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Monday, November 25, 2013

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**1 - Groups To Seek High Court Review Of Ruling On EPA Haze Plan Discretion, Inside EPA, 11/23/13**
http://insideepa.com/201311222453760/EPA-Daily-News/Daily-News/groups-to-seek-high-court-review-of-ruling-on-epa-haze-plan-discretion/menu-id-95.html
Oklahoma and utilities plan to seek Supreme Court review of a precedent-setting appellate court ruling that backed EPA's power to reject state's regional haze air quality plans if they do not follow agency guidelines, with the groups saying the ruling's "substantial" implications for federalism in part warrant the high court taking the case.

**2- ANALYSIS-U.S. air pollution authority faces Supreme Court tests, Chicago Tribune, 11/24/13**
http://www.chicagotribune.com/sns-rt-usa-courtairpollution--analysis-20131124,0,7586231.story
The U.S. government's authority to regulate air pollution nationwide, often against the wishes of Republican-leaning states, could face new curbs when the U.S. Supreme Court takes on two high-stakes cases in coming months.

**3 - Proposed salt-dome regulations under fire, Baton Rouge Advocate, 11/25/13**
http://theadvocate.com/news/ascension/5366499-123/proposed-salt-dome-regulations-coming-under
At least a dozen salt-dome caverns in Louisiana are as close to the edge of their supporting underground formations as the one that collapsed last year and caused the yawning sinkhole in Assumption Parish.

**4 - Lost bayou recreated in one of largest floodplain projects, Baton Rouge Advocate, 11/24/13**
http://theadvocate.com/home/7576148-125/lost-bayou-recreated-in-one
The Nature Conservancy recently finished a project that re-created the Mollicy Bayou along its historical route. Completed in October, the 2.5-mile reconstructed bayou once again connects the interior of the property to the river and is the latest step in one of the largest floodplain restoration projects in the country, encompassing 25 square miles of floodplain.

**5 - No more study; just ban plastic bags (opinion), San Antonio Express-News, 11/22/13**
http://www.mysanantonio.com/opinion/commentary/article/No-more-study-just-ban-plastic-bags-5003341.php
Banning thin film plastic carryout bags is not “a complex issue that deserves close study by City Council” but an issue that has been studied exhaustively around the state, indeed the world, and bans are winning the debate.

**6 – Editorial: EPA sensibly pulls back on federal ethanol mandate, Dallas Morning News, 11/24/13**
http://www.dallasnews.com/opinion/editorials/20131124-editorial-epa-sensibly-pulls-back-on-federal-ethanol-mandate.ece
It’s not entirely coincidence that the alcohol in your adult beverage and the ethanol in your gas tank are so similar in structure. After all, if one drink was no problem and two even less, a third or fourth really would get this party started.

**7 - In Texas water contamination case, the fire still burns, E&E News, 11/25/13**
http://www.eenews.net/energywire/stories/1059990957/
Steve Lipsky can light his water on fire. It's been said more than once, by people who should know, that he can't do this. But, earlier this month, in the shadow of his 12,000-square-foot house outside Fort Worth, he set a barbecue lighter next to the pipe from his water well and ignited a fist-sized dagger of flame atop the stream.

**8 - Strong Rules on Fracking in Wyoming Seen as Model, New York Times, 11/22/13**
http://www.nytimes.com/2013/11/23/business/energy-environment/wyomings-strong-fracking-rules-may-be-a-model.html?_r=2&
In energy-friendly Wyoming, oil and gas companies are getting a clear message: Drill, baby, drill — but carefully.

**9 - House clears drilling, fracking bills, Politico, 11/22/13**
http://www.politico.com/morningenergy/1113/morningenergy12297.html?ml=ae_l
The House yesterday passed two bills aimed at speeding up oil and gas permitting on federal lands and potentially blocking Interior Department fracking regulations, the first two of a trio of energy bills the House is taking up before flying home for Thanksgiving.

**10 – Intel undergoing new permit process, Albuquerque Journal, 11/24/13**
http://www.abqjournal.com/307147/riowest/intel-undergoing-new-permit-process-plant-designated-major-source-of-greenhouse-gases-source.html
The Intel plant near Rio Ranch is seeking a new air quality permit to meet federal standards for greenhouse gas emissions, New Mexico Environment Department Air Quality Bureau representatives said at a meeting in Corrales on Wednesday.

**11 - San Juan output dwindles, Albuquerque Journal, 11/25/13**
http://www.abqjournal.com/308348/biz/san-juan-output-dwindles.html
Natural-gas production in northwestern New Mexico's San Juan Basin is still in frank decline because of stubbornly low prices for dry gas.

**12 – Filibuster change clears path for Obama climate regs crackdown, The Hill, 11/23/13**
http://thehill.com/blogs/e2-wire/e2-wire/191251-filibuster-change-clears-path-for-obama-climate-regulations
Green groups might be the biggest winners from Senate Democrats' decision to gut the minority party's filibuster rights on nominations.

**13 – EPA Findings On NOx Health Effects May Bolster Push For Stricter NAAQS, InsideEPA, 11/23/13**
http://insideepa.com/201311222453863/EPA-Daily-News/Daily-News/epa-findings-on-nox-health-effects-may-bolster-push-for-stricter-naaqs/menu-id-95.html
EPA's new draft review of the latest research on nitrogen oxides (NOx) emissions shows health harms at exposure levels far below existing regulatory limits and finds stronger associations between NOx exposure and adverse effects, which could provide a boost to environmentalists who have called for a stricter federal NOx air standard.

**14 – Warsaw Climate Talks Close with General Agreements in Main Areas; Details to Come, BNA, 11/23/13**
http://esweb.bna.com/eslw/lpages/lpages.adp?pg=breaking_news&bn_product=deln#urn:bna:a0e3p6g8p7
UN climate talks in Warsaw dramatically closed with a flurry of activity Nov. 23, producing a hard-fought agreement on "loss and damage" and a working deadline for countries to submit post-2020 emissions reduction targets.

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Daily News

# Groups To Seek High Court Review Of Ruling On EPA Haze Plan Discretion

**Posted: November 22, 2013**

Oklahoma and utilities plan to seek Supreme Court review of a precedent-setting appellate court ruling that backed EPA's power to reject state's regional haze air quality plans if they do not follow agency guidelines, with the groups saying the ruling's "substantial" implications for federalism in part warrant the high court taking the case.

The groups, in a Nov. 6 motion, ask the U.S. Court of Appeals for the 10th Circuit to stay its mandate that finalizes the ruling pending a bid for the Supreme Court to review the case and its precedent -- which the 8th Circuit adopted in a recent ruling, and the 9th Circuit could consider in a pending lawsuit over Arizona's regional haze plan.

Oklahoma Attorney General Scott Pruitt (R), Oklahoma Gas & Electric (OG&E) and manufacturers say in the motion that the 10th Circuit's ruling in *State of Oklahoma, et al. v. EPA, et al*. deferring to the agency is contrary to the "unprecedented State-Federal partnership role established by Congress for regional haze," adding that the federalism issues raised in the case will provide "substantial incentive for the Supreme Court to take this case."

But EPA counters in a Nov. 15 reply that the groups are only trying to delay a compliance deadline to cut emissions by an additional six months, saying Oklahoma and OG&E have failed to show their petition will present a "substantial question" that is likely to merit the Supreme Court agreeing to review the case.

EPA's regional haze program requires states to craft state implementation plans (SIPs) outlining the air pollution controls they will impose to cut industrial sources of haze-forming emissions and help restore visibility in national parks and wilderness areas. The Clean Air Act requires controls to meet a standard of best available retrofit technology (BART), and if EPA deems SIPs inadequate it can reject them and impose a federal haze plan.

In *State of Oklahoma,* EPA rejected Oklahoma's SIP that would have only required four coal-fired power plants to continue to burn low-sulfur coal, a practice the plants were already employing to cut emissions of sulfur dioxide. In its rejection, EPA said that state air regulators and the utility had overestimated the costs of installing sulfur scrubbers when they determined what was BART and imposed a federal implementation (FIP) plan for haze.

During briefing in the appellate case, Oklahoma and industry argued that because haze is an "aesthetic" issue based on visibility, Congress intended for states to have the primary responsibility to craft plans to limit haze-forming emissions, in which EPA could not second-guess state determinations on what constitutes BART.

But a three-judge panel on the 10th Circuit found in July in a 2-1 decision that the haze program functions just like the rest of the Clean Air Act, where although states have primary authority to craft air quality plans, EPA can reject plans that do not meet federal requirements. EPA had found Oklahoma failed to follow agency guidelines, which then allowed the agency to impose a FIP that mandated installing the scrubbers within five years, which the 10th Circuit upheld.

The 10th Circuit Oct. 31 denied requests from the state and industry to rehear *Oklahoma*, prompting the latest move to appeal the case to the Supreme Court, in which the deadline for filing the petition for *certorari* is in January.

**Court's Mandate**

In the Nov. 6 motion outlining the groups' plans to seek high court review, they ask the court to stay issuance of its mandate pending the filing of a petition for writ of *certiorari* for the Supreme Court to take the case -- a decision that if the D.C. Circuit grants would withhold implementation of the decision that EPA's FIP was valid.

Regardless of whether the court delays the mandate pending high court review, the groups want the court to clarify that the 10th Circuit's stay of the FIP remains in place until the issuance of the mandate.

If the court were to agree to both requests, OG&E would be able to delay the ultimate deadline for installing scrubbers on the coal-fired units, even if the Supreme Court rejected the case.

OG&E, through the *Oklahoma* litigation, has delayed the sulfur scrubber compliance deadline in the FIP by more than a year through the litigation, according to an Aug. 27 letter to the company from EPA.

Pruitt in Nov. 14 testimony to a House Energy & Commerce Committee hearing underscored the precedent of the 10th Circuit decision, saying, "At stake is the ability of Oklahoma and other states to develop and implement state-based solutions. The EPA exceeded its authority when it denied the state's plan to address regional haze."

EPA, in its Nov. 15 motion, says Oklahoma and OG&E have failed to show they have a "reasonable probability" in prevailing in the Supreme Court that would merit staying the mandate, as the agency says the 10th Circuit opinion aligns with Supreme Court precedent, and that there is no split between circuit courts on the issues in the case.

The agency also takes issue with the claim from Oklahoma and OG&E that there is no urgency to install the sulfur scrubbers because haze is "aesthetic-based," noting sulfur dioxide's well-known link to particulate matter and adverse health effects. EPA says that even absent a stay, other facilities have been able to install sulfur scrubbers in three years or less, meaning that "even absent a stay, OG&E could wait more than a year -- until Feb. 23, 2015 -- to begin installation, which would provide enough time to wait for Supreme Court to decide whether to grant certiorari.

Nevertheless, the groups say there is "good cause" to stay the mandate because there is "strong possibility that Petitioner's petition for *certorari* will be granted by the Supreme Court," and there would be no purpose of issuing a mandate. They also say that because haze is "aesthetic-based and not health-based," a delay is "plainly warranted."

The 10th Circuit, in its July 19 opinion, said the court's stay on the compliance deadline in the FIP "is hereby lifted." EPA Region VI Association Director of Air Thomas Diggs, in an Oct. 30 letter to OG&E, says that based on that opinion, the agency views the court's decision "as having immediate effect," and say that if the utility believed otherwise, it should have raised that issue in its petition for rehearing.

But Pruitt and OG&E, in the Nov. 6 motion, say that until the mandate is issued, "the Court's decision, including the lifting of the stay, is not final, and the Court retains jurisdiction to take further action." The motion says if the stay on the FIP was lifted immediately with the ruling, OG&E would have to start work to install the sulfur scrubbers immediately, even while the court considered the petitions for rehearing, which "makes no practical sense and is contrary to the legal significance attached to the issuance of the mandate."

Meanwhile, North Dakota and others have missed the deadline to appeal an opinion made on similar grounds in *State of North Dakota et al. v EPA et al,* where the 8th Circuit cited *Oklahoma* as precedent in its decision backing EPA's authority to reject state haze plans that fail to follow EPA guidelines on estimating costs. The court issued its mandate in the case on Nov. 14. -- *Chris Knight (*cknight@iwpnews.com*)*

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## ANALYSIS-U.S. air pollution authority faces Supreme Court tests

Reuters

10:02 AM CST, November 24, 2013

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* Cases concern air pollution, greenhouse gas permits

* Question is not what EPA can regulate, but its use of Clean Air Act

* Outcome will not directly affect Obama's Climate Action Plan

By Lawrence Hurley and Valerie Volcovici

WASHINGTON, Nov 24 (Reuters) - The U.S. government's authority to regulate air pollution nationwide, often against the wishes of Republican-leaning states, could face new curbs when the U.S. Supreme Court takes on two high-stakes cases in coming months.

The cases focus on the broad-ranging power wielded by the U.S. Environmental Protection Agency (EPA) under the landmark Clean Air Act, first enacted in 1970.

The law was envisioned as a cooperative effort between the federal government and states in which the EPA sets standards but states have to set plans to comply.

That flexibility has allowed states which favor looser regulations, like Texas and Kansas, to resist - with the support of industry groups like the U.S. Chamber of Commerce and the National Association of Manufacturers - when the agency wants to impose more stringent standards.

In both cases before the conservative-leaning Supreme Court, mainly Republican-led states and industry groups have challenged different EPA regulations, in the hope of weakening the agency's authority. The EPA has support from Democratic-leaning states, like Massachusetts and New York, and from environmental groups.

"It would be both a big deal and somewhat unsurprising if

EPA loses both Clean Air Act cases," said Richard Frank, an environmental law professor at the University of California at Davis School of Law. Such rulings would reflect a dilution of the deference that courts generally show government agencies in interpreting statutes, he added.

The cases do not challenge whether the EPA can regulate pollutants, such as greenhouse gases, but instead how it uses the Clean Air Act to regulate a wide range of them.

The EPA's authority to interpret the statute broadly is vital to its mission in the face of resistance from Republicans and a handful of Democrats in Congress and some state governments. In the climate change context in particular, the Clean Air Act is the EPA's main tool for tackling greenhouse gas emissions after the U.S. Senate rejected a cap-and-trade bill in 2010.

The Supreme Court rulings are unlikely to have a direct impact on President Barack Obama's sweeping Climate Action Plan, which was unveiled in June, legal experts say, in part because the EPA will be using its authority under parts of the law not at issue in the cases. But decisions against the EPA could pose obstacles to the way it rolls out its rules.

In the first case, to be argued on Dec. 10, the nine justices will consider the legality of a rule that regulates air pollution that crosses state lines.

The second case, expected to be scheduled for oral argument in February, concerns a challenge to the Obama administration's first wave of regulations targeting heat-trapping greenhouse gases.

The court is due to issue rulings in both cases by the end of June.

INTER-STATE POLLUTION

The EPA's Cross-State Air Pollution Rule, meant to take effect in January 2012, would have set limits on nitrogen oxides and sulfur dioxide from coal-fired power plants in 28 states that emit pollutants in the eastern part of the country that directly affect air quality in other states, generally referred to as "upwind states."

An alliance of industry groups and 15 states, in addition to companies like Southern Co, Peabody Energy Corp and American Electric Power Inc, challenged the rule, and it was never implemented. The U.S. Court of Appeals for the District of Columbia Circuit determined in August 2012 that the

rule was invalid on multiple grounds.

Under the worst-case scenario for the government, the Supreme Court could weaken the EPA's power to bring recalcitrant states into line, legal experts said.

In the Obama administration's petition asking for Supreme Court review of the cross-state rule, Solicitor General Donald Verrilli said that if the D.C. Circuit decision stood, it would "gravely undermine" enforcement of the Clean Air Act, delaying the ability of downwind states to comply with air standards and making it nearly impossible for those states to meet deadlines.

A ruling against the EPA could also encourage states to resist other EPA proposals.

"If the Supreme Court pushes back against the EPA and says the EPA has to give the states the first chance to address the problem, that gives the states more leverage," said Jonathan Martel, a partner at law firm Arnold & Porter LLP, who represents business interests in air pollution cases.

CLIMATE CHANGE RULES

In the climate change case, the Supreme Court agreed last month to consider a single question of the many raised by nine different coalitions of industry groups, such as the American Petroleum Institute, and 16 states, including Texas and Virginia. They appealed a June 2012 ruling by the appeals court in Washington upholding the first suite of EPA rules aimed at tackling climate change.

The justices will weigh only whether the agency has authority to regulate greenhouse gases under a permitting program for stationary sources of pollution.

A loss for the EPA could remove a whole category of pollutants, not just greenhouse gases, from the so-called "prevention of serious deterioration" or PSD program, which requires any new or modified major polluting facility to obtain a permit before any new construction is done if it emits "any air pollutant."

Under the program, the operators have to show that they are using the best available technology available to reduce emissions of the covered pollutants.

It may not be all bad news for the EPA. The court passed up a chance to review the agency's determination that greenhouse gases, the driving force behind climate change, are a pollutant that needs to be regulated under the Clean Air Act.

Wins for the EPA in both cases would not, however, lead to any major shift in the law in its favor, experts say.

"Everything continues to be hard work" for the EPA, said Sean Donahue, an attorney who represents the Environmental Defense Fund. "There's tremendous resistance at every turn."

(Reporting by Lawrence Hurley and Valerie Volcovici; Editing by Ros Krasny, Howard Goller and Nick Zieminski)

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# Proposed salt-dome regulations under fire

**By David J. Mitchell**
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At least a dozen salt-dome caverns in Louisiana are as close to the edge of their supporting underground formations as the one that collapsed last year and caused the yawning sinkhole in Assumption Parish.

Advocate Staff Photo by BRAD BOWIE -- The Cargill Plant as seen on Thursday afternoon in Breaux Bridge.

Data collected by the state in response to the sinkhole also shows those 12 caverns, along with 15 others, would violate proposed rules mandating a buffer zone of sorts for future caverns to help ensure they are structurally sound.

The Texas Brine Co. cavern that caused the sinkhole was mined too close to the outer edge of a salt formation called the Napoleonville Dome, which left a relatively thin wall of salt between the cavity and less stable outer rock.

Scientists believe that salt cavern wall failed, causing a subsurface scrambling of rock that created the sinkhole and freed oil and natural gas from underground deposits.

Marylee Orr, executive director of the Louisiana Environmental Action Network, said the number of caverns within the proposed buffer zone is a concern because a problem with just one of them can be catastrophic. She said the state's proposed rules need to be even tighter and more protective of the public and the environment.

"I think we need to be cautious because if there is a problem, it is not a small problem, ... you know what I mean?" Orr said. "It is very impactful to the community, and, I believe, to their health."

But state officials say there is no indication elsewhere of problems similar to those that caused Texas Brine's Oxy Geismar 3 cavern to collapse.

"To date no other cavern facility has been found to demonstrate the type of warning signs that would indicate impending structural failure of the nature experienced by Texas Brine's Oxy Geismar 3," said Patrick Courreges, communications director for the state Department of Natural Resources.

Salt-dome caverns are important to industry in Louisiana, either for the brine created by mining them or for the storage capacity they offer when emptied of the brine.

The Texas Brine cavern collapse — which forced the ongoing evacuation of many homes near the sinkhole because of flammable gas bubbling up through aquifers — prompted DNR's Office of Conservation to rewrite rules.

Courreges said that while there have been no signs of problems with other caverns, the Office of Conservation is playing it safe because of the possible risk.

The changes would apply to caverns used to make brine, such as Texas Brine's, as well as those used to store gas and other flammable hydrocarbons.

The proposals include a new 300-foot minimum safety distance from what is called the "edge of salt," along with new requirements for long-term monitoring of some caverns.

After the Texas Brine collapse, the state required salt-dome operators to show how close the 256 caverns in Louisiana are to the edge of the salt formations that, in essence, house them.

In all, 27 caverns are closer than the proposed 300-foot minimum distance for future caverns, according DNR data compiled at The Advocate's request.

Under the proposed regulations, the six that are 100 feet or closer to the edge of salt would be permanently closed, with long-term monitoring established. Five of the six are already inactive or plugged.

Operators of the remaining 21 caverns between 100 feet and 300 feet from the edge of salt would have a year to demonstrate they can continue to be operated safely.

Many of those are no longer active.

**Some worry, some don't**

The 12 caverns within 150 feet of the edge of their salt formations — the estimated distance of the failed Texas Brine cavern — are spread primarily across south Louisiana in eight domes, which are huge underground formations of solid salt. Those domes stretch from Sulphur to Breaux Bridge to the swamps of southeastern Ascension Parish.

Kenneth Carmouche and his wife, Christine, watched the Bayou Corne sinkhole in the news and sometimes talked about the salt dome about a half-mile south of their home in the Anse La Butte community between Breaux Bridge and Lafayette.

The nearby Anse La Butte Dome contains a Cargill mining operation used to produce pharmaceutical and food-grade salt and an Enterprise Products liquefied petroleum gas storage complex.

New industry-submitted data indicate four caverns in the dome are within the proposed 300-foot minimum. One of those, operated by Cargill, is 130 feet from the edge of salt, 20 feet closer than the Texas Brine cavern was thought to be.

Kenneth Carmouche said he worries about companies continuing to remove material from the earth without backfilling the empty space.

“I mean, if you take something out and you don’t put nothing in, something’s going to happen,” he said. “Now, it might not happen tomorrow or the day after. Something’s going to happen. Just, I mean it’s common sense. You take air out of a tire, it’s going to go flat.”

But Pamela Alex, who lives nearby on Salt Mine Highway, is less concerned. Alex, 48, a housekeeper, has lived in the community her whole life and heard the old-timers speaking Creole French that renders Anse La Butte into “Anz La Bit.”

“We’ve always lived here, and there’s never been a problem,” she said.

Rick Rainey, an Enterprise spokesman, said the company is operating within existing rules, adding that its caverns are structurally safe.

Mark Klein, a Cargill spokesman, said none of his company’s three caverns within the buffer zone are currently being used. Two are plugged and stable, and the remaining one, which is closer to the edge of salt than the Texas Brine cavern, is inactive and being monitored. It too is structurally sound, he said.

Two other salt domes in populated areas with caverns close to the edge of salt are the Pine Prairie Dome in Evangeline Parish and the Sulphur Mines Dome in Calcasieu Parish.

Homes in the Easton community are scattered along the east side of the Pine Prairie Dome and are mixed with the infrastructure of an oil and gas field. The new DNR information shows two liquefied petroleum gas storage caverns are within 150 feet of the salt edge. One is active. The other has been out of service since 1996.

Targa Midstream Services, which operates the caverns, did not respond to requests for comment but has told DNR that both caverns have passed safety tests.

Liz Hill, Evangeline Parish director of homeland security and emergency preparedness, said the Targa caverns don’t cause much of a stir in Easton, where many people work in the industry and live near oil and gas wells and pipelines.

“Kids grow up riding their bikes right in front of them,” she said. “People that live in the Easton area usually have grown up with it.”

The Sulphur Mines salt dome, where extraction of oil, gas, brine or sulphur has gone on since the late 1860s, has five caverns within the proposed 300-foot minimum. Some homes dot the area south of the salt dome. The dome contains the cavern that is the closest to the edge of its formation, at 20 feet, according to DNR.

The cavern was plugged in July 2012. In March, the owner, Axiall Corporation, reported

to DNR that the cavern and three others it operates there within the proposed 300-foot minimum are structurally sound.

Other caverns that are closer than 150 feet to the edge of salt include four in the Bayou Choctaw Dome, which lies under swamps in Iberville Parish northwest of Plaquemine.

One cavern there, operated by the nation's Strategic Petroleum Reserve, is only 60 feet from the boundary of its salt formation.

Concerns about the cavern's thin salt wall had been raised since the early 1980s. In 2011, before the Bayou Corne sinkhole emerged, the federal agency decided to drain the cavern because of concerns about oil leaking, citing the agency's own safe minimum distance standard of 300 feet.

Strategic Petroleum Reserve spokesman James Quern said the agency last month finished pumping oil from that cavern into a nearby one. The now-empty cavern, which shows no structural problems, will be continually monitored, he added.

**Proposed rules stir debate**

Environmentalists, some Bayou Corne residents and others fighting a proposed gas storage cavern expansion at the Jefferson Island Dome under Lake Peigneur in Iberia Parish plan to speak at a public hearing Tuesday on the proposed regulations.

Some find the minimum-safe-distance rules inadequate, while others don't see enough protections for people affected by failed storage and brine caverns. They also want the state to require environmental impact statements before new caverns are permitted.

Wilma Subra, a LEAN technical advisor, said she would like to see some kind of negotiation on the minimum distance from the edge of salt.

"I still think it needs to be much farther than what they are proposing," Subra said.

Courreges said the Office of Conservation arrived at the 300-foot minimum by adding a 100-foot safety factor to a U.S. Environmental Protection Agency safety standard calling for a 200-foot separation between salt caverns.

He added most new cavern permits include information on environmental impact, and that the new rules would require companies to provide assistance to people evacuated because of sinkholes.

Texas Brine provides assistance to evacuated Bayou Corne residents under the specific terms of its permit.

Some salt-dome cavern operators insist they can safely operate within the proposed 300-foot zone.

Louisiana Offshore Oil Port carved caverns from the onshore Clovelly Dome to hold crude deliveries from big tankers in the Gulf of Mexico. LOOP reported one of its caverns holding oil is 240 feet from the salt edge. Terry Coleman, vice president of engineering and technology for LOOP LLC, said the company continuously monitors cavern conditions.

“We use quite a bit of advanced technology to ensure the integrity of that cavern and all of our caverns,” he said.

Whitney Autin, a geology professor at the State University of New York, College at Brockport, said the development of salt domes is often a question of real estate. Operators want to be in domes that are near pipelines and customers for brine and that have enough sweet spots left inside to mine salt, he said.

Autin, who got his geology doctorate from LSU and has published papers on Louisiana salt domes, said it may be hard to develop a single set of standard regulations that can account for all of the differences in geology and in salt-dome structure to ensure new caverns are safe.

“My analysis would be like there is no one-size-fits-all about the speed limit in a four-lane highway,” he said. “Some places, the speed is 75 , and some places, the speed limit on the Interstate is 45 if you’re going through a thick, urban area.”

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# Lost bayou recreated in one of largest floodplain projects

Photo provided by The Nature Conservancy -- Mollicy Farms Unit of the Upper Ouachita National Wildlife Refuge in northeastern Louisiana is a 16,000-acre floodplain restoration project.

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## North La. waterway restored in one of the largest floodplain projects in the country

**By AMY WOLD**
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Until recently, Mollicy Bayou was no more than a memory of a waterway on old aerial photos, winding its way through a portion of the Upper Ouachita National Wildlife Refuge in Morehouse Parish.

For decades, farming operations on this 17,000-acre parcel had filled in the waterway, which at one time helped drain the former backwater flooding area for the Ouachita River.

The Nature Conservancy recently finished a project that re-created this waterway along

its historical route. Completed in October, the 2.5-mile reconstructed bayou once again connects the interior of the property to the river and is the latest step in one of the largest floodplain restoration projects in the country, encompassing 25 square miles of floodplain.

“I don’t know if it will ever be the same, but the goal is to help it function as a floodplain as normally as possible,” said Joe Saenz, project manager for the North Louisiana National Wildlife Refuge complex.

The overall restoration project started with The Nature Conservancy helping the U.S. Fish and Wildlife Service purchase the property and was followed by the service planting bottomland hardwood trees in the area. In 2009, plans moved forward to create several breaches in a large levee that surrounds the property to allow better flow from the river during high water.

The next goal was to repair and restore some of the internal water movement on the property, which had largely been flattened for farming purposes.

“After years of farming, all the creeks and bayous and sloughs had pretty much been obliterated,” said Keith Ouchley, state director for The Nature Conservancy.

One of the main waterways was Mollicy Bayou, which runs down the middle of the property from east to west where it used to meet up with the Ouachita River. Over the years, the bayou had been cut off by the levee and filled in with dirt.

“The channel of the bayou wasn’t visible anymore,” Ouchley said.

The Nature Conservancy was able to trace the path of the bayou and this year started construction on re-creating this waterway with the slow meander of a Louisiana bayou.

It’s 30 feet wide, 6 feet deep and contoured around the bends to mimic the natural way a bayou would look, although planners know full well that the next high water event on the Ouachita River could reshape the bayou.

“Once the river comes up, we’ll see what Mother Nature does with that,” said Jim Bergan, director of freshwater and wetland conservation with The Nature Conservancy in Louisiana.

The benefits of the project are not only the creation of additional wildlife habitat but also the water quality of the Ouachita River. At least that’s the assumption being tested through the comparison of water and other monitoring done before the project work started and continuing now.

“We’ll actually be able to measure the effects of this project,” Ouchley said.

Ditches used by farmers helped move water quickly out of the area, which means soil

and nutrients didn't get a chance to settle out of the water before moving downstream. Now, with the floodplain reopened, the water will be moving much more slowly, giving these nutrients, which can cause formation of algae blooms and low-oxygen dead zones, and the sediment in the water time to settle instead on the floodplain.

"As water comes up in this area and goes down, you don't want that water just to rush out," Saenz said. It's been several years since the levees around the project have been breached, and the reconnected floodplain is working the way it used to before it was cleared for farming, he said.

Before being cut off from the river by the levees, the area would flood from late fall until April and then slowly release water back into the river. The area to the west of the river gives some idea of what it looked like, with lush stands of trees.

"These are great storage areas for flood water," Ouchley said.

This fall, The Nature Conservancy seeded the banks of the reborn bayou to help stabilize the area, and this winter the organization plans to recruit volunteers to plant cypress and oak in the area.

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# No more study; just ban plastic bags

Margaret Day, For the Express-News : November 22, 2013 : Updated: November 22, 2013 6:03pm

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Photo By John Davenport / San Antonio Express-News
Plastic bags and other trash are strewn across trees and plants next to Jones Maltsberger Road.

SAN ANTONIO — I am writing to correct assertions in the Express-News Nov. 15 editorial, “Plastic bag ban needs more study.”

Banning thin film plastic carryout bags is not “a complex issue that deserves close study by City Council” but an issue that has been studied exhaustively around the state, indeed the world, and bans are winning the debate.

The editorial claims “at their worst, plastic bags are unsightly pollutants that get trapped in trees and caught on bushes.” No, what is worse is plastic bags kill and cost a lot. Ranchers in our area attest that cows die from ingesting them, as does wildlife. Fort Stockton and Kermit banned plastic bags in part because of cattle deaths. Sunlight eventually breaks down bags from their petroleum derived polymers into microscopic granules. These molecules build up in water and soil, absorb other pollutants, and concentrate in the food chain, eventually contributing to rising rates of cancer and other diseases in humans.

“Cleanup costs” include all these indirect costs, because, despite however much money and labor the city, county, state, and citizen groups like Basura Bash volunteers may fork up — the plastic bag litter remains!

The City Council announced a resolution to ban “single use bags.” What the editorial fails to notice is that this includes plastic and paper bags. Hopefully, an ordinance will be adopted that

bans plastic and requires a fee high enough to discourage and end the use of paper bags, which also have a high environmental and cost burden.

The social and environmental benefits of reusable bags are clear, if the bags are durable and made responsibly. The ban can be an important tool for educating citizens on everyday responsibilities in a sustainable society.

The health concerns of reusable bags are a scare tactic. Food carried in reusable bags is protected by its packaging and, if not, washing the bags when needed is environmentally sounder than using hundreds of plastic bags every year. The water used for washing is recycled, thanks to our city's great water treatment system. The editorial claims fecal coliform is a big problem, but Consumer's Union scientists debunked this. These alarmist reports are paid for by the chemical industry, in this case the American Chemical Council.

The editorial claims studies have suggested bag bans hurt businesses. Yet, a 2013 proposed bill to prohibit bag bans in Texas was withdrawn, ostensibly because the Texas Retailers Association was unable to verify any damages from bag bans.

The argument that the poor are most burdened by a bag ban is also baseless. Lower income families will gain from bag bans, especially if the true costs of single-use bags, including health costs, are factored in, and because they have no choice but to pay imbedded plastic and paper bag costs that raise prices.

The editorial recommends council first consider improving plastic bag recycling. The city already did fund such an effort. We paid a quarter of a million dollars in taxpayer money and delayed two years to support their Change is in the Bag plan, which failed. As for bundling bags for curbside recycling, Austin tried and failed.

Recycling plastic bags is not enough. The EPA reports over 380 billion plastic bags, sacks and wraps are consumed in the U.S. each year and barely 1 to 5 percent are recycled. Many bags will continue to fly off landfill sites or be tossed and end up clogging drains, despoiling the landscape, and killing.

It is uneconomical to recycle plastic bags. Repairing recycling machines can cost millions. A Clean Air Council study found that recycling 1 ton of plastic bags costs $4,000, but the recycled product can be sold for only $32.

*Margaret Day is chairwoman of the Sierra Club Alamo Chapter.*

# Editorial: EPA sensibly pulls back on federal ethanol mandate

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Getty Images
PEMBROKE PINES, FL - NOVEMBER 15: Gas pumps with a sign indicating the gas is containing up to 10 % ethanol are seen at Victory gas station on November 15, 2013 in Pembroke Pines, Florida. Today, the federal Environmental Protection Agency announced a proposal to ease an annual requirement for ethanol in gasoline. (Photo by Joe Raedle/Getty Images)

Published: 24 November 2013 08:06 PM

It’s not entirely coincidence that the alcohol in your adult beverage and the ethanol in your gas tank are so similar in structure. After all, if one drink was no problem and two even less, a third or fourth really would get this party started.

Only in the harsh morning light do we see the logistical fallacy.

In the U.S., ethanol is derived almost entirely from corn, a humble farm product with other obvious uses, but what could be more important that weaning America from polluting petroleum, much of it imported from places with little love for our way of life?

*Corn, corn, American corn! We can grow our own motor fuel! See ya, Saudis!*

Well, it seemed like a good idea at the time.

Ethanol does burn far cleaner than regular gasoline, but what we didn't consider for too long was that this wasn't something for nothing. Ethanol, in fact, consumes so much fertilizer and water to grow and energy to produce — and promotes the plowing of so much marginal cropland — that its environmental effects are negative (water quality, food availability) or, at best, neutral (air quality).

Roughly 40 percent of U.S. corn goes into motor fuel, not to feed your family or your livestock. Federal studies also find that this artificial resource diversion inflates prices for every type of food that corn touches. And because ethanol is harder on your engine than gasoline alone, most fuel blends must be limited to about 10 percent.

So in a rare bit of good news from Washington these days, the Environmental Protection Agency surprised ethanol proponents and opponents recently by — for the first time — reducing the federal mandate for the amount of ethanol that must be mixed into the nation's gasoline supply.

In technical terms, instead of the targeted renewable fuels quota of 18.15 billion gallons for 2014, the EPA dropped the requirement to 15.21 billion gallons. Because other forms of renewables still do not make market sense, the vast majority of that amount — and the reduction — is corn-based ethanol.

It's a win for taxpayers, who have peeled off about $40 billion in tax subsidies to prop up renewable fuel production since the first "gasohol" subsidies in the late 1970s. A 2007 energy security law requires refiners to blend in higher percentages of renewables each year, while giving the EPA the power to adjust the number, which it finally did.

Make no mistake, the ethanol lobby still has powerful friends in Congress, and Iowa remains a pivotal state in the presidential nominating process. And even if tapping the brakes on corn-based ethanol makes sense, the feds would be wise to continue to push development of non-food-based fuels, like cellulosic biofuels.

So drink in this moment today but keep looking for smarter, cleaner fuel answers for tomorrow.

What the EPA proposes

— A range of 15 billion to 15.52 billion gallons of biofuels to be added to the U.S. fuel supply next year, with a recommended target of 15.21 billion gallons within that range.

— If the target number becomes law, it would mark a reduction of nearly 3 billion gallons.

— An official cited the "blend wall," or the point at which ethanol exceeds 10 percent of the total fuel supply, as a principal reason for lowering the mandate. The oil and gas industry has long warned that blending ethanol at more than 10 percent of the total gasoline supply could damage car engines

— Once the rule is published in the Federal Register, there will be a 50-day public comment period. The agency is expected to finalize the rule by next spring.

THE POLITICS AND BUSINESS OF UNCONVENTIONAL ENERGY

Print this story, sponsored by America's Natural Gas.

## 1. ENFORCEMENT:

# In Texas water contamination case, the fire still burns

**Mike Soraghan, E&E reporter**

*Published: Monday, November 25, 2013*

WEATHERFORD, Texas -- Steve Lipsky can light his water on fire.

It's been said more than once, by people who should know, that he can't do this. But, earlier this month, in the shadow of his 12,000-square-foot house outside Fort Worth, he set a barbecue lighter next to the pipe from his water well and ignited a fist-sized dagger of flame atop the stream.

"That," he said, stepping back, "is what would be going into my house."

For showing that to the world, and complaining about it, Lipsky has been accused of "outright fraud" by a conservative filmmaker, disparaged by the oil and gas industry, and accused of a "deceptive" demonstration as part of a "conspiracy to defame" by a Texas judge.

Steve Lipsky lights the water from his well on fire in this November 2012 photo. **Click here** to see a video of the flame in action. Courtesy of Steve Lipsky.

That's because Lipsky blames Range Resources Corp. for the flammable flow. Range, based in Fort Worth, is one of the most aggressive shale gas drilling companies in the country. In 2009, the company drilled a well on ranchland about 2,000 feet from Lipsky's house. Range says it's not just wrong to blame it for the stray gas, but fraudulent.

Lipsky's complaints to U.S. EPA in 2010 sparked one of the biggest battles of the country's shale drilling boom. Federal regulators brought a high-profile enforcement case against Range for contaminating the water. Then they bailed out, leaving few answers after more than a year of litigation.

But as the convoluted case heads into its fourth year, the simmering complaints and suspicions EPA left behind are starting to resurface.

As soon as today, EPA's internal watchdog is expected to release the results of its investigation into the case. Since July 2012, the EPA inspector general has been investigating why the allegations were leveled and then withdrawn.

In addition, a team from Duke University has been sampling the water at the homes of Lipsky and his neighbors and finding troubling levels of methane contamination, many times higher than what Range provided to regulators. The researchers are preparing their findings for publication but also have been providing them to individual homeowners.

Armed with those results, Lipsky has renewed his complaints with state and federal officials. And this time he's been joined by a handful of neighbors also concerned that drilling might have contaminated their groundwater.

Inspectors with the state agency that handles drilling, oddly enough called the Texas Railroad Commission, have visited the area at least twice, and the cases remain open.

### Haves and have-nots

It's tough to feel sorry for Steve Lipsky. He's a talkative guy with a wheeler-dealer style who made a bundle processing mortgages. The real estate crash hurt but didn't leave him broke. He still has an office with 30 employees nearby in Weatherford, a bustling bedroom community off Interstate 20 a few exits west of Fort Worth.

He also has a custom-built, two-story home on 13 acres along a bay of the Brazos River in a development called Silverado. The four-car garage fits his Range Rover, his Audi R5 sports car and his wife's SUV, with room for motorcycles and ATVs. He and his wife, Shyla, reserved but always smiling, have three adorable kids.

But you wouldn't want to drink his water. The stuff that flows from his well isn't just flammable. It's gray, cloudy and bubbly, and it smells bad.

He doesn't want to drink his water, either. So he doesn't.

He pays $400 a month to have water trucked in from the nearby city of Granbury. That's enough for drinking, baths, cooking and about everything else the family needs. He pretty much turns on the groundwater pump only for testing and to show inspectors and visiting media types that he can light the stream on fire.

You wouldn't want to drink Shelly Perdue's water, either. It bubbles and smells bad, and she says she can light hers on fire, too.

Shelly Perdue stands by her water well, which she says is contaminated by methane. Photo by Mike Soraghan.

But she can't afford to truck in water from the city. She drinks bottled water and has since she moved here in the '90s. But she uses well water for watering the lawn, dish washing, showers and everything else.

She's more like the people who usually suffer the downsides of America's uptick in energy production. Rural and busy with the concerns of making ends meet. It took her a while to decipher the bureaucracy, the different roles of agencies like the Railroad Commission and EPA.

"I thought they were the same thing," she recalled, sitting on a swaying metal couch on her weathered deck on a recent afternoon.

Her lot backs up to the Silverado development, and her mobile home is only about 1,500 feet from Lipsky's private cul-de-sac. But it takes 20 minutes to drive between them. And the two might as well be from different planets.

She's on a rutted street in a neighborhood of mobile homes and ragged pier-and-beam houses called Lake Country Acres. There's a strong fence between Silverado and the yards on her side. Some have litters of cars on blocks, hoods up. Hers doesn't, though. Her mobile home could politely be called rough around the edges, but it's one of the nicer in the neighborhood. And it's home.

And, she notes, "it's paid for."

Across the street is the white gravel driveway to the wells drilled by Range. There's a round indentation of gravel in her grass from trucks turning into the drive. And there's the constant hum from a compressor station behind the wells.

Most of her neighbors in Lake Country Acres are on a community water system. But the previous owners of her property hadn't joined. Instead, they drilled a water well nearly 400 feet deep.

When Range was drilling the wells in 2009, the bubbling she noticed in the water was only one of her worries.

"It was the trucks and the dust and the noise," she said. "It wasn't just the water."

Someone told her to call a county commissioner about the trucks driving on her property. His advice: Stand on her corner with a shotgun.

She figured that might land her in jail. Instead, she parked her car at that corner and stood next to it with her arms crossed. Fuming drivers called her names and waved crude gestures, but they never dinged her sedan.

When the drilling was done, Range flared the gas, a bright hot flame in the middle of a searing Texas summer. Trying to keep her home livable, she ran her air conditioner so hard her electric bill for one month totaled $700. Then the central unit gave out. She got window units, and space heaters for winter, because the unit was also her heater.

After that, the truck traffic went from constant to frequent. But there's still the persistent drone of a compressor on the well pad. On a recent day, it sounded like a lawn mower that never stopped. Her neighbors say it can grow to something more like an airplane.

"When you're sitting outside at night, hoping to hear the crickets, all you hear is this," Perdue said, pointing up.

And then there's the water. It always smelled bad. But after the wells were drilled, it turned cloudy and bubbled.

"It would sound like a glass of champagne," she said.

She still doesn't drink it, but she fears that deadly gas from the saturated water is building up in her home. A consultant hired by Lipsky at one point found the air in her kitchen was more than 2 percent gas, approaching the explosive level.

She talks matter-of-factly of headaches and occasionally passing out in her house. She's a single mother working odd jobs, so she doesn't have health insurance or the money to get herself checked out.

Methane is common in drinking water wells in some areas of the country and is not toxic in water. But if it collects, it can explode inside a house or asphyxiate someone at high concentrations. And sometimes more harmful toxins, such as benzene, come with it.

Methane migration is an established, if not common, problem when drilling oil and gas wells. Failure to properly seal wells with cement can allow gas from different formations to drift into drinking water aquifers.

Range says that Perdue's 368-foot-deep well was drilled into the gas-bearing Strawn formation. But that presents its own problems. About 600 feet away, Range's two wells were sealed with cement only a little farther down than that -- 394 and 409 feet. Other nearby gas wells are sealed twice as deep. That suggests that Range might not have sealed off the well from the Strawn, which produces both usable gas and usable water.

That Lipsky and Perdue have methane in their water doesn't prove where it came from.

Without base-line testing of the groundwater, performed before the drilling began, it's immensely complicated to figure that out.

EPA determined that the gas in Lipsky's water well matched the gas Range was producing. But then it dropped the case. The Railroad Commission said they didn't match. But it heard from only Range's hand-picked experts.

Range, though, has gone beyond denying that it contaminated the water. The company says methane occurs naturally in area water wells, but it also ridiculed the idea that there was contamination. In court filings, Range attorneys wrote that "Mr. Lipsky has falsely claimed he can light his water on fire, and that statement has been repeated to the media."

And in early 2011, at the height of the EPA case, the company sent letters to homeowners attesting to the quality of the water. Lipsky's letter read, in bold print, "The water is safe to drink, and there is no danger in using it in your home."

It was a pretty strong statement. On the next page was a graph showing that gas had built up to about eight times the explosive level in his wellhead (the letter reminded him to vent the wellhead, which he says he does).

And the water was never very good. Perdue decided that back in the '90s, when she was fixing the site up to move a home onto it. Many Silverado homeowners kept water in holding tanks to let the sulfur dissipate.

"This area always had problems," Lipsky said. "Range just made it worse."

But Range is known for strong statements and taking a hard line. Many companies in such a situation would issue brief, meaningless statements of innocence and let lawyers and industry trade groups lead the hand-to-hand combat. But Range spokesman Matt Pitzarella has fired back each time someone raises the possibility that Range's wells contaminated local water. And last year, company attorney David Poole fired off a cease-and-desist letter to the former EPA regional administrator, Al Armendariz, when he publicly stood by the allegations.

This isn't the only case where Range has taken public relations risks. It sued a Pennsylvania township for delaying approval of new drilling, has subpoenaed activists and bloggers, and is answering questions about whether a nondisclosure agreement it has with a Pennsylvania couple binds their children as well (***EnergyWire***, Feb. 20).

Recently, though, Range has gone quiet. Pitzarella has not responded to numerous requests for comment for this story and several previous ones.

Range is a well-known independent gas producer, but with a market capitalization of about $12 billion, it's far from the largest. It's known for being aggressive and nimble. It was the first company to complete a well in Pennsylvania's Marcellus Shale in 2004 and is one of the biggest drillers in the Keystone State.

The Barnett Shale under the Dallas-Fort Worth area and Lipsky's house isn't a focus of Range's operations. The company sold its Barnett properties, including the Butler 1H and Teal 1H wells near Lipsky and Perdue, as part of a $900 million, 390-well deal in 2011 with Legend Natural Gas, financed by the Carlyle Group and Riverstone Holdings LLC.

### EPA steps in

Perdue, a slight, slender woman, is not the type to pick up the phone and demand action. Lipsky, the businessman, has no such hesitation.

In 2009, his water pump kept failing after working fine for several years. So he called the company that drilled it. The workers who came to fix it told him the pump wasn't broken, there was just too much gas in the water.

Then, he said, "I called everybody" -- the county fire marshal, EPA, the health department and the Railroad Commission.

It was state inspectors from the Railroad Commission, he said, who first told him there was a well bore drilled under his property. He'd thought drilling wasn't allowed in his development.

The inspectors found evidence of a small leak on one of Range's gas wells, known as "bradenhead pressure," and cited Range for a **violation**. But then the state inspectors disappeared, from Lipsky's perspective. The agency never offered a reason for the sudden appearance of methane, and officials there went silent for months.

Range dispatched the violation in October by performing a test for the state showing the well had mechanical integrity. But that didn't fix the methane in the water.

EPA initially had deferred to the state, but when months went by and officials in the regional office in Dallas determined the state wasn't going to act, they called Lipsky and came out to visit.

Shyla and Steve Lipsky. Photo courtesy of the Lipskys.

The regional office in Dallas was led by Armendariz, an Obama appointee and former college engineering professor. He was taking an aggressive stance with oil and gas companies accused of harming the people who live amid their drilling. In May 2010, at a town hall meeting in Dish, Texas, he offered a vivid description of how he deployed limited enforcement resources.

"It was kind of like how the Romans used to conquer little villages in the Mediterranean," Armendariz explained. "They'd go into a little Turkish town somewhere, they'd find the first five guys they saw and they would crucify them. And then you know that town was really easy to manage for the next few years. And so you make examples out of people who are in this case not compliant with the law."

He'd prefaced those remarks by saying they were "a little crude and not appropriate," but he kept going. He would later wish he hadn't, especially with the "crucify" part.

EPA officials jumped into the case. They collected data and sent it to Isotech Laboratories, whose president, Dennis Coleman, told staffers that the gas in Lipsky's water well and Range's production wells were "likely to be from the same source," according to EPA notes. But he added a qualifier -- "one must evaluate the potential for other sources."

Satisfied with the connection, Armendariz was fearful that the methane leaking from the water or even the ground might cause houses to explode. He wrote off the Railroad Commission as too cozy with the oil and gas industry to be effective.

On Dec. 7, 2010, Armendariz brought a rare enforcement action, called an "emergency order," against Range. It charged that Range's two wells, Butler and Teal, had contaminated wells belonging to Lipsky and Rick Hayley, a neighbor who is now out of the picture.

### EPA backs off

It quickly became clear that this wasn't just about the groundwater under a large-lot subdivision in the far reaches of the Dallas-Fort Worth metroplex.

It was about whether the shale drilling that was coming to more and more communities across the country was safe and well-regulated. That boom was made possible by advances in a process called hydraulic fracturing, or fracking, but the high-pressure injection of fluid underground wasn't at issue in this case.

The emergency order was a slap not only at Range, but also the state and the Railroad Commission. It charged that the agency, headed by three elected officials, hadn't done enough to help its constituents.

Stung, the commissioners lambasted EPA for intruding in state affairs. The commissioners scheduled a hearing and exonerated Range in short order.

Things heated up in Washington, too. In March 2011, then-EPA Administrator Lisa Jackson took a face-to-face meeting with Ed Rendell, who'd just ended two terms as governor of Pennsylvania. At the suggestion of Range's top lobbyist -- his former deputy chief of staff -- Rendell urged Jackson to back off Range.

A year later, in March 2012, EPA suddenly dropped the case.

Range officials stress that this was not a negotiated settlement, where each side gives a little. Instead, they maintain that EPA higher-ups in Washington beat a full retreat when they realized their people on the ground in Dallas had brought the case based on flawed science.

EPA has never confirmed that, and hundreds of pages of internal emails released under the Freedom of Information Act reflect no doubts about the strength of the water contamination case. EPA has also declined to back up Range's assertion that the water in the area is safe to drink.

What EPA did say when it dropped the case was that Range would test the water wells in the neighborhood. The agency also announced that Range had agreed to provide access to its well sites for the agency's multiyear study of hydraulic fracturing.

In the wake of the dismissal, Armendariz's 2010 "crucify" comment caught up with him. Pro-drilling Sen. James Inhofe (R-Okla.) released a video of the remarks as proof that Armendariz had been out to get Range all along. Armendariz apologized, then resigned.

But when asked publicly about the situation later that year, Armendariz said he still believed that Range's gas was in Lipsky's well (***EnergyWire***, Oct. 22, 2012).

In the wake of the dismissal, Inhofe and several other Republican senators asked EPA Inspector General Arthur Elkins to investigate why the case was brought. When Rendell's involvement surfaced, environmental groups asked him to investigate why it was dropped (***EnergyWire***, Feb. 12).

Officials from the Inspector General's Office conducted an exit interview at EPA last month. Two sources told *EnergyWire* the report could be released as early as today.

### About that burning water

After EPA bailed out, Lipsky sued Range, and Range sued back. The judge threw out Lipsky's case on procedural grounds. But he came down on Range's side in ruling that Lipsky was part of a "conspiracy to defame" the company because he'd circulated a video "calculated to alarm the public into believing the water was burning."

The water does burn. But it wasn't water burning in that video. It was gas flowing from a vent in his water well that's designed to bleed off methane when the water surfaces. Without it, the wellhead might explode. He'd hooked a garden hose up to the vent, so he could direct the flow when he lit it.

But the video posted to YouTube in January 2011 bore the title "Hydraulic Fracturing turns gardenhose to flamethrower," leaving open the suggestion that water was supposed to be coming out the hose. In the background was the trickling sound of the water from the pump.

The judge, Trey Loftin, later said some things indicating Lipsky may not have gotten a fair hearing. Running to keep his job in 2012 in a county where President Obama would get only 16 percent of the vote, he boasted in campaign literature that "Obama's EPA backed down only after" his ruling. Still, Loftin lost the election and then agreed to recuse himself from the case.

The idea that Lipsky was somehow lighting a natural gas line has gotten traction in the oil and gas community and the fevered comments that collect under news articles about fracking. It gained legitimacy with the release of "FrackNation," a pro-drilling documentary by Phelim McAleer. McAleer said the judge had called it "outright fraud."

"The video was faked," McAleer says in the film. "They intentionally pumped gas into the water line in order to set it on fire."

It's a voice over an image of Loftin's **order**, which doesn't mention a water line.

Asked in an email exchange about the inconsistencies, McAleer replied: "Quite simply it is someone who is pushing for a big pay day -- a multi-million dollar lawsuit -- who a judge has found committed a fraud in pursuit of the lawsuit."

### Re-engaging in battle

Lipsky and Perdue had never met until about a year ago, when Lipsky was showing some reporters around the neighborhood. They chatted for a long time that day, and now they talk regularly. She's even accompanied him and Shyla to Washington for a protest at the White House and meetings with interested committee staffers on Capitol Hill.

He's hardly a classic environmental activist. He prefers SUVs to hybrids. And the irony is not lost on him that he's become a face of the anti-shale-gas movement, even though he has fireplaces with gas logs and a propane tank. Filmmaker Josh Fox profiled him and Shyla in his anti-gas documentary "Gasland II," and Fox stays in his guesthouse when he's in town.

Lipsky's resources have kept the case going in the face of a backlash that would have silenced many. He says he's spent hundreds of thousands of dollars on attorneys, consultants and testing.

That's a lot more than the $400 he pays each month to truck in water. But instead of cutting his losses, he's re-engaged. He worries that his outside water supply could be cut off as rationing becomes more common with the Texas drought.

Beyond that, he's galled by Range's assurances that the water is "safe" and fumes at being called a liar by the company and Loftin, the ex-judge.

About a year ago, a team from Duke University arrived and started sampling air and water at the homes of Lipsky's neighbors. The results came back higher than what Range had provided in 2011, in some cases much higher.

For example, Range's contractors tested Perdue's well in November 2012 and found methane at a level of 20.1 milligrams per liter, which is twice the "action level" set by the state. But Duke tested a month later and found it at 54.7 mg/l, more than five times that action level.

The Duke team is led by Rob Jackson, who earned the scorn of the oil and gas industry and Pennsylvania oil and gas officials when he found methane contamination rose in drinking water near drilling sites.

With those results, Lipsky filed a new complaint with the Railroad Commission. This time, Perdue and a handful of other neighbors have joined in. While some of them were angered when they compared Duke's results with Range's, others have begun to wonder about health problems, and some say the contamination has simply worsened since 2010.

### The routine

"Safe to drink and use in your home." It's a line Lipsky repeats as he watches the flame dance at the end of a 4-foot PVC pipe in the dark. The flow is flooding the ground below, which over time has become gray and chalky under the grass.

The water well itself is a squat cement column, about 2 feet high, between his home and the basketball court, next to a shed with enormous black water tanks.

He's done this often enough that he's put a metal collar on the end of the tube to stop the flame from melting the plastic.

He does have to fiddle with the valves. Open it up too much, the gas overwhelms the flame and snuffs it out. Tighten up, and the flame will grow until it dies off.

"It takes a little bit of playing with," he explained, relighting the flow. It took a few clicks, but the gas caught again and grew. The flame was mostly orange, with tiny bubbles, but the methane gave it a border of blue.

He stepped back and watched it flicker.

The New York Times

A romantic comedy for adults

November 22, 2013

# Strong Rules on Fracking in Wyoming Seen as Model

By KATE GALBRAITH

In energy-friendly Wyoming, oil and gas companies are getting a clear message: Drill, baby, drill — but carefully.

Last week, state regulators approved one of the nation's strongest requirements for testing water wells near drilling sites. The measure is intended to address concerns that groundwater can become contaminated from drilling activities.

It is the latest of several groundbreaking regulations related to energy production issued by Wyoming, which in 2010 became the first state to require disclosure of some of the chemicals used in the drilling process known as hydraulic fracturing, or fracking.

"I am not going to accept the question of do you want a clean environment or do you want energy," said Gov. Matthew H. Mead, a Republican who championed the water-testing regulation. "The fact is that in Wyoming, we want and need both."

Wyoming ranks about fourth among states in natural gas production and eighth in oil production, which has grown rapidly in recent years.

The new water rule, which takes effect in March, will require oil and gas companies to test wells or springs within a half-mile of their drilling site, both before and after drilling. The tests will measure a range of factors, including temperature, bacteria, dissolved gases like methane and propane, and roughly 20 chemical compounds and elements including barium, benzene, strontium and nitrates.

The rule comes after another measure that took effect this month requiring drilling companies to monitor for certain air pollutants at new oil and gas production sites, and fix any leaks. The requirement applies only to an area in western Wyoming that struggles to keep ozone in check.

POLITICO

# House clears drilling, fracking bills – Could Pompeo pipeline bill find friend in Wyden? – Science journal hopeful on Warsaw

By **ALEX GUILLEN** | 11/21/13 10:04 AM EDT

Text Size

*With help from Darius Dixon and Darren Goode*

**HOUSE CLEARS DRILLING, FRACKING BILLS:** The House yesterday passed two bills aimed at speeding up oil and gas permitting on federal lands and potentially blocking Interior Department fracking regulations, the first two of a trio of energy bills the House is taking up before flying home for Thanksgiving. The fracking bill, from Rep. Bill Flores, stops Interior from enforcing federal fracking regulations in states that already have rules or guidance for fracking on the books — a broad provision that critics argued would let almost any state law, no matter how lax, supersede federal rules. Flores's bill is also the first passed by House Republicans that delves into the growing debate on the booming practice of hydraulic fracturing. Both bills that passed yesterday garnered White House veto threats, and aren't likely to go anywhere in the Senate.

**Meanwhile, in the Senate:** Sen. Orrin Hatch has introduced a similar fracking bill in the upper chamber. Sens. Mike Enzi, John Barrasso and Jim Risch are also sponsors. Text: **http://1.usa.gov/l0gMdv (http://1.usa.gov/l0gMdv)**

**HOUSE TURNS TO GAS PIPELINES BILL:** Now the House turns to Rep. Mike Pompeo's bill aimed at expediting permitting of natural gas pipelines. H.R 1900 would give FERC 12 months to make a decision on pre-filed pipeline applications; other agencies involved in permitting would get 90 days after FERC completes its environmental review to object. If no decision is reached by those deadlines, the pipeline application would be approved. Pompeo maintains the legislation, which also enjoys support from many in the industry, is not just a "Republican messaging bill," noting that Democrats Jim Matheson and John Barrow voted for it in committee.

— Nonetheless, the bill drew a veto threat from the White House this week, which argued the deadlines could spur conflicts and confusion with existing law and may "force agencies to make decisions based on incomplete information." And while FERC Commissioner Philip Moeller told lawmakers his agency could meet the 12-month deadline (assuming the clock started once an application was complete), Jeff Wright, director of FERC's Office of Energy Projects, reportedly said last month that the 90-day deadline for non-FERC agencies is "draconian" and will push officials into a corner that could make them deny applications.

**Wyden may offer path through Senate:** House Republicans and Senate Democrats don't talk often, but Pompeo might have the attention of one key senator across the Capitol: Energy and Natural Resources Chairman Ron Wyden. In July, Wyden said one of his major goals is to "speed up pipeline development while also plugging the methane leaks" — and supporters of Pompeo's bill say that has opened the door for dialogue. Pompeo told reporters yesterday that he might be open to adding language addressing rogue methane leaks — a major source of heartburn for climate activists since unburned methane is a powerful greenhouse gas. "We'll work to figure out precisely what it is Sen. Wyden wants to do with respect to methane, how to handle it, if the things he's asking for make sense, if the industry

would find that kind of a provision acceptable," Pompeo said. "I think Sen. Wyden is someone who would look at this and say, 'That's good government, we ought to do that, this isn't going to present increased environmental risk.'"

**Don't look for any movement soon:** There are no plans for a Senate hearing right now, Wyden spokeswoman Samantha Offerdahl told ME. "Sen. Wyden is still working to find ways to incentivize new and better pipes that reduce overall methane emissions," she said. "He continues to look for ways to bring industry and environmental groups together on a proposal. Those efforts will likely continue through the end of the year."

**But first, the amendments:** Lawmakers will get a chance to feel out support for methane leak reduction legislation when the chamber votes on an amendment from Rep. Paul Tonko requiring pipeline applications to explain how developers will minimize methane leaks. The House will also vote on four other Democratic amendments that would replace the entire bill with language directing GAO to study the extent of expected permitting delays by FERC and other agencies; push back deadlines until FERC has considered state or local objections to a project; remove the non-FERC agency deadline; and delay implementation of the bill as long as the sequester is in place. Amendment texts: **http://1.usa.gov/IgTWOm (http://1.usa.gov/IgTWOm)**

**HAPPY THURSDAY** and welcome to Morning Energy, where today's non-energy reading recommendation is this obituary of Frederick Sanger, the chemist whose work helped decode the human genome: **http://nyti.ms/1fX7dYP (http://nyti.ms/1fX7dYP)** . Send your energy news to **aguillen@politico.com (mailto:aguillen@politico.com)** , and follow on Twitter @alexcguillen, @Morning_Energy and @POLITICOPro. **http://www.twitter.com/alexcguillen (http://www.twitter.com/alexcguillen)** , **http://www.twitter.com/Morning_Energy (http://www.twitter.com/Morning_Energy)** , **http://www.twitter.com/POLITICOPro (http://www.twitter.com/POLITICOPro)**

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**HAPPENING TODAY — PRO TWITTER CHAT:** Join @POLITICOPro reporters @DarrenGoode, @EricaMartinson and Energy Editor @BKingDC this afternoon for a Twitter chat on all things energy: biofuels, critical infrastructure, pending policy, legislation and more starting at 1:30 p.m. **http://politi.co/1jmOYM8 (http://politi.co/1jmOYM8)** . Twitter Hashtag: #EnergyInsider #ProChat. Track the conversation on POLITICO's Energy Insider Tweet Hub: **http://politi.co/1atPJlB (http://politi.co/1atPJlB)**

**TODAY'S FERC MEETING:** FERC's monthly meeting today is fairly packed, not least of which because of the release of a fiscal 2013 enforcement actions report. The first of a half-dozen rulemakings before the commission today will make progress on a proposal to modify grid interconnection costs and procedures for small (20 megawatts or less) power producers that the solar industry argued had grandfathered in unfair regulatory hurdles for them. Another item on the panel's agenda may move on a draft rule released this spring proposed by NERC on so-called Version 5 Critical Infrastructure Protection Reliability Standards, which includes 12 requirements, such as incident response reporting.

**FERC will also consider** a proposal by NERC to scrap 34 reliability requirements that the organization felt did little to protect the bulk power system or were redundant with other standards. Meanwhile, the agency leadership could make a call on whether it will agree to a request from the Bonneville Power Administration — which doesn't fall under FERC jurisdiction— that their tariff revisions be recognized by FERC and that BPA be given reciprocity status. The meeting starts at 10 a.m. at FERC HQ, 888 First St. NE. Live webcast: **http://1.usa.gov/y00BJo (http://1.usa.gov/y00BJo)**

— President's Council of Advisors on Science and Technology will also meet this morning. On the agenda: Cybersecurity and education information technology. Details and webcast: **http://1.usa.gov/csHyeQ (http://1.usa.gov/csHyeQ)**

**SCIENCE JOURNAL UPBEAT ABOUT WARSAW DESPITE SETBACKS:** There's been a lot of bad news for climate activists surrounding the UN talks in Warsaw, including Japan scaling back its emissions reduction goals and Australia preparing to repeal a carbon tax — but the journal Nature's editorial board is remaining hopeful. "Reducing emissions will be neither easy nor free, particularly given the need to expand basic energy services in poor countries. … The temptation to abandon the effort and drift back into business-as-usual will always be there. The goal for Warsaw this week is not an agreement, but a viable roadmap to an agreement. Surely that much can be achieved." More: **http://bit.ly/1auHDci (http://bit.ly/1auHDci)**

**DODD-FRANK UPS RISKS FROM ENERGY PRICE VOLATILITY — FORMER DOE CHIEF:** Changes to swaps and futures hedging used by the energy industry and others under the 2010 Dodd-Frank bill means the market faces greater risks thanks to inherent price volatility, former Energy Secretary Spencer Abraham and Digital Power Capital CEO Mark Mills write in a new white paper. "The use of swaps and futures hedging by energy businesses had nothing to do with triggering the Great Recession," they write. "The fact that energy businesses use swaps is as relevant to global financial stability as gasoline use for lawnmowers is relevant to global aviation fuel supply. Less than 0.3% of the total swaps market involves energy transactions. Yet, Dodd-Frank disrupts and puts at risk long-standing and effective use of hedging and swaps to protect both businesses and consumers from energy volatility." More: **http://bit.ly/1cH4WOA (http://bit.ly/1cH4WOA)**

**INDUSTRIAL GAS USERS SAY RESEARCH PROVES LNG EXPORTS BAD FOR ECONOMY:** America's Energy Advantage, a coalition of major industrial natural gas consumers and the American Public Gas Association that calls for caution in approving permits for LNG exports to non-FTA nations, has a memo out today summarizing studies on LNG exports that concludes "that excessive LNG exports will have profoundly negative effects on the U.S. economy." Read: **http://bit.ly/1jo06IJ (http://bit.ly/1jo06IJ)**

**THEY KNEW THEM ALL FROM BOSTON TO DUBUQUE:** Democrats in Congress are recruiting a varsity squad of sports officials to help make the case for action on climate change. Rep. Henry Waxman and Sen. Sheldon Whitehouse will meet today with officials from most of the country's major sports leagues, including Major League Baseball, the National Basketball Association, the National Hockey League and the National Football League. Andrew Restuccia has more: **http://politi.co/1cHBRmq (http://politi.co/1cHBRmq)**

**TIP-A-CANOE AND McCARTHY TOO:** EPA chief Gina McCarthy is pulling her paddle out for a trip up the Los Angeles River today with Mayor Eric Garcetti. Garcetti is trying to get the federal government to support a $1 billion project to restore a stretch of the river, but he's paddling upstream thanks in part to spending cuts pushed by House Republicans, the Los Angeles Times notes: **http://lat.ms/1bS31so (http://lat.ms/1bS31so)**

**The real question:** Is there an "IOU" note where Sally Jewell's kayak used to be?

**QUICK HITS**

— AFP has the latest on tensions between "rich and poor countries" at the Warsaw climate talks: **http://bit.ly/1cGKSMj (http://bit.ly/1cGKSMj)**

— The AP has more on yesterday's arguments on fracking fluid disclosure before the Wyoming Supreme Court: **http://bit.ly/1e0scIG (http://bit.ly/1e0scIG)**

— Shale gas can serve as a bridge fuel to cleaner sources of energy, Carol Browner says. Bloomberg: **http://bloom.bg/1auX58p (http://bloom.bg/1auX58p)**

— A proposal requiring state legislators to approve any certain mines in the Bristol Bay area (think Pebble Mine) looks like it will be on the ballot next fall. AP: **http://bit.ly/1fkppOj (http://bit.ly/1fkppOj)**

abqjournal.com
http://www.abqjournal.com/307147/riowest/intel-undergoing-new-permit-process-plant-designated-major-source-of-greenhouse-gases-source.html

# Intel undergoing new permit process

Lee Ross / Rio Rancho Observer Staff Writer 1 day ago

CORRALES — The Intel plant near Rio Ranch is seeking a new air quality permit to meet federal standards for greenhouse gas emissions, New Mexico Environment Department Air Quality Bureau representatives said at a meeting in Corrales on Wednesday.

The presentation at the Corrales Senior Center was delivered by NMED's Ned Jerabeck, a hazardous air pollutants specialist, and Daren Zigich, whose job is to watch the local Intel manufacturing operation.

About 25 people attended the meeting, which was held by the Corrales Environmental Working Group. The group was formed nine years ago to work for environmental improvement at Intel.

Zigich explained that Intel will be required to go through the U.S. Environmental Protection Agency Title V permit process required for major sources of hazardous air pollutants, or those that emit 100 tons (meaning 2,000 pounds, not metric tons) per year.

To explain some of the more recent changes to the law, and why Intel went from being considered a relatively insignificant source to a major source of greenhouse gases, Zigich talked about the EPA's finding in December 2009 that six greenhouse gases — carbon dioxide, methane, nitrous oxide, hydrofluorcarbons, perfluorocarbons and sulfur hexafluoride — threaten public health and welfare when they are present in the atmosphere.

Not all of those gases carry equal warming potential, Zigich said. The weight of methane a plant produces or has the potential to produce, for example, is multiplied by 21. So, while Intel has tended to produce just over 30,000 tons of greenhouse gases a year, the mixture of hydrofluorcarbons and sulfur hexafluoride coming out of its stacks as part of the microchip fabrication process have put what's called the carbon dioxide equivalent, or CO2e, for the plant over the top, Zigich explained.

In 2003 and 2004, the plant produced an average CO2e of about 321,000 tons. The Title V permit caps emissions for Intel going forward by using that average, plus 75,000 tons the EPA allows for expansion or other eventualities, putting Intel's total allowable emissions at about 396,000 tons.

He added that, with Intel in the mix, total greenhouse gas emissions for the state should go up by about 1 percent.

Zigich said he hopes to have the permit in place by next month, and the limit can be re-evaluated in a decade.

He said NMED will have more access to know what Intel is emitting and that there will be inspections about once a year rather than roughly once every four years. He even indicated that one can track the volume of many chips the plant is producing by its emissions.

Companies that are doing well tend to emit more greenhouse gases, he said.

"You can tell economies by CO2 emissions," he said. "This is the first time we're actually going to get a look at how much of these (chemicals) they're using."

Sarah Tenorio Chavez, an environmental health and safety expert at Intel, said the company has reported its use of fluoride compounds since 2000 and its fuel use for “many, many years.”

Zigich, along with Chavez and other representatives from Intel, answered questions from the working group after the presentation.

Several members of the working group indicated they believe the emissions from the plant are making them or their neighbors sick.

“We have many ailing citizens,” said Lynn Kinis, who said she lives “down the hill” from the plant in Corrales.

She added that, although she is aware that Intel pays to have emissions tests done by third parties, she doesn’t believe some of the reports, primarily because Intel is the one signing the checks.

Zigich suggested anyone with similar concerns contact local politicians.

# San Juan output dwindles

Kevin Robinson-Avila / Journal Staff Writer 7 hours ago

Posted: 12:05 am

Natural-gas production in northwestern New Mexico's San Juan Basin is still in frank decline because of stubbornly low prices for dry gas.

But with drilling growing in the Mancos Shale – an oil- and liquid-rich zone that San Juan producers largely had ignored until recently – producers are more optimistic about a slow recovery in the near future.

"We've faced pretty much the same situation here every year since the recession," said T. Greg Merrion, president of Farmington-based Merrion Oil and Gas Corp. "The price for dry natural gas remains so low that it just doesn't make a lot of sense to drill. But the Mancos Shale is the one real caveat in the story."

Dry-gas prices have remained chronically low since 2008, thanks to depressed consumer demand from the sluggish economy and some warmer-than-normal winters. That plus a market glut generated by an unprecedented surge in natural-gas production from shale-gas plays in other parts of the country.

Producers currently receive only about $3.60 per 1,000 cubic feet of dry natural gas, down from more than $6 before the recession.

That has slashed output in the San Juan Basin to 20-year lows. Production plummeted by 9 percent last year alone, followed by another 4.5 percent decline in the first six months of 2013, according to the state Oil Conservation Division.

"We're still very much trapped in the doldrums of recession," said Jason Sandel, executive vice president of Aztec Well Servicing in Farmington.

Merrion said dry natural-gas production won't recover until prices climb back to at least $5 or $6 per 1,000 cubic feet.

The one bright spot, however, is the Mancos Shale. Two companies, Encana Corp. and WPX Energy Inc., are aggressively exploring for oil and liquid fuels there, such as propane and butane, which add substantial premiums to producer prices once separated from dry gas.

Until now, companies had concentrated on the San Juan's dry-gas sandstone beds because they're easier to permeate and exploit than hard-rock shale.

But modern drilling techniques are helping to crack the Mancos open, including three-dimensional imaging to pinpoint pools of hydrocarbons, hydraulic fracturing to bust up the shale, and horizontal drilling to pull trapped oil and gas sideways out of the rock.

To date, Encana has spent about $200 million to explore the Mancos, with 23 horizontal wells now operating there. And it plans a huge increase next year, with between $350 million and $450 million budgeted to drill up to 100 wells, according to a company report to investors in early November.

This year, WPX will have drilled 15 wells in the Mancos. And next year, it's budgeted $200 million to drill 37 more wells, according to its third-quarter earnings report.

Both companies say they're pursuing the Mancos because wells there have generated good, commercial-scale output of between 400 and 600 barrels of oil per day. In addition, drilling costs are declining substantially as they gain more experience cutting into the shale rock.

"We expect to see more companies begin operating in the Mancos as a result of WPX and Encana's activities, because their experiences will encourage other producers," Merrion said. "A lot of money is being spent in the Mancos, and activity is beginning to pick up. That will end up having a significant impact on the San Juan economy."

Sandel said he's "cautiously optimistic."

"There's a glimmer of hope on the horizon," he said. "Thanks to the Mancos, I think some recovery could begin in the San Juan at the end of 2014 or in early 2015."

November 23, 2013, 12:00 pm

# Filibuster change clears path for Obama climate regs crackdown

By Laura Barron-Lopez

*Getty Images*

Green groups might be the biggest winners from Senate Democrats' decision to gut the minority party's filibuster rights on nominations.

Their top priority — President Obama's second-term regulations on climate change — is likely to have a better shot at surviving legal challenges once Obama's nominees are confirmed for the crucial U.S. Court of Appeals for the District of Columbia.

Melinda Pierce, a policy expert for the Sierra Club, said the addition of Obama's three nominees would be an "improvement" to the D.C. Circuit, which is second only to the Supreme Court in influence and power.

"But filling up all 11 seats, a full panel is an improvement to the current situation in the court," Pierce said. "And we hope these additions will ensure that the climate regulations are upheld."

Pierce also defended the three nominees — Patricia Millett, Robert Wilkins and Nina Pillard — saying they "are by no means activists."

The decision by Senate Democrats to end the filibuster on judicial and administration nominees was decried by Republicans, who described it as a "power grab" aimed at loosening the checks on presidential power.

Senate Minority Leader Mitch McConnell (R-Ky.) on Thursday said it was "clear" that Democrats were triggering the "nuclear option" to advance Obama's agenda.

"In short, unlike the first two years of the Obama administration, there's now a legislative check on the president. And the administration doesn't much like checks and balances," McConnell said.

The D.C. Circuit, which handles the majority of legal challenges to regulations, currently has eight members split evenly between Democratic and Republican appointees.

Green groups suffered a major defeat at the circuit court last year when rules to cut soot-and smog-forming power plant emissions that cross state lines were shot down. Those rules had been a pillar of Obama's air pollution agenda, and are now before the Supreme Court.

Advocates are hoping to avoid a similar defeat when the separate, upcoming carbon emissions standards face litigation at the court, which is a near certainty.

The environmental movement was heavily involved in the fight over limiting the filibuster.

Sierra Club was part of a coalition of liberal groups and unions that pressured Senate Majority Leader Harry Reid (D-Nev.) to limit the use of the filibuster through a majority vote.

Pierce said the end of the 60-vote filibuster for nominees could change the way Obama approaches judicial nominations for the rest of his term.

"It may free Obama up to be more ambitious about putting forward folks that share [the administration's] philosophy and be less fearful because of the 60-vote threshold," Pierce said.

The same goes for nominations to agencies, which might begin to move through the Senate faster.

That's good news for nominees to senior roles at the EPA.

Ken Kopocis, who was nominated by Obama in 2011 to lead the EPA's water office has yet to be confirmed by the Senate, but will likely breeze through now.

Similarly, the Sierra Club predicts a quick vote to confirm Janet McCabe as the EPA's head of air and radiation once she is nominated. McCabe currently holds the job in an acting capacity.

"The office is central to the many air pollution regulations, for example the pending carbon standards," Pierce said.

"The change to the filibuster rules brought forward by Senator Reid will likely mean that whoever is nominated — and we expect that will be Janet — will have an easier and certainly shorter path to confirmation."

The League of Conservation Voters, another green group, praised Reid's leadership.

A spokesman for the League, Jeff Gohringer, said Republicans have made "progress on environmental issues a lot harder than it needs to be."

Republicans disagree, and are mulling a change in tactics now that the filibuster power has been weakened.

A top GOP aide in the Senate said Republican lawmakers would have to place a heightened focus on committee votes in order to stop nominees they oppose.

"Once a nominee comes to the floor, they are almost guaranteed to be confirmed, so the whole game is at the committee level now," the aide said.

**TAGS: Climate change**


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# EPA Findings On NOx Health Effects May Bolster Push For Stricter NAAQS

**Posted: November 22, 2013**

EPA's new draft review of the latest research on nitrogen oxides (NOx) emissions shows health harms at exposure levels far below existing regulatory limits and finds stronger associations between NOx exposure and adverse effects, which could provide a boost to environmentalists who have called for a stricter federal NOx air standard.

In response to the findings -- outlined in EPA's draft Integrated Science Assessment (ISA) for NOx released Nov. 22 -- environmental group Clean Air Watch in a blog post notes that it has advocated for a stricter NOx national ambient air quality standard (NAAQS) and says the ISA "warns that nitrogen dioxide pollution, chiefly from traffic and construction equipment, appears to be more dangerous -- even more deadly -- than previously thought."

The ISA is a comprehensive review of existing science on pollutants and is a key step in the agency's Clean Air Act-mandated five year review of its six NAAQS, including the standard for NOx. After taking comment on the study through Jan. 21, EPA will craft further assessments including a policy paper outlining options for revising the NAAQS.

The agency regulates NOx under its NAAQS for nitrogen dioxide (NO2), which is a subset of NOx and is the "indicator," or targeted pollutant, under the ambient air standard. EPA last updated the NO2 NAAQS in 2010, issuing a new one-hour primary, health-based NO2 standard of 100 parts per billion (ppb), while retaining its combined annual primary and secondary, environment-based standard of 53 ppb that it established in 1996.

On its "Rulemaking Gateway" website, EPA says it initiated the current review of the NO2 NAAQS March 14, 2012, and plans to publish a proposed rule in the *Federal Register* sometime in February 2016. That could push publication of a final standard until after the next presidential election in November 2016.

EPA in the draft ISA, marked "do not cite or quote," finds a "causal relationship" between short-term exposure to NO2 and respiratory effects, the first time that NO2 has been found to cause a health effect with such a high degree of certainty. In the previous ISA for NOx, completed in 2008, EPA concluded that the evidence was "sufficient to infer a likely causal relationship," but did not categorically state that NO2 causes respiratory harm.

The new draft ISA is the first version that will undergo external peer review, prior to one or more likely revisions before it is released in final form. The document forms the basis for subsequent steps in the review process, notably the policy assessment document that EPA staff normally prepares for the agency administrator, outlining options for revising the NAAQS, and all the documents eventually form the basis for a proposed rulemaking.

**Short-Term Exposure**

Crucially, the draft ISA finds evidence of harm at levels of short-term exposure far below 100 ppb, which could bolster environmentalists who say the agency should tighten its NAAQS far below that limit.

EPA says much of the evidence comes from older studies that were available for the 2008 ISA, but that new data have reduced scientific uncertainty over whether NO2 was truly to blame for observed harm, or whether effects seen were the result of "confounding" factors such as other air pollutants or pre-existing health problems.

The ISA says "the causal determination is strengthened from likely to be a causal relationship to causal relationship because the recent epidemiologic evidence reduces the previously identified uncertainty regarding confounding by other traffic-related pollutants," EPA says. "Associations are found in studies with mean 24-(hour average) NO2 concentrations 18 to 29 ppb and maximum concentrations 48 to 106 ppb. Associations are found in studies with mean (1 hour maximum) NO2 concentrations 22 to 66 ppb and maximum concentrations 59 to 298 ppb."

EPA adds, "Biological plausibility for the independent effects of NO2 exposure on asthma exacerbations is demonstrated by findings from previous controlled human exposure studies that NO2 exposure of 200 to 300 ppb for 30 minutes, and 100 ppb for 1 hour induced increases in airway responsiveness in adults with asthma."

Under the air law, EPA must set NAAQS at a level adequate to protect human health and the environment with "an adequate margin of safety." The ISA findings appear to suggest that the 100 ppb one-hour NAAQS limit may not meet this requirement, especially since EPA in the review states, "There is adequate evidence that children (ages 0-14 years) and older adults (ages 65 years and older) are at increased risk of NO2-related health effects."

The agency has further strengthened the "causal determination" classification of various other health effects from its conclusions in the 2008 ISA, which may also boost calls for a stricter NAAQS. For example, EPA says there is "likely to be a causal relationship" between short-term exposure to NO2 and cardiovascular effects, whereas the 2008 document said there was "inadequate" evidence "to infer the presence or absence of a causal relationship."

In 2008, EPA said there was "suggestive but not sufficient" evidence to infer a causal relationship between short-term exposure and total mortality, but the agency now says says there is "likely to be a causal relationship."

The draft ISA similarly strengthens the causality determinations for long-term exposure and health effects including respiratory problems and cardiovascular effects, but also for reproductive and developmental effects and cancer. For reproductive and developmental effects and cancer, EPA now says the evidence of causation is "suggestive," whereas before in the 2008 version of the ISA there was inadequate evidence to infer causation.

**Long-Term Effects**

In the new ISA, EPA says that for long-term effects, the strongest evidence is again for respiratory effects, for which there is "likely" to be a causal relationship. Previously, the evidence was merely "suggestive."

Clean Air Watch in its blog post highlighting the ISA says that in the 2010 NO2 NAAQS "EPA eventually set a standard not as tough as we would have preferred," but notes the agency did call for more road-side air quality monitors to measure pollution, "so the public can know just how dirty the air is in high-exposure areas." These monitors are only now beginning to be put in place, Clean Air Watch says.

Members of the Clean Air Scientific Advisory Committee NOx review panel, which will review the ISA, stressed in a June 18 letter to the agency that it should pay special attention to the near-road environment because of elevated NOx levels and exposures in those areas, and use road-side monitoring data where available.

Meanwhile, environmentalists are asking the U.S. Court of Appeals for the District of Columbia Circuit to remand the agency's April 3, 2012, final rule that dropped an earlier plan to set a novel first-time joint secondary NAAQS for NOx and sulfur oxides in order to better protect the environment from the pollutants.

Judges asked tough questions about the standing of petitioners in *Center for Biological Diversity v. EPA* at oral arguments Oct. 10, and also questioned their basis for challenging EPA's policy judgment in not setting the novel standard.

The standard would have used a unique indicator based on the acid neutralizing capacity of waterbodies, but EPA, backed by industry, said the method is too scientifically uncertain to use as the basis for a NAAQS now. -- *Stuart Parker* (sparker@iwpnews.com)

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November 25, 2013

## LATEST DEVELOPMENTS

### Warsaw Climate Talks Close with General Agreements in Main Areas; Details to Come

Posted: Nov 23, 2013, 3:35 PM EST

*By Eric J. Lyman and Dean Scott*

UN climate talks in Warsaw dramatically closed with a flurry of activity Nov. 23, producing a hard-fought agreement on "loss and damage" and a working deadline for countries to submit post-2020 emissions reduction targets.

The nearly 200 countries participating in the talks also agreed to a package of finance-related texts, but there was no agreement on intermediate benchmark financial targets ahead of the 2020 goal of providing $100 billion for adaptation efforts, or specific deadlines for countries to make financial pledges.

COP President Marcin Korolec declared the 13 days of talks a success before sounding the final gavel: "We came with three central goals and we achieved all of them," Korolec said, referring to the goal of creating a pathway to Paris, agreeing to financial policies, and an agreement on a "loss and damage" mechanism. But all three lacked specifics that will be filled in at a later date.

The talks lasted nearly 24 hours beyond their scheduled Nov. 22 close. Almost all the main agreements came on the final day.

The debate on "loss and damage" ended up centering on phrasing indicating the mechanism would be established under the Cancun Adaptation Framework. Fiji—quickly seconded by the Philippines, Nepal, Bangladesh, Nicaragua, the European Union, the Group of 77 developing countries, and the AOSIS group of small island states—objected to the word "under," believing it would make it too easy for "loss and damage" funding to become a subset of adaptation funding. The U.S. was among the countries insisting the phrase should remain intact.

The word "under" was left in, but with new language allowing for a review of the "loss and damage mechanism including its structure and mandate" at COP-22 to be held in 2016. U.S. climate envoy Todd Stern said it was a "meaningful and practical" compromise that allowed the issue to be revisited once it was better understood.

The Ad-hoc Working Group on the Durban Platform for Enhanced Action (ADP) sought to establish a deadline by which countries would be required to state emissions reduction targets for the post-2020 period—a main part of the pathway to the 2015 conference in Paris expected to produce a global climate agreement.

In the end, the ADP agreed that "countries ready to do so" submit emissions reduction targets "well in advance of COP-21" in December 2015, but the only date left in brackets was for the targets to be submitted during the first quarter of 2015. A deadline as late as March 2015 would give parties only eight months to renegotiate targets to compensate for the expected gap between the ambitions reflected in the pledges and the level needed to avoid the worst impacts of climate change.

The COP also adopted a decision from the high-level Work Program on long-term finance that "urges"—but does not require—developed nations to make a specific pledge offer of billions of dollars to developed nations between now and 2020. The finance text cleared a major hurdle in the final hours of the talks when Stern said he would drop his objections to the nearly completed draft if developing nations stopped pushing for more financial concessions.

Those concessions included calls on industrialized nations to pledge $70 billion beginning in 2016 to ramp up climate finance. Developing nations fell short of getting any exact explicit pledge beyond the annual $100 billion from developed countries beginning in 2020.

The work program text, as approved by the COP, does urge developed nations to deliver climate finance "at increasing levels" between now and 2020. Stern told other ministers in the plenary that the text was a "difficult compromise" for the U.S. but that it "captures a balance" between developed and developing nations' views. The U.S. also blocked a push by developing nations to extend the life of the high-level forum on finance into future years. Stern noted that the work program was supposed to end at the conclusion of the Warsaw talks.

The approved work program text also requests developed countries to submit strategies for scaling up climate finance between now and 2020; convene workshops on scaling up climate finance; and submit ideas to a high-level ministerial dialogue on climate finance every two years, starting in 2014 and ending in 2020.

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ISSN 2167-8065

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