

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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Expect GOP Plaudits for Pruitt But Not EPA Budget at Hearing

Posted June 09, 2017, 6:00 A.M. ET

By [Brian Dabbs](#)

EPA chief Scott Pruitt will likely get a warm welcome from Republican appropriators next week despite bipartisan opposition to the agency's fiscal year 2018 budget, a GOP lawmaker told Bloomberg BNA.

Republicans are applauding the agency's regulatory rollbacks, and that praise will likely set the tone for Pruitt's maiden testimony on Capitol Hill as administrator, said Rep. Tom Cole (R-Okla.), a member of the House Appropriations Subcommittee on Interior, Environment and Related Agencies, which oversees the Environmental Protection Agency's budget.

Members on both sides of the aisle, however, are poised to raise concerns about the wide-ranging cuts in the agency's budget, lawmakers said. Pruitt will defend the request, which was crafted and released by the White House, before the subcommittee on June 15.

'A Very Friendly Reception'

"He'll get, obviously from the Republican side, a very friendly reception because of the regulatory things, but I think there'll be some pretty serious discussions about the size of the cuts," Cole told Bloomberg BNA. "I think at the end of the day, EPA takes a haircut. It's certainly taken several haircuts with a Republican Congress, but it's hard for me to see cuts of the size that were proposed in the president's budget."

The EPA is reviewing rules defining which bodies of water are subject to federal regulation and limiting methane emissions in oil and gas operations, as well as those setting ozone and fuel economy standards. The agency is also reviewing the Clean Power Plan, President Barack Obama's signature rule to combat climate change by limiting power plant emissions.

But the FY18 budget cuts, which total \$2.6 billion, hit immediate Republican opposition on Capitol

Hill. That reduction amounts to nearly one-third of the agency's current budget.

"Just trying to substitute agency cuts for policy disagreement is a tool, but it's probably not the longest-lasting, most effective one," Rep. Mark Amodei (R-Nev.), another member of the subcommittee told Bloomberg BNA. "I don't think that any of those people on that committee are going to vote for cuts just because that's the administration's recommendation."

The budget would slash enforcement and zero out funding for programs to restore the Great Lakes, Chesapeake Bay and other bodies of water, while chopping an array of other bedrock programs. The White House is requesting a roughly 80 percent reduction in funding for the Diesel Emissions Reduction Act, which funds clean diesel projects. That program is a favorite of subcommittee Chairman Ken Calvert (R-Calif.).

'The King's Man'

The White House budget also makes deep cuts in Superfund and state grant accounts, both of which Pruitt has singled out as important functions. But the administrator is prepared to vouch for the budget before lawmakers.

"Administrator Pruitt will be testifying in support of the president's proposed budget, which seeks to return EPA to its statutory mission, and reduce redundancies and inefficiencies," EPA spokeswoman Liz Bowman told Bloomberg BNA. "We believe that with better leadership, and reducing inefficiencies and administrative costs, we can accelerate the pace of the clean-ups of [Superfund sites]. It is also worth noting that we believe there is a significant amount of money being wasted in administrative costs in this program."

Agency chiefs regularly disagree with some aspects of a budget they're tasked to defend.

"He works for the president. You take the king's shilling, you become the king's man. That's just the way it works," Cole said. "At the end of the day, if you're going to be part of the administration, you have to defend the president's budget."

General Electric Challenges EPA on \$613 Million Cleanup

Posted June 09, 2017, 12:53 P.M. ET

By [Sylvia Carignan](#)

General Electric says the Environmental Protection Agency's orders for cleaning up chemical pollution along the Housatonic River are too expensive and too demanding.

EPA's Region 1 office ordered the work, estimated to cost \$613 million over at least 13 years.

General Electric is bound by a 2000 consent decree and a 2016 revision of a Resource Conservation and Recovery Act corrective action permit to clean up contaminants such as polychlorinated biphenyls (PCBs).

The company challenged the permit before the EPA's Environmental Appeals Board at the agency's Washington, D.C., headquarters June 8.

The board's judges are currently considering the fate of the permit.

General Electric was directed to address hazardous waste at its former facility on the river, on floodplain properties, and along the river itself.

Region 1 asked General Electric to dispose of contaminated sediment, soil and waste off-site at licensed waste facilities. General Electric filed an appeal of the Region 1 permit in November, triggering an Environmental Appeals Board hearing.

The company said the extensive cleanup actions in the Region 1 permit—including off-site waste disposal and the amount of sediment that needs to be removed—exceed the scope agreed upon in the consent decree. Less demanding remedies would still protect human health, according to General Electric.

“The region has given itself authorities that exceed its powers,” said Andrew Nathanson, who represented General Electric on the issue before the Environmental Appeals Board.

Environmental and local interest groups, which also argued their cases before the board, said the same EPA cleanup plan isn’t extensive enough because it leaves unsafe levels of contaminants behind.

“Now is the time to get them out of there, to the greatest extent possible,” said Peter deFur, representing the Housatonic River Initiative.

The state of Connecticut, represented by Lori DiBella, also seeks a more thorough cleanup.

“We want a swimmable, fishable river, and we don’t have that right now,” DiBella said.

Siting Hazardous Waste

Nathanson argued General Electric would prefer to dispose of waste on its own property, at a lower cost, instead of the off-site disposal plan.

“It wasn’t just expensive, but massively more expensive,” Nathanson said, potentially costing the company \$180 million to \$250 million more for an equally environmentally protective option.

Timothy Conway, EPA’s senior enforcement counsel representing Region 1, said they aren’t necessarily equal.

“The potential for a landfill near the river potentially leaking made it less protective,” he told the board.

The board’s judges asked if Region 1 had released more detailed information about how the EPA decided on certain cleanup options.

“The analysis we provided is sufficient for the purposes of what we were charged with doing,” Conway said.

The Housatonic River site runs along the western edges of Massachusetts and Connecticut, into the Long Island Sound.

General Electric’s facility in Pittsfield, Mass., formerly used to manufacture electrical transformers, is

associated with the release of PCBs.

The RCRA permit addresses contaminants, predominantly PCBs, in the “Rest of River” portion of the site, downstream of General Electric’s facility.

According to the EPA, PCBs are a probable carcinogen and are potentially related to health problems involving the immune system, endocrine system, and learning deficits.

Carbon Prices Continue to Drop in Northeast

Posted June 09, 2017, 01:34 P.M. ET

By [Gerald B. Silverman](#)

The cost for electricity generators to comply with the Regional Greenhouse Gas Initiative sank to a four-and-a-half-year low in RGGI’s latest auction, driven by an oversupplied market and uncertainty over a longstanding program review by the nine states in the initiative.

RGGI carbon allowances sold for \$2.53 in the auction, a decline of 15.6 percent from the previous auction and 44 percent from June 2016, RGGI [announced](#) June 9.

The [trend](#) in RGGI carbon prices has been downward for a couple of years, as a result of an over-supply of allowances, regulatory uncertainty on the federal and state levels and the prices for natural gas and renewables.

Mike Taylor, president of Emission Advisors Inc., told Bloomberg BNA that the decline was not a surprise, given a large bank of unused allowances, declining emissions, and an “underwhelming” program review.

Taylor said “a case can be made for prices to trend up through the remainder of the decade,” as the bank of allowances is depleted and the nine RGGI states complete their review of the program.

RGGI states -- Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island and Vermont -- started a program review in 2015 that will determine if the existing emissions cap will be tightened after 2020, when the current cap expires.

EPA’s Pruitt Could Face Tough Crowd at G-7 Environment Meeting

Posted June 09, 2017, 6:30 A.M. ET

By [Eric J. Lyman](#)

Climate-related issues are just one part of the agenda for this weekend’s meeting in Italy of environment ministers from the leading industrial nations, but EPA Administrator Scott Pruitt can expect an earful on the decision of the U.S. to withdraw from the Paris climate change agreement, environmental groups said.

“The ministerial in Bologna is first and foremost an opportunity for the G-7 countries to send a clear signal to Scott Pruitt that these actions are not tolerated, that backsliding doesn’t come without consequences,” Climate Action Network International Executive Director Wael Hmaidan told Bloomberg BNA.

Environmental officials from the Group of Seven nations—Canada, France, Germany, Italy, Japan, the U.K. and the U.S.—meet in Bologna, Italy, June 11-12.

An [outline](#) of the meeting goals released June 8 said they would focus on the “state of implementation of the goals set by the Paris Agreement to fight climate change,” sustainable development goals that are part of the United Nations’ 2030 agenda, environmental tax reform, and sustainable finance.

Italian ministry officials declined to comment on the priorities at the talks.

‘Trump’s Crazy Decision’

Trump announced June 1 that the U.S. would withdraw from the Paris Agreement, which has the support of virtually every other nation. The Environmental Protection Agency’s Pruitt was among the strongest voices in the Trump administration calling for withdrawal from the Paris accord, agreeing with Trump that the pact would cost U.S. workers jobs, especially in industries like coal mining.

“Despite Trump’s crazy decision, the G-7 should strongly afford the need to implement the Paris accord and push countries to put more effort into filling the void left by the United States,” Luca Iacoboni, the head of the energy and climate program for Greenpeace-Italy, told Bloomberg BNA.

Angelo Paletta, a business professor at the University of Bologna who is following the talks, said: “It will be important to understand what this means about other countries commitments over the next five years, as well as concerns about finance as the world tries to raise \$100 billion per year starting in 2020.”

Paletta was referring to the United Nations’ Green Climate Fund, which aims to help developing countries adapt to the impacts of climate change.

President Barack Obama had pledged that the U.S. would commit \$3 billion over four years to the fund, but Trump has vowed to halt U.S. contributions to the fund.

Exxon Says N.Y. Attorney General Distorts Company’s Climate Data

Posted June 09, 2017, 03:17 P.M. ET

By [Erik Larson](#)

Exxon Mobil Corp. accused New York Attorney General Eric Schneiderman of wildly distorting in court how the company calculates the long-term financial impact of climate change on its assets.

Schneiderman recently revealed detailed findings from the two-year probe, including “significant evidence” that Exxon may have been using two sets of numbers—one public and one secret—to calculate the impact of climate change on its oil and gas reserves. He also accused Exxon of allowing emails relevant to the probe to be deleted, including those in a secondary account for former Chief Executive Officer Rex Tillerson under his alias Wayne Tracker.

That filing was “filled with inflammatory, reckless, and false allegations of an ‘ongoing fraudulent scheme’ and ‘sham’ business practices,” Irving, Texas-based Exxon said June 9 in a court filing in Manhattan. The oil giant urged a judge to reject a fresh subpoena in the case.

The attorney general's probe into whether Exxon misled investors about its approach to global warming is a cover for Schneiderman's "transparent political ambitions," Exxon said.

Schneiderman's press office didn't immediately respond to a phone call seeking comment. A hearing in the case is scheduled for June 16 in Manhattan.

Exxon has a separate lawsuit against Schneiderman pending in federal court in New York in which the company seeks to force an end to the probe on the grounds that it was started in "bad faith" as part of an environmental witch hunt.

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Lawmakers Aim for Fewer Wildfires, Healthier Forests

Posted June 09, 2017, 02:53 P.M. ET

By [Alan Kovski](#)

A reintroduced bill that would make disaster funding available for the largest wildfires garnered support from both sides of the aisle June 8, just one week before another bill addressing forest management issues is set for discussion in the House.

Both bills could prove important to rural communities, the timber industry, and recreation in forests.

Rep. Mike Simpson (R-Idaho) reintroduced the [Wildfire Disaster Funding Act](#) (no number assigned yet) would allow wildfire suppression financing to be covered by disaster funds when regularly appropriated money is exhausted. The strategy would end the practice of borrowing funds from other programs, a disruptive process that can undercut programs intended to prevent fires.

Rep. Kurt Schrader (D-Ore.) joined Simpson in introducing the bill, and 16 House members from both parties signed on as co-sponsors.

Many lawmakers also aim to see forest management practices improved to reduce the frequency and severity of forest fires. The House Natural Resources Committee will discuss a draft version of a bill by Rep. Bruce Westerman (R-Ark.) June 15.

Westerman's [Resilient Federal Forests Act of 2017](#) (no number assigned yet) was introduced as a discussion draft. Several provisions are similar to a Westerman bill that the House passed in 2015 but the Senate did not act on. It would expedite environmental reviews of forest management decisions and, unlike the 2015 bill, establish an arbitration procedure as an alternative to litigation for dispute resolution.

The goal of Westerman's bill is to develop healthier forests with less risk of wildfires, but disagreements over the subject, year after year, involve the extent of timber harvesting and efforts to limit the lawsuits that often block logging. Environmental groups worry that such legislation over-relies on logging as a solution.

HIKO Mulling Appeal on \$1.8M Fine for Overcharging

Posted June 09, 2017, 02:53 P.M. ET

By Leslie A. Pappas

HIKO Energy LLC may appeal a court's decision to uphold a \$1.8 million fine against the company, an attorney for the East Coast electric generation supplier told Bloomberg BNA June 9.

The Pennsylvania Commonwealth Court on June 8 voted 4-3 to affirm the penalty for overcharging thousands of Pennsylvania customers in 2014, ruling that state regulators had the authority to impose a separate fine per each invoice.

The decision affirmed a fine that broke records when the Pennsylvania Public Utility Commission imposed it in 2016. The penalty remains one of the highest state regulators have ever imposed, second only to a \$11.4 million penalty levied against Uber Technologies Inc. for operating in Pittsburgh without approval.

The Uber penalty was similar to the one for HIKO because regulators counted each invoice as a violation. The Uber penalty added up because regulators levied a violation for each ride. Uber and the PUC settled that case in April, reducing the penalty to \$3.5 million.

HIKO is reviewing its legal options and considering whether to appeal, one of company's attorneys, Vincent E. Gentile of Drinker Biddle & Reath LLP told Bloomberg BNA in an email June 9.

"While we are disappointed with the majority's opinion, the decision concerns events that occurred more than three years ago during the polar vortex of 2014," Gentile said. "HIKO has implemented significant changes to its operating practices and has made full refunds to all customers who were affected during that event."

Cold Winter Charges

HIKO's penalty stemmed from a four-month period from January to April 2014, when the company intentionally overcharged about 5,700 customers who were enrolled in a guaranteed cost-savings plan. Faced with energy price spikes during an unusually cold winter, the company purposefully overcharged its customers more than the fixed price the company guaranteed in writing when the customers signed up for the plan, the order said (HIKO Energy v. Pa. Pub. Util. Commission, Pa. Commw. Ct., No. 5 C.D. 2016, Opinion 6/8/17).

An investigation by the PUC found overcharges on 14,689 customer invoices, averaging about \$124 each. The subsequent \$1.8 million penalty was calculated by multiplying the number of invoices by the average overcharged.

HIKO argued that its failure to honor its price guarantee was a single business decision, not 14,689 separate ones, the opinion said.

The Commonwealth Court disagreed, saying, "The imposition of a civil penalty for each overcharge is lawful and appropriate in light of the fact that each overcharge can be feasibly segregated into a discrete violation."

In a dissenting opinion, Judge Mary Hannah Leavitt said the PUC imposed fines ranging from \$25,000 to \$125,000 on other electric suppliers for the same violation, and called the \$1.8 million fine "grossly disproportionate."

HIKO works with about 30 utility companies to deliver electricity to customers in New York, New Jersey, Connecticut, Pennsylvania, Illinois, Ohio, and Maryland.

Trump Climate Critics Wrong on Pulling Out of Paris, Perry Says

Posted June 09, 2017, 02:23 P.M. ET

By Feifei Shen and Tom Mackenzie

Critics of President Donald Trump's move to withdraw the U.S. from the Paris climate change agreement are acting more for political reasons than for the reality of what the accord may achieve, U.S. Energy Secretary Rick Perry said June 9 in an interview where he defended the president's move.

Goldman Sachs Group Inc. Chief Executive Officer Lloyd Blankfein, JPMorgan Chase & Co. Chairman Jamie Dimon and others ranging from General Motors Co. and Ford Motor Co. to Exxon Mobil Corp. are wrong about wanting the U.S. to remain a part of the Paris climate deal, Perry said in a Bloomberg Television interview with Tom Mackenzie.

"When you looked at the cost versus the benefit of what you're going to get from being in the Paris agreement, it wasn't worth it," Perry said in Beijing. "I think they are wrong, because they're coming at it from the political side of it rather than the reality."

Perry was in Beijing June 7 and 8 attending a ministerial-level meeting on clean energy where he made a broad appeal to cooperate on natural gas, nuclear energy and technologies such as carbon capture and storage.

"The reality is we are going to continue to be leaders on clean energy," Perry said, adding that the U.S. will continue to contribute to mitigating climate change. "There's a real story to be told here about the U.S.; it's about what we are doing to reduce emissions."

China Meetings

Earlier in the week, Perry met with Chinese Vice Premier Zhang Gaoli where he emphasized areas where the two countries can cooperate. One area is liquefied natural gas. The U.S. is the world's largest producer of natural gas and within a few years will be the third-largest exporter of the super-chilled version of the fuel.

Companies are proposing dozens of new export plants in the U.S. and need foreign buyers to underpin financing for the multi-billion-dollar projects. China, which is trying to increase gas use instead of coal to help clear smog-choked air, should be interested in U.S. supplies because the projects have the benefit of political stability, Perry said.

Perry also said President Trump is right to look at selling some oil from the Strategic Petroleum Reserve. The Trump administration proposed a budget last month that included selling off 270 million barrels on top of a 190 million-barrel drawdown already planned. The reserve currently has a little less than 700 million barrels of oil.

Strategic Reserves

On the strategic reserve, "the debate is what's the right level," Perry said. "The president is right to

have the conversation. How much of this do we really need to keep on hand, how much of it can we put into the market, and how do you manage all that. That is classic Donald Trump negotiating a better deal for the people of the U.S.”

When in Tokyo earlier in the week, Perry sounded a combative tone, challenging China to take up the mantle of leadership on climate change while dodging questions about whether President Trump believes in global warming.

“Those of you that focus on that are chasing a rabbit down a hole,” Perry told reporters in Tokyo.

China has transformed itself into one of the world’s leaders in renewables in recent years with ambitious bets on wind and solar. The country, which is home to about one out of every three wind turbines in the world, has led in clean-energy spending since 2012. In the first quarter of this year, China outspent the U.S. and Japan combined on clean-energy projects.

—With assistance from Dan Murtaugh and Stephen Engle.

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Week Ahead: Pruitt Meets the Purse-String Holders

Posted June 09, 2017, 02:14 P.M. ET

By [Chuck McCutcheon](#)

EPA Administrator Scott Pruitt will explain to Congress why he believes cutting his agency’s budget by 31 percent is a good idea, one of numerous energy and environment events during the week of June 12.

Pruitt is [scheduled](#) to appear June 15 before the House Appropriations’ Interior, Environment and Related Agencies’ Subcommittee to discuss President Donald Trump’s fiscal 2018 budget request. Pruitt has defended the proposed cut to the Environmental Protection Agency by [saying](#) he has met with many state officials “who are committed to pro-jobs and pro-environment” and who will join in funding a greater share of U.S. environmental protection needs.

Republicans on the Appropriations Committee are expected to give Pruitt a warm reception because of his commitment to overhauling the agency, as [Brian Dabbs](#) has reported. However, they have been [more dismissive](#) about the magnitude of the proposed cut.

Ken Calvert (R-Calif.), who chairs the EPA funding subcommittee, has said he looks forward to working with the Trump administration. But in President Barack Obama’s final year in office, his appropriations subcommittee [called for](#) cutting less than \$300 million from Obama’s EPA budget request—which would have amounted to about a 3.5 percent cut to EPA’s budget—while at the same time boosting spending by more than \$200 million over what Obama had sought for drinking water state revolving funds.

Calvert is a conservative who has spoken of the need to reduce “job-killing regulations.” But he also has a bipartisan side: He has held a seat on the Appropriations Committee since 2007 and has reached across the aisle on votes to raise the debt limit and keep the government running when hardliners threatened a shutdown. With a business background in the real estate and restaurant industries, Calvert is a member of the [Republican Main Street Partnership](#), a coalition of more than

70 members of Congress that backs “advancing positive policies that can command bipartisan support.”

Also on Capitol Hill

The Senate Environment and Public Works Committee will hold a [hearing](#) June 13 on several of Trump’s nominees: Annie Caputo and David Wright to the Nuclear Regulatory Commission (as well as the reappointment of Commissioner Kristine Svinicki); and Susan Bodine to assistant administrator of EPA’s Office of Enforcement and Compliance Assurance. Bloomberg BNA will cover.

Environment and Public Works also will hold a [hearing](#) June 14 on the renewable fuel standard Reid Vapor Pressure (RVP) waiver. The bill ([S. 517](#)) would waive summer restrictions on transportation fuel containing 15 percent ethanol, known as E15, and higher ethanol blends. Among those scheduled to testify is Mike Lorenz, executive vice president of Sheetz Inc. Brian Dabbs will monitor.

Also June 14, the House Energy and Commerce Committee’s Energy Subcommittee is [set](#) to explore states’ roles on energy security planning, emergency preparedness and state energy programs. [Rebecca Kern](#) will cover.

The Senate Energy and Natural Resources Committee’s Water and Power Subcommittee will meet June 14 to look at a [variety](#) of water- and power-related bills, including [one](#) aimed at making it easier to build new surface water storage projects. [Alan Kovski](#) will cover.

The House Agriculture Subcommittee on Conservation and Forestry will hold a [hearing](#) June 13 on small watershed structure. Trump has proposed to zero out funds for the Department of Agriculture’s rural wastewater and water infrastructure program in the fiscal year 2018 budget. [Amena H. Saiyid](#) will cover.

In Other News

G-7 meeting: Environmental officials from the Group of Seven nations—Canada, France, Germany, Italy, Japan, the U.K. and the U.S.—meet in Bologna, Italy, June 11-12. Climate-related issues are just one part of the agenda, but Pruitt can expect an earful on the decision of the U.S. to withdraw from the Paris climate change agreement. [Eric J. Lyman](#) is covering.

European Parliament: European Union lawmakers are scheduled to discuss the U.S. decision to withdraw from the Paris Agreement June 14. Votes also are expected on a variety of environment issues, including greenhouse gas emissions reductions through 2030 for parts of the economy that are not covered by emissions trading as well as the use of pesticides in certain conservation areas. Stephen Gardner will cover.

Methane lawsuit: Environmental groups are asking a federal appeals court to stop the EPA from placing a stay on an Obama-era regulation on methane emissions from oil and gas wells. The agency has until 4 p.m. on June 15 to submit a response to the groups arguing why the stay shouldn’t be struck down. [David Schultz](#) will handle.

Social cost of carbon: The National Academies’ Board on Environmental Change and Society will hold a June 14 [symposium](#) on the social cost of carbon and climate impacts. [Rachel Leven](#) will track.

Dental amalgam rule: June 14 is the deadline for the EPA to defend its decision to pull the dental

amalgam rule from taking effect, even though former EPA administrator Gina McCarthy had signed the rule. The Natural Resources Defense Council has sued the EPA for pulling the rule without going through notice and comment. The rule in question set federal effluent limits to regulate the 100,000 dental clinics that discard dental fillings containing mercury, a potent neurotoxin, into municipal sewer systems. [Amena H. Saiyid](#) will cover.

EPA Review of New Chemicals: EPA's Jeffery Morris discusses during a free June 12 [webinar](#) what the agency's Office of Pollution Prevention and Toxics has been doing to slash the backlog of new chemical requests that had piled up following last year's overhaul of the Toxic Substances Control Act and prevent another backlog from occurring. Specialty chemical manufacturers, former EPA officials and Lynn L. Bergeson, managing partner of Bergeson & Campbell P.C., add their perspectives. [Pat Rizzuto](#) is moderating the webinar.

Green chemistry: William Feehery, president of DuPont Industrial Biosciences, will [deliver](#) the keynote address at the American Chemical Society's 21st Annual Green Chemistry & Engineering Conference June 13-15 in Reston, Va. Bloomberg BNA will cover.

Chemical dispersants: The toxicity and efficacy of chemical dispersants used to respond to oil spills is the subject of a new science review that aims to improve oil spill cleanups. The tools will be studied by a new scientific advisory committee that holds its first [meeting](#) June 13-15. The trade-offs for workers, coastal communities and the environment when other cleanup methods are used—or when oil spills are left untreated—also will be discussed by the National Academies' Committee on the Evaluation of the Use of Chemical Dispersants in Oil Spill Response. [Pat Rizzuto](#) is following.

Paris Pullout Pits Chamber Against Some of Its Biggest Members

Posted June 09, 2017, 8:30 A.M. ET

By [Ari Natter](#)

As President Donald Trump mulled whether to exit the Paris climate accord, companies as varied as Dow Chemical Corp., Exxon Mobil Corp., and Citigroup Inc. prodded him to [stay in](#).

But when Trump announced his decision, he cited research from one business behemoth that's issued a steady stream of criticism to the Paris deal, the [U.S. Chamber of Commerce](#) that counts all three companies as members.

That disconnect between corporate executives and the nation's top corporate lobbying force is reviving pressure on the Chamber—and on the companies that remain members despite their differences over climate policy.

"For decades, the U.S. Chamber of Commerce has been big polluters' partisan enforcer in Washington," Democratic Sen. Sheldon Whitehouse, who co-authored [a congressional report](#) last year about this corporate disconnect over climate change, said in an emailed statement.

"It's time for member companies to ask themselves whether they want to side with a relentless climate foe, or protect the health and safety of the American people and the reputation of our country," he added.

Public Citizen and other groups said they are starting a petition drive to prod three companies—Walt Disney Co., Gap Inc., and PepsiCo Inc.—to drop their connection to the U.S. Chamber. That organized pressure is reminiscent of 2009, when companies such as Apple Inc. and Exelon Corp

that advocated for federal action to address climate change quit the Washington group as it lobbied to derail cap-and-trade legislation.

“You’ve got a lot of companies that are really talking out of both sides of their mouth,” said Dan Dudis, who heads the Chamber Watch project at Public Citizen.

The U.S. Chamber of Commerce spent nearly \$104 million on lobbying last year making it the top lobbying spender among 3,734 groups tracked by the Center for Responsive Politics. Among the issues it has championed are reworking the Affordable Care Act, business tax cuts, and opposition to a minimum wage hike. The group, which has its headquarters across Lafayette Square from the White House, said it was officially neutral on the Paris accord despite its long list of criticisms.

The chamber said in a statement that the business community “stands ready to fashion solutions to keep America prosperous, clean and secure. America should choose a path for an energy future that is achievable, affordable, and most importantly meaningful.”

From coal producer Cloud Peak Energy Inc. to electric-automaker Tesla Inc., corporate America has broadly supported the Paris accord, a 2015 agreement of nearly 200 nations to address the threat of climate change. The deal is the first to include pledges from developing nations such as India and China to curtail their emissions, as well as developed nations in North America and Europe.

Among the companies that signed onto an [open letter](#) to publicly support the Paris climate agreement were Microsoft Corp. and Google’s Alphabet Inc. Ivanka Trump appealed to Dow Chemical’s CEO Andrew Liveris to spearhead a late lobbying push to try to save U.S. involvement in the pact. And executives’ response to Trump’s decision was quick and overwhelmingly negative. Robert Iger, chief executive of Disney, resigned from a White House advisory council. Ford Motor Co. and Microsoft weighed in with their dismay, too.

In response to questions from Bloomberg, companies said they agree with the chamber on some issues, but not all. Others said they are putting pressure on it to change course.

“We have been outspoken in our support for the Paris Agreement and have had a dialogue with the chamber about how its views and advocacy on climate policy are inconsistent with Citi’s position,” Citigroup spokeswoman Elizabeth Kelly said in an email. “Citi does not expect to be in agreement with every position our trade associations take.”

Time to Time

Dow, which gave the chamber [\\$1.8 million](#) for lobbying in 2016, “participates in many trade and business associations,” the chemical-maker’s spokeswoman Rachelle Schikorra, said in an email. “From time to time, we find ourselves in disagreement with the prevailing views of the majority of the U.S. Chamber’s membership, including issues such as climate change.”

“PepsiCo’s long-standing commitment to addressing climate change will not change,” the company said in a statement that didn’t address questions about its ties to the chamber.

“No organization speaks for Ford on every issue,” said Christin Baker, a Ford spokeswoman. “The chamber has been actively supportive of tax reform, but takes a different view on climate. We will continue to work with the chamber on issues where we are aligned.”

Companies may differ with the chamber on climate change, but agree on taxes or labor issues, said Lee Drutman, a senior fellow in the program on political reform at New America, a Washington

research organization. Still, they face the risk of customer blowback.

“Any company with a consumer-facing brand has to worry about its reputation,” Drutman said in a phone interview. “If it’s on the wrong side of a political issue that its customer base is passionate about, it could find itself losing a lot of customers.”

Oil giant Exxon, which disclosed giving the U.S. Chamber of Commerce Foundation \$1 million in 2015, advocated for staying in the Paris accord, as its chief executive Darren Woods argued that oil demand will continue to grow in the coming decades even with the agreement in place.

“We believe that the United States is well positioned to compete within the framework of the Paris Agreement, with abundant low-carbon resources such as natural gas, and innovative private industries,” spokesman Alan Jeffers, said in an email. He declined to comment on the chamber’s report on Paris.

While the chamber said it hadn’t made a recommendation on whether the U.S. should remain in Paris, it issued a series of criticisms of the pact since even before it was completed.

In congressional testimony, it said the U.S. pledge to cut greenhouse gas emissions by 26 percent would hike U.S. energy costs and diminish job creation—and that the pact would not do much to actually curtail greenhouse gas emissions. The chamber jointly funded a study in March that determined the deal could slice \$3 trillion off U.S. gross domestic product by 2040.

Trump made specific reference to that study, and each of the group’s earlier arguments, in announcing his decision to pull the U.S. out of the pact.

“The cost to the economy at this time would be close to \$3 trillion in lost GDP and 6.5 million industrial jobs, while households would have 7,000 less income, and in many cases, much worse than that,” Trump said in the Rose Garden ceremony June 1.

Kevin Steinberger, a policy analyst with the Natural Resources Defense Council’s climate and clean air program, said the chamber’s claim that it was neutral on the accord was “disingenuous.”

“The report was clearly aimed at attacking the Paris agreement and used an unrealistic scenario to do so,” he said.

—With assistance from Hugh Son and Keith Naughton.

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Mimic Nature to Harness Stormwater Runoff at Parks, EPA Says

Posted June 09, 2017, 01:44 P.M. ET

By Amena H. Saiyid

Harness stormwater at parks by planting rain gardens with native plants and grasses and installing porous pavements, the EPA recommends in a new guidance.

Released June 8, “Green Infrastructure in Parks: A Guide to Collaboration, Funding, and Community Engagement” identifies these and other types of green infrastructure projects that

stormwater agencies can use at parks to manage polluted runoff.

Green infrastructure, an engineering technique that mimics nature, redirects stormwater into the soil through porous pavements, shrubbery on rooftops, or strategically installed sunken grassy areas along the edges of paved sidewalks, roads, and parking lots.

The Environmental Protection Agency, which has been promoting green infrastructure use among municipalities since 2011, said the approach would work in parks because it is “attractive, effective, and beneficial” and requires minimal maintenance other than regular pruning and weeding. Congress also is considering bills that include green infrastructure use.

The guidance discusses how stormwater agencies can use their own funds or tap into state funds to install green infrastructure at parks. It also provides links to other EPA documents that spell out other green infrastructure resources.

EU Panel Classifies Titanium Dioxide as Cancer Risk

Posted June 09, 2017, 01:21 P.M. ET

By [Stephen Gardner](#)

Titanium dioxide, which is widely used in the manufacture of paints, paper, and plastics, should be classified as carcinogenic in the European Union, the European Chemicals Agency said June 9.

ECHA’s Risk Assessment Committee concluded that titanium dioxide could cause cancer if inhaled, and should be ranked as a Category 2 carcinogen, the lowest classification for carcinogenicity. These substances are suspected of causing cancer compared to category 1B and 1A substances which are presumed to and known to cause cancer, respectively.

The Category 2 carcinogenicity rating would apply EU-wide to all forms of titanium dioxide, including its nanoforms. Companies that sell the substance would be required to bring their product hazard labels into line with EU standards for hazardous substances, which are set out in the EU CLP Regulation (Regulation (EC) No 1272/2008 on classification, labeling, and packaging of substances and mixtures).

France proposed the common EU classification of titanium dioxide and called for it to be considered a Category 1B carcinogen, but the evidence was insufficient for that classification, the chemicals agency said.

From a compliance point of view, there are significant differences between a 1B or 2 classification. Substances classified 1A or 1B cannot be supplied to consumers and might become candidates for phaseout under the EU’s REACH law (Regulation No. 1907/2006 on the registration, evaluation, and authorization of chemicals).

Classifying titanium dioxide as Category 2 will have “limited direct consequences,” the European Chemicals Agency said in a statement to Bloomberg BNA.

The risk committee’s opinion on titanium dioxide will be forwarded to the European Commission, the EU’s executive arm, which will formally decide on the classification of the substance, ECHA said.

Study of VW’s Cheating on Diesels Examines Role of Bosch Code

Posted June 09, 2017, 12:36 P.M. ET

By [Ryan Beene](#)

A study alleges that Robert Bosch GmbH created the software that enabled Volkswagen AG to evade diesel emissions standards for years.

Technical documents also indicate Bosch code was used in a so-called defeat device for a Fiat Chrysler Automobiles NV model, according to a year-long study by researchers at the University of California, San Diego and Ruhr-Universität Bochum in Germany. That software set one mode for when a vehicle is being tested—but then allowed tailpipe pollution to spike in real-world driving conditions.

“We find strong evidence that both defeat devices were created by Bosch and then enabled by Volkswagen and Fiat for their respective vehicles,” [the study](#) said, citing technical documents.

In a statement, Bosch declined to comment on the study, citing “the sensitive legal nature of these matters,” adding that it would “not comment further concerning matters under investigation and in litigation.” Bosch has previously rejected as “wild and unfounded” claims from vehicle owners that its employees conspired with VW to conceal defeat-device software.

The authors of the study, “How They Did It: An Analysis of Emission Defeat Devices in Modern Automobiles,” reached their conclusions by analyzing technical documents bearing Bosch copyright notices, which were posted on a VW portal maintained for repair shops and websites for enthusiasts who alter their engine’s software. The authors acknowledged that the documents were not provided or verified by Bosch and that automakers ultimately decide how to use the pollution-control software in their vehicles.

“Since we did not obtain the function sheets directly” from Bosch, the researchers wrote in their study, released May 22, “we cannot be absolutely certain of their authenticity.”

Bosch, the world’s largest auto-parts supplier, provides engine-control software to manage diesel emissions systems, offering computer precision to fine-tune those historically dirtier engines.

The company has had varying degrees of involvement in engine development work done by its automaker customers, ranging from simply providing software to hands-on technical collaboration, according to Daniel Carder, director of West Virginia University’s Center for Alternative Fuels Engines and Emissions. Carder, who was part of the team that first identified VW’s diesel cheating, said Bosch’s software allowed engineers to tune engine performance with far more precision than previously possible.

Bloomberg News reported in September that the U.S. Justice Department was widening its criminal investigation into VW to probe whether Bosch conspired with the carmaker to evade U.S. pollution tests. Bosch declined to comment at the time.

VW has admitted to installing some 11 million diesel vehicles worldwide with defeat device software that could limit pollution during lab tests while exceeding legal limits on the road. Fiat Chrysler was accused by the Justice Department last month of using defeat devices in Jeep SUVs and Ram pickups, which use Bosch software. Fiat Chrysler denied wrongdoing and says it will defend itself vigorously against the allegation that it sought to cheat.

Bosch was not named as a defendant in the complaint. Fiat Chrysler “frequently engaged in discussions with Bosch regarding calibrations,” of the software, the Justice Department said in the complaint.

While the VW and Fiat Chrysler defeat devices analyzed in the study are different from one another, they both allow vehicles to limit nitrogen oxide emissions during laboratory tests while allowing the vehicles to emit higher levels of tailpipe pollution in real-world driving, according to the study. The Bosch-copyrighted documents illustrate how the defeat devices could spot telltale signs of an emissions test, according to Kirill Levchenko, a UC-San Diego computer scientist and an author of the study.

“It’s a diagram of a defeat device,” Levchenko said, referring to the Bosch schematic design.

The study was supported by the European Research Council and by the U.S. National Science Foundation. It was prepared for an Institute of Electrical and Electronics Engineers Symposium on Security and Privacy in San Jose last month.

Widening Investigation

The study’s findings add to scrutiny already surrounding the extent of the Stuttgart, Germany-based Bosch’s involvement in the suspect diesel systems. Bosch has been named as a co-defendant in class-action lawsuits filed by owners of diesel vehicles made by VW, Fiat Chrysler, Daimler AG’s Mercedes-Benz and, most recently, General Motors Co. In January, Bosch agreed to a \$327.5 million settlement with VW owners; it admitted no wrongdoing.

U.S. vehicle owners accused Bosch of conspiring with the automaker to develop and conceal the defeat device software. In 2008, Bosch also asked VW to shield it from legal liability stemming from the use of its software, lawyers representing owners of VW diesels claimed in court filings last September. Bosch declined to comment on the letter at the time.

The Bosch-copyrighted schematics, reproduced in the study, diagram how the VW vehicles detected when they were being tested and limited pollution emissions to permissible levels. When the cars weren’t being tested, they released the smog-forming pollutants at up to 40 times the permitted levels, according to the U.S. Environmental Protection Agency.

Separately, the researchers say they discovered code on a diesel Fiat 500x crossover that is sold in Europe but not the U.S. that “amounts to a defeat device.” In the Bosch-copyrighted documents, one pollution-control path is called “real driving” and the other is labeled “homologation,” a term used for the process of certifying that a product meets regulatory standards.

The testing mode directs the storage catalyst to limit nitrogen oxide emissions more aggressively than in the “real driving” mode. The stricter pollution controls are suspended after a little more than 26 minutes, which is the length of many emissions tests, Levchenko said.

A Fiat Chrysler spokesman declined to comment, and referred to written comments the company delivered last fall for a European Parliament committee hearing into allegations that the 500x deactivated emissions controls after 22 minutes.

“Our vehicles do not detect that they are being tested,” the company said at the time. “They also do not deactivate the emission control systems after 22 minutes after cranking, contrary to allegations.”

Regulators in Italy and Germany have been trading blows in a months-long dispute over the existence of defeat devices in Fiat Chrysler vehicles, including the 500x. Germany has accused the company of using defeat devices while Italian regulators say their testing reveals no such cheating.

The spat escalated last month when the European Commission opened a proceeding into whether the Italian regulators properly granted emissions approval to the Fiat Chrysler diesels.

—With assistance from Gabrielle Coppola.

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EPA's Reconsideration of Power Plant Carbon Rule at White House

Posted June 09, 2017, 10:12 A.M. ET

By Andrew Childers

The White House is reviewing the EPA's plan to roll back carbon dioxide standards on the fleet of existing power plants.

Environmental Protection Agency Administrator Scott Pruitt opposed the Obama-era regulation, known as the Clean Power Plan, while he was Oklahoma attorney general. He has repeatedly said the EPA overstepped its Clean Air Act authority issuing the rule and Congress needs to speak directly to the agency's power to regulate greenhouse gases.

The Clean Power Plan faces a host of legal challenges from states and utility groups. The EPA asked a federal appellate court to indefinitely pause those challenges while it reconsiders the power plant rule.

Merkel Says Trump's Climate Stance Is Lowering G-20 Expectations

Posted June 09, 2017, 12:20 P.M. ET

By Patrick Donahue and Charlie Devereux

German Chancellor Angela Merkel said Group of 20 leaders "won't get everything we wished for" at a summit next month after U.S. President Donald Trump's decision to exit the Paris climate accord.

On a visit to Argentina as part of a tour to rally support among G-20 nations, Merkel cited the difficulty of that task ahead of the July 7-8 summit in Hamburg, since the communique must be signed off by all 20 partners.

"Nobody in this world—no individual person or country—can solve all problems alone," Merkel said at a press conference in Buenos Aires alongside Argentine President Mauricio Macri. "We all have to cooperate."

The German leader signaled a narrowing of expectations in key areas as the U.S. exit from the climate agreement casts a shadow over world leaders' ability to find a common line on issues such as global warming, trade and migration. Merkel, who's due to meet Mexican President Enrique Pena Nieto June 9, is seeking to build as broad a front as possible after leaders failed to persuade Trump

to stick to the climate accord at a Group of Seven summit last month.

As host of the G-20 summit, “I’ll naturally have to speak up about differences if we don’t agree on certain points,” Merkel said at the news conference in Argentina June 8.

Argentina’s Opening

Merkel told Macri that she “values very much” Argentina’s commitment to the Paris climate treaty, a pointed contrast to her response that Trump’s decision was “extremely regrettable.” After the fallout at the G-7 summit, Merkel suggested that reliable relations with the U.S. were “to some extent over.”

The German and Argentine leaders also drew a contrast on trade, calling for a negotiated accord between the European Union and Mercosur, the South American free-trade bloc. German and Argentine officials have said they want a deal by the end of the year.

Merkel lauded Macri for “setting out on a courageous path of reform.” The Argentine leader has lifted currency controls as well as some trade barriers and settled an outstanding legal dispute from Argentina’s 2001 debt default.

“Argentina already tried isolationism and it didn’t work,” Macri said alongside the chancellor.

Merkel said advantages squeezed out by isolationism tend to be short-lived and, in Argentina’s case, “weren’t good for the people at all.”

—With assistance from Eric Martin.

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Macron Said to Push for Franco-German Carbon Emissions Price Floor

Posted June 09, 2017, 12:09 P.M. ET

By [Francois de Beaupuy](#) and [Helene Fouquet](#)

Emmanuel Macron reached out to Germany to establish a common price floor for carbon dioxide emitted by power utilities as the French president seeks to strengthen his alliance with Angela Merkel after the U.S. decided to exit the Paris climate accord, according to people familiar with the matter.

Macron wants to revive a plan to set up a minimum price of 30 euros (\$33.55) per ton of CO₂ emissions, about six times the current European level, a French official said, asking not to be named as the matter isn’t yet public. France is seeking to convince Germany and other European countries to adopt a similar plan, the person said. It would also make sense for countries such as Belgium, the Netherlands and Luxembourg, said another person who has heard about Macron’s initiative.

Merkel and Macron have been leading the international opposition to the disruptive presidency of Donald Trump in the U.S. rallying support for trade and climate action. Macron this week launched an appeal to U.S. environmentalists to come work in France, while Merkel is in Latin America preparing for another meeting with Trump at the Group of 20 summit in Hamburg.

The U.S. decision to exit the Paris climate accord comes after the price of European carbon permits

plunged from their 2008 peak, eroding the penalty for burning coal, the most polluting fuel. Companies from Electricite de France SA to Engie SA have lobbied for a minimum price of at least 30 euros, arguing it would boost the use of cleaner natural gas-fired power stations.

Hard Sell

Spokesmen at Germany's Environment Ministry weren't immediately available for comment. Messages seeking comment from the French president's office weren't immediately replied to.

The proposal may be a hard sell in the short term for German Chancellor Merkel, who faces general elections in September. A floor price for carbon emissions might hurt German utilities RWE AG and Uniper SE, which have said it would lead to job losses because they rely heavily on lignite and coal to produce electricity.

France unsuccessfully tried to convince Germany to adopt a common carbon floor price last year in a bid to supplement the EU's Emissions Trading System, which has failed to provide an efficient incentive to reduce greenhouse gases. A glut of pollution rights pushed prices in the \$48 billion market down more than 80 percent since 2008.

France then considered introducing a floor price unilaterally last year before dropping the plan a few months before this year's presidential elections amid labor union protests that it would prompt coal-fired plant closures.

The French and German leaders plan to hold a joint cabinet meeting over the summer.

Generating Revenue

A tax on carbon would generate government receipts, which could be used to mitigate the "social impacts" of the energy transition on the coal industry, EDF Chief Executive Officer Jean-Bernard Levy said June 8 at a conference in Paris organized by the Toulouse School of Economics. By introducing a levy of 18 pounds (\$22.88) per ton of CO2 emissions, the U.K. has cut the share of coal in electricity production to 10 percent from 30 percent in two years, he said.

"The time is the right one today for an initiative that maybe could be generated in France, with quick support of Germany, obviously after the September elections," Levy said. "It can be done gradually, and it can be done in such a way that it leads to no massive phasing out of production means in the short term."

—With assistance from Brian Parkin, Mathew Carr and Tino Andresen.

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India Power Plants Stranded as 50 Million Homes Left in the Dark

Posted June 09, 2017, 10:56 A.M. ET

By [Anindya Upadhyay](#)

India is scaling back expectations for power demand growth as it struggles to electrify millions of homes despite a glut in generation capacity.

The world's second-most populous nation is building more power plants than it can utilize as state-level distributors struggle to connect 50 million households, according to Ravindra Kumar Verma, head of the Central Electricity Authority, the power ministry's planning arm. As a result, about 25 gigawatts of coal-fired power-generating capacity is "stranded" and unused, he said. That's equivalent to the entire installed capacity of neighboring Pakistan.

Demand growth for power is slowing as state distribution companies, known as discoms, struggle to purchase enough electricity for the populations they serve. Most discoms lose money selling below cost to poor and agricultural customers and through power theft. The CEA defines demand as the amount of electricity that distributors buy, not necessarily how much would be needed for the whole country, helping explain why millions still lack power and several cities face regular blackouts despite the under-utilized capacity.

"We were thinking that the entire demand will come on the system, but it has not happened that way," Verma said in an interview in New Delhi June 6. "When discoms turn around is the point when we will get close to 24/7 power. That's where all the constraint lies."

Electricity use is estimated to grow 6.2 percent a year over the six years ending March 2022. Consumption over the previous six years expanded 5.3 percent, missing a 7.6 percent forecast, the CEA said in its latest power survey report published this year. The lower-than-expected growth rate led the agency to temper its outlook, Verma said.

"Projections are estimated growth rates worked out on the basis of certain assumptions. If the assumptions slip, then projections are hit," he said.

India is on track to add 102 gigawatts of conventional power projects in the five years ended March 2017, compared with a target of 88.5 gigawatts, according to country's Draft Electricity Plan published in December. At the same time, the country's gas-fired plants, which can generate nearly 25 gigawatts of power, are running at less than a quarter of their capacity, according to the plan. The country's capacity totaled 329 gigawatts, with more than half of that coming from coal-fired plants, according to CEA data.

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Concern Raised About Peabody Mine Cleanup on Navajo, Hopi Land

Posted June 09, 2017, 7:00 A.M. ET

By Stephen Lee

Arizona residents and environmentalists are growing increasingly worried about the cleanup of a large coal mine that's moving swiftly toward closure. Peabody Energy Corp., the mine's operator, promises that the reclamation will be done right.

If it's not, locals fear the Navajo and Hopi tribes in the northern part of the state will be left with a parched, ravaged homeland that might never be fully restored.

Peabody's Kayenta Mine in Arizona provides coal to the massive Navajo Generating Station 80 miles to the northwest. In 2015, the mine produced 6.8 million tons of coal.

But cheap natural gas has dented the power plant's profitability, and in February its owners voted to

close it by Dec. 23, 2019. Because the mine has no other customers and no rail link to the outside world, when the plant closes, the mine will close, too.

Peabody told Bloomberg BNA that the company set aside a \$235 million surety bond for reclamation at Kayenta. The Office of Surface Mining Reclamation and Enforcement confirmed that amount and said it deems it adequate.

“We are a guest on Navajo and Hopi lands and operate at the behest of the tribes,” Peabody said in an emailed statement.

Political leaders at the Navajo and Hopi tribes want the power plant and mine to stay open because their economies rely heavily on them.

Water Dispute

But some environmental advocates question whether the \$235 million bond will be enough to reclaim the 35.8 square miles that have been mined at Kayenta once the mine shuts down.

One of them is Brad Bartlett, an environmental law professor at the University of Denver, who says none of the Kayenta lands have reached the final stage of reclamation necessary before Peabody can get its bond back, despite the fact that the mine has been active for 40 years and that the company is supposed to reclaim the land as it goes.

One reason the final stage of reclamation, or Phase III, hasn't been reached is that doing so requires Peabody not only to reclaim the land but also to replace the water it has used, Bartlett told Bloomberg BNA. Peabody says the total water use over the life of both the Kayenta mine and an older mine on the same tract, Black Mesa, will be less than 0.1 percent of the water volume stored in the aquifer. The mine uses 1,200 acre feet of water per year, according to the company.

But Percy Deal, a former Navajo tribal council member who lives near the mine, said he thinks the figure is closer to 6,400 acre feet. Many residents don't have any water and have to haul it in from elsewhere, Deal said.

“Before Peabody moved in, there used to be a lot of natural springs that produced water on their own,” Deal told Bloomberg BNA. “It seeped out of the ground. You would see pools of water here and there. None of those are currently working, not one bit.”

‘An Enormous Amount of Money’

The fundamental water problem is that Peabody has been drawing so much water from the subsurface aquifer that it no longer connects to the surface, according to Bartlett. Peabody denies that, saying the aquifer is recharged every year through the hydrologic cycle by some 13,000 acre-feet per year.

But Bartlett said the aquifer has dropped by 150 feet in some places.

“Where [Peabody] will find that replacement water, I don't know,” he said. “It strikes me as an enormous amount of money.”

Carolyn Johnson, retired executive director of the Citizens Coal Council, shares those concerns, saying the damage to the underground aquifer is the primary reason Peabody's \$235 million bond

won't be enough for a complete reclamation.

"We don't even know that it's fixable," Johnson told Bloomberg BNA. "I'm not sure the techniques are out there. There are other things they can do, which would be very costly, to bring water in for those people. But it's never going to be like it was before mining."

Concerns About Aquifer

Because of the technical uncertainty about how to reclaim a mined-through aquifer, Johnson said she couldn't estimate what it would cost.

"I don't know how to put a number to it," she said. "You're trying to create a number where you don't even have the science. But I know that \$235 million isn't going to do it, because it's so many acres, and boy, that mine is huge."

OSMRE didn't respond to questions about how it arrived at the \$235 million figure. Ellen Pfister, an affiliate representative of the Northern Plains Resource Council who helped lobby Congress for the passage of the Surface Mine Control and Reclamation Act in the 1970s, said OSMRE's cost estimates are based on what it would cost the agency to complete the work, including equipment and labor costs.

"I don't blame those people for being concerned," Pfister told Bloomberg BNA, referring to the Navajo and Hopi. "I'd want to know where the water is that they're planning to use [to fill the aquifer]. I'd want to know what quality it is, and how much of it is there. I don't think it's unreasonable to question that."

Only 56 percent of the mined lands at Kayenta are subject to Phase III standards for the bond to be released back to Peabody, according to OSMRE documents. The remaining lands are subject to less demanding standards and don't address water. Of all the land mined, OSMRE has approved reclamation on only 18 percent, all subject to the lower standards.

Reclaimed Acres

Other concerns have arisen over the reclamation of the land. Deal said the Kayenta tract used to be home to large groves of pinyon, pine and cedar trees, along with other natural plants and herbs that were used for food, medication and cultural purposes, such as making dye for coloring wool.

But now those trees and plants are gone, and "almost 100 percent" of them haven't been replaced, Deal said. "It looks like a bare spot; it doesn't look natural," he said.

Peabody spokeswoman Beth Sutton denied that charge, telling Bloomberg BNA that the company has restored between 16,000 and 18,000 acres of land at Kayenta. Those lands are now up to 10 times more productive for livestock grazing than native range land, according to a Peabody fact sheet.

But Deal said the new vegetation Peabody has planted is "pure grass—no trees, no plants." Largely as a result, native elk, deer, antelope, turkey, eagles and hawks are now rarely seen, Deal said.

Navajo tribe member Nicole Horseherder agreed with Deal's account.

"You have this huge grassland, and the grass is very sparse," Horseherder told Bloomberg BNA.

“There’s a lot of bare spots. The grassland is dying. It’s very poor.”

Another View

Daniel Benally Jr., also a Navajo tribe member, gave Bloomberg BNA a contradictory account of Peabody’s land reclamation efforts. Benally said the company has restored many medicinal plants and improved the land for cattle grazing and shepherding.

“The vegetation’s so good that the wildlife has come back,” Benally said. He also said the natural springs at Kayenta have been running.

Benally is a Peabody employee, and he spoke to Bloomberg BNA with Sutton present. When asked to comment on Deal’s observations, Sutton told him not to answer and ended the interview.

5:1 Reclamation Rate

Sutton further said Peabody has been reclaiming five acres for every new acre it mines.

But Bartlett said that ratio is “extraordinarily high,” and that it could suggest that much of the land that was supposed to be reclaimed years ago is only now being attended to.

The figure also indicates that “there’s going to be a lot of jobs going forward” once the mine shuts down, Bartlett said. “To those people who might be worried about losing their jobs, it sounds to me like there’s a heck of a lot of reclamation to be done out there.”

OSMRE said it has inspected the Kayenta mine “and determined that contemporaneous reclamation [has been] completed well.”

Another Reclamation Case

Still, local residents’ concerns are exacerbated by the state of Peabody’s old Black Mesa Mine, which stands on the same parcel of land and shut down in 2005. Twelve years later, Black Mesa remains largely unreclaimed.

“Everything that Peabody built to carry on the operations—the buildings, a huge water tank, everything—is still there,” Deal said. “It’s never been decommissioned, never been brought down. The only thing they did was put up a chain link fence and lock and a sign that says ‘Keep Out.’”

Sutton said the reclamation at Black Mesa will begin this month, and that preparation for dismantling the structures is underway.

Meanwhile, the Navajo Generating Station’s future remains dim. Salt River Project, one of the plant’s owners, has imposed a July 1 deadline to hammer out a lease extension with the Navajo Nation, whose land it is on, to keep the plant running until Dec. 23, 2019, with decommissioning and remediation of the facility starting afterward.

Otherwise, SRP says it will have to close the plant immediately in order to decommission it by the end of 2019. The Navajo Nation will hold a vote June 21 on the extension agreement SRP offered.

No outside buyers have stepped forward to take over the plant when the current lease expires, but Peabody is actively looking for a buyer.

Who Will Justice Let Cash in on Environmental Settlements?

Posted June 09, 2017, 7:01 A.M. ET

By [Amena H. Saiyid](#)

The National Fish and Wildlife Foundation received a check for \$7 million from Princess Cruise Line in April, but not as a typical act of charity. Rather, the payment was part of a \$40 million settlement the cruise line made with the federal government to resolve allegations that it violated the Clean Water Act by illegally dumping oil waste and falsifying oil spill records.

The foundation also received \$2.554 billion as part of the settlement in criminal cases against BP for its Macondo well that blew out on April 20, 2010, spewing an estimated 4.9 million barrels of oil into the Gulf as the largest U.S. offshore spill.

Payments to organizations that are not parties in enforcement actions involving violations of environmental laws are not uncommon.

Tonawanda Coke Corp. agreed to pay \$357,000 to Ducks Unlimited in May 2015 for wetlands acquisition and preservation as part of a \$12 million settlement in a civil case alleging air and water pollution violations at its plant near Buffalo, N.Y. In all, the company paid \$42 million to resolve enforcement actions that included a landmark criminal prosecution.

These types of penalties may be coming to an end because of a June 7 Justice Department [memo](#) prohibiting settlement payments to nongovernmental entities that are not a party to the litigation.

The problem for some, however, is the memo, signed by Attorney General Jeff Sessions, didn't define nongovernmental organization, whether it is a public or private entity. It also wasn't clear if it applied to publicly owned wastewater utilities.

Ambiguous Language

"There's a lot of ambiguity in the memo," Neil McAliley, a shareholder attorney with the Miami office of Carlton Fields Jordan Burt P.A., told Bloomberg BNA June 8.

The memo is based largely on language in the Republican-sponsored Stop Settlement Slush Funds Act of 2017 (H.R. 732) that attempts to bar the federal government from making payments to groups, individuals, or institutions that aren't party to litigation. The bill awaits full House consideration as the House Judiciary Committee reported it out March 30.

"I think this memo is really focused on whom the defendant is paying money as opposed to whether this defendant is a public or private entity," McAliley said. The memo states that payments are not to be made to any nongovernmental entity that is not a party to the dispute.

"This language does suggest that a defendant could be required to send money to a governmental entity that is not a party to the case," McAliley said, but "exactly how one defines a 'governmental entity' may not be as obvious as one might think, and we will need to see how this policy is applied."

McAliley gave as an example nonprofit corporations created by acts of Congress that are designed to accept money for donation to government agencies, such as the National Fish and Wildlife

Foundation, which received the Princess Cruise Lines and BP money, and the National Park Foundation.

"It clearly is broad language, but what we don't know is how is it being explained by the Justice Department," John Cruden, the former acting assistant attorney general for environment and natural resources under President Barack Obama, told Bloomberg BNA in a June 8 telephone interview.

In other words, "Who is making the decision that a certain organization falls within the memo or outside the memo," said Cruden, who now is the president-elect of the American College of Environmental Lawyers.

Exception to the Prohibition

The foundation wasn't a party to the lawsuit, but groups such as these could receive payments under the exception the memo lays out for a payment that "directly remedies ... harm to the environment," McAliley said.

"Did the new policy intend to capture those types of entities or not?" he asked.

Other attorneys don't necessarily agree.

At a June 7 webinar discussing Clean Water Act enforcement trends in the Trump administration, Nathan Vassar, an attorney with Lloyd Gosselink Rochelle & Townsend, P.C., said the Department of Justice memo likely will not apply to settlements involving publicly owned wastewater utilities that may be defendants in a Clean Water Act lawsuit. The webinar was organized by the National Association of Clean Water Agencies (NACWA), which represents many of those utilities.

"I am not aware of any payments to third parties in the context of municipal discharger settlements," Vassar said in response to a question posed about the impact of the Justice Department memo on Clean Water Act enforcement.

Erica Spitzig, the association's deputy general counsel, agreed with Vassar that the department's memo will not likely have a significant impact on publicly owned wastewater utilities.

"We are not aware of any settlements requiring publicly owned treatment works to make donations or other cash payments to third parties who are neither impacted by nor involved in the litigation," Spitzig said in a June 8 email to Bloomberg BNA on what she called the association's initial impressions.

Cruden also agreed, saying the government usually settles Clean Water Act violations by requiring money to be spent either upgrading or repairing the part of the system that caused the problem.

"That can get quite expensive, as much as a billion dollars as we saw in the DC Water case," he said.

Nuanced Reading

Also on the NACWA webinar was Andrew Stewart, who until late 2015 served as the acting director of the special litigation and projects division in EPA's Office of Enforcement and Compliance Assurance. His remarks a day after the webinar were more nuanced about the memo's impact on settlements involving public wastewater utilities.

“I agree the memo didn’t seem to be focused on publicly owned treatment works (POTWs), but it didn’t explicitly carve out POTWs,” Stewart, who now serves as a counsel with Vinson & Elkins LLP, told Bloomberg BNA in a June 8 email.

Stewart said the memo broadly applied to payments to third parties under settlements, but Vassar said he thought it applied more to settlements involving private sector defendants, such as Volkswagen, which was referenced by Rep. Bob Goodlatte (R-Va.), the chief sponsor of H.R. 732, as an example of third-party payments.

Goodlatte has repeatedly highlighted the \$2 billion included in the Volkswagen diesel emissions settlement to pay for electric vehicle infrastructure, as an example of third-party payments. This funding wasn’t justified as “mitigation” spending because the settlement had explicitly set aside a separate \$2.7 billion mitigation trust fund, Goodlatte told former Attorney General Loretta Lynch in a Jan 10 [letter](#) when requesting a preservation of all documents pertaining to the Justice Department settlements.

Sessions didn’t mention the Volkswagen settlement or any other settlement in the memo. Instead, he said, “It has come to my attention that certain previous settlement agreements involving the Department included payments to various nongovernmental, third-party organizations as a condition of settlement with the United States. These third parties were neither victims nor parties the lawsuit.”

No Payments for Supplemental Projects

Stewart, unlike a number of attorneys representing environmental groups, said the memo applies to payments made to third parties, but doesn’t “explicitly address” supplemental environmental projects. More important, SEPs don’t involve cash donations to third parties, he said. Spitzig, of NACWA, and Cruden agreed with him.

“The goal of DOJ memo is to compensate victims of noncompliance,” Stewart said. “The fact that the SEPs are designed to benefit the environment impacted by the alleged violation makes these projects consistent with the DOJ memo.”

Slashing Permit Wait Time Key to Fixing Infrastructure: Trump

Posted June 09, 2017, 11:54 A.M. ET

By [Shaun Courtney](#)

President Donald Trump called for drastic changes to what he described as an “excruciating” regulatory system that slows down permitting of federally funded infrastructure projects, cutting permitting time from an average of 10 years to two.

The president called on federal agencies to streamline review processes and said during a speech today at the Transportation Department that his administration will penalize agencies that “consistently delay” projects by missing deadlines. Trump announced the creation of a new council to help infrastructure project managers navigate the bureaucracy, in part by creating a new online dashboard for project tracking.

“The excruciating wait time for permitting has inflicted enormous financial pain on cities and states—and has blocked many important projects from ever getting off the ground,” Trump said in prepared remarks. “To all our state and local leaders here today, I want you to know that help is

finally on the way.”

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