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From: Bloomberg BNA
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Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

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Interior May Restore Pre-2015 Federal Fracking Regulations

Posted June 27, 2017, 03:16 P.M. ET

By Alan Kovski

The Interior Department appears poised to rescind its 2015 rule on hydraulic fracturing outright, after which it may simply revert to the pre-existing status quo on federal regulations for fracking on federal and Indian lands.

But, defenders of the Obama-era rule will have to wait and see exactly what the Trump administration does before they can formulate a legal strategy in response, Earthjustice attorney Michael Freeman told Bloomberg BNA June 26.

Oil and gas companies, routinely using fracking to enhance the flow of subsurface hydrocarbons, also are waiting, but with more hope for the outcome. Two of their trade groups, the Independent Petroleum Association of America and Western Energy Alliance, joined in litigation against the 2015 rule.

Interior asked a federal appeals court to hold the litigation in abeyance while the Bureau of Land Management (BLM) works to rescind the rule and considers what to put in its place.

The most recent federal brief filed at the U.S. Court of Appeal for the Tenth Circuit said BLM anticipates it will repeal the 2015 rule and revert to federal regulations for fracking that have existed for decades (Wyoming v. Zinke, 10th Cir., No. 16-8068, 6/20/17).

Looking to Pre-2015 Code

"It certainly looks like they are just going to rescind the rule outright" rather than replace it with a revised rule, Freeman said. But as for a legal challenge, he said, "I think we'll have to see what they say and how they try to do it."

The federal brief filed June 20 said, "BLM expects to seek comment on a proposal to rescind the

2015 hydraulic fracturing rule and to restore the affected sections of the Code of Federal Regulations to their pre-2015 language."

A BLM notice of proposed rulemaking is under review at the White House Office of Management and Budget, but its contents are not publicly disclosed.

The agency will provide for a public comment period of 60 days before a final decision, the government told the appeals court.

Authority to Regulate in Question

Wyoming, supported by three other states and the Ute Indian tribe, challenged the legal authority of the BLM to regulate fracking and won in the U.S. District Court for the District of Wyoming, vacating the 2015 rule. The Obama administration appealed, and the Trump administration has continued the appeal, hoping to defend its authority if not the details in the 2015 rule.

Environmental groups intervening in the case have asked the appeals court to continue the case, not hold it in abeyance, to rule on federal authority over fracking. In the June 20 brief, the government said the question of authority need not be decided in the current case.

"If BLM restores the earlier regulations, as it anticipates, BLM's statutory authority could be decided at that time within the context of a rule that BLM chooses to implement," Interior said.

The phrase "as it anticipates" was another indication of where the government was headed.

Federal Explanation Wanted

Freeman, whose Earthjustice law firm represents Earthworks, the Wilderness Society and other environmental intervenors in the case, said the federal government has not provided an adequate explanation to the appeals court of the rationale for the government's course of action.

He described the administration's moves as an "abdication of responsibility" to protect public lands. Like the Obama administration, he said the older federal regulations for fracking were out of date.

The government has indicated the 2015 regulations impose regulatory burdens that may be unjustified, but it has not spelled out the details. It also has cited President Donald Trump's March 28 executive order directing Interior Secretary Ryan Zinke to publish a proposed rule for "suspending, revising, or rescinding" the 2015 rule.

Oil and gas industry groups have been emphatic about what they see as the unjustified burden of additional reporting and approval requirements imposed by the Obama administration regulations.

State regulations have been adequate to govern fracking on federal as well as other lands, the industry groups have said. To them, the 2015 fracking rule was a solution in search of a problem.

EPA Nitrogen Dioxide Air Standards Up For White House Review

Posted June 27, 2017, 02:03 P.M. ET

By David Schultz

The EPA's review of its nitrogen dioxide air pollution standards is nearly complete with the agency sending its proposal for how to proceed to the White House Office of Management and Budget.

OMB is reviewing the agency's proposed decision, according to a June 26 posting on its website.

The Clean Air Act requires the Environmental Protection Agency to review its nitrogen dioxide standards at least once every five years to determine whether they should be revised. Earlier this year, the agency's air pollution science advisers said the EPA should leave the current standards in place. The agency also indicated it was leaning toward keeping the current standards in place in a draft version of its review that it released last year.

Nitrogen dioxide air pollution is primarily a byproduct of vehicle fumes that can cause serious respiratory problems. Regions that exceed the agency's standards for nitrogen dioxide levels, which are currently between 53 and 100 parts per billion, could face mandatory pollution control measures, including stricter permitting requirements for industrial facilities.

An OMB review is typically the final stage of the rule making process before an agency decision is made public.

$1 Billion Mine Cleanup Bill Moves to Full House

Posted June 27, 2017, 12:52 P.M. ET

By Stephen Lee

A bill that would speed the delivery of $1 billion to states grappling with old, unreclaimed mine sites passed a House committee June 27.

The Revitalizing the Economy of Coal Communities by Leveraging Local Activities and Investing More (RECLAIM) Act (H.R. 1731) passed the House Natural Resources Committee on a voice vote and now moves to the full House.

Under the bill, $1 billion would be drawn from the federal Abandoned Mine Land fund and delivered to states so they can clean up their most polluted or dangerous old mines. Money in the fund comes from a tax on coal production.

The committee adopted three amendments during the markup. One, offered by Rep. Don Beyer (D-Va.), lets states request funding for mine cleanup projects that aren't connected to future economic development. Previously, the bill required states to show an "economic nexus" for all projects at abandoned mines that pose a threat to health, safety and the general welfare of the public.

Another from Rep. Liz Cheney (R-Wyo.) would protect Wyoming—which alone pays more than half of the total AML fees because it's the biggest coal-producing state— from being affected by accelerated payments out of the fund. The third amendment, offered by Rep. Glenn Thompson (R-Pa.), would bar states that don't use the money for reclamation from receiving further funding authorized by the bill.

Two Senate Companion Bills

Rep. Donald McEachin (D-Va.) introduced but withdrew an amendment that would have struck a section from the bill moving the headquarters of the Appalachian Regional Commission out of

Washington, D.C., to a "more affordable location" in Appalachia. In McEachin's view, that move will only weaken the ARC, a $146 million federal-state partnership intended to create economic opportunities in the 13 Appalachian states and is consistent with President Donald Trump's intent, stated in his budget request, to eliminate the commission altogether.

The RECLAIM Act stalled in the last Congress when no senator offered a companion version. This year, however, two companion bills have been introduced—one by Senate Majority Leader Mitch McConnell (R-Ky.) and another by Sen. Joe Manchin (D-W.Va.)—and proponents on both sides of the aisle say they're optimistic it will pass.

During the House markup, the panel also passed the Community Reclamations Partnerships Act (H.R. 2937), which lets states assume the liability for good samaritans who want to clean up old mine lands.

Other bills advanced to the full House include the Resilient Federal Forests Act (H.R. 2936), which seeks to reduce the risk of catastrophic wildfires through active forest management, according to its sponsor, Rep. Bruce Westerman (R-Ark.). The bill passed on a 23-12 vote.

The Water Rights Protection Act (H.R. 2939), which bars the Departments of the Interior and Agriculture from requiring private citizens to hand over their water rights to the federal government in order to keep operating on federal lands, passed on a 24-14 vote.

Pumped Hydropower Storage Bill Passes House

Posted June 27, 2017, 03:34 P.M. ET

By Brian Dabbs

A bill designed to eliminate regulatory uncertainty in hydropower storage at federal reservoirs passed the House June 27.

The legislation (H.R. 1967) would tap the Bureau of Reclamation as the lead regulator for pump storage at the agency's facilities. The Federal Energy Regulatory Commission sometimes requires permits for that activity, and the legislation would remove FERC from the regulatory process, the bill's supporters said.

A House Natural Resources Committee spokeswoman previously told Bloomberg BNA that the bill could be part of a broad infrastructure package in the future. Its status in the Senate remains uncertain.

Pump storage is similar to a battery, and proponents said it's a useful way to extend the period of time that hydroelectric power is available. Water is pumped from a lower reservoir to a higher reservoir and later used to generate electricity.

Rep. Doug Lamborn (R-Colo.) sponsored the bill, and Rep. Cathy McMorris Rodgers (R-Wash.), a member of the Republican leadership and founder of the Hydropower Caucus, joined on the bill.

Perry: Renewables Affect Grid Reliability; FERC Member Refutes

Posted June 27, 2017, 02:47 P.M. ET

By Rebecca Kern

Energy Secretary Rick Perry said previous policies benefiting renewable resources threaten baseload resources and lead to a less reliable electric grid, but Federal Energy Regulatory Commissioner Colette Honorable refuted his claim.

"These politically-driven policies, driven primarily by the hostility to coal, threaten the reliability and stability of the greatest electrical grid in the world," Perry said June 27 at the Energy Information Administration's annual conference in Washington.

"We'll also ensure our grid reliability and that our baseload capacity that is needed to power the economy is not tossed aside in the name of some political favorite," Perry said, referring to the tax subsidies Congress passed during the Obama administration for wind and solar technologies.

Honorable: 'Bring on' Renewables

But FERC's Honorable refuted the assertion that wind and solar resources threaten reliability. Baseload generators include nuclear power plants and coal plants, many of which are closing due to low natural gas prices, energy analysts and grid market operators said.

"Do I believe [renewables] have impacted grid reliability? Absolutely not," she said a session following Perry's presentation at the EIA conference. FERC is an independent agency that orders and approves standards to ensure the reliable operation for the electric grid.

"Do we recognize that renewables have different attributes? Yes. Do we recognize that we must ensure the proper support for renewables? Yes," she said.

But no reliability problems have occurred in the regional grids operated in the Midwest and Texas, where large amounts of wind have been integrated onto the system, according to Honorable.

"I don't see any problems with reliability, and I say, 'Bring on more renewables,'" she added.

Honorable announced late June 26 that Friday, June 30, will be her last day as a commissioner.

Department Grid Study

Perry has questioned the impact of renewable subsidies and taxes on baseload resources and whether adding more renewables would affect the grid's reliability, and directed the Energy Department to conduct an internal study of reliability of the electric grid.

"I've asked the staff to undertake a critical review of the regulatory burdens placed by the previous administration on baseload generators," he said. The study is expected to be issued to the public in July.

The renewable industry is on the defensive, however, saying intermittent resources such as wind and solar add more resiliency, diversity, and reliability to the electric grid.

A June 26 report from the Natural Resources Defense Council concluded that today's grid planners are increasingly valuing resource flexibility to make it easier to balance supply and demand in real time. It found that baseload plants are limited in providing this flexibility because they can't be turned on and off without incurring significant cost.

A white paper that the Advanced Energy Economy Institute issued in May highlighted the flexibility that renewable resources offer. The Solar Energy Industries Association and the American Wind Energy Association sent similar briefing papers to the Energy Department.

Energy Secretary Supports Nuclear, but Funding Cut Proposed

Posted June 26, 2017, 09:00 P.M. ET

By Rebecca Kern

Energy Secretary Rick Perry called domestic nuclear energy development a "game changer" at the start of White House "Energy Week," but the department's proposed budget would cut funding for its nuclear office.

Perry's June 26 comments to reporters came during the announcement of Energy Week events including some focused on American energy dominance—bringing together state, tribal, business, labor leaders in Washington. The week will culminate with an announcement on American energy policy by President Donald Trump at the Energy Department headquarters June 29.

Perry called U.S. nuclear policy "an important player in the development of our clean energy portfolio globally."

"I believe we can achieve this by focusing on the development of technology like advanced nuclear reactors, and small modular reactors," he added.

Advanced reactors are still decades away from commercialization and materials other than water, such as sodium and gas, to cool the reactors. Meanwhile, small modular reactors—smaller-scale and purportedly safer water-cooled reactors—could be on the market by the mid-2020s, with NuScale Power LLC's application under review by the Nuclear Regulatory Commission.

But the proposed fiscal year 2018 budget request for the Energy Department includes a 28 percent cut to the Office of Nuclear Energy from $984 million in the fiscal year 2017 annualized continuing resolution to $703 million. The office is responsible of nuclear technology research and development.

Analyst Skeptical

Chris Gadomski, the lead nuclear analyst at Bloomberg New Energy Finance, is skeptical of Perry's backing.

"Perry says there is support for the U.S. nuclear energy industry, but he says nothing about financial support for the industry," he told Bloomberg BNA June 26.

"Commercializing an advanced reactor will cost between $1.5 billion to $3.5 billion and represents a very risky venture given low natural gas prices, no carbon price, and policy preferences for renewables," he said. "That is a huge challenge for the U.S. industry even with government support. Trump's budget cuts rather than increases support for nuclear."

The Nuclear Energy Institute's Neal Cohen, the senior vice president of external affairs, told Bloomberg BNA that he was "heartened to see Secretary Perry recognize ... the fact that nuclear is

essential and can't be taken for granted." But the trade group, which represents the nuclear power industry, has lamented the proposed funding cuts to nuclear.

"Unfortunately, the proposed budget does not support the actions necessary for the U.S. nuclear energy industry to thrive. Now is not the time to back away from federal investment that has played such a pivotal role in making the United States a world leader in this technology," Maria Korsnick, NEI's president and CEO, said in May when the budget was released.

Defining Energy Dominance

The Energy Week is part of a month-long series of policy-themed weeks, including infrastructure week. The week will focus on American jobs utilizing U.S. domestic energy resources. Perry defined energy dominance as "using domestic resources for the good here at home and abroad."

"An energy-dominant America means a self reliant, a secure nation, free from geopolitical turmoil of other nations who seek to use energy as an economic weapon," he said.

"An energy-dominant America will export to markets around the world, increasing our global leadership and influence. Becoming energy dominant means that we are getting government out of the way so that we can share our energy wealth with developing nations," he added.

Perry Seeks Energy Pact with Mexico, Canada as NAFTA Talks Near

Posted June 27, 2017, 8:09 A.M. ET

By Josh Wingrove and Jennifer A. Dlouhy

The U.S. has a unique opportunity to develop a "North American energy strategy" with Canada and Mexico, Energy Secretary Rick Perry said, striking a conciliatory tone with the other members of the North American Free Trade Agreement.

While President Donald Trump has blasted NAFTA and moved to renegotiate it, Perry referred to the upcoming talks as a "massage" of the 1994 NAFTA deal, saying it presents an opportunity to bolster energy ties, not enact new trade barriers.

"That relationship I don't think has ever been more important than it is today, particularly from an energy perspective," he told reporters at the White House June 26, while stressing his close ties with his counterparts in Ottawa and Mexico City. "Energy is going to play a very important role."

His comments come at the outset of so-called "Energy Week" from the White House, as Trump works to reduce regulations on energy producers and jump-start energy exports. Perry's comments are nonetheless the latest signal Trump's cabinet is warming to trade ties with Canada and Mexico—whether it's lauding NAFTA and its impact on farmers or saying any revisions of the pact will be good for the U.S. neighbors, as well.

"Energy is an ideal area for the Trump administration to move forward with the relationship," Duncan Wood, director of the Mexico Institute at the Woodrow Wilson Intentional Center for Scholars, said in a telephone interview.

Trump has long advocated for American energy dominance, Wood said: "But everybody knows that for the United States to do that on its own is a pipe dream in the short term at least—but for North

America working together, it becomes feasible."

Canada Trade

Perry likened NAFTA renegotiation to the "need to renegotiate a contract from time to time," saying the president wants to "massage" and "rework" the deal, with energy playing an important role. When NAFTA was negotiated, the U.S. was reliant on oil imports from Canada and Mexico; it's now both a major exporter and importer of oil and natural gas with both nations.

"I think we have a unique opportunity in this country to develop a North American energy strategy that will pay great dividends for Canadians, for Mexicans, for Americans, as we go forward," he said, adding he has good working relationships with Canada Natural Resources Minister Jim Carr and Mexican Energy Secretary Pedro Joaquin Coldwell.

Carr echoed the comments, saying in a June 26 interview that Perry has championed North American energy cooperation since his first days on the job.

"We both understand the importance of that integrated market," Carr said in an interview. "We understand we have to keep goods flowing, that we can establish North America as a world leader in the production of conventional and clean energy."

Oil Trade

Energy is a pillar of North American trade. Imported crude from Canada and Mexico now accounts for a larger percentage of total U.S. imports, growing to 49 percent in 2016, from 34 percent in 2010, according to the American Petroleum Institute.

North American energy trade acts to balance regional supply and demand needs. In 2016, the U.S. exported 2.1 trillion cubic feet of natural gas by pipeline to Canada and Mexico, while also importing 2.9 trillion cubic feet from the countries, according to the U.S. Energy Information Administration. The U.S. exported 1.6 billion barrels of crude oil and petroleum products to Canada and Mexico that year, while importing 1.4 billion barrels from the two countries, the EIA reported.

North American energy markets are already highly integrated, at least in oil, gas and petroleum products. Electricity is the outlier; while there are grid connections across the U.S.-Canada border, similar transmission does not occur between the U.S. and Mexico.

Trade Disputes

Already, a plurality of shipments of liquefied natural gas—20 percent, Bloomberg data show—from Cheniere Energy Inc.'s Sabine Pass export facility ultimately have been sold to Mexico since that site began shipping LNG in early 2016.

"If you would have asked me to think about where these volumes would go a year, year and a half ago, I wouldn't have guessed our neighbors to the south of the border would be the single largest market to date," Cheniere Executive Vice President Anatol Feygin said at an EIA conference in Washington June 26.

To be sure, the trade disputes between the countries go beyond NAFTA and energy. The U.S. and Mexico hope to sign a final deal on sugar imports this month, settling a long-standing irritant.

The U.S. imposed a second-round of duties on Canadian softwood lumber on June 26—a move widely expected even before Trump's election. The U.S. is also reviewing steel rules, though Canadian Prime Minister Justin Trudeau is confident his country will be spared by any new measures. The U.S. and Canada are also at odds over aerospace.

Energy, Keystone

There's more room for the conversation now, too, since the Trump administration authorized construction of TransCanada Corp.'s proposed Keystone XL pipeline to deliver oil sands crude from Alberta across the border, ultimately going to Gulf Coast refineries. For years as the Obama administration skeptically weighed the project and environmentalists battled the pipeline, it overshadowed trilateral talks.

That's no longer the case.

"Mexico and the United States could talk about pipelines for natural gas, but ultimately on a trilateral basis, it was all stymied by that issue of Keystone," Wood said. Without the Keystone decision hanging over discussions, "it liberates the agenda a little more."

—With assistance from Jennifer Jacobs and Catherine Traywick.

Navajo Vote to Extend Large Coal-Fired Power Plant's Lease

Posted June 27, 2017, 9:00 A.M. ET

By Stephen Lee

The massive coal-fired Navajo Generating Station can continue to operate through 2019 after the Navajo Nation Council approved legislation allowing it more time to shut down.

The passage of Legislation No. 0194-17 June 26 gives the operators of the 2,250-megawatt Navajo Generating Station in Page, Ariz.—the biggest coal plant in the West—five years to decommission and remediate the facility starting Dec. 23, 2019, when the current 50-year lease expires.

Had the measure failed, the plant's operators would have had to close it in a matter of days to give themselves enough time to decommission the plant by the 2019 expiration date. The plant's owners said earlier that decommissioning would take roughly two years.

The extension also means the large Kayenta Mine 80 miles away, which solely provides coal to the Navajo Generating Station, will stay open through 2019. If and when the power plant closes, however, the mine will also close because it doesn't have a rail link connecting it to any other customers.

Peabody Energy, which operates the mine, has taken out a $235 million bond to reclaim the land. Some environmental advocates, however, question whether the bond amount is enough to reclaim the 35.8 square miles that have been mined at Kayenta.

Navajo leaders, fearful of what the plant's closure would mean for their economy, had supported the extension. The plant employs roughly 400 workers, and the mine employs another 243, according to

the Institute for Energy Economics and Financial Analysis.

Grim Outlook Beyond 2019

The chances of the plant remaining open beyond 2019 appear murky at best. No outside buyers have stepped forward to take over the plant when the current lease expires, but several players, including the Navajo Nation and Peabody Energy, are actively looking for a buyer.

Andy Tobin, commissioner of the Arizona Corporation Commission—the state's public utilities commission, told Bloomberg BNA before the vote that the plant plays a central role in Arizona's economy.

"It's the only coal plant in Arizona that burns Arizona coal," Tobin said. "Without it, Arizona will become a full-time energy importer, which is something that bothers me as a whole."

Tobin also said he thinks it's possible to build a rail link to the Kayenta Mine, so Peabody can sell the coal to other customers.

Monsanto's Foes Are Branching Out

Posted June 27, 2017, 7:00 A.M. ET

By Tiffany Stecker

Call it the anti-Roundup dream team. A coalition of attorneys, invigorated by their lawsuit representing cancer victims against Monsanto Co., is tackling the world's most popular weedkiller on multiple fronts. They are veteran environmental attorney and political scion Robert F. Kennedy, Jr.; Aimee Wagstaff of Andrus Wagstaff LP in Lakewood, Colo.; Michael Miller of the Miller Firm LLC in Orange, Va.; Michael Baum and Brent Wisner of Baum Hedlund Aristei Goldman PC in Los Angeles; and Robin Greenwald of Weitz & Luxenberg PC in New York. Their weapon? A glimpse at decades of Monsanto's internal deliberations on glyphosate, the main ingredient in Roundup herbicide. The attorneys have spent the last several months poring over hundreds of confidential documents they say show that the company actively worked to downplay the cancer risk for glyphosate. The plaintiffs in the high profile multi-district litigation (MDL), being heard in the U.S. District Court for the Northern District of California, allege that Monsanto's Roundup caused their non-Hodgkins lymphoma, a relatively common cancer of the blood.

They are now extending to another legal challenge. On June 20, they joined other attorneys in filing a complaint that accuses the company of falsely advertising that glyphosate works by targeting an enzyme that is not found in people or pets. They are teaming up with another law firm that is building a name on suing food companies for making such claims.

The attorneys have also weighed in on California's decision to list glyphosate as a carcinogen under the state's Proposition 65 law, which goes into effect July 7, and provided information to members of the European Parliament to sway decision-making on the herbicide. The zeal with which the firms are taking on Monsanto—fueled, Kennedy said, by the troubling information culled from the documents—is rare in private practice, he told Bloomberg BNA. "I've never seen private attorneys so energized against a defendant," Kennedy, whose Hurley, N.Y.-based firm Kennedy & Madonna LLP is working with Baum Hedlund on the litigation, said. "Everybody is cooperating so well, we've created a team." Since March, the lawyers have successfully unsealed a trove of emails, letters and studies intended to inject doubt into the process by which Roundup earned its Environmental Protection Agency approval. They suggest that Monsanto's scientists ghost-wrote studies that

cleared glyphosate of its cancer-causing potential; that the company tried to enlist EPA staff to shut down an investigation into the herbicide; and that officials hired a scientist in 1985 to persuade EPA regulators to change its decision on its cancer classification for glyphosate.

Monsanto has denied these allegations, and the judge presiding in the case also has panned the attorneys for trying to unseal documents not directly relevant to the case, calling the move a "PR campaign" at a May 11 hearing.

Injury Lawyers as 'Private AGs'?

People seeking to sue over Roundup exposure may now be more inclined to approach the firms, Wisner of Baum Hedlund told Bloomberg BNA. "We've all had a chance to see what's behind the curtain," he said. "We bring a lot of institutional knowledge to the litigation."

Since its introduction to consumers in 1974, Roundup has helped revolutionize farming practices, allowing growers to control weeds more efficiently and boost agricultural productivity. But concerns over use with genetically-engineered crops, the chemical's presence in foods, and its role in fostering glyphosate-resistant weeds have left environmentalists skeptical.

Nonprofits have been suing the EPA and other federal agencies for failing to properly regulate glyphosate since the 1990s.

"The problem is so big, it's creating opportunities left and right," Adam Keats, a senior attorney with the Center for Food Safety, told Bloomberg BNA.

Regulatory bodies around the world, including the EPA, have backed findings showing that Roundup has low toxicity. But a contested 2015 finding from the International Agency for Research on Cancer that glyphosate is a "probable" carcinogen created an upwelling of cases from consumer protection and personal injury firms, many of which have been consolidated in the Northern District of California MDL.

These firms have deeper pockets—and less to lose—than environmental nonprofits fighting an agricultural giant, Keats said.

"We don't have the same resources that law firms have; therefore, we pick and choose what we challenge," he said. In seeking to reform the regulatory process, "we're less subject to litigation tactics that would bleed us dry."

When government agencies are reluctant to change their practice, consumer protection lawyers serve as vigilantes against weak regulation, Wisner said.

"I think that these [attorneys for] consumer fraud cases, for better or worse, were effectively becoming private attorney generals," he said.

Suit Is Frivolous, Says Monsanto

The attorneys' latest complaint, filed in the U.S. District Court for the Western District of Wisconsin, pushes back against one of the company's claims.

Glyphosate kills weeds by inhibiting an enzyme essential for keeping plants alive. The chemical disrupts the pathway that the enzyme, 5- enolpyruvylshikimate-3-phosphate (EPSP), takes to

process amino acids, the building blocks of proteins.

Animals don't process amino acids through the same pathway as plants. But bacteria, including the microbes that populate mammals' guts, do. Recent research has found that human intestinal flora can affect the immune system, allergies, and even behavior. Therefore, Monsanto cannot declare that "glyphosate targets an enzyme found in plants but not people or pets," the plaintiffs say.

SImilar "enzymatic pathway" arguments against Monsanto have failed in the past. Federal courts in New York and California dismissed cases when plaintiffs sought relief in the form of court-ordered label changes. The cases were thrown out because one of the nation's pesticides laws, the Federal Insecticide, Fungicide and Rodenticide Act, dictates what information makes it on pesticide labels and pre-empts any injunctive relief claims.

The current action does not seek label changes. Instead, it seeks to compensate consumers who bought Roundup under the representation that the product does not affect human health, Kim Richman, an attorney with the Brooklyn, N.Y.-based Richman Law Group, told Bloomberg BNA.

The Richman Law Group has sued several food and tobacco companies for making false and deceptive claims on their products. They have gone after General Mills for calling Nature Valley granola bars "natural" despite the presence of glyphosate residues, and RJ Reynolds Co. for implying that their brand of American Spirit cigarettes are healthier and safer than other brands.

In the Monsanto challenge, Richman said he wants to draw attention to glyphosate's "real and most pervasive effect — weakening the human gut biome."

"The public has been misled on this point, and it must be addressed," he said.

Monsanto is confident the challenge will go nowhere.

"These are frivolous lawsuits without any merit. We will defend the Company vigorously, and we are confident we will prevail," spokesman Sam Murphey said in an emailed statement.

The match between Richman and the lawyers in the Non-Hodgkins lymphoma MDL is a natural one for the anti-glyphosate crusaders.

"We're bringing the science, he's bringing his world class knowledge of consumer fraud," Kennedy said.

David v. Goliath

Richman has also sued Monsanto in D.C. District Court, as well as in Illinois federal court, over the company's claims that Roundup doesn't affect humans. In the latest complaint, the attorneys represent plaintiffs from Illinois, New York, Wisconsin, California, New Jersey and Florida, kicking off a nationwide class-action suit to recover monetary damages.

It's Richman's latest "big tent" approach in bringing together firms and groups taking on glyphosate from different angles: from consumer deception to public health.

Rather than having competing actions filed in different corners of the U.S., Richman said, his law group is coordinating attorneys across the country and across various practice areas.

This is "all in an effort to file together against a Goliath and bypass an otherwise complicated MDL process, which can often waste valuable judicial resources and delay available relief," he said. The group used a similar tactic in lawsuits against Quaker Oats and General Mills.

The MDL process is triggered by the Judicial Panel on Multi-District Litigation (JPML), a panel of judges that meet six times a year to consolidate complaints across the country into a single court, allowing the process of collecting evidence to play out in that court before a trial begins in the jurisdiction of origin. The judges centralize these cases to avoid duplication, prevent inconsistent pretrial rulings, and save money.

But the MDL process can also be complicated, delaying relief and inviting some firms to take advantage of the system in a way that does not serve the lead plaintiffs or classes they seek to represent. The JPML may unwittingly disenfranchise the plaintiffs or classes by centralizing the cases far from their chosen jurisdiction, Richman said.

Instead of triggering an MDL, he said, the attorneys are able to self-organize and create a "mini" MDL. Avoiding the traditional process, when possible, reflects an emphasis to place plaintiffs and classes "before control and power," Richman said.

The choice of the Wisconsin court is a deliberate one. The court has a reputation for quickly moving cases off the docket, Kennedy said.

Although these mini MDLs generally benefit plaintiffs, they also sidestep the neutral decision-maker in the MDL panel, said Andrew Bradt, an assistant professor at the University of California, Berkeley School of Law who studies the MDL process. Both plaintiffs and defendants like to "shop" for the best court, which can lead to gamesmanship and inefficiency in the legal system. "This is forum shopping on steroids," he said.

Chemical Makers Can Ask, Pay For Part of EPA Risk Analysis

Posted June 27, 2017, 03:14 P.M. ET

By Pat Rizzuto

Chemical manufacturers can request and foot the bill for the EPA to review the risks of some chemical uses without triggering an obligation to cover the cost of a more comprehensive examination, a senior agency official said.

A 2016 update to the nation's chemical safety law allows chemical manufacturers to ask the Environmental Protection Agency to evaluate the risks of chemicals they make—provided the companies pay for the review, which can cost more than $1 million. Between 25 and 50 percent of the chemical risk evaluations the agency conducts can be carried out at the requests of chemical manufacturers who also foot the bill.

A recently issued regulation allows chemical manufacturers that want the EPA to evaluate the risks of some—but not all—uses of a chemical to request and pay for the narrower evaluation, according to Wendy Cleland-Hamnett, acting assistant administrator for chemical safety and pollution prevention. That is a change from the proposed version of the rule that would have required the companies to pay the costs of evaluating the risks of all the chemical's uses—even if the company didn't make the chemical for those other applications.

There are many reasons chemical manufacturers may want the EPA to assess the risks of a

chemical they make. For example, one or more manufacturers may think the chemical they make—or certain uses of it—pose little risk. Having a formal EPA conclusion that agreed with them could benefit them in the marketplace.

The EPA, however, will examine all the uses of that chemical that it thinks warrant review, Cleland-Hamnett said June 27 at a forum on the revised chemicals law held at the George Washington University School of Public Health in Washington, D.C. She discussed changes the EPA made to a trio of chemical regulations issued June 22, the one-year anniversary of the Toxic Substances Control Act amendments of 2016.

EPA Starts Water Rule Repeal, Fulfills Trump Campaign Pledge

Posted June 27, 2017, 02:23 P.M. ET

By Amena H. Saiyid

EPA Administrator Scott Pruitt June 27 initiated the repeal of an Obama-era water jurisdiction regulation by issuing a proposal that would reinstate prior policies on what waters are subject to federal protections, the agency announced.

The proposed repeal, once in final form, will be the first step the Trump administration takes in a two-step process to undo the 2015 Clean Water Rule, also known as the Waters of the U.S. rule (WOTUS). The second step, which Pruitt has said will be completed by as soon as the end of the year, will involve a rewrite of the 2015 regulation.

"We are taking significant action to return power to the states and provide regulatory certainty to our nation's farmers and businesses," Pruitt said in a June 27 news release announcing the proposal. "This is the first step in the two-step process to redefine 'waters of the U.S.' and we are committed to moving through this re-evaluation to quickly provide regulatory certainty, in a way that is thoughtful, transparent and collaborative with other agencies and the public."

Waters and wetlands that fall under Clean Water Act jurisdiction are protected from pollution by federal discharge and dredge-and-fill permits, oil spill prevention requirements, water quality standards, and state water quality certifications, among other programs.

The Obama-era water rule is facing dozens of lawsuits from various business, agriculture and manufacturing groups, including Murray Energy Corp., who argued the federal government improperly expanded its regulatory reach over waters. Environmental groups also have challenged the rule to make it more protective than its current form.

The significance of this first step (RIN:2040-AF74) is that it will take the 2015 Obama water rule off the books, rendering moot all outstanding federal legal challenges against the regulation, attorneys said.

Trump Promised Rollback

The EPA's action moves Trump closer to fulfilling the pledge he made during his presidential campaign and in a February executive order that directed the EPA to undo the regulation that he and other Republicans have termed a "federal land grab."

Trump ordered the EPA and the U.S. Army Corps of Engineers to craft the new jurisdiction rule with states, their co-regulators in implementing the Clean Water Act. States are eagerly looking forward

to that and have encouraged the administration to share more than just an outline of its plans to rewrite the jurisdictional rule.

The undoing of the Obama-era water rule will involve the reinstatement of a 1986 jurisdiction rule and related guidance that the EPA said was in place "prior to the issuance of the Clean Water Rule and that is being implemented now under the U.S. Court of Appeals for the Sixth Circuit's stay of that rule."

A Sixth Circuit panel issued a nationwide stay of the WOTUS rule in 2015 after determining that there was a good chance that groups challenging the rule would prevail.

Reed Hopper, principal attorney with Pacific Legal Foundation's environmental law practice, told Bloomberg BNA in an email that the proposed repeal of the Clean Water Rule would end that Sixth Circuit litigation. However, Hopper said it would not end proceedings before the U.S. Supreme Court, which has been asked to decide which federal court should hear challenges to a water jurisdiction rule.

"The justices know they need to address the issue before a new WOTUS rule is issued," Hopper said.

California Mounts Lobbying Blitz for EPA Water Loans

Posted June 27, 2017, 7:30 A.M. ET

By David Schultz

The Golden State is making a strong lobbying push to try to win new federal loans for water infrastructure projects, according to data and documents reviewed by Bloomberg BNA.

The EPA has received applications from water systems across the country for these loans in 2017, the first year the agency will dole them out. But California is head and shoulders above its peers in trying to persuade the agency to send the loans its way.

Officials in California's water utility industry told Bloomberg BNA that their state's thirst for these infrastructure loans is the result of a desperate need for more efficient water delivery amid a population boom and a crippling drought. But the state may also be trying to give itself a leg up in what will likely be a highly competitive EPA approval process.

Though the agency only has funding to subsidize $1.5 billion in loans this year, water systems are asking it to back 43 different infrastructure projects that would add up to a total of $6 billion.

"It's going to be super competitive," Dan Child, the general manager of Silicon Valley Clean Water, told Bloomberg BNA.

Of the 43 loan applications, 19 come from California. No other state submitted more than three.

Low-Cost Loans

The loans were established by the Water Infrastructure Finance and Innovation Act, also known as WIFIA. Unlike some other federal grant programs, WIFIA doesn't provide municipalities with all of the money they need to complete an infrastructure project. Instead, the program subsidizes the

municipalities' borrowing costs, which allows them to finance a project at much lower rates.

The EPA in fiscal year 2017 will allocate almost $25 million in subsidies, which it says will allow water systems to take out a total of $1.5 billion in low-cost loans. These loans can then be combined with other sources of funding to complete projects worth up to $3 billion, according to the agency.

Child's organization, which runs a Bay Area sewer system, is applying for nearly $200 million in WIFIA loans to replace an 8-mile long pipe that carries untreated sewage to its treatment plant in Redwood City. Like many of his fellow Californians who applied for these loans, Child enlisted the help of lobbyists in Washington.

A Bloomberg BNA review of lobbying filings from the first quarter of 2017 found that more than a dozen municipalities in the state deployed lobbyists to the Environmental Protection Agency and to Capitol Hill to discuss the new water loan program, far more than any other state.

Drought Driven?

The firm Child's organization employed, The Ferguson Group, also represented water systems in San Diego and Monterey.

Its CEO, Roger Gwinn, said that interest has been high from California because the state's water systems are facing huge problems that can't be solved by issuing more bonds or raising water rates.

As recently as April of 2016, more than half of the state was facing extreme drought conditions, according to federal drought monitoring data. Meanwhile, the state's population has increased by more than five percent since 2010, according to Census Bureau estimates.

"They've got tremendous challenges," Gwinn told Bloomberg BNA. WIFIA "saves a tremendous amount of money for the borrowers."

He said many of the applications that have come from the state would address its water shortages by funding desalinization projects or water reuse technology.

Lawmakers Enlisted to Help

Gwinn said he reached out to numerous California lawmakers to ask them to support his clients. Ultimately, five sent letters to the EPA this spring about WIFIA applications from their districts: Sen. Dianne Feinstein (D-Calif.) and Reps. Jackie Speier (D-Calif.), Lou Correa (D-Calif.), Ed Royce (R-Calif.), and Dana Rohrabacher (R-Calif.). That's according to documents obtained by Bloomberg BNA through an open records request.

Sen. Bill Nelson (D-Fla.) sent a letter to the EPA as well regarding a WIFIA application submitted by Osceola County in Florida.

Adam Russell, a Feinstein spokesman, said it's common across Capitol Hill for a constituent to ask their lawmaker to weigh in on an application they have pending with a federal agency.

"Senator Feinstein takes these requests seriously and, when appropriate, weighs in with her support in order to ensure that federal dollars are spent wisely," Russell told Bloomberg BNA.

A spokesman with Rep. Correa echoed these comments, telling Bloomberg BNA that Correa

"supports improving infrastructure in his district."

Criteria for EPA Awards

It's unclear how effective the lobbying push can be given the way the law is written.

In the WIFIA law, there is language that spells out the criteria the agency must follow when determining which loan applications to grant, according to EPA spokeswoman Amy Graham. One of those criteria, she told Bloomberg BNA in an email, requires the agency to consider the geographic diversity of the program's borrowers.

That means that while more than 40 percent of this year's applications come from California, the state likely won't receive 40 percent of the loans.

Dan Hartnett, the head of legislative affairs with the Association of Metropolitan Water Agencies, said there are enough safeguards built into WIFIA to prevent lobbying or political influence from swaying the outcome of the process.

"I'd be skeptical that [lobbying] would make any difference from the sense I've gotten from EPA staff," Hartnett told Bloomberg BNA. "It seems that Congress wrote the law not to make it pork."

Infrastructure Funding Gap

But should it be?

Timothy Quinn, head of the Association of California Water Agencies, said lawmakers should be using their clout to advocate for infrastructure projects in their districts. Weighing in on a WIFIA loan application is one way they can do that now that earmark funding has been banned in Congress.

"In the old rules, you got an earmark and that's how you helped your district," Quinn told Bloomberg BNA. "Now you get a low-cost loan. I don't see anything wrong with that at all."

And it's not as though upgrading water infrastructure is a frivolous pursuit, he said. The EPA estimated in 2011 that the country's drinking water systems needed more than $380 billion in upgrades, an estimate that didn't include wastewater needs. Meanwhile, other than WIFIA's $1.5 billion in loans, the only other significant sources of federal funding for water infrastructure comes from the EPA's State Revolving Fund program, which the president is proposing to fund at just over $2 billion for the next fiscal year.

The gap between federal funds and infrastructure needs ultimately falls on states, cities and, in the end, water bill payers.

Quinn said that, with the needs so high and the federal funding so scarce, water systems have a right to do all they can to bring home any dollars that are available. This is especially the case in California, where demand for water is rising while its supply is falling.

"We've been pursuing expensive local resources to make ends meet," Quinn said. "WIFIA fit with what we've been doing in California like a glove. It's a new tool and a good tool."

—With assistance from Rachel Leven

Germany Prepares Fund to Encourage Pension-Pot Climate Spending

Posted June 27, 2017, 8:46 A.M. ET

By Mathew Carr and Brian Parkin

Germany's environment ministry is to start its first fund aimed at reducing the risk of financing clean-energy projects in emerging nations.

The facility will link institutional investors such as pension funds with "bankable" climate-friendly ventures, according to Norbert Gorissen, the ministry's head of international climate finance. The fund, which may be ready by year-end, will offer a range of services from investment in ready-packaged projects to consultancy and currency hedging.

"Institutional investors are not interested in the highest returns," Gorissen said last month in an interview. "They're interested in long-term, stable conditions, which require investing in a green energy and infrastructure system."

The world needs to spend almost $7 trillion a year through 2030 on basic infrastructure that could include "smart," energy-efficient projects to meet the emission-reduction targets in 2015's Paris climate deal, the Organization for Economic Cooperation and Development said in May. The Group of 20 nations meets next month with policies to boost spending on environmentally-friendly projects set to be one of the key topics at the summit in Hamburg.

Encouraging private-sector financing for climate programs can be difficult as institutional investors don't want to work with the "nitty gritty" of many small deals, Gorissen said. Germany's fund would bring those together into one package.

"It's a facility that will help a whole pipeline of projects to be better prepared," he said. "So it provides consultancy and due diligence so project developers can get across the barriers from an infant stage to the stage where you can start talking to the banks."

Germany won't be the first country to do this. Denmark established the $200 million Danish Climate Investment Fund in 2014, which received about 58 percent of its money from the private sector. It provides advisory services from the initial idea through to when the project is economically viable.

"Public-private partnerships are the way forward if you want to mobilize private capital on a large scale," said Torben Moeger Pedersen, chief executive officer of PensionDanmark A/S, which invested in DCIF.

Gorissen, who will oversee climate spending of about 386 million euros ($432 million) this year, declined to comment on the potential size of the new facility.

"We're just talking about millions at the moment, but I'm hoping I can make the case that this is possible."