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Region 2 News Clips

Gowanus waterfront activists can learn from past rezoning failures (BROOKLYN BRIDGE; March 28, 2019)

A presentation to the Community Board 6 Waterfront Committee last week showed a bold vision of a future Gowanus Canal: public spaces and on-water access, community gardens and rock climbing — and, of course, boat launches.

Plastic bag ban gaining momentum in Albany (NORTH COUNTRY PUBLIC RADIO; March 28, 2019)

The sponsors of a bill to ban single-use plastic bags in New York are optimistic that the measures will be part of the new state budget. But there are still details to be worked out, including whether there should be a fee on paper bags.

New York lawmakers say plastic bag ban in the works as budget talks continue (DAILY GAZETTE; March 28, 2019)
The environmentally-friendly move could also include a fee on paper bags

Gov. Cuomo and state lawmakers are preparing to ban single-use plastic bags statewide.

State Sues DuPont and Chemours over Decades of Pollution (NJ SPOTLIGHT; March 28, 2019)
New Jersey Attorney General files lawsuits 'to hold polluters accountable' for alleged contamination

Helen Martens joined an emotional audience of long-suffering Pompton Lakes residents — many of them also cancer patients, like Martens — who for decades fought to force chemical giant DuPont to clean up an old munitions plant that allegedly polluted their groundwater with toxic plumes of carcinogens.

Rate Counsel Opposes PSE&G's $2.78 Billion Energy-Efficiency Filing (NJ SPOTLIGHT; March 28, 2019)
Ratepayer watchdog contends utility overestimated how cost effective six-year program would be, recouping costs contrary to Clean Energy Act

The New Jersey Division of Rate Counsel is urging the state to reject a $2.78 billion proposal by Public Service Electric & Gas to invest in new energy-efficiency projects across its territory.

Southampton Town mulls legal action against DEC after mining settlement (NEWSDAY; March 28, 2019)
The DEC said the settlement is a path to the mine's closure without further litigation from Sand Land.

Southampton Town is considering legal action against the state Department of Environmental Conservation following a settlement that could allow a Noyac sand mine — which a Suffolk County study showed had negatively impacted groundwater — to operate for eight more years.

Environmental groups push property tax or water hike for septic improvements (NEWSDAY; March 28, 2019)

The groups said the average annual cost to homeowners would be $75 for a tax increase, or $110 or higher for a water fee. But there's no guarantee the proposal will make it onto the November ballot.

Environmental groups are pushing for a Suffolk County ballot measure that would raise $70 million a year through either property taxes or water bills to combat nitrogen in waterways by improving wastewater treatment.

NYS debates the future of plastic bags (NEWSDAY; March 28, 2019) Editorial

One of the most fluid topics at this extremely fluid stage of Albany budget negotiations is a proposed ban on plastic bags.

Lewiston nuclear waste to be removed. Now what? (WBFO NEWS; March 27, 2019)

Two things emerged from a thinly attended public meeting in Lewiston Tuesday night: Washington will remove the nuclear waste from the Niagara Falls Storage Site in the town, but no one knows when that will be.

National News

Administration

- **Dayton Daily News: Exclusive: Fairfield native targeting safe drinking water as new head of EPA**
- **E&E News: Reagan appointee says EPA 'disemboweling' program**
- **PoliticoPro: Wheeler to testify before House subpanel April 2**

Air

- **Bloomberg Environment: Insight: EPA's Criminal Theory in Clean Air Act Breaks New Ground**

Biofuel

- **Reuters: EPA grants additional 2017 small refinery waiver from nation's biofuel laws**
- **Reuters: U.S. EPA likely to release decision on 2018 small refinery waivers in April: sources**

Chemicals

- **Bloomberg Environment: EPA Neglect Is Catalyst for Chemical Research, Firefighters Say**
- **Bloomberg Environment: EPA Tackles Worker Safety Charges in 13 New Chemical Rules**

- Bloomberg Environment: Ethylene Oxide Concerns Hijack Focus on Other Toxic at EPA Event
- Bloomberg Environment: Health Agency Backs Tackling Family of Fluorinated Chemicals (1)
- Bucks County Courier Times: Senate committee, EPA debate urgency of chemical response
- E&E News: Man awarded $80M in lawsuit claiming Roundup causes cancer
- JDSUPRA: Major Expansion Of Emerging Contaminant Sampling Requirements In New York
- KHOU 11: More progress made in cleaning out Houston Ship Channel after ITC fire
- NRDC: New Federal Bill Would Ban Chlorpyrifos
- PoliticoPro: Top federal scientist calls for handling PFAS as a class

Superfund

- Associated Press: EPA: No toxic releases at Superfund sites in flooded Midwest
- Gizmodo: Seven Midwestern Superfund Sites Have Dealt With Flooding Since the Bomb Cyclone, But EPA Says Everything's Fine
- Weather Channel: EPA Says No Public Alert for Superfund Sites Impacted by Midwestern Flooding

Water

- The Hill: What you can do about EPA's attack on clean water

Full Articles

Region 2 News

BROOKLYN DAILY EAGLE

Gowanus waterfront activists can learn from past rezoning failures

By Paul Stremple

March 28, 2019

A vision sketch of Gowanus canal bridge crossing with waterfront development and pedestrian activity. Courtesy of Department of City Planning

A presentation to the Community Board 6 Waterfront Committee last week showed a bold vision of a future Gowanus Canal: public spaces and on-water access, community gardens and rock climbing — and, of course, boat launches.

The March 20 presentation came courtesy of the Gowanus Dredgers, a canoe club that advocates for recreation and restoration of the Gowanus Canal. Now that the notoriously polluted waterway is in the center of a neighborhood rezoning, activists like the Dredgers are attempting to get ahead of the curve, laying out an expansive vision of what waterfront design could be in Brooklyn.

Owen Foote, a member of the Dredgers, said they wanted to avoid the city laying down the same underutilized waterfront esplanades from every previous project along the Gowanus and are instead advocating for "integrated waterfront service facilities," ranging from boathouses and floating walkways to dining and public space.

As the city prepares plans for the rezoning in Gowanus, residents are speaking out against the high-rise development and the increased density that comes with it. But one of the defining elements in the neighborhood — the canal — provides an opportunity to capitalize on lessons learned in Brooklyn's previous waterfront rezonings.

Promises made, promises broken

When the Department of City Planning presented a rezoning proposal to the Community Board 6 Land-Use Committee in February, the Waterfront Access Plan looked like a standard New York City waterfront design: visual corridors between developments, public esplanades with curving pathways, benches — and very little interaction with the water.

Asked if the city would consider ways to increase access along the waterfront, a DCP spokesperson said the agency was "looking to craft a modified version of them in the Gowanus Waterfront Action Plan, to address the Gowanus Canal's unique geography, to promote resiliency and sustainability and to meet the community's vision for the area."

The city made a similar effort back in 2009 toward innovation in the Williamsburg/Greenpoint waterfront rezoning, adding a text amendment to city waterfront design that was later adopted citywide. The amendment expanded design standards from a strict, all-guardrail approach on the city's waterfront to allow for newer approaches to waterfront access, like riprap shorelines, which are constructed from boulders, or get-downs, which provide types of stepped access to the water.

But a decade later, as high-rise condos of 30 and 40 stories spring up along the North Brooklyn shoreline, residents are worried they aren't getting what they were promised in the rezoning.

North Brooklyn residents gathered in Greenpoint last December to discuss waterfront design and development with representatives of the DCP. The meeting was initiated by the increasingly vocal dissatisfaction of Williamsburg and Greenpoint residents with the reality of design along the waterfront.

Rezoning doesn't come around often, but when it does, the effects are literally set in stone.

When the publicly accessible space at Greenpoint Landing opened last year, residents found the design sterile in comparison to original discussions. The bulkhead walls and railings above the water prevent the kind of direct interaction that many hoped for.

No get-downs to the water have been planned along the waterfront, and the Community Board 1 Parks committee rejected a city design for the nearby Box Street Park mainly based on its lack of waterfront access, sending designers back to the drawing board to come up with a new plan.

Willis Elkins, a member of Community Board 1 and the Newtown Creek Alliance in North Brooklyn, called access to the water along the Greenpoint/Williamsburg waterfront "lacking."

There are "nice parks that don't have a great connection or interaction with the waterway," said

Elkins. He pointed to Grand Ferry Park as a positive example, where low-lying riprap allows visitors to interact with the water or sit on the rocks, but contrasted the small, older park (built in 1998, with an update in 2008) with newer, flashier development.

The much-touted Domino Park, he said, has plenty of amenities, but offers very little interaction with the water. Same for Greenpoint Landing, which has a riprap shoreline, but prevents access or connection with a railing at the top, along the paved esplanade.

No enforcement authority

One of the key points at the DCP meeting in Greenpoint was that DCP has no real enforcement authority beyond setting design minimums. Agency representatives were quick to point out that DCP expanded the language to make room for more ambitious "design forward" projects from developers, but so long as the minimums were met — paths so many feet wide, benches every so often, a certain number of trees or square feet of ground cover — they had no real enforcement authority to hold developers to a higher standard.

The real estate interests putting up glossy towers full of multi-million dollar condos were more than welcome to invest in innovative public space along their waterfronts, but only if they wanted to.

"We have long sought to build out an extraordinary waterfront for the residents of Greenpoint," said a spokesperson for Greenpoint Landing in an email. "Throughout the design process, we have listened to the community and continue to do so in designing the next phases of waterfront."

A large section of the Greenpoint Landing project remains to be built, and the spokesperson said that developers will continue to hold meetings with the community and incorporate their comments into planning. They hope to incorporate more green space and natural plantings along the waterfront, with water access "where possible."

The efficacy of community feedback can be hard to measure, however, as any Brooklyn resident that has sat in on a "visioning session" can probably attest. Grassroots efforts to put pressure on developers decades after city planning decisions have been made — and some developments have already been built — is seen by many as too little, too late.

Rezoning process offers an opportunity

If DCP doesn't include binding language in their plans for rezoning, accountability for developers could be found in the ULURP process that guides rezoning. But as the community board, City Council and borough president make recommendations to approve developments, their discussions are often more focused on height requirements, air rights and inclusionary housing than they are in design.

"It's my regret I didn't get on this message five years ago," Councilmember Stephen Levin said at the Greenpoint meeting in December, acknowledging his constituents' disappointment in the work. Levin said it wouldn't be possible to make options into requirements for already approved buildings in North Brooklyn, but urged the community to "speak with one voice" about their expectations.

Levin's district also includes a portion of the Gowanus Canal, which now faces a waterfront rezoning. Though much of the new development along the North Brooklyn waterfront has been approved, and community organization hasn't materialized on a larger scale, there is an opportunity for Gowanus residents to get ahead of the curve, using the lessons learned on the North Brooklyn waterfront to hold developers to a higher standard.

Rock climbing walls may be ambitious examples for what a waterfront can look like, but the point made by the Gowanus Dredgers — that not all waterfront designs be derivative esplanades — is timely. Without binding language or agreements from politicians to enforce higher standards on the space, the path of least resistance is likely. Rezoning doesn't come around often, but when it does, the effects and decisions are felt for generations, and literally set in stone.

NORTH COUNTRY PUBLIC RADIO

Plastic bag ban gaining momentum in Albany

By Karen Dewitt

March 28, 2019

The sponsors of a bill to ban single-use plastic bags in New York are optimistic that the measures will be part of the new state budget. But there are still details to be worked out, including whether there should be a fee on paper bags.

Lawmakers and environmental groups stood outside the Assembly chambers in a Capitol filled with groups making their last-minute pitches for items in the state budget.

Assemblyman Sean Ryan of Buffalo held up a crumpled plastic bag and said the overuse of the bags is an environmental scourge.

“Buffalo is a town on Lake Erie, next to the Niagara River, and every year, we spend a lot of taxpayer dollars pulling these out of our waterways,” Ryan said. “They get into the storm sewers, they get into the sanitary sewers, they get into the flood control units.”

Assembly sponsor and Environmental Committee chair Steve Englebright said he’s been lobbying for the ban for decades. With both houses of the Legislature now controlled by Democrats, he said he believes it can finally happen.

“I’ve waited 40 years, and my hair is falling out,” he joked. “I don’t want to wait any longer.”

Englebright said a fee on paper bags is also being discussed but has not yet been agreed to.

Englebright and the Senate sponsor, Todd Kaminsky, are from Long Island, where some local governments have their own rules banning bags or imposing fees on their use.

Kaminsky, who is also the Senate Environmental Committee chair, said it’s possible that there will be an opt-out for communities who either have their own plans in place or don’t want to impose a paper bag fee. And there could be a fee exemption for lower-income New Yorkers, he said, but it’s all still being discussed.

“I’m optimistic,” Kaminsky said. “The details are still being ironed out, but we’re getting there.”

Kaminsky was asked whether he thought potential opposition to imposing a fee on paper bags might “scuttle” the plastic ban.

“I’m hoping for no scuttling,” Kaminsky said. “I’m in the no-scuttling camp.”

Liz Moran, the environmental policy director for the New York Public Interest Research Group, said a fee on paper bags could be a good tool to get the public accustomed to bringing their own shopping bags to grocery stores.

“And then once they pay the fee, ‘Oh, we have to bring a bag,’ ” Moran said. “People in other states have adjusted quite well.”

Senate Leader Andrea Stewart-Cousins said a fee on paper bags was part of the discussion between herself, Assembly Speaker Carl Heastie and Gov. Andrew Cuomo at a closed-door leaders meeting Wednesday morning.

“There has been a conversation that if you just ban plastic, then you’re flooded with paper, and how is that resolved,” said Stewart-Cousins.

Cuomo, speaking on March 22, said he wants to include the plastic bag ban in the budget, and is open to “compromising” on whether there should be a fee on paper bags and whether local governments can opt out of the rules.

“I don’t want to lose the plastic bag ban for disagreement over the paper fee,” Cuomo said.

Cuomo’s senior adviser, Rich Azzopardi, in a statement issued Wednesday afternoon said he’s “encouraged by the emerging consensus on this issue.” He said curbing the use of plastic bags, which he called an “environmental blight,” has long been a priority.

Opponents include the Food Industry Alliance of New York, the trade group for food retailers and wholesalers. In a statement, the group said the ban would result in “severe consequences for New York’s retail food industry” and “further bolsters New York’s anti-business reputation.”

The group is not opposed to charging fees on both single-use plastic and paper bags available in grocery stores. FIA President Mike Durant said a fee-based program in Suffolk County has worked well.

DAILY GAZETTE

New York lawmakers say plastic bag ban in the works as budget talks continue

The environmentally-friendly move could also include a fee on paper bags

By Denis Slattery

March 28, 2019

Gov. Cuomo and state lawmakers are preparing to ban single-use plastic bags statewide.

The environmentally-friendly move, which made headway Wednesday during budget talks, could also include a fee on paper bags as a way to encourage people to bring reusable totes with them when they go grocery shopping.

"Cracking down on the environmental blight caused by plastic bags has long been a priority for the Governor and was one of the first budget proposals he unveiled this year," said Cuomo senior adviser Richard Azzopardi. "We're encouraged by the emerging consensus on this issue and will continue to work with the Legislature to finalize a budget that works for all New Yorkers."

The ban comes two years after Cuomo blocked the City's attempts to place a 5-cent fee on plastic bags because store owners would have kept all of the funds.

Assembly Speaker Carl Heastie (D-Bronx) suggested this week that some of the money from a paper bag fee should go to environmental projects.

Lawmakers are discussing carveouts for low-income residents and the possibility that some counties could opt out of the fee portion of the measure.

"Those are part of the details we're working out," Sen. Todd Kaminsky, the chairman of the Environmental Conservation Committee. "We know we want plastic and paper to be addressed. We know we like the ban-fee combo, but that's what we're working out."

The Long Island Democrat said he is hopeful that there will be a consensus in the coming days, adding that the ban has been "kicked around Albany for way too long" and noting that schoolkids in his district often cite pollution and plastic waste as some of their biggest concerns.

"I go to many elementary schools every year... all children give the same answer when I say 'if you could be in Albany and be the governor one day what's the one thing you would do,' they all say do something about the pollution, do something about the plastic," Kaminsky said.

NJ SPOTLIGHT

State Sues DuPont and Chemours over Decades of Pollution

New Jersey Attorney General files lawsuits 'to hold polluters accountable' for alleged contamination

By Brenda Flanagan, NJTV News

March 28, 2019

Helen Martens joined an emotional audience of long-suffering Pompton Lakes residents — many of them also cancer patients, like Martens — who for decades fought to force chemical giant DuPont to clean up an old munitions plant that allegedly polluted their groundwater with toxic plumes of carcinogens.

“Our lives matter,” Martens said. “Somebody needs to make them accountable.”

State Attorney General Gurbir Grewal announced on Wednesday that he’s suing DuPont and its affiliate Chemours over that site and three others.

“And we’re sending a strong message to polluters that no matter how big you are, or how powerful you are, or how long you’ve been getting away with contaminating our state’s natural resources, we are going to hold you accountable in court,” Grewal said.

“We’re stunned at the fact that after 40 years, someone is finally listening to the residents of Pompton Lakes,” said Jefferson Harman LaSala, board member of Pompton Lakes Residents for Environmental Integrity.

Grewal announced that New Jersey has filed four Natural Resource Damages lawsuits for contamination allegedly caused by facilities at Pompton Lakes; Parlin; Repauno in Greenwich, Gloucester County; and Chambers Works in Pennsville, Salem County. The Chambers Works and Parlin sites involve PFAS chemicals from 3M, which is also named in the two suits.

‘…force polluters to pay’

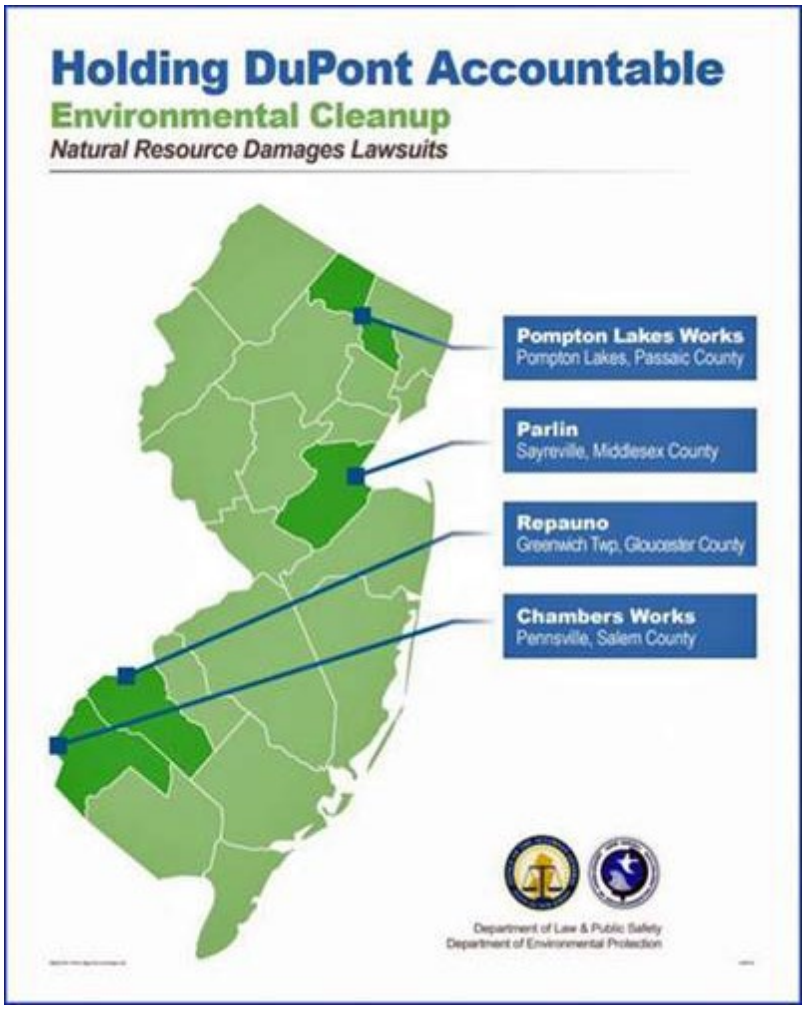
“NRD cases are powerful tools — tools that allow us to hold polluters accountable, tools that allow us to force polluters to pay the public for injuries that they have caused to natural resources throughout our state. And we are going to use all the monies that we recover in these cases to restore our environment,” Grewal said.

Holding DuPont Accountable

Environmental Cleanup

Natural Resource Damages Lawsuits

Department of Law & Public Safety
Department of Environmental Protection



In a statement, DuPont said, “DuPont has worked under the direct oversight of NJDEP and U.S. EPA for more than two decades on remediating soil, sediment and groundwater both on and offsite at these locations. Fulfilling our remediation responsibilities has been and will continue to be a priority for DuPont.”

Its affiliate Chemours said it is “ … surprised and disappointed by today’s announcement from the New Jersey Attorney General. Since our creation, Chemours has consistently stepped up to its responsibility and worked cooperatively with state and federal officials regarding any environmental issues at our manufacturing and remediation sites in New Jersey.”

“I’m afraid to live in my home. I live in fear. I do, I live in fear of, ‘What’s that smell? Is that the chemicals coming up?’ You know, I had cancer. I have a lot of problems going on, medically,” Martens said.

In Pompton Lakes, the groundwater carried compounds called TCE and PCE from solvents used to clean machinery at the munitions factory. The compounds aerosolized under pressure and a chemical vapor infiltrated basements in an estimated 340 homes. DuPont has worked to mitigate the contamination — including installing a groundwater pump and filtration system, and individual units to vent the gas from affected homes.

Wanting DuPont to assume responsibility

“This is hopeful. This is good news,” said 28-year-old Rick Orefice, who used to play down by the lake. Five years ago, doctors removed his spleen, which had swollen to five pounds — the result of a rare cancer. He wants DuPont to assume responsibility.

“To honestly fix the situation and not drag their feet anymore, to not keep shoving the blame onto a different company and when it fails, that company is the one who takes the blame instead of DuPont,” Orefice said.

“We want a full cleanup. And we want something done for the homeowners. We need buyouts or something to help the homeowners in this town,” Martens said.

The attorney general said Natural Resources Damages do not include housing buyouts. He would not say how much money these four lawsuits could involve.

NJ SPOTLIGHT

Rate Counsel Opposes PSE&G’s $2.78 Billion Energy-Efficiency Filing

Ratepayer watchdog contends utility overestimated how cost effective six-year program would be, recouping costs contrary to Clean Energy Act

March 28, 2019

The New Jersey Division of Rate Counsel is urging the state to reject a $2.78 billion proposal by Public Service Electric & Gas to invest in new energy-efficiency projects across its territory.

In filings with the state Board of Public Utilities, Rate Counsel’s experts argued the utility overstated how cost effective the proposed six-year program would be. They also contended a provision to recoup revenues PSE&G would lose due to its energy-saving actions is contrary to the Clean Energy Act (CEA) signed by Gov. Phil Murphy last May.

PSE&G submitted the petition last September, part of a $4 billion filing, seeking to align its spending with the clean-energy bill signed only a few months earlier. The utility argued the money spent on 22 energy-efficiency programs would save customers more than $5.7 billion over the 20-year life of the program.

NJ's national energy-efficiency ranking

New Jersey currently ranks 29th nationwide in energy savings, according to the American Council for an Energy Efficient Economy. PSE&G contends its energy-efficiency filing is the right thing to do for its customers and the state, according to Karen Johnson, a spokeswoman for the utility.

"The programs we have proposed will save customers billions of dollars in energy costs, create thousands of green jobs in New Jersey, improve air quality, and drastically reduce the state's carbon footprint,'' she said.

But Rate Counsel and its consultants argued the company's filing is premature, since the BPU has yet to wind up its own proceeding regarding the interpretation of the clean-energy law and its requirements.

"PSE&G does not have the authority to impose its own interpretation of the CEA in order to direct billions of dollars of ratepayers' dollars to its proposed programs,'' Erza Hausman, a consultant for Rate Counsel argued in a filing.

No exclusive for PSE&G

The Rate Counsel's consultants also urged the BPU to reject the utility's bid to become the exclusive agent for regulated energy-efficiency projects within its territory, a controversial proposal given that a competitive private market exists that could offer customers more varied choices in how to reduce energy use.

"I wouldn't want to see it monopolized,'' said Rate Counsel director Stefanie Brand. "That's not good for consumers. There's a role for utilities, but it's not necessarily the only game in town.''

Under the utility's proposal, Rate Counsel's consultants also feared the utility's energy-efficiency proposals would displace some of the state Office of Clean Energy's own successful and cost-effective energy-savings programs in both the residential and commercial/industrial sectors.

Why dismantle the programs OCE already has and are working well?'' asked Brand. "Why take over the work that OCE already is doing and doing well?"

Rate Counsel blocks decoupling

The utility's proposal to recoup any lost revenue from its energy-efficiency programs through a new mechanism also was declared unnecessary by Rate Counsel. PSE&G has repeatedly said it would only invest significantly in energy efficiency if the state adopted a so-called decoupling provision.

But Brand argued the clean-energy law requires the board to adopt incentives for utilities to meet, mandating a 2 percent annual reduction in electric use, 0.75 percent a year for gas. If they fail to achieve the required reductions, utilities would face penalties (which have not yet been set by the BPU).

PSE&G's original $4 billion filing was broken into separate elements by the BPU late last

year. Besides the energy-efficiency component, the utility sought to spend $800 million on smart meters, a technology widely used nationwide, but not yet in New Jersey; $364 million on infrastructure for charging electric vehicles; and $180 million on energy storage.

In addition, PSE&G has a $2.5 billion filing pending before state regulators to modernize both its electric and its gas distribution systems. Its sister company, PSEG Power, should learn next month if its bid to win up to $300 million in annual ratepayer subsidies to keep three nuclear plants open in South Jersey has been successful.

NEWSDAY

Southampton Town mulls legal action against DEC after mining settlement

The DEC said the settlement is a path to the mine's closure without further litigation from Sand Land.

By Vera Chinese

March 28, 2019

Southampton Town is considering legal action against the state Department of Environmental Conservation following a settlement that could allow a Noyac sand mine — which a Suffolk County study showed had negatively impacted groundwater — to operate for eight more years.

The DEC in September proposed requiring mining to stop at Sand Land in Noyac, where a study released by Suffolk County in June found elevated levels of manganese and iron in the groundwater concluding it was from mulching and composting on the site. Sand Land representatives, who have denied that the groundwater contamination was due to operations at the facility, appealed the DEC decision.

The state agency announced on March 15 it had reached an agreement that would allow the operation to continue for eight years and permit the mine to expand 40 feet deeper but require reclamation of the site in 10 years, a decision that surprised environmentalists, civic leaders and elected officials.

“We are not happy with the settlement the DEC reached,” Southampton Town Supervisor Jay Schneiderman said Tuesday, adding that the town is exploring its legal options. “I think I have

made that expressively clear."

The DEC said the settlement is a path to the mine's closure without further litigation from Sand Land.

State officials noted the agreement prohibits the company from accepting new vegetative waste at the site, prevents horizontal expansion of the mine, institutes a groundwater monitoring program and provides additional financial security to ensure the mine is reclaimed within a decade.

"DEC's ongoing and rigorous monitoring of this facility and investigation of its operations resulted in the final settlement, which imposes the most stringent requirements on any sand mining operation in the state," a DEC spokeswoman said in an email.

Sand Land has submitted a revised mining permit application reflecting the settlement terms. The DEC is accepting public comment and will later make a final determination on the permit.

Schneiderman said the town zoning code prohibits new mining and said the settlement appears to contradict a previous DEC determination. On Sept. 10, the DEC denied a renewal for Sand Land's mining permit, which was set to expire November 2018.

The September decision from Daniel Whitehead, the director of the DEC's environmental permits division, notes the site has insufficient sand for mining and that the sand is in an area where organic waste was processed. Future mining in areas where organic waste was processed and stored has "the potential to allow the release of contaminants in that area which could impact the local groundwater," the letter states.

Assemblyman Fred W. Thiele Jr. (I-Sag Harbor) said he would join Southampton Town in a legal proceeding and plans to submit a bill that would prohibit the DEC from issuing mining permits for contaminated land that lies over sole source aquifers. It would also force the closure of mines over contaminated properties.

"There is no justification for permitting the removal of sand which is necessary to filter our groundwater to be removed from a contaminated property," Thiele said in an email.

NEWSDAY

Environmental groups push property tax or water hike for septic improvements

The groups said the average annual cost to homeowners would be $75 for a tax increase, or $110 or higher for a water fee. But there's no guarantee the proposal will make it onto the November ballot.

By David M. Schwartz

March 27, 2019

Environmental groups are pushing for a Suffolk County ballot measure that would raise $70 million a year through either property taxes or water bills to combat nitrogen in waterways by improving wastewater treatment.

The groups submitted ballot language to the county attorney's office March 8 that will ask voters to approve a property tax line dedicated to grants for nitrogen-removing septic systems, sewer expansions and sewage treatment plant improvements.

Separately, the groups have circulated among civic and environmental organizations a draft letter to county lawmakers asking them to support a referendum on a property tax or a fee on water usage.

"The Long Island that many of us grew up with is being killed by sewage — and we must act to fix the problem now," according to the letter from four Long Island environmental groups that formed the Long Island Clean Water Partnership.

According to advocates, average homeowners would pay about $75 a year under both scenarios, though the Suffolk County Water Authority estimated the costs for a water fee would be $110 or higher for the average residential water user.

The proposals face skepticism from county lawmakers and Suffolk County Water Authority officials concerned about imposing additional costs on Suffolk residents.

It's no sure thing either measure will qualify for the ballot. Advocates said they're still in the early stages and while they had originally been targeting November, some coalition members suggested this week that the effort might be pushed to 2020, as they continue to gather support among elected officials.

To get on the ballot, the water fee would need approval from the State Legislature. State lawmakers said they'd want to see support from the county legislature and Suffolk County Executive Steve Bellone. In 2016, a proposed referendum to raise water rates for wastewater treatment, pushed by Bellone, failed to advance in the State Legislature.

But the proposed property tax could get on the ballot without any legislative support, if backers collect more than 13,000 signatures from Suffolk voters.

While the water fee is preferred by most groups, given residents' opposition to property tax increases, the proposed property tax initiative could be a backup if elected officials balk.

"If the lawmakers don't want to do it, the citizens can do it themselves," said Richard Amper, executive director of the Long Island Pine Barrens Society. "We think the public is supportive of water protection today."

Excess nitrogen has been tied to algal blooms that have decimated shellfish stocks, reduced eel grass populations, depleted oxygen levels in waters, closed swimming at freshwater lakes and damaged natural coastal barriers like marshlands, according to advocates, as well as many environmentalists and academics. A study of the Great South Bay attributed nearly 70 percent of nitrogen to unsewered homes.

About 360,000 homes in Suffolk County are not connected to sewers, and the county has identified 209,000 homes in priority areas to either connect to sewers or install septic systems designed to remove nitrogen.

"The water quality problem is an $8 billion infrastructure problem," said Nicholas Calderon, public policy adviser for The Nature Conservancy, Long Island, citing countywide estimates to connect homes to sewers or advanced septic systems. "It's not going to be fixed by itself. The only way to fix it is we have dedicated revenue stream. It's the only way we can protect our water."

The Long Island Clean Water Partnership is made up of advocacy groups Citizens Campaign for the Environment, The Nature Conservancy, Group for the East End and Long Island Pine Barrens Society.

"If we're ever going to really address water quality, we're going to need a consistent, reliable funding source," said Adrienne Esposito, executive director of Farmingdale-based Citizens Campaign for the Environment.

Bellone, who has made fighting nitrogen the centerpiece of his environmental agenda, was noncommittal about the latest initiatives.

"We are reviewing the current proposal and having conversations with local stakeholders," Bellone said in a statement. He, along with county legislators, are on the ballot for re-election this year.

Suffolk Legislature Presiding Officer DuWayne Gregory said residents struggling with the high cost of living already have been hit this year by federal tax law changes and water rates that could rise dramatically to treat emerging contaminants in drinking water.

"We have to do something to expand advanced wastewater treatment systems and sewers. But we have to come up with a way that's suitable for the taxpayers," Gregory (D-Copiague) said. "They're under a lot of stress and burden. I'm not sure this is necessarily the way to do it."

Jeffrey Szabo, chief executive officer of the Suffolk County Water Authority, said he would oppose a water fee, though he wouldn't oppose a property tax line.

He said nitrogen is not a major concern for drinking water — only two wells out of the district's 600 need treatment — and levels of nitrogen have stabilized or trended down, as he

believes farmers improved how they use fertilizers.

“We believe nitrogen is an issue in surface water, in bays and estuaries. When it comes to a drinking water perspective, it’s not something that keeps me up at night,” Szabo said. “If environmentalists want a tax for sewer purposes, it should not be hidden in residents’ water bills.”

He said bills that will average $436 a year April 1 could increase an additional 25 percent to 33 percent in future years to pay for treatment of emerging contaminants, which the state is expected to regulate this year.

Additionally, an estimated 25,000 to 40,000 households are on private wells, and don’t get a water bill.

Advocates said while a water fee or property tax might not be perfect, it was necessary to find a revenue stream.

“Whether we do it this year or next year is being worked out. But it needs to be done,” Esposito said. She called the property tax proposal “a way to get legislators to act on their own. And help them not be so lethargic.”

Amper said the partnership would push forward with a referendum this year. “The need is too urgent to wait,” he said.

A recurring revenue stream for wastewater would be a capstone of efforts by Bellone and environmental groups that have focused on nitrogen since at least 2014, when the county released an updated water resources plan and Bellone declared nitrogen “public water enemy No. 1.”

The county successfully pushed for $362 million in state and federal grants to sewer areas of Mastic and Babylon as a wetland protection program, and built a county program to permit nitrogen-reducing advanced septic systems.

But the major unanswered question all along has been how to fund the plans. Suffolk County in February put out a bid for a study of a countywide wastewater district, which asked consultants to evaluate potential funding streams, including “a surcharge on water usage, and a modest monthly charge to property owners.”

A centerpiece of the county’s effort so far has been a county grant program to help homeowners pay for new systems, which cost on average of more than $20,000. Funding so far is limited to $10 million from the county over five years and $10 million from the state. Bellone and advocates said that the septic rebate program is threatened over the possibility that homeowners will have to pay taxes on the county and state grants. County Comptroller John Kennedy sent tax forms to homeowners who received the grant, while the Bellone administration said the tax should be paid by the installers who receive the check, citing an opinion from their tax counsel.

Assemb. Fred Thiele (I-Sag Harbor), who sponsored an Assembly bill to allow a water fee referendum three years ago, was waiting to see if there was support in the State Senate, county legislature and county executive.

Still, he saw a need for local funding.

“This is not a one-year, two-year or five-year program,” he said. “I don’t think we can make any progress on water quality unless we can commit to funding infrastructure projects over a long period of time.”

Republican Minority Leader Tom Cilmi (R-Bay Shore) said he “wouldn’t close the door on a referendum,” but said language would have to be clear about costs to homeowners. He also noted the county should re-examine how it spends sales tax money dedicated to open-space funding to see if that could be better spent on wastewater treatment.

“It’s pretty obvious to me that in order to reduce nitrogen, we need to spend some money,” he said. “But we’re already spending tens of millions on water quality, mainly through the purchase of open space … Perhaps it’s time to re-examine the allocation of that sales tax, rather than charge people additional money they don’t have.”

Legis. Robert Trotta (R-Fort Salonga) said he wouldn’t trust county leadership not to raid the fund, because it borrowed $171 million from a county sewer fund from 2014 to 2017 to pay operating expenses. That money came from a countywide sales tax.

Amper said the language of the proposals would put the money in a “lockbox” so it couldn’t be raided by future administrations.

“We’re going to do this one way or the other,” Amper said. “I’ve heard county legislators say to me in the last two or three years, I don’t want to be accused of raising taxes. You’re not going to be accused of raising taxes, you’re going to be accused of not letting people decide.”

But not everyone in the environmental community agree that unsewered homes represent a crisis.

John Tanacredi, a Molloy College professor and executive director of the Center for Environmental Research and Coastal Oceans Monitoring, said there’s been an overemphasis on the dangers of nitrogen coming from septic systems.

“The coastal environment of Long Island is outstanding,” he said, pointing to abundant populations of menhaden, sea turtles in Queens and a recent study showing the Long Island Sound’s recovery. Algal blooms and fish kills are all part of a natural process, he said.

“To blame it all on these septic systems is inaccurate,” he said.

Chris Gobler, a Stony Brook University professor at the School of Marine and Atmospheric Science who has worked with the county and environmental advocates, said sea grass levels, shellfish landings and wetland coverage all have declined dramatically in the Great South Bay.

Every year, he said, a variety of harmful algal blooms appear from May to October in Long Island waters.

“A series of studies have shown the main source of nitrogen is 360,000 homes not connected to sewage treatment plants,” he said.

NEWSDAY -- EDITORIAL

NYS debates the future of plastic bags

Paper or plastic with that?

One of the most fluid topics at this extremely fluid stage of Albany budget negotiations is a proposed ban on plastic bags.

While most everyone favors the ban itself, there is much debate about an accompanying 5-cent fee on paper bags. The general consensus is to let municipalities decide whether they want paper bags offered free of charge or to opt in to institute a fee. But while some negotiators want to give only counties the right to opt in, others say cities must be included as well to make sure that New York City, Buffalo, Rochester and others like Glen Cove and Long Beach have the option as well. And still others say if counties decide not to opt in, then the towns within those counties should have the option to opt in (as well as villages if the towns they are in do not).

Also being discussed is how to split that nickel between the state, local municipalities and/or stores, and how those shares can be spent (reusable bags, other environmental-related programs or other uses).

Environmental-minded lawmakers and advocates also were optimistic about getting approved a measure to reduce food waste and help feed the hungry by requiring big producers like hospitals, colleges and supermarkets to donate edible items to hunger-relief organizations and recycle the rest. It's a plan Gov. Andrew M. Cuomo left out of his budget proposal after trying in vain to get it passed the last two years.

It's also looking increasingly like the budget will include $500 million for clean water infrastructure, not the commitment for $2.5 billion over five years some advocates had been pushing. And Cuomo's plan to use Environmental Protection Fund money to pay for staffing was still on the table, despite legislative opposition.

But the biggest environmental surprise might be that climate change, as one insider put it, "is apparently back on the table as of 4 this morning."

The debate, which played out in legislative hearings on the Climate and Community Protection Act held by Sen. Todd Kaminsky's environmental conservation committee earlier this year, centers on which emissions-reduction goal to adopt and by when. One camp is

arguing that the state should get 100 percent of its energy from renewable sources by a date certain, while the other camp says that is not doable and a better target is to be carbon-neutral by that date. One difference: the second goal allows for nuclear energy, the first does not.

The conversation got so hot so fast that several organizations — Citizens Campaign for the Environment, The Nature Conservancy, National Resources Defense Council, New York League of Conservation Voters and Audubon New York — quickly whipped up a letter Wednesday morning to lawmakers arguing for the carbon-neutral goal as a way to “address climate change in a bold, progressive, meaningful way that achieves durable, lasting change.”

If there’s one thing folks in Albany understand this time of year, it’s change.

WBFO NEWS

Lewiston nuclear waste to be removed. Now what?

By Mike Desmond

March 28, 2019

Two things emerged from a thinly attended public meeting in Lewiston Tuesday night: Washington will remove the nuclear waste from the Niagara Falls Storage Site in the town, but no one knows when that will be.

The bureaucratic process of planning for what to do about stored nuclear waste in Lewiston lurched forward Tuesday when the U.S. Army Corps of Engineers said a final decision has been made: the material will be dug up from an underground vault and hauled away. Making that choice from four possibilities has been on Washington desks for years.

The announcement was made just hours before a public meeting Tuesday night at the Lew-Port Community Resource Center.

This heavily radioactive waste is left over from the first atom bomb program in World War II. Washington decided the waste should be removed from a 10-acre concrete tomb and taken somewhere.

"It's in the Corps' mission right now," said Local Special Projects Branch Chief Bill Kowalewski. "We're executing the projects and you're right: when we're done with a cleanup, we finish the cleanup. We operate and maintain it for two years to make sure it's operating as we designed and then we do hand it back to the Department of Energy - and they, they, then have the mission to monitor the site in perpetuity."

The problem is that Lewiston removal will cost at least $500 million, according to a 2015 estimate, but the entire federal budget for these 23 FUSRAP (Formerly Utilized Sites Remedial Action Program) sites nationally is only around $120 million. Another problem is that Lewiston is 13th on the list of 23 of these sites, according to Kowalewski.

Credit Mike Desmond / WBFO News

Niagara County Legislature Vice Chairman Clyde Burmaster has been in office for 26 years and the waste has been in the concrete box for 35 years. He had two "when" questions:

"When are you going to start it? Which they don't talk about and you heard it in there. They don't have any idea when they're going be start. They're just going to go through this process," Burmaster said. "And if you are talking about $115 million a year or something that's set aside for all those different landfills: When are we ever going to get up higher than 13 on the list? We never will. We'll never make it up there."

Amy Witryol told the meeting there are a lot of issues.

"The utilities, the water, the electricity and then we can begin thinking about what we want that property to be for the next generation," Witryol said, "because the Department of Energy, given the proposed plan for complete removal, is not going to want to spend the amount of money on a site this small and be a caretaker for perpetuity."

National News

Administration

Dayton Daily News

Exclusive: Fairfield native targeting safe drinking water as new head of EPA
https://www.daytondailynews.com/news/exclusive-fairfield-native-targeting-safe-drinking-water-new-head-epa/JZ6V3BIMnFXGBcU8rRgtxK/
Michael D. Pitman
Posted: March 27, 2019

SHARONVILLE —
Safe drinking water is an immediate goal for Fairfield native Andrew Wheeler, the recently confirmed head of the U.S. Environmental Protection Agency, and part of that includes removing lead and copper pipes from the ground across Southwest Ohio and the country.
During a keynote speech Tuesday at the sustainability symposium in Sharonville, Wheeler said the U.S. "can and should do more on the global stage," and he reiterated his debated position that water issues "are the largest and most immediate environmental public health issue affecting the world today."
Wheeler, who was confirmed by the Senateon Feb. 28 to lead the EPA, explained his stance in an exclusive interview with the Journal-News. "The water issues are solvable," Wheeler said. "We know what it takes to provide safe drinking water to people."
Safe drinking water isn't a concern for Butler County communities, local officials said.
Communities here worry about water main breaks and corroding, aging pipes, officials said. Wheeler said a federal EPA loan program, which is in its second year, has assisted seven cities across the country and could help Butler County and southwest Ohio communities replace their aging infrastructure.
The low-cost, long-term loans through the Water Infrastructure Finance and Innovation Act will leverage $1.8 billion to fund $3.8 billion in projects this year. Wheeler said 39 communities have been invited to apply this summer for funds that will help collectively finance more than $10 billion in projects next year.
Communities around Butler County are investing in underground infrastructure, officials said.
Fairfield will spend more than $2 million this year in water main replacement, and Butler County has a $1 million project underway on Jerry Drive in West Chester Twp. to replace 8,600 feet of water main.
Butler County Water and Sewer Director Martha Shelby said her agency has four construction projects planned over the next two years to replace an estimated 33,000 feet of water main.
But the federal agency will also undertake this year an update to the EPA's Lead and Copper Rule, which hasn't been updated in two decades. Wheeler said his goal is to remove lead and copper pipes from all communities.
"We don't know where all the lead and copper lines are," he said. "The first thing we're going to do is to catalog where they are, and I've challenged our staff to come up with more innovative ways of testing and predicting where corrosive pipes might be so we can identify which pipes need to be replaced first."
Fairfield and Butler County water and sewer departments confirmed they do not have lead and copper pipes in their system.
"This is an issue for communities like the city of Cincinnati," said Fairfield Public Utilities Director Adam Sackenheim, who worked nearly a year at Cincinnati's departments of water and sewers. "I'm 100 percent supportive of the U.S. EPA, Ohio EPA, to fund the lead and copper line replacement program."

The Journal-News contacted the cities of Hamilton and Middletown but didn't receive a response before deadline.
Local governments are only responsible for water lines in the public right-of-way so "that isn't any good for a resident because they may have 50 feet of service line," and may not have the means to replace it, he said.
Communities like Fairfield, which didn't form until the 1950s, don't have lead and copper pipes as they were phased out at that point, Sackenheim said.
Wheeler said once lead and copper pipe locations are identified, it could take 20 to 30 years to replace them. But he wants to make sure the most corrosive pipes are tackled first, and those more impoverished and at-risk communities are assisted before the more affluent communities

E&E News

Reagan appointee says EPA 'disemboweling' program

https://www.eenews.net/eedaily/stories/1060131809/search?keyword=EPA

Corbin Hiar

Posted: March 28, 2019

A federal investigator who spent a year auditing EPA's chemical testing program yesterday still couldn't explain how or why agency leaders decided against releasing a completed review of the dangers posed by the widely used chemical formaldehyde.

"There are questions about what happened to it," Alfredo Gómez, director of the Government Accountability Office's natural resources and environment team, told lawmakers at a House Science, Space and Technology subcommittee hearing.

Also unclear, the GAO witness said, is "when it is going to be released."

While Republicans and a career EPA official supported leadership's efforts to delay the draft formaldehyde report, a Reagan-era political appointee argued they were destroying the agency's Integrated Risk Information System.

IRIS has been working on the draft formaldehyde risk assessment since 1997. The chemical, which a Department of Health and Human Services program determined in 2011 is "known to be a human carcinogen," is used in everything from plywood to insecticides.

IRIS was ready to unveil its long-awaited formaldehyde review last year. But EPA leaders blocked the science-focused program from releasing any of its research, GAO reported earlier this month (***E&E News PM***, March 4).

Such assessments are often used by regulatory offices at EPA and other federal and state agencies to limit the use of potentially dangerous chemicals.

Gómez began auditing IRIS last March. He found EPA leadership verbally ordered program offices to limit their assessment requests to no more than four chemicals after an initial agencywide survey found broad support for most of IRIS's work.

The end result of that process was a **work plan** for IRIS that didn't include formaldehyde or

10 other chemicals.

Rep. Don Beyer (D-Va.) pressed the top career official overseeing IRIS for more information on how that second review of the program's work plan came about.

"I wasn't involved in that conversation," said Jennifer Orme-Zavaleta, the principal deputy assistant administrator for science in EPA's Office of Research and Development. "I don't know if it was requested by the ORD representatives or the administrator."

Beyer suggested the move to withhold the formaldehyde assessment was made to appease the former clients and employers of EPA leadership.

"The suspicious part of me wonders if the prioritization wasn't simply used as a way to eliminate chemicals that are controversial within industry and focus on ones that are easy, low-hanging fruit," he said.

EPA's Office of Pollution Prevention and Chemical Safety is currently working on a risk assessment of formaldehyde, the first step toward potential regulations of the chemical — but is doing so without first releasing IRIS's completed draft review (***Greenwire***, March 20).

The situation, Beyer said, "raises the prospect that this is not science driving it, but rather the politics and money."

Although Orme-Zavaleta couldn't offer much clarity on the status of IRIS's formaldehyde assessment, overall she described the politically directed surveys of the program's priorities as a positive step.

"We have always gone out to programs in helping to identify what their needs are," she said. "But this new process raises it to an assistant administrator level. And that's going to provide greater stability to the program as well as greater accountability."

Republican lawmakers on the Science Committee also backed EPA leadership's IRIS efforts. GAO found these moves had shrunk the workload of the program from 22 chemicals to 11 and effectively prevented it from publicly releasing any work for six months.

"A brief pause may have been necessary to adequately address the issues and challenges that IRIS faces and develop a plan of action for future progress," said Rep. Ralph Norman (R-S.C.), who noted the program has been on GAO's High Risk List since 2009 (***Greenwire***, March 6).

"You suspend operation and pull the cars off the track for evaluation, which makes for a better ride in the end," Norman said.

But that analogy didn't match up with what GAO's most recent review found was needed. It mainly called for greater leadership support of IRIS's scientific focus.

"As we understand it, the IRIS program was able to handle that workload given their current resources," Gómez said, referring to the 22 chemicals it was reviewing in early 2018.

Bernard Goldstein, who was the assistant administrator for EPA's ORD under President Reagan, was even more dismissive of the efforts by the Trump EPA to reform IRIS.

"Rather than streamlining, disemboweling is really what's happening here," he said.

PoliticoPro

Wheeler to testify before House subpanel April 2

https://subscriber.politicopro.com/energy/whiteboard/2019/03/wheeler-to-testify-before-house-subpanel-april-2-2966612

Anthony Adragna

Posted: 10:49am, March 28, 2019

EPA Administrator Andrew Wheeler will offer his first congressional testimony since his confirmation April 2 before a House Appropriations subcommittee, according to a hearing notice.

The testimony, before the Interior and Environment Subcommittee, will be on the agency's fiscal 2020 budget request, which sought just $6.1 billion. That would be 31 percent reduction over this year's enacted funding of $8.8 billion.

WHAT'S NEXT: Wheeler will testify on April 2 in Rayburn 2359 at 10 a.m.

Air

Bloomberg Environment

Insight: EPA's Criminal Theory in Clean Air Act Breaks New Ground

https://news.bloombergenvironment.com/environment-and-energy/insight-epas-criminal-theory-in-clean-air-act-breaks-new-ground

Justin Savage & Sidley Austin LLP

Posted: 9:00am, March 28, 2019

The auto industry is witnessing a fundamental shift regarding the federal government's legal theory of criminal liability, specifically as it relates to the Clean Air Act. The theory appeared in two cases last year. Neither was fully litigated—meaning the Environmental Protection Agency hasn't had to defend its arguments—but they still provide important information on the future of enforcement.

Important Cases to Study

In *United States v. Rexer*, the government brought criminal charges against employees of Rockwater Northeast LLC, DJ Paulhamus Trucking, and Sweitzer's Garage LLC. Rockwater transported wastewater for hydraulic fracturing operations. Paulhamus provided hauling services to Rockwater, and Sweitzer's Garage offered maintenance and inspection services.

The Department of Justice alleged that Rockwater removed a portion of 30 heavy-duty trucks' exhaust systems that contained emissions control devices and replaced them with straight pipe or hollowed out selective catalytic reduction devices or diesel particulate filters in the exhaust pipes. The onboard diagnostic devices (OBDs) were likewise disabled, preventing the vehicles from signaling or reacting to the malfunction.

The DOJ alleged that Rockwater purchased the "defeat devices" used for these activities from Paulhamus Trucking and Sweitzer's Garage, and Sweitzer's Garage then issued false inspection certificates. The department also alleged that these activities constituted "tampering" within the meaning of Section 113(c)(2)(C) and brought charges for conspiracy to defraud the U.S. under 18 U.S.C. § 371 and Section 113. The defendants, which included five individuals, pleaded guilty to conspiracy.

In *United States v. OE Construction*, an employee at OE Construction Corp. in Colorado purchased tuning kits from J-Ball Electronics Inc., which he used on OE's trucks to remove or alter the diesel oxidation catalyst, the diesel particulate filter, selective catalytic reduction device, and the exhaust gas recirculation device, and to modify the OBD to allow the trucks to operate without emissions control equipment. J-Ball manufactured the kits and ran software that could reprogram the trucks' systems. The company assured the EPA that the issue had arisen for only four vehicles and failed to disclose the modifications on two additional vehicles with the intent to avoid enforcement. The Justice Department charged OE under Section 113(c)(2)(C) and under 18 U.S.C. § 3 as an accessory after the fact.

Focusing scarce prosecutorial resources on just 36 trucks at issue in *OE Construction* and *Rexner* makes little sense—unless the federal government intended to send a message about the potential criminal liability for knowing OBD violations.

It is reasonable to expect more cases that push this theory, particularly in the aftermarket sector, but it would be a mistake to assume that the EPA's interpretation won't have a wider reach. Nothing on the face of Section 113(c)(2)(C) prevents the EPA from applying its new theory to original engine manufacturers, Tier 1 suppliers, or other "persons" who knowingly falsify, tamper with, render inaccurate, or fail to install OBDs.

However, one could reasonably question on policy ground whether it is appropriate to break new ground in environmental criminal enforcement, particularly on a novel interpretation of Section 113(c)(2)(C), a long-standing provision of the Clean Air Act.

Title II of the act, which regulates vehicle and engine emissions, contains no criminal liability provisions. It seems odd that Congress would deny the EPA direct criminal enforcement authority over vehicle emissions and engines in Title II, while indirectly creating liability for the monitors of those emissions. Apart from concerns about the interpretative strength of the EPA's position, criminal enforcement of a novel statutory interpretation raises due process concerns.

The "rule of lenity" provides that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity" to ensure that such statues provide fair warning concerning conduct rendered illegal. Here, because Title II is silent on criminal liability, it would appear to raise questions about whether the regulated community has fair warning of the EPA's new interpretation of Section 113(c)(2)(C).

Mitigating Related Risks

These cases showcase the EPA's willingness to turn allegations of knowing onboard

diagnostic device violations into criminal charges. Notwithstanding the small number of vehicles involved, and the EPA's lack of OBD regulation, the federal pursuit of these cases signals an attempt to create policy through enforcement and a new legal theory that is gaining momentum.

The EPA typically opens criminal investigations based on two factors—significant environmental harm and culpable conduct. The agency is more likely to find significant environmental harm where even a small amount of illegal conduct appears to represent a trend. It also is more likely to find culpable conduct where there is a history of repeated violations from the targeted business.

Given these factors, companies can take a number of actions to avoid unjustified attention from the EPA's criminal investigation arm. A robust internal compliance program can be critical in avoiding issues and program elements could include one or more of the following:

- self-audits or internal reviews to regularly assess technical assumptions and OBD performance;
- internal policies that encourage employees to report misconduct and police for illegitimate uses of products; and
- internal policies that prohibit employees from offering assistance that may enable customers to use its products for illegitimate purposes.

Second, best practices for supplier and customer relationships might include one or more of the following:

- requiring audits or demonstrations of quality assurance/quality control from suppliers relevant to the OBD;
- commercial agreements to follow regulatory requirements;
- indemnification for failure to follow regulatory requirements or good industry practice; and
- ensuring that marketing materials don't contain any information that could be read to suggest unrealistic or "too good to be true" performance.

Balancing risk awareness with a pragmatic response to the EPA's new approach is a guiding principle for companies involved in developing and installing OEM-related equipment.

Finally, because the EPA is entering new regulatory territory, educating the agency on a vehicle's onboard diagnostic device technology can serve as another tool in mitigating risks in this area.

(In Part 1 of this series, which ran March 27, we examined the legal history and what's behind these changes.)

This column does not necessarily reflect the opinion of The Bureau of National Affairs Inc. or its owners.

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Biofuel

Reuters

EPA grants additional 2017 small refinery waiver from nation's biofuel laws

https://www.reuters.com/article/us-usa-epa-biofuels/epa-grants-additional-2017-small-refinery-waiver-from-nations-biofuel-laws-idUSKCN1R92DA

Jarrett Renshaw

Posted: 2:19pm, March 28, 2019

(Reuters) - The U.S. Environmental Protection Agency granted an additional 2017 small

refinery waiver from the nation's biofuel laws, bringing the tally to 35, the agency disclosed on Thursday.

The EPA under President Donald Trump has greatly expanded the small refinery waiver program, drawing cheers from members of the oil industry and jeers from farmers in the Midwest. The waivers exempt smaller refineries from blending biofuels like corn-based ethanol into the fuel pool.

Reuters

U.S. EPA likely to release decision on 2018 small refinery waivers in April: sources

https://www.reuters.com/article/us-usa-ethanol-epa/us-epa-likely-to-release-decisions-on-2018-small-refinery-waivers-in-april-sources-idUSKCN1R927O

Humerya Pamuk and Jarrett Renshaw

Posted: 1:15pm, March 28, 2019

WASHINGTON (Reuters) - The U.S. Environmental Protection Agency is likely to release its decisions on applications for small refinery waivers from the U.S. biofuel laws for 2018 in April, three sources familiar with the matter said on Thursday.

One of the sources said the 2018 waiver decisions could come in a couple of weeks. But refiners were expecting to find out about their petitions before the end of the month, which is the deadline for proving compliance under the U.S Renewable Fuel Standard for the 2018 calendar year.

The RFS requires refiners to blend certain volumes of biofuels like ethanol each year or purchase blending credits from those that do. But small facilities with a capacity of less than 75,000 barrels per day that can prove compliance would cause them significant financial strain can seek exemptions.

The EPA granted an additional 2017 small refinery waivers from the nation's biofuel laws, bringing the tally to 35, the agency disclosed on Thursday.

The EPA vastly expanded the program under President Donald Trump, granting waivers to plants of oil majors, including Exxon Mobil Corp and Chevron Corp, drawing ire from the corn industry, a key Trump constituency. The number of small refinery exemptions granted grew from seven in 2015 to at least 35 in 2017, EPA data shows.

There is still one outstanding application for 2017, EPA data shows.

The RFS program has been an economic boom for corn farmers in the Midwest, but merchant refiners say it has added hundreds of millions of dollars in compliance costs.

For 2018, there are a total of 39 petitions pending, according to EPA's website.

The EPA was not immediately available to comment.

Chemicals

Bloomberg Environment

EPA Neglect Is Catalyst for Chemical Research, Firefighters Say

https://news.bloombergenvironment.com/environment-and-energy/epa-neglect-is-catalyst-for-chemical-research-firefighters-say

Pat Rizzuto

Posted: 6:35pm, March 27, 2019

- EPA failing to protect firefighters, international association says
- Data on firefighters' exposure to chemicals from association-sponsored studies coming this summer

The EPA's failures to recognize firefighters' exposures to chemicals is helping spur the International Association of Fire Fighters to sponsor its own research, a senior association official says.

The association hopes some of the research results will be ready to present at the association's health and safety symposium in August, Patrick J. Morrison, assistant to the association's general president, told Bloomberg Environment March 27.

The Environmental Protection Agency has failed to make public some chemical safety information, refused to gather additional information from chemical manufacturers, and ignored firefighters' exposures to chemicals such as asbestos and hexabromocyclododecane flame retardants that it's examining as it decides whether those chemicals' risks warrant regulatory controls, Morrison said.

"We feel like the chemical companies are running EPA right now," he said.

The EPA didn't comment on that particular statement, but pointed to information it has posted online that firefighters and other groups could examine to address their safety questions.

"EPA needs to do its job and protect workers now," Rep. Paul Tonko (D-N.Y.) told Bloomberg Environment after a March 13 hearing of the House Energy and Commerce Committee's Environment and Climate Change Subcommittee.

"We know as a matter of fact that firefighters, teachers, farm workers and people in many other professions are dying earlier and getting sick more than they should," due to their chemical exposures, Tonko, the subcommittee's chairman, said by email.

Fluorochemicals

The group of chemicals the fire fighters association recently has focused on are heat-, grease-,

and water resistant compounds called per- and polyfluoroalkyl substances, or PFAS, Morrison said.

Firefighters are exposed to those chemicals in specialized foams that fight jet fuel and similar fires, in the protective clothing they wear, and in carpets and furniture, he said.

Firefighters are worried their exposure to PFAS and to flame retardants may contribute to their already documented greater risk of cancer, Morrison said.

A National Institute for Occupational Safety and Health (NIOSH) study of 30,000 firefighters found they get cancer more often and are more likely to die from cancer than most people.

Firefighters also are worried those chemicals may harm their children, Morrison testified during the March 13 hearing. Studies have reached inconsistent findings, but some research has found some PFAS can impair the immune system and the thyroid hormone, which plays a critical role during development.

A Lot of Fear'

"Right now we have a lot of fear out there without a lot of information," Morrison said.

The association is sponsoring three studies to start answering questions, he said.

First, the association is working with Oregon State University to determine which PFAS chemicals and brominated flame retardants are in firefighters' protective clothing, or "turnout gear," and what the concentrations are of those chemicals, Morrison said.

That information will help the association work toward the next question--whether a limit should be set on the amount of those chemicals in firefighters' clothes, he said.

The association hopes the results of Oregon State's analyses will be ready for the association's August conference, he said.

Second, the association and Commonweal Biomonitoring Resource Center (CBRC) also collected dust samples from 50 fire stations in the U.S. and Canada to determine what levels of flame retardants firefighters brought back from fire incidents to the station. Those dust samples are being re-analyzed to determine PFAS levels, Morrison said.

The idea of the dust study is to see if firefighters are bringing these PFAS chemicals from fires to the stations where they sleep, eat, and live, Morrison said.

If they are, the association would work on examining procedures that could reduce the chemical contamination, he said.

Some U.S. information already has been published, but the association hopes details on the PFAS concentrations will be ready by August, he said.

Finally, the association and University of Arizona plan to test the concentrations of PFAS and other chemicals in the blood of about 200 firefighters, Morrison said.

Government 'Failed Us'

The exposure studies are filling a gap, Morrison suggested. But critical health information isn't available, and that's where "the government has failed us completely," he said.

The health information about PFAS, flame retardants, and other chemicals that firefighters seek would help them know when, after they've put out a fire, it's safe to take off their breathing apparatus, Morrison said.

Health information also would help firefighters determine decontamination protocols, he said.

The EPA, for example, hasn't made public the information it gathered as it approved hundreds of new PFAS, Morrison said.

Nor has the agency used its legal authorities under the original or amended Toxic Substances Control Act to collect health and safety information about new or older PFAS, he said.

Some information on the new and older chemicals is available on an EPA databasecalled ChemView under the PFAS group category, the agency said. It provided detailed instructions on ways firefighters or other parties parties could search that database to see if contains the information they seek.

The first national health study to examine the effects of PFAS will focus on communities that have drank contaminated water.

Ironically, that study won't examine the firefighters who used the specialized fire fighting foam containing the chemicals that led to much of that contamination, Morrison said.

Congress

Sens. Jeanne Shaheen (D-N.H.) and Lisa Murkowski (R-Alaska) led a bipartisan group of 21 senators last year who asked the Centers for Disease Control and Prevention to study the health effects of occupational exposure to per-and polyfluoroalkyl substances (PFAS), particularly in firefighters.

NIOSH, the part of the CDC that typically conducts occupational studies, doesn't have any research underway on firefighter exposure to PFAS, a spokesman for that agency said March 27.

Shaheen and Murkowski introduced legislation, S. 858, that would require the Department of Defense to test PFAS levels in the blood of military firefighters.

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Bloomberg Environment

EPA Tackles Worker Safety Charges in 13 New Chemical Rules

https://news.bloombergenvironment.com/environment-and-energy/epa-tackles-worker-safety-charges-in-13-new-chemical-rules

Pat Rizzuto

Posted: 2:32pm, March 28, 2019

- EPA issues final 'significant new use rules' for 13 chemicals
- Rules detail agency's position that it is protecting workers as it allows new chemicals into commerce

The EPA March 28 tackled head on allegations that it neglected worker safety protections in deciding to allow new chemicals to enter commerce, releasing "significant new use rules" for 13 substances.

The final rules (RIN 2070-AB27) include at least four pages in which the Environmental Protection Agency responds to public comments alleging the agency's new chemicals program systematically fails to protect has failed to protect workers and violates TSCA in other ways.

The rules provide a "rock solid" legal argument supporting EPA's position that it is protecting worker health as it decides whether new chemicals may be manufactured or imported into the U.S., Lynn Bergeson, managing partner of Bergeson & Campbell, PC, told Bloomberg Environment.

The rules require chemical manufacturers to notify the agency 90 days before using any of the chemicals in a way the Environmental Protection Agency designates as new.

For example, manufacturing a new plastic additive without controls limiting workers' exposure to dust would be a "new" use triggering the notification requirement. The agency would then review a company's proposed use and decide if it would be alright or needed some type of control.

This is the first batch of this particular type of new use rule the agency has issued since the Toxic Substances Control Act was overhauled in 2016.

First of Its Kind

In this case, the type of SNUR the agency issued means the new chemicals were allowed to go into commerce without their original manufacturer being required to sign enforceable consent

orders to do certain things, like specifically limit a chemical's release into water.

Concerns the agency had about ways people or the environment might be harmed by the chemicals are being managed through the final rules. The rules will be effective 60 days after they are published in the Federal Register.

The agency's legal rationale likely is intended should these final rules be challenged in court, said Bergeson, whose law firm manages the TSCA New Chemicals Coalition. Through that coalition, chemical manufacturers to share experiences with and concerns about the agency's new chemicals program.

Bergeson referred to allegations that environmental and labor groups made as they commented on the proposed rules, that they posted online, and that a former Occupational Safety and Health Administration official made during March 13 subcommittee hearing.

Richard Denison, lead senior scientist with the Environmental Defense Fund, which has voiced its worker-safety concerns extensively, could not immediately be reached for comment. Nor could Daniel Rosenberg, an attorney with the Natural Resources Defense Council.

The NRDC sued the agency in the U.S. Court of Appeals for the Second Circuit last year, charging that approving new chemicals that might pose an undue risk without simultaneously controlling that risk violated TSCA.

The NRDC dropped that lawsuit because, at the time, the agency had not allowed new, potentially risky chemicals into commerce without enforceable consent orders that controlled those risk.

Names of the 13 chemicals range from simple—Silanized amorphous silica (generic)—a reinforcing filler for the production of rubber goods; to complex—Formic acid, compds. with hydrolyzed bisphenol A-epichlorohydrin-polyethylene glycol ether with bisphenol A (2:1) polymer-N1-(1,3-dimethylbutylidene)-N2-[2-[(1, 3- dimethylbutylidene)amino]ethyl]-1,2-ethanediamine-dialdehyde-2-(methylamino)ethanol reaction products acetates (salts), (generic)—which is used in industrial, commercial, and consumer activities.

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Bloomberg Environment

Ethylene Oxide Concerns Hijack Focus on Other Toxic at EPA Event

https://news.bloombergenvironment.com/environment-and-energy/ethylene-oxide-concerns-hijack-focus-on-other-toxic-at-epa-event

Stephen Joyce

Posted: 6:17pm, March 27, 2019

- Medical sterilizer takes center stage from hydrochloric acid
- Congress stepping up oversight of possibly hazardous emissions

Speakers at an EPA hearing skipped the main agenda item and urged the agency to create a new, stand-alone regulation for ethylene oxide while updating its assessment of the risks posed by the toxic.

A March 27 hearing in Washington, D.C., was set up to focus on an EPA proposed rule on Clean Air Act standards for hydrochloric acid.

The proposed rule on hydrochloric acid included a section—not mentioned in the rule's summary—asking for public comment on ethylene oxide emissions.

Many commenters at the hearing focused instead on ethylene oxide, not the acid, which was slated to be the main agenda item.

Ethylene oxide is used in making antifreeze, textiles, plastics, detergents and adhesives, among other medical applications, according to the Environmental Protection Agency.

The EPA has acknowledged that ethylene oxide emissions pose health risks, yet the agency's standards for ethylene oxide haven't been updated in more than a decade, speakers said.

The 'Ask'

EPA should advance a new regulatory effort on ethylene oxide and not—as is the case with the proposed rule discussed March 27—deal with it only marginally, they said.

"The whole problem with having this hearing was that EPA injected this ethylene oxide review into a single source-based hazardous air pollutant standard. It doesn't belong there," Ann Mesnikoff, federal legislative director for the Environmental Law & Policy Center told Bloomberg Environment.

"If it's going to address ethylene oxide, EPA should put out a proposal that is entitled ethylene oxide," she said.

According to EPA, high levels of exposure to ethylene oxide is linked to breast cancer, non-Hodgkin lymphoma, and lymphocytic leukemia.

An EPA spokeswoman didn't immediately respond to a request for comment on possible future regulatory actions regarding ethylene oxide.

Sterilization Facilities

Emissions stemming from the use of ethylene oxide to sterilize medical equipment at a Willowbrook, Ill. facility operated by Sterigenics U.S. LLC has sparked community

opposition. The issue has spurred members of Congress to seek additional regulations and heightened congressional oversight.

The agency's standard for commercial sterilizers was last updated in 2006, and the standard for hospital sterilizers was last revised in 2007.

Sens. Richard Durbin (D-Ill.) and Tammy Duckworth (D-Ill.) requested in a letter to EPA Administrator Andrew Wheeler any documents related to EPA political appointee involvement in enforcement activities at facilities using ethylene oxide and their involvement, if any, in deciding whether and how to amend EPA's 2016 hazard assessment for ethylene oxide.

Many States

But concern over the emissions aren't limited to Illinois. EPA's Toxic Release Inventory shows ethylene oxide is emitted from facilities in Missouri, Pennsylvania, West Virginia, and other states. Citizens from several states appeared at the March 27 hearing to voice their concern over the emissions.

Not everyone at the hearing was critical. An American Chemistry Council representative said the current EPA standard for ethylene oxide is too strict.

The industry trade group in 2018 requested that EPA "correct" its ethylene oxide standard because they argued it relied on a flawed risk value that's lower than the normal amount of ethylene oxide found in ambient air.

It's even lower than the naturally created levels of ethylene oxide in the human body, the council asserted.

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Bloomberg Environment

Health Agency Backs Tackling Family of Fluorinated Chemicals (1)

https://news.bloombergenvironment.com/environment-and-energy/health-agency-backs-tackling-family-of-fluorinated-chemicals-1

Sylvia Carignan

Posted: 11:54am, March 28, 2019; Updated: 3:31pm, March 28, 2019

- National Institute of Environmental Health Sciences director backs assessing 'PFAS' chemicals as class, not individually
- EPA has guidance on two of the chemicals, some states have rules

Thousands of fluorinated chemicals, among them two prominent compounds contaminating drinking water across the country, are best tackled as a class, a National Institutes of Health official told the Senate Environment and Public Works Committee March 28.

The speaker contrasted a group approach to the U.S. Environmental Protection Agency's and states' individualized approach to regulating them.

Around 3,000 chemicals, also known as per- and polyfluoroalkyl substances or PFAS, have been used to manufacture nonstick and stain-resistant coatings in clothing, fast-food wrappers, carpets, and other consumer and industrial products.

Linda Birnbaum, director of the North Carolina-based National Institute of Environmental Health Sciences—one of the 27 sub-units that comprise the broader National Institutes of Health—said the "best approach" to assess exposure to PFAS and protect public health is to look at the chemicals as a class.

Found in Mixtures

That approach is important because mixtures of several different types of the chemicals are found in individual samples, Birnbaum said.

In the past, the EPA has based its choices about whether to regulate chemicals or pesticides individually or as a group based on the number of chemical and environmental characteristics they share.

The EPA is exploring whether to regulate PFAS as a class of chemicals, Alexandra Dapolito Dunn, the EPA's assistant administrator for chemical safety and pollution prevention, said at an American Bar Association conference in Denver March 28.

Birnbaum's agency, in partnership with the EPA, is researching "more than a hundred" chemicals in the PFAS family, Birnbaum said.

States and the EPA have mostly relied on unenforceable guidance to address the chemicals. But some states have issued regulations for individual chemicals, most commonly for two types known as PFOA and PFOS.

PFAS compounds may cause adverse health effects at sufficient levels of exposure, including developmental harm to fetuses, testicular and kidney cancer, liver damage, immune system or thyroid effects, and changes in cholesterol, according to the EPA.

—With assistance from Amena H. Saiyid.

(Added comment from Dunn in seventh paragraph.)

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Bucks County Courier Times

Senate committee, EPA debate urgency of chemical response

https://www.buckscountycouriertimes.com/news/20190328/senate-committee-epa-debate-urgency-of-chemical-response

Kyle Bagenstose

Posted: 1:49pm, March 28, 2019

During a Senate Environment and Public Works committee Thursday, U.S. Sen. Tom Carper, of Delaware, and an EPA official went back and forth on the speed of the agency's response to PFAS chemicals.

Department of Defense and Environmental Protection Agency officials faced scrutiny over their response to toxic chemicals during a **Senate hearing** Thursday morning, but repeated past assurances that their agencies were doing all they could to address growing contamination.

The subject of the two-hour Senate Environment and Public Works Committee hearing was per- and polyfluoroalkyl substances, or PFAS, a family of durable chemicals that have been used for decades in non-stick cookware, water-resistant clothing, firefighting foams used by the military, and other applications. Bucks and Montgomery counties are the site of one of the worst PFAS contaminations in the country, with at least 70,000 people previously exposed to dangerous amounts of the chemicals.

Citizens, towns and environmental groups nationwide have been critical of the military and EPA over the response to PFAS, claiming they've been too slow to respond to a growing national health crisis. Committee minority leader Sen. Tom Carper, D-Delaware, voiced such concerns Thursday, saying the EPA lacked a sense of "urgency."

"I know it when I see it," Carper said. "That's not the case, at least so far."

David Ross, assistant administrator in the EPA's Office of Water, referred to the agency's **PFAS Action Plan**, reiterating previous congressional testimony that the EPA has committed to considering a nationwide drinking water standard, listing some PFAS as hazardous substances under the Superfund law, creating groundwater recommendations, and

other measures.

When Carper tried to pin Ross down on a precise date for setting a drinking water standard, Ross said the process didn't allow for such a prediction.

"We are going to move as expeditiously as we can," Ross said.

Asked by Sen. Ben Cardin, D-Maryland, about how the EPA will support water suppliers and treatment operators hit by PFAS contamination costs, Ross referred to the agency's consideration of a Superfund listing.

"If we list (PFAS) as hazardous substances ... that helps in the cost recovery aspect," Ross said.

Also a topic of discussion was apparent discrepancies in PFAS safety numbers. The EPA has set a 70 parts per trillion (ppt) health advisory limit for the chemicals in drinking water. But the U.S. Agency for Toxic Substances and Disease Registry **released last year** a draft evaluation that some experts say puts forth a safety limit that would be much lower if applied to drinking water, possibly with parts per trillion in the teens.

The matter was also the subject of some controversy, with emails obtained by the nonprofit Union of Concerned Scientists appearing to show an effort by the White House and Department of Defense to delay the ATSDR's release of the numbers for fear of a "**public relations nightmare**."

Patrick Breysse, director of the ATSDR and also appearing before the committee Thursday, said the agency uses its figures as "screening values."

"Below which health effects are not likely, above which we think it's possible," Breysse said, adding "By definition, they're a little more conservative (than the EPA's.)"

Ross added a similar line of reasoning, noting the agencies used "slightly different science."

Maureen Sullivan, a deputy assistant secretary of defense and the Pentagon's point person on PFAS, added she had never reviewed the ATSDR's figures prior to their release.

"We never actually saw the ATSDR document, I never asked that it be suppressed," Sullivan said.

Carper raised similar concerns that the military might be attempting to influence the EPA's draft groundwater cleanup guidelines from 70 ppt to closer to 400 ppt, after issuing a letter last week stating he had learned directly of such efforts. The recommendation is currently with the

White House's Office of Management and Budget for review.

"I understand that the Department of Defense is refusing to clean up contamination where it exceeds 400 parts per trillion, according to information that my office and staff have received," Carper added.

Sullivan responded by saying the Department of Defense is following established cleanup procedures under the Superfund law.

E&E News

Man awarded $80M in lawsuit claiming Roundup causes cancer

https://www.eenews.net/greenwire/2019/03/28/stories/1060132507

Sudhun Thanawala

Posted: March 28, 2019

A U.S. jury yesterday awarded more than $80 million in damages to a California man who blamed Roundup weedkiller for his cancer, in a case that his attorneys say could help determine the fate of hundreds of similar lawsuits.

Edwin Hardeman proved that Roundup's design was defective; it lacked sufficient cancer warnings; and its manufacturer, agribusiness giant Monsanto, was negligent, the six-person jury in San Francisco found.

It awarded Hardeman more than $5 million in compensation and an additional $75 million in punitive damages. Hardeman, 70, put his arm around his wife, Mary, as the verdict was read and hugged his attorneys.

Monsanto says studies have established that glyphosate, the active ingredient in its widely used weedkiller, is safe. The company said it will appeal.

"We are disappointed with the jury's decision, but this verdict does not change the weight of over four decades of extensive science and the conclusions of regulators worldwide that support the safety of our glyphosate-based herbicides and that they are not carcinogenic," according to a statement from Bayer, which acquired Monsanto last year.

Hardeman said he used Roundup products to treat poison oak, overgrowth and weeds on his San Francisco Bay Area property for years. The same jury previously found that Roundup was a substantial factor in Hardeman's non-Hodgkin lymphoma.

"Today, the jury sent a message loud and clear that companies should no longer put products on the market for anyone to buy without being truthful, without testing their product and without warning if it causes cancer," said Jennifer Moore, one of Hardeman's attorneys.

A different jury in August awarded another man $289 million, but a judge later slashed it to $78 million. Monsanto has appealed.

Hardeman's trial may be more significant than that case. U.S. Judge Vince Chhabria is

overseeing hundreds of Roundup lawsuits and has deemed Hardeman's case and two others "bellwether trials."

The outcome of such cases can help attorneys decide whether to keep fighting similar lawsuits or settle them. — *Sudhin Thanawala, Associated Press*

JDSUPRA

Major Expansion Of Emerging Contaminant Sampling Requirements In New York

https://www.jdsupra.com/legalnews/major-expansion-of-emerging-contaminant-48480/

Cole Schotz, Jill Richardson

Posted: March 25, 2019

The New York State Department of Environmental Conservation (NYSDEC) is now requiring all sites entering into a state cleanup program to sample for two of the more popular and well-known "emerging contaminants" – 1,4-dioxane and Per- and Polyfluoroalkyl substances (aka PFAS) – in soil, groundwater, surface water, sediment, and, where applicable, biota. There is currently no requirement to sample soil vapor.

NYSDEC is also requiring similar sampling of any soil imported to a site, such as for backfill or a soil cap. According to the guidance, NYSDEC will evaluate the results on a site-specific basis to determine appropriate use.

The recently-issued guidance document, *Sampling for 1,4-Dioxane and Per- and Polyfluoroakyl Substances (PFAS) Under DEC's Part 375 Remedial Programs*, is a significant expansion of the NYSDEC policy issued last year, which also required 1,4-dioxane and PFAS sampling at all sites in a state cleanup program, but only of groundwater.

Keep in mind that NYSDEC is still developing cleanup standards for the majority of these contaminants, so the extent of the impact on the development and implementation of remedial strategies won't be clear for a while. However, at minimum, the requirement to sample all environmental media (except spoil vapor) could have significant impacts on the cost, complexity, and duration of at least the investigation phase of remediation projects in New York, and may also complicate due diligence issues.

Stay tuned as we continue to follow these important developments impacting NYSDEC cleanup programs, as well as the ongoing developments in other states making moves towards regulating PFAS chemicals in the absence of federal drinking water or cleanup standards for the time being.

KHOU 11

More progress made in cleaning out Houston Ship Channel after ITC fire

https://www.khou.com/article/news/local/itc-fire/more-progress-made-in-cleaning-out-houston-ship-channel-after-itc-fire/285-94f7ba17-8253-422f-9ddc-367b44eaf43e

Janelle Bludau

Posted: 1:16pm, March 28, 2019

DEER PARK, Texas — It's been 12 days since the ITC fire started and the company's Incident Command Chief is defending their CEO.

In a press conference held Thursday morning, the EPA stressed they are being vigilant with air and water monitoring. They said right now they haven't received any cause for concern from the samples

they've collected.

During the press conference, the Coast Guard noted they're making progress with the Houston Ship Channel.

It will continue to operate during daylight hours with restrictions. On Wednesday, 35 percent of normal traffic was able to get through.

The Coast Guard says there are 141 vessels anchored, 55 waiting to go through the ship channel, and 19 waiting to get out.

The Coast Guard says they've implemented additional inspection teams to make sure these vessels aren't picking up any of those hazardous chemicals.

They say they still can't put a timeline on when the Ship Channel will reopen completely, but they expect even more ships to pass through on Thursday.

As for clean up efforts, the EPA says they've recovered nearly 12,000 barrels of oil chemicals from the water.

The focus continues to be on Tucker Bayou and also Carpenters Bayou and Old River.

ITC says they're focused on finishing the transfer of the tank they started yesterday and recovering products from two others.

The products left are gasoline, blendstock, and base oil. Wednesday night, the company's CEO posted a statement on YouTube.

During the press conference, ITC's Incident Commander defended him.

"I know my CEO. I know his character. I can assure you that he's genuine, he's sincere and when he speaks, I can assure you he speaks from the heart" he said.

ITC said it hasn't made headway in determining what caused the massive chemical fire - largely because they are still unable to get to the tank where it ignited.

Company representatives say they are working to preserve the area for the federal investigation. And while lawsuits continue to pile on - ITC says the number of claims they've received are growing as well.

NRDC

New Federal Bill Would Ban Chlorpyrifos

https://www.nrdc.org/media/2019/190328

Kate Kiely

Posted: March 28, 2019

WASHINGTON – U.S. Senator Tom Udall (D-NM) today reintroduced a 2017 bill that would protect children nationwide by banning chlorpyrifos—a pesticide linked to learning disabilities—from use on U.S. fruits and vegetables. It joins a similar House measure introduced earlier this year by Congresswoman Nydia Velázquez (D-NY).

Senator Udall's bill comes the day before the second anniversary of the Trump administration’s refusal to ban the chemical, in response to a petition against the U.S. Environmental Protection Agency brought by the Natural Resources Defense Council and

Pesticide Action Network more than a decade ago. The groups, represented by Earthjustice, are continuing to fight that decision and provided our latest arguments before the 9th Circuit Court of Appeals earlier this week.

A statement follows from Jennifer Sass, senior scientist at the Natural Resources Defense Council:

"Parents feed their kids fruits and veggies because they want the best for them—they shouldn't have to worry it will harm their development. The Trump administration knows this pesticide is linked to learning disabilities but is fighting tooth and nail to keep it on our food and on our fields anyway. These congressional leaders have had enough of the Trump administration playing politics with children's health and are taking matters into their own hands."

Background:

Adapted from World War II-era nerve gases, chlorpyrifos was banned from use in household products, like roach sprays, nearly two decades ago but is still widely used on many U.S. food crops, including children's favorites like apples, oranges and strawberries.

NRDC has been fighting for more than two decades to get chlorpyrifos out of our food supply, and first petitioned EPA to ban it in 2007 with the Pesticide Action Network. EPA was finally on track to ban it at the end of 2016. Shortly after taking office, however, the Trump administration reversed course and continues to fight to keep it on the market.

EPA's own assessment of the chemical's risks shows that exposure to low levels of the pesticide in early life can lead to increased risk of learning disabilities, including reductions in IQ, developmental delay and ADHD. This assessment is based on dozens of scientific

studies including from Dow Chemical, the nation's largest manufacturer of chlorpyrifos.

Farmworkers and families in agricultural communities face additional risk because the chemical is used so close to where they live, work and go to school—resulting in exposures from air, water and dust in their homes.

Dow Chemical has close ties to the President. Among other things, the company reportedly donated $1 million for Trump's inauguration and its CEO previously played a chief advisory role to the president, heading up his now defunct "American Manufacturing Council."

Earlier this week, *The New York Times* also underscored the catastrophic impact of chlorpyrifos on threatened and endangered species when it reported that Acting U.S. Interior Secretary David Bernhardt prevented the release of a U.S. Fish and Wildlife Service study concluding that it and two other pesticides are putting nearly 1,400 species on a path to extinction.

In the absence of federal protections, states are starting to stand up. Last summer, Hawaii became the first state to ban the chemical, and California released a scientific study that reaffirmed health concerns about the chemical and set the stage for extensive restrictions.

For more information, go to: https://www.nrdc.org/chlorpyrifos.

Politico

Top federal scientist calls for handling PFAS as a class

https://subscriber.politicopro.com/energy/whiteboard/2019/03/top-federal-scientist-calls-for-handling-pfas-as-a-class-2969858

Annie Snider

Posted: 1:36pm, March 28, 2019

A top federal scientist today raised alarm about the health effects of PFAS and argued the thousands of chemicals in the group should be handled as a class — an approach the chemicals industry has fiercely opposed.

National Institutes of Environmental Health Director Linda Birnbaum told the Senate Environment and Public Works Committee the pervasive chemicals affect "almost every [bodily] system that you can think of." But understanding those effects is difficult because most studies look only at one or a small handful of chemicals, she said, whereas "current human exposures to PFAS involve complex mixtures, not individual chemicals."

"Approaching PFAS as a class, rather than as thousands of individual compounds, is the best approach for assessing exposure and biological impact, and for protecting public health," Birnbaum said.

Communities and public health advocates have also argued for handling PFAS as a class, saying it would take centuries to develop the science necessary for regulations if the thousands of chemicals are handled individually. EPA's PFAS Action Plan makes no commitment to do so.

The American Chemistry Council has staunchly opposed efforts to regulate the chemicals as a group, a plan that was included in a bill, S. 638 (116), introduced earlier this month by Sens. Tom Carper (D-Del.) and Shelley Moore Capito (R-W.Va.) to designate all PFAS as hazardous for the purposes of Superfund.

"PFAS is a diverse family of chemistries that have differing characteristics, formulations and intended uses. Because of these differences, it is inappropriate to pass one-size-fits-all regulations of PFAS as a class," ACC said in response to that measure.

Superfund

Associated Press

EPA: No toxic releases at Superfund sites in flooded Midwest

https://www.apnews.com/740c6d99cf96462282b7f9f1bdaab64aGrant Schulte (AP)

Grant Schulte

Posted: 9:00pm, March 27, 2019

MEAD, Neb. (AP) — Flooding in the Midwest temporarily cut off a Superfund site in Nebraska that stores radioactive waste and explosives, inundated another one storing toxic chemical waste in Missouri, and limited access to others, federal regulators said Wednesday.

The Environmental Protection Agency reported no releases of hazardous contaminants at any of eight toxic waste sites in flooded parts of Missouri, Nebraska and Iowa. It has not issued any public health advisories or alerts, nor has it tested any of the soil and water at those sites.

The EPA identified the Nebraska Ordnance Plant in Mead, Nebraska, and the Conservation Chemical Corporation site in Kansas City, Missouri, as heavily flooded Superfund sites that required the agency to take immediate action to prevent the spread of contaminated groundwater.

Two Iowa sites — Railroad Avenue Groundwater Contamination Site that is part of Des Moines Water Treatment Plant, and the Mid-America Tanning Company site near Sergeant Bluff — had some minor flooding on the property but did not require the agency to immediately do anything. It plans to reassess once the flood waters recede.

The remaining four toxic waste sites were not affected by floodwaters, but road closures limited access, the agency said.

Larry Poell, 62, who lives on top of the Superfund site in Mead, said federal officials have always maintained that the contaminated plumes are stable, but he wonders if the floodwater caused them to shift.

“I’m concerned about it. I think everybody’s concerned about it,” he said in an interview inside a local flood relief shelter in Ashland, Nebraska.

Poell said officials test the water near his home quarterly and hold community meetings twice a year. He said the meetings are usually sparsely attended.

The Mead site operated as a munitions plant from 1942 to 1956 and its disposal of radioactive waste and other chemicals led to groundwater contamination.

Maureen Hunt, 50, who farms on land less than a mile from the Nebraska Ordnance Plant, said all of the surrounding roads were inaccessible at the flood’s peak. On Wednesday, many surrounding cornfields still held large ponds of floodwater.

“Imagine water everywhere you look,” she said between cleanup chores. “I’ve never in my life seen anything like it.”

To contain the underground plume from expanding at sites where the groundwater is contaminated, the EPA normally pumps up the contaminated water, treats it to clean up contaminants and then discharges the water.

But because the Mead area was already heavily flooded, the Nebraska Ordnance Plant temporarily shut down the pumps and treatment plant on March 13 for a couple of days rather than exacerbate the situation by discharging treated water, EPA said.

At the Conservation Chemical Company site, a 6-acre area in Kansas City, Missouri, chemical storage and disposal operations from the 1960s to the 1980s led to contamination of groundwater and soils. During the latest flood, the site owner increased the pumping rate to suck up more water and increase pressure to keep its underground plume of contaminated water from expanding, the EPA said.

The remaining sites that the EPA says are not currently affected by floodwaters, but where road closures are limiting field work, are the former landfill called Lawrence Todz Farm in Camanche, Iowa, the Iowa-Nebraska Light & Power Co. site in Norfolk, Nebraska; a site identified only as Old Highway 275 and 288th Street in the town of Valley in Nebraska; and the closed St. Joseph City Landfill, north of Kansas City, Missouri.

Valerie Wilder, the Superfund section chief for the Missouri Department of Natural Resources, said in an email that the EPA contacted the state agency’s project manager for the Conservation Chemical Company site to keep her informed of its flooding status, but that there has been no EPA request for a state response at this time.

Aerial photos taken Friday of Missouri’s closed St. Joseph landfill, which is not a Superfund site, showed that roughly half of the closed landfill had water on top of asphalt at that time. EPA said it is no longer flooded.

At many Superfund sites, contaminated soils are capped with additional soil layers or other materials as a temporary measure until cleanups are finished. Floods can wash away those covers, releasing toxic pollution into the waters. That happened at the San Jacinto River Waste Pits near Houston when floodwaters from Hurricane Harvey damaged a concrete cap meant to contain pollutants,

releasing dioxins into the river.

"That's a risk for cleanup crews and families that have returned to their homes, as well as fish, wildlife and waterways down the road," said Kara Cook-Schultz, toxics director for the U.S. Public Interest Research Group.

It's important for EPA to inform first responders, cleanup workers and residents about the types of contaminants at each flooded Superfund site and precautions they should take to limit exposure, Cook-Schultz said.

"In the long term, we'd like to see more money going to Superfund sites," she said. "A lot of them have been around 40 or 50 years and have not been cleaned up. We'd like to see them completely remediated so we don't have to worry that they will be flooded and the floodwaters contaminated."

—

Associated Press writers Margery Beck in Omaha, Nebraska; Roxana Hegeman in Wichita, Kansas; Margaret Stafford in Kansas City, Missouri; and John Flesher in Traverse City, Michigan, contributed to this report.

Gizmodo

Seven Midwestern Superfund Sites Have Dealt With Flooding Since the Bomb Cyclone, But EPA Says Everything's Fine

https://earther.gizmodo.com/eight-midwestern-superfund-sites-have-flooded-since-the-1833635905

Yessenia Funes

Posted: 11:00am, March 28, 2019

The tragic situation in the Midwest continues to unfold more than two weeksafter a bomb cyclone brought in snow that eventually melted, triggering floods that destroyed farms and threatened tribal communities. The latest areas under scrutiny are Superfund sites, whose toxic pollutants can be spread far and wide by floodwaters.

Currently on the radar for federal and state officials are seven Superfund sites and a landfill across Iowa, Nebraska, and Missouri, states that are still experiencing some minor to major flooding as of Thursday. These are some of the most contaminated sites in the U.S., and when floodwaters hit them, they can become major threats to human and environmental health if their pollutants travel off site, as was seen in Houston after Hurricane Harvey.

"Superfund sites contain some of the most dangerous chemicals known to humankind," Jacob Carter, a research scientist for the Union of Concerned Scientists' Center for Science and Democracy, told Earther.

That's why the Environmental Protection Agency is now monitoring a bunch of Superfund sites closely, although so far, it seems to think all of them are doing okay.

The EPA has taken action on two Superfunds in particular, it announced Tuesday: Nebraska Ordnance Plant, a former munitions production plant in Mead, Nebraska, and Conservation Chemical Corporation in Kansas City, Missouri, which used to store chemicals. The agency hasn't spotted any contaminant releases at either, but floodwaters did hit them hard.

"When you have these floods, you have debris and mud and silt left over, so whatever pollution is in the river doesn't stay in the river. It's going to stay behind as the waters recede and be in the street, in the playground, in the person's basement, what have you."

The EPA told Earther it also flagged another two sites in Iowa with water on the property that didn't require action—the Railroad Avenue Groundwater Contamination Site in West Des Moines and the Mid-America Tanning Company Site near Sergeant Bluff. The Lawrence Todtz Farm Site in Iowawasn't flooded, but it's been made inaccessible due to the flooding, so the EPA is also monitoring it. And the EPA, in coordination with state environmental agencies, is keeping tabs on another two Superfund sites in Nebraska where the flooding has paused clean up activities, as well as a landfill in the City of St. Joseph in Missouri that isn't a Superfund.

The Nebraska Ordnance Plant, which sits in the state's still slightly-flooded southeast corner, has its soil and groundwater contaminated with potentially carcinogenic substances like trichloroethene (or TCE), as well as explosives. The facility saw its groundwater treatment plant and extraction wells, which help remove the TCE, temporarily shut down because authorities couldn't access them. They are all back up and running now.

This is only one of the facilities the state of Nebraska is monitoring. Others will still require close attention as the floodwaters recede—especially if anything strange turns up in the state's drinking water.

"Right now, a combination of flood waters and damaged roads are keeping responders from a few of Nebraska Superfund Sites for inspection. Those sites have not been fully evaluated yet," Amanda Woita, a public information officer with the Nebraska Department of Environmental Quality (DEQ), told Earther in an email. "DEQ's primary responsibility is protecting public health. That includes testing drinking water and assessing other important infrastructure, such as community drinking water wells and sewage treatment plants. The

department is in that phase right now."

Back in Missouri, the Conservation Chemical Corporation's soil and groundwater are also contaminated with carcinogenic chemicals like benzene and TCE. The site experienced flooding, but the EPA reports that it didn't stop its clean-up operations in response. Instead, more groundwater was extracted to help keep pace with the floodwaters.

Half of Missouri's St. Joseph City Landfill has become flooded, according to Brian Quinn, the information officer for the Missouri Department of Natural Resources. He told Earther in an email that the non-hazardous landfill was last inspected in January 2018, and the department will conduct another investigation once the waters recede to make sure the asphalt and soil cap covering the garbage is still in place.

All in all, the EPA hasn't issued any public health alerts or advisories in wake of these floods, the agency told Earther. But there could still be trouble as the floodwaters migrate farther down the Mississippi River in Missouri. John Hickey, the executive director of the state's Sierra Club chapter, is worried that the many coal ash disposal sites in the eastern portion of the state along the Mississippi could pose a threat if floodwaters breach them. Coal ash landfills and ponds often contain heavy metals like lead and mercury, which are hazardous to human health. Similar flooding concerns were raised in North Carolina in wake of Hurricane Florence last year.

But the Superfund sites that have already experienced flooding worry Hickey, too.

"When you have these floods, you have debris and mud and silt left over, so whatever pollution is in the river doesn't stay in the river," Hickey told Earther. "It's going to stay behind as the waters recede and be in the street, in the playground, in the person's basement, what have you."

Americans experienced that reality firsthand in 2017 after Hurricane Harvey damaged 13 Superfund sites in Texas, leading to mass contamination from one site alone. It took the EPA eight months to begin cleaning up that site, the San Jacinto River Waste Pits, and cleanup is slated to go on another year or more. Then, there was Hurricane Maria, which flooded a lead-contaminated Superfund in Arecibo, Puerto Rico, leaving residents worried about contamination long after the natural disaster.

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As Carter noted, low-income communities and people of color tend to be closest to these facilities, so they're the most at risk.

"These are some of the most disenfranchised communities in the United States," he told Earther. "[They] don't have a ton of power in the United States, and they will be the ones impacted by this flooding at Superfund sites."

The EPA is well aware of the threat that flooding—which is set to intensify in the Midwest in a warmer world—poses to these sites. Its Climate Adaptation Plan published in 2014 makes this clear: "Inundation and flooding may lead to transport of contaminants through surface soils, ground water, surface waters, and/or coastal waters."

Former President Barack Obama issued an executive order that would've required all federal departments, including those that manage Superfunds, prepare for future flood risks. President Donald Trump, predictably, rescindedit. According to the National Oceanic and Atmospheric Administration's spring flood outlook, heavier than usual rainfall is set to bring "historic, widespread" flooding to the Midwest through May.

Whether or not the latest bout of floods caused any Superfund sites to spread their contaminants, it seems clear these sites will only become more vulnerable. We better ready up.

Correction: An earlier version of this post indicated that eight Superfund sites have dealt with floodwaters. One of those sites, a landfill, is not actually a Superfund. The text and headline have been updated accordingly.

Weather Channel

EPA Says No Public Alert for Superfund Sites Impacted by Midwestern Flooding

https://weather.com/science/environment/news/2019-03-27-midwestern-flooding-superfund-sites

Pam Wright

Posted: 8:45am, March 28, 2019

- At least two sites have been inspected by the EPA.
- Six others have been cleared in Iowa, Nebraska and Missouri.

- The agency emphasized that it could find no evidence of that any hazardous contaminants were released.

Midwestern flooding from recent bouts of heavy rain and snowmelt impacted at least two Superfund sites but no public health advisories or alerts have been issued, the Environmental Protection Agency said Wednesday.

In an email to weather.com, the agency said it was assessing two sites that were directly impacted by the flooding: the Nebraska Ordnance Plant, in Mead, Nebraska, and the Conservation Chemical Corporation, in Kansas City, Missouri.

"At the Nebraska Ordnance Plant, floodwaters rendered portions of the site temporarily inaccessible," the EPA said in a Tuesday press release. "Shutdown of the groundwater treatment plant and extraction wells was necessary for approximately two days, due to access issues. The treatment plant and all wells are up and running again."

The former munitions plant disposed of radioactive waste and other chemicals between 1942 and 1956, leading to groundwater contamination.

"Because the contamination being addressed at the site is in the groundwater, exposure to contamination as a result of floodwater is not expected," the agency told weather.com.

A second Superfund site, the Conservation Chemical Corporation, partially flooded when the Missouri River topped its bank near the location.

"In response, the site's Potentially Responsible Parties, under EPA oversight, successfully increased the pumping rate of the groundwater treatment system to account for impacts from floodwaters," the EPA said.

"During this flood event, water is present inside the perimeter fence but remains isolated from and does not cover soil above the in-place hazardous waste," the agency added.

The EPA emphasized that it could not find evidence that any hazardous contaminants were released by the flooding.

In addition, the agency says it has been monitoring 6 other sites, two of which had water on the properties but did not require any actions, both in Iowa. Four others in Nebraska, Iowa and Missouri were "not impacted by floodwater but have limited access due to flooded roadways."

"In coordination with our state and local partners, we will continue to monitor the floodwaters and the sites closely in the days ahead," the agency said, adding that "no immediate actions are required at these sites."

Superfund is a law that provides EPA funding and authority to clean up contaminated sites.

Water

The Hill

What you can do about EPA's attack on clean water

https://thehill.com/opinion/energy-environment/436028-what-you-can-do-about-epas-attack-on-clean-water

Blan Holman

Posted: 5:00pm, March 27, 2019

The Environmental Protection Agency is being rightly criticized for its slow-motion plan to address emerging toxic chemicals in America's drinking water. Unfortunately, it has managed to move at breakneck speed to gut our nation's most critical and longstanding water protections: the Clean Water Act.

The administration recently announced a plan to roll back clean water safeguards that have protected our communities and families for nearly 50 years.

The scale of recklessness is astounding: crucial protections for more than 60 percent of our nation's stream miles and millions of acres of wetlands would be stripped. The result would be more unpermitted toxic pollution contaminating our waterways and more catastrophic flooding damage. Since most of our drinking water comes from surface waters, this proposal would put drinking water for over 200 million Americans at risk — including seven out of 10 Southerners.

The main purpose of the rule is to benefit big industrial polluters who have proven time and time again that they cannot be trusted to regulate themselves. On the losing end: our broader national economy, which has grown strong with the Clean Water Act and relies on clean water to thrive. From the $130 billion tourism industry in the South to farmers, breweries and outdoor businesses, more pollution will mean higher costs for all of us living and working downstream.

Each year, millions of Americans head out to go fishing or hunting. From manufacturing companies to small businesses across the country, the money they spend in pursuit of their sport produces hundreds of billions in economic benefits every year. In total, the outdoor recreation economy alone supports 7.6 million jobs and results in $887 billion in consumer spending. Clean water has proven to be key not only to our health, but to our way of life.

Like many people, I grew up playing in creeks and streams and swimming my way through summer. I want my children, and theirs, to have the same access to clean water.

That's why a bipartisan Congress passed the Clean Water Act in the first place back in 1972. Water pollution was a severe national problem that crossed state lines. The country needed a national solution, and the Clean Water Act delivered, setting consistent clean-up standards nationwide and giving local officials and citizens powerful tools to meet them.

The law has been a huge success. In fact, it's been so successful at protecting America's water and promoting a strong economy that it gets taken for granted. Without these national protections, polluters like sewage treatment facilities and industrial operations will be able to directly dump into our waterways without cleaning up to national standards. Powerful Washington lobbyists for large polluters are betting that being taken for granted means the Clean Water Act can be taken away, and no one will notice.

State agencies rely heavily on the Clean Water Act to keep our waters clean or hold polluters accountable. In fact, without the Clean Water Act's national baseline safeguards, these officials will be poorly positioned to protect our waterways in the face of chronic underfunding and political pressure to go easy on polluters. Nowhere is that clearer than in the South.

State-level protections from Alabama to Georgia to the Carolinas have been eviscerated. Budgets and staff have faced drastic cuts, leaving local communities dependent on federal funding and oversight. If Washington politicians succeed in sabotaging the Clean Water Act, emaciated state agencies will be pitted in a "race to the bottom" of weakening standards — the same toxic dynamic Congress tried to fix in 1972.

We must continue to fight the administration's attacks on America's bedrock protections. We have had success so far, winning the first round of this fight in federal court. But the attacks keep coming, and the real battle is just getting started. We can't win this war alone.

Fortunately, the public has a say. The law prevents the administration from doing all its hatchet work in secret. The public has until April 15 to comment on the proposal to expose vast swaths of America's waters to new pollution. This is a chance for Americans to speak out against Washington insiders' extreme attack on our fundamental right to clean water. Each comment counts. Each one makes it that much harder for politicians and big polluters to disregard the science and throw our clean water away.

The path to prosperity does not lie in giving polluters free rein to expose our waterways to pollution and jeopardize the health of our families and communities. It lies in protecting our communities, our local economies and the clean water on which they depend.

Blan Holman is the managing attorney of the Southern Environmental Law Center's Charleston office. Follow him on Twitter at @BlanHolman.