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Energy and Climate Report

Afternoon Briefing - Your Preview of Today's News

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

EPA Stuck in Neutral on Car Emissions, Official Says

Posted June 02, 2017, 11:31 A.M. ET

By [David Schultz](#)

The EPA has made little to no progress on determining whether to relax greenhouse gas standards for cars, according to one of its senior career staffers, raising doubts that it will be able to act before a deadline next year locks in the current standards through 2025.

Additionally, the agency has made little effort to reach out to environmental regulators in California, which has the authority to set its own state vehicle standards. A California air regulator told Bloomberg BNA that the state has little desire to roll back its standards, potentially setting up a scenario in which car makers will need to manufacture different models for different states.

President Donald Trump announced at a March 15 rally in Detroit that his administration would reopen an Obama administration decision that maintained current automobile standards at a companywide average of 54.5 miles per gallon, or its equivalent, through 2025. The auto industry is seeking relaxed standards, arguing that the miles per gallon target is too difficult to achieve and would ultimately inflate the prices of their vehicles.

But in the nearly three months since then, the Environmental Protection Agency has taken few if any actions to begin formally reconsidering the decision, according to Chris Grundler, director of the EPA's Office of Transportation and Air Quality. Grundler told reporters at a May 31 EPA advisory council meeting that he hasn't briefed his agency's administrator, Scott Pruitt, on the issue and that his office has had no interaction with California officials or with the Department of Transportation, which has authority to regulate fuel efficiency.

April Deadline

The Obama administration surprised many when it announced in January, weeks before Trump's inauguration, that the EPA would not alter its current greenhouse gas standards. The regulations on vehicle emissions only required a decision on that by April 2018.

After the Trump administration took office, the auto industry began lobbying the EPA to revisit its decision before the April 2018 deadline, which would lock the standards in place. The Alliance of Automobile Manufacturers, which counts Ford Motor Corp., General Motors Corp. and Volkswagen

of America among its members, in February formally asked Pruitt to rescind the Obama-era determination to leave the standards in place.

With Trump's announcement in Detroit, the industry got its wish. And Gloria Bergquist, head of public affairs with the Alliance of Automobile Manufacturers, said she's still optimistic the EPA can meet its deadline.

"There is surely time to complete a robust evaluation by April 2018, which is important to automakers because of their long lead time in developing products," she told Bloomberg BNA.

EPA spokeswoman Amy Graham said the agency is committed to meeting this deadline and is currently working to process new information that the auto industry is providing it.

Complex Process

But there is much to be done before then if the agency does plan on relaxing the automobile standards.

Janet McCabe, head of the EPA's air office during the Obama administration, said that when her team was making its decision to maintain the current standards it compiled voluminous data showing that car makers could achieve the target. If the current EPA wants to change the standards, it will need to compile equally compelling data that contradicts that determination, she told Bloomberg BNA.

"These are very detailed documents and reports and studies," McCabe said. "Technical staff at EPA would need to look at them. ... It's not a quick matter."

Additionally, the agency will need to budget time to allow the public to comment on its decision and then process and respond to those comments, all before the April 2018 deadline.

California

Then there's the matter of California.

Because the state began regulating air pollution before the EPA was even created, its authority to set fuel efficiency standards for cars was grandfathered in to the Clean Air Act. The auto industry had asked federal authorities to work with the state to set a single, harmonized standard—something they accomplished back in 2012 when the current standards were first agreed to.

However, with the Trump administration now indicating it may want to diverge from that 2012 agreement, California has drawn a line in the sand. Alberto Ayala, deputy executive officer of the California Air Resources Board, said California would be happy to sit down with the EPA and DOT to discuss setting standards for 2026 and beyond.

"We're more than interested in that," he told Bloomberg BNA. "[But] if it's all about rolling back the current standards, we're not interested in that."

Ayala said, aside from a letter Pruitt sent responding to the concerns of Gov. Jerry Brown (D), the EPA's political leadership has not reached out to his state on this issue in any way.

Grundler said that it wouldn't be in anyone's interest for the EPA, DOT and California to each go their own way on the vehicle standards.

"Chaos is not an option," Grundler said. "It's not good for business, not good for breathers."

CEOs, Politicians Unite on Paris Accord, Climate Change

Posted June 02, 2017, 10:36 A.M. ET

By [Jessica Shankleman](#) and [Joe Ryan](#)

Donald Trump's plan to scrap U.S. involvement in the world's broadest deal on global warming may actually have the opposite effect, galvanizing countries, businesses and even U.S. states, to double down on stopping pollution.

The U.S. president June 1 sided with the interests of coal miners, who dig up the dirtiest fossil fuel, as he sought to make good on his election campaign promise to quit the landmark Paris Agreement on climate change.

That put him at odds both with world leaders and chief executive officers of almost every industry on the planet, including oil majors Exxon Mobil Corp. and Total SA; airline owner Sir Richard Branson; and financiers led by BlackRock Inc.'s Laurence D. Fink and Goldman Sachs Group Inc.'s Lloyd Blankfein. With Trump working to boost fossil fuels, the rest said they're determined to keep investing in clean energy regardless of U.S. policies.

"The anger and concern over Trump's withdrawal could soon give way to global resolve," said Jonathan Pershing, a veteran climate negotiator who served as special envoy for climate change at the U.S. Department of State until Trump's election last November. "The goad of disagreement sometimes can drive coalitions more strongly."

Even as Trump branded the Paris deal "unfair," state governors took to social media to confirm their support for the accord. The mayor of Pittsburgh—a Pennsylvania city Trump highlighted as a beneficiary of his decision to turn his back on the global pact—vowed to abide by the Paris Agreement.

California Opposition

California Gov. Jerry Brown departs June 2 for China, where he will urge the world's most populous country and largest car market to take environmental cues from Sacramento instead of Washington. While the Trump administration is seeking to relax fuel-mileage standards for 2022–2025, California is maintaining stricter rules.

"California will resist," Brown said on a call with reporters. "This is an insane move by this president."

Even Russia's Energy Minister said he was confident Trump couldn't topple the Paris deal, which seeks to limit global warming well below 2 degrees Celsius (3.6 degrees Fahrenheit). Russia hasn't yet ratified the Paris Agreement, and many in the government in Moscow view the deal as a threat to their oil and natural gas exports.

"Many countries have confirmed their commitment to the accord," Alexander Novak, Russia's

energy minister, said June 2 at the St. Petersburg International Economic Forum. “Six G-7 countries maintain the commitment, and so does China. So I think in this case we don’t see significant risks of other countries dropping their commitment in a domino effect.”

Solar vs. Coal

While the Paris climate deal was seen as crucial to stopping catastrophic climate change, market forces play a key role in what technologies get new investment. Solar power is already cheaper than coal in some parts of the world. In less than a decade, it’s likely to be the lowest cost option almost everywhere, according to Bloomberg New Energy Finance.

European oil majors BP and Total said the transition to lower carbon fuel is inevitable regardless of Trump’s decision. Both called for a global carbon price to shift the world away from the dirtiest energy sources and are pursuing more investments in natural gas, which has lower carbon emissions than oil or coal.

“In 20 years, we will not be known as oil and gas companies, but as gas and oil companies,” Total Chief Executive Officer Patrick Pouyanne said at the St. Petersburg forum June 2. “If we want to have the gas, despite the position of president Trump, we need to go to carbon pricing one way or another.”

—With assistance from Jack Farchy, John Lippert, Ryan Beene and Anna Hirtenstein.

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EU, China Show Common Climate Front After U.S. Shuns Global Pact

Posted June 02, 2017, 11:10 A.M. ET

By Jonathan Stearns

The European Union and China displayed a united front over the need to fight climate change while revealing nagging differences over the path to deeper trade and investment ties.

Jean-Claude Juncker, president of the European Commission, the EU’s executive arm, said Europe and China must lead the global transition to clean-energy technologies after the U.S. decided to withdraw from the landmark climate-protection accord reached by almost 200 countries in Paris two years ago.

“There is no backsliding on the Paris agreement,” Juncker told an EU-China business conference June 2 in Brussels. Chinese Premier Li Keqiang told the same audience that EU-China ties help to counter “the growing uncertainties in the world.”

The two leaders spoke less than 24 hours after U.S. President Donald Trump provoked worldwide disappointment and anger by announcing plans to withdraw from the Paris pact, which curbs fossil-fuel production. Juncker said fighting climate change is “more important today than yesterday.”

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Trump’s Paris Exit Leaves Him Isolated From C-Suites to Capitals

Posted June 02, 2017, 9:49 A.M. ET

By Jennifer A. Dlouhy

The response to President Donald Trump's announcement he was exiting the Paris climate accord and wanted to renegotiate on his terms was immediate: The leaders of France, Germany and Italy said no.

On Wall Street, corporate executives pilloried the businessman president. Goldman Sachs' CEO tweeted for the first time, calling the move a setback for the environment and U.S. leadership. Tesla Inc.'s Elon Musk and Bob Iger of Walt Disney Co. quit a White House advisory council in protest.

Even the mayor of Pittsburgh, Pennsylvania -- a city Trump highlighted as a beneficiary of his decision to turn his back on the global pact -- vowed to abide by the Paris agreement.

Trump's decision leaves him more alienated than ever, isolated on the world stage and increasingly embattled at home.

Coming against the backdrop of sprawling probes into ties between Russia and Trump's campaign, the backlash threatens to sap the president's power when he needs it most to advance domestic priorities such as tax reform and a health care overhaul while confronting an increasingly bellicose North Korea.

It's a dramatic change in fortunes for the president after just 133 days in office. Business leaders no longer seem to fear Trump's tweets; foreign leaders have moved from attempts to find rapport to direct confrontation.

Consider that in earlier days, a tweet about Ford Motor Co. shipping U.S. jobs to Mexico prompted the automaker to announce it was abandoning plans to build a \$1.6 billion plant there.

Days after his election, Trump called the top executive of United Technologies Corp. and told him not to move jobs from a Carrier factory in Indianapolis to Mexico. Carrier partially relented, agreeing to keep 1,100 jobs in the U.S. in exchange for \$7 million in tax breaks and incentives from the state. Even so, 1,300 jobs are still going to Mexico.

And in her first visit with Trump in Washington, German Chancellor Angela Merkel gamely tried to shake Trump's hand during a photo opportunity, offering an optimistic assessment of the meeting despite the president's persistent criticisms of her country.

"I've always said it's much, much better to talk to one another and not about one another, and I think our conversation proved this," she said afterwards.

There is none of that fear and trembling now.

After Trump's announcement on Paris, Ford issued a statement asserting that "we believe climate change is real and remain deeply committed to reducing greenhouse gas emissions." Company chairman Bill Ford, the man Trump once described as "my friend," broke with the president over his executive order on immigration. And Ford still employs more than 7,000 workers in Mexico.

Although Carrier hasn't announced a change to its plans, other companies are moving production south. And foreign leaders now game out how to try to one-up the president.

In his first meeting with Trump, French President Emmanuel Macron squeezed Trump's hand so hard that the American's knuckles turned white. And when the two chatted before cameras, Macron spoke only French. He switched to English for his remarks with U.K. Prime Minister Theresa May.

After Trump's announcement on Paris, Macron tweeted, "Make our planet great again," and assured American scientists, engineers, entrepreneurs and "responsible citizens" they could find "a second homeland" in France.

Trump's first foreign trip as president left fellow members of the North Atlantic Treaty Organization unsettled and wary, as well. Trump omitted any clear commitment to the alliance's pledge of collective defense, leaving allies uncertain whether the U.S. would come to their aid if attacked.

Afterwards, unlike her White House visit, Merkel didn't extol the benefits of discussion.

She told a beer-hall rally in Munich that Europe "really must take our fate into our own hands," adding "this is what I have experienced in the last few days."

Former Defense Secretary Leon Panetta said the combined weight of Trump's NATO speech and his decision to leave the Paris agreement mark "the sad demise of a 70-year era of American global leadership."

"'America First' policies are threatening our strategic interests and eroding our moral standing in the world," Panetta said in a statement.

To be sure, the Republican voters that elected Trump to the White House have not turned away from the president. Among Republicans, 87 percent say they approve of the job Trump is doing, according to Gallup's most recent weekly poll. Trump's job approval has fallen just slightly, from 45 percent just after his inauguration to 41 percent.

And congressional leaders upon whom Trump depends to advance his agenda endorsed his action. House Speaker Paul Ryan (R-Wis.) called the Paris agreement "a raw deal for America" and commended the decision. And Senate Majority Leader Mitch McConnell (R-Ky.) was more blunt: "I applaud President Trump and his administration for dealing yet another significant blow to the Obama administration's assault on domestic energy production and jobs."

The tone of Trump's Rose Garden speech Thursday was unapologetic, evoking the inaugural address in which the president angrily lashed out at other countries playing the U.S. for a fool and vowed that "from this day forward, it's going to be only America first."

"The Paris agreement handicaps the United States economy in order to win praise from the very foreign capitals and global activists that have long sought to gain wealth at our country's expense," Trump said. "We don't want other leaders and other countries laughing at us anymore."

Trump did make an offer to renegotiate the Paris accord, but that was quickly rejected. Merkel, Macron and Italian President Sergio Mattarella issued a statement insisting that the agreement was "irreversible" and "cannot be renegotiated."

And after the president said he was taking action to put the interests of Youngstown, Ohio; Detroit, Michigan; and Pittsburgh above those of Paris, Bill Peduto, Pittsburgh's mayor, shot back that the city needed no such help: "I can assure you that we will follow the guidelines of the Paris agreement

for our people, our economy and future.“

—With assistance from Shannon Pettypiece

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Exxon Citizen Suit With Record Penalty Difficult to Repeat

Posted June 02, 2017, 7:01 A.M. ET

By *Renee Schoof*

The \$20 million fine recently levied against ExxonMobil Corp. is a record penalty for an air pollution lawsuit brought by a citizens' group, but attorneys say bringing other big cases like it will be difficult.

There are few targets as large as Exxon's Baytown Complex in Texas, one of the largest integrated refining and petrochemical facilities in the world. And environmental groups opposed to the Trump administration's policies are preparing to devote more of their time to defending Environmental Protection Agency regulations, sapping resources they might have used to sue industrial polluters.

While citizen suits in general are expected to increase, Clean Air Act cases like the Exxon suit are so complex that they stretch the bounds of what the groups can do, attorneys told Bloomberg BNA.

“We're not the federal government,” Joshua Kratka, a senior attorney at the non-profit National Environmental Law Center who argued the case against the Baytown refinery, said. “There's no way we have those resources. There's really no substitute for a strong and effective EPA.”

A U.S. District Court for the Southern District of Texas judge in April assessed penalties of more than \$21 million for violations of Exxon's Clean Air Act permits based on self-reported “emissions events,” or unauthorized pollution caused by equipment malfunctions or startup and shutdown. Since the company already had paid more than \$1.4 million in state and local penalties, the net penalty was about \$19.9 million. It appeared to be by far the largest citizen suit penalty based on records going back about 10 years, according to the Justice Department.

Exxon on May 24 filed a [motion](#) to alter the judgment, challenging the basis for the penalty and arguing that it should be eliminated. Kratka said plaintiffs would file a response arguing that Exxon's case was without merit.

Resource-Intensive Cases

The Clean Air Act allows citizens groups, such as environmental advocates, to bring enforcement challenges to industrial facilities believed to be violating federal air pollution standards. But the cases are expensive and time-consuming, attorneys said.

“There aren't that many Clean Air Act citizen suits in any given year,” Eric Schaeffer, executive director of the Environmental Integrity Project and a former director of EPA's Office of Civil Enforcement, said. “They're difficult to bring.”

Environmental groups will increasingly use their resources for suits against the federal government over rollbacks of environmental regulations on the fossil fuel industry, Kratka said. And “the more times citizen and environmental groups have to sue the government, the less capacity they have to

sue the violators.”

The Baytown lawsuit succeeded because the environmental attorneys did a careful job of researching the facts of the violations, attorneys said. They had a boost because air emissions reports must be made available online in Texas, and the groups used those reports as evidence that Exxon had violated federal pollution limits. They also got four people who lived near the complex to testify.

Environment Texas Citizen Lobby Inc. and the Sierra Club sued Exxon in 2010. The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg, founder of Bloomberg L.P. Bloomberg BNA is an affiliate of Bloomberg L.P.

The suit claimed there were unauthorized air emissions of benzene, sulfur dioxide and other pollutants from Exxon’s Baytown refining and petrochemical complex between October 2005 and September 2013. It cited State of Texas Environmental Electronic Reporting System (STEERS) reports to the Texas Commission on Environmental Quality documenting emissions of pollutants.

‘Too Big to Comply’

Despite the hefty fine, Seth D. Jaffe, a partner at Foley Hoag LLP in Boston and coordinator of the firm’s environmental practice group, who was not involved in the case, said the decision could be viewed as a victory for Exxon because the penalty covered years of violations and was small in comparison to the roughly \$500 million the company spends on maintenance every year.

The maximum penalty could have reached \$500 million, Jaffe wrote in a [blog](#). Moreover, the federal judge denied the plaintiffs’ request for injunctive relief.

“I think it’s a win for Exxon because the law does not make any exceptions for facilities that are too big to comply,” Jaffe told Bloomberg BNA. “The fact that it’s impossible to comply doesn’t mean you don’t have to pay something if you’re in violation.”

Exxon Already Fined by Texas Regulator

An ExxonMobil spokesman said Texas regulators handled the case when the Texas Commission on Environmental Quality imposed the \$1.4 million penalty on the basis of an agreed upon order. The state regulator also ordered Exxon to take corrective actions to reduce emissions. Exxon and the TCEQ agreed on the enforcement order in February 2012, two years after the environmental groups sued.

The spokesman, Todd Spitler, told Bloomberg BNA that aggregating volumes from emissions events over time, as the environmental groups did, “does not appropriately or accurately reflect the nature of the events or indicate an underlying issue at our integrated Baytown complex.”

That’s because the company reports emissions to federal and state regulators in a timely and consistent manner, complies with “all laws, regulations and permits, and has a robust compliance assurance system that enables workers to identify and report potential deviations from the company’s Clean Air Act permit requirements, Spitler said.

“Baytown personnel dedicate thousands of hours every year monitoring, validating and documenting our compliance to these regulations and our permits,” he said.

Spitler also said the Baytown complex had spent more than \$1.3 billion since 2003 on environmental projects aimed at improving air quality and energy efficiency. Since 2005, the Baytown complex has reduced emissions from malfunctions and maintenance reported to the TCEQ by 90 percent, he said. Court records showed Exxon spent between \$464 million and \$685 million per year on maintenance of equipment at the complex.

Successful But Rare

The Baytown case is the third successful Clean Air Act citizen lawsuit filed by advocates against facilities in the Houston area over the past decade. During the trial, the Texas Oil & Gas Association raised fears that if the court validated the advocates' approach, it could lead to a "a cascade of citizen suits, seeking to relitigate years of past administrative enforcement."

But Environment Texas, one of the advocacy organizations involved in the Baytown litigation, can only handle one citizen lawsuit at a time, Luke Metzger, founding director of the group, told Bloomberg BNA.

Environment Texas is already involved in another Clean Air Act suit, this one against Pasadena Refining System Inc., which is owned by Petroleo Brasileiro S.A. (Petrobras). The lawsuit, filed in March, alleged the Houston-area refinery violated emissions limits thousands of times over the past five years.

Environment Texas and the Sierra Club filed two others since 2008—one against Chevron Phillips Chemical Co. and another against Shell Oil Co. Both were resolved with consent agreements. The groups said that the companies reduced emissions from their Gulf Coast plants by about 95 percent, or more than was required by their settlements.

Those cases, like the Exxon citizen suit, involved mainly "upset events," such as equipment breakdowns and malfunctions.

"The goal is to get plants to put money into maintenance and better design and training, so they don't break down and flare pollution into the community," Kratka said.

Texas has an affirmative defense for such upset emissions, meaning that if a company can prove that it satisfied conditions such as the events being unavoidable or not recurring, it has a defense against penalty.

Kratka, who argued the appeal before the Fifth Circuit, said that ExxonMobil said all the violations met those criteria.

"We challenged every one, and the judge this time said it was the defendant's burden to come up with proof," Kratka said.

N.Y. Says Exxon's Climate Change Proxy Costs May Be 'Sham'

Posted June 02, 2017, 12:27 P.M. ET

By [Erik Larson](#)

New York's top cop told a judge that his probe into Exxon Mobil Corp. uncovered "significant evidence" the oil giant may have misled investors about how it calculates the impact of climate

change on assets and project decisions.

New York Attorney General Eric Schneiderman said in a court filing June 2 that the investigation into Exxon's public statements about climate change revealed that for the last decade it may not have been pricing in the future impact of greenhouse gas emissions as it claimed.

"That evidence suggests not only that Exxon's public statements about its risk management practices were false and misleading, but also that Exxon may still be in the midst of perpetrating an ongoing fraudulent scheme on investors and the public," Schneiderman said.

If true, the allegations risk inflaming investors who this week backed a non-binding resolution urging the Irving, Texas-based company to consider whether it can prosper under strict greenhouse gas limits. While Exxon opposed the vote, it has accepted climate-change science and opposed President Donald Trump's decision to pull the U.S. out of the 2015 Paris Climate Accord.

Alan Jeffers, an Exxon spokesman, didn't immediately return a call for comment before regular business hours June 2. A message left with the company's media line wasn't immediately returned.

Proxy Costs

The allegations center on Exxon's claim that it applies so-called proxy costs to greenhouse gas emissions, which the company says "reasonably approximates the range of potential future government actions with respect to climate change," according to the filing. The attorney general said Exxon regularly cites the proxy costs to "assure investors that none of Exxon's projects or assets will be materially affected by future climate change-related regulations."

That claim may be vastly exaggerated, Schneiderman said in his filing in state court in New York.

"Exxon has identified only a single, anomalous instance in which a proxy cost was actually applied," the attorney general said. "Exxon's documents reveal a widespread lack of awareness among employees of the proxy cost policy, or how it should be applied."

The use of proxy costs "may be a sham," and Exxon also has "secret internal versions of proxy costs," Schneiderman alleged. The company told an employee from its majority-owned Imperial Oil Ltd. not to apply it to its Canadian oil sands projects, according to the filing.

Exxon has refused to make the employee available to testify, "contending for the first time that it lacks control over its majority-owned subsidiary from which it has been producing documents for months," he said.

Exxon has repeatedly denied wrongdoing and claims the state probe was started in "bad faith" because the outcome had been predetermined based on ideological coordination with environmental groups and even former Vice President Al Gore, an outspoken opponent of climate change.

Schneiderman and his Massachusetts counterpart, Maura Healey, have been investigating since 2015 whether Exxon misled the public and investors by withholding information about how climate change could impact the company's finances. Exxon sued to block their subpoenas for millions of pages of documents, while Republicans in Washington have sought to derail the investigations from Capitol Hill.

Schneiderman also referenced for the first time the existence of a second alias email account that was discovered in the course of the investigation, months after he accused Exxon of failing to disclose former Chief Executive Officer Rex Tillerson's secondary email account. He used the alias Wayne Tracker to discuss sensitive topics with the board.

The identity of the owner of the new alias account, which has the name "J.E. Gray," wasn't disclosed in the June 2 filing.

Sworn testimony of Exxon's lawyers suggested the company may have withheld the existence of the alias accounts as a "test of whether the Attorney General's office is reading the documents," according to Schneiderman.

Schneiderman filed the additional material in support of his May 8 subpoena to Exxon. The case was transferred to Manhattan by a federal judge in Dallas who said it belonged in New York, effectively restarting the litigation from scratch. Schneiderman has used the opportunity to make fresh allegations.

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