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Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

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New Zealand Moves Up Microbeads Ban, Expands Scope

Posted August 25, 2017, 01:39 P.M. ET

By [Murray Griffin](#)

New Zealand plans to ban plastic microbeads in a broader range of products and tighten the deadline so the ban will go into effect in May 2018.

A Ministry for the Environment spokeswoman Aug. 24 told Bloomberg BNA that the country had to give the World Trade Organization six months' notice of its intention to introduce regulations that would implement the ban on plastic beads less than 5 millimeters in diameter.

This ban is part of a global initiative to reduce the amount of plastic ending up in oceans, said Associate Environment Minister Scott Simpson. The regulations will make it illegal to sell or manufacture products containing plastic microbeads, and the ban also will extend over a wider range of products.

"We anticipate the regulations will be ready to be published by November 2017, which means the regulations would come into force in May 2018," the spokeswoman said in emailed comments. The government originally intended to introduce a ban that would go into effect July 1, 2018.

Garth Wyllie, executive director of the Cosmetic Toiletry & Fragrance Association of New Zealand, Aug. 24 told Bloomberg BNA that his organization fully supported the ban, although the earlier start date was "a little surprising." The association's members include Chanel, Clarins, and Elizabeth Arden.

The government initially intended applying the regulations only to personal care items, but will now extend it to all "wash-off" products, which includes cleaners and personal care products. The broader ban will be more effective at preventing microbeads from entering waterways, the ministry spokeswoman said.

The ban will not apply to wipe-off make-up products, such as powder foundation and eyeshadows,

which could contain polymers, she said.

“These are supposed to be wiped off with a tissue and disposed of in a bin,” the spokeswoman said. Nor will the ban apply to “leave-on” products such as anti-aging creams, sunscreens, and hairsprays, she said.

Widespread Support for Ban

The U.S. makes the same distinctions about personal care products in its imminent microbeads ban, according to the the spokeswoman.

“The precise scope of the ban will be defined in the regulations,” she said.

The proposed ban received widespread support following the release of a consultation paper in February, according to a government summary of submissions.

Non-wash-off cosmetics containing microbeads, which won’t be banned, don’t pose a risk to the environment because when they are removed “they end up in landfill,” Wyllie said. Nevertheless, companies are working to remove microbeads from these products, he said in emailed comments.

Katherine Rich, chief executive of the New Zealand Food & Grocery Council (NZFGC), told Bloomberg BNA that her organization supported the ban.

Members of the council anticipate products containing microbeads “will have disappeared from shelves well before then,” Rich said in Aug. 24 emailed comments.

“A survey last year by NZFGC of its members and others in the industry showed that many were not using microbeads, or were well down the track of reformulation,” Rich said.

Greenpeace said it welcomed the government’s move, but was waiting to see more details. A spokeswoman for the environment group said the ban appeared not to include bioplastics or liquid plastics, some of which are not biodegradable. Nor did it appear to include nanoplastics, which the government appeared to consider too small to be a microbead.

The regulations banning microbeads will be introduced under the Waste Minimization Act 2008.

“The New Zealand ban parallels similar initiatives in the United States, United Kingdom, Canada, the European Union and Australia to ban or phase out plastic microbeads in products.”

New Biofuel Exemption Prospects Spur Oil Giant Concern

Posted August 25, 2017, 7:30 A.M. ET

By [Brian Dabbs](#)

An era of relaxed biofuel blending requirements may be dawning for small oil refineries nationwide following a watershed court decision and new congressional direction for regulators.

That prospect is cheered on by many companies that operate small refineries, such as Silver Eagle Refining Inc. Refiners often complain of the high costs involved with complying with the blending requirements. Exemptions from that requirements, which are granted only to companies financially

damaged by compliance, could provide them a windfall.

But the emergent trend is likely to put the Environmental Protection Agency, which has remodeled itself as an ally of the energy industry, in a tough position. Representatives of larger refiners are warning against the fallout tied to a wave of new exemptions, which would shift some of the burden of complying with the aggregate annual biofuel mandate.

That's because exemptions don't affect the EPA's annual blending requirements, so exemptions result in an uptick in the compliance obligations for those that still have to comply with the program.

"The exemptions take that obligated volume out of the stream, and you can't wave a magic wand and take that biofuel out of the total requirement," Suzanne Murray, a Haynes and Boone LLP attorney who represents refiners, told Bloomberg BNA. "Maybe with a couple of guys on the margins, it's OK, but when you start getting more and more folks, sooner or later it adds up to real volume."

Congress put the blending mandate, known as the renewable fuel standard (RFS), into law more than a decade ago. Proponents at the time said greater use of biofuels would cut down on greenhouse gas emissions and bolster U.S. energy independence.

The mandate requires refiners and importers to blend biofuels, such as traditional ethanol and advanced fuels like cellulosic ethanol, into gasoline or purchase credits to comply. The EPA decides on individual exemption petitions in consultation with the Energy Department.

Spreading the 'Burden'

Large refineries like ExxonMobil Corp., Chevron Corp., and Marathon Petroleum Co. LLC, as well as nonexempt small refineries, have to step in for those exempted. That puts them in an unfair position, Mike Tadeo, a spokesman for the American Petroleum Institute, which represents all the industry heavyweights, told Bloomberg BNA.

"EPA should take measures that reduce the overall RFS requirement when a refiner is exempted as to not spread that burden across the rest of the industry," Tadeo said.

Refineries are required to comply with the RFS based on the amount of petroleum processed, but the industry writ large must meet the aggregate annual mandate. A change like the one the American Petroleum Institute supports will likely require new legislation or a regulatory revamp. The EPA is accepting comments on the exemptions as part of its 2018 RFS proposal.

Some refineries say they already struggle to meet their current quotas.

Relief in the Pipeline

A federal appeals court shot down an EPA rejection of an exemption request Aug. 15, and now some small refineries will likely push the agency for more exemptions, according to Murray and Monte Shaw, executive director of the Iowa Renewable Fuels Association.

Those pleas are likely to fall on friendlier ears at the agency than in years past, Murray, Shaw, and a former EPA official told Bloomberg BNA. EPA Administrator Scott Pruitt, a past biofuel critic and oil industry ally, generally supports the exemptions, the former agency official, who worked directly with Pruitt, said, speaking on condition of anonymity.

A refinery must process 75,000 crude barrels a day or less to qualify for an exemption. Nearly 60 percent of all refineries operate under that threshold, according to the Energy Information Administration.

To qualify under the hardship criteria, a refinery must incur disproportionate cost or face the threat of insolvency linked to compliance.

Jerry Lockie, manager at Silver Eagle Refining Inc. refinery in Woods Cross, Utah, told Bloomberg BNA that his company now sees an opportunity for an exemption in the wake of the Sinclair decision.

“We’re evaluating our options for filing for the exemption because it does create an economic disadvantage for us,” said Lockie, who told Bloomberg BNA his refinery hasn’t received an exemption to date. “We just transferred the information to our counsel and it’s in review.”

The EPA declined Bloomberg BNA requests for information on the small exemption policy, as well as a list of exemptions requests, denial and approvals. According to the 2018 RFS [proposal](#), which the EPA released last month, the agency evaluated a dozen exemptions requests. But the rule doesn’t discuss the decisions.

Those interviewed said they weren’t aware of any exemptions approved in 2016. Bloomberg BNA reached out to dozens of companies that operate small refineries and most declined to comment or didn’t respond.

But Keith Johnson, a spokesman for the refinery operator Delek Group Ltd., told Bloomberg BNA that he’s aware of some recent exemptions. The EPA waived RFS obligations last year for a Delek facility at El Dorado, Ark., and an Alon Israel Oil Co. Ltd. facility at Krotz Springs, La., Johnson said.

Delek absorbed Alon in recent weeks. The company aims to apply for exemptions at both facilities again this year, Johnson said.

More Energy Department Clout?

On top of the impact of the decision and Pruitt’s position, the agency also is constrained by a new directive that could encourage exemptions.

A report that accompanied the 2017 funding law directed the EPA to follow Department of Energy recommendations on the exemptions. The Energy Department recommended exemptions in the past, but the EPA disregarded its views, according to some of those interviewed by Bloomberg BNA.

The 2018 RFS proposal suggests that new language may have teeth.

“This directive could impact how EPA evaluates small refinery hardship petitions and the number and magnitude of exemptions granted,” the EPA said in its 2018 RFS [proposal](#), which released last month.

But despite that language, Thomas White of the Energy Department’s Office of Energy Policy and Systems Analysis said the department’s “influence has not changed,” adding that the DOE “has always provided EPA an evaluation of a petitioner.”

Those interviewed said increased exemptions are likely but not guaranteed.

“You can’t necessarily expect EPA to grant all these. They may listen to the bigger refiners,” Shaw, the Iowa Renewable Fuels Association leader, told Bloomberg BNA. “I’d say there’s a smoother path now, but that doesn’t make any of them a slam dunk.”

Water Pollution Testing Rule Increases State Compliance Options

Posted August 25, 2017, 01:05 P.M. ET

By [David Schultz](#)

The EPA issued new testing [guidelines](#) for testing effluent levels in water, which will provide states with more options for complying with federal pollution regulations.

The guidelines, which the Environmental Protection Agency periodically revises, lay out which testing methods are acceptable to use on water for finding levels of toxic chemicals, harmful compounds, and other pollutants.

Frances Bothfeld, an analyst with the Association of Clean Water Administrators, told Bloomberg BNA that the EPA had all but completed these guidelines late last year. But, she said the agency waited to formally make them final until new political leadership at its Office of Water had a chance to review the guidelines.

The guidelines will be published in the Federal Register Aug. 28.

Texas Coal Plants May Not Be Saved by Scaled Back Visibility Rules

Posted August 25, 2017, 11:45 A.M. ET

By [Nushin Huq](#)

The EPA is giving Texas a chance to rework a proposed multibillion-dollar air pollution regulation for utilities, but that likely won’t be enough to save some coal-fired power plants from shutting down, energy analysts told Bloomberg BNA.

The [proposal](#), issued in the final days of the Obama administration, would require Texas power plants to install new pollution controls in order to improve visibility in nearby national parks, including the Big Bend and Guadalupe Mountains national parks. Luminant Generation Co. LLC, a subsidiary of Vistra Energy, which owns several power plants that would be covered by the regulation, projected the proposal would require utilities to spend more than \$3 billion dollars on emissions controls.

Several Texas utilities voiced support for the successful negotiations between the EPA and Texas, but more flexible regulations may not be enough to save some coal plants from retirement. Market pressure from renewables will still likely force some Texas plants to shutter, according to Rob Whaley, an analyst with the consulting firm Wood Mackenzie who focuses on the Electricity Reliability Council of Texas, the state’s electricity grid operator.

“The ERCOT market, with all the wind generation coming on, is really suppressing prices and

making it really hard for these baseload units to make money,” Whaley said.

Emissions Trading Planned

The EPA is under a Sept. 9 deadline to issue final visibility regulations for Texas, but the Trump administration recently asked a federal judge to extend that deadline until the end of 2018, citing a breakthrough in talks with state regulators.

“Circumstances have changed significantly over the past several months and weeks as EPA and Texas have engaged in a productive level of dialogue that has not occurred in many years,” the agency said.

The Texas Council on Environmental Quality declined Bloomberg BNA’s request to comment on those talks, but the state regulatory agency said in an Aug. 24 court filing that it intends to spend the next six months developing a proposed emissions trading program in order to meet its “best available retrofit technology” obligations under the EPA’s regional haze program.

The Obama administration’s proposal didn’t opt for an emissions trading approach, something that utilities hoped it would have done, according to Eric Groten, an environmental attorney with Vinson & Elkins LLP in Austin.

“That’s the most significant change in what the EPA is saying it would like to do now,” Groten said. “It’s no great leap of faith to say it’s planning not to impose specific limitations on specific plants that must be met by those plants. What it will do instead is impose emission limitations on those plants but then allow trading.”

The EPA’s decision to give Texas a chance to develop a more flexible set of requirements marks the second possible reprieve on regional haze rules for the state’s utilities since Inauguration Day: In March a federal appeals court gave the EPA a chance to reconsider a different regional haze regulation that would have required seven Texas coal plants to install about \$2 billion in pollution controls.

Windy Times in Texas

The cost of complying with the regional haze requirements, combined with Texas’ recent significant gains in wind energy product, could have led to the retirement of Luminant’s Big Brown, Martin Lake, Monticello and Sandow power plants by 2024, according to Whaley.

If the emissions targets for the plants are scaled back by the Trump administration, some of those Luminant plants projected to retire may become economical, Whaley said. But it is possible that price pressure might still take half of that generating capacity offline, he said.

“I think of the 3.5 gigawatts of generation we predict will retire under current rules, about half may survive, but I still don’t think all of it will,” Whaley said.

Wind generation accounted for nearly 23 percent of ERCOT’s power generation in the first quarter of 2017. That level marked the highest quarterly wind penetration in ERCOT’s history and highlighted the market challenges facing the coal industry in Texas.

At present, some of the coal plants “are running only seasonally,” Matt Preston, a coal analyst for Wood Mackenzie, told Bloomberg BNA.

Some utilities already have taken action to comply with the EPA's regional haze regulations for Texas. For example, NRG Energy decided to switch the fuel used at its Limestone power plant from lignite to a coal that has a lower sulfur content, according to company spokesman David Knox.

Knox told Bloomberg BNA that given the "environmental co-benefit of the fuel switch" and the expected level of operation of the Limestone plant, NRG expects to meet its regional haze obligations.

Industry Welcomes EPA Reversal

Luminant declined to comment on the regional haze rule and the pending litigation, but in [comments](#) filed in March, the utility said it would support an extension of the deadline to allow for the EPA to "work cooperatively" with Texas on an alternative plan.

Several other utilities that operate in Texas openly welcomed the fruitful negotiations between the EPA and Texas regulators.

"We are pleased that EPA and the State of Texas have been working so closely together, and look forward to participating in the state's efforts to develop its plan," Wes Reeves, Xcel Energy spokesman, told Bloomberg BNA in a statement.

Dynegy, which operates the Coletto Creek coal plant in Texas, also supports giving Texas regulators enough time to develop a suitable state plan for regional haze, company spokeswoman Meredith Moore told Bloomberg BNA.

"We support TCEQ and EPA working collaboratively to reach agreement on a Texas state implementation plan that meets the statutory requirements of the regional haze rule, protects the environment, and treats all in-state generators equitably," Moore said.

National Rule Next?

Regional haze regulations have been an industry target for the past decade, Gloria Smith, managing attorney for the Sierra Club's Environmental Law Program, told Bloomberg BNA. The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, the majority owner of Bloomberg L.P., parent of Bloomberg BNA.

On a national level, the EPA will likely take action on a regional haze regulation issued in January, according to Smith. The regulation drew criticism from states and industry over its handling of requirements that states develop long-term strategies for making reasonable progress toward national visibility goals.

EPA Administrator Scott Pruitt is likely not a fan of that regulation. During his time as Oklahoma attorney general, he joined with seven other state attorneys general in [comments](#) that identified various alleged legal flaws in the agency's approach.

"We're certain that EPA will be asked to pull that rule back and to revisit it, similarly like in Texas," Smith said. "We're really frustrated because we thought everyone had come together...and now we're going to throw things into chaos again."

The reasonable progress regulation clarifies the four statutory factors under the Clean Air Act that

industry has to comply with, Smith said. Those statutory factors will remain unless Congress changes the law, she said.

“There’s actually a lot of momentum right now for reducing emissions, curbing coal-fired generation,” Smith said. “The regional haze rule was instrumental for a number of years for cleaning up our national parks, and I don’t see that momentum stopping.”

Duke Asks to Cancel Planned South Carolina Nuclear Reactors

Posted August 25, 2017, 01:16 P.M. ET

By [Jim Polson](#)

Duke Energy Corp. asked to cancel its planned nuclear plant in South Carolina, citing the bankruptcy of reactor manufacturer Westinghouse Electric Co.

The Charlotte-based company also said Aug. 25 in a state filing that North Carolina utility regulators should require customers of the company’s Duke Energy Carolinas unit to pay \$353 million of pre-construction costs spent on the Lee Nuclear Station over the next dozen years.

The company’s decision is the latest blow to the U.S. nuclear industry in the wake of the Westinghouse’s filing for bankruptcy earlier this year. South Carolina utilities Scana Corp. and Santee Cooper pulled the plug on a half-finished plant earlier this month after delays and cost overruns, and Southern Co. is weighing whether to halt work on two Georgia reactors.

Nuclear units that were operating for decades have shut, unable to compete with low-cost renewable energy and abundant supplies of natural gas from shale basins.

“Risks and uncertainties to initiating construction on the Lee Nuclear project have become too great and cancellation of the project is the best option for customers,” Duke said in a separate statement.

A similar request will be made with South Carolina utility regulators in the future, Rick Rhodes, a company spokesman, said by phone Aug. 25. The U.S. Nuclear Regulatory Commission issued a construction and operating license for the plant last year and Duke will maintain that license “to build new nuclear at this site in the future if it is in the best interest of customers.”

NextEra Energy Inc. has said it’s decided to “pause” an expansion of its Turkey Point nuclear plant in Florida, but the company is still seeking approval to obtain and then maintain a federal license for two reactors there.

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Shell Joins Solar Push in Coal Country of World’s Top Exporter

Posted August 25, 2017, 8:38 A.M. ET

By [Ben Sharples](#) and [Perry Williams](#)

Royal Dutch Shell Plc is investigating a solar power project in an Australian region better known for its fossil fuels, particularly coal.

The company is studying the feasibility of a solar development on its land in the Western Downs area of Queensland, which is subject to a final investment decision, a spokeswoman said by email. Though Shell's statement didn't elaborate on timing or size, the regional council this week said it had approved construction of the 250-megawatt [Delga Solar Farm](#) project proposed by Shell at Woleebee, near Wandoan.

Shell plans to spend as much as \$1 billion a year on its New Energies division as the transition to renewable power accelerates, and will partner with Sunseap Group Pte to invest in solar throughout the Asia Pacific. Equis Energy earlier this month approved a 1,000-megawatt solar plant near Wandoan, a region long associated with a potential large coal mine development by Glencore Plc.

"Investment in Australia's large-scale solar sector has had a record-breaking 12 months with around 1,678 megawatts worth of new projects currently under construction across the country," said Leonard Quong, an associate with Bloomberg New Energy Finance in Sydney. Falling technology costs and surging electricity prices are helping to drive a boom in the sector, Quong said.

Equis' A\$1.5 billion (\$1.2 billion) Wandoan South Solar Project will be one of the largest in the country and is scheduled to start delivering power in 2019, the Singapore-based company said Aug. 7. Australia is the world's biggest exporter of thermal and metallurgical coal.

There are 38 solar plants operating in Australia with a capacity to generate 411 megawatts of power, and a further 29 under construction, according to BNEF.

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Canada Making Progress on Central Arctic's First Deep-Water Port

Posted August 25, 2017, 11:18 A.M. ET

By [Peter Menyasz](#)

Canada's Nunavut territory is taking early steps toward building the first deep-water port in the Central Arctic, located at the mid-point of the Northwest Passage.

The port would ease access to international markets for the territory's gold, copper, and diamond mines. Companies active in the region include MMG Ltd., currently developing a zinc and copper mine near Izok, TMAC Resources Inc., developing a gold mine at Hope Bay, and Tundra Copper Corp., which is exploring for copper near the proposed port's location.

The Grays Bay project also would link Nunavut to the national highway and rail systems of the Northwest Territories via the proposed Tibbitt-Contwoyto Winter Road, which would be the first to connect Nunavut to the rest of Canada and forge the first overland connection between Canada and a port on the Northwest Passage, according to the project overview.

The territorial government on Aug. 24 said the Nunavut Impact Review Board formally accepted the Grays Bay Road and Port project proposal, clearing the way for screening the project.

The port and road could transform the territory's economy. The port would be built, managed and operated jointly by the Nunavut government and the Kitikmeot Inuit Association aboriginal group and would connect the significant mineral resources of the Slave Geological Province, which straddles Nunavut and the Northwest Territories, to Arctic shipping routes.

“We are beginning to shape the potential development of Nunavut’s economic future with nation-building infrastructure,” Monica Ell-Kanayuk, the territory’s Minister of Economic Development and Transportation, said in a statement. The screening process will give all stakeholders and the public a chance to understand the details of the project, she said.

The Kitikmeot Inuit community is excited by this milestone in the project approval process, which has included significant support from local municipalities and the community’s approximately 6,000 members, Paul Emingak, executive director of the Kitikmeot Inuit Association, said Aug. 24.

To date, there hasn’t been any significant opposition to the project, Emingak told Bloomberg BNA. “We haven’t heard from environmental groups on whether or not they oppose it. We’re not at that stage yet.”

Full Environmental Review Sought

World Wildlife Fund Canada wants a full, stringent environmental review of the project, particularly because the proposed all-weather road would cross the calving ground for the Bathurst caribou herd, Brandon Laforest, the environmental group’s senior specialist on Arctic species and ecosystems, said Aug. 25.

“Our position is that there should be no development at all in the calving area,” Laforest told Bloomberg BNA, noting that the Bathurst herd’s population has dropped to 20,000 from a high of 470,000 and that aboriginal groups in the Northwest Territories are heavily dependent on it for their traditional way of life.

The Grays Bay proposal calls for construction of a deep-water port at Grays Bay on the Coronation Gulf and a 233-kilometer (145-mile), all-season road from the port to Jericho Station, home to the Jericho Diamond Mine, which is currently dormant.

TMAC Resources’ Hope Bay project involves three high-grade gold deposits in Nunavut’s Kitikmeot Region which are estimated by the company to contain 4.9 million ounces of gold. Tundra Copper Corp., owned by Vancouver-based Kaizen Discovery Inc., is exploring for copper resources on more than 3,500 square kilometers (1,350 square miles) near the town of Kugluktuk, also on the Coronation Gulf.

The port would be open to ships and small vessels during the July-October open water season. The four-year construction project also would include bridges and culverts, quarries, diesel storage tanks, a runway and other port facilities.

Caribou Crossing

Caribou populations that traverse the area where the port would be located could be affected, but that has been taken into consideration from the start in designing the proposal, Emingak said. “We take caribou issues seriously,” he said.

The project would affect land used by three caribou herds, but the proponents are developing a range of measures to minimize negative impacts, according to a project overview on the assessment agency’s website.

The port will not be open when caribou are crossing the Coronation Gulf in the spring and fall, and

the all-weather road that is also part of the project will be closed to vehicles when another herd is calving, the overview said. Side slopes of the road will be flatter and packed down in areas where caribou are expected or known to cross, and construction activity will be shut down at times when large numbers of caribou are nearby, it said.

Laforest said the proposed measures to limit the road's impact might work under normal circumstances, but even the presence of a road can be a problem for a calving ground, particularly for a herd that is already suffering.

The project overview noted that future users of the port aren't considered directly part of the project as their activities are conducted away from the port and wouldn't be under the direct management of the port's owners. "Such future users would include any ships or trucks needed to build or operate future mining projects, such as the Izok Corridor Project. These types of projects would have to go through their own environmental assessment," the overview said.

MMG Ltd.'s C\$6.5 billion (\$5.2 billion) Izok Corridor Project involves development of a zinc and copper mine near Izok Lake. Shortly after the Nunavut agency launched a detailed review in 2013, the company decided the project was uneconomic due to the infrastructure requirements of construction in the Arctic. The company's website says it continues to work on making the project feasible.

Decision Due in 45 Days

The territorial agency has 45 days to complete the screening assessment, which includes a public comment period. The agency can: approve the project, potentially imposing terms and conditions; require a full environmental and socio-economic review; send the proposal back to the proponent for clarification; or recommend that the project be modified or abandoned.

Based on the agency's conclusion, federal Indigenous and Northern Affairs Minister Carolyn Bennett can accept or reject a decision to allow the project to proceed, direct the agency to reconsider any terms and conditions imposed, overturn a negative decision if the project is deemed to be in the national interest, or refer the decision report back to the agency for further review.

Reviews are more comprehensive assessments generally reserved for major development projects or projects that may cause significant public concern, the agency says in a description of its screening process. Reviews require the proponent to develop an environmental impact statement and the scheduling of a full public hearing, and projects approved after a review are issued a project certificate, it said.

"We expect it to go forward to a broader review where all these things will come out," Laforest of the World Wildlife Fund said. "There's a lot at stake with this project."

After 40 Years, Shared Water Pollution Permits Still Puzzle States

Posted August 25, 2017, 9:00 A.M. ET

By [Amena H. Saiyid](#)

Several states want to issue water pollution permits that for decades have been controlled by the federal government, but a recent report highlights how they're being hindered by confusion over costs and even which waters are eligible for state oversight.

At issue are dredge-and-fill permits needed before mining, construction, and some farming activities can be carried out in and near federally protected waters.

In most of the country, those permits are issued by the U.S. Army Corps of Engineers, which uses the permits to ensure these federal waters aren't polluted by commercial and agricultural activity.

But the process can take years, and some states want to take over the permitting role to speed up the process, end duplication with state permits, and provide consistency for the companies that need the permits before excavating in or around some wetlands or water bodies.

Lingering Uncertainty

Congress gave states the right to take over these permitting duties 40 years ago, and the the actual dredge-and-fill permit requirements are identical whether administered by a state or the federal government. But only two states—Michigan in 1984 and New Jersey in 1994—have actually assumed permitting responsibilities from the federal government, though seven additional states have explored the notion.

One of the biggest lingering issues facing those states is a lack of clarity over which types of federally protected waters they can assume control over and which ones must remain under the purview of the corps. (New Jersey worked out a compromise to clarify its role in permitting on federal waters and wetlands before taking over responsibility in 1994. But the corps doesn't want to follow that approach now.)

The Environmental Protection Agency asked an advisory committee to answer the question of exactly which federal waters would be covered, but the [panel recently](#) failed to reach a consensus.

The corps dissented from an approach endorsed by other federal and state agencies—and backed by the National Wildlife Federation—that would have made clear that states could issue permits over navigable waters covered under the Clean Water Act of 1972, even while the corps retained permitting authority over major water bodies that transport people and goods that are covered under the Rivers and Harbors Act of 1899.

That ongoing uncertainty, combined with a tough budget environment for state environmental agencies, has discouraged states like Alaska and Oregon from following through on their desire to take the lead on dredge-and-fill permitting.

Of the seven state agencies contacted by Bloomberg BNA since the May release of the panel's report, Arizona was the only one to report active discussions with its state legislature on assuming the permitting program.

Arizona Eyes Faster Permitting

Obtaining a dredge-and-fill permit from the corps can take anywhere from six months to several years, depending on the complexity of the permit, the location of the project, and whether endangered species could be affected, according to Neal McAilley, an attorney at Carlton Fields in Miami, who has sought permits for clients.

For a state to take over permitting from the corps, it needs funding, legislative backing, and EPA approval. The actual cost of assuming the dredge-and-fill program varies by state, but Virginia in 2012 estimated the cost of staffing and operating a permitting program to be about \$3.4 million a year.

Arizona regulators remain interested in assuming the program and are talking with state lawmakers about legislation to expedite the process, according to a state water official.

“The interest we have in obtaining the Section 404 [of the Clean Water Act] dredge-and-fill permit program is that we will be able to have a more consistent environment to do business,” Trevor Baggiore, water quality division director for the Arizona Department of Environmental Quality, told Bloomberg BNA. “We can provide a faster service than the corps.”

Construction and mining are the main industries that obtain those permits in Arizona. The state’s efforts are backed by Phoenix-based Freeport-McMoRan, spokesman Eric Kenner told Bloomberg BNA in an email. That company is the world’s largest producer of molybdenum, which is used as an alloy in steel manufacturing, and second largest producer of copper.

Don Taylor, chief operating officer for Arizona Mining Inc., wouldn’t speculate on the impact on his company’s operations until Arizona actually enacts changes, but he told Bloomberg BNA that any change to streamline the permitting process and ensure more consistent communication with regulators would be a positive for all businesses that deal with the issue.

Baggiore said funding is not as much of an issue for Arizona as it is for other states because it charges fees for Clean Water Act discharge permits, a process that would continue if Arizona assumes the dredge-and-fill program.

Interest Remains, But ...

While Arizona is still working to take over the permitting process, the interest of several states has been dampened by confusion over which waters they would assume and which would be retained by the corps.

Congress authorized states in 1977 to take over permitting of waters and wetlands covered by the Clean Water Act, but not those that fall under the Rivers and Harbors Act, which includes major rivers and lakes where transportation of goods and people takes place.

States have been confused over whether that’s the final word, so the EPA attempted to clear up that situation by asking its National Advisory Council for Environmental Policy and Technology (NACEPT) to weigh in. But the corps didn’t agree with the rest of the panel.

The corps insisted that it retain permitting authority over a category of navigable waters—including small ponds like Minnesota’s Bah Lakes—that go beyond major arteries used for transporting goods. The corps also wanted to retain authority over wetlands adjacent to major rivers on a case-by-case basis.

State assumption was a bipartisan compromise Congress enacted to protect states’ traditional land-use authorities while extending federal standards to many waters that were not regulated, according to Virginia Albrecht, special counsel to Hunton & Williams LLP, who served on the advisory panel.

“It’s a mystery why the corps representative on [a NACEPT panel] refused to implement this clear congressional intent,” Albrecht told Bloomberg BNA in an email.

The corps deferred all next steps to the EPA, which told Bloomberg BNA that it is still reviewing the report, but remains committed to giving states an opportunity to be equal regulatory partners.

States Need Funding

Montana's interest in assuming dredge-and-fill permitting waned because the advisory committee didn't provide the steps necessary for takeover and because its state Legislature didn't back the effort, Jeni Garcin, spokeswoman for the state Department of Environmental Quality, told Bloomberg BNA.

Florida and Virginia environmental officials told Bloomberg BNA that the subject wasn't on the agency's radar screen, while Maryland failed to respond. Other states remain interested, but they can't pursue the takeover because of tight budgets.

In Alaska, the current budget climate doesn't support taking over program, Michelle Hale, water division director for Alaska's Department of Conservation, told Bloomberg BNA in an email.

Oregon's interest has been tempered since it discovered it may run afoul of Endangered Species Act protections for the state's salmon species, Bill Ryan, deputy director of Oregon Department of State Lands, told Bloomberg BNA.

The corps consults with other federal agencies to make sure no permitted activity threatens salmon. If the state takes over the permitting program, it would need legislative permission and funding to set up another regulatory program to deal with any harm to the salmon caused by dredging and filling of streams, a move for which there is "neither appetite nor budget" in Oregon, Ryan said.

Week Ahead: 'Garbage Juice,' Snow Leopards, EPA Modeling Debated

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By [Chuck McCutcheon](#)

"Garbage juice" in North Carolina, the snow leopard's role in addressing climate change, and an EPA panel's scrutiny of regulation models are among the topics at energy and environment events during the week of Aug. 28.

North Carolina lawmakers are scheduled to vote Monday on overriding Gov. Roy Cooper's (D) veto of a bill ([H.B. 576](#)) that would allow the state's landfill operators to spray leachate and wastewater into the air to help manage solid waste. The technique is known as "aerosolization," but opponents have termed it "garbage juice spraying."

In his [veto message](#), Cooper said he opposed the bill because it would limit the future use of more environmentally protective technologies. Despite the earlier blessing from state lawmakers, the owner of most of North Carolina's landfills—Phoenix-based Republic Services Inc.—is now backing away from aerosolization.

Republic Services "concluded that the technique is not a viable alternative for our liquids management in North Carolina," the company said in a [statement](#) to Bloomberg BNA. The company said it didn't plan to use the method in the future and was "committed to working with regulators on future ideas and opportunities that might further enhance the management of an evolving waste stream."

Another company, Charah LLC, which operates a landfill near Moncure, N.C., told state regulators

that it wants to withdraw its request for an aerosolization permit, [according to](#) a news report. [Andrew Ballard](#) will cover.

In Other News

World Water Week: Stockholm's annual [conference](#) addressing global water issues, organized by the Stockholm International Water Institute, runs Sunday through Friday. Thousands of attendees from more than 100 countries will listen to panel discussions on topics such as irrigating forests with wastewater and using hydropower to address climate change.

One of Monday's panels will [address](#) how snow leopards are bringing together 12 countries in Asia's Third Pole region to deal with water and climate security. The animals are [considered](#) to show potential resiliency against the direct impacts of climate change in the near term: They are able to tolerate a range of temperatures and require minimal fresh water. But scientists are concerned about the snow leopards' longer term future as climate change accelerates.

Hurricane Harvey: Bloomberg BNA staff will monitor the hurricane's impact on the Gulf Coast region's oil and gas sector and other energy and environmental effects.

Regulation modeling: The Environmental Protection Agency's Science Advisory Board [meets](#) Tuesday and Wednesday in Arlington, Va. Among the topics is a review of a draft board report on economywide modeling of environmental regulations' costs and benefits. [Peter Wilcoxon](#), a Brookings Institution nonresident senior fellow in economic studies and co-director of the Brookings Climate and Energy Economics Project, chairs the committee on the topic and will make a presentation. [Sylvia Carignan](#) will watch.

Perry to Ukraine: Energy Secretary Rick Perry on Monday will lead a U.S. delegation to Kyiv, Ukraine. The group will meet with President Petro Poroshenko, as well as other Ukrainian officials to discuss energy partnerships. The department, along with Xcoal Energy & Resources, [announced](#) Aug. 21 the first shipment of Pennsylvania thermal coal to Ukraine.

Conowingo Dam: The [Maryland Environmental Service](#) is expected Thursday to issue a detailed request for proposal for a demonstration project to determine the costs of dredging the Conowingo Dam. The project also will seek to identify markets for reuse of dredged material. Recent research shows that the hydroelectric dam, located on the Susquehanna River in northern Maryland, has been filling with sediment faster than expected. [Leslie A. Pappas](#) will cover.

Infrastructure investment: The Atlantic Council will hold a Monday [forum](#) in Chapel Hill, N.C., on the Trump administration's infrastructure proposal featuring Rep. David Price (D-N.C.).

EPA webinars: The EPA will hold a Tuesday [webinar](#) on reducing plastic products' pollution and a Thursday [webinar](#) on suspect screening of chemicals in consumer products.

—With assistance from Andrew Ballard.

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