds, making it the most widely used herbicide, according to the state Department of Pesticide Regulation, a branch of the state EPA.

Chicago Tribune

http://www.chicagotribune.com/suburbs/post-tribune/news/ct-ptb-east-chicago-epa-orders-st-1219-20171218-story.html

EPA orders companies blamed for East Chicago contamination to pay for cleanup

By Craig Lyons, 12/19/17

The U.S. Environmental Protection Agency ordered companies blamed for contamination in East Chicago to take over the cleanup of part of the Calumet neighborhood.

The EPA on Monday announced it filed two unilateral administrative orders against six companies held responsible for the contamination in East Chicago's Calumet neighborhood, which is a part of the U.S.S. Lead Superfund site.

The orders would compel the companies – U.S.S. Lead, Atlantic Richfield Co., DuPont, Chemours, United States Metals Refining Co. and Mueller Industries – to remediate contaminated soil in Zone 2, which runs from McCook to Huish Drive, and do indoor dust cleaning in that area and Zone 3, which runs east of Huish. The EPA said its staff will oversee the contractors the companies hire to do the work.

"We continue to make cleaning up East Chicago a priority, to protect the health and well-being of the residents who live in the impacted areas," said EPA Administrator Scott Pruitt in a statement.

The EPA estimated the companies will have to pay $24 million for the remediation, according to the announcement, and $2.25 million for the indoor dust cleaning.

The new agreements come almost a week after the EPA said the costs to remove contaminated soil from two neighborhoods on the Superfund site could quadruple from what was initially estimated.

The EPA said the cost anticipated for the two residential zones of the Calumet neighborhood are expected to increase from the estimated $22.8 million to an estimated $84.9 million.

The EPA said it based the initial cost estimate on sampling done at 7 percent of the homes in those two residential areas, according to documents, but now that testing has been done at 90 percent of the properties, the data showed more the remediate would require more resources.

The EPA's remediation plan for zones 2 and 3 includes excavation of contaminated soil to a maximum depth of 24 inches; disposal of the contaminated material; and restoring the yards once new soil is filled in, according to EPA documents.

The U.S.S. Lead Superfund site is one of 21 that Pruitt put on a list of sites in need of immediate and intense attention. Pruitt visited East Chicago in April and it was the first Superfund site he had went to after taking office.

Pruitt last week put the U.S.S. Lead Superfund site on a list of 21 sites across the county in need of immediate and intense attention, according to a press release.

"Getting toxic land sites cleaned up and revitalized is of the utmost importance to the communities across the country that are affected by these sites," Pruitt said, in a statement. "I have charged the Superfund Task Force to immediately and intently develop plans for each of these sites to ensure they are thoughtfully addressed with urgency."

Agri-Pulse

https://www.agri-pulse.com/articles/10379-glyphosate-not-likely-to-be-human-carcinogen-epa-says

Glyphosate 'not likely' to be human carcinogen, EPA says

By Steve Davies, 7:04 PM

Glyphosate, the active ingredient in Roundup, the most widely used herbicide in the world, is not likely to cause cancer in humans, the Environmental Protection Agency said Monday.

The agency released a slew of documents examining the chemical's possible human health effects and said it found the "strongest support" for the classification in its cancer guidelines of "not likely to be carcinogenic to humans."

"The agency's (draft) assessment found no other meaningful risks to human health when the product is used according to the pesticide label," EPA's Office of Pesticide Programs said. "The agency's scientific findings are consistent with the conclusions of science reviews by a number of other countries as well as the 2017 National Institute of Health Agricultural Health Survey."

The review looked at "dietary, residential/non-occupational, aggregate, and occupational exposures," EPA said. "Additionally, the agency performed an in-depth review of the glyphosate

cancer database, including data from epidemiological, animal carcinogenicity, and genotoxicity studies."

The latest review is certain to be pounced on by supporters of continued glyphosate use. A coalition led by the National Association of Wheat Growers, for example, issued a statement Monday calling attention to EPA's review.

The coalition is suing the state of California over glyphosate's inclusion on the state's Prop 65 list, which includes chemicals "known to the state to cause cancer or reproductive toxicity."

In its statement, the NAWG coalition said the EPA finding "demonstrates that California based its proposed listing of glyphosate on unscientific findings from a single Lyon, France-based organization – the International Agency for Research on Cancer (IARC)."

IARC released a monograph in March 2015 that concluded glyphosate probably causes cancer in humans, but other regulatory bodies around the world have found otherwise. EPA's own Cancer Assessment Review Committee also found that glyphosate is not likely to cause cancer.

Using data generated by the Agricultural Health Study, a paper published in the Journal of the National Cancer Institute, recently concluded that "no association was apparent between glyphosate and any solid tumors or lymphoid malignancies overall, including (non-Hodgkin lymphoma) and its subtypes."

EPA also said that its draft ecological risk assessment "indicates that there is potential for effects on birds, mammals, and terrestrial and aquatic plants."

The assessments will be used in the agency's registration review for glyphosate. EPA said it plans to propose its interim registration review decision in 2019.

To: AO OPA OMR CLIPS[AO_OPA_OMR_CLIPS@epa.gov]
From: Sorokin, Nicholas
Sent: Mon 12/11/2017 3:23:01 PM
Subject: E&E News: Sources: Trump supports Pruitt's plan to question science, 12/11/17

E&E News

https://www.eenews.net/climatewire/stories/1060068567/search?keyword=EPA

Sources: Trump supports Pruitt's plan to question science

By Robin Bravender, 12/11/17

President Trump has privately said he supports a public debate to challenge mainstream climate science, according to administration officials. But there's infighting about how it should occur — if at all.

The president has told U.S. EPA Administrator Scott Pruitt during several conversations that he supports Pruitt's plan for a "red-team, blue-team" debate aimed at challenging the prevailing scientific consensus about humans' impact on climate change, a senior administration official told E&E News. Another administration official said that "there is support for the initiative at the highest levels."

Pruitt has been pushing the idea of a climate science critique for months, suggesting at one point that it could be a debate that's aired on television. Conservative groups and some Republicans have been eager for the EPA boss to get started; they see the exercise as an avenue to torpedo the so-called endangerment finding that underpins EPA's climate rules.

Pressed by a House Republican last week to offer a timeline for the red team, Pruitt said work on the initiative is "ongoing" but that details could be unveiled as early as next month. "We may be able to get there as early as January next year," he testified.

But the administration isn't unified behind the idea. "Pruitt has not been given authorization to go ahead with red team, blue team; there are still many issues to be ironed out," another administration official said.

It's the latest example of infighting within the Trump administration over high-profile energy and environmental policies. It follows internal clashing earlier this year over whether to exit the Paris climate accord. In that case, Pruitt's camp — the one pushing for withdrawal — came out on top, and Pruitt became the administration's spokesman for the Paris exit.

Trump's public statements — dismissing global warming as a "hoax" invented by the Chinese — indicate that he hasn't bought into the consensus views about climate science and suggest he may welcome such a debate.

A White House spokeswoman did not respond to requests for comment.

EPA spokeswoman Liz Bowman said, "We have nothing to share at this time, and we will share additional details if and when they're available."

Middle ground?

Conservative think tanks and influential Republican donors are anxious to get the process underway.

They contend that critics of mainstream climate science have been marginalized for years, and they see it as a way to undermine EPA's endangerment finding, which is a scientific determination that greenhouse gases threaten public health and welfare.

Some conservatives have been pressuring Pruitt to overturn that finding, but many acknowledge that he'll face a tough court battle if he takes on the finding directly (*Climatewire*, July 18). He's already been criticized by some who fear he won't challenge the endangerment finding. Leaving it intact would make it easier for the next administration to roll out new versions of the climate rules the Trump team is working hard to dismantle.

The red team forum may present Pruitt with a middle ground — a way to appease conservatives who want to discredit the endangerment finding while avoiding legal fights for now.

Bob Murray, the CEO of Murray Energy Corp. who's a key Trump ally on energy issues, said Pruitt told him recently that the red team debate is the first step toward a possible challenge to the endangerment finding.

"They're laying groundwork for it; they want to do this red, blue study, debate on science before we get there," Murray said of the endangerment finding. "I said, 'You need to get it done; if you don't get it repealed, you're going to have this climate agenda forever. It needs to be repealed'" (*Climatewire*, Dec. 1).

Myron Ebell, who led the EPA transition team for the Trump administration, sees the red team as a way to help unravel the endangerment finding.

"What we've been pushing is that the EPA should grant our petition to reopen the endangerment finding, and they should then put out an advance notice of proposed rulemaking," said Ebell, who's the director of the Center for Energy and Environment at the Competitive Enterprise Institute.

EPA should then begin its climate science critique as part of its plan to re-examine the finding, he added. "That would put the exercise in a legal framework that could then be used consequentially."

H. Sterling Burnett, a research fellow on environmental policy for the conservative Heartland Institute, said a red team will allow the administration to "make decisions based upon a fuller, more accurate understanding of the state of climate science."

Once that's done, he said, "there will be little justification for the endangerment finding, then they can safely withdraw it and defend it in court."

The Heartland Institute has been holding closed-door meetings for months to strategize how to push the administration to move ahead with the red team.

Heartland also sent lists of recommendations to EPA for potential members of the red team, according to documents obtained by the Climate Investigations Center and shared with E&E News (*Climatewire*, Oct. 26).

'Self-inflicted wound'

Despite the support from conservative circles, the exercise presents some political perils, and some say the administration and Pruitt would be wise to steer clear.

"I think that there are people in the White House who think we've got a lot of stuff we've got to do, and in the regulatory reform initiatives that we are advancing, we in the White House take incoming fire all the time," said an energy industry lawyer.

"In the case of red team, blue team, we'll be taking incoming fire all right, but it'll be completely voluntary. It'll be like a self-inflicted wound."

One line of attack the administration is already facing is that the operation aims to treat the two sides of the debate as equal. That would give the minority of researchers who question mainstream science a bigger platform.

There are also outstanding questions of who participates and how it would be run.

Pruitt was rumored to be considering Steven Koonin, a former Obama administration energy official, to lead the red team effort. Koonin said in an August interview that he'd consider it if certain conditions were met. His participation would allow Republicans to claim bipartisan

support.

Koonin said in August that he's driven by science, not politics.

"I've got no dog in the fight about whether [climate change] is the greatest catastrophe that's facing the planet or this is a nothing burger," he said. "This is something that is a national issue, and I feel the scientific community has an obligation to see that this is accurately portrayed" (*Climatewire*, Aug. 7).

Some critics of mainstream climate science have said they'll only participate if they see it as a serious effort with researchers they deem credible.

"The big question in my mind is to what extent the Heartland Institute has the ear of Scott Pruitt," said Judith Curry, a former professor at the School of Earth and Atmospheric Sciences at Georgia Tech whose name has been circulated as a possible red team member. She has said that having Heartland's name affiliated with the effort detracts from its credibility.

"I hope this is set up with sensible high-level people who are outside the everyday fray of the debate," she said.

There's also uncertainty about a possible "blue team" that would defend the mainstream science. Scientists may refuse to participate, arguing that it's an insincere effort or a waste of time. And the Trump administration may not want those optics.

The administration could also risk unflattering media coverage from the debate itself. Inflammatory assertions from either side of the debate would undoubtedly generate a flurry of news coverage, which could exacerbate criticisms that the administration isn't doing enough about climate change or generate intense scrutiny of the researchers picked for the red team.

Even some who welcome the debate say it comes with pitfalls.

"It's a very complicated thing, and it has to be gotten right or it won't have credibility and it won't produce a good product," said Ebell.

He doesn't think EPA is the correct agency to lead the charge, he said, suggesting instead that it be situated within the White House Office of Science and Technology Policy, where the president's top science adviser typically works.

But Trump hasn't nominated a leader for his science shop yet. Pruitt, meanwhile, appears eager to get started.

"It's something we hope to do," he told lawmakers last week. "That would be a process where we would focus on objective, transparent, real-time review of questions and answers around the issue of CO2."

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E&E News

https://www.eenews.net/climatewire/2017/12/08/stories/1060068439

Pruitt discredits non-agency science. That claim lost in court

By: Chelsea Harvey, 12/8/17

U.S. EPA committed a "breach of process" when formulating one of its most significant scientific findings of the last decade, Administrator Scott Pruitt said yesterday. It's an argument that's already been presented — and rejected — in a U.S. court of appeals.

Pruitt told members of the House Energy and Commerce Committee that the agency's endangerment finding — its 2009 determination that carbon dioxide emissions pose a threat to public health and welfare — relied on "borrowed" work from the Intergovernmental Panel on Climate Change. He said the finding's overall process had been "short-shrifted."

In fact, the endangerment finding was informed not only by reports from the IPCC, but also from the U.S. Global Change Research Program, U.S. Climate Change Science Program and National Research Council, as well as studies and reports from other independent research groups.

Avi Zevin, an attorney at New York University School of Law's Institute for Policy Integrity, pointed out that a similar criticism was presented several years ago in court, where it was rebuffed.

In 2012, the U.S. Court of Appeals for the District of Columbia Circuit rejected a variety of arguments — presented in the case Coalition for Responsible Regulation Inc. v. EPA — by industry groups and others who challenged the endangerment finding and a series of EPA rules it helped inform. Among these was the argument that EPA had "improperly delegated its judgment" to the IPCC and other organizations whose assessments of climate science helped inform the endangerment finding.

In its decision, the court responded that "this argument is little more than a semantic trick."

"EPA simply did here what it and other decision-makers often must do to make a science-based judgment: it sought out and reviewed existing scientific evidence to determine whether a particular finding was warranted," the judgment stated, adding that it's common for such decisions to rely on large syntheses of scientific studies, of the type produced by the IPCC.

"This is how science works," the decision added. "EPA is not required to re-prove the existence of the atom every time it approaches a scientific question."

The concept of the endangerment finding was born in 2007, when a Supreme Court ruling instructed EPA to determine whether greenhouse gas emissions pose a threat to human health or the environment. A version of the endangerment finding was first presented to the George W. Bush administration, although it was not made official until 2009 under the Obama administration.

Since then, the endangerment finding has formed the cornerstone of EPA's climate-related regulations, including the Clean Power Plan. In the last year, conservatives have urged the Trump administration to challenge the finding, noting that it could still serve as the underpinning for future climate-related rules.

Pruitt has not indicated whether he will attempt to overturn the finding. But his comments yesterday mark at least the second time he's leveled the same criticism against it — that its reliance on scientific literature from the IPCC is an unprecedented decision that undermines the integrity of its conclusions.

"There was something done in 2009 that in my estimation has never been done since and not done before that event, where they took work from the U.N. IPCC and transported it to the agency and adopted that as the core of the finding," Pruitt said yesterday. "So there was a breach of process that occurred in 2009 that many believe was not handled the proper way."

In an October interview with Time, he also suggested that the decision "really draws into question, did this agency engage in a robust, meaningful discussion with respect to the endangerment that CO2 poses to this country?"

While it's unclear if Pruitt will challenge the endangerment finding, Zevin noted that attempting to use this argument as a legal justification for overturning the finding would likely be "an uphill battle," since it's already been addressed by the D.C. Circuit. It's possible that such an argument could be brought again in the future and appealed all the way up to the Supreme Court, he noted — but states and industry groups attempted this several years ago, and the Supreme Court rejected their petition.

"EPA makes scientific judgments all the time that are based on research that it did not conduct — peer-reviewed research that it reviews and then uses as the basis for lots of scientific determinations," Zevin said.

IPCC reports, specifically, may not have been commonly referenced before the endangerment finding. But it's common for federal agencies to base their decisions on a range of scientific information available to them. In fact, EPA's own guidelines for the dissemination of information — the same guidelines it was required to follow when preparing the endangerment finding — notes that the agency may use relevant external studies and reports to inform its decisionmaking.

Given that the IPCC is generally considered the global authority on climate science, it could be argued that excluding IPCC reports from proceedings related to the endangerment finding would have been unusual. And in any case, while EPA does conduct its own science, it's not the federal agency known for the type of atmospheric studies necessary to inform a determination about greenhouse gas emissions. That research is most often conducted by NASA or NOAA.

Still, Pruitt has reiterated his plan to organize a "red team, blue team" exercise aimed at challenging the mainstream consensus on climate science. It's an idea he's been discussing for months, with the encouragement of conservative organizations like the Heritage Foundation — and at yesterday's hearing, he suggested that mishandling of the endangerment finding process is an example of why it's needed.

"I think one of the most important things we can do for the American people is provide that type of discussion, because it hasn't happened at the agency," he said. "As I indicated, the agency borrowed the work product of a third party, and we need to ensure that that discussion occurs, and it occurs in a way that the American people know that an objective, transparent review is taking place."

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Politico

https://www.politicopro.com/energy/story/2017/09/repeal-and-replace-approach-to-epa-climate-rule-may-disappoint-trump-base-161885

Repeal and replace approach to EPA climate rule may disappoint Trump base

By: Emily Holden, 9/14/17, 5:01 a.m.

The Trump administration is leaving the door open to replace former President Barack Obama's landmark climate regulation for power plants — a move that would fall short of conservatives' calls to erase it all together

A mend-it-don't-end-it approach from the Environmental Protection Agency on Obama's 2015 rule could appease power companies that say they need some kind of EPA regulations — albeit much weaker ones — to save them from years of legal uncertainty. But it might not satisfy the demands from some conservative activists, who have pressured EPA Administrator Scott Pruitt to reject the entire idea that climate change is a problem requiring federal action.

The agency is aiming by early October to issue a proposal to undo the Clean Power Plan, along with a separate advance notice of its intent to consider a replacement, a source close to the process told POLITICO.

That approach still leaves a wide array of options on the table — including ultimately deciding against a new rule — and it could allow Pruitt to stretch out the process for several more years without ultimately resolving how the agency should address the greenhouse gas emissions from power plants, one of the largest contributors to human-caused climate change.

The Clean Power Plan encouraged the power sector to shift away from coal and toward natural gas and renewable power, an approach that Obama's critics said exceeded EPA's authority under

the Clean Air Act. At a minimum, Trump's EPA would likely seek to limit any replacement to require only the negligible carbon emissions reductions that could be achieved at coal plants themselves, without prodding states and utilities to replace those facilities with cleaner generation.

The details about how to begin unraveling Obama's climate regulations could have political implications for Pruitt, who is widely seen as a potential candidate for the U.S. Senate in his native Oklahoma. Repealing the power plant rule was an explicit campaign promise for President Donald Trump, who has dismissed man-made climate change as a "hoax."

For now, conservatives appear willing to give Pruitt the benefit of the doubt because he is walking a legal tightrope and could still decide to take aim at EPA's underlying obligation to regulate carbon emissions. The D.C. Circuit Court of Appeals has agreed to keep litigation over the Clean Power Plan on hold through Oct. 7, but judges warned Pruitt last month that EPA is dodging its legal obligation to regulate carbon by failing to outline its next steps on the rule.

Myron Ebell, the climate skeptic who led EPA's transition team, has pushed for Pruitt to fight the agency's "endangerment finding" that it must address climate change. But he said a replacement rule might be an "adequate stopgap."

He said if the courts ultimately find that a coal-plant focused rule isn't enough to fulfill EPA's legal obligation, then "in order to keep the president's promise that we're going to get rid of these economically destructive rules, the only alternative they will have is to reopen the endangerment finding."

Challenging that finding, which determined that heat-trapping gases like carbon dioxide were a public health threat, would mean fighting climate change science, and most lawyers say it is a losing battle. The Obama administration issued the endangerment finding in 2009, two years after the Supreme Court told EPA to determine its role in fighting climate change.

Tom Pyle, a conservative lobbyist with the American Energy Alliance who led Trump's Energy Department transition team, said he would prefer a straight withdrawal of the Clean Power Plan but wouldn't oppose a replacement rule.

"Ultimately, the responsibility to fix this mess lies with the Congress, so until they act, the only thing the Administration can do is minimize the damage," Pyle said via email.

But EPA would be on much shakier legal ground if it just refused to regulate carbon dioxide from power plants, the nation's largest source of greenhouse gas pollution.

EPA wants to move to collect comments about whether to write a new regulation, and is likely to write a new rule, multiple sources said.

Any replacement would be based on a narrow interpretation of EPA's authority and is unlikely to make a meaningful dent in carbon levels — unlike Obama's version, which pledged to cut the power industry's carbon pollution as much as 32 percent below 2005 levels by 2030.

Opponents of the Clean Power Plan have also argued that the rule is illegal because EPA had already regulated coal plants under a different section of law. EPA could still make that argument while proposing to withdraw the plan and invite comments on the idea in its notice of a potential replacement.

Environmental groups are expected to sue no matter which path Pruitt and Trump take.

"There would be very intense protests to rescinding the Clean Power Plan and replacing it with nothing indefinitely, which is what this would be," said Sean Donahue, a lawyer at Donahue & Goldberg who represents environmental groups defending the Clean Power Plan in court.

EPA is planning to issue an Advance Notice of Proposed Rulemaking (ANPR), the first step toward issuing a replacement for the Clean Power Plan, according to the source familiar with the process. But that route leaves many options open.

Kevin Poloncarz, a lawyer with the firm Paul Hastings who represents energy companies supporting the Clean Power Plan, said the notice could be "fairly nondescript" and could suggest a replacement rule or ask for feedback on whether EPA can legally regulate power plants under the section of the Clean Air Act that the Obama administration used.

If EPA simply rescinded the Clean Power Plan without announcing plans to consider a replacement, Poloncarz said power companies could face nuisance lawsuits.

Issuing the notice could be a compromise position. While it's in place, "the industry should feel some degree of comfort that they're insulated from those lawsuits," Poloncarz said.

States like New York could still take court action against EPA if the agency is taking too long or questions its own authority on greenhouse gases, he added.

It's not unusual for an agency to take years to follow up on an ANPR. EPA took about six years to issue its draft Clean Power Plan in 2014.

"The entire point of ANPR is to help agencies decide which course they want to pursue where there are multiple options," said Tom Lorenzen, a partner at Crowell & Moring who represents electric cooperatives challenging the Clean Power Plan.

"I think one purpose of an ANPR would be to send a message to the court that EPA is thinking about what comes next," he added.

Lorenzen said an ANPR could suggest a replacement rule or argue that any regulation is illegal because the agency has already regulated power plants under Section 112 of the Clean Air Act.

Several attorneys noted that Bill Wehrum, the lawyer nominated to run EPA's air office, has represented power industry clients who likely would back a replacement rule because they consider regulation to be inevitable.

Most utilities assume a future regulation or law will require them to curb carbon emissions, even if Trump's EPA rescinds the Clean Power Plan.

Even coal-heavy power companies have said they support EPA issuing a replacement rule.

AEP, a Midwestern power company that gets slightly less than half of its electricity from coal, would back a new proposal "consistent with the EPA's authority under the Clean Air Act," spokeswoman Tammy Ridout said.

In 2005, 70 percent of AEP's power came from coal, but the company has been intentionally shifting toward renewable power and lower-carbon natural gas.

"We think that future regulation of carbon emissions from power production is likely, and could provide additional planning certainty," Ridout said.

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