

To: Jackson, Ryan[jackson.ryan@epa.gov]
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Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

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Municipal Water Fees Challenged as Improper Taxes in Michigan

Posted June 21, 2017, 01:00 P.M. ET

By [Alex Ebert](#)

At least four Detroit-area municipalities are facing class actions alleging that their sewer or water fees are actually unconstitutional under state law.

In the coming weeks, all 26,000 Waterford Township water and sewer account holders will receive notice that they may apply for refunds for sewer fees between 2010 and this year, as part of a [settlement](#) reached between the township and a citizen alleging water and sewer charges were actually improper taxes. The \$1.4 million settlement in *Mason v. Chartered Twp. of Waterford* is one of at least four within recent years, all regarding the same fees-as-illegal-taxes issue.

In addition to those settlements, similar lawsuits are pending against Detroit and three of its suburbs: Bloomfield Township and the cities of Oak Park and Westland. Although the legal theory behind the lawsuits is more than two decades old, Michigan municipal governments still grapple with how to properly fund infrastructure for public water and other utilities without running afoul of the state's murky rule for new taxes.

The lawsuits allege that local governments have violated a part of the Michigan Constitution known as the [Headlee Amendment](#). The amendment, effective since 1978, requires voter approval for any local tax increases or new taxes. Since a 1998 Michigan Supreme Court [opinion](#), all municipalities have been aware of what is called the "Bolt Test," which requires that fees serve a regulatory purpose, be reasonable and proportionate, and be voluntary. Yet, local governments still struggle with these requirements.

"It's hard to figure out exactly what the Bolt decision means and how to apply it," Mark Nettleton, attorney with Grand Rapids, Mich.-based Mika Myers Plc, told Bloomberg BNA.

Fee Test: Funds Part of Improvement Plan

Municipalities can violate the test by lacking reasoning for the price of water or sewer fees. For instance, local water fees can't be based just on a neighboring municipality's fees, but must be calculated to provide water and fund infrastructure improvements and repairs for the water system, Nettleton said.

Although courts generally side with municipalities, if a city's water or sewer fund accumulates money, it must be intended for repairs or infrastructure improvements in some city plan. Without a plan those growing funds make a city vulnerable to suit.

In contrast to the Waterford case, a Michigan state court granted summary disposition for the City of Taylor against a water fees lawsuit June 8. In that ruling, the court found that the plaintiff hadn't proved the city was overcharging for water beyond its sewer repair needs, and also did not prove that sewer fees were being used for improper purposes because Taylor had plans for how to use the fees to improve and repair its water infrastructure.

The recent series of class actions are brought by Kickham Hanley PLLC, based in Royal Oak, Mich. Gregory Hanley, managing partner with Kickham Hanley and the lead attorney on these lawsuits, declined to comment on this type of litigation.

EU Maps Out Ecodesign Plan for Energy-Efficient Data Equipment

Posted June 21, 2017, 12:38 P.M. ET

By Stephen Gardner

The European Commission published a plan that could lead to new ecodesign requirements for computer servers and data storage equipment sold in the European Union.

The commission, the EU's executive arm, issued the "roadmap" on the environmental impact of servers and data storage equipment June 20. It also set out a plan to assess whether energy efficiency and other environmental obligations should be established for the equipment, but does not commit the commission to take action.

Ecodesign standards for servers would be "a step in the right direction. With the explosion of digital content and internet traffic, Europe needs to look closely at the environmental impact" of the information and communication technology sector, said Chloe Fayole, policy officer with the European Environmental Citizens Organization for Standardization, which campaigns for environmental standards for products.

The standards could lead to a yearly energy saving by 2030 equivalent to the annual electricity consumption of EU member country Croatia, according to the roadmap. Currently, energy efficiency standards are lacking for servers and data storage, however, and data centers are often configured to be less energy-efficient than they could be, the commission said.

Mandatory energy efficiency and recyclability standards could be imposed on servers and data storage devices under the EU Ecodesign Directive (2009/125/EC), under which groups of products are assessed for potential energy savings.

Public comments on the plan can be submitted through July 18.

The Energy Star program, through which the EU and U.S. cooperate on energy certification of office

equipment, also could be extended as an option for servers and data storage equipment, according to the roadmap. Energy Star standards already exist for enterprise servers and data center power supply.

The future of Energy Star is uncertain, however, after U.S. President Donald Trump in his budget request to Congress in May proposed to eliminate the program's annual funding of about \$50 million.

"If the U.S. reduce their speed on energy efficiency, Europe would need to step up. If the U.S. becomes weaker on energy efficiency, this will be detrimental for Europe too. When the U.S. energy efficiency standards are more ambitious than the EU ones, it's a great incentive for Europe to regulate, and vice versa," Fayola said.

Energy Department Priorities Not Reflected in Budget: Moniz

Posted June 21, 2017, 12:30 P.M. ET

By [Chuck McCutcheon](#)

Former Energy Secretary Ernest Moniz said June 21 he sees a "disconnect" between his successor Rick Perry's support for energy research and development and the Trump administration's proposed budget.

"To be honest, I think Secretary Perry has made some very strong and positive statements in terms of R&D, in terms of innovation, but there's a disconnect to the budget," Moniz, who served under former President Barack Obama, told reporters.

The overall fiscal year 2018 budget request, which would reduce spending for research on coal, nuclear and other initiatives by 30 percent or more, is "a non-starter ... It just doesn't do the job across the board," Moniz said.

He said he's particularly concerned the Energy Department's national laboratories, which conducts much of its cutting-edge research, could be severely impacted if the proposed budget is passed.

Speaking at the National Press Club, Moniz also objected to some Republicans' desire to have public-private partnerships replace federal funding.

"Public-private partnerships are important, but the idea that they're going to fill this gap [in federal spending], I just don't see," he said.

Moniz made his remarks as he announced a new project, the Energy Futures Initiative, a nonprofit group that he said will study innovative solutions to energy issues.

Water Rule Rewrite Should Reflect Regional Differences, States Say

Posted June 21, 2017, 12:21 P.M. ET

By [Amena H. Saiyid](#)

Any rewrite of the EPA regulation clarifying which waters and wetlands fall under federal protection should reflect variations in regional climate, geology and hydrology, state and local officials said.

The EPA is reviewing an Obama-era water jurisdiction rule under an executive order issued by President Donald Trump. Any rewrite of the regulation should include an analysis of impacts on local governments, as well as clear definitions that outline Clean Water Act jurisdiction, aspects that were missing the 2015 Clean Water Rule, according to the state and local officials.

The jurisdiction issue is important because bodies of water covered by the Clean Water Act are protected from pollution by federal discharge and dredge-and-fill permits, oil spill prevention requirements and state water quality certifications, among other programs.

The states and local governments, in comments filed individually and by various trade groups, responded to EPA's call for how all three levels of government can display cooperative federalism in rewriting the water jurisdiction rule based on the direction provided in the February executive order.

The order directed the EPA and the U.S. Army Corps of Engineers to ensure that states are treated as regulatory partners in the rewrite. Moreover, it said the rewrite should follow the late U.S. Supreme Court Justice Antonin Scalia's 2006 plurality opinion in *Rapanos v. United States* that asserted Clean Water Act jurisdiction over wetlands that have a "continuous surface connection" to waters that display a "relative permanence" of flow.

Reflect Regional Variations

Arizona, Kentucky, and South Dakota are among more than 30 states that challenged the 2015 Obama rule on grounds that the federal government was taking over regulation of waters that fell under state domain. Many of those states offered their comments on how the Trump administration should approach its rewrite of the regulation.

As the rewrite process moves forward, "It is critical for EPA and the corps to take into account regional considerations for this definition due to wide variation in state laws, geographic and climatic differences in the United States, and widely varying regulatory constructs," wrote Steven Pirner, South Dakota's secretary of environment and natural resources.

This view was underscored by Charles G. Snavelly, Kentucky's secretary of energy and environment, who urged the EPA and the corps to develop an approach to making water jurisdictional determinations that consider regional and local variations in geology, geomorphology, and hydrology.

Gov. Doug Ducey (R) made Arizona's views clear, declaring that "the original intent of Congress was not to use the Clean Water Act as a blanket regulation to cover all waters."

New York state was among the seven states that is involved in defending the Obama jurisdiction rule in courts. To provide a level playing field among states and a strong and consistent regulatory floor, New York wants the agencies to develop a sound national rule and inventory of federal protected waters, Basil Seggos, New York's commissioner of environmental conservation, told the EPA.

Defining Terms a 'Challenge'

The Environmental Council of the States acknowledged that the process of defining the terms that Scalia used in his opinion, such as "relatively permanent" or "continuous surface connection", will present different challenges in every region.

“While a difficult task, EPA must ensure that the resulting rule and definitions contained within it are regionally practical, as well as easily implemented and justified by good science,” wrote Peter LaFlamme, president of the Association of Clean Water Administrators, which represents state water officials.

Outward physical characteristics, such as year-round flows of water, shouldn’t serve as the primary basis for asserting jurisdiction, as some streams that flow intermittently throughout the year do have downstream impacts, said LaFlamme, adding “what is insubstantial in one region may not be in another region.”

He encouraged the EPA to consult with the corps and the U.S. Geological Survey to “ensure definitional and scientific consistency and ease of implementation.” He once again reiterated the need for the EPA to consult with states as concepts, ideas, and definitions are developed in the course of the rulemaking.

Avoid Ambiguity

Most comments that Bloomberg BNA reviewed urged the agencies to avoid the use of ambiguous terms in the new rule. The Obama-era regulation used terms such as “uplands,” “significant nexus,” “adjacency,” “neighboring,” “floodplains,” “riparian areas,” and “tributary” that beguiled many state and local regulators because they were either undefined or confusing.

“Generic terms such as “uplands” and “drylands” and what constitutes a “tributary” will tend to benefit from the application of the technical judgment that has been well developed by state and federal agencies and the consulting community, over the 40 year history of implementing the Clean Water Act,” Seggos said.

“Clear definitions are key” for cities that oversee roads, roadside ditches, bridges, flood control facilities, municipal separate storm sewer systems, green infrastructure projects and wastewater management systems, said the U.S. Conference of Mayors, the National Association of Counties and the National League of Cities in a joint letter to the EPA.

Reflect Uses

The challenge in crafting a rule that defines waters of the U.S. is to recognize how water is used and managed, according to Fred Andes, a coordinator with the Federal Water Quality Coalition, which represents municipal wastewater utilities, industries and among its members.

This is the time for the Trump administration to sit down with states and local governments to talk through the details. They need to agree on drawing lines of jurisdiction that are based on sound science, while providing flexibility for individual circumstances, Andes said.

The 2015 rule made it seem that green infrastructure projects—such as specially engineered projects designed to capture stormwater such as strategically created wetlands—could be classified as federally protected waters.

“If that is the case then we have a big problem,” Andes said. That’s because a federally protected water triggers a whole host of requirements, including compliance with water quality standards, and slow down the regulatory process.

“Communities want to invest in green infrastructure projects because they yield a lot of water quality benefits and result in a low carbon footprint,” Andes said. “Let’s try to make sure this rule doesn’t keep it from happening.”

Icahn Influence Gets Scrutiny as EPA Prepares Biofuel Quota

Posted June 21, 2017, 11:52 A.M. ET

By [Brian Dabbs](#)

A top Trump adviser’s oil-related profits and regulatory influence is now coming under fire from House Democrats.

The lawmakers are [asking](#) the EPA to disclose all communications with Carl Icahn, the billionaire refinery owner and informal White House regulatory czar. Rep. Frank Pallone (D-N.J.) and other Energy and Commerce Committee Democrats are also suggesting Icahn’s business dealings present an inherent conflict of interest.

That pressure comes at a particularly sensitive time. The Environmental Protection Agency is set to unveil 2018 quotas for the renewable fuel standard.

Icahn has repeatedly criticized the biofuel blending mandate, and his refining company, CVR Energy Inc., spent \$60 million less on biofuel credits in the first quarter of 2017, according to SEC filings unpacked by Bloomberg News.

The Energy Independence and Security Act (Pub. L. No. 110-140) sets biofuel blending quotas through 2022. Those refiners that don’t blend biofuel, such as CVR, must purchase the credits to comply with the mandate.

Icahn has caused waves since President Donald Trump tapped him as an adviser in December 2016. Senate Democrats have pressured more disclosure on his activities since inauguration day, but the June House letter marks the first salvo from that side of Capitol Hill.

EPA Must Do More to Combat Weedkiller Resistance: Watchdog

Posted June 21, 2017, 11:42 A.M. ET

By [Tiffany Stecker](#)

The EPA must do more to combat weed resistance to common herbicides, the agency’s watchdog said in a new report.

The Environmental Protection Agency’s Inspector General released the [report](#) June 21 to review the agency’s handling of a growing problem among U.S. farmers.

Many crop growers in the Midwest and the South are struggling with weeds like palmer amaranth and pigweed that don’t die when sprayed with Monsanto’s glyphosate, the most commonly-used herbicide in the world. Decades of spraying the popular weedkiller alongside corn, soybeans, cotton, and other crops genetically engineered to withstand glyphosate has facilitated the evolution of invasive weeds.

Although the EPA uses the pesticide registration process to collect information on health and environmental risks from pesticides used on herbicide-resistant weeds, the agency collects little to no information on the synergy—the increased potency of chemicals that are mixed—of pesticides, the report said.

The Inspector General also found that herbicide labels don't always include information on the chemical mechanism that explains how the herbicide kills the plant, which can result in improper spraying of weedkillers.

The EPA also has failed to provide adequate information on tracking resistance, the report said.

“There is a lack of communication and collaboration between the EPA and its public and private stakeholders regarding herbicide resistance management,” according to the report’s summary. “This limits the reach of actions proposed and taken by the EPA, the development of meaningful alternatives, and the agency’s ability to proactively respond to herbicide resistance in the field.”

In a March 23 response to the report, Wendy Cleland-Hamnett, acting assistant administrator of the EPA’s Office of Chemical Safety and Pollution Prevention, said the agency would complete draft plans to improve data collection and communication with scientists, government agencies, and industry by March 2018.

However, Cleland-Hamnett said the EPA would not develop performance measures to assess the agency’s success in slowing the spread of herbicide resistance because it would be “beyond the scope” of the agency’s regulatory authority.

China Selects Five Areas for Green Finance Pilot Programs

Posted June 21, 2017, 11:37 A.M. ET

By [Michael Standaert](#)

China has selected five regions for pilot programs meant to promote new environmentally friendly financial products, including bonds and insurance.

The provinces of Zhejiang, Jiangxi, Guangdong, Guizhou, and the Xinjiang-Uighur autonomous region will pilot the programs, the State Council announced last week.

Banks and financial institutions in those regions will be encouraged to establish specific green finance departments and branches, and encourage environmental micro-loans, venture capital, private equity, and other domestic and foreign investment, the State Council said. It did not announce details on when the programs would begin.

China issued about \$54 billion in green bonds last year, and has become a global leader. But much of the investment has come from large state-owned enterprises and banks.

U.K. Seeks to Lead World in Driverless and Electric Vehicles

Posted June 21, 2017, 11:25 A.M. ET

By [Jessica Shankleman](#)

The U.K. government plans to invest more than 800 million pounds (\$1 billion) in new driverless and zero-emission vehicle technology as it seeks to boost its economy while leaving the European Union.

Investment in research and new recharging infrastructure is intended to make Britain a “leader” in electric and autonomous vehicles, Queen Elizabeth II said in a June 21 speech marking the state opening of Parliament in London. The technology may be worth 28 billion pounds to the economy by 2035, the government estimates.

In order to deliver on that goal, the government will:

- Extend mandatory vehicle insurance to cover the use of automated vehicles
- Set a target for almost every car and van to be zero emission by 2050
- Allow government to require motorway service areas and large gasoline stations to install electric vehicle recharging points
- Require a set of common standards for charging points so they can be used widely across all vehicles

Invest 200 million pounds in researching and testing driverless car infrastructure and 600 million pounds during the course of this Parliament in supporting the ultra-low emission vehicles, sums which had been previously announced

The measures were welcomed by businesses, which had been concerned that Prime Minister Theresa May’s focus on withdrawing Britain from the European Union would push issues like air pollution down the agenda.

“It is encouraging to see the government’s desire to make the U.K. a leader in new industries and enhance its role on the world stage,” said Nick Molho, executive director of the Aldersgate Group, an alliance of business leaders, politicians and non-profit groups that’s pressing the Treasury on environmental policies.

As well as offering a new source of revenue, EVs could help reduce smog, which is linked to about 40,000 early deaths each year, and is draining 20 billion pounds a year from the economy, according to the Royal College of Physicians.

The government is working to publish a final plan setting out how it will tackle the issue next month. It has lost two court battles with ClientEarth, an environmental pressure group that sued claiming the current action was not good enough to meet legal requirements.

Although electric cars are still only about 1 percent of all U.K. vehicle sales, the country was one of only a handful worldwide to have more than 100,000 plug-in automobiles on the road, according to Colin McKerracher, analyst for Bloomberg New Energy Finance.

“The announcements today on charging infrastructure in particular should help pave the way for broader EV adoption in the 2020s,” McKerracher said. “Much of the pressure for EVs across Europe comes from EU fleet-wide vehicle CO2 targets and it remains unclear what comparable standards the U.K. will enact or adopt post-Brexit.”

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Superfund Program Faces Sacrifices Under Budget Pressure

Posted June 21, 2017, 9:44 A.M. ET

By [Sylvia Carignan](#)

The Environmental Protection Agency could reduce its backlog of contaminated sites on a smaller budget, but not without sacrifices, environmental consultants and attorneys say.

Those who work with Superfund sites say the agency could lower its cleanup standards or cut out stages of the process to more quickly move sites off the National Priorities List, which contains the most contaminated sites in the country. Sites remain on the list until the agency determines there is no longer a significant threat to health or the environment.

EPA Administrator Scott Pruitt has instructed an agency task force to recommend strategies to expedite site cleanups in the face of a proposed 30 percent cut for the Superfund program in the fiscal year 2018 budget request. However, a pair of environmental consultants said they believe the easiest sites to clean up have already been dealt with, leaving complicated, expensive projects on the priorities list.

“Some of the remaining sites are among the most difficult to resolve,” John Connor, president of the Houston-based engineering consulting firm GSI Environmental, told Bloomberg BNA.

Before sites can be removed from the list, they must reach the Superfund program’s “construction complete” stage, signifying that the site’s physical remediation needs, such as landfill caps, soil removal, or dredging, have been completed. The number of sites that have reached “construction complete” status has fallen each year since 2000.

The agency does not make a “construction complete” designation for a site until certain benchmarks are achieved: the remediation plan must address immediate threats and get long-term threats under control to earn that status.

“Construction complete” designations could come more quickly if the EPA moves those benchmarks, but not without a cost, said Peter deFur, president and owner of Environmental Stewardship Concepts, a consulting firm based in Richmond, Va.

“Project managers across the nation would fight tooth and nail to oppose any weakening of those,” deFur told Bloomberg BNA.

Building a Backlog

At any given time, the Superfund program generally has about 50 to 60 sites under consideration for the National Priorities List, according to EPA data. There are about 1,300 finalized sites on the list.

One of the biggest challenges of the Superfund program is the growing gap between the number of newly proposed sites and the number of sites with completed construction, Steve Jawetz, principal at Beveridge and Diamond, P.C. in Washington, told Bloomberg BNA.

“The growing backlog is one indicator of lack of success in moving sites through the program expeditiously, even if the pace of progress at each existing site is entirely justified,” Jawetz said.

The pace of site cleanup has been a common concern, according to Connor of GSI Environmental.

“Many in our industry would contend that U.S. EPA’s closure criteria and procedures are too conservative and arcane, such that sites don’t close as soon as they should,” he said.

The length of the cleanup process is another concern for the agency, as well as companies involved with Superfund sites, said Bart Seitz, partner in the Washington office of Baker Botts LLP.

“Trying to cut out steps in the process would be very helpful,” Seitz told Bloomberg BNA.

Reforming Superfund

In May, agency administrator Scott Pruitt called together a task force to reform the Superfund program, while defending the Trump administration’s proposed cuts to program funding. Pruitt has asked the task force of EPA employees to suggest ways the program could expedite remediation and restructure the cleanup process. The task force had 30 days to achieve their task, ending June 21.

The task force’s resulting recommendations will not be released to the public at that time, according to the agency.

Seitz said every presidential administration has faced Superfund challenges, but Pruitt may be able to make lasting improvements.

“I do think, given administrator Pruitt’s stature in the administration, he may have a real opportunity ... to actually adopt some good reforms that would move these sites forward,” Seitz said.

Burkina Faso Gets Solar Plant After Energy Policy Change

Posted June 21, 2017, 8:17 A.M. ET

By [Simon Gonggo](#)

Burkina Faso signed an agreement to build a solar plant in the first such deal after the West African nation adopted legislation that authorizes private investment in the energy sector.

Windiga Energy Inc. of Canada will install 85,000 photovoltaic panels to generate about 20 megawatts in the northwestern outskirts of the capital, Ouagadougou, the country’s energy minister, Alfa Omar Dissa, told reporters after the June 20 signing ceremony. The project will contribute to reducing the cost of electricity, Dissa said.

“We hope this will generate many other projects,” Finance Minister Hadizatou Sori Coulibaly said.

The investment follows after the liberalization of the West African nation’s energy sector in April as the government seeks to improve connectivity in a country where only 17 percent of the population has access to electricity, according to U.S. Agency for International Development data. The landlocked country of about 18 million has installed generation capacity of about 200 megawatts.

Gas Plant

Windiga Energy is also in talks with the government to build a \$200 million gas power plant that will

generate 140 megawatts, Chief Executive Officer Benoit La Salle told reporters at the same ceremony. The first phase of the solar plant, which can be extended to generate 30 megawatts, will cost 34 million euros (\$38 million) and is funded by Windiga, he said.

In another project, the government ordered the construction of a 33 megawatts solar plant near the capital, of which the 47.5 million euros cost will be funded by a grant from the European Union and a French Development Agency loan, Dissa said. Over the next three years, the country wants to supply 300 villages with solar energy and install 3,000 solar lamps with funding from the state budget, he said.

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London Mayor Seeks Pollution-Free Transport System by 2050

Posted June 21, 2017, 8:03 A.M. ET

By [Jessica Shankleman](#)

London's Mayor Sadiq Khan called for the city's entire transport network to operate with zero greenhouse-gas emissions by the middle of the century under a 3.3 billion-pound (\$4.2 billion) a year program aimed at reducing dangerous levels of pollution.

Transport for London will gradually expand the city's planned ultra-low emissions zone so that center of the city is pollution free by 2025 and inner districts by 2040. The entire metropolitan area would be covered by the zone by 2050, according to the [draft](#) Transport Strategy.

Khan said the city "simply cannot afford to take the same old approach to travel" as the population is expected to rise to 10.5 million people by 2041. That growth will add 5 million journeys a day.

Pollution in London is already some of the worst in Europe and causes almost 10,000 premature deaths a year, according to research by the Environmental Research Group at King's College London.

The strategy also envisions:

- "Record investment" in walking, public transport and cycling, so those methods make up 80 percent of journeys by 2041, up from 64 percent in 2015. That would mean cutting car journeys by 3 million a day,
- More frequent trains on the London Underground and modernization of key lines including the Piccadilly, Central, Bakerloo and Waterloo & City in the mid-2020s,
- Extensions to the Bakerloo line to beyond Lewisham in South London and the London Overground to Barking Riverside, the Northern line to Battersea and the Dockland Light Railway across the Thames River to Thamesmead,
- Creation of a suburban rail metro service for outer London could improve journey times by 15 percent by the late 2020s.
- Increase in safety so that no one is killed in or by a London bus by 2030, and
- Deaths and serious injuries from road collisions would be eliminated from London's streets by 2041.

The strategy will require spending of about 3.3 billion pounds a year on average, equal to almost 1 percent of London's gross value added. Transport for London will need make up a 700 million pound annual shortfall in its budget that will be created from 2018 when it will no longer get a grant from the national government.

TfL is confident the gap could be filled. It's developing a range of new revenue streams including issuing green bonds, selling land that's no longer needed, and earning more from advertising.

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Trump Relying on Courts to Halt Obama EPA Rules, Lawyers Say

Posted June 21, 2017, 7:01 A.M. ET

By [Amena H. Saiyid](#)

The Trump administration is placing a greater reliance on courts to block environmental regulations than any of its predecessors, according to lawyers interviewed by Bloomberg BNA.

The Environmental Protection Agency and the Justice Department have turned to the courts to endorse their actions to prevent the regulations from taking effect and freeze legal challenges. The Trump administration has used the strategy to halt several Obama-era regulations, including limits on toxic pollution from power plants, methane emissions standards for oil and gas wells, and requirements that chemical companies update their risk management programs.

These moves allow the Trump administration to quickly do away with regulatory requirements without having to engage in a full administrative rulemaking process, which buys the new administration time to revisit regulations and rewrite them as it sees fit.

Specifically, the EPA has delayed compliance with the rules administratively. The Justice Department has then followed these administrative moves by asking the courts to stay the underlying legal challenges to these rules on the basis of its decision to reconsider the rules. That strategy extends to lawsuits filed by environmental advocates over the administration's move to freeze compliance obligations, which the Justice Department has asked courts to dismiss.

"The Trump Administration is relying to an unusual degree on seeking courts to stay proceedings while they reengage the regulatory process," Justin Pidot, environmental law professor with University of Denver's Sturm School of Law, told Bloomberg BNA. Pidot formerly worked as an attorney in the Justice Department's Environment and Natural Resources division.

Reconsideration Not Unusual

It is not unusual for a newly elected administration to take steps to undo existing regulations that don't fit with its agenda. Since his election, President Donald Trump has taken steps to undo several major Obama-era environmental regulations, including carbon dioxide standards for power plants and a rule governing which waters are subject to federal jurisdiction under the Clean Water Act.

"Of course, it's not unusual for a new administration to review pending rules initiated by a prior administration," Andrew Stewart, an environmental attorney with Vinson & Elkins LLP in Washington, D.C. "This is particularly true when the new administration is from a different political party, and we saw this at the beginning of the Obama administration."

What most lawyers interviewed by Bloomberg BNA find “unique” about the Trump administration is the number of environmental regulations that it is seeking to undo, the speed with which they are being undone and the way it is going about it.

Hope Babock, an environmental law professor with the Georgetown Law School, described the strategy of reliance on the courts as “clever” because it avoids the prolonged process of withdrawing a rule under the Administrative Procedure Act that requires public notice and comment.

The administrative stay causes the rule in question to enter a “regulatory black hole” until the agencies decide how they will rewrite portions they find objectionable.

For instance, compliance dates for the 2015 power plant effluent limits rule (RIN: 2040-AF76) were to take effect in 2018, but the EPA issued an administrative stay on April 12, postponing compliance indefinitely. That rule required more than 1,000 power plants to use the best available technology that is economically achievable to regulate waste streams that are generated by the use of air pollution controls and coal gasification techniques.

Delays Draw Lawsuits

A coalition of environmental groups represented by Earthjustice challenged the delay in effluent limits, saying the EPA didn’t follow the Administrative Procedure Act in giving the public an opportunity to comment on the delay on its proposed rewrite.

The Justice Department in turn asked the U.S. District Court for the District of Columbia to either dismiss the environmental groups’ challenge or transfer the case to the U.S. Court of Appeals for the Fifth Circuit, which already froze litigation against the effluent regulation pending EPA’s review of the rule.

Stewart, who served in the Justice Department until late 2015, noted that the EPA did publish June 6 a public notice (82 Fed. Reg. 26,017) seeking comment on the postponed compliance deadlines.

Thomas Cmar, an Earthjustice attorney representing the environmental advocates, told Bloomberg BNA that the challenge, as outlined in their legal response, is over the administrative stay that EPA issued in April. At that time, the EPA failed to give prior notice or accept public comment on the stay before issuing it, a “move that is illegal” under the Administrative Procedure Act, according to Cmar.

The EPA’s subsequent move to seek comment on the delayed compliance deadlines is equally flawed, Cmar said, because the notice was issued under the Clean Water Act, not the Administrative Procedure Act. The Clean Water Act doesn’t make any provision to reconsider or postpone compliance deadlines for effluent limits once they are established, Cmar said.

Similar Treatment for Methane Rules

The EPA followed the same strategy when it came to undoing air pollution regulations (RIN:2060-AT59) on oil and gas wells that aim to limit emissions of methane, a potent greenhouse gas.

In that instance, the agency delayed implementation of the methane standards by 90 days, but again didn’t seek public comment. At that time, the DOJ followed the administrative freeze by successfully seeking a stay from the court on underlying legal challenges to the rule.

The EPA's initial move to halt the methane regulation came days ahead of a deadline for oil and gas drillers to comply with emissions control and gas leak monitoring requirements.

The EPA published another [notice](#) June 15, where it is seeking comment to further delay compliance by an additional two years.

And Another One

Earlier in June, the EPA again gave chemical companies more time to comply with the rule that requires them to update their risk management programs (RIN: 2040-AG91). It issued a temporary stay in mid-March without seeking notice, before launching a rulemaking to delay compliance until February 2019.

The Justice Department to date has been successful in getting courts to hold cases until the underlying rules are reconsidered, but John Cruden, former assistant attorney general for the Environment and Natural Resources Division under Obama, cautioned that changing any portion of the rule, including the effective dates, "inspires litigation."

"My own experience has been that very short time extensions often works," Cruden told Bloomberg BNA. "However, I believe DOJ will have an uphill battle trying to defend longer extensions unless the agency fully meets the requirements of the Administrative Procedure Act."

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Daily Environment Report for EPA

To: Jackson, Ryan[jackson.ryan@epa.gov]
From: Bloomberg BNA
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Subject: June 21 -- Energy and Climate Report - Afternoon Briefing



Energy and Climate Report

Afternoon Briefing - Your Preview of Today's News

The following news provides a snapshot of what Bloomberg BNA is working on today. Read the full version of all the stories in the final issue, published each night.

Energy Department Priorities Not Reflected in Budget: Moniz

Posted June 21, 2017, 12:30 P.M. ET

By [Chuck McCutcheon](#)

Former Energy Secretary Ernest Moniz said June 21 he sees a “disconnect” between his successor Rick Perry’s support for energy research and development and the Trump administration’s proposed budget.

“To be honest, I think Secretary Perry has made some very strong and positive statements in terms of R&D, in terms of innovation, but there’s a disconnect to the budget,” Moniz, who served under former President Barack Obama, told reporters.

The overall fiscal year 2018 budget request, which would reduce spending for research on coal, nuclear and other initiatives by 30 percent or more, is “a non-starter ... It just doesn’t do the job across the board,” Moniz said.

He said he’s particularly concerned the Energy Department’s national laboratories, which conducts much of its cutting-edge research, could be severely impacted if the proposed budget is passed.

Speaking at the National Press Club, Moniz also objected to some Republicans’ desire to have public-private partnerships replace federal funding.

“Public-private partnerships are important, but the idea that they’re going to fill this gap [in federal spending], I just don’t see,” he said.

Moniz made his remarks as he announced a new project, the Energy Futures Initiative, a nonprofit group that he said will study innovative solutions to energy issues.

Trump Relying on Courts to Halt Obama EPA Rules, Lawyers Say

Posted June 21, 2017, 7:01 A.M. ET

By [Amena H. Saiyid](#)

The Trump administration is placing a greater reliance on courts to block environmental regulations than any of its predecessors, according to lawyers interviewed by Bloomberg BNA.

The Environmental Protection Agency and the Justice Department have turned to the courts to endorse their actions to prevent the regulations from taking effect and freeze legal challenges. The Trump administration has used the strategy to halt several Obama-era regulations, including limits on toxic pollution from power plants, methane emissions standards for oil and gas wells, and requirements that chemical companies update their risk management programs.

These moves allow the Trump administration to quickly do away with regulatory requirements without having to engage in a full administrative rulemaking process, which buys the new administration time to revisit regulations and rewrite them as it sees fit.

Specifically, the EPA has delayed compliance with the rules administratively. The Justice Department has then followed these administrative moves by asking the courts to stay the underlying legal challenges to these rules on the basis of its decision to reconsider the rules. That strategy extends to lawsuits filed by environmental advocates over the administration's move to freeze compliance obligations, which the Justice Department has asked courts to dismiss.

"The Trump Administration is relying to an unusual degree on seeking courts to stay proceedings while they reengage the regulatory process," Justin Pidot, environmental law professor with University of Denver's Sturm School of Law, told Bloomberg BNA. Pidot formerly worked as an attorney in the Justice Department's Environment and Natural Resources division.

Reconsideration Not Unusual

It is not unusual for a newly elected administration to take steps to undo existing regulations that don't fit with its agenda. Since his election, President Donald Trump has taken steps to undo several major Obama-era environmental regulations, including carbon dioxide standards for power plants and a rule governing which waters are subject to federal jurisdiction under the Clean Water Act.

"Of course, it's not unusual for a new administration to review pending rules initiated by a prior administration," Andrew Stewart, an environmental attorney with Vinson & Elkins LLP in Washington, D.C. "This is particularly true when the new administration is from a different political party, and we saw this at the beginning of the Obama administration."

What most lawyers interviewed by Bloomberg BNA find "unique" about the Trump administration is the number of environmental regulations that it is seeking to undo, the speed with which they are being undone and the way it is going about it.

Hope Babcock, an environmental law professor with the Georgetown Law School, described the strategy of reliance on the courts as "clever" because it avoids the prolonged process of withdrawing a rule under the Administrative Procedure Act that requires public notice and comment.

The administrative stay causes the rule in question to enter a "regulatory black hole" until the agencies decide how they will rewrite portions they find objectionable.

For instance, compliance dates for the 2015 power plant effluent limits rule (RIN: 2040-AF76) were to take effect in 2018, but the EPA issued an administrative stay on April 12, postponing compliance indefinitely. That rule required more than 1,000 power plants to use the best available technology that is economically achievable to regulate waste streams that are generated by the use of air pollution controls and coal gasification techniques.

Delays Draw Lawsuits

A coalition of environmental groups represented by Earthjustice challenged the delay in effluent limits, saying the EPA didn't follow the Administrative Procedure Act in giving the public an opportunity to comment on the delay on its proposed rewrite.

The Justice Department in turn asked the U.S. District Court for the District of Columbia to either dismiss the environmental groups' challenge or transfer the case to the U.S. Court of Appeals for the Fifth Circuit, which already froze litigation against the effluent regulation pending EPA's review of the rule.

Stewart, who served in the Justice Department until late 2015, noted that the EPA did publish June 6 a public notice (82 Fed. Reg. 26,017) seeking comment on the postponed compliance deadlines.

Thomas Cmar, an Earthjustice attorney representing the environmental advocates, told Bloomberg BNA that the challenge, as outlined in their legal response, is over the administrative stay that EPA issued in April. At that time, the EPA failed to give prior notice or accept public comment on the stay before issuing it, a "move that is illegal" under the Administrative Procedure Act, according to Cmar.

The EPA's subsequent move to seek comment on the delayed compliance deadlines is equally flawed, Cmar said, because the notice was issued under the Clean Water Act, not the Administrative Procedure Act. The Clean Water Act doesn't make any provision to reconsider or postpone compliance deadlines for effluent limits once they are established, Cmar said.

Similar Treatment for Methane Rules

The EPA followed the same strategy when it came to undoing air pollution regulations (RIN:2060-AT59) on oil and gas wells that aim to limit emissions of methane, a potent greenhouse gas.

In that instance, the agency delayed implementation of the methane standards by 90 days, but again didn't seek public comment. At that time, the DOJ followed the administrative freeze by successfully seeking a stay from the court on underlying legal challenges to the rule.

The EPA's initial move to halt the methane regulation came days ahead of a deadline for oil and gas drillers to comply with emissions control and gas leak monitoring requirements.

The EPA published another notice June 15, where it is seeking comment to further delay compliance by an additional two years.

And Another One

Earlier in June, the EPA again gave chemical companies more time to comply with the rule that requires them to update their risk management programs (RIN: 2040-AG91). It issued a temporary stay in mid-March without seeking notice, before launching a rulemaking to delay compliance until February 2019.

The Justice Department to date has been successful in getting courts to hold cases until the underlying rules are reconsidered, but John Cruden, former assistant attorney general for the Environment and Natural Resources Division under Obama, cautioned that changing any portion of the rule, including the effective dates, "inspires litigation."

“My own experience has been that very short time extensions often works,” Cruden told Bloomberg BNA. “However, I believe DOJ will have an uphill battle trying to defend longer extensions unless the agency fully meets the requirements of the Administrative Procedure Act.”

Icahn Influence Gets Scrutiny as EPA Prepares Biofuel Quota

Posted June 21, 2017, 11:52 A.M. ET

By [Brian Dabbs](#)

A top Trump adviser’s oil-related profits and regulatory influence is now coming under fire from House Democrats.

The lawmakers are asking the EPA to disclose all communications with Carl Icahn, the billionaire refinery owner and informal White House regulatory czar. Rep. Frank Pallone (D-N.J.) and other Energy and Commerce Committee Democrats are also suggesting Icahn’s business dealings present an inherent conflict of interest.

That pressure comes at a particularly sensitive time. The Environmental Protection Agency is set to unveil 2018 quotas for the renewable fuel standard.

Icahn has repeatedly criticized the biofuel blending mandate, and his refining company, CVR Energy Inc., spent \$60 million less on biofuel credits in the first quarter of 2017, according to SEC filings unpacked by Bloomberg News.

The Energy Independence and Security Act (Pub. L. No. 110-140) sets biofuel blending quotas through 2022. Those refiners that don’t blend biofuel, such as CVR, must purchase the credits to comply with the mandate.

Icahn has caused waves since President Donald Trump tapped him as an adviser in December 2016. Senate Democrats have pressured more disclosure on his activities since inauguration day, but the June House letter marks the first salvo from that side of Capitol Hill.

EU Maps Out Ecodesign Plan for Energy-Efficient Data Equipment

Posted June 21, 2017, 12:38 P.M. ET

By [Stephen Gardner](#)

The European Commission published a plan that could lead to new ecodesign requirements for computer servers and data storage equipment sold in the European Union.

The commission, the EU’s executive arm, issued the “roadmap” on the environmental impact of servers and data storage equipment June 20. It also set out a plan to assess whether energy efficiency and other environmental obligations should be established for the equipment, but does not commit the commission to take action.

Ecodesign standards for servers would be “a step in the right direction. With the explosion of digital content and internet traffic, Europe needs to look closely at the environmental impact” of the information and communication technology sector, said Chloe Fayole, policy officer with the

European Environmental Citizens Organization for Standardization, which campaigns for environmental standards for products.

The standards could lead to a yearly energy saving by 2030 equivalent to the annual electricity consumption of EU member country Croatia, according to the roadmap. Currently, energy efficiency standards are lacking for servers and data storage, however, and data centers are often configured to be less energy-efficient than they could be, the commission said.

Mandatory energy efficiency and recyclability standards could be imposed on servers and data storage devices under the EU Ecodesign Directive (2009/125/EC), under which groups of products are assessed for potential energy savings.

Public comments on the plan can be submitted through July 18.

The Energy Star program, through which the EU and U.S. cooperate on energy certification of office equipment, also could be extended as an option for servers and data storage equipment, according to the roadmap. Energy Star standards already exist for enterprise servers and data center power supply.

The future of Energy Star is uncertain, however, after U.S. President Donald Trump in his budget request to Congress in May proposed to eliminate the program's annual funding of about \$50 million.

"If the U.S. reduce their speed on energy efficiency, Europe would need to step up. If the U.S. becomes weaker on energy efficiency, this will be detrimental for Europe too. When the U.S. energy efficiency standards are more ambitious than the EU ones, it's a great incentive for Europe to regulate, and vice versa," Fayola said.

U.K. Seeks to Lead World in Driverless and Electric Vehicles

Posted June 21, 2017, 11:25 A.M. ET

By [Jessica Shankleman](#)

The U.K. government plans to invest more than 800 million pounds (\$1 billion) in new driverless and zero-emission vehicle technology as it seeks to boost its economy while leaving the European Union.

Investment in research and new recharging infrastructure is intended to make Britain a "leader" in electric and autonomous vehicles, Queen Elizabeth II said in a June 21 speech marking the state opening of Parliament in London. The technology may be worth 28 billion pounds to the economy by 2035, the government estimates.

In order to deliver on that goal, the government will:

- Extend mandatory vehicle insurance to cover the use of automated vehicles
- Set a target for almost every car and van to be zero emission by 2050
- Allow government to require motorway service areas and large gasoline stations to install electric vehicle recharging points

- Require a set of common standards for charging points so they can be used widely across all vehicles

Invest 200 million pounds in researching and testing driverless car infrastructure and 600 million pounds during the course of this Parliament in supporting the ultra-low emission vehicles, sums which had been previously announced

The measures were welcomed by businesses, which had been concerned that Prime Minister Theresa May's focus on withdrawing Britain from the European Union would push issues like air pollution down the agenda.

"It is encouraging to see the government's desire to make the U.K. a leader in new industries and enhance its role on the world stage," said Nick Molho, executive director of the Aldersgate Group, an alliance of business leaders, politicians and non-profit groups that's pressing the Treasury on environmental policies.

As well as offering a new source of revenue, EVs could help reduce smog, which is linked to about 40,000 early deaths each year, and is draining 20 billion pounds a year from the economy, according to the Royal College of Physicians.

The government is working to publish a final plan setting out how it will tackle the issue next month. It has lost two court battles with ClientEarth, an environmental pressure group that sued claiming the current action was not good enough to meet legal requirements.

Although electric cars are still only about 1 percent of all U.K. vehicle sales, the country was one of only a handful worldwide to have more than 100,000 plug-in automobiles on the road, according to Colin McKerracher, analyst for Bloomberg New Energy Finance.

"The announcements today on charging infrastructure in particular should help pave the way for broader EV adoption in the 2020s," McKerracher said. "Much of the pressure for EVs across Europe comes from EU fleet-wide vehicle CO2 targets and it remains unclear what comparable standards the U.K. will enact or adopt post-Brexit."

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Burkina Faso Gets Solar Plant After Energy Policy Change

Posted June 21, 2017, 8:17 A.M. ET

By [Simon Gongqo](#)

Burkina Faso signed an agreement to build a solar plant in the first such deal after the West African nation adopted legislation that authorizes private investment in the energy sector.

Windiga Energy Inc. of Canada will install 85,000 photovoltaic panels to generate about 20 megawatts in the northwestern outskirts of the capital, Ouagadougou, the country's energy minister, Alfa Omar Dissa, told reporters after the June 20 signing ceremony. The project will contribute to reducing the cost of electricity, Dissa said.

"We hope this will generate many other projects," Finance Minister Hadizatou Sori Coulibaly said.

The investment follows after the liberalization of the West African nation's energy sector in April as

the government seeks to improve connectivity in a country where only 17 percent of the population has access to electricity, according to U.S. Agency for International Development data. The landlocked country of about 18 million has installed generation capacity of about 200 megawatts.

Gas Plant

Windiga Energy is also in talks with the government to build a \$200 million gas power plant that will generate 140 megawatts, Chief Executive Officer Benoit La Salle told reporters at the same ceremony. The first phase of the solar plant, which can be extended to generate 30 megawatts, will cost 34 million euros (\$38 million) and is funded by Windiga, he said.

In another project, the government ordered the construction of a 33 megawatts solar plant near the capital, of which the 47.5 million euros cost will be funded by a grant from the European Union and a French Development Agency loan, Dissa said. Over the next three years, the country wants to supply 300 villages with solar energy and install 3,000 solar lamps with funding from the state budget, he said.

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