2017 Outlook Environment & Energy

AIR, CLIMATE CHANGE
AIR POLLUTION Air rules may get caught up in Trump's rollback plans .............................................. S-5
CLIMATE REGULATION Advocates sue to preserve climate gains ..................................................... S-8
CLIMATE REGULATION Trump readies retreat from Obama actions on international climate issues .......... S-11

CHEMICALS
CHEMICAL CONVENTIONS New restrictions expected from international chemical conventions ........... S-12
CHEMICALS Amended chemicals law implementation top priority ..................................................... S-15
REACH Major review of EU's REACH chemical regulation on tap ................................................... S-13

COURTS, ENFORCEMENT
COURTS More litigation, same balance forecasted for high court ......................................................... S-24
ENFORCEMENT Enforcement priority changes expected but unknowns abound ............................. S-19
REGULATORY POLICY Courts needed to maintain regulatory balance .............................................. S-21
Reality of removal will temper Trump deregulation plans ............................................................. S-23

ENERGY
ENERGY Trump administration expected to curtail energy regulations ............................................... S-28

Yucca Mountain expected to see new life as nuclear waste site ....................................................... S-32

PIPELINE SAFETY U.S. pipeline agency to focus on data, outreach .................................................. S-35

HAZARDOUS SUBSTANCES
HAZARDOUS WASTE Trump administration to absorb hazardous waste agenda ................................ S-37
SUPERFUND Superfund to focus on contribution claims, new EPA rules ........................................ S-39

INTERNATIONAL
BRAZIL Brazil could loosen environmental licensing for business .................................................... S-43
CANADA Canada focus turns to carbon pricing, pipelines ................................................................... S-44
CHINA China to begin national carbon market .................................................................................. S-51
EUROPEAN UNION European Union seeks environmental progress in difficult times ..................... S-52
FRANCE Clean air plan, renewables on agenda for France .................................................................. S-47
GERMANY Germany aligns environmental agenda with election year ............................................. S-45
INDIA India pursues major solar, wind projects .................................................................................. S-54
MEXICO Mexico looks to expand grid to support renewable power ................................................ S-49
OECD OECD to work on climate policy, chemical safety .................................................................. S-57
UNITED KINGDOM U.K. to counter Brexit fears with emissions plan ................................................. S-56
UNITED NATIONS Ship emissions next target of United Nations climate push ......................... S-59

PESTICIDES Uncertainty the theme of 2017 for pesticides, biotech ........................... S-61

WATER Fate of water rule remains uncertain ahead of Trump EPA ........................................... S-66
Air, Climate Change

Air Pollution

Key Obama-Era Air Rules Could Be Caught Up in Trump’s Regulatory Rollback Plans

Obama-era regulations on ground-level ozone and utility sector emissions are potential targets for a rollback under President-elect Donald Trump, but environmental advocacy organizations are planning a vigorous defense of those regulations in the courts and in the U.S. Senate.

At the same time, the transition of power from President Barack Obama to Trump inserts uncertainty into the status of ongoing Clean Air Act litigation and rulemaking at the Environmental Protection Agency, though the agency will still face several looming deadlines to take action on implementing the 2015 ozone standards, reviewing national air toxics standards and making decisions on state pollution plans.

Outside of the regulatory sphere, 2017 also will see continued implementation of the $14.7 billion Volkswagen diesel settlement, with planned activities including continued buyback of non-compliant cars, the first round of funding under a mitigation account intended to reduce nitrogen oxides emissions and VW working on a plan to invest in zero emissions vehicle infrastructure and market development.

Air Regulation Rollback Efforts During the campaign, Trump pledged to rescind environmental regulations including the Clean Power Plan and the Waters of the U.S. Rule. However, he offered few specifics on his plans for Clean Air Act rules that don’t target greenhouse gases beyond statements that he will “ensure clean air and clean water” while reducing the number of federal regulations on the books and promoting domestic energy production.

There are some indications those Clean Air Act rules could be on Trump’s agenda. His transition website promises a “top-down” review of all regulations on the coal industry, which could include several Clean Air Act rules targeting emissions from coal-fired power plants. In addition, Trump selected Oklahoma Attorney General Scott Pruitt (R)—who brought lawsuits against the 2015 ozone standards, the Mercury and Air Toxics Standards for power plants and other air rules—for nomination as EPA administrator, further signaling a likely change in the direction of the agency’s air program.

Conservative, free-market and business organizations are lining up with recommendations for the Trump administration to take steps to alter the EPA’s regulatory course. For example, the National Association of Manufacturers suggested in a white paper that the new administration work with Congress to allow the EPA to conduct less frequent reviews of its national ambient air quality standards for ozone and other pollutants, while the Manhattan Institute called on the Trump administration to suspend the EPA’s new source performance standards and instead subject new industrial facilities to the same emissions standards that apply to existing pollution sources.

The Trump transition did not respond to a request for an interview to discuss the new administration’s environmental policy priorities in 2017 and beyond. However, observers told Bloomberg BNA that they expect to see the incoming administration make changes to the EPA’s air program, including a likely push to cut back some of the key regulations and policies implemented during Obama’s two terms in power.

“I would be shocked if rollback were not a component of their agenda,” William Yeatman, a senior fellow at the Competitive Enterprise Institute, told Bloomberg BNA. “There is any number of ways to skin that cat.”

Yeatman has no involvement with the Trump transition, though two of his colleagues at the Competitive Enterprise Institute, Myron Ebell and Christopher Horner, are serving on the transition’s EPA review team.

The Trump administration would have several potential avenues to try to alter some of the Obama EPA’s air pollution rules, including:

- using the administrative rulemaking process to either rescind or substantially change rules;
- working with Congress to halt implementation of rules, revise the Clean Air Act and use expedited floor procedures under the Congressional Review Act to scrap EPA regulations issued since June 13;
- abandoning the legal defense of rules that are subject to ongoing litigation; and
- slowing down implementation and easing enforcement of established regulations.

Advocates Plan Defense in Courts Janet McCabe, acting assistant EPA administrator for air and radiation, told Bloomberg BNA in an interview that during the Obama administration, the agency made “a lot of progress” on reducing hazardous air pollution and oversaw an 18 percent reduction in levels of criteria pollutants like ozone, sulfur dioxide and particulate matter between 2009 and 2015.

McCabe said that during her time at the EPA she had the opportunity to work on programs that will “affect millions of people for years to come,” including more stringent national ambient air quality standards, the Mercury and Air Toxics Standards for power plants and rules limiting power plant emissions that cross state lines.

Environmental advocacy organizations like the Natural Resources Defense Council are planning to play defense in an attempt to preserve those Obama-era air rules during the Trump administration.
Scott Pruitt’s History of Air Pollution Lawsuits

Oklahoma Attorney General Scott Pruitt, President-elect Trump’s pick to head the EPA, has a history of challenging agency decisions. Here are some of the challenges Pruitt made to Obama-era air pollution rules.

“We will fight any attempt to roll back Clean Air safeguards and health protections,” John Walke, clean air director at the NRDC, told Bloomberg BNA. “It’s that simple.”

Any attempt by the Trump administration to weaken or rollback clean air regulations will be “met with lawsuits and opposition” from environmental advocates, Walke said. In addition to lawsuits, the strategy for environmental advocates will be to try and block any legislation that would weaken the Clean Air Act from getting enough votes to pass the Senate.

Process Must Be Followed In order for the Trump EPA to rescind or change a rule that is already on the books, the agency will have to follow an administrative process that requires an appropriate record to support its decision-making. That process must be “rational and reasonable and in accordance with the law,” according to Ignacia Moreno, former assistant attorney general for the Justice Department’s Environment and Natural Resources Division. Moreno, during remarks at a November conference hosted by New York University Law School’s Institute for Policy Integrity, said there would be no “short cut” available for the Trump administration if it seeks to rollback environmental rules.

Undoing established regulations is sometimes a “time-consuming and difficult process” with no guarantee of success, according to Jonathan Adler, director of the Center for Business Law & Regulation at the Case Western Reserve University School of Law. Adler teaches courses in environmental, administrative and constitutional law.

Adler told Bloomberg BNA that some EPA initiatives during the George W. Bush administration “foundered” due to mistakes in the rulemaking process, which resulted in successful legal challenges by environmental advocates and states.

Adler highlighted the Clean Air Mercury Rule, a 2005 rule that established an emissions trading system to reduce utility sector mercury emissions. The U.S. Court of Appeals for the District of Columbia Circuit in 2008 va-
cated the rule after determining the EPA did not make
the specific findings required under the Clean Air Act to
remove power plants from a list of hazardous air pollut-
ant sources that must be subject to strict emissions lim-
its (New Jersey v. EPA, 517 F.3d 574, 65 ERC 1993, 2008
BL 24283 (D.C. Cir., 2008)).

An EPA under the leadership of Pruitt, who has
shown a “real commitment to federalism” during his
time as Oklahoma attorney general, would likely take
steps to undo some Obama-era regulatory initiatives
and move ahead with action that is more deferential to
states, Adler said. However, he acknowledged that it
is difficult to make a regulatory agency change course.
“We’ve seen AG Pruitt be a very aggressive and very
effective critic of EPA,” Adler said. “We’ll have to see
how that translates into trying to alter EPA’s trajec-
tory.”

**Likely Regulatory Freeze, but Deadlines Loom**

Trump has pledged in speeches that his administration will
protect clean air and clean water for Americans, but the
outlook for any new regulatory activity past Trump’s in-
auguration is unclear. Trump has pledged to issue a
temporary moratorium on new agency regulations and
implement a new requirement for his administration
that every new regulation issued be accompanied by the
elimination of two existing rules.

While the Trump transition hasn’t offered any more
information on how the “one in, two out” policy would
be implemented, Trump’s pledge to issue a freeze on
new regulations would be consistent with recent his-
tory.

One of the first actions of the Obama administration
was to send a memorandum to regulatory agencies in-
structing them to withdraw any rules that were not yet
published in the Federal Register, consider extending
the effective date of rules that were already published
but not yet in effect and not transmit any additional pro-
posals or final rules to the Office of the Federal Regis-
ter unless they had been approved by an Obama ap-
pointee. Presidents George W. Bush and Bill Clinton
took similar steps to freeze new regulations early in
their terms.

In the past, beginning-of-administration regulatory
freezes have not applied to regulations subject to statu-
tory or judicial guidelines. If the Trump administration
follows suit, that would mean the EPA would be ex-
pected to issue various Clean Air Act regulations, statu-
tory freeze or not. The agency’s air program is subject
to statutory and judicially-enforceable deadlines in 2017
for a variety of actions, both before and after Trump’s
inauguration. Those actions include:

- **Jan. 19** — action against more than a dozen states
  that missed statutory deadlines to submit plans con-
  cerning implementation of national ozone standards
  (proposed settlement deadline);

- **Feb. 13** — a decision on whether to approve a re-
  vised Nevada plan for addressing emissions that cross
  state lines under the 2008 ozone standards (settlement
deadline);

- **Oct. 1** — designations of areas that do and don’t
  meet the 2015 ozone standards of 70 parts per billion
  (statutory deadline);

- **Oct. 27** — a response to a 2013 petition that seeks
  the addition of nine states to the Ozone Transport Re-
  gion, which would subject them to additional pollution
  control and planning requirements (settlement dead-
  line); and

- **Dec. 31** — designations under the 2010 primary
  sulfur dioxide standard for areas that haven’t installed
  a new sulfur dioxide monitoring network (settlement
deadline).

Statutory deadlines, along with judicially-enforceable
deadlines resulting from citizen lawsuits challenging
missed deadlines, are being looked at by environmental
advocates as a tool against Trump’s EPA, according to
Pat Gallagher, director of the Sierra Club’s Environ-
mental Law Program. The Sierra Club has received
funding from Bloomberg Philanthropies, the charitable
organization founded by Michael Bloomberg, the ma-
ajority owner of Bloomberg L.P., parent of Bloomberg
BNA.

Environmental advocacy organizations like Sierra
Club have routinely sued the Obama administration for
missing Clean Air Act deadlines, a trend Gallagher ex-
pects to continue during the Trump administration.

“The environmental community will hold the Trump
administration to those deadlines...we will go to court,”
Gallagher told Bloomberg BNA. “I think that area of
work will only grow, potentially exponentially, under
the Trump administration.”

**What Happens to Pending Litigation?**

In addition to a slate of regulatory deadlines, the Trump
administration also will inherit a variety of ongoing lawsuits in which
the Justice Department is defending Obama-era air
rules. That includes challenges to the 2015 ozone stan-
dards and an EPA finding on regulating power plants
that underpins the agency’s Mercury and Air Toxics
Standards.

At the beginning of an administration, the Justice De-
partment can ask courts to halt progress on pending lit-
igation, according to Thomas Lorenzen, a partner with
Crowell & Moring LLP in Washington D.C. Lorenzen,
who formerly worked in the Justice Department’s Envi-
ronmental Defense Section, told Bloomberg BNA that
those cases can be held in abeyance for a “relatively
short period” if the new administration wants to con-
tinue defense of those rules or a longer freeze if the
agency decides they want to reprouse or withdraw the
regulation in question.

“I suspect we’re going to be seeing a lot of that”
when Trump takes office, Lorenzen said.

Walke of the NRDC said early in past administrations
there have been situations where the incoming govern-
ment leadership has decided to abandon the govern-
ment’s opposition to lawsuits, settle lawsuits or even
join the side of the parties challenging the decisions of
the previous administration. However, Walke said envi-
ronmental advocates involved in litigation, either as pe-
titioners or intervenors, will “vigorously protest” any
efforts by incoming EPA leadership to reverse course
on regulations that are subject to litigation.
“They remain parties to the lawsuit, even if the government switches sides,” Walker said. “So those cases don’t automatically roll away.”

The U.S. Court of Appeals for the District of Columbia Circuit, which has jurisdiction over nationally applicable Clean Air Act rules, has scheduled oral arguments in three different air pollution lawsuits during the first half of 2017. Those are:

- Feb. 10 — a lawsuit brought by environmental advocates against an EPA finding that the agency fulfilled its legal obligations to control industrial emissions of mercury and other hazardous air pollutants (Sierra Club v. EPA, D.C. Cir., No. 15-1246, 12/12/16)
- April 19 — challenges to the EPA’s 2015 ozone standards (Murray Energy v. EPA, D.C. Cir., No. 15-1385, 11/7/16)
- May 8 — state challenges to the EPA’s “startup, shutdown, malfunction SIP Call,” which requires 36 states to make changes to plans for addressing excess air pollution emissions (Walter Coke Inc. v. EPA, D.C. Cir., No. 15-1166, 12/2/16)

Lorenzen said it’s unclear what will happen to those cases, but acknowledged it is “certainly a possibility” that the incoming Trump administration could ask the court to postpone those arguments. The D.C. Circuit in December opted to reschedule arguments in the ozone litigation from February until April, though the court did not explain its decision.

**Volkswagen Money to Flow** While there is some uncertainty over the EPA’s regulatory agenda for 2017, at the state and local level, environmental regulators are working on plans to improve air quality using funding under the $14.7 billion diesel emissions settlement between Volkswagen AG, the federal government and consumers. The settlement requires the automaker to place $2.7 billion into a trust fund that will be used on air quality improvement projects intended to mitigate the excess pollution caused by VW diesels equipped with illegal defeat devices that allowed the vehicles to pass emissions tests despite emitting more nitrogen oxides than allowed during normal driving conditions.

The conditions of the trust fund allow money to be spent on projects to upgrade older, higher-emitting diesel technology with cleaner options, including the newer diesel or vehicles powered by alternative fuels. McCabe told Bloomberg BNA that the mitigation trust fund is “an incredible opportunity for states” to fund supplementary air quality improvement projects.

Money won’t be awarded under the trust fund until a trustee is appointed to oversee disbursement of the funds, which will be followed by a process wherein states and tribes will need to formally file for “beneficiary status” in order to be eligible for money. Neither Volkswagen of America nor the EPA could offer a projection on when the trustee will be named, but state agencies are already planning how they will spend their share of the trust fund money, according to S. William Becker, executive director of the National Association of Clean Air Agencies. NACAA represents air pollution agencies from 40 states, the District of Columbia and many metropolitan areas.

“Every state in the country will be receiving a significant amount of money as part of the mitigation fund,” Becker told Bloomberg BNA. “There’s enough need among the states on [nitrogen oxides] and diesel controls in a variety of sources where this will make a demonstrable and important improvement to air quality.”

States could be in line to receive even more funding from Volkswagen: the U.S. Justice Department Dec. 20 announced a separate $1 billion settlement over a different class of Volkswagen diesels that, if approved by the court, would make another $225 million in environmental remediation funds available to states.

**Climate Regulation**

**Environmental Advocates Turn to Lawsuits To Preserve Obama Climate Change Gains**

Environmental advocates will wage rearguard actions through the courts and regulatory process in the coming year to preserve the greenhouse gas regulations established by the Obama administration from President-elect Donald Trump, who once called climate change a Chinese hoax.

Trump has repeatedly vowed to undo the Clean Power Plan, the Obama administration’s carbon dioxide limits on power plants, and his calls to remove impediments to fossil fuel development could jeopardize the first suite of methane limits on new oil and gas wells.

Environmental advocates are gearing up to preserve the gains of the Obama era through lawsuits and petitions to the Environmental Protection Agency to spur additional rulemaking or defend the regulations already in place. Those preparations come in the wake of recent Trump statements that suggest human activities contribute to climate change and that he may pull the U.S. out of the first global agreement to curb greenhouse gas emissions.

“We’ve seen this in past administrations,” Joanne Spalding, a managing attorney at the Sierra Club, told Bloomberg BNA. “That’s why we spent years litigating the EPA’s authority to regulate greenhouse gas emissions in the first place. I anticipate that will become a part of our strategy. If the administration says ‘We’re not going to adopt rules for various source categories,’ we’ll probably litigate those.”

Environmental advocates say the election of Trump puts them on similar footing to the last Republican president, George W. Bush. Advocates for addressing climate change repeatedly had to petition and sue the Bush administration to prod it toward action, resulting in a landmark U.S. Supreme Court case that affirmed the EPA’s ability to regulate greenhouse gases as an air pollutant under the Clean Air Act.

Despite the experience, the Trump administration may present a new array of challenges for environmental advocates.

“The big overarching question is are we looking at a challenge to environmental protections that will look similar to what we’ve seen before in the second Bush administration and the Reagan years or are we looking at something that is really unpredictable, something that is different from what we’ve seen before,” Michael
Burger, executive director of the Sabin Center for Climate Change Law at the Columbia Law School, told Bloomberg BNA.

**Major Rules Vulnerable** Though the Obama EPA established the first regulatory regime to curb greenhouse gas emissions, many of the major pieces remain vulnerable as a skeptical Trump administration takes over. Trump has already vowed to pull back the Clean Power Plan (RIN:2060-AR33), the centerpiece of Obama’s efforts to address climate change domestically and the backbone of the U.S. commitment to reduce its greenhouse gas emissions under the international Paris Agreement.

In September, a 10-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit heard a full day of argument on the Clean Power Plan, and a decision is expected early this year (West Virginia v. EPA, D.C. Cir. en banc, No. 15-1363, 9/27/16).

If the court were to uphold the Clean Power Plan, the Trump administration could appeal the decision to the Supreme Court, which currently has a vacancy that Trump will fill, retaining the court’s current conservative tilt. If it’s remanded to the EPA for correction, a Trump administration could significantly undercut the rule’s emissions requirements or even attempt to repeal it, though both options would spur more litigation from environmental groups.

“All roads do lead to rulemaking even if they are able to get a voluntary remand from D.C. Circuit,” Megan Berge, a partner at Baker Botts LLP’s Washington, D.C. office, who represents industry groups, told Bloomberg BNA.

The D.C. Circuit is also reviewing briefs on similar carbon dioxide standards for new and modified power plants (RIN:2060-AQ91), which are a prerequisite for the EPA regulating the existing fleet under the Clean Power Plan. Briefing in that case is currently due to conclude in February (North Dakota v. EPA, D.C. Cir., No. 15-1381, briefs filed 10/13/16).

In both cases, the incoming Trump administration could seek a stay of the lawsuits while it reconsiders the regulations, said Burger, who represented cities supporting the EPA in litigation over the Clean Power Plan. However, the court could wait for the administration to take concrete steps under its review before granting such a stay.

**Methane Rules May Survive** Rolling back Obama regulations on methane, a short-lived but extremely potent greenhouse gas, may prove more difficult for a Trump administration that has vowed to remove impediments to fossil fuel production, said Mark Brownstein, vice president in the Environmental Defense Fund’s climate and energy program in New York.

Two Obama administration methane regulations—one issued by the EPA for new and modified oil and gas wells under Section 111(b) of the Clean Air Act (RIN:2060-AS30), and the other issued by the Interior Department that limits venting and flaring from oil and gas wells (RIN:1004-AE14)—are being challenged in court.

But even if the Trump administration chose not to defend the regulations, there are other parties to those lawsuits that would step in and defend them, Brownstein said.

---

**VOLKSWAGEN SETTLEMENT BY THE NUMBERS**

Volkswagen AG reached a partial settlement with the federal government to spend as much as $14.7 billion to resolve its emissions cheating scandal in 500,000 diesel vehicles.

**THE SETTLEMENT REQUIRES VOLKSWAGEN TO:**

- **CREATE A $10 BILLION** compensation fund for owners who purchased vehicles with defeat devices.
- **PAY $12,500 to $44,000** to consumers who want to sell their cars back to Volkswagen.
- **PAY $2.7 BILLION** for projects to reduce nitrogen oxides emissions.
- **INVEST $2 BILLION** in zero-emissions vehicles.

A BNA Graphic/Volk21g1
“We don’t know how those court cases will turn out, but we think both rules are on strong footing,” Brownstein said.

Another route for rolling back these particular regulations could be under the Congressional Review Act. Nixing the rules under the review act technically means the rule wouldn’t take effect and no similar rule to that could be issued, Brownstein said.

However, this route is largely untested. The review act has only been used once to repeal a set of Labor Department ergonomic standards and those stakes were small enough that the constitutionality of that action wasn’t challenged, Brownstein said. That wouldn’t be the case with these rules, he said.

“If this becomes a major path to shredding administrative action for environmental purposes or otherwise, then you can be certain that there would be a constitutional challenge here on separation of powers,” Brownstein said.

Like the power plant standards, the Trump EPA could attempt to rescind the methane standards through the regulatory process, but that would again be challenged by environmental groups.

The EPA could not “make a decent case that suddenly this was a big mistake,” especially when states such as Wyoming are adopting the federal standards for new and modified oil and gas wells by reference into their rules, Brownstein said.

Deregulation Not a Panacea Though observers expect the Trump administration to slow the pace and stringency of new regulations and possibly roll back existing rules, deregulation may not be in industry’s best interest, attorneys said.

“If you just focus on deregulating, you create a vacuum, and that vacuum gets filled with litigation and uncertainty,” Berge said.

Rather than whole rollbacks of EPA regulations, targeted fixes may be more beneficial and provide more certainty to industry groups, she said.

“We don’t need someone to come in with a bulldozer and try to clear the field. We need a surgeon not a sledgehammer,” she said.

Many industries are already making independent efforts to address climate change as part of their business practices, Jon Sohn, counsel at Dentons in Washington, D.C., who has represented clients on climate issues before the EPA and White House Council on Environmental Quality, told Bloomberg BNA.

“A number of them are already planning for this across all sectors,” he said. “It’s not as if every natural gas power plant producer out there is against the Clean Power Plan for instance. The challenge is to move past the politicization of climate change and take a hard look at the science.”

Refrigeration Industry Defends Phaseout While there are many areas where industry is pushing for rollbacks, there is at least one issue area where industry is fearing one instead.

Air conditioning and other refrigeration companies are worried ratification of an international agreement that would cut 80 percent of super-polluting hydrofluorocarbons could come under scrutiny in the new Republican-led regime, said Stephen Yurek, president of the Air-Conditioning, Heating & Refrigeration Institute in Arlington, Va.

“We are concerned [about] this getting wrapped up in the broader discussion of the Paris accord and climate change,” Yurek told Bloomberg BNA.

The Kigali amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer that would phase down use of HFCs globally, reached in October, should be ratified because it is implementable and feasible and industry is on board, Yurek said.

“They’re quite comfortable with the changes that are coming and they won’t want their investments to be disrupted by the U.S. changing courses,” Durwood Zaelke, president of the Institute for Governance & Sustainable Development in Washington, D.C., told Bloomberg BNA.

The industry is also largely on board with domestic regulations phasing out hydrofluorocarbons, including those under the EPA’s Significant New Alternatives Policy program, although the industry had pushed for a later compliance deadline, Yurek and Zaelke said.

While Zaelke said industry might want more flexibility in complying with those rules, he added that he didn’t see those rules changing “radically.”

Encouraging in States, Fighting in Congress With Republicans in control of both houses of Congress, the presidency and the Supreme Court, environmental advocates said they will turn their attention to states and businesses interested in acting on climate change while fending off legislation to roll back programs already in place.

“The posture will be one most immediately of defense,” Burger said. “I fully expect to see an onslaught of legislation. Regardless of where Trump settles, the Republicans in Congress, we know where they stand. I
expect to see an onslaught of activity to roll back climate regulations and environmental protections more generally.”

Without the prospect of federal action, states may be the drivers of continued emissions reductions, advocates said.

“We’ll probably be focusing on states and trying to get states to go further on reg actions,” the Sierra Club’s Spalding said. “It’s unlikely we’ll be seeing any federal regulation in some areas in the next four years.”

Though environmental groups are gearing up for a more combative relationship than they enjoyed with the Obama administration, they have not ruled out working with Trump where possible.

“We are prepared to engage where there’s possibilities for constructive engagement,” Alden Meyer, director of strategy and policy at the Union of Concerned Scientists in Washington, D.C., told Bloomberg BNA.

By Andrew Childers and Rachel Leven

To contact the reporters on this story: Andrew Childers and Rachel Leven in Washington, D.C., at AChilders@bna.com and RLeven@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

International Climate

Trump Readies Retreat From Obama Actions on International Climate Issues

Aside from occasional flickers of hope that his mind isn’t made up, President-elect Donald Trump is readying a 2017 rollback of his Democratic predecessor’s climate change agenda—up to and including withdrawing the U.S. from the Paris climate pact.

While the enormity of that change will not be clear until key positions in his Cabinet are confirmed, his nominees for the Environmental Protection Agency, State Department and Energy Department indicate a skepticism of climate actions and science, and all signs point to a retreat from an era of international climate engagement under President Barack Obama.

Even the most ardent supporters of the 2015 climate accord—reached after more than 20 years of talks aimed at committing developed and developing nations alike to address greenhouse gas emissions—expect a monumental change under Trump.

In the end, Trump could reverse his campaign pledge to “cancel” U.S. participation in the Paris Agreement and steer clear of an even more drastic move: complete U.S. withdrawal of the world’s No. 2 emitter from climate talks under the United Nations Framework Convention on Climate Change, the parent treaty to the Paris accord. But right now, those actions remain on the table.

It is “a time of profound uncertainty,” acknowledged Christo Artusio, whose work on U.S. climate negotiations at the State Department dates to the beginning of the George W. Bush administration. “I would find it unlikely that a future administration would intend to roll back” some policies that enjoy broad support from affected industries, he said, such as production tax credits for wind and solar energy.

But “there are others where it’s just a completely open question,” said Artusio, who directs the State Department Office of Global Change.

Next Move Hard to Predict

For some, it has been difficult to distinguish between the array of actions being contemplated and the degree to which the incoming administration is leaning toward a Paris withdrawal, which is a lengthier process that could drag on for four years, or a UNFCCC withdrawal, which would take only a year. But either action would signal a reversal of eight years of U.S. engagement on the climate issue.

The president-elect has at times given climate advocates reason for cautious optimism—meeting with former Vice President Al Gore for an early December climate talk, for example—but Trump’s comments continue to suggest he sees the deal as fundamentally flawed. “You’ll have a decision pretty quickly” on the Paris pact, Trump said in a lengthy Fox News Sunday interview Dec. 11, 2016, adding that he was “studying” the issue closely.

“I do say this: I don’t want that agreement to put us at a competitive disadvantage with other countries,” Trump said, adding he is wary of “different time limits” in the deal that could give China or other nations a competitive advantage over the U.S. Trump has expressed concerns that China, the world’s top emitter, took on a relatively modest pledge as its contribution to the Paris Agreement.

China is to peak its carbon emissions by around 2030 and cut carbon intensity 60 percent to 65 percent by 2030 from 2005 levels; the U.S., by contrast, vowed to make actual cuts in its emissions of 26 percent to 28 percent by 2025, also from 2005 levels. But neither country’s pledges, which all countries are to strengthen over time, are binding emissions targets as set out in the Kyoto Protocol.

The Paris deal, which entered into force Nov. 4, 2016, also includes a goal set by nearly 200 nations to keep average temperatures from rising more than 2 degrees Celsius (3.6 degrees Fahrenheit) since the pre-industrial era and pursue efforts to hold the line at a 1.5 degree Celsius increase (2.7 F).

‘Nothing Off the Table’

For Heather Zichal, who advised Obama on his climate and energy agenda, targeting the Paris deal or the UN parent treaty would have deep repercussions, perhaps none more troubling to her than a collapse of cooperation on the climate issue between the U.S. and the world’s top emitter, China.

“At this point it’s as if they’re throwing darts at a dartboard,” Zichal told Bloomberg BNA. “Nothing is off the table for this administration. I suspect they will wind up in a position of saying, ‘We’re not engaging on climate change, we’re not going to these [UN] meetings, and we’re not living up to our commitments on finance,’ ” including the Green Climate Fund, Zichal said.

Obama pledged $3 billion over four years to the Green Climate Fund in 2014 to prod developing nations to the table to negotiate a global deal, but the U.S. has yet to put up $2.5 billion of that pledge. Future interna-
tional climate funding will face an uphill battle with Republicans controlling the White House and both chambers of Congress.

Chairman Staunch Opponent of Funding The incoming chairman of the Senate Environment and Public Works Committee, Sen. John Barrasso (R-Wyo.) has been perhaps the most vocal congressional opponent of such climate aid, typically used to help developing nations adapt to climate impacts and transition to a low-carbon economy.

"I’ll do everything I can to stop it," Barrasso told Bloomberg BNA.

Trump’s opponents and supporters agree on one thing: International climate funding may be the single most endangered aspect of Obama’s climate legacy.

Congressional Republicans up until now have tried but failed to block Obama from making good on his Green Climate Fund pledge. The U.S. is just one of the 43 nations or subnational governments that vowed to contribute more than $10 billion to the green fund as of December 2016. That number includes pledges from nine developing nations.

Alden Meyer, who tracks UN climate talks as the Union of Concerned Scientists’ director of strategy and policy, worries that international climate funding, from the Green Climate Fund to money the U.S. Agency for International Development funnels to developing nations already being hit by climate impacts, could be on the chopping block.

“What Trump will do with USAID, World Bank and the [Green Climate Fund]—those are pretty high-profile targets,” Meyer told Bloomberg BNA.

“We will have to see environmental, religious and civil society groups go into overtime to make the case that these are in the U.S. interest” in the years ahead, he said.

Climate Funding a Bull’s-Eye? International funding is one clear area where Congress could have a broad role in rolling back climate policy, according to a Republican aide to the Senate Environment and Public Works Committee.

Given that many of Obama’s climate regulations and policies were executed by the president through regulatory actions or administrative policies, reversing them will primarily rest with the Trump administration, said Mandy Gunasekara, majority counsel for the committee. That includes U.S. acceptance of the Paris deal, which was done by Obama using his executive authority to negotiate international agreements.

“Broadly, it would primarily be administrative action” to roll back much of that climate agenda “since the original action was 100 percent from [the previous] administration,” the Senate aide told Bloomberg BNA.

“It will be up to the Trump administration from day one to make clear what the path forward is—our role is to remind them of the path the current administration took and say, ‘Don’t be swayed by the consequences to the environmental community.’”

Instead, Republicans should stick to their guns in arguing that the climate rules are costly to the economy, hurt job growth and that U.S. actions amount to too little to put a dent in global emissions, she said. “The consequences to the country” for reversing climate policies will be to remove regulatory barriers to economic growth, “and that will be a good thing,” Gunasekara said.

Negotiating Strategy Fueled Resentment Republicans will likely turn a deaf ear to pleas from Democrats and environmental groups to leave Obama’s international climate legacy untouched, she said, largely because of Republican resentment of what they view as a go-it-alone strategy by the outgoing president. Obama negotiated and signed the U.S. on to the Paris Agreement using his executive authority, skirting a ratification battle with Republicans in the Senate that would have doomed the effort.

The idea of going beyond withdrawing the U.S. from the Paris accord to driving a stake through the heart of the 1992 UN climate convention, first floated last November as nearly 200 nations resumed talks in Morocco to implement the Paris deal, was seen by some as a trial balloon. The prospect of complete U.S. withdrawal from the climate treaty—meaning the U.S. wouldn’t even be at the table for negotiations, as it was even during the George W. Bush administration—may have had the effect, intended or not, of making a withdrawal from the Paris pact look like the more moderate choice.

Gunasekara acknowledged that the idea of targeting the entire UN parent treaty, one that was ratified unanimously by the Senate and signed by President George H.W. Bush, is seen by some as a bridge too far. “That is certainly a prevalent narrative,” she said. But Republicans are apt to have little sympathy for those arguments given that Republican senators encountered what she said was resistance from the Obama administration and top officials from the EPA and the White House Council on Environmental Quality to testify on the Paris deal.

Soft Tone for Obama Administration For their part, top Obama officials who pushed for getting a deal in Paris and speedily getting it entered into force, including Secretary of State John Kerry and the lead U.S. climate negotiator, Jonathan Pershing, tried to cajole Trump to preserve the Paris deal. And they tried to do so without unnecessarily provoking the new administration.

“No one should doubt the overwhelming majority of the citizens of the United States who know climate change is happening and who are determined to keep our commitments that were made in Paris,” Kerry said Nov. 16 in a speech during the final days of the Marrakech UN climate summit, formally the 22nd Conference of the Parties to the UN Framework Convention on Climate Change.

Kerry said he has faith that increasing wind, solar and other renewable energy development is a revolution that will continue unabated regardless of the whims of a new administration; the public, he said, also has largely accepted that something must be done to address global temperatures that seem to hit new records each year.

“The last time that Morocco hosted the COP was in 2001, and the intervening 15 years have been among the 16 hottest years in recorded history,” Kerry said, adding that 2016 is likely to be “the warmest year of all.”
“At some point, even the strongest skeptic has to acknowledge that something disturbing is happening,” he said.

**Paris Flexibility Highlighted** Pershing, the U.S. negotiator, has largely resisted engaging in a war of words with the incoming administration, instead emphasizing that the next president has far more flexibility to maneuver within the climate pact than is generally understood. The actions each nation has pledged to the Paris Agreement are not prescribed in the deal itself, which gives successive administrations room to make wholesale changes to policies as they see fit, he argued.

“What’s flexible is what any individual country might do under the system,” Pershing said in an interview with Bloomberg BNA as negotiators neared the end of the Nov. 7–19 climate talks in Morocco.

The agreement does not require any nation to adopt a carbon reduction or any other specific energy policy, he said. That is why the deal doesn’t require nations to agree, for example, to triple their use of renewable energy or hit a minimum level of energy efficiency.

“We did not do that. What we did was set a global goal, 2 degrees [Celsius] is the place we’re shooting for, and if we can get to 1.5, we’d like that,” Pershing said. “And within that [context] we said each country should do exactly as much as they can deliver and go beyond that if they can, and then we will assess and evaluate every few years” whether the combined global effort is making a significant dent in the global temperature increase.

“Supposing we currently have, as we do, the Clean Power Plan [and] suppose the next administration decides it wants to do something different,” Pershing added. “It has [the] recourse within this deal to make the changes” it wants, he said, suggesting Trump could substitute other policies more amenable to his administration.

**Looking Ahead From Morocco** The Marrakech summit, which opened only days after the Paris Agreement went into effect, was never expected to deliver significant progress on the global climate effort beyond the first steps toward implementing the pact, which will continue to be the focus at this year’s UN summit in Bonn. Negotiators got about as much progress as expected in Morocco; they outlined how they will craft a rule book for implementing the Paris deal.

But Trump’s election also spurred what Jo Tyndall, New Zealand’s former climate ambassador, called a strong vote of confidence in the Paris pact by the nearly 200 nations at the Morocco summit. They rallied around a Marrakech Action Proclamation with the world’s nations warning that the Earth’s climate “is warming at an alarming and unprecedented rate and we have an urgent duty to respond” to the challenge.

That represented “a collective will” to move forward even as the U.S. considers retrenchment and to “demonstrate clearly that all [countries] were strongly committed to the Paris Agreement,” Tyndall, who now co-chairs the ad hoc working group helping to implement the Paris pact, told Bloomberg BNA.

On implementation issues, “I was particularly pleased that we got a clear and substantial work plan” heading into the 2018 high-level UN summit to be held in Bonn, Tyndall said, which “was a tangible demonstration of the shared desire to get on with the job” of implementing the Paris deal.

**Resistance to Trump Retreat Grows** Many environmental groups are searching for the right tone in confronting Trump over a possible U.S. withdrawal from the Paris Agreement and the array of international climate efforts that could be targeted after Trump takes office in January.

But several of Trump’s early picks—Myron Ebell, who is heading Environmental Protection Agency transition matters and is a longtime climate skeptic, and Oklahoma Attorney General Scott Pruitt, Trump’s pick to head EPA who sued to block its power plant carbon pollution limits—have angered environmental groups.

Trump’s pick for secretary of state, ExxonMobil Corp. Chief Executive Officer Rex Tillerson, is seen as a moderate voice on the Paris pact. But environmental groups say ExxonMobil spent decades undermining climate researchers even as its own internal research acknowledged links between human activity and climate change as early as 1981.

Pruitt is “by far the worst” EPA nominee ever put forth for the job, League of Conservation Voters President Gene Karpinski told reporters.

And Senate Democrats, who control just 48 seats in the Senate, not enough on their own to reject a Trump nominee without Republican defections, are worried.

“This is a full-fledged environmental emergency,” Sen. Brian Schatz (D-Hawaii) said.

**By Dean Scott**

To contact the reporter on this story: Dean Scott in Washington DC at DScott@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com
Chemicals

Chemical Conventions Gear Up For Biennial Conference in 2017

Parties to the Basel, Rotterdam and Stockholm international chemical conventions are planning to stake new ground in their effort to curb the global proliferation of harmful substances.

More than a thousand delegates from more than 180 countries will convene in Geneva to consider new limits and guidelines for chemicals and wastes at the 13th Basel, Rotterdam and Stockholm (BRS) Conference of the Parties from April 24 to May 5.

The goal is to help countries “more effectively and efficiently implement the conventions for the benefit of human health and the environment,” BRS Executive Secretary Rolph Payet told Bloomberg BNA. “The COPs are not only important for the decisions which are taken, they are also vital in terms of the direction and momentum which is given to countries’ implementation efforts at the national level,” Payet said. “In short, 2017 will be a key and exciting year in pushing forward the chemicals and waste agenda, through both policy and through practical means.”

**Basel Convention** Parties to the Basel Convention—which defines limits on the cross-border movement of hazardous waste and its disposal—will discuss technical guidelines to curb the hazardous effects of electronic waste.

Two years ago, Basel parties adopted a set of guidelines aimed at curbing trade in e-waste from discarded mobile devices and computer equipment, which often contains harmful toxic materials—like mercury, cadmium, asbestos and lead.

In 2017, Basel parties will evaluate the implementation of their e-waste guidelines and may consider future work to address any outstanding aspects of the guidelines, according to the BRS secretariat.

Basel Convention parties will discuss technical guidelines for the environmentally sound management of wastes that consist of, contain, or are contaminated with persistent organic pollutants. They also will consider an Indonesian-Swiss initiative to improve the effectiveness of the convention and address challenges with handling, storing and disposing of household waste, among other matters.

Members are considering a follow-up to the Indonesian-Swiss country-led initiative regarding the ratification or acceptance by additional parties of the Ban Amendment, which prohibits all transboundary movements of hazardous wastes destined for final disposal operations from Organization of Economic Cooperation and Development to non-OECD states.

Specifically, the initiative considers whether a simple, two-thirds or three-fourths majority is necessary for the Ban Amendment to enter into force.

**Rotterdam Convention** Parties to the Rotterdam Convention COP—which requires countries to verify their trading partners’ consent to receive restricted chemical exports—will consider listing eight additional chemicals in Annex III of the convention.

That annex requires members to notify a receiving country when they plan to export restricted chemicals and participate in a “prior informed consent” procedure for hazardous chemicals and pesticides.

In September 2016, the Rotterdam Convention’s Chemical Review Committee (CRC) recommended that parties include two highly toxic pesticides in Annex III—carbofuran and carbosulfan—which are used to control insects on a variety of crops.

Carbofuran is a highly toxic carbamate pesticide marketed as Furadan and sold by companies like the Philadelphia-based FMC Corp. Carbosulfan is another carbamate insecticide that is banned in the European Union.

**Annex III Listings** Rotterdam parties are expected to increase transparency for international exports of paraquat dichloride, fenthion, chrysotile asbestos, trichlorfon and tributyltin compounds at the 2017 Basel, Rotterdam and Stockholm COPs.

In 2015 India, Guatemala, Malaysia and Zimbabwe blocked the Annex III listing of paraquat dichloride—an herbicide considered toxic to humans and animals—due to concerns about the impact on their respective agricultural industries.

Also that year, Sudan categorically objected to the Annex III listing of fenthion 640 ULV—a toxic pesticide—due to concerns it would negatively affect its domestic agricultural practices.

India and other top asbestos-producing nations—Kazakhstan and Russia—previously blocked the listing of chrysotile asbestos, also known as “white asbestos.” Exposure to chrysotile asbestos—which is used to produce cement and roofing materials—causes cancer of the lung, larynx and ovaries; mesothelioma and asbestososis, according to the World Health Organization.

Rotterdam parties also will seek to surmount India’s opposition to the listing of trichlorfon, another toxic pesticide.

**New Voting Procedure** Rotterdam parties will consider amending their convention to sanction a majority vote if all efforts to find a consensus on a particular issue or listing have failed.

Though the BRS conventions have traditionally adopted any decisions or amendments to the treaties on a consensus basis, Stockholm parties in 2015 voted to ban pentachlorophenol despite opposition from the Indian delegation.
“Some parties have been reluctant to list additional chemicals in Annex III of the convention,” a spokesman for the BRS secretariat told Bloomberg BNA. “The conference of the parties thus launched a process in 2015 to review the cases where no consensus was reached and to develop options for improving the effectiveness of the listing process.”

Specifically, members will consider a formal proposal offered by a group of African nations that would permit members to pass a particular measure if 75 percent of the parties present approved such a decision. “In our view, the pressure of a possible vote helps move parties toward consensus,” said Joe DiGangi, a senior science and technical adviser at the International POPs Elimination Network (IPEN). “If consensus is not possible, then a vote permits protective measures to move forward without being held hostage to the objections of a small number of countries.”

Stockholm Convention Parties to the Stockholm Convention—which bans the production, use and trade of certain persistent organic pollutants—will consider new restrictions for three chemicals during the 2017 COPs.

Participants will consider including decabromodiphenyl ether (DecaBDE)—a flame retardant that is widely used in electronic products—in Annex A of the convention, which requires parties to eliminate the production and use of such chemicals.

Environmental groups said they would oppose the European auto industry’s effort to obtain any “open-ended” exemptions for legacy spare parts that contain DecaBDE.

“The basis for the auto industry exemption request is that the industry simply does not want to take responsibility or pay for validating new spare parts that do not contain DecaBDE,” DiGangi told Bloomberg BNA via e-mail. “The auto industry admits they can make new parts that do not contain DecaBDE and they should do the same for spare parts.”

IPEN also will oppose any forthcoming EU proposals to exempt the recycling of plastics containing DecaBDE or apply insufficient clean-up standards.

Such proposals “would essentially legitimize e-waste dumping in developing countries under the guise of recycling,” DiGangi told Bloomberg BNA.

Other Possible Listings Stockholm parties will try to add short-chain chlorinated paraffins (SCCPs) to Annex A of the convention during the 2017 COPs.

IPEN said it would oppose China’s efforts to pursue certain exemptions to the listing of SCCPs, which are used for metal cutting and have been found in products like toys, exercise mats, children’s costumes and stickers.

Stockholm parties also will consider adding hexa-chlorobutadiene (HCBD) to Annex C of the convention, which would require members to reduce its unintentional release during certain industrial and combustion processes.

HCBD is a chemical byproduct linked to hypotension, myocardial dystrophy, nervous disorders, liver function disorders and respiratory tract lesions and is no longer produced intentionally.

Though Stockholm parties agreed to list HCBD on annex A of the convention in 2015, China blocked a proposal to add it to Annex C.

HCBD is linked to the production of a hydrofluoro-carbon substance that China wants to use in air conditioning and refrigerators as a substitute for chlorofluorocarbons, DiGangi told Bloomberg BNA.

“If [Stockholm parties] fail to list the substance, then the COP would be ignoring the principal source of HCBD releases,” he said.

Stockholm Convention parties also will work to adopt a compliance mechanism; consider implementation guidelines; discuss funding; and evaluate the effectiveness of the convention’s ability to protect human health and the environment from persistent organic pollutants.

By Bryce Baschuk

To contact the reporter on this story: Bryce Baschuk in Geneva at correspondents@bna.com

To contact the editor responsible for this story: Greg Henderson in Washington at ghenderson@bna.com

REACH

Major Review of REACH Slated for Delivery in 2017

The European Union’s REACH chemicals regulation will chalk up its 10th year of implementation in 2017, a milestone that will be marked by a review that could trigger amendments to the law.

The review, to be carried out by the EU’s executive arm, the European Commission, will be wide ranging. Article 117 of REACH (Regulation No. 1907/2006 on the registration, evaluation and authorization of chemicals) specifies that the review should cover the functioning in practice of the regulation, the effectiveness of the system for registering chemicals, success in promoting no-animal testing and enforcement of the rules by the 28 member states.

A previous review was carried out after REACH passed the five-year mark. Published in 2013, it recommended clarifications, for example, on requirements for information on chemicals, but no other major changes.

This year, however, the commission will combine the review with a so-called REFIT, or regulatory fitness, check. In a statement to Bloomberg BNA, the commission said this will be “an evidence-based judgment of the effects of REACH” that will consider “to what extent it is delivering on its objectives without unnecessary burdens.”

Further complicating the picture, the commission is carrying out a parallel REFIT check on EU chemicals legislation other than REACH, which should identify any overlaps and inconsistencies, such as different “safe” exposure thresholds for substances under REACH and under occupational safety legislation.

It all adds up to a major exercise that, starting this year, could lead to more proposals to amend REACH and other EU chemicals laws.

Limited Appetite for Change But despite the extensive review exercise, there is little appetite for major change.

Frida Höök, senior policy adviser with ChemSec, a nonprofit group that campaigns for the phaseout of toxic substances, said the reviews were a “massive process” and no major overhaul should be proposed,
though “it will of course be difficult” for the commission “to not make any changes.”

Erwin Annys, director of chemicals policy at the European Chemical Industry Council, said, “There is clearly room for improvement” of REACH, but “it’s probably too early to evaluate the broader consequences and aspects of REACH.”

The Helsinki, Finland-based European Chemicals Agency, which administers REACH, published in May 2016 its own report on the implementation of the regulation. Some streamlining could be done, but there was no “imminent need to revise the REACH Regulation,” ECHA said in the report.

On the REACH review combined with the REFIT of other EU chemicals legislation, ECHA Director Geert Dancet said, “there are possibilities to make legislation work more in harmony,” but the commission should follow the ECHA recommendations from last May that suggested a fine-tuning of REACH rather than a wholesale revision.

Complex Exercise REACH requires the commission’s review of the law to be delivered by June 1, but few expect the deadline to be met.

“It’s a large, complicated exercise,” and it would be “extraordinarily ambitious” for the commission to deliver on time, Dancet said.

In addition, the review is being carried out while preparations are gearing up for the third and final REACH registration deadline, which falls on May 31, 2018. To comply with EU market access requirements by that date, all substances manufactured in, or imported into, the EU in volumes between one and 100 metric tons must be registered with ECHA. Higher volume substances were required to be registered by previous deadlines.

The 2018 deadline is likely to affect thousands of companies, many of which could be trading in low-volume or specialist substances and will be filing registrations to ECHA for the first time. ECHA wants affected companies to submit their registration dossiers as far ahead of the deadline as possible.

For the chemicals industry, the “preparatory work is taking place now,” and many smaller companies will be preparing their registration dossiers during 2017 for submission in 2018, Annys said.

Authorization Process Although the commission might hold back from introducing major changes in the 2017 REACH review, some REACH processes will be in the spotlight.

Companies are concerned that, when decisions are made under REACH to phase out hazardous substances, the process for obtaining continued-use authorizations for those substances should not be excessively bureaucratic or expensive.

Annys said the commission was assessing whether there were “ways in general to facilitate the authorization process.” Authorities should be able to process authorization requests “in a more straightforward way,” with simplified information requirements, such as better templates, he added.

Companies have requested better templates for the elements they have to provide as part of the process, mainly information on how substances can be safely managed and analyses of whether there are safer alternatives.

Modifying the authorization process—which requires companies to demonstrate that there are no viable alternatives to otherwise phased-out substances and the risks of hazardous substances can be managed—might not prove straightforward.

The commission has been attempting for more than a year to move forward with two secondary acts that would reduce the amount of information required from companies for authorizations for hazardous substances used at low volumes and hazardous substances used in spare parts for equipment that continues to operate but is no longer sold new on the market.

Two people who are separately following the process told Bloomberg BNA that hold-ups in adopting the authorization modifications were due to uncertainties over data thresholds and technical legal considerations about the type of act that would be required to implement the changes.
The commission said work on the draft acts was "currently still ongoing."

**Nanomaterials Gap** The place of nanomaterials in REACH also will be considered in 2017. REACH does not impose special requirements on chemicals at nanoscale compared to the same substances at normal scale, but the requirement for companies to provide information on safe use of substances should cover any nano-specific uses.

ECHA has said, however, that nanosubstances have been under-reported in REACH registration dossiers. The commission said it will propose changes to the annexes of REACH to clarify what the information requirements are for nanosubstances.

These changes also have been delayed for more than a year. "The amendment to the REACH annexes on nanomaterials is still in the pipeline," the commission said.

Dancet said, "We really need the changes to these annexes to make the information richer," and a regulatory committee will discuss the proposals in spring. The issue would be resolved "we hope as quickly as possible afterwards," he added.

Clarification of the requirements for nanosubstances will "guide industry better on how to provide that information to ECHA," said David Carlander, director general of the Nanotechnology Industries Association.

The information requirements should be finalized because "we are expecting for the 2018 REACH deadline to see more nanomaterials" being registered, Carlander said.

**Commercial Chemicals Law Implementation Will Take Engagement by Industry, Advocates**

Engaging with the Environmental Protection Agency to shape the development of chemical rules and policies in 2017 is a top priority for a host of industry and environmental groups, their representatives told Bloomberg BNA.

Building on Congress's bipartisan 2016 overhaul of the Toxic Substances Control Act and Canada's chemical regulation to show how North America offers a global model for chemicals management also is a priority for the American Chemistry Council.

Working with Congress to pass laws requiring the disclosure of chemicals in products, increasing the Food and Drug Administration's oversight of chemicals and working with state legislatures and agencies as they seek to manage chemicals of concern are additional priorities for the American Sustainable Business Council and environmental health advocacy groups.

Ben Dunham, a senior policy adviser with Holland & Knight LLP, told Bloomberg BNA companies, trade associations and other groups should make educating the incoming Trump administration about the value of the amended chemicals law their top priority.

"This is a situation where regulation is good for business, public health and the environment," said Dunham, who previously advised the late Sen. Frank Lautenberg (D-N.J.). The 2016 TSCA amendments are named after Lautenberg, who introduced a number of bills to overhaul the 1976 Toxic Substances Control Act.

**Lautenberg Act ‘Job One’** "We have a clear position that the fair and effective implementation of the Lautenberg Chemical Safety Act is job one when it comes to chemical management issues to be addressed by the new administration," said Michael Walls, vice president of regulatory and technical affairs at the American Chemistry Council. The trade association represents major U.S. chemical manufacturers.

"Congress has now put in place a process to help ensure the public that chemicals are manufactured and used safely," Walls told Bloomberg BNA.

"We can enhance public confidence while we promote innovation and ensure that the benefits of chemistry can be safely brought forward to the marketplace," he said.

**Regulations, Guidance & More** The chemistry council expects the EPA under the Trump administration to make sure the law's deadlines are met, Walls said.

The statute’s deadlines include directing the EPA to publish the scope of 10 risk evaluations by May, to release three final procedural rules by June and to develop guidance by June to help third parties submit draft risk evaluations to the agency (see chart).

If the EPA meets the June 2017 deadline and issues the final rule describing the process it will use to update the TSCA inventory, that would trigger an end-of-the-year deadline for industry.

Chemical manufacturers and possibly processors would be required to notify the agency 180 days after the final rule is issued concerning any chemical they've made or used during the previous 10 years.

Participating in these rulemakings and policy decisions are priorities for the Consumer Specialty Products Association, the American Sustainable Business Council and the Natural Resources Defense Council as well, according to representatives of those organizations.

**Funding EPA Critical** A critical element of TSCA implementation will be ensuring that the EPA has the financial, staffing and other resources it needs for its chemical review and control efforts, according to representatives from a wide swath of organizations Bloomberg BNA interviewed.

"While the industry funds a portion of EPA's activities under the new law, appropriated funds cover the majority of the costs. Funding for TSCA implementation should increase significantly beyond the baseline set during the years when TSCA was essentially dormant," Phil Klein, an executive vice president at the specialty products association, told Bloomberg BNA.

**Beyond Implementation** The EPA’s Office of Chemical Safety and Pollution Prevention has work to do in 2017 beyond the specific mandates of the amended TSCA law.

For example, the Chemical Data Reporting rule required thousands of chemical manufacturers and processors in 2016 to submit production volume, use, expo-
TSCA Implementation Milestones

Initial Implementation Rules

Require chemical manufacturers, possibly processors, to notify the EPA of chemicals they have made or used within the last 10 years

Initiated July 2016

DEADLINE: June 2017; industry notifications will be due 180 days later

Develop EPA process to identify chemicals that are low or high priorities for risk evaluations

Submitted to OMB Nov. 7, 2017

DEADLINE: June 2017

Develop risk evaluation process

Submitted to OMB Nov. 10, 2016

DEADLINE: June 2017

Determine fees chemical manufacturers and processors pay

Initiated July 2016

DEADLINE: None

Persistent, Bioaccumulative & Toxic (PBT) chemicals

Announce PBTs that will receive an expedited review meaning their hazard is presumed, but the EPA must make an exposure finding before controlling their risks

Five chemicals selected Oct. 11, 2016

DEADLINE: EPA must propose risk management rules by June 2019

Risk Evaluations

Announce first 10 chemicals slated for risk evaluation

Announced Nov. 29, 2016

DEADLINE: Mid-December 2016

Publish scope of first 10 risk evaluations

DEADLINE: May 2017

Ensure risk evaluations underway for at least 20 high-priority chemicals and that at least 20 are designated as low priorities

DEADLINE: December 2019

Later Regulations

Develop process to review confidential business information claims made for chemical identity for chemicals on TSCA’s active inventory

Initiated July 2016

DEADLINE: December 2019

Enter negotiated rulemaking and propose rule describing Chemical Data Reporting rule requirements that apply to companies generating inorganic byproducts

Initiated September 2016

DEADLINE: June 2019

Other

Report to Congress on capacity to conduct risk evaluations and promulgate risk management rules for existing chemicals (TSCA Section 6)

DEADLINE: Mid-December 2016

Develop guidance to assist 3rd parties submit draft risk evaluations for EPA’s review

DEADLINE: June 2017

Review definition of small manufacturers and processors in consultation with the Small Business Administration.

EPA announced December 14, 2016 that it may change small business definition

DEADLINE: December 2016

Establish Science Advisory Committee on Chemicals


Develop strategic plan to promote alternative testing methods to reduce vertebrate animal testing

DEADLINE: June 2018

Develop policies, procedures, guidance needed to implement act

DEADLINE: June 2018

Current as of January 4, 2017
It relies on a hazard-based rather than risk-based approach to reach conclusions about the safety of products and then provides a government endorsement of qualifying products, she said.

But David Levine, chief executive officer for the American Sustainable Business Council, supports the Safer Choice program.

The program uses scientific criteria to identify safer chemicals and adds government recognition to encourage their innovation, Levine said.

“This isn’t a rule. It provides voluntary guidelines for industry to aspire to,” Levine said.

“It’s using the best of science to develop a clear line of opportunity for business to innovate,” he said.

Beyond EPA Bryan McGannon, from the sustainable business council, discussed additional chemical laws and policies the council will work to support in 2017.

These include supporting the reintroduction of the Personal Care Products Safety Act, which would amend the Food and Drug Administration to require cosmetics companies to register their facilities with the Food and Drug Administration.

The bill, which was supported by five Democrats and two Republicans in the last Congress, also would boost FDA authority over cosmetics and their ingredients.

The business council will support the reintroduction of the Cleaning Product Right to Know Act, McGannon said.

Introduced in 2016 by Rep. Steve Israel (D-N.Y.), that bill would have required cleaning products to disclose their ingredients including components of dyes, fragrances, and preservatives making up 1 percent or more of the product.

States Sarah Doll, director of Safer States, a network of environmental health organizations, said the 2016 election “reinforced the need for states to double down and continue to move forward” on chemicals management.

It is unclear how the Trump administration will implement amended TSCA, but under the law, states only are preempted when the EPA acts and, even then, the scope of that preemption is limited, she said.

“States retain quite a bit of space to act,” Doll said.

California, Maryland, Minnesota, New York, Washington, Vermont and other states are expected to stay focused on chemicals including arsenic, lead, flame retardants, perfluorinated compounds, bisphenol A and other chemicals regulated by the FDA as well as the EPA, Doll said.

Ingredient Disclosure Mandating chemical disclosure in cleaning and other products is a type of legislative action Doll said she expects states to take up again in 2017.
Klein, from the specialty products association, agreed ingredient disclosure is likely to come to a head in 2017 at the state level.

“We are committed to working with the states and nongovernmental organizations to find a solution on this important issue. We need to find the balance of being transparent while protecting trade secret information and companies’ innovation,” he said.

“We would like to see this issue addressed at the federal level to prevent a patchwork of state laws that impedes interstate commerce,” Klein said.

**Hazard Versus Risk** States generally use a hazard-based approach to evaluate whether chemicals could cause harm, Doll said.

A risk-based approach combines hazard plus exposure to estimate a probability of harm.

Few states have the financial or other resources to conduct exposure assessments, which can vary extensively, Doll said.

States, however, have experience dealing with the legacy of persistent, bioaccumulative and toxic chemicals such as mercury, she said.

Based on that experience, they work towards solutions that eliminate hazards and avoid potential problems, Doll said.

That approach “sets you down a path towards solutions that are faster and more effective” than employing the more complicated risk-based approach, she said.

**Working Internationally** The American Chemistry Council opposes hazard-based approaches as potentially wasting resources on chemicals that pose few or no risks.

In 2017, it will be working to promote risk-based approaches internationally, Walls said.

The Lautenberg Act’s risk-based approach to chemicals is shared by Canada’s Environmental Protection Act, which is the cornerstone of that country’s chemicals management, Walls said.

“Both systems reject just a hazard-based approach; both require hazard plus exposure to actually determine risk,” he said.

“That looks like a model for chemical regulation and regulatory cooperation that we think other regions could benefit from,” Walls said.

Governments around the world are thinking of revising their existing or establishing new chemical regulatory systems, he said.

In addition, governments that already have established chemical programs that are examining chemicals in commerce often focus on the same chemicals, he said.

There are many opportunities for governments to share the risk evaluation burden by understanding the information and analytic approaches each has used, Walls said.

The risk assessment work that the U.S. and Canada have undertaken through the US-Canada Regulatory Cooperation Council aims to show how different countries can work together to assess chemicals more effectively and efficiently, he said.

The American Chemistry Council supports the continuation of that program, he said.

**BY PAT RIZZUTO**

To contact the reporter on this story: Pat Rizzuto in Washington, D.C. at prizzuto@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com
President-elect Donald Trump’s enthusiasm for fossil fuels and opposition to energy regulations suggest change is ahead for environmental enforcement.

Some environmental attorneys and former government officials say they don’t expect major changes involving enforcement immediately because the Trump administration’s focus will be on regulatory change instead.

Priorities will change eventually, however. The first Environmental Protection Agency enforcement priority that might be downsized or eliminated is the one concerning energy extraction, some environmental practitioners say.

Those decisions will await new political leadership in the EPA’s Office of Enforcement and Compliance Assurance, which has seen its budget decline in recent years.

Environmental Enforcement Vulnerable Joel A. Mintz, who studies environmental enforcement, law and policy and teaches at Nova Southeastern University Shepard Broad College of Law in Fort Lauderdale, Fla., said environmental enforcement is “at a point of vulnerability.”

“One way it’s possible to sort of quietly deregulate the environment is minimizing enforcement. Doing that while leaving other requirements nominally on the books is one possible under-the-radar approach that this new administration might take to end federal environmental regulation,” he said.

Yet Mintz, like other environmental enforcement and compliance officials interviewed for this article after the election, said it was too early to predict. “We don’t know what they have in mind,” he said.

Trump’s transition team didn’t respond to queries for this article. The president-elect during the campaign gave broad outlines for cutting regulations and reducing the size of the EPA but hasn’t provided specifics.

Priorities Will Change EPA’s National Enforcement Initiatives are policy statements that are set in three-year cycles. The latest ones, for 2017 to 2019, were established during the Obama administration after a comment period and consultation with states, tribes and others.

However, the initiatives aren’t rules, and they always are subject to change.

The initiatives are policy statements that help determine where the agency puts its resources for enforcement.

“Historically these priorities have remained stable and remained on the books for the most part as administrations have changed,” said Andrew Stewart, a former EPA Office of Civil Enforcement official and now an environmental attorney at Vinson & Elkins LLP in Washington, D.C.

Broad Statements Point to Change Based on broad statements from Trump, however, it seems possible that the new political leadership of the EPA eventually will take a fresh look at some of the enforcement priorities, Stewart said.

One possibility of what the EPA might do in the Trump administration is to give states a larger role in

**EPA Enforcement Initiatives, FY 2017-2019**

- Large sources of air pollution such as power plants
- Energy extraction, particularly natural gas
- Accidents at industrial and chemical plants
- Raw sewage and contaminated stormwater pollution
- Industrial water pollution
- Hazardous air pollutants
- Water pollution from animal waste at large feeding operations

![Bloomberg BNA graphic/epai05g1](image-url)
addressing noncompliance in the oil and gas industry and reduce oversight by headquarters, or it may expand self-auditing options and compliance assistance programs, Stewart said.

“It’s hard to see energy extraction focused on as vigorously as in the last few years,” Doug Parker, former director of the EPA Criminal Investigation Division, told Bloomberg BNA.

**Enforcement Through Lawsuits** Another likely change in the new administration is a greater role for nongovernmental groups attempting to get environmental laws enforced through lawsuits.

Also likely are attempts by the Republican-controlled Congress to change or eliminate parts of the laws that the EPA implements and enforces. Environmental attorneys say these could include parts of the Clean Air Act governing how national ambient air quality standards are implemented or some of the requirements under the National Environmental Policy Act.

J. Scott Janoe, an environmental attorney at Baker Botts LLP in Houston whose clients include energy, mining and manufacturing businesses, said he didn’t expect fundamental changes in enforcement immediately.

“In the past, environmental enforcement cases haven’t simply evaporated overnight even with changes in administration,” he told Bloomberg BNA.

**EPA, Justice Unlikely to Throw Out Cases** Parker, the former EPA top cop who is now a member of the Earth & Water Group, a Washington law firm and public policy advisory group, said the new administration was unlikely to ask the EPA and Department of Justice to throw out criminal cases.

“If you’ve got a pending civil case involving a violation of a law, you don’t have to bring a criminal case on top of it,” Parker said.

Cynthia Giles, who led the Office of Enforcement and Compliance Assurance for the past eight years, told Bloomberg BNA, the cases would go forward. “Strong enforcement is always going to be needed, and the agency is very committed to following through with that,” she said in an interview.

Giles also said the future of enforcement would include monitoring by the agency, citizens and companies with technology that wasn’t available a decade ago. “It always makes sense to look for innovation and ways we can improve compliance and reduce pollution in ways that are cheaper and faster, embracing some new technologies,” she said.

**Priorities for New Administration** The Hogan Lovells environmental team expected “promotion of infrastructure projects, fossil fuels and manufacturing to be top priorities that will guide the Trump Administration addresses environmental regulation.”

It also said it was unlikely that Trump would abolish the EPA immediately.

“Complying with regulatory requirements is built into the standard processes, profit evaluations, and investment strategies of countless business across the country,” it said, adding: “Immediately abolishing EPA without addressing any of the underlying environmental laws that EPA administers and enforces would throw all of industry into deep uncertainty and wreak havoc with the economy.”

**Enforcement Already Constrained** One telling indication in 2017 will be the Trump administration’s first budget request for the EPA. During the campaign he said at various times he planned to reduce the agency.

In one interview in 2015, when asked what departments he would cut, Trump said, “Environmental protection. What they do is a disgrace. Every week they come out with new regulations. They’re making it impossible...”

“Who’s going to protect the environment?” asked Chris Wallace, host of “Fox News Sunday.”

“We’ll be fine with the environment,” Trump said. “We can leave a little bit, but you can’t destroy businesses.”

**Budget Cut Significantly** The EPA’s budget has been cut significantly in recent years. The agency’s enacted budget for fiscal year 2016 was $8.1 billion, down from $10.3 billion in 2010.

The budget for the EPA’s Office of Enforcement and Compliance Assurance declined from $597 million in FY 2010 to $545 million in FY 2016.

Nearly half of EPA’s annual budget goes to states and tribes through grants for environmental protection work, including enforcement.

In the past decade, this grant funding has remained flat, the Environmental Council of the States, a nonpartisan group of state environmental leaders, reported in 2016. Federal funds for environmental protection are not keeping up with the cost of doing business, because states have an increasing number of regulatory requirements, the report said.

Mintz, the Nova Southeastern law professor who researches environmental enforcement, said he found EPA records that show the agency had 3,646 full-time-equivalent staff focused on enforcement in 1999, a high point in staffing, but the number fell to 2,880 in 2015.

Those reductions to EPA enforcement and the agency as a whole were the result of budget cuts since the Clinton presidency that continued through the Obama administration, he told Bloomberg BNA.

**Falloff Seen in Cases, Inspections** The result was a fall-off in the number of civil enforcement cases and inspections, Mintz said. What’s more, the agency was less able to hire qualified contractors to help in technical aspects of enforcement cases, compliance assistance for small businesses, computer upgrades and redressing non-compliance by smaller sources of pollution, he said.

The EPA predicted its enforcement case numbers would decrease.

The fiscal year 2014-2018 EPA Strategic Plan projected the agency would conclude 13,600 civil judicial and administrative enforcement cases over the five-year period, compared to a 2005-2009 baseline of 19,000 cases, or 5,400 fewer cases over a five-year period.

**Environmental Advocates Prepare** David Baron, managing attorney in Earthjustice’s Washington, D.C., office, said if the new administration cuts back on enforcement, “it’s very likely that environmental groups will increase the amount of enforcement they under...”
take, particularly against the most dangerous and largest sources of pollution.”

An increase of lawsuits also is likely if the new administration grants large facilities air pollution permits that don’t comply with the Clean Air Act, exposing people to unsafe pollution levels, he said.

Pat Gallagher, director of the environmental law program at the Sierra Club, said the environmental group expects “a severe dropoff in environmental enforcement.” He said he expected the Trump administration in particular wouldn’t carry on the Obama administration’s interest in environmental enforcement in the oil and gas sector and in other areas as well.

“We are already examining enforcement databases, notices of violation and so forth to assess which cases we may want to take over or prosecute [by filing lawsuits] if Trump fails to,” Gallagher 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.

Environmental Justice Fears For those advocating for environmental justice communities, the outlook under a Trump administration is unclear—but there is plenty of fear to go around. Even though Trump’s comments on the campaign about improving drinking water infrastructure could be promising, his other remarks left advocates concerned.

Advocates question whether a Trump EPA will rescind the 1994 executive order that directs federal agencies to address environmental justice in their actions. They fear cuts in enforcement resources and Trump’s statements that he would reorganize the EPA will result in fewer protections for vulnerable communities.

And not least, they fear that actions they said have been needed for years and seemed finally within their grasp with the EPA’s latest environmental justice strategy—on issues such as consideration of cumulative impacts—will be stalled or lost altogether.

Scott Fulton, former general counsel for the EPA and now president of the Environmental Law Institute, told Bloomberg BNA to watch for whom the president-elect selects as his final team at the EPA and in the civil rights and environment and natural resources divisions at the Justice Department to get a better idea of what his presidency will actually mean for these communities.

“It’s hard to discern at this point how this will shake out,” Fulton said.

Justice Groups’ Actions Underway Groups are already acting. Environmental justice organizations, including We Act for Environmental Justice, urged the EPA in a recent letter to take immediate steps such as rescinding a highly contested proposed revamp of regulations that implement Title VI of the Civil Rights Act to protect minorities. This law bars entities that receive federal funds from discriminating or having a discriminatory impact based on race, color or national origin.

Others are preparing to act or to continue their existing work.

Lisa Garcia, vice president of litigation for healthy communities at Earthjustice, told Bloomberg BNA her group, for example, is ready to harness existing environmental laws like the Clean Air Act in court to protect these communities.

Sacoby Wilson, a member of the National Environmental Justice Advisory Council, told Bloomberg BNA he will continue to work with communities and local and state agencies to get these communities appropriate protections.

Barriers Seen for Environmental Justice But Wilson emphasized that it isn’t as simple for justice advocates as perhaps for the rest of the green movement. Especially in areas such as the EPA’s enforcement of Title VI, the agency’s record has been subpar for years.

Communities that have borne the brunt of disproportionate pollution burdens have been working at a high urgency level for federal, state and local protections for years, he said. They will continue to do so, he said.

“It’s going to get worse,” Wilson said. “But it’s pretty bad now.”

BY RENEE SCHOOF AND RACHEL LEVEN

To contact the reporters on this story: Rachel Leven in Washington, D.C. at rleven@bna.com; Renee Schoof in Washington at rschoof@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com

Regulatory Policy

Courts Needed to Maintain Regulatory Balance, Lawyers, Officials Say

The U.S. Court of Appeals for the D.C. Circuit, staffed by seven Democratic appointees and headed by Chief Judge Merrick Garland, will play a pivotal role in maintaining some semblance of regulatory order in 2017, said lawyers and administration officials interviewed by Bloomberg BNA.

President-elect Donald Trump has pledged across-the-board deregulation, while Republican leaders in Congress eagerly anticipate quick passage of resolutions to rescind Obama-era regulations and bills to significantly slow or stop agencies from issuing expensive new rules.

Still, agencies have ongoing statutory obligations to regulate, and stakeholders can get a court order to force agencies to act, a former Obama administration official said. And most often, lawsuits involving federal agencies and administrative law fall under the jurisdiction of the D.C. Circuit Court.

“In that realm, Donald Trump is going to be under a lot of duress if he doesn’t want to regulate, or tries to deregulate extensively, because there are going to be lawsuits flying left and right to challenge his actions,” the official said.

Regulations Come From Congress A substantial amount of regulation that takes place each year is non-discretionary under hundreds or thousands of statutes, said Howard Shelanski, administrator of the Office of Information and Regulatory Affairs, an office within the White House Office of Management and Budget that controls the flow of regulatory activity.

“These are statutes that were enacted for good reason because these rules are necessary to keep the country running,” Shelanski said. “I think you would have both cost to the economy, great inconvenience to the
American public and a lot of lawsuits against the government if you simply stopped regulating.”

An agency can’t simply decide to regulate where it does not have statutory authority, Shelanski said. Any regulation or mandate by a president for an agency to regulate or deregulate has to fit within the authority that Congress has established, he said.

Then, assuming it is valid under the statute as a matter of authority, the regulation has to be justified on the administrative record, Shelanski said. That record is, of course, subject to judicial review, he added.

**Brief Moratorium** The new administration is likely to start out with an order on Trump’s first day in office directing agencies to freeze work on all pending regulations, pull back any not yet published in the Federal Register and delay any effective dates if possible, said Sam Batkins, director of regulatory policy at the American Action Forum.

A similar order was issued at the start of the Obama administration, Batkins said.

“That’s just sort of standard practice, to have a brief formal regulatory moratorium,” he said.

After that, Congress is likely to start immediately working to rescind some regulations under the Congressional Review Act, Batkins said. The CRA, enacted in 1996, provides Congress with a fast-track procedure for rescinding regulations that avoids a filibuster.

The CRA procedure may only be used for 60 legislative days once a regulation is submitted to Congress. The process requires both chambers to pass a joint resolution nullifying a regulation. The resolution is subject to debate lasting up to 10 hours in the Senate, but the measure cannot be filibustered. Once Congress adjourns for the year, the clock is reset and any regulations issued 60 legislative days before adjournment may be considered the following year.

In this case, any regulations issued after about May 30 are eligible to be reviewed and rescinded by the next Congress using the CRA procedure.

Adding fire power to this effort, on Jan. 4 the House passed by a vote of 238-184 a bill (H.R. 21) that would allow Congress to repeal at once a slew of regulations issued by the Obama administration in the last half of 2016.

The Midnight Rules Relief Act, sponsored by Rep. Darrell Issa (R-Calif.), would amend the Congressional Review Act to allow Congress to include multiple regulations in one joint resolution of disapproval. The CRA now requires regulations to be considered individually.

**One-In, Two-Out** With only a small subset of rules eligible for rescission under the CRA, Trump has pledged to deregulate through executive branch agencies by requiring them to eliminate two rules for every one they want to issue.

But in order to eliminate those two regulations, agencies will have to initiate a full-blown rulemaking process that will be time-consuming, expensive and subject his administration to lawsuits, the administration official said.

Trump’s announced policy could be a purely rhetorical position that never happens, the official said. Or, agencies could attempt to identify enough regulations that are insignificant, anachronistic, non-controversial, or genuinely outdated or unjustified to allow the policy to work in the short run.

“Or he could actually do this in earnest by eliminating regulations that are carrying out important statutory duties, in which case, he’s going to be in an epic and expensive battle,” the official said.

“He’s going to be fighting his bureaucracy and he’s going to be fighting in the courts,” the official said. “He has statutory obligations to regulate and American citizens expect their government to adequately protect them.”

**Impractical and Bad for Business** Under such a policy, every time an agency had to issue a congressionally mandated regulation, it would be held up because the agency would first have to select two regulations to eliminate, initiate rulemaking processes to void or modify them, and legally justify the actions, the official said.

There are rhetorical arguments that regulation is too expensive, the official said. But there can’t just be a rhetorical explanation to justify overturning a rule. There has to be an administrative record that supports eliminating a rule that can survive judicial scrutiny, the official said.

Setting aside the legal grounds for eliminating a rule, there could be other complications as well, the official said. It could be difficult for businesses to operate in this environment after having made substantial compliance investments and long-term business plans that accommodate regulation.

Businesses would face the uncertainty of those requirements being eliminated, while new entrants in their sector could come in and compete without those investments or requirements, the official said.

“I think the incoming administration is going to find that things are more complicated than they might expect,” the official said.

**Benefiting Corporate Interests.** Public interest organizations are alarmed that the Trump administration will tilt the regulatory state in favor of industry and corporations, said Amit Narang, regulatory policy advocate for Public Citizen.

“I think we’re seeing confirmations of that in the first signs of who is being considered for some of these agency positions and administration posts,” Narang said. “You’re seeing the who’s who of the Washington-insider lobbying class.”

Industry executives will clearly come in with a strong conviction that corporate America knows best, Narang said. It’s hard to see corporate CEOs taking over agencies and then holding the industries that they led and worked for accountable in any significant way, he said.

“So in terms of the personnel Trump is appointing, it’s pretty clear that we’re looking at more or less a corporate takeover of our government agencies,” he said.

BY CHERYL BOLEN

To contact the reporter on this story: Cheryl Bolen in Washington at cbolen@bna.com

To contact the editor responsible for this story: Paul Hendrie at phendrie@bna.com
Candiate Donald Trump promised sweeping deregulation in 2017, but as president he will find the realities of legislating and business interests radically tempering those ambitions, analysts and administration officials told Bloomberg BNA.

The newly emboldened Republican majority has pledged to help deregulate through generous use of the Congressional Review Act. House Speaker Paul Ryan (R-Wis.) plans to slow future regulation by passing several regulatory overhaul measures in the opening days of the 115th session of Congress. And Trump has promised to eliminate two existing regulations for every new rule.

Yet even with majorities in both chambers of Congress, Republicans are still constrained by the filibuster in the Senate, the Administrative Procedure Act, judicial review, the congressional calendar and competing legislative priorities, among other limiting factors.

“[They] will be faced with the choice of not doing a new rule that responds to a real need or a statutory mandate, or repealing rules that are still doing a lot of good,” Howard Shelanski, the administrator of the Office of Information and Regulatory Affairs, said in an interview.

“The Chamber is already working with transition officials to identify priority areas where relief is most urgently needed,” he said.

The Chamber is urging immediate action to undo the Department of Labor’s fiduciary rule, issued in April, as well as the Environmental Protection Agency’s Waters of the U.S. rule, which was finalized in May 2015, Donohue said. “These are just two on a long list of contenders,” he said.

**Regulatory Accountability Act at Top** William Kovacs, senior vice president for environment, technology and regulatory affairs at the Chamber, called for passage of the Regulatory Accountability Act, which he said would require agencies to invest more effort earlier in the rule-making process.

“The key to the RAA is that it does not dismantle the regulatory state,” Kovacs said. Rather, the bill differentiates between general regulations and high-impact or transformative regulations that have a nationwide impact on jobs and the economy, he said.

By focusing only on high-impact, transformative regulations, Congress can control overreaching regulations while allowing the day-to-day operations of agencies to function, Kovacs said.

**Not So Easy** Wide-scale deregulation, however, will not be easy. Every jurisdiction, including the U.K. and Canada, that has tried to launch a serious retrospective review effort or one-in, one-out effort has run into the same problem, which is, it is difficult to find meaningful rules to cut, Shelanski said.

The biggest challenge in trying to pull rules off the books, or even to modify rules, is that there isn’t a big constituency for removing preexisting rules, either on the business side or on the beneficiary side, Shelanski said.

Obviously, beneficiaries don’t want to lose rules that are benefiting them, Shelanski said. And for business, once the costs of coming into compliance have been absorbed, the incremental or ongoing costs of compliance, in many cases, are rather low, he said.

“Indeed, they have often accommodated their systems and their management to the point that it would actually be costly to change the regime,” Shelanski said.

**Congress Has a List** Sam Batkins, director of regulatory policy at the American Action Forum, outlined several rules that are likely to be the target of elimination in the next Congress, either through the Congressional Review Act, legal challenges or through other legislative means.

The Congressional Review Act (Pub. L. No. 104-121) became law in 1996 as part of the “Contract with America,” a pledge made by the then-new Republican House that included easing the regulatory burden. The law gives Congress 60 days after a rule is issued for both chambers to pass a joint resolution nullifying the regulation. The joint resolution is not subject to Senate filibuster.

In terms of specific regulations that Congress is likely to target, the first is DOL’s overtime rule, finalized in May, followed by the EPA’s endangerment finding in July that emissions from certain types of aircraft engines contribute to the pollution that causes climate change, Batkins said.

There’s also the EPA’s fuel efficiency standards for heavy-duty trucks finalized in August that would be subject to a CRA resolution of disapproval, Batkins said. This would more or less preclude the EPA from going back to the well on efficiency standards for trucks, he said.

“And there are of course rumors that Congress would look to remove EPA’s authority under the Clean Air Act to regulate greenhouse gas emissions,” Batkins said. “Obviously all of that would be subject to filibuster, unlike a CRA,” he said.

**A Dozen Rules at Risk?** It is unlikely Congress would target more than 15-20 regulations, Batkins said, and other analysts predicted far fewer, given the legislative priorities of the incoming administration and up to 10 hours of debate time per rule in the Senate for CRA resolutions.

Rules that could be subject to rescission include the Department of Transportation’s drone rules finalized in June, Department of Interior regulations finalized in July on drilling in the Arctic outer continental shelf and the DOL’s fair pay and safe workplaces rule finalized in August, Batkins said.
**Meaning of Substantially Similar** Congressional Democrats and public interest groups have long opposed use of the CRA, in part because it is perceived as a “nuclear bomb” on the regulation it rescinds. Once a rule is repealed, the CRA prohibits agencies from issuing a “substantially similar” regulation in its place.

Susan Dudley, director of the Regulatory Studies Center at the George Washington University, said this feature of the CRA is likely to give lawmakers pause before using the law, given its “Draconian” outcome.

The CRA has only successfully been used once in its 20-year history, to rescind a Clinton-era regulation on ergonomics. To date, the definition of “substantially similar” in this context has not been litigated.

Still, the Occupational Safety and Health Administration has never gone forward with another ergonomics regulation, Dudley said.

“You could understand they might not have during the eight years of the Bush administration, since he had signed the disapproval, but we’ve had another eight years in the Obama administration and they’ve never renewed that,” Dudley observed.

**Increased Litigation, Same Balance Forecast for 2017 U.S. Supreme Court**

Environmental litigation is expected to increase in 2017, and more cases are expected to eventually be brought to the U.S. Supreme Court.

As President-elect Donald Trump appoints a successor to the late Justice Antonin Scalia, the prior balance of conservative to liberal justices on the U.S. Supreme Court is expected to be maintained, often leaving Justice Anthony Kennedy as the key deciding vote in split decisions.

The only environmental case the Supreme Court agreed to review so far this year, a regulatory takings case, awaits an oral argument date, as Scalia’s seat remains empty.

Timothy Bishop of Mayer Brown LLP in Chicago told Bloomberg BNA that an increased number of environmental cases are expected to be filed over the next few years.

With Republicans controlling the White House and both chambers of Congress, “the courts are the route still open for environmental groups to get what they want,” Bishop said.

**More Lawsuits Expected** Nongovernmental organizations will bring more lawsuits, and there will be many appeals regardless of which side prevails.

The regulated community also will continue efforts to challenge various administrative actions and the doctrines of deference to agency actions. With more environmental cases being brought, this will eventually lead to more petitions being brought to the Supreme Court.

Patrick Gallagher, director of the Sierra Club’s Environmental Law Program in Oakland, Calif., agreed, telling Bloomberg BNA that two main categories of environmental litigation will explode: litigation for judicial review of executive branch misbehavior in rescinding rules or in adopting new ones, and enforcement when the executive branch is lax in its oversight or enforcement duties.

He said he expects there to be lots of work at the state level as federal oversight is expected to become more lax.

**Regulatory Rollbacks and Mistakes** The Trump transition is expected to be similar to that of the George W. Bush administration, Gallagher said.

“There were regulatory rollbacks and new rules with some mistakes made,” Gallagher said, citing the 2005 Clean Air Mercury Rule that was vacated by a 2008 court decision finding that mercury from coal-powered plants needed to be stringently regulated as a hazardous air pollutant (New Jersey v. EPA, 517 F.3d 574, 65 ERC 1993, 2008 BL 24283 (D.C. Cir. 2008)).

Trump seems more extreme than Bush but also less predictable, Gallagher said, so he expects “more extreme rollbacks, but also some weird surprises.”

“Some missteps are anticipated,” Gallagher said, “and we will be ready to jump in when they happen.”

**Ongoing Deference Interest** Gallagher said he expects the Supreme Court to continue to be interested in examining issues of judicial deference to agency actions.

The court’s interest is an ongoing trend that has lasted decades independent of administrations as judicial deference implicates federalism and separation of powers issues, he said.

Gallagher said that appointment of Scalia’s replacement could be a drawn out battle, and it may be midway into 2017 before there is a confirmation.

With Scalia’s replacement on the bench, the court will look as it has for most of the last 30 years—slightly more conservative than liberal and fairly friendly to business concerns, Bishop said. Kennedy will remain central on split decisions.

**Older Justices’ Seats** The big change would occur if any of the older justices’ seats were to become open, he said.

Justice Ruth Bader Ginsburg is 83 years old, Kennedy is 80 and Justice Stephen Breyer is 78. If any of them are replaced, the balance could shift to having a solid five-justice conservative majority without Kennedy as a swing vote that decides the majority opinion. Whether that happens anytime soon, though, is pure speculation, as the justices appear healthy and active, he said.

Since Scalia’s death, the Supreme Court has taken actions that are seen as attempts to avoid split four-four decisions, which wouldn’t establish precedents or resolve broad issues beyond the appeals process of the individual cases.

This includes delaying the assignment of a date for oral argument in Murr v. Wisconsin, the only directly environmental case before the court so far this year (U.S., No. 15-214, 8/14/15).

**Murr v. Wisconsin** In Murr, the Supreme Court agreed to review determinations of the relevant land parcels when the government is alleged to have effected a regulatory taking of property requiring compensation under the Fifth Amendment to the U.S. Constitution.
The Wisconsin Court of Appeals ruled that two contiguous commonly owned parcels of land were properly considered as one parcel in determining that regulations didn’t deprive the owners of all or substantially all the value of their land (Murr v. State, 859 N.W.2d 628, 2014 BL 360927 (Wis. Ct. App. 2014)).

An ordinance in St. Croix County, Wis., requires contiguous commonly owned land to be merged for purposes of development or sale and prohibits development or subdividing for sale below a certain minimum size.

The Murrs own two contiguous lots of land that became merged, and the second undeveloped lakeshore lot can’t be developed or sold separately from the first developed lot. Under a grandfather clause in the ordinance, if the properties were owned by different parties, the undeveloped second lot could be developed. When the Murr’s sought to sell the second lot as one that could be developed, their variance request was denied. If all economic value of a parcel of land is removed by a regulation, then the government has effected a categorical regulatory taking, and compensation is required. To determine if a partial regulatory taking has occurred, a court uses a fact-intensive test to evaluate the economic impact of the regulation on the relevant parcel as a whole, the interference with reasonable investment-backed expectations and the character of the government action. Defining the relevant parcel of land can often be key in determining whether a taking has been effected.

**Takings Considerations in Regulatory Action**

Takings cases are considered important for the impact to individual property owners but also as a government consideration in passing laws or regulations that economically impact property owners.

In the *Murr* case, Bishop said it’s difficult to tell what will happen. The petition was granted in January 2016 but hasn’t been scheduled for oral argument while numerous cases granted after it have been. Assuming a quick Supreme Court appointment to fill Justice Scalia’s seat, the court will set argument for some time after a confirmation.

Conceivably, if that doesn’t occur soon, the court could dismiss the petition as improvidently granted, Bishop said, leaving the appeals court decision intact but not establishing any new Supreme Court precedent.

The Supreme Court has one other regulatory takings petition among the environmental petitions currently before it awaiting decisions on whether the court will grant or deny them review.

### U.S. Supreme Court: Energy and Environment Developments

<table>
<thead>
<tr>
<th>Topic</th>
<th>Citation</th>
<th>Description</th>
<th>Status</th>
<th>Latest Story</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Petition Granted</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory Takings, Categorical versus Partial</td>
<td><em>United States v. Lost Tree Village Corp.</em>, U.S., No. 15-1192, 3/22/16</td>
<td>Federal government asks Supreme Court whether wetlands can be severed from contiguous uplands for takings analysis purposes and whether lack of investment-backed expectations can be considered in determining if permit denial is categorical taking.</td>
<td>Petition distributed for June 2, 2016 conference, Supreme Court has taken no action.</td>
<td>Florida Developer Denied Wetlands Permit Awarded $4.2 Million by Federal Claims Court</td>
</tr>
<tr>
<td>Clean Water Act Jurisdiction</td>
<td><em>Nat’l Ass’n of Mfrs. v. DOD</em>, U.S., No. 16-299, 9/2/16</td>
<td>Industry association asks Supreme Court whether the EPA/U.S. Army Corps of Engineers’ Waters of the United States rule should be reviewed first in federal district or appeals court.</td>
<td>Distributed for conference Jan. 6.</td>
<td>High Court Gives U.S. Extra Month for Water Rule Response</td>
</tr>
<tr>
<td>Takings Claim, Remediation Cost Valuation</td>
<td><em>MCNB Bank v. West Virginia ex rel. W. Va.</em></td>
<td>Bank asks Supreme Court whether deducting remediation costs from condemned property</td>
<td>Distributed for conference Jan. 6.</td>
<td></td>
</tr>
<tr>
<td>Topic</td>
<td>Citation</td>
<td>Description</td>
<td>Status</td>
<td>Latest Story</td>
</tr>
<tr>
<td>-------</td>
<td>----------</td>
<td>-------------</td>
<td>--------</td>
<td>--------------</td>
</tr>
<tr>
<td>Deduction</td>
<td>DOT, U.S., No. 16-331, 9/9/16</td>
<td>Valuation denies just compensation and whether lack of uniformity on remediation cost admissibility should be addressed.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Outer Continental Shelf Lands Act, well-Capping Regulatory Obligation</td>
<td>Noble Energy, Inc. v. Jewell, U.S., No. 16-368, 9/22/16</td>
<td>Oil and natural gas company asks Supreme Court whether common law principles should be given more weight than agency interpretations when reviewing regulations.</td>
<td>Response due Jan. 23.</td>
<td></td>
</tr>
<tr>
<td>Federal Power Act, FERC contract modification authority</td>
<td>Ameren Servs. Co. v. FERC, U.S., No. 16-531, 10/14/16</td>
<td>Power companies ask Supreme Court whether FERC may only modify an interstate electric transmission rate contract if it concludes the contract seriously harms the public interest and whether it must presume contracts are just and reasonable.</td>
<td>Response due Jan. 18.</td>
<td></td>
</tr>
<tr>
<td>Water Rights, Interstate Compact</td>
<td>Texas v. New Mexico, U.S., No. 141, ORIG., 1/8/13</td>
<td>Texas claims New Mexico is violating Rio Grande Compact; seeks damages and an order to comply. U.S. intervened to protect Rio Grande Project, Mexico treaty.</td>
<td>Special master draft report recommended Supreme Court deny New Mexico’s motion to dismiss the complaints.</td>
<td>Texas, New Mexico to Argue Motion in Rio Grande Case</td>
</tr>
<tr>
<td>Water Rights, Non-Compact Interstate Dispute</td>
<td>Georgia v. Florida, U.S., No. 142, ORIG., 10/1/13</td>
<td>Florida claims Georgia’s use of Apalachicola-Chattahoochee-Flint River Basin water is harming ecosystems of the Apalachicola River and Bay and its shellfish industry; seeks diversions cap and an apportionment.</td>
<td>Special master denied Georgia’s motion to dismiss the complaint for failure to join the U.S. Trial began Oct. 31 in Maine.</td>
<td></td>
</tr>
<tr>
<td>Water Rights, Non-Compact Interstate Dispute</td>
<td>Mississippi v. Tennessee, U.S., No. 143, ORIG., 6/6/14</td>
<td>Mississippi alleges groundwater pumping by Memphis’s public utility caused water to flow from Mississippi into Tennessee; seeks $615 million in resources damages rather than apportionment.</td>
<td>Special master to hold an evidentiary hearing on whether aquifer constitutes an interstate resource. Discovery complete by July 30, 2017.</td>
<td>Hearing Proposed in States’ Groundwater Dispute</td>
</tr>
<tr>
<td>Water Pollution, Non-Compact Interstate Dispute</td>
<td>New Mexico v. Colorado, U.S., No. 147, ORIG., 6/20/16</td>
<td>New Mexico asks to file case alleging Colorado bears responsibility under CERCLA, RCRA and common law for acidic wastewater from the Gold King Mine spill contaminating the Animas and</td>
<td>Distributed for conference Nov. 22. Solicitor General asked for position of United States.</td>
<td>Supreme Court Seeking DOJ’s Input on Gold King Mine Suit</td>
</tr>
</tbody>
</table>
U.S. Supreme Court: Energy and Environment Developments

<table>
<thead>
<tr>
<th>Topic</th>
<th>Citation</th>
<th>Description</th>
<th>Status</th>
<th>Latest Story</th>
</tr>
</thead>
<tbody>
<tr>
<td>San Juan Rivers; seeks response costs and abatement order.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Energy

Trump Administration Expected To Curtail Energy Regulations

The Trump administration will not have an entirely free hand to increase fossil fuel development, but it will have a wealth of options—so many that a first task may be simply to prioritize the preferred ones.

When he becomes president, Donald Trump can reverse executive orders immediately, back out of court fights over regulations, start rewriting energy and environmental regulations and—possibly the most substantial move—work with Congress to amend laws.

Rep. Kevin Cramer (R-N.D.), an early energy adviser to Trump, told Bloomberg BNA that House Republicans will act quickly to introduce legislation under the Congressional Review Act to repeal rules finalized by the Obama administration since May. The first rule he said they would go after would be the stream protection rule, intended to minimize stream impacts from coal mining waste.

“THAT IS JUST THE MOST ARBITRARY RULE.” Cramer told Bloomberg BNA. “I don’t know that it makes sense in Appalachia, but it dang sure doesn’t make sense for the prairies of North Dakota. We’ll be able to do that with legislation that [Trump will] no doubt sign.”

Cramer said the House Republicans will also go after repealing the Clean Water Act jurisdiction rule, which he said has just as significant consequences to agriculture as it does to energy.

Trump has said he wants to open up more federal lands for oil and natural gas exploration, though he has not specified areas. Federal leasing sites can range from the relatively uncontroversial—in the Gulf of Mexico and established onshore production areas—to the extraordinary, such as the coastal plain of the Arctic National Wildlife Refuge, if Congress were to allow it.

Trump also has stressed the need for infrastructure investments and has mentioned the proposed Keystone XL pipeline as something he would approve and the Dakota Access pipeline as something that should be allowed to go ahead. That leaves a host of other possibilities—other oil pipelines, electric transmission lines, liquefied natural gas export facilities, coal export facilities and more.

From the perspective of oil and gas producers, it is helpful that Trump has advisers such as Harold Hamm, CEO of Continental Resources Inc., who understand the issues and can explain them to Trump in a clear and convincing manner, said Lee Fuller, executive vice president of the Independent Petroleum Association of America.

Congress to Review Rules Before Trump takes office, the Obama administration will have opportunities to issue more regulations in its final days. Fuller said there is not much left that the outgoing administration can do to frustrate oil and gas companies that has not already been done.

“They’ve largely kind of cleared the decks on most of our stuff,” Fuller said.

The Congressional Review Act will give Congress about 60 days—not counting days when either chamber is adjourned for more than three days—to review and strike down regulations completed roughly since late May. The reviews could apply to regulations and some other administrative actions issued since about the end of May.

It will not necessarily be a quick and easy process, given that each resolution of disapproval can apply to only one regulation and must allow for up to 10 hours of debate in the Senate. It will occupy time while Congress is trying to tackle other big issues, notably changes to the health-care law and a final appropriations bill for fiscal year 2017.

“So they’ll have to figure out how they’re going to prioritize these,” said Bill Cooper, staff director of the House Natural Resources Subcommittee on Energy and Mineral Resources. Everyone will have ideas of what should be on the priority list, he said.

Among the candidates may be the Bureau of Land Management final rule in November on venting, flaring and leaking of natural gas from oil and gas operations (RIN:2060–AS30) and the Environmental Protection Agency final rule in June on emissions of methane and volatile organic compounds from new and modified oil and gas operations (RIN:1004-AE14).

Offshore Plans, Onshore Permitting The Bureau of Ocean Energy Management in November issued a five-year leasing plan for the years 2017-2022 that eliminated any leasing in the Arctic offshore as well as the Atlantic. The proposed version of the plan had included leasing in the Beaufort Sea in 2020 and in the Chukchi Sea in 2022, and the earlier draft proposed version had included leasing in the Atlantic in 2021.

A new five-year plan could be completed in as little as a year and a half following the steps required by the Outer Continental Shelf Lands Act. If Trump wanted, he could have a plan completed in late 2018 with leasing in the Beaufort, Chukchi and Atlantic areas in the same years initially proposed by the Obama administration.

A potentially enormous discovery of oil in Smith Bay, Alaska, was announced in October by Caelus Energy LLC. The oil reservoir is in state waters off the state’s northern coast and could benefit from pipeline permitting by the U.S. Army Corps of Engineers to get the oil to the start of the Trans-Alaska Pipeline.

The Corps of Engineers has a much more immediate challenge—the impending expiration, in March, of na-
Nationwide permits that avoid the need for lengthy project-specific environmental reviews under the Clean Water Act. The permits have to be renewed every five years, and much state regulatory action also can be stalled if the corps is slow to act.

Nationwide Permit 12 is especially important for construction, replacement, maintenance, repair and removal of all pipelines carrying liquids or gases and any electrical wires or cables. Nationwide Permit 3 is important to an array of repair, rehabilitation or replacement
Solar Industry Optimistic on Credits The solar industry is gearing up to defend its hard-earned five-year extension of the investment tax credits for solar projects.

The tax credits were part of the year-end spending bill in December 2015. The industry wants to ensure that the credits remain in place as a Republican-controlled Congress and Republican president discuss embarking on broad tax reform legislation in 2017.

The 2015 spending bill extended the investment tax credits in a phased-down fashion for solar projects. Projects get a 30 percent tax credit for 2017, 2018 and 2019, and then it ramps down to 26 percent in 2020 and 22 percent in 2021. In 2022, the credits become a permanent 10 percent for commercial solar projects but end for residential projects.

“Our contention to people who are interested in tax reform is that the investment tax credit has already been tax reformed and we should be allowed to maintain that kind of ramp down as a transition to whatever new tax code is enacted over the next couple of years,” Christopher Mansour, the vice president of federal affairs at the Solar Energy Industries Association, the trade association that represents the solar industry, told Bloomberg BNA.

Mansour says he is optimistic that the solar investment tax credit will be safe this year due to general political will to retain it. “A lot of members of Congress, whether they’re Democrats or Republicans, don’t like to change the rules in mid-stream on businesses,” he said. “Our companies are making billions of dollars of investment decisions now, based on the structure that the Congress enacted last year.”

“So we feel pretty good that we should be able to defend our current ramp down of the ITC,” he said.

The American Wind Energy Association said it is optimistic members of Congress will work to ensure investments in wind power continue. It is also hopeful that a renewed focus on improving infrastructure will benefit the wind industry.

“We’re confident that wind’s champions in Congress will want to maintain stable investment policy to keep growing American wind jobs,” Aaron Severn, AWEA’s senior director of federal legislative affairs, told Bloomberg BNA. “We also want to work with Congress and the new administration to grow and strengthen our nation’s transmission infrastructure which the president-elect has outlined as major priority.”

Litigation on Fracking and Birds The Obama administration is in federal court defending the BLM regulations on gas venting, flaring and leaking and regulations to tighten controls of oil and gas development where hydraulic fracturing is involved (RIN:1004-AE26). Attorneys say the administration could ask for remands, then revise the regulations in ways more amenable to allowing states to continue taking the leading role on such regulations.

Attorneys said a remand strategy would prevent environmental activist intervenors from continuing to defend the challenged rulemakings. The attorneys are saying something similar about legal challenges by states, local government and industry to federal land-use plans to protect the greater sage grouse across much of the West, including in regions with oil, gas and coal resources.

“I think they’ve got good grounds to do that,” said James Banks, a partner at Hogan Lovells US LLP in Washington, D.C. The amendments to the land-use plans by the BLM and the U.S. Forest Service were overwhelmingly devoted to protecting wildlife habitat rather than adhering to the “multiple use” mandates of federal land laws, Banks said.

Parker Moore, environmental lawyer at Beveridge & Diamond PC in Washington, D.C., agreed that a new administration could seek remands, but he said he expected more than that, especially given the economic sectors potentially affected by the sage grouse protections.

“I honestly think what you’ll see with the sage grouse is some form of legislation,” Moore said. He noted that attempts already had been made to use legislation, including proposals to delay an Endangered Species Act listing decision until conservation efforts have had time to produce results.

Tough Laws to Change The U.S. Fish and Wildlife Service is once again considering whether it should list the lesser prairie chicken as a threatened or endangered species. The Trump administration could insist the service take seriously and evaluate fairly the state and private efforts to protect the bird, something the service failed to do the first time around, Banks said.

Banks helped the Permian Basin Petroleum Association win a 2015 court order overturning the listing of the lesser prairie chicken as a threatened species. Like the sage grouse, the prairie chicken is often found in areas with oil and gas development and potential for power transmission lines and wind farms, as well as non-energy activity such as ranching and farming.

Some members of Congress would like to amend the Endangered Species Act and the National Environmental Policy Act, but Moore expressed skepticism that much more could be accomplished than tweaks to make the statutes work better, such as improving the petition process to reduce the burden placed on the overworked Fish and Wildlife Service.

“Honestly, I don’t see any wholesale changes to those statutes,” Moore said. “It’s much too difficult to do.”

Mining Regulations in Doubt Two coal regulations are likely to be withdrawn by the Trump administration, including the Office of Surface Mining, Reclamation and Enforcement’s stream protection rule (RIN:1029-AC63). The rule, which would limit the placement of waste in or near streams, has long faced opposition from congressional Republicans and the mining sector. The agency issued its final rule in December.

“We are advocating that the Trump administration initiate a timeout on these rules and policies and re-evaluate them before moving forward,” said Gregory Conrad, executive director of the Interstate Mining Compact Commission.

The day the stream protection rule was released, Senate Majority Leader Mitch McConnell (R-Ky.) said he would use the Congressional Review Act to overturn it. House Republicans have said the same thing, and Trump said on the campaign trail that he wanted to kill it.

The Office of Surface Mining’s self-bonding rule (RIN:1029-AC73), which would close loopholes in the way mining companies finance their future cleanup ob-
litigations, is also likely to be scrubbed. Mine companies chafe at additional limitations on how they fund their operations.

Another likely target is the Bureau of Land Management’s coal leasing moratorium on federal lands, which the Obama administration put in place as a prelude to broad changes. Because the moratorium is an executive-level action only, it can be eliminated with the stroke of a pen.

“arly every coal rule is going to be on the table for review,” said Christian Palich, president of the Ohio Coal Association. “Trump has said throughout the campaign that he wants to support coal. We believe they’re going to look at every regulation and look at what’s necessary.”

**Rockies Oil, Gas, Solar, Wind** In the Rocky Mountain states, regulators are anticipating a slight increase in rig counts in areas such as Utah’s Uintah Basin and the northern part of the Denver-Julesburg Basin.

“We’re continuing to look at what the market’s going to do and how we can reinforce a resurgence in the oil and gas space,” Jeff Ackermann, director of the Colorado Energy Office, told Bloomberg BNA. “We’re making sure there are not impediments to getting rig counts back up and production going again.”

In Utah, which is sixth in the nation for electric vehicle adoption, the state is expanding its EV infrastructure, Laura Nelson, the governor’s energy adviser, told Bloomberg BNA. The state is experiencing a solar boom and expects to see continued expansion in the state, both through utility-based development and also distributed solar opportunities, she said.

Proposed legislation to limit rooftop solar incentives and a proposed change in the net-metering rate could temper that expansion, however, she said.

In Colorado, Xcel Energy plans to speed up the development in 2017 of a new 600-megawatt wind project and the construction of a 125-mile transmission line connecting the cities of the urban Front Range region with the windy Eastern Plains. The Rush Creek Wind Project will boost wind generation by 20 percent.

“We’re looking forward to an administration that will be less openly hostile to our industry,” said Kathleen Sgamma, president of the Western Energy Alliance, an industry group in Denver.

**Pennsylvania to Act on Permitting** Pennsylvania is looking forward to a busy year of litigation over fracking regulations, the development of new permitting requirements and potentially a legislative battle over energy and environmental protection.

The Pennsylvania Department of Environmental Protection told Bloomberg BNA that its energy-related regulatory priorities in 2017 include:

- Reducing methane emissions from natural gas drilling and transport by revising permits for compressor stations and creating a general permit for unconventional gas well sites;
- Reducing smog from existing oil and gas operations by drafting rules under guidelines that the federal EPA issued Oct. 20;
- Beginning to issue new regulations for conventional oil and gas drilling; and
- Creating a statewide plan to increase the deployment of solar electricity.

**Litigation, Legislation in Pennsylvania** A Commonwealth Court is expected to rule on a challenge to Pennsylvania’s new Chapter 78a regulations, which focus on hydraulic fracturing regulations and natural gas development (Marcellus Shale Coalition v. Pa. Dep’t Envtl. Protection, Pa. Commw. Ct., No. 573 MD 2016, 11/8/16).

In an order Nov. 8, Judge Kevin Brobson temporarily stayed provisions that restrict drilling near school playgrounds, require developers to monitor and remediate inactive wells, impose new impoundment construction standards and set new requirements for site restoration.

In its decision, “the Court expressed some skepticism over other aspects of the regulations, and we should see that litigation resolve in 2017,” Elizabeth Witmer, energy chair at Saul Ewing LLP in Philadelphia, told Bloomberg BNA.

The year also could see a number of legislative challenges to energy and environmental regulations. In October, the state Senate adopted Senate Resolution 385, which directs the Joint State Government Commission “to conduct a study to analyze and identify which environmental laws and regulations of this Commonwealth have more stringent standards than Federal law requires.”

“The intent is to develop a hit list of state laws and regulations that they want to roll back,” David Hess, director of policy and communications at Crisci Associates in Harrisburg, Pa., and a former secretary of environmental protection, told Bloomberg BNA. Crisci lobbies on behalf of environmental groups and alternative energy companies, among others.

**California Deals With Gas Storage** California regulators in early 2017 are expected to wrap up their safety review of natural gas wells at the Aliso Canyon storage facility in the Los Angeles area. A four-month-long leak, which began in October 2015, forced closure of the storage field operated by Sempra Energy’s Southern California Gas Co. Only 29 of the 114 wells have been deemed safe for new injections of gas. SoCalGas has a year to make the other 85 wells safe or permanently seal them.

Newly enacted legislation, S.B. 380, requires the California Public Utilities Commission to open a proceeding by July to determine whether the Aliso Canyon facility can be permanently closed without jeopardizing the region’s energy and electricity needs.

Also in early 2017, the state Division of Oil, Gas and Geothermal Resources plans to complete a rulemaking to make permanent emergency regulations adopted in the wake of the Aliso Canyon leak. The regulations will apply to 14 underground natural gas facilities in the state. The proposed rules update construction and operating standards for gas storage wells, impose additional data and monitoring requirements and ensure all facilities have adequate risk management and emergency response plans.

The California Air Resources Board will consider adopting rules this spring to slash methane emissions from oil and gas facilities 40 percent to 45 percent by 2025. If adopted, the rules would be phased in between Jan. 1, 2018, and Jan. 1, 2020.

**By Alan Kovski, Rebecca Kern and Stephen Lee** — With assistance from Tripp Baltz, Carolyn Whetzel and Leslie A. Pappas

To contact the reporters on this story: Leslie A. Pappas in Philadelphia at LPappas@bna.com; Alan Kovski
Yucca Mountain Expected to See New Life as Nuclear Waste Site

The Yucca Mountain nuclear waste repository is likely to be brought back to life under the Trump administration and Republican-controlled Congress in 2017.

With former Senate Minority Leader Harry Reid (D-Nev.)—a Yucca Mountain opponent—out of office, Republicans say they are gearing up to introduce legislation to revive work on the permanent geological repository for spent nuclear waste in Nevada that was mothballed by the Obama administration in 2010.

Other energy policy developments ahead in 2017 could include a revival of a broad energy bill in Congress and new policy directions at the Energy Department.

One area of change might be energy efficiency standards. The standards were a key component of the Obama administration’s climate action plan, but they may take a lower profile in an administration where the president doesn’t accept the science of human-caused climate change.

**Signals From Trump** On the nuclear waste repository, the Trump transition team indicated that it wants to look into reopening the Yucca Mountain application. The team asked about it in a series of questions sent to the Energy Department.

Based on those signals, the Nuclear Energy Institute, which represents the nuclear power industry, is gearing up to lobby the new administration and Congress on restarting the process. At the same time, it is seeking consolidated interim storage options for commercial nuclear waste.

“In 2010, Harry Reid was able to strangle the Yucca Mountain project to death by cutting off funding, both at the Energy Department and the Nuclear Regulatory Commission,” Rod McCullum, a senior director for used fuel and decommissioning programs at the Nuclear Energy Institute, told Bloomberg BNA.

“But he never really tried to get the law changed. Yucca Mountain is still the law of the land,” he said. That law—the Nuclear Waste Policy Act—stipulates that Yucca Mountain is the designated permanent geological repository where commercial spent nuclear fuel is supposed to be sent.

The Energy Department during the Bush administration sent the Yucca Mountain licensing application to the Nuclear Regulatory Commission for review in 2008. But in March 2010, the Energy Department under the Obama administration sought to withdraw the application, and work on the project stopped.

**Not So Easy to Restart Yucca** Analysts say quite a few steps have to happen before the license application can be restarted.

“‘I think it’s going to be a challenge just logistically,’” Mary Anne Sullivan, a partner at Hogan Lovells, who formerly was a general counsel at the Energy Department, told Bloomberg BNA.

She said the federal government has sunk billions into the Yucca Mountain application project—$11.4 billion in federal appropriations to be specific, according to the Energy Department as of Sept. 30.

The Nuclear Waste Fund was created as part of the Nuclear Waste Policy Act of 1982 to pay for a permanent geological repository. Starting in 1983, operators of nuclear plants had to pay fees into the fund to cover the transport of nuclear waste from plants to the repository. The payments stopped in March 2014 when operators won a lawsuit against the agency because the waste was never removed. The fund had $38.8 billion in it as of Sept. 30.

Also, as a result of the Energy Department not removing the nuclear waste from nuclear plants by a 1998 statutory deadline, nuclear operators have sued the agency—which has led the government to shell out $6.1 billion in settlements from the taxpayer-funded Judgment Fund as of Sept. 30.

After the Energy Department filed the Yucca application in 2008, the NRC started a hearing process in which its Atomic Safety and Licensing Board appointed multiple boards of administrative law judges to hear a variety of legal and technical contentions. The boards admitted approximately 300 of them before suspending the proceedings in September 2011.
**More Staffing** The NRC would probably need additional funding to increase staffing. No new NRC appropriations related to Yucca Mountain have occurred since fiscal year 2010, but the agency currently has about $1.4 million left in remaining appropriations related to Yucca.

The NRC would need more funding for its Office of General Counsel and the Atomic Safety and Licensing Board to restart the adjudicatory hearing process, David McIntyre, an NRC spokesman, told Bloomberg BNA.

“We would need to reassemble a team to re-engage on the adjudicatory process,” Stephen Burns, NRC chairman, told Bloomberg BNA.

To restart the adjudicatory process, one or more of the boards would have to hear the contentions to the application or the NRC’s adoption of the Energy Department’s environmental impact statement, according to the NRC. The parties could then ask for the commission to review board decisions, and the final decision could be subject to appeal at a U.S. Court of Appeals, according to the NRC.

Whether all of this could happen in 2017 is uncertain. The Energy Department would have to update its Yucca Mountain application at the NRC. In addition, the Energy Department would have to reassemble technical teams because it dismantled its entire Yucca Mountain project office—the Office of Civilian Radioactive Waste Management.

Edwin Lyman, a senior scientist in the Global Security Program at the Union of Concerned Scientists, said it would be almost like starting from scratch.

“People dispersed, people retired, people found other jobs. You can’t just turn that back on,” Lyman said. “They lost expertise. Even if there is an intent to restart the program, it would take quite some time to get back up to the point where you can actually make progress.”

**Legislative Action on Yucca** Yucca Mountain license funding could be included in an appropriations bill covering NRC’s budget this spring, Samuel Brinton, a senior policy analyst with the Bipartisan Policy Center’s Energy Project, told Bloomberg BNA.

Also, in mid-2017 there is likely to be a revival of a nuclear waste bill (S. 854) that was introduced and co-sponsored last year by Sens. Lisa Murkowski (R-Alaska), Maria Cantwell (D-Wash.), Lamar Alexander (R-Tenn.) and Dianne Feinstein (D-Calif.), Brinton said.

The bill proposed to amend the Nuclear Waste Policy Act of 1982 to establish an independent agency to oversee the permanent disposal of nuclear waste, including the siting, construction and operation of additional repositories, a test facility and additional storage locations.

Brinton said that the nuclear waste bill in 2017 could provide Yucca Mountain funding authorization as well as land and water rights, interim storage of nuclear waste and the creation of an independent agency focused solely on a permanent nuclear waste repository.

“If you want it to last long term and if you want any of these things to work, everyone agrees that you need to move it out of the Department of Energy,” Brinton said.

**Optimism for 2017 Energy Bill** Separately, some lawmakers also see prospects for a broad energy reform bill this year. One languished in December and failed to get passed.

“I would definitely be supportive of doing a major energy initiative,” Rep. Frank Pallone (D-N.J.), the House Energy and Commerce Committee ranking member, told Bloomberg BNA. “From the very beginning, I wanted to have an energy bill that had some significant funding to upgrade the electricity grid and also to upgrade improvements for pipelines.”

Pallone, a central player during recent negotiations to strike a last-minute deal, said the overhaul is likely to align with Donald Trump’s calls for major infrastructure boosts. The energy legislation (S. 2012) could have put in place a range of efficiency initiatives, including school, home and commercial building retrofitting, as well as cybersecurity improvements.

Provisions to expedite the Energy Department approval process for natural gas exports played a central role in energy bill negotiations, and that is likely to continue, the highest-ranking member of the House Energy and Commerce Energy and Power Subcommittee, Rep. Pete Olson (R-Texas), told Bloomberg BNA.

Christopher Guith, senior vice president for policy at the U.S. Chamber of Commerce Institute for 21st Century Energy, said a potential Obama administration veto forced Republicans to hedge their interest in an overhaul effort. In 2017, Republicans will pursue a more aggressive strategy, Guith said.

But Athan Manuel, director of the Sierra Club Lands Protection Program, who followed the bill closely in light of the inclusion of Land and Water Conservation Fund reauthorization, said the environment in the next Congress may prove more difficult.

“Democrats will play hardball ... considering they have no administration ally as a backstop,” he told Bloomberg BNA. “This was the only window for the next two to four years.”

**Efficiency Standards Take Back Seat** Energy efficiency standards probably won’t be pursued as energetically by the Trump administration’s Energy Department, interested parties predict.

The Energy Department finalized nearly 60 new or updated appliance standards since President Barack Obama took office in 2009. They are projected to save consumers more than $550 billion on energy bills between 2009 and 2030.

Efficiency standards were a cornerstone of the Obama administration’s Climate Action Plan goal of reducing carbon emissions by 3 billion metric tons by 2030. The minimum efficiency requirements reduce the
amount of energy that appliances and equipment use, which leads to reductions of carbon emissions and savings on electricity bills.

Rick Perry, Trump’s pick for Energy secretary, is skeptical about the science that shows the Earth is warming as a result of fossil fuel use.

Trump also has scoffed at climate change. He promised to repeal the Obama administration’s Clean Power Plan, which puts the first carbon emissions limits on power plants.

Some observers think these signals mean the Energy Department of the Trump administration will slow down energy efficiency efforts.

The Trump transition team memo to the Energy Department asked which appliance products are subject to statutory requirements and which are discretionary.

“From everything we’ve seen, heard, the cast of characters and the questionnaire, we’re not hopeful that [the Trump administration] is going to continue to pursue energy efficiency with any vigor, even though it is broadly popular and effective,” David Goldston, the Natural Resources Defense Council’s director of government affairs, told Bloomberg BNA.

The efficiency standards already in effect are expected to continue.

“Undoing the regulations that are already in place and enforced, not only is not practical, I don’t even know that it’s possible because the manufacturers are meeting the efficiency requirements. They’re not going to go back to making less efficient products,” Kateri Callahan, president of the Alliance to Save Energy, an energy efficiency coalition, told Bloomberg BNA.

Callahan noted, however, that final regulations that the Energy Department has issued since May could be subject to repeal through the Congressional Review Act. Those include a negotiated final standard for central air conditioners and heat pumps.

It remains to be seen whether Trump would want to prioritize efforts to repeal these rules and whether support exists in Congress to get them repealed during the first 60 legislative days, she said.

**Down Commissioners at NRC, FERC** Going into 2017, the NRC and the Federal Energy Regulatory Commission each are down two commissioners. Trump is in a position to appoint Republican commissioners to both of these independent agencies. When fully staffed, each is led by five commissioners who are appointed by the White House and confirmed by the Senate to serve five-year terms.

The NRC has been down to three commissioners since former NRC Commissioner William Ostendorf (a Republican) left after his term ended June 30. The remaining commissioners are Burns (an independent), Commissioner Kristine Svinicki (a Republican), and Commissioner Jeff Baran (a Democrat).

Three of the five commission seats can be from the political party in power in the White House. Therefore, Trump will be able to appoint up to three Republican commissioners in 2017. He will be able to fill the two empty spots with Republican commissioners, and potentially a third Republican seat when Svinicki’s term expires in June 2017.

The Union of Concerned Scientists’ Lyman predicts that after Trump becomes president, he will select Svinicki to become the chairman of the commission, replacing Burns.

FERC has been down to three commissioners since October: Chairman Norman Bay, Commissioner Cheryl LaFleur and Commissioner Colette Honorable are all Democrats.

Three of the five commission seats can be from the party in power in the White House. Trump will be able to appoint two Republicans to fill the two empty spots, and potentially a third Republican commissioner to fill Honorable’s seat after her term expires in June 2017.

William S. Scherman, a partner at Gibson, Dunn & Crutcher who formerly served as general counsel at FERC, said that in the past, FERC appointments in a new administration haven’t been made until April or May, but this time may be different.

“Given that we are in a very unusual circumstance where we have three members from one party, none of whom are affiliated with the incoming administration, I think FERC will be much higher on the priority list for the incoming transition,” he said. “We’re likely to see action much quicker than we might otherwise have seen if there had a full complement of commissioners.”

“They could have someone ready to go as soon as the Senate reconvenes [in January], and move somebody very quickly,” he said. But he noted that there is only so much bandwidth for the Federal Bureau of Investigation to do background checks and for the Senate Energy and Natural Resources Committee to review nominees. The committee will hold hearings on 40 energy-related presidentially appointed nominees, including all FERC nominees.

**Integrating Renewables into the Grid** Observers of FERC will be watching to see if a Trump administration continues current progress on integrating renewables and battery storage into the nation’s electric grid.

A November proposed rule issued by FERC aims to break down barriers to market entry for electric battery storage on the grid. The proposal would require regional transmission operators to allow such battery storage to provide resources on the grid, enabling them to be paid similarly as other generation resources.

“That’s one example of a series of electric market pricing reforms that we’ve seen recently that have been renewable-friendly and demand-resource-friendly,” Brookesany Barrowes, an attorney at Baker Botts who focuses on FERC cases, told Bloomberg BNA. “They proceed in a way to encourage the development and use of alternative electric sources, and specifically trying to reform pricing mechanisms and market mechanisms, which is the strongest tool FERC has to affect resource mix.”

Barrowes said this trend of better integrating renewables may not be continued by a Trump administration, which hasn’t come out as strongly in favor of renewables as the current administration.

“That’s a trend you see with the current slate of Democratic [FERC] commissioners. I think there’s some question as to whether that trend would continue if you’ve got a new mix of commissioners that would be appointed by a Trump administration,” she said.

**By Rebecca Kern**

— With assistance from Brian Dabbs in Washington
To contact the reporter on this story: Rebecca Kern in Washington at rKern@bna.com
To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com
Pipeline Safety

U.S. Pipeline Agency to Focus On Data, Outreach in 2017

The organizational overhaul of the Pipeline and Hazardous Materials Safety Administration renews a focus in 2017 on data and stakeholder input—pivotal signposts for new emergency response authorities the agency was pursuing before the presidential election.

The agency will be “more forward-looking, proactive, innovative and data-driven,” says PHMSA’s latest strategic plan, issued in 2016. To support the changes, new positions were created, including an independent chief financial officer and an associate administrator for administration. PHMSA also will develop a workforce training and development plan for all levels of the organization to retain and enhance staff skills.

Christina Sames, vice president of operations and engineering with the American Gas Association in Washington, D.C., praised the recent overhaul. She said a new PHMSA executive director position—a career slot—will reinforce stability in between administrations.

But some groups raised questions about the permanence of PHMSA’s new strategic plan.

“In the past, PHMSA’s strategic priorities were readily identifiable based upon input from senior career staff, but the agency is much more influenced today by political decisions,” the nonprofit Alliance for Innovation and Infrastructure said. “Their current strategic plan will likely be altered by the next administration.” The organization says it is dedicated to identifying infrastructure needs, creating awareness of those needs and developing public-private partnerships. “

A New Executive

President-elect Donald Trump has said that he would remove energy regulations to restore jobs, which presumably includes those affecting pipeline operations. However, the public was reminded of the relevance of regulations that govern safe lines last September when the Colonial Pipeline leak in Alabama...
forced a shutdown that caused gasoline reserves on the East Coast to fall from 64 million barrels to 55.5 million, the biggest one-week drop in U.S. history.

In view of the organizational changes, environmental advocates like Lena Moffitt with the Sierra Club in Washington, D.C., said PHMSA is still under-resourced and understaffed. Moffitt said leaks pose an increasing threat to communities and the environment, and she expressed "hope that we can correct the inaccuracies of the past."

On the positive side, "we’re encouraged seeing Congress give PHMSA emergency powers” for leaks and explosions. And she praised the plans for a Department of Planning and Analytics for the information it may bring. "Any innovation in data and analytics is a good thing."

PHMSA also is setting up a Voluntary Information-Sharing System Working Group that will provide the new secretary of transportation with independent pipeline safety recommendations. In addition, a PHMSA spokesperson said, "we’ve made strides in filling out and diversifying our federal advisory committees. We have added members to more fully represent government and the public on our Liquid and Gas Pipeline Advisory committees, and they will be an integral voice throughout the regulatory development process."

The agency continues to work on a major crude-by-rail emergency response rule. According to the spokesperson, "To date, the department has taken over 30 actions to improve the safe transportation of crude by rail, including issuing the High Hazard Flammable Train Rule last year. In addition, we are working aggressively to implement the Fixing America’s Surface Transportation (FAST) Act provisions including finalizing rulemaking on Oil Spill Response planning."

That work also encompasses scientific queries about the chemical properties of crude. "We are participating with the Department of Energy, Sandia National Laboratories and Transport Canada in a study to better understand the characteristics of crude oil, to examine sample collection and testing methods of crude and to better understand how crude oil properties relate to transportation safety," the spokesperson said.

Railroads would develop more thorough oil spill response plans based on the amount of oil they are transporting, as opposed to current “basic plans.” The goal is to provide first responders with more information so they can improve emergency and remedial efforts when derailments occur.

**Aliso Canyon Fallout** The agency also is looking to strengthen protections for gas storage wells.

After the amount of natural gas released at Aliso Canyon in 2015 nearly erased California’s progress on reducing greenhouse gas emissions, a federal task force said new natural gas storage wells should have double barriers and older, single-barrier wells should be phased out.

The call for the more protective well design is among 44 recommendations in the Oct. 18 report by an interagency panel the White House convened to analyze the massive leak. How the new administration will respond to the report—and to PHMSA regulations under development—is unclear.

**Other Actions** If it is carried forward, an interim final rule implementing new emergency authorities at PHMSA may boost effective responses to pipeline ruptures.

On Oct. 3, PHMSA issued the interim final rule (RIN:2137-AF26) under a federal pipeline safety bill President Barack Obama signed into law in June that includes emergency order authority (the PIPES Act of 2016).

That bill reauthorized PHMSA through 2019 and required the agency to finish issuing safety directives from a 2011 law that was not fully implemented. The agency must finish those directives and rules first before it starts new ones.

“PHMSA’s priorities include completing all outstanding regulatory requirements as enumerated in the PIPES Act of 2011, the PIPES Act of 2016 and the FAST Act,” an agency spokesperson told Bloomberg BNA.

**By Steven Gibb**

To contact the reporter on this story: Steven Gibb in Washington at sgibb@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com
Hazardous Waste

New Administration Set to Absorb Hazardous Waste Agenda Despite Regulatory Uncertainty

A range of hazardous waste-heavy rulemakings under Resource Conservation and Recovery Act (RCRA) authority remain on the EPA agenda in the closing weeks of the Obama administration, and those regulatory actions are likely to stay in the crosshairs after President-elect Donald Trump assumes office, advocates and lawyers told Bloomberg BNA.

Both on the campaign trail and following his Nov. 8 victory, Trump vowed a nearly wholesale rollback of Environmental Protection Agency and other federal regulations, but the president-elect didn’t stress any RCRA-related priorities.

The RCRA agenda is, therefore, likely to stay the course, yet a potential decrease in congressional appropriations for the EPA may bode poorly for the agency’s enforcement and rulemaking capacity, the attorneys and advocates said. Lawmakers also may choose to annul recent rulemakings, such as the hazardous waste generator rule (RIN:2050-AG70), at the outset of the next Congress using the Congressional Review Act.

Over the past year and beyond, Trump has peppered the campaign trail and transition process with incendiary comments toward the EPA. He once called for “tremendous cutting” at the agency, while adding that EPA rulemaking is “making it impossible for our country to compete.”

RCRA establishes a framework for the vast majority of states to implement and administer their own management programs for hazardous waste and nonhazardous waste, known as municipal solid waste. State programs must meet federal standards. The regulations also put in place a corrective action program, which requires cleanup of blighted lands. The EPA runs the hazardous waste programs in Alaska and Iowa.

Uncertain Trump Prognosis All those interviewed said it’s virtually impossible to predict agency activity under Trump, who recently nominated Oklahoma Attorney General Scott Pruitt as EPA administrator. Pruitt has challenged EPA regulations on clean water, clean power and methane limits for the oil and natural gas industry, while also criticizing the Renewable Fuel Standard.

“There’s a lot of prognosticating going on, but who knows where the agency will ultimately end up,” Karl Bourdeau, a principal at Beveridge & Diamond PC in Washington D.C., told Bloomberg BNA, arguing some enforcement may be an area of policy change. “There’s a lot of discretion involved in the decision to go after an alleged violation. Some of those decisions will depend on the predilections of people appointed to senior positions. They’re going to have their own view on what types of violations to go after.”

Bourdeau said one of the most significant changes likely to hit the agency is a decreased budget, which Congress is able to do through the appropriations process. Dismantling regulations require transparency and procedural hurdles, he said, noting an oft-cited reason to avoid alarm.

Ongoing Hazardous Waste Overhaul The agency issued the hazardous waste generator rule, which attorneys have said may boost compliance costs with minimal sweeteners, in late November, paving way for implementation May 30, 2017.

That rule allows industry to avoid a higher quantity generator status previously triggered by a one-time, episodic generation, while also permitting “very small quantity generators” to consolidate hazardous waste under a large quantity generator as long as the two generators are controlled by the same entity.

A final rule (RIN:2050-AG77) to align electronic reporting for hazardous waste imports and exports with Organization for Economic Cooperation and Development requirements standards will also take effect Dec. 31. That rule comports with the e-Manifest underlying rule (RIN:2050-AG20), which published in 2014 but doesn’t deploy until 2018.

EPA officials estimate the e-Manifest rule will save industry $100 million annually in paperwork costs following full implementation.

“I think the focus on hazardous waste is inherent to the RCRA program, although political cycles often bring different priorities,” Duke McCall, a partner with Morgan, Lewis & Bockius LLP based in Washington, D.C., told Bloomberg BNA. “I don’t think anyone at this point can speak with confidence about what the new administration will do. Until a new administrator is selected, it’s really just guesswork.” The RCRA statute also defines standards for state nonhazardous waste management programs.

McCall spoke before Trump nominated Pruitt, who is poised to face Democratic resistance.

Accommodation and Protection: Stanislaus Meanwhile, an announcement on the intent to propose a rule (RIN:2050-AG86) to create new standards for “wet” landfills and bioreactor landfills was expected before the end of 2016 but has yet to be issued.

The EPA Office of Land and Emergency Management, which is tasked with RCRA regulatory action, has far less rulemaking in the pipelines than the air, water and chemical offices. Still, Assistant Administrator Mathy Stanislaus told Bloomberg BNA the hazardous waste rulemakings all aim to dovetail safeguards and economic benefits.

“I think embedded in all of these is accommodating use, and I would say maximum use, of materials that flows in the economy, while also setting forth some...
critical protections,” said Stanislaus in an exclusive interview with Bloomberg BNA.

As a standout example of that approach, Stanislaus pointed to the EPA’s 2015 definition of the solid waste rule (RIN:2050-AE82), which adds more regulation to secondary materials recycling and revises an offramp for those materials to be considered outside of the waste statute. Litigation over the rule is currently awaiting a decision at the U.S. Court of Appeals for the D.C. Circuit following oral argument in early November (API v. EPA, D.C. Cir., No. 09-1038, 1/27/09).

The high-profile rule aims to avert “sham recycling” by requiring industry to document compliance with the four following criteria: hazardous secondary material must provide a useful contribution to the recycling process or to a product or intermediate; recycling must produce a valuable product or intermediate; hazardous secondary material must be managed as valuable commodities; and the product of recycling must be comparable to a legitimate product or intermediate.

“We structured a rule to accommodate tremendous reuse and re-engineering of materials, a closed loop in the manufacturing realm, establish best practices of metals being re-manufactured, looking at various kinds of arrangements to re-engineer high-value solvents,” Stanislaus said. “We think that’s going to lay the groundwork for more broadly looking at materials to reuse and re-engineer to capture economic and environmental outcomes.”

Both manufacturing revitalization through materials recovery and environmental justice continue to play bedrock roles in RCRA implementation, Stanislaus said.

**Alleged Loopholes** That positive outlook isn’t shared by much of the affected community, however. James Pew, an Earthjustice staff attorney in Washington, D.C., told Bloomberg BNA that slate of rules represents a degradation of the statute.

“I think what you’re seeing, which is kind of counter-intuitive, is the roll out of a number of EPA loopholes to weaken protections against the handling of hazardous waste,” said Pew, who challenged the solid waste rule in the court. “Over and over again exemptions lead to these situations where hazardous waste piles up and those piles aren’t subject to RCRA requirements which leads to explosions and leaks into the groundwater.”

Bourdeau said the environmental community will likely “come out in spades” against safeguard rollbacks under Trump, arguing RCRA citizen suits will be a weapon for dissenter. “The citizen suit laws in this country are very powerful partially because they provide attorney fees if a case substantially succeeds, which means there’s a change of behavior as a result of the suit,” he said. “The RCRA citizen suit has been used probably more than any other statute. It’s used constantly, and it’s used creatively and expansively to address a lot of perceived wills.”

The RCRA statute allows challenges to “any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.”

Pew questioned that tactic, however. “If this agency continues to engage, as it has been, in weakening the statute, then what is there to enforce through citizen suits?” he said. “They’re turning this statute into Swiss cheese with the exemptions.”

**Coal Ash Saga Continues** Meanwhile, the agency is also preparing to propose a supplemental rule (RIN:2050-AE88) to ax some non-controversial elements of the 2014 federal coal ash regulation (RIN:2050-AE81).

Ash is produced by coal-fired power plants when they generate electricity. Coal ash is an evergreen, hot button issue both in policy-making circles and among affected communities. Litigation over the rule (Utils. Solid Waste Activities Grp. v. EPA, D.C. Cir. App., No. 15-1219, 7/15/15) continues despite congressional passage Dec. 10 of a regulatory overhaul to allow state implementation of personalized regulatory frameworks.

“States have been and continue to be additional authority under RCRA to implement coal ash residual programs, and so I would flag that as something we very much hope the administration would be supportive of,” Alexandra Dunn, executive director of the Environmental Council of the States, a nonpartisan association of state and territorial environmental commissioners, told Bloomberg BNA.

Environmental groups have largely disputed the legislation, alleging it will jeopardize disposal protections codified in the EPA rule. Coal ash, which is a byproduct of combustion, and other residuals are used to make concrete and gypsum wallboard, along with structural fills and other uses.

The beneficial use industry, however, staunchly backs the revamp despite a beneficial use exemption already put in place as part of the underlying rule. “Regulatory certainty was restored with the new rule, and we look forward to sitting down to talk with the new administration about how to increase beneficial use,” John Ward, spokesman for the American Coal Ash Association, told Bloomberg BNA.

Both Dunn and Ward said coal ash operational changes, such as outreach to shed light on environmental benefits of reuse and state best practice reviews, at the EPA may be more critical than regulatory modifications.

**Food Waste/Sustainability** EPA officials are continuing to prioritize initiatives related to strengthening the domestic and global “circular economy,” the broad notion of reusing and recycling materials in place of developing raw material, as part of a concerted effort to reduce greenhouse gas emissions, Stanislaus said, who pointed to ongoing partnerships with G-7 countries.

The EPA says municipal solid waste recycling rates have dramatically increased over recent decades, but the rate has flattened at roughly 34 percent since 2010. The EPA, however, lacks a mechanism under RCRA or other statutes to require states to ramp up recycling. Meanwhile, hazardous waste recycling also has dramatically increased in recent years, the EPA says.

G-7 countries convened “circular economy” summits in early 2016. That international cooperation is set to continue into the Trump administration, Stanislaus said.
The federal Superfund law celebrates its 37th birthday in 2017 and, according to experienced attorneys tracking the litigation, plenty remains to fight about.

The hazardous waste cleanup law, never a model of clarity, formed the basis for several significant legal rulings in 2016.

They included a high-profile Ninth Circuit decision on transboundary aerial pollutants from Canada, and another from the D.C. Circuit clarifying how the federal government should be treated relative to other liable parties.

A spate of interesting Superfund cases are on tap for the coming year.

Top among them are another Ninth Circuit case, this one addressing whether a company’s settlement of its liability under another federal statute triggers its right to file a Superfund contribution claim.

Another lawsuit to watch in 2017, this one in the Tenth Circuit, is expected to address whether the federal government is responsible for paying for contamination cleanups on federal land leased to mining companies and others.

Look Back: No Aerial Liability, Equal Treatment for Feds

The marquee ruling in 2016 came from the U.S. Court of Appeals for the Ninth Circuit, which held that emissions carried by the wind onto land or water don’t constitute “disposal” under the Comprehensive Environmental Response, Cleanup and Liability Act or Superfund law, clearing a Canadian smelter of liability.

Attorneys strongly differ on whether the court got this lawsuit facing Teck Cominco right (Pakootas v. Teck Cominco Metals, Ltd., 830 F.3d 975, 82 ERC 2045, 2016 BL 241292 (9th Cir. 2016)).

Attorney Peter Hsiao with Morrison and Foerster in Los Angeles said the court properly followed precedent and that air pollution is already controlled under the Clean Air Act and state law through a carefully designed regulatory scheme.

But Professor Craig Johnston at Lewis & Clark Law School in Oregon said the precedent was distinguishable. “Teck was an emitter—it wasn’t passive movement. That should be adequate to be disposal,” he said.

In another closely watched case, the D.C. Circuit in August said the federal government’s agreement to cover Lockheed Martin Corp.’s cleanup costs wasn’t a basis to reduce the government’s own share of liability (Lockheed Martin Corp. v. United States, 833 F.3d 225, 83 ERC 1010, 2016 BL 269266 (D.C. Cir. 2016)).

The Lockheed decision means that the government will be treated like any other liable party in Superfund litigation, Prof. Alfred Light at St. Thomas University School of Law in Miami Gardens, Fla., told Bloomberg BNA.

The Ninth Circuit also issued a June decision holding that a company that has been sued under the Superfund law is not limited to a contribution action to recover cleanup costs at a different but related site (Whittaker Corp. v. United States, 825 F.3d 1002, 82 ERC 1725, 2016 BL 187374 (9th Cir. 2016)).

At the trial court level, in February, the Eastern District of New York ruled that listing a contaminated site on the Superfund National Priorities List many years after the state of New York discovered the contamination revived the state’s natural resources damages claim (New York v. Next Millennium Realty, LLC, 160 F. Supp. 3d 485, 82 ERC 1405, 2016 BL 35748 (E.D.N.Y. 2016)).

And the Eastern District of Missouri, in September, held that the owners of a contaminated site couldn’t recover costs under Superfund for testing done to confirm that contamination migrated to their property from a nearby site (Wilson Rd. Dev. Corp. v. Fronabarger Concrete, Inc., 83 ERC 1233, 2016 BL 305802 (E.D. Mo. 2016)).

Contribution Claims, Federal Lease Liability

In the coming year, federal appeals courts will consider the intersection of the Superfund law and other environmental statutes as they relate to contribution claims, and the extent of the federal government’s Superfund liability on federally leased land.

The Ninth Circuit, in February, is slated to consider whether Superfund provides a contribution claim where a party hasn’t expressly settled its CERCLA liability—an issue that has divided the Second and Third Circuits.

Many other environmental statutes lack express contribution rights. The ruling, if upheld, would ensure that parties settling under those statutes would have an avenue to pursue cleanup costs from other liable parties.

In another case, the Tenth Circuit is set to decide whether the federal government is liable for contamination on federal land leased to a mining company.

Chevron Corp. argues the government provided engineering services and facilitated mining waste disposed of on federal land. Consequently, it should pay a portion of the contaminated area’s cleanup costs.

At the trial court level, the District of South Carolina will consider whether the recipient of a unilateral cleanup order may pursue a cost recovery or contribution action.

Meanwhile, lower courts in Wisconsin and Michigan will consider apportionment and allocation at sediment
sites—an issue that has divided courts at the trial and appellate level.

<table>
<thead>
<tr>
<th>Topic</th>
<th>Citation</th>
<th>Description</th>
<th>Status</th>
<th>Latest Story</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contribution</td>
<td>Asarco LLC v. Atl. Richfield Co., 9th Cir., No. 14-35723</td>
<td>Appeal from ruling that a consent decree for RCRA and CWA violations also triggers CERCLA statute of limitations for a contribution action.</td>
<td>Set for oral argument 2/8/17.</td>
<td>Recent Superfund Decision Expands Option of Contribution to Non-CERCLA Settlements</td>
</tr>
<tr>
<td></td>
<td>Chevron Mining v. United States 10th Cir., No. 15-02209</td>
<td>Chevron Mining, which held mining rights on federal land, seeks to hold the U.S. liable as an owner for mining contamination and as an arranger for “facilitating” mining waste disposal.</td>
<td>Oral argument held 11/14/16.</td>
<td>Chevron Mining to Pay $4M to Restore Natural Resources at New Mexico Mine</td>
</tr>
<tr>
<td></td>
<td>PCS Nitrogen Inc. v. Ross Dev. Corp., D.S.C., No. 14-cv-04252</td>
<td>Contribution lawsuit over supplemental remediation ordered by the EPA; enforcement order held equivalent to civil action for contribution purposes.</td>
<td>Summary judgment motions pending. The proceedings are stayed as to defendant Ashley II of Charleston, LLC pending conclusion of bankruptcy proceedings.</td>
<td>Enforcement Order Equivalent of Civil Action Limits Party to Superfund Contribution Claim</td>
</tr>
<tr>
<td></td>
<td>ExxonMobil Corp. v. United States, S.D. Tex., No. 10-cv-02386</td>
<td>Litigation involving division of cleanup costs between the federal government and ExxonMobil for adjoining World War II-era industrial sites. Operator liability found for both parties for each site.</td>
<td>Trial over allocation of costs pending. Discovery ongoing.</td>
<td>ExxonMobil, U.S, to Share Superfund Costs for WWII Factory Waste; Allocation Deferred</td>
</tr>
<tr>
<td></td>
<td>AmeriPride Serv., Inc. v. Texas Eastern Overseas, Inc., E.D. Cal., No. 00-cv-00113</td>
<td>Cleanup cost litigation against multiple parties for tainted soils at an industrial laundry plant in Texas. After 9th Circuit remand, district court rules pro rata approach applies.</td>
<td>Allocation trial completed 11/15/16. Briefing completed 12/19/16 on proportionate share approach.</td>
<td>Pro Rata Split of Superfund Costs Ruled Fairer</td>
</tr>
<tr>
<td></td>
<td>Emhart Indus., Inc. v. New England Container Co., D.R.I., No. 06-cv-00218</td>
<td>Allocation of cleanup costs for Centredale Manor Superfund Site in Rhode Island. Emhart held jointly liable for failure to establish divisibility of harm.</td>
<td>Phase II bench trial continued to 1/17/17.</td>
<td>Brief Operation Rejected for Superfund Apportionment</td>
</tr>
</tbody>
</table>
### Policy Overlook: Vapor Rules, Insurance to Effect Changes

A high-profile addition to Superfund assessment criteria and a pending final rule on financial insurance for the hardrock mining industry are likely to dominate Superfund compliance changes writ large in 2017.

The Environmental Protection Agency floated the vapor intrusion addition to the Superfund Hazard Ranking System (HRS) in early December, and lawyers and advocates say it is likely to induce a modest increase to the Superfund National Priority List.

**Broadened Superfund Criteria** Vapor intrusion, also known as subsurface intrusion, will now join surface water, groundwater, air and soil contamination as potential factors in the Superfund Hazard Ranking System (HRS) assessments, the program’s assessment metric.

Vapor intrusion is the process of volatile compounds migrating through subsurface groundwater or soil to indoor air in above-ground structures. Human exposure can cause a range of health problems depending on the particular chemicals resting below the surface.

The rule (RIN:2050-AG67), which will take effect 30 days after it formally enters the Federal Register, is poised to increase the number of listed sites by making it easier to hit the HRS 28.5 point threshold, Norman Bernstein, a lawyer with Bernstein and Associates LLC in Rye Brook, N.Y., told Bloomberg BNA. That scale draws in scoring from the soon-to-be five total factors.

“The total number of sites which would be eligible for listing under the NPL would increase, and the agency itself has in effect acknowledged that,” said Bernstein, a critic of the rule. “If they reduced the weight of the other criteria, that would have been a regulatory neutral change, but in fact they put their thumb on the scale.”

A staunch supporter of the new requirement, Lenny Siegel, executive director of the advocacy group the Center for Public Environmental Oversight, agreed more sites will likely be in the EPA crosshairs. “I don’t think there will be a flood because a lot of the potential [vapor intrusion] sites are on the NPL for other reasons,” he told Bloomberg BNA. “It’s not going to tilt the entire program in a new direction, but symbolically it reminds people to evaluate [vapor intrusion] as a new contamination pathway, which could be equally important.”

The rule falls within the 60 legislative-day window for the Congressional Review Act (CRA), a mechanism for repeal. But Republicans will likely be selective in their repeal priorities. “This one may be not sufficiently material for Congress to act on it, so the agency would have to go through notice and comment requirements to change the rule,” said Bernstein, referring to guidelines embedded in the Administrative Procedure Act.

In the environment space, Republicans will most likely target climate change rulemaking for immediate CRA repeal, as well as the Interior Department’s coal industry-related stream protection rule (RIN:1029-AC63).

**Industry, Advocates Blast Mining Insurance** Meanwhile, the court-ordered finalization of Superfund hardrock mining insurance requirements is likely to continue to rankle Western states and mining companies, which immediately lashed out at the EPA following the informal release of the proposal in late November.

The heavily anticipated, court-ordered proposal (RIN:2050-AG61), released informally in early December, prompted immediate criticism from Western states and industry, both of which have blasted the rulemaking process repeatedly over the past year.

Following its release, House Natural Resources Committee Chairman Rob Bishop (R-Utah) and Energy and Commerce Chairman Fred Upton (R-Mich.), two fierce critics of the rulemaking, called the regulation burdensome and duplicative. “The latest EPA proposed regulation is the result of sue-and-settle litigation that perpetuates more of the same special interest handouts from this administration,” they said in a statement. “State financial assurance programs and numerous other federal regulations are already in place to ensure environmental stewardship, but the EPA ignored input from those models and stakeholders.”

The EPA rule would force hardrock mine operators to obtain Superfund financial assurances to cover hazardous discharge impacts. Hardrock refers to minerals that contain gold, silver, iron, copper, zinc, nickel, tin, lead and other metals, as opposed to, for instance, coal.

Certain categories of facilities are exempt, such as mines less than five acres in size and stream bed mines that don’t use hazardous substances.

The incoming administration is not obligated to finalize proposals issued under a preceding administration, but the related litigation is a likely bulwark against halting the rulemaking process. The U.S. Court of Appeals for the D.C. Circuit in January 2016 said the EPA must finalize the rule by Dec. 1, 2017 (*In re Idaho Conservation League*, D.C. Cir. App., No. 14-1149, 1/29/16).

The judges also decided the EPA must finalize financial assurance requirements for other industries over a staggered period between 2020 and 2024.

Alongside releasing the hardrock mining rule, the agency notified (RIN:2050-AG56) the public that it intends to issue proposals for chemical manufacturing; electric power generation, transmission and distribution; and petroleum and coal products manufacturing sectors.

Meanwhile, the EPA released regional guidance in April on the inclusion of financial assurance require-
ments in cleanup consent decrees and unilateral administrative orders.

**Devolution?** The Trump campaign team floated the general idea of devolving EPA’s Superfund authority to the states, Don Elliott, a Covington & Burling LLP lawyer in Washington, D.C., and former EPA top-ranking legal official, told Bloomberg BNA. Elliott said that would likely mean states would absorb more cleanup responsibility.

He was unable to provide more details, and several Superfund professionals have since speculated how such a shift would materialize.

That devolution could come in the form of increased state influence over remedy selection, often referred to as a record of decision, Winston Porter, president of Environmental Strategies in Savannah, Ga., and the former head of the EPA’s waste office, told Bloomberg BNA.

States often clean up sites better than federal headquarters, Porter said, while also harping on the—according to him—excessively long, standard process of evaluating remediation strategies and implementing a plan.

“Right now, there are ways for the EPA and the states to work together. States take some of the responsibility and EPA takes some, but statutory authority still stays at the EPA [headquarters],” Porter said. “In order to get the final authority for picking the remedy to the states, that would likely mean a change in law, and I don’t say that casually.”

The Superfund statute does not provide the EPA authority to delegate compliance to states. That marks a distinction from air, water and Resource Conservation and Recovery Act laws. Still, nearly all states have Superfund programs to augment or enhance federal efforts.

Staffing levels and responsibilities vary, however, and the EPA rarely delegates comprehensive Superfund assessment and remediation to state programs for the more significant cleanups.

Some Superfund professionals are skeptical of such a change. “It’s a double-edged sword,” said Bernstein. “Some state programs are weak. I’m not sure they could do that devolution without substantially increasing monies going to the states.”

**Targeted Budget Cuts?** Still, Superfund professionals and other stakeholders are flying blind into the incoming year to a certain degree, in light of President-elect Donald Trump’s calls to dismantle the EPA. “We’re going to have little tidbits left but we’re going to get most of [the EPA] out,” he said in early 2016. That said, Trump has never publicly specified a Superfund overhaul, nor has his campaign or transition team.

Following the lapse of a tax on toxic material handlers in the mid-1990s, the EPA must either clean up sites with congressionally appropriated taxpayer funds or get responsible parties to foot the bill.

More than 1,300 sites are currently on the priority list, and an additional 53 sites are proposed, according to EPA data dated Nov. 29, 2016. Nearly 400 sites have been deleted from the priority list throughout the life of the program.

Meanwhile, environmental groups fear a slashed budget for the agency. Siegel suggested, though, targeted cuts could actually stave off massive cuts to Superfund.

“It’s real clear that Trump and his prospective appointees want to limit what the EPA does on climate change, and I would expect him to lean against anything else that threatens the fossil fuel companies. But not all exposure and contamination issues are partisan,” said Siegel. “If it’s the [air program] that absorbs the cuts, then other programs might not hurt as much.”

Siegel said Republican legislatures nationwide have rallied around safety measures against, for instance, perfluorinated chemicals contamination.

The EPA also is projecting to complete a final rule on a proposal (RIN:2050-AG78) to align the National Contingency Plan, which outlines the preparation and response strategy for hazardous discharges, with other emergency response systems. However, a Trump administration could easily discontinue that rulemaking.

**BY BRIAN DABBS, PETER HAYES AND STEVEN M. SELLERS**

To contact the reporters on this story: Steven M. Sellers in Washington at ssellers@bna.com, Peter Hayes in Washington at phayes@bna.com and Brian Dabbs in Washington at bdabbs@bna.com.

To contact the editors responsible for this story: Steven Patrick at spatrick@bna.com and Larry Pearl at lpearl@bna.com
Brazil Could Loosen Environmental Licensing for Businesses

Brazil’s environmental policy will likely take a back seat to the country’s economic recovery throughout the year as President Michel Temer seeks to establish the fiscal reform needed to end a three-year recession.

The main environmental measure that Congress is expected to prioritize in 2017 involves loosening some licensing requirements, environmentalists, current and former Environment Ministry officials and industrial groups told Bloomberg BNA.

One proposal would exempt farms, ranches and agribusinesses from now-required environmental licenses. It also would eliminate or greatly reduce the number of public hearings for higher impact projects, including infrastructure works, to continue to be licensed by state and federal agencies.

The bill also would allow some developers to electronically register environmental impact licensing requests with state agencies for automatic approval.

Big Projects Another proposal would streamline licensing for “nationally strategic” infrastructure projects like dams, roads, railways, ports, waterways and those involving the extraction of natural resources. It would require only a single license, instead of three, as currently needed.

It also would mandate that officials grant or deny a license within eight months of an application being filed. Currently, the process can take five years.

“It will be a conservative piece of legislation that fasttracks environmental licensing, in part, by reducing licensing rigor, and thus spurring needed investment,” Ana Cristina Barros, Latin American regional director of the Nature Conservancy in Brasilia, told Bloomberg BNA.

But Mauricio Guetta, a lawyer at the nonprofit Socio-Environmental Institute in Brasilia, said “Congress will be wary” of passing a bill that would increase the risk of environmental catastrophes. “The memory of the rupture of the mining waste reservoir in November of 2015 is still fresh in the memory of all congressmen.”

That incident sent 62 million cubic meters of iron-ore tailings into waterways and killed 19 in Minas Gerais state.

The bill to reform environmental licensing “will be a compromise that combines the most economically viable and ecologically sustainable aspects” of the various proposals, said Congressman Nilson Leitao, a member of the environmental committee in the Chamber of Deputies.

Air Quality Standards Brazil’s National Environmental Council (CONAMA), a public-private policymaking body headed by the Environment Ministry, may pass an important resolution to tighten air quality standards and bring them in line with current World Health Organization recommendations. The resolution would set intermediate and final targets to which atmospheric emissions must drop, and intermediate and possibly final deadlines for reaching those reductions.

“The main factor standing in the way of a technical commission agreement on a resolution involves target dates” for reducing pollution, Leticia Carvalho, director of the Department of Environmental Quality at the Environment Ministry, told Bloomberg BNA.

The Environment Ministry and industrial-sector representatives on CONAMA support a periodic drawdown in pollution with regular re-evaluations throughout a 16-year period and no final target date. Environmental representatives and federal prosecutors want a faster drawdown with a nine-year deadline, according to Carvalho.

Dealing With Deforestation The National Space Research Institute (INPE) reported that the Brazilian Amazon lost an estimated 29 percent more rainforest in the year ending July 31, 2016, than was cleared in the preceding 12 months, so the Environment Ministry will likely expand its efforts to fight deforestation.

The Brazilian Amazon deforestation rate fluctuates for a variety of complex causes, the main ones being the price of commodities—like soy and beef sourced in that biome—and the intensity of federal and state enforcement efforts to combat illegal cutting, Dalton Valeriano, INPE’s Amazon program coordinator, told Bloomberg BNA.

The government will be under pressure to curb the Amazon deforestation, Alfredo Sirkis, executive secretary of the Brazilian Forum on Climate Change, told Bloomberg BNA. “If Brazil doesn’t take such proactive steps to reduce Amazon deforestation it will face international embarrassment and criticism for not taking its Paris climate agreement commitments seriously enough,” Sirkis said.

Brazil, among the world’s top 10 carbon emitters, has vowed to eliminate illegal Amazon deforestation by 2030. The clearing of that rainforest accounts for 20 percent of the country’s carbon emissions.

By Michael Kepp

To contact the reporter on this story: Michael Kepp in Rio de Janeiro at correspondents@bna.com
Canada Focuses on Carbon Tax, Climate; Pipeline Projects Face More Opposition

Canada will spend 2017 figuring out how to make carbon pricing work on a nationwide basis and how to justify building pipeline projects that face strong opposition on environmental grounds.

Prime Minister Justin Trudeau has set an ambitious target of having a price on carbon in place in 2018. Four provinces already have carbon taxes or cap-and-trade programs, but the other nine jurisdictions have significant work to do in a short timeframe.

Trudeau will also have to stick-handle the thorny issue of his government’s approval of Kinder Morgan’s Trans Mountain pipeline project, which faces intense opposition from local politicians, the public and aboriginal groups.

The Canadian business community supports the concept of carbon pricing, and British Columbia’s carbon tax demonstrates that it can be done in a way that doesn’t harm competitiveness, said Perrin Beatty, president of the Canadian Chamber of Commerce.

“I’m convinced you can put a price on carbon and remain competitive,” Beatty told Bloomberg BNA.

But such major policy decisions can’t be taken in isolation, and Canada must consider what its U.S. neighbor is doing under the leadership of Donald Trump, he said.

“Any decisions we take have to be taken in the context of global competitiveness,” he said.

Pan-Canadian Framework The carbon pricing approach is part of a broader Pan-Canadian Framework on Clean Growth and Climate Change, which was agreed to and signed Dec. 9 by the federal government and 11 of 13 provincial and territorial governments.

The plan, intended to help Canada meet its target of reducing greenhouse gases by 30 percent from 2005 levels by 2030, includes a “floor” price for carbon that starts at C$10 ($7.60) per metric ton of carbon dioxide equivalent in 2018 and increases in annual increments to C$50 ($38) by 2022.

Provinces and territories have the option of applying a carbon tax, as British Columbia and Alberta already have done, or implement a cap-and-trade system for emissions, as Quebec already has done and Ontario will launch in early 2017.

The plan is “pretty reasonable” and includes “ambitious” reduction initiatives for most sectors, said Dale Marshall, national program manager with Toronto-based Environmental Defence.

Pipeline Approvals Despite its federal approval, building of the Trans Mountain pipeline remains in doubt, said Marshall.

The project would nearly triple Kinder Morgan’s daily transmission of oil from Alberta to the Vancouver coast. But the plan still needs an environmental approval from British Columbia. Marshall also cited opposition from Vancouver Mayor Gregor Robertson, and aboriginal communities along the pipeline’s proposed route, who have threatened court action.

The government in late 2016 approved the project but rejected the also controversial Northern Gateway proj-
ect that would have passed through a sensitive forest ecosystem in northern British Columbia and ran counter to the government’s stated opposition to tanker traffic along that province’s northern coast.

Carbon Pricing The climate change framework’s carbon pricing element probably can be implemented as proposed, despite opposition from the provinces of Saskatchewan and Manitoba that led to them not signing the overall document, Marshall said.

Saskatchewan Premier Brad Wall has threatened legal action, which could go to the Supreme Court of Canada. But the federal government has authority to regulate toxic substances and has declared greenhouse gases as toxic under the Canadian Environmental Protection Act.

Trudeau has said the federal government will apply the planned carbon tax in any jurisdiction that doesn’t do so on its own.

Climate Plan’s Impacts The climate change plan doesn’t include enough specific accounting to show how carbon pricing and other control measures would meet Canada’s projected targets, Erin Flanagan, federal policy director with Calgary-based Pembina Institute, said.

Observers were looking for clear numbers to show how the climate plan will meet the “gap” identified by Canada’s National Energy Board of 291 million metric tons between the national target and plans identified before the national framework was released, Flanagan told Bloomberg BNA. The gap was largely the result of continued growth in oil sands and liquefied natural gas production, she said.

The framework plan provides a broad picture of the pathway to achieving the 2030 emissions reduction target that is “pretty helpful” in setting the stage for developing additional actions, and federal officials have promised, but not yet delivered, further details, she said. “Many groups were clear that we wanted to see the math,” she said. “We’re looking forward to more detailed projections.”

Province Plans British Columbia has had a carbon tax since 2008, which currently is at C$30 ($23) per metric ton.

Alberta’s economywide carbon tax kicks in Jan. 1, 2017. It is expected to raise C$9.6 billion ($7.2 billion) during the next five years, most of which will be invested in energy sector diversification.

Saskatchewan opposes the federal plan, saying carbon pricing would hurt economies already suffering from low commodity prices.

Manitoba ruled out a cap-and-trade system as part of a national strategy to reduce emissions.

Canada will continue assessing in 2017 the 1,550 substances whose environmental and health reviews are part of the third wave of assessments under the Chemicals Management Plan.

Election Issue In British Columbia’s 2013 provincial election, now-Premier Christy Clark promised a liquefied natural gas export industry that would alleviate the province’s budget problems.

With some 20 plants promised and in various stages of regulatory approval, only one has been approved for final investment.

The issue promises to be a hot election topic in 2017.

Coal Questions In November, Trudeau announced Canada’s planned elimination of traditional coal-fired power plants. Alberta and Ontario have also made significant moves on coal plant phaseouts.

But Dogwood Initiative environmental group spokesman Kai Nagata said that while that happens, British Columbia is allowing the transport of coal from the Powder River Basin mines on the Montana-Wyoming border for shipment from western Canadian ports.

Environmental groups claim Canada is being used as a conduit for coal that Washington and Oregon have refused to handle due to health concerns.

That plan faces a Federal Court of Canada challenge in Vancouver in May.

Saskatchewan Considers Pipeline Law Saskatchewan has introduced the Pipelines Amendment Act, which would, if passed:

- provide requirements for financial assurance from operators for pipelines in high-risk locations like water crossings;
- create a legal framework for phased-in licensing of more than 80,000 lines exempt under the 1998 Pipelines Act;
- establish a new inspection, investigation and compliance audit powers for ministry staff;
- update and modernizing penalty provisions; and
- establish new obligations associated with environmental issues that might occur following pipeline abandonment.

The bill was introduced and passed at the first reading stage in the legislature Nov. 28. The governing Saskatchewan Party has a parliamentary majority so the bill’s passage is virtually assured.

By Peter Menysz and Jeremy Hainsworth
To contact the reporters: Peter Menysz in Ottawa and Jeremy Hainsworth in Vancouver at correspondent@bna.com
To contact the editor: Greg Henderson at ghenderson@bna.com

Germany

Germany Aligns Environmental Agenda With Election Year, Tying Up Loose Ends

Germany’s ambitious green energy transition is likely to dominate environmental legislative goals again in 2017, even if upcoming federal elections mean work could focus more on tying up loose ends than pursuing ambitious changes.

Germany’s energy transition, known as the Energiewende, seeks to eliminate nuclear power by 2022, increase green energy as a percent of the mix to 80 percent by 2050, and decrease carbon dioxide emissions by up to 95 percent by 2050 compared to 1990 levels.

In 2017, the transition—with proposed legislation—is expected to be underpinned by the new Climate Protection Plan 2050 adopted by the Cabinet in November. The plan serves as a guiding force for Germany’s adherence to the Paris Agreement, adopted internationally Nov. 4.
But the efficacy of the German plan may be stymied by lagging agricultural and transportation sectors, along with an administration conscious of upcoming elections.

“The election is clearly going to be the big influencer on all things energy,” Matthias Lang, an attorney specializing in energy and environment at Bird & Bird’s Dusseldorf office, told Bloomberg BNA at the end of 2016. “That’s why everything is starting to be tidied up now. There is no room to do anything major next year.”

Compromise on Coal The Climate Protection Plan 2050 commits all economic sectors to tailored benchmarks for carbon emissions over the next 15 years in order to reach emission reduction goals.

In 2017, the plan is expected to spawn legislation dealing with emission standards such as for livestock farming, as well as reforming legislation for agricultural waste.

At the same time, there is concern over delays in the economy withdrawing from coal use. The final draft of the plan was vetoed by Economy and Energy Minister Sigmar Gabriel due to its inclusion of a commission charged with creating a timetable for coal withdrawal by 2017. He said the plan did not sufficiently take into account the socioeconomic impact on Germany’s coal-producing regions.

So in 2017, the commission will examine “regional social and economic concerns,” instead of creating a timetable for coal withdrawal.

Some say a delayed coal phaseout will hurt goals to curb carbon emissions.

“We need to develop a timetable for withdrawal from coal use as soon as possible, so that companies and energy providers are able to come to terms with the move,” Peter Meiwald, a Green party lawmaker in the Bundestag, the lower house of Germany’s Parliament, told Bloomberg BNA. “We need a smooth transition with limited hiccups in order to reach our climate goals.”

Transportation Sector Lagging Despite legislation meant to spark electric car sales in 2016, emissions standards in Germany’s transportation sector continue to lag, making it a priority for the legislative agenda. Emissions from this sector make up 18 percent of the greenhouse gas total in Germany, according to the German Environmental Agency.

“It’s the only sector that hasn’t improved, but actually worsened when compared to 1990 [levels]—it’s an absolute deterioration,” Jurgen Resch, co-director of Deutsche Umwelthilfe, a nonprofit environmental association, told Bloomberg BNA.

The federal government wants 1 million electric cars on German roads by 2020 and created incentives to achieve that. For example, one new law extends tax exemptions from five to 10 years for electric and hybrid vehicles purchased between Jan. 1, 2016, and Dec. 31, 2020.

In 2017, the Parliament hopes to further bolster electric transportation infrastructure with a bill to ease the process of erecting barrier-free charging stations at private dwellings.

“We still don’t have consistency within the e-car charging system—we have 200 different billing systems that are uncooperative with one another,” Resch said. “Every year, we see new laws and ordinances for e-mobility. Next year will be no different, but we won’t see any significant changes in the coming years, even with new adaptations.”

Market Considerations, Nuclear Storage Regarding power production, wrangling over cost-effective ways to produce and distribute energy in line with Germany’s nuclear phaseout will continue into 2017.

Both houses of Parliament Dec. 16 passed an amendment to combined-heat and power (CHP) laws. The proposed bill would only provide subsidies via a feed-in tariff support system to co-generation plants producing between one and 50 megawatts of power that take part in market auctions.

The proposal, which mirrors market-tendering schemes laid out for renewables in the revised Renewable Energy Act in 2016, has been criticized as being burdensome on energy-intensive, medium-sized businesses.

The Ministry for the Economy and Energy, however, sees a market-tendering system for renewables in 2017 as crucial for competition and progress in Germany’s energy transition.

“Transition in this department is important in order to bring renewables into the market and setting competitive prices,” Beate Baron, a ministry spokeswoman, told Bloomberg BNA.

New Legislation Seen in 2017 This means a series of new legislative proposals in 2017, Hartmut Gaszner, a partner with the Gaszner, Groth, Siederer & Coll. law firm in Berlin, told Bloomberg BNA.

Among these is a bill for nuclear waste disposal passed by both houses of Parliament Dec. 16. It assigns responsibility for dismantling nuclear facilities to plant operators but would absolve companies of their responsibility for intermediate and final nuclear waste storage if they pay half of the 38.5 billion euro ($40.69 billion) storage provisions, plus a 6.12 billion euro ($6.47 billion) risk premium, into a general fund by 2022.

“But there’s doubt as to how these finances would be contributed and what would happen if the funds don’t suffice,” Gaszner said. “Were this to take place, the energy providers would have to incur the remaining liability.”

“They’re all aware that they may not have the economic potential for paying all the costs,” he added.

Still, in 2017, the system for disposal will begin to take shape, Lang said.

Agricultural Sector A review of certain aspects of the European Union’s Common Agricultural Policy (CAP) is slated for 2017, meaning that debates on agricultural subsidies and farm pollution could take on a new tenor this year.

“There will be a review as to how we spend money on agricultural subsidies in Europe—there’s a big debate in Germany about that,” said Julia Hertin, acting general secretary at the German Advisory Council on the Environment.

Traditionally, large amounts of money from the EU are slated for agriculture, Hertin said. But continuing issues with environmental protection and decreasing biodiversity within the sector present controversy for allocating funds.

The German Cabinet adopted a bill in November giving federal states the power to “opt out” of genetically modified crops already approved at the EU level, a step toward combating decreased variance in high-yield farming, as well as reforming legislation for agricultural waste.

Despite legislation meant to spark electric car sales in 2016, emissions standards in Germany’s transportation sector continue to lag, making it a priority for the legislative agenda. Emissions from this sector make up 18 percent of the greenhouse gas total in Germany, according to the German Environmental Agency.

“It’s the only sector that hasn’t improved, but actually worsened when compared to 1990 [levels]—it’s an absolute deterioration,” Jurgen Resch, co-director of Deutsche Umwelthilfe, a nonprofit environmental association, told Bloomberg BNA.

The federal government wants 1 million electric cars on German roads by 2020 and created incentives to achieve that. For example, one new law extends tax exemptions from five to 10 years for electric and hybrid vehicles purchased between Jan. 1, 2016, and Dec. 31, 2020.

In 2017, the Parliament hopes to further bolster electric transportation infrastructure with a bill to ease the process of erecting barrier-free charging stations at private dwellings.

“We still don’t have consistency within the e-car charging system—we have 200 different billing systems that are uncooperative with one another,” Resch said. “Every year, we see new laws and ordinances for e-mobility. Next year will be no different, but we won’t see any significant changes in the coming years, even with new adaptations.”

Market Considerations, Nuclear Storage Regarding power production, wrangling over cost-effective ways to produce and distribute energy in line with Germany’s nuclear phaseout will continue into 2017.

Both houses of Parliament Dec. 16 passed an amendment to combined-heat and power (CHP) laws. The proposed bill would only provide subsidies via a feed-in tariff support system to co-generation plants producing between one and 50 megawatts of power that take part in market auctions.

The proposal, which mirrors market-tendering schemes laid out for renewables in the revised Renewable Energy Act in 2016, has been criticized as being burdensome on energy-intensive, medium-sized businesses.

The Ministry for the Economy and Energy, however, sees a market-tendering system for renewables in 2017 as crucial for competition and progress in Germany’s energy transition.

“Transition in this department is important in order to bring renewables into the market and setting competitive prices,” Beate Baron, a ministry spokeswoman, told Bloomberg BNA.

New Legislation Seen in 2017 This means a series of new legislative proposals in 2017, Hartmut Gaszner, a partner with the Gaszner, Groth, Siederer & Coll. law firm in Berlin, told Bloomberg BNA.

Among these is a bill for nuclear waste disposal passed by both houses of Parliament Dec. 16. It assigns responsibility for dismantling nuclear facilities to plant operators but would absolve companies of their responsibility for intermediate and final nuclear waste storage if they pay half of the 38.5 billion euro ($40.69 billion) storage provisions, plus a 6.12 billion euro ($6.47 billion) risk premium, into a general fund by 2022.

“But there’s doubt as to how these finances would be contributed and what would happen if the funds don’t suffice,” Gaszner said. “Were this to take place, the energy providers would have to incur the remaining liability.”

“They’re all aware that they may not have the economic potential for paying all the costs,” he added.

Still, in 2017, the system for disposal will begin to take shape, Lang said.

Agricultural Sector A review of certain aspects of the European Union’s Common Agricultural Policy (CAP) is slated for 2017, meaning that debates on agricultural subsidies and farm pollution could take on a new tenor this year.

“There will be a review as to how we spend money on agricultural subsidies in Europe—there’s a big debate in Germany about that,” said Julia Hertin, acting general secretary at the German Advisory Council on the Environment.

Traditionally, large amounts of money from the EU are slated for agriculture, Hertin said. But continuing issues with environmental protection and decreasing biodiversity within the sector present controversy for allocating funds.
crops, analysts say. The bill underwent its first reading in Parliament and is expected to be finalized in 2017.

Still, on the pollution front, increased nitrate levels in groundwater persist. The European Commission filed a lawsuit Oct. 27 against Germany at the European Court of Justice for its failure to comply with nitrate standards in groundwater swells in accordance with its Nitrates Directive (91/676/EEC).

“The problem is well-known,” Nikolai Fetchner, a spokesperson with the Environment Ministry, told Bloomberg BNA. “We recently presented a measurements report, in which we investigated the quality of German bodies of water and determined that there are currently big problems in areas of high-intensity agriculture.”

Germany has been criticized for delaying amendments to its Fertilizer Ordinance, one of the country’s main implementations of the Nitrates Directive. Ministry action on the matter is also slated for 2017.

**Recycling: Go Local** After years of discussion, a new Packaging Act (Verpackungsgesetz) was adopted by the Cabinet Dec. 21 and is expected to be introduced into Parliament in 2017.

According to the Environment Ministry, its main objective is to prevent packaging waste by breathing new life into local recycling initiatives and by focusing on ecological development in product packaging.

If the bill passes in the Parliament, municipal authorities would be able to decide how to properly dispose of and recycle products based on the needs of their constituencies.

The law mandates that the recycling rate on plastic packaging rise to 63 percent by 2022 from 36 percent currently; and that recycling rates for metals, paper and glass rise to 90 percent by 2022.

“We need an effective recycling law, not only for packaging, but also for products. At the moment, these products are mostly incinerated,” Meiwald said.

**Elections and Policy** Elections expected between August and October could prevent an ambitious environmental policy agenda in 2017. But they also could push policymakers to better define future positions, especially as costs of clean energy continue to rise.

“It’s one of the key questions—will energy play a role in the elections,” Lang said. “Already, people are starting to position themselves. And preparing for what the elections bring.”

At the same time, most expect 2017 to be an implementation year, one tying up loose ends in lieu of new and innovative measures.

“It’s the year of general elections, so I’m afraid there’s not much government policy going on,” Hertin said. “It’s just finishing touches on processes that have been going on for a long time.”

**FRANCE**

Air Pollution Plan, Renewable Energy Lead Environmental Agenda for France

France starts the year with a new air pollution plan spurred by weeks of particulate-matter pollution that far exceeded regulatory levels in December, which forced the government to implement emergency measures.

The country also has a new environmental class-action measure, new feed-in tariffs and premiums that spur new renewable energy projects, and it plans to continue boosting numbers of electric and low-emission vehicles on the road.

Chemical makers are preparing for the next phase of REACH registration in 2018, and the plastics industry is awaiting a key European Union document on plastics recycling, sources said.

France’s unpopular government got a political boost from the COP21 international climate talks in Paris in late 2015, but that was short-lived as the economy continued to tank, and terrorists struck several times.

The country is due to choose a new president in April, and President Francois Hollande has already bowed out of the running. During televised debates of candidates for the “Les Républicains” party, which is favored to win next year, candidates barely mentioned climate change and the environment.

**Air Pollution Plan** A national public health agency report in June 2016 said dirty air kills an estimated 48,000 people per year in France, reducing life expectancy by more than two years in the country’s biggest cities.

But the French still love their cars, and they have the urban air to prove it.

On Dec. 1, 2016, Paris saw peak particulate concentrations hit a record 259 micrograms per cubic meter, due to fine particulate matter (PM-10) and nitrogen dioxide fed by road traffic and wood burning heating systems, with conditions exacerbated by weather patterns, according to Airparif, the ministry’s air quality monitoring agency for Paris and the Ile de France region.

With pollution levels remaining at or above the regulatory threshold of 80 micrograms per cubic meter for several days after that, police and environmental authorities announced temporary emergency measures including free metro and urban rail access, speed-limit reductions by 20 kilometers per hour (about 12.5 miles per hour) on most highways, barring large trucks from the Paris region, emissions reduction for manufacturers, and restrictions on wood burning.

Segolene Royal, minister of ecology, sustainable development and energy, announced an air pollution plan for 2017, with a big focus being cleaner transport.

France is among countries that still give tax breaks to diesel fuel, despite evidence it pollutes air significantly more than gasoline. Royal said that, in an effort to reduce the number of diesel-burning vehicles on the road,
the government will continue “converging” tax rates over five years, to be equal by 2021.

**Car Certificate Scheme** Starting Jan. 16, cars driven in Paris during peak hours will have to have “crit’air” certificates displayed in their windshields, indicating one of six pollution levels, with a green one for 100 percent electric vehicles, and levels 1 through 5 based on Euro emissions standards.

Royal said other governments and prefectures will also be able to issue “crit’air” certificates to low-emission vehicles in zones covered by atmosphere protection plans and future limited-traffic zones. The certificates will allow keeping the biggest emitting vehicles out of the city during peak pollution periods. Paris Mayor Anne Hidalgo has committed to banning diesel-powered vehicles from the city by 2025.

France’s framework 2015 Law for an Energy Transition Related to Green Growth set a national target of having 20 percent of automobiles electric by 2020. Royal said a 10,000 euro ($10,644) bonus created in 2016 for individuals buying electric vehicles will be extended to purchases of “light utility vehicles” for business purposes starting in 2017.

Royal said France is the EU’s leader for electric cars, with more than 100,000 registered to date, and a market growing at 40 percent per year, primarily vehicles manufactured in France. She said a decree that will take effect Jan. 1 calls for the national government and public companies to convert at least 50 percent of their fleets to low-emission vehicles, local governments at least 20 percent, and car rental and taxi companies at least 10 percent, the next time they update their fleets.

**Mobility Plans** The minister said the energy transition law promotes carpooling by requiring companies of more than 100 employees to implement “mobility plans” by Jan. 1, 2018. Employers can already get tax breaks for contributing to costs of employees’ bike commuting to work.

A measure under consideration would extend that tax break to government agencies. The government is signing agreements with certain French municipal governments to experiment with “radical” measures to become “breathable” cities, with more restricted traffic areas, and projects including bike-lane building, hydrogen-fueled transport, alternative-fuel heating, and others, she said.

The comprehensive Law on Modernization of 21st Century Justice published in November 2016 changed the environmental code to allow people who have suffered similar environmental damages because of the same person or company that failed to meet legal or contractual obligations to seek compensation via collective lawsuits, or “actions du groupe.”

The suits must be filed before civil or administrative courts on behalf of victims by certified victim defense or consumer protection associations, or environmental protection associations, according to the law. Key differences from U.S.-style class actions are that France bars punitive damages and no-win, no-fee contingency arrangements, and, in France, case losers must pay the winner’s legal fees.

**Decree on Energy Planning** On Oct. 28, 2016, the ministry published a decree setting out a multiyear plan to meet energy targets. The energy transition law said France should cut primary fossil fuel use 30 percent by 2030 compared with 2012 levels and halve its energy consumption by 2050 compared with 2012 levels.

It set out a framework for energy efficiency, through building renovation, permitting energy measures and called for renewables to account for 32 percent of total energy consumption and 40 percent of electricity production by 2030.

The law also set a goal of cutting nuclear energy’s share of total electricity consumption to 50 percent from the current 75 percent by 2025, increasing the need for renewable energy production. The Syndicat des Energies Renouvelables, or SER, which groups French renewable energy producers, reported in November that the country got about 20 percent of its electricity from renewable sources in the third quarter of 2016.

**New Feed-in Authorization Texts** For about 15 years until last year, France had a system under which national flagship energy company Electricite de France (EDF) paid qualifying renewable energy producers feed-in tariffs set by the government. The energy transition law established a new support scheme in which the feed-in tariff mechanism would continue for some renewable energy-production facilities, but for most facilities, producers will have to compete through tenders to win either a feed-in tariff or feed-in premium.

After the European Commission gave its green light Dec. 12, the ecology ministry published four regulatory texts setting feed-in tariffs or feed-in premiums for renewable energy generated from land-based wind turbines, hydroelectric sites, geothermal energy sites of less than 500 kilowatts capacity, and biogas produced from methanization from nondangerous waste and plant material, taking effect Jan. 1 for installations that filed requests in 2016.

European Competition Commissioner Margrethe Vestager said the French measures achieve a balance to “encourage investment in non-polluting production capacity, while avoiding unjustified excess costs for the final consumer” as required by EU policy.

**Gearing Up for REACH Phase 3** France’s biggest group of chemical manufacturers, l’Union des Industries Chimiques, or UIC, will help its members prepare for the third and final phase of registration under the EU’s REACH regulation. After two phases completed for larger volumes, Phase 3 requires companies to register substances they import or manufacture in the 1-100 metric ton range by May 31, 2018.

“The object is to contact small and medium-size chemical makers that may still not understand what they have to do,” Philippe Prudhon, technical affairs director at the UIC told Bloomberg BNA. The UIC is also helping companies with obligations under a March 2014 decree that wrote into French law the 2012 EU directive (2012/18/EU), known as Seveso III.

That directive overhauled the EU’s safety classification system for hazardous industrial and technological sites to bring its categories of chemicals in line with the UN Globally Harmonized System of Classification and Labeling of Chemicals.

Prudhon said classification of “pure” substances has not presented many difficulties for classification, but blends of chemicals have proven more challenging.

Meanwhile, the industry is waiting for the European Commission to come up with an EU-wide definition of endocrine disruptors that is “practical, and that compa-
nies can implement. The concern is that the French government will try to be the head of the class. That would not be good for French companies, in terms of competitiveness,” Prudhon said.

After leaks of an extremely smelly sulfur-based chemical called mercaptan from a plant near Rouen in Normandy in 2013, environmental authorities set up a network of air expert agencies, Associations Agrées pour la Surveillance de la Qualité de l’Air, or AASQA, to speed responses to future events. In 2017, the UIC will continue working with AASQA and a network of industry experts called UNISAID, to “be able to quickly analyze and address such leaks,” said Prudhon.

Plastics, Circular Economy Michel Loubry, France-based regional director for Western Europe at PlasticEurope, said plastics makers in France and elsewhere in Europe are awaiting publication of a European Commission green paper on plastics in a circular economy that will be a road map, among other things, on the need to recycle plastics, and to recover energy from plastics that can’t be recycled. “That will help in our push to achieve zero plastics in landfills,” he said.

In France, the energy-transition law prohibited stores from distributing single-use plastic sacks, of under 50 microns thickness, since July 1, 2016. Bags over 50 microns thickness are considered reusable and can still be distributed.

The French Biodiversity Protection law passed in 2016 banned use of plastic Q-Tip type cotton swabs and plastic balls, used in cosmetics. Starting Jan. 1, 2018, industry has filed suit against those at EU level, Loubry said.

PlasticEurope is still waiting for the European Commission and the French Consell d’Etat (State Council) to act on its challenges to France’s ban on in-country sales and imports of bisphenol A in food-contact materials, said Loubry.

By RICK MITCHELL

To contact the reporter on this story: Rick Mitchell in Paris at correspondents@bna.com
To contact the editor on this story: Greg Henderson at ghenderson@bna.com

Mexico

Mexico Will Focus on Grid Expansion To Support More Renewable Power

Mexico’s efforts to build up renewable power and integrate it into its electric grid will top its environmental agenda this year.

The country’s first two renewable power auctions, which took place in 2016, have been considered a worldwide success, with several participants bidding record-breaking low prices for a range of renewable energy generation.

The next step for Mexico will be ensuring that new power can be connected into the grid. Mexican officials say they plan to turn to private investment—an option permitted by a 2014 overhaul of the energy sector—for the funds to do so.

“We have a very ambitious plan to strengthen the grid, not only using traditional resources but also tapping into financing from the private sector, which is new in Mexico and will be good for incorporating new transmission technologies,” said Cesar Hernandez, undersecretary of electricity at the Ministry of Energy, in an interview with Bloomberg BNA.

“It will make transmission stronger and the grid more reliable and more able to accommodate these intermittent resources.”

770-Mile High-Voltage Line The most ambitious transmission project is a 770-mile direct-current, high-voltage transmission line to connect wind-generation capacity in Oaxaca to the country’s most concentrated industrial region in central Mexico. A further build-out of transmission is also expected.

Energy officials plan to hold an auction this spring for private investment needed to finance, develop, construct and maintain the lines.

Other projects include a proposed line between Sonora and Baja California and improved connections with border states in the U.S. and Central America.

Higher-quality transmission and distribution systems, such as the Oaxaca line, are also critical to handle the intermittent power generated by Mexico’s new wind and solar resources.

“How much intermittency is allowed into the grid is key to the future of renewable energy in Mexico,” said Carlos Tornel, an environmental analyst with the Mexico Climate Initiative, an organization that supports climate change mitigation.

Mexico currently has about 5 percent to 7 percent renewable resources. Because most of it is intermittent power, it requires backup generation, which can fire up quickly in case of a shortfall, to maintain the reliability of the grid.

One of Mexico’s challenges in adding renewable energy will be to provide a sufficient amount of backup generation, Tornel said. He said his organization is calling for enough generation backup to support 20 percent intermittent power.

More Auctions Mexico also plans additional energy auctions for renewable power, hoping to build on the success of its 2016 auctions, which attracted some of the world’s lowest prices for solar power and included several competitors with a wide range of technologies.

“The first auction established Mexico as the place in the world to be in the renewables market,” said Duncan Wood, the director of the Wilson Center’s Mexico Institute. “It set a precedent, with some of the lowest prices we have seen for solar energy, and generated an enormous amount of interest.”

These two auctions together attracted nearly 5,000 megawatts of new renewable energy projects to be built, at an average price of $41.80 in the first auction and $33.47 per megawatt hour in the second auction.

The demand for renewable energy and for the clean energy certificates that were sold at the markets has been driven by the Energy Transition Law, which was passed in December 2015. The law requires at least 5 percent of all power generation must come from renewable resources by 2018.

Power generators not meeting this requirement must hold the equivalent in clean energy certificates. In Mexico, power generators generally mean the state utility Comision Federal de Electricidad, or CFE, and large industrial companies, many of which generate their own power.
“Clean energy certificates were what was driving the first auction,” said Mannti Cummins, director of Monterrey-based Energia Veleta, a Mexican wind generation company. “If you have an obligation to purchase clean energy certificates and you don’t, you can get smacked with some pretty hefty fines.”

**Transmission Pricing Uncertain** While the requirement to hold clean energy certificates and the competitive price of renewable energy are driving the demand, the establishment of a wholesale power market and the new laws governing it have created uncertainty about how the cost of transmission will be priced.

For example, there are questions about how the cost of congestion will be passed on to the consumer. The cost of congestion is the extra cost involved for the necessary infrastructure to ensure that transmission will be possible at times of peak demand.

This increased transmission price risk has made private generation users reluctant to contract directly with renewable energy generators, which has slowed the immediate development of new plants in Mexico.

A private generation user is a private manufacturer in Mexico, which, under laws that were ushered in in the early 1990s, was able to get a cheaper electricity rate by contracting to generate a certain amount of its own renewable energy power and use the equivalent amount from the grid without having to worry about transmission costs. However, this incentive for renewable energy was essentially shut down by the latest changes of the laws.

“What you now have are much smaller projects having to be located as close as possible to private offtakers simply because of the uncertainty around wheeling charges,” said Dino Barajas, a partner who specializes in Latin American power deals at Akin Gump Strauss Hauer & Feld LLP in Los Angeles.

The wheeling charge is the per megawatt-hour charge that a transmission owner receives for transporting electricity.

“You are losing the efficiency of being able to do a 400 megawatt project with the best wind resources and being able to wheel that green energy to wherever the load demand is,” Barajas said.

**Energy Credits in Short Supply** The country’s next renewable energy auction will take place in April. It will be the first one to include these private industrial firms in Mexico as buyers.

However, because these certificates can only be sold in conjunction with renewable power at the auctions and have a maximum price cap, they are expected to be in short supply in the coming year, possibly leaving companies unable to meet the 2018 requirements.

And there is also skepticism that all of the generation that was awarded at the first two auctions will end up being built on schedule, because of the low prices and the time needed to get environmental and community permits.

“They bid too low and those prices may not be sustainable,” said Miriam Grunstein, a senior partner with Brilliant Energy Consulting in Mexico City. “There were a lot of surplus materials from China for solar energy, and in order to get those panels in the market, they made extremely low bids, but once they start generating for CFE they will have other costs that do not compensate for the low price of the panels.”

Leonardo Beltran, the undersecretary of energy planning and transition at the Energy Ministry, has defended the quality of the bids, pointing to the more than 70 participants and the detailed plans that supported the bids, as well as the penalties that abandoned projects would accrue.

“There were some bids that were off the charts but many others were right there,” Beltran said in an interview with Bloomberg BNA. “It was basically an assessment of your availability of capital, the regulatory cost, if you are close or far from transmission lines. Those assessments were in the same neighborhood for several bidders, so it is rather difficult to say the projects would not be built.”

**Cleaner Fuel Coming** A new requirement to distribute ultra-low sulfur diesel throughout Mexico will become effective in July 2018, and is expected to push forward the enforcement of air quality standards, as well as the development of higher emissions standards in the country.

This new requirement was originally introduced as part of a temporary fuel quality standard, NOM-EM-005-CRE-2015, but a permanent standard is expected in 2017 that will require fuel with sulfur contents of less than 15 ppm—currently only required for Mexico City and other large population centers—to be sold throughout the country. The change should make it easier to end the delays in adopting the country’s proposed heavy duty vehicle fuel standard, NOM-044, which requires EPA 2010 fuel standards.

“The lack of availability of ultra low sulfur diesel fuel throughout Mexico made it impossible to move forward on air quality standards and higher emissions standards,” said Gabriela Nino, an analyst and director of the Mexican Center for Environmental Law. “With the fuel finally available, we can now comply with our current air quality laws and address issues, like higher emissions standards for heavy trucks.”

**Water Law Revisions** A new law overseeing the use of water in Mexico also may be in the works, according to Anaid Velasco, an environmental analyst with the Mexican Center for Environmental Law.

A general water law was proposed last spring to clarify how changes to the energy sector would impact the use of water. However, provisions limiting a guaranteed supply of water to citizens to about 13 gallons per day were controversial, and the law was not voted on.

“The news is that they are improving the general water law initiative,” Velasco said, noting that the revised legislation is expected in early 2017. “Our main concern is that the law includes effective provisions regarding the human right to water.”

**New Building Standards** Energy efficiency standards for new buildings (NOM-020-ENERG-2011) also were revised in 2016, ending the resistance from the construction industry, according to Santiago Creuheras, director general of energy efficiency at the Ministry of Energy.

The revisions will expand the territories where energy efficient construction must be used, and an additional energy consumption tariff for domestic use is be-
China will strengthen nationwide environmental laws and actions related to water pollution in 2017, and will embark on the first phase of a national carbon market.

Also on the horizon is broader implementation of air pollution control policies. And the country is expected to finally release a comprehensive soil pollution law.

China also will prepare for a nationwide environmental tax, tiered to encourage businesses and locales to reduce air, water, waste and noise pollution.

New Leadership New top government officials will be put in place after the annual meetings in March of the National People’s Congress, China’s main legislative body.

The authority of the Ministry of Environmental Protection (MEP) “will be further strengthened,” Yang Fuqiang, senior adviser on climate and energy at the Natural Resources Defense Council in Beijing, told Bloomberg BNA.

The ministry is slowly undergoing “vertical reform,” which will give it more direct oversight from top to bottom. It is reviewing how to improve supervision, particularly regarding bribery issues that hurt progress on environmental issues, Yang said.

Water Pollution China will update the country’s water pollution law to reflect changes in the recently amended Environmental Protection Law. Those could include tougher, daily accumulating penalties for violators.

The Ministry of Environmental Protection “is working overtime” to finish amendments to the water law and the new soil law, Ma Yong, vice director of the legal committee for China Biodiversity Conservation & Green Development Foundation in Beijing, told Bloomberg BNA.

“Both [laws] are on the fast track,” Ma said. “For the water law, basic principles will be required, particularly about ‘overall improvement of water quality.’ Whereas in the past, the law was about meeting specific standards, this will focus on overall quality assurance.”

Soil Pollution Last May, China’s central government launched a plan to end pervasive soil pollution by 2020 and to clean up many of the worst contaminated sites by 2030.

When the new soil pollution prevention and control law is unveiled, it is expected to include details on setting up a fund to remediate contaminated sites, treating sites that have been abandoned for long periods, and possibly determining who was responsible for the soil pollution, Ma said.

The soil law could affect state-owned companies, farmers, industrial parks, large property holders and local governments, said Ge Feng, coordinator of public participation at Friends of Nature in Beijing.

Carbon Emissions China this year is to launch the first part of its national carbon market, which follows several years of testing the idea in seven pilot programs around the country. But the nationwide emissions trading system (ETS) will begin in a pilot phase, as well, and will not be fully operational until around 2020.

China is pledging to reach its peak carbon emissions level at or before 2030. The country was on track to see a 6 percent annual decline in carbon intensity per unit of gross domestic product by the end of 2016, according to the government.

Some have raised concern about whether China would backtracks on pledges made as part of the Paris Agreement on climate change, because of Donald Trump’s possible moves to pull the U.S. from the agreement.

Yang from the NRDC said that he thought climate relations, which had been a highlight of U.S.-China bilateral agreements during the Obama administration, would “be slightly affected, but the change will be small.”

Environmental Tax Law China’s National People’s Congress approved the country’s first Environmental Tax Law just before the end of 2016. It will replace a system of pollutant fees that have been levied on heavy industry since 1979.

The law, which will go into effect Jan. 1, 2018, will tax heavy industries, mining companies and power plants.

“There is still disagreement about whether to expand the scope of the tax to include things like carbon, resource and fuel taxes,” said Cai Shouqiu, a professor of law at Wuhan University and former head of the Institute of Environmental Law. “The common ground that has been reached so far is that basically pollution emissions fees will be changed into environmental taxes.”

The latest draft of the Environmental Tax Law does not clearly specify how pollution amounts would trigger different tax rates, and “this is the biggest challenge,” said Gao Ping, a professor at the School of Taxation at the Central University of Finance and Economics in Beijing.
The European Union in 2017 will seek to put in place the legislative architecture that will guide its decarbonization efforts through 2030, in a context of increasing political uncertainty caused by the Trump presidency in the U.S. and other potentially disruptive political changes.

The 28-country bloc also will move forward with various waste management and circular economy initiatives, including publication of a strategy on the prevention and handling of plastic waste.

The decarbonization effort will include measures on emission reductions for all sectors of the economy, as well as measures on renewable energy and energy efficiency, which together should add up to a 40 percent reduction in greenhouse gases by 2030 compared to 1990.

A 40 percent reduction is the commitment the EU has made under the 2015 Paris Agreement, under which global warming should be limited to no more than 2 degrees Celsius (3.6 degrees Fahrenheit) above pre-industrial levels, and preferably should be kept below 1.5 degrees Celsius.

Trump Looms Large

The Paris Agreement could be undermined by incoming U.S. President Donald Trump, however, who has said he will take the U.S. out of the United Nations-negotiated agreement, although he has an “open mind” about the agreement.

Patrick ten Brink, director of the Brussels office of the Institute for European Environmental Policy (IEEP), said Trump is “the big joker in the pack,” but backing out of the Paris Agreement could “galvanize the EU to stick to its commitments more forcefully.”

Karin Kadenbach, a center-left European Parliament lawmaker from Austria and a member of the Parliament’s environment committee, said, “The EU must re-
main a global leader in the fight against climate change,” despite the “possible disengagement” by a U.S. Trump administration.

“The EU must remain a global leader in the fight against climate change.”

“The ratification of the Paris climate agreement was a turning point towards a smart and sustainable economic growth,” and the EU should “scale up our own targets and deliver a long-term strategy,” Kadenbach said.

**British, French Concerns** The EU’s environmental agenda in 2017 also could be disrupted by the start of talks about the U.K.’s exit from the EU and by presidential elections in France that will conclude in May.

In France, Marine Le Pen, leader of the right-wing nationalist party Front National, is a possible victor. The Front National party opposes the EU in its current form and believes environmental policies should be decided at the national level and should not result in high costs for industry.

The U.K., meanwhile, said it aims to start by the end of March formal talks on leaving the EU, following the nation’s Brexit referendum in June 2016. Ten Brink said the “Brexit issue is going to change the calculus” for EU countries on some aspects of the bloc’s decarbonization strategy, in particular on renewable energy.

There is “high wind potential in the U.K. and low costs,” so other countries might have to do more to compensate for the U.K.’s departure if the EU is to meet a 2030 target for 27 percent of its final energy consumption to be met from renewable sources, ten Brink said.

Brexit could be a “hook for other countries that wish to slow things down,” although it also could give EU countries more freedom in areas that the U.K. has so far blocked, such as potential carbon taxes decided at the EU level, ten Brink said.

Claude Turmes, a Luxembourg Green member of the European Parliament, said “2017 will be a key year” in which countries would make strategic choices about moving to a “new energy world versus the old.”

Despite political uncertainties, the EU should accelerate its decarbonization efforts in 2017, in particular to take advantage of falling renewable energy costs, Turmes said.

**Moving Ahead on Emissions Trading** Of the main elements of climate and energy policy to be moved forward by the EU in 2017, talks on the bloc’s emissions trading system (ETS) have advanced the most.

The European Parliament should adopt in February its position on a revision of the ETS through 2030. A proposed reform of the system was published by the European Commission, the EU’s executive body, in July 2015.

Under the commission’s proposal, participants in the ETS, including heavy industry and power companies, would be required to cut their emissions by 43 percent on average by 2030, compared to 2005, in order to contribute to the overall EU emissions cut of 40 percent. This would mean the ETS emissions cap should reduce by 2.2 percent a year after 2020, compared to 1.74 percent at the close of 2016.

Ian Duncan, a British center-right lawmaker who is the European Parliament’s lead negotiator on the ETS reform, suggested that the annual emissions cap reduction could be increased after 2023, when a review of the Paris Agreement will take place and an assessment will be made of whether the world is on track to reduce emissions sufficiently to combat dangerous global warming.

**Maintaining Predictability** Other lawmakers have proposed amendments that would increase the annual reduction to as much as 4.2 percent. EU countries are likely to resist a cut beyond 2.2 percent a year, however, on the grounds that the emissions reduction should be predictable for companies.

An official from the Council of the EU, which represents the governments of member countries, speaking on condition of anonymity, said because of this, “I wouldn’t expect the 2.2 percent to be changed.”

Consequently in the ETS revision, the pace of emission cuts is “not a central part of the discussion,” said Wendel Trio, director of the Climate Action Network Europe, a coalition of advocacy groups.

Instead, the main ETS issues that lawmakers will decide will be the extent to which EU companies covered by the ETS should be compensated to ensure that they are not disadvantaged when compared to non-EU competitors that do not face carbon cuts, in addition to what should be done with surplus carbon permits that have been placed in a reserve.

Trio said surplus carbon permits could end up being canceled because the EU carbon price is low and is likely to remain “extremely low at least until the late 2020s.”

**Joined-Up Objectives** After the European Parliament decides its position on the ETS revision, it must start negotiations with the Council of the EU to reach an agreement acceptable to both institutions.

It is unclear if this will be completed in 2017. A final agreement on the ETS could be held up while the Parliament and EU countries discuss the other elements of the EU’s 2030 climate and energy strategy, including emissions cuts for parts of the economy not covered by the ETS and a revision of the 2009 EU Renewable Energy Directive (2009/28/EC).

The commission proposed cuts for non-ETS sectors in July 2016 and the update to the renewables law in November, meaning that substantive discussions on the dossiers in the European Parliament and council will start in 2017, but are unlikely to be completed.

“One of the main questions will be how much governments will want to link all these files with each other,” Trio said.

The proposals on non-ETS emissions, such as those from agriculture, construction and waste, would impose requirements on countries to reduce their emissions from these sectors by as much as 40 percent by 2030, depending on the wealth of each country and its capacity for making cuts.

Trio said countries might seek to offset their targets in different ways, including by looking for relief in other parts of the EU’s climate and energy strategy in exchange for taking on higher non-ETS targets. Countries such as Italy and Poland have “voiced very strong concerns about their targets,” Trio said.
He added that “if things are getting linked, it will slow things down,” although “it makes sense” to look at the different parts of the climate and energy strategy “as a coherent proposal.”

**Going Circular** The EU also will seek progress in 2017 on measures to make the bloc’s economy more circular, through greater resource efficiency and more reuse and recycling of waste.

The commission proposed in December 2015 a package of directives under which EU countries should recycle 65 percent of household waste by 2030. Also under the directives, the recycling rate for packaging materials should rise by 2030 to 75 percent by weight on average, with rates ranging from 55 percent for plastic to 85 percent for glass, paper, cardboard and metals.

Pavel Poc, a Czech center-left lawmaker and vice chair of the European Parliament’s environment committee, said decision-making on the proposed targets will be a priority for the environment committee, which will vote on them in early 2017. Thereafter, the committee could opt to start negotiations with the Council of the EU to finalize details of the targets.

As part of its circular economy strategy, the EU also will decide on eco-design measures for products, which are aimed at making categories of products more energy-efficient and easier to reuse or recycle.

Energy efficiency for products overlaps with the EU’s climate and energy goals in terms of contributing to a target, which the European Commission proposed Nov. 30, 2016, for the EU to achieve 30 percent energy savings by 2030, measured against expected future energy demand under business-as-usual policies.

One such eco-design measure, which will be decided in 2017, will be on energy standards for heating and air cooling systems and industrial chillers. The proposed regulation also will set nitrogen oxide emission limits for the equipment.

**Plastics Plan** The European Commission will add to its suite of circular economy proposals in 2017 with a strategy on plastics.

A commission official who asked not to be named said this will be published in late 2017, will look at the use, reuse and recycling of plastics, and will be a “first real attempt to look at how we use plastics.”

The strategy will overlap to some extent with revisions to recycling rates for packaging materials and seek to reduce the amount of plastic waste going into the oceans, the official said.

The commission also will publish proposals on the reuse of treated wastewater, for example for irrigation or for recharging aquifers. A commission public consultation on wastewater reuse is open through Jan. 27, and a proposal for a regulation setting criteria for wastewater reuse could be published in mid-2017.

The IEEP’s ten Brink said there was “more and more debate on the circularity of water use,” and rules on wastewater reuse will have to take into account microplastics.

“Most wastewater isn’t treated for micro- and nano-plastics,” ten Brink said, and reuse of wastewater in agriculture, for example, could “also pass on plastics to croplands.”

More research is needed to understand if the root systems of crops pick up micro-plastics, or if the plastics remain in the soil, and a lack of understanding on this could hold back the commission’s wastewater reuse plans, he said.

**India**

**India Will Continue Pursuit of Major Solar, Wind Projects**

India will continue its push for more large-scale solar and wind power as it ramps up renewable energy this year; it also may offer incentives for large hydroelectric dam projects.

Today, renewable energy accounts for 14.7 percent of the country’s installed capacity, most of which has been in the shape of large, grid-connected projects, according to government figures. The country wants to increase that to 40 percent by 2030.

New guidelines for the wind power sector announced in October have introduced solar-style reverse auctions in the wind power space, and a first batch of interstate grid-connected projects totaling 1,000 megawatts is to be awarded in 2017.

**Reverse Bidding Successful** The reverse bidding model has been highly successful in bringing down solar energy prices in India and is expected to introduce more competitiveness and lower tariffs in the wind power sector, as well.

Hurdles remain, such as lack of clear net-metering policies and grid management issues.

“Though many states have net-metering policies, the tariff structure is not very encouraging for stimulating large-scale adaption of solar rooftop systems,” Madhavan Nampoothiri, founder and director of RE-Solve Energy Consultants, told Bloomberg BNA in an e-mail.

But he expects the government to iron out some of these difficulties this year.

In addition to off-grid projects, advances in electricity storage are imperative to avoid stress on the grid due to large-scale solar and wind generation. In a first, the government-run Solar Energy Corp. of India issued tenders in August for solar power generation with battery storage under the National Solar Mission.

“We can expect a lot more projects along these lines,” Nampoothiri said.

**Impasse Over Renewables** The government is also working to resolve the impasse over renewable purchase obligations to clear the backlog of renewable energy certificates, improve uptake of renewable energy and reopen an additional revenue channel for producers.

And India’s Ministry of New and Renewable Energy is seeking executive approval to classify large hydroelectricity plants as renewable, which would extend to them a range of tax benefits and cheaper financing.

Currently, only the smaller hydropower projects, those of up to 25 megawatts capacity, are considered renewable. As such, they are entitled to benefits including preferential tariffs, federal financial assistance, subsidy

---

**BY STEPHEN GARDNER**

To contact the reporter on this story: Stephen Gardner in Brussels at correspondents@bna.com

To contact the editor responsible for this story: Greg Henderson at ghenderson@bna.com
to upgrade watermills, custom duty concessions and a 10-year tax holiday.

**Air Pollution Strategy** Fighting vehicular emissions has been a key component of India’s anti-air pollution strategy, and two key measures on this front will come into place during 2017.

Starting April 1, small commercial passenger vehicles must meet average fuel consumption standards that aim to improve their fuel economy by 15 percent by 2021.

And all automobile companies, including those manufacturing electric vehicles and those making vehicles running on liquefied petroleum gas and compressed natural gas, must inform the road transport ministry of the emission and noise levels of each vehicle made or sold in India.

India’s flagship energy-efficiency program for large energy consumers—Perform, Achieve, Trade—will see the beginning of sale and purchase of energy-efficiency certificates in 2017. The program will enable energy savers to earn certificates, which they can sell to those failing to achieve their own energy-efficiency targets.

**Water Management** Facing an impending water crisis, India’s Ministry of Water Resources, River Development and Ganga Rejuvenation is working on several fronts—water conservation, groundwater management, river cleanup and river-basin interlinking.

In late December, India’s National Board for Wildlife approved a project to build barrages and canals to link the basins of the rivers Ken and Betwa, the first big step in country’s ambitious but long-delayed Inter-Basin Water Transfer program.

A draft national water framework bill is likely to be finalized in 2017, to give the federal government the power to regulate water on a national level.

The model bill for the conservation, protection, regulation and management of groundwater, which all state governments could use to formulate their respective water legislation, may also be finalized. The measure would make the local authority the primary decision-maker and governance mechanism for groundwater.

A national groundwater management improvement program focusing on environmental and social systems appraisal is also likely to be approved in 2017. The program would bring $1 billion of World Bank aid to India.

**The Ganges** A Cabinet of Ministers’ decision to create a new body to oversee the cleanup and rejuvenation of the Ganges River, and to empower it to issue directions and impose penalties under the Environment Protection Act of 1986, will be rolled out in the coming year.

The new council will have punitive powers under the statute, and its work will be supplemented by state- and district-level committees to be set up in each riparian state.

“How the Ganga authorities function at the central, state and district levels will become clear in 2017, and will be among the most significant legislative, regulatory events on the environment front for the coming year,” Himanshu Thakkar, coordinator of the South Asia Network on Dams, Rivers and People, told Bloomberg BNA.

Billions of dollars spent since 1985 to reverse the effects of pollution on the Ganges have done little to improve the problem.

**Interstate Conflicts** Water being a state subject under India’s federal structure, interstate conflicts over sharing of riparian waters are frequent and persistent. Several ongoing disputes are likely to carry on this year and may be decided in court.

These disputes include the sharing of Cauvery River waters between Tamil Nadu and Karnataka states; election-bound Punjab’s refusal to share river waters with neighboring states; and the sharing of the Mahadayi River waters among the states of Maharashtra, Karnataka and Goa.

The Supreme Court of India will hear a case in 2017 against hydropower projects in the central Himalayan state of Uttarakhand.

And the National Green Tribunal will hear cases against hydropower projects in the northeastern Himalayan states, particularly Arunachal Pradesh.

Tighter regulations for effluents from tanneries and textiles units are likely to come into effect this year.

**Bio-Energy Mission** The government will spend $1.5 billion through 2022 on an Integrated Bio-Energy Mission to boost bio-energy, biogas and biomass power and regeneration.

A new national policy on renewable energy-based mini-grids and micro-grids is expected to be finalized in the coming year, targeting deployment of at least 10,000 of those smaller, renewables-based grids across the country.

Solar, wind, biomass and hydropower would be covered, and energy supply companies would supply electricity at prices negotiated with consumers. Subsidies and incentives received from the relevant state governments would be passed on to consumers.

**Chemicals** India is expected to announce a ban on 13 persistent organic pollutants (POPs) listed at the 2009 meeting of the Stockholm Convention’s conference of parties.

And starting Nov. 1, only paints containing no more than 0.009 percent lead can be made or imported.

**BY MADHUR SINGH**

To contact the reporter on this story: Madhur Singh in Chandigarh, India, at correspondents@bna.com

To contact the editor responsible for this story: Greg Henderson at ghenderson@bna.com


The model bill for the conservation, protection, regulation and management of groundwater is available at http://wrmin.nic.in/writereaddata/Model_Bill_Groundwater_May_2016.pdf

The national groundwater management improvement program is available at http://wrmin.nic.in/
Outlook 2017: U.K. Plans to Counter Brexit Fears With Emissions-Reduction Plan

Although formal talks to leave the European Union will take center stage in 2017, the U.K. government will press on with key environmental goals, which include creating a new plan to reduce greenhouse gases, according to Monika Samoraj, a spokeswoman for Business and Energy Secretary Greg Clark.

Other priorities will include developing a low-carbon industrial strategy and a smarter energy system, improving air quality plans and devising a 25-year plan covering natural resources such as water, soil and peatland, she said.

Brexit ‘Green’ Fears Putting forward a “strong environmental and low-carbon policy in 2017” will be crucial to allay concerns around Brexit, the U.K. government’s pending exit from the EU, Nick Molho, executive director of the Aldersgate Group, a coalition of business and environmentalists, told Bloomberg BNA.

Article 50 of the EU’s Lisbon Treaty “is due to be triggered in March 2017, starting the process for the U.K. to leave the EU,” said Barnaby Wharton, a senior energy policy adviser at the U.K.’s most powerful business lobby, the Confederation of British Industry (CBI).

“What does Brexit really mean?” Wharton asked, spelling out the biggest concern of the 190,000 businesses that make up the CBI, representing a third of the private sector workforce. “There will need to be detailed discussions about what environmental laws from the EU the U.K. keeps, and which are dropped.”

Dustin Benton, acting deputy director of the think tank Green Alliance, told Bloomberg BNA that “Brexit potentially puts 40 years of U.K. environmental law at risk, and our public opinion polling shows that just one in six Brits believes that Brexit will improve U.K. environmental protections.”

Brexit potentially puts 40 years of U.K. environmental law at risk.

Emissions-Reduction Plan The government dismisses claims that Brexit could lead to a repeal of the U.K.’s tough climate change legislation enacted at the end of 2008. “Our commitment to meeting our Climate Change Act target of at least 80 percent emissions reduction below 1990 levels by 2050 is as strong as ever,” Samoraj told Bloomberg BNA.

In ratifying the Paris Agreement on climate exchange, the U.K. has underlined its commitment to cutting emissions, regardless of its future status within the EU, she said. To prove its intentions, “we will set out” in 2017 “our emissions-reduction plan for the 2020s, which will send an important signal to the markets, businesses and investors,” Samoraj said.

Benton acknowledged that “a huge amount of modeling and analysis has gone into this effort” to set out how the U.K. “will decarbonize power, heat and transport,” and “the bones of what is necessary are already clear: Britain will need to commit a final 2 billion pounds ($2.5 billion) to low-carbon power to make renewables subsidy-free.”

Industrial Strategy Any emissions-reduction plan “needs to be accompanied by a complementary industrial strategy that should aim to better connect British businesses with the government’s low-carbon agenda,” Molho said.

Benton highlighted that “on the domestic front, the policy reversals that happened in 2015 have yet to be addressed, leaving the U.K. without an energy-efficiency policy, a carbon-capture plan, and with a ban on onshore wind, even though it’s the cheapest source of new power in the U.K.”

But the “good news is that government has set out a timetable to address policy deficiencies, and has committed to an industrial strategy that has the real prospect of revolutionizing the U.K.’s low-carbon economy,” he said.

For instance, the new Department for Business, Energy and Industrial Strategy (BEIS) is to hold the next round of subsidies—worth almost 300 million pounds ($376.8 million) for renewable energy technologies—known as the contracts for difference allocation round, in April 2017, Samoraj said.

The department will also decide on two key issues following consultations: a call for comment on whether onshore wind projects on remote islands should be treated differently from onshore wind projects on mainland Great Britain, and consultations on how to close unabated coal-fired power stations by 2025.

At the same time, a newly reformed Nuclear Industry Council will meet early in the year to discuss how to drive U.K. supply-chain growth in the nuclear sector.

Rise of Smart Energy On the energy efficiency front, 2017 could see “the rise of smart energy,” the CBI’s Wharton said. “We have seen a number of pilots in this field in the U.K., and plenty more are in the pipeline. With storage costs dropping and systems becoming more integrated, 2017 could be the year that smart energy systems really take off.”

The Business, Energy and Industrial Strategy department will continue to oversee a goal for 2020 to ensure that every home and small business has a new smart meter, replacing technology that is more than a century old, Samoraj said.

The department will also continue to develop and deploy schemes to improve the energy efficiency of older buildings. In England alone there are nearly 5 million properties built before 1919.

Improving Air Quality With air quality in cities being “increasingly a major public concern,” the U.K. will also “need to set out how to get a grip on urban emission,” Wharton said.

Five local government authorities in 2017 will analyze responses to proposals for Clean Air Zones in five cities outside London, according to BEIS.

Proposals for zones include replacing old, polluting vehicles with modern, cleaner vehicles. The most-polluting vehicles, such as old buses, taxis, coaches and heavy trucks, will be discouraged from entering air quality hotspots.
At the same time, the Department for Transport will deliver funding of 290 million ($364.3 million) toward ultra-low emission transport, including cleaner buses and taxis; improving charging infrastructure for electric vehicles; and subsidies to build demonstration-scale advanced renewable fuel plants in the U.K.

**Natural Environment** A major preoccupation about Brexit is that “many U.K. environmental standards derive from EU legislation, and the state of the U.K.’s natural environment is currently in decline,” Molho said.

Benton said that “leaving the EU won’t change natural systems: The tides that wash British plastic pollution onto Norwegian shores won’t change, and air pollution from French fertilizer overuse will still blow across the channel.”

Andrea Leadsom, secretary of state for environment, food and rural affairs, will start devising a 25-year plan for water, soil and peatland after the department assesses responses from a consultation, a spokesman for Leadsom told Bloomberg BNA.

“In developing its 25-year plan, the government should ensure that it at least maintains the environmental standards that we will have inherited from our membership of the EU or in areas such as agriculture, consider how these could be improved,” Molho said.

In addition, the U.K. “will have to reinvent its agricultural, marine and land management protections from scratch,” Benton said. “A success will mean linking public payments for agriculture to wildlife friendly farming. The current system has failed nature: over two-thirds of payments are just for agricultural production, which often cuts across the environmental goals.”

By Ali Qassim

To contact the reporter on this story: Ali Qassim in London at correspondents@bna.com

To contact the editor responsible for this story: Greg Henderson at ghenderson@bna.com

**OECD**

**OECD Poised to Work On Climate, Chemical Policy**

The Organization for Economic Cooperation and Development this year plans policy work on the fight against climate change, on biosafety, and on testing chemicals for safety, OECD environmental officials told Bloomberg BNA.

The Paris-based policy and standards body’s 35 member countries include some of the world’s biggest energy users and polluters among advanced market economies, as well as a handful of emerging economies such as Chile, Mexico and Turkey.

Major emerging Group of 20 economies Brazil, India, China, Indonesia and South Africa are not OECD members, but participate in the organization’s “key partners” program.

Last year, the organization released environmental performance reviews of Chile and France. Publication of similar reviews of Canada, the Czech Republic, Estonia, Hungary, South Korea, New Zealand and Switzerland are planned for 2017 and 2018, said Ziga Zarnic, special adviser in OECD’s Environment Directorate.

**Implementing Paris Commitments** At the 2015 Paris climate conference, nearly 200 countries signed a pact that called for holding global warming to “well below” 2 degrees Celsius (3.6 degrees Fahrenheit) above pre-industrial levels and for making an effort to hold warming to a more ambitious 1.5 degrees Celsius. They also made national commitments to reduce their greenhouse gas emissions.

A June 2016 paper, “The OECD Supporting Action on Climate Change,” summarized the organization’s analytical and policy work aimed at helping countries spell out a “credible roadmap” of collective and national efforts to achieve the Paris Agreement’s goals.

Since many implementation details must still be worked out, this year a climate change expert group made up of OECD and International Energy Agency (IEA) members plans to work with parties in a “non-negotiating setup” on efforts to complete rules and resolve outstanding methodological issues, such as transparency, accounting and communicating progress on adaptation.

The group’s focus is on improving transparency for mitigation and climate finance under the United Nations Framework Convention on Climate Change. As countries work on developing low-emissions development pathways to 2050, OECD analysis aims to help them monitor progress and provide information about major policy challenges and choices, such as on carbon pricing mechanisms and eliminating fossil fuel subsidies, Zarnic said.

**Aligning Climate, Economic Policies** A 2015 publication that OECD produced with the IEA and other autonomous agencies argued that governments and regulators should coordinate climate policy goals with policies in investment, finance, tax, competition, energy, agriculture, land use, transport and market regulations.

Around 70 percent of the organization’s country reports, including environmental performance reviews, economic surveys and investment reviews, have recommendations on meeting climate and environmental goals through structural reforms to foster new business models and ease entry of low-carbon and resource-efficient businesses.

OECD said it plans to help countries “diagnose” policy misalignments and prepare pre-2020 action plans on mitigation in a broader economic context. “Some of the cross-cutting issues that need to be examined,” are, “for example, the role of fossil fuel subsidies and the effect that their removal could have on emissions pathways, economic performance and technological choices,” said Zarnic.

**G-20, Green Finance** G-20 countries account for about 85 percent of world economic output and a similar percentage of global carbon dioxide emissions. The OECD heads voluntary peer reviews of G-20 members’ fossil-fuel subsidies and contributes to the group’s work on climate finance.

For Germany’s G-20 presidency in 2017, a major OECD project aims to analyze if, and how, low-emissions and climate-resilient development can be achieved without compromising economic growth, competitiveness, development or well-being. A final report is planned for May.

The OECD, which launched the Centre on Green Finance & Investment in 2016, plans a report this year to introduce policy makers to the growing green bond...
market and to propose a framework for analyzing the potential contribution that bonds can make to a low-carbon transition, Zarnic said. The fourth OECD Green Investment Financing Forum is planned for the fall.

In May, the organization will release “Green Growth Indicators 2017,” while the OECD Green Growth and Sustainable Development Forum in the fall will focus on developing the ocean economy.

**Circular Economy** The organization is continuing work on analyzing key characteristics and macroeconomic impacts of the transition toward a circular economy, taking into account the full life cycle of products and the importance of new business models, trade-offs and hurdles.

That includes OECD work to “mainstream” biodiversity and development focuses on national and sectoral objectives, for example, in agriculture, fisheries and forestry, and how to monitor and evaluate performance.

Planned for March, “Marine Protected Areas: Economics, Management and Effective Policy” will draw on countries’ examples of good practices, while “Biodiversity and Development: Mainstreaming and Managing for Results” is planned for the OECD Global Forum on Environment, later in the year.

The OECD Nitrogen Expert Group is assessing policy instruments to manage “unwanted” release of nitrogen across a range of sectors, including agriculture, energy, industry, transportation and households. The 2017 publication “Managing the Human Impacts on the Nitrogen Cycle” will examine how countries can design policies to reduce adverse environmental and health effects of reactive nitrogen, such as through better identifying intervention points in the nitrogen cycle.

In the area of water policy, the OECD will release in March “The Economics of Water Quality in OECD Countries” for World Water Day, said Zarnic.

**CHEMICALS**

**Harmonized Test Guidelines** The core of OECD’s wide-ranging work on chemicals aims to add or adapt harmonized test guidelines to the organization’s multilateral Mutual Acceptance of Data system (MAD), under which the 41 participating countries exchange results of toxicity testing conducted using OECD-approved methods and principles.

The organization said MAD testing allows hazard identification, which with exposure information fosters risk assessments for chemicals, while sharing data allows saving more than 150 million euros ($160.5 million) a year.

Bob Diderich said the directorate’s Environment, Health and Safety Division, which he heads, will continue developing harmonized test guidelines for safety testing of chemicals, including for endocrine disruptors, pesticides and manufactured nanomaterials.

The organization published a first batch of adverse outcome pathways (AOP), or toxicity pathways through which chemicals cause adverse outcomes in humans and wildlife, for its AOP-wiki knowledge base in 2016 and plans another batch in 2017.

AOPs underpin the OECD’s project for developing integrated or novel approaches to hazard testing and assessment, which encourage regulatory use of non-test data and in vitro test data; allow reduction of animal testing; and enable assessment of larger numbers of chemicals based on factors such as similarity in structure, mechanism of action and metabolic pathways.

**Read Across** Read-across—a powerful tool that allows predicting unknown properties of one chemical from known properties of similar chemicals—is the science behind the OECD Quantitative Structure-Activity Relationships (QSAR) project. The OECD plans to publish a new Version 4 QSAR toolbox with new methods and profilers for grouping chemicals.

The organization plans to release a new knowledge base module called Effectopedia for gathering information on quantitative links between key molecular initiating events in adverse outcome pathways. The long-term goal is to be able to predict adverse outcome effects from chemicals in living tissue and organisms.

The organization also plans five new case studies for its program on using novel methods for hazard assessments, including for grouping and read-across for repeated-dose toxicity. “That is one endpoint for which it is always difficult to perform read-across on,” Diderich said.

**Test Guidelines** The OECD has about 100 test guidelines projects going. On the subject of endocrine disrupting pathways, a focus in 2017 will be the thyroid receptor pathway.

“There are still not many methods out there that could be a model for an OECD test guideline for that,” Diderich said.

Among new projects, the organization is developing a stock-taking paper on existing test methods for identifying endocrine disrupting chemicals that act via the retinoic acid pathway, for which no harmonized test methods exist yet.

There is also work to update a document on interpreting test results from endocrine disruptor studies, based on recent work by the European Chemicals Agency and the U.S. on deciding which chemicals are actually endocrine disruptors and which are not. There is work underway to update an existing inhalation toxicity test to take into account specific properties of nanomaterials.

**Honeybees** The OECD plans a seminar on testing and risk assessment of pesticide effects on pollinators. Authorities, such as the European Food Safety Authority, and U.S. Environmental Protection Agency and others, need longer term toxicity tests, especially of pesticides on honeybees. Until now, the organization has had only acute toxicity test guidelines, but is developing longer term, multiple-day feeding tests and may be able to publish a first long-term toxicity test guideline in 2017. “There will probably be other, even longer term test methods that need to be developed. Work on a test guideline on behavior of honeybees following a single exposure was recently started, but that will a couple of years to finish,” Diderich said.

**Novel Pesticide Technologies** An OECD guidance document released in 2016 addressed measuring and interpreting pesticide residues in crops. A companion document planned for 2017 will address rotational crops. Work also will be published on risk assessment of secondary metabolites of micro-biocontrol agents, as well as a revised guidance document on pheromones, which are biological methods for pest control.
Harmonizing Use Codes Within the OECD’s program on exposure assessment, one project is gathering models for estimating children’s exposure to chemicals when they put toys, other products or objects into their mouths.

A shortcoming of risk assessment is that it is very difficult to find out how chemicals are used. For example, in the European Union, registrants under REACH must indicate the chemical’s functions based on a table of functional-use codes.

The problem is these codes are not harmonized between countries. An OECD project aims to take a step toward harmonizing them among member countries to ease exchange information, Didierich said.

Costs-Benefits Program The OECD plans to establish a regular forum for countries to share case studies as well as risk-management approaches and methods for estimating associated costs and benefits for society. The plan is for it to do methodological development, especially on how to quantify benefits from lowering morbidity rates to reducing environmental impacts from chemicals.

The OECD has traditionally developed tools and guidance documents and left it to countries to figure out what to do with them. Another new plan for next year is to have outreach workshops to directly help nonmember partner countries that don’t have chemical regulatory systems to set up a system for gathering information on chemicals on the market, performing risk assessment and deciding on risk management measures for individual chemicals.

This program is in the context of what the United Nations does through its Strategic Approach to International Chemicals Management program.

There are also two ongoing projects for pollutant release and transfer registries. On sustainable plastics, one workshop is planned for how to assess plastic makers’ sustainability claims. And several scenario documents for estimating chemical emissions from industry sectors are in the pipeline.

Manufactured Nanomaterials Peter Kearns, principal administrator in the organization’s Environment Directorate, said during 2017 the OECD will continue developing methods or guidelines for safety testing of nanomaterials in “areas in which they are most needed, bearing in mind that many existing test guidelines are suitable.”

A strong focus in the coming months will be on characterization of nanomaterials in relation to physical chemical properties. There also will be an increased effort to address exposure assessment, especially in relation to consumer exposure and environmental exposure, he said.

Chemical Accidents In January, the organization plans to publish a document on aging of hazardous installations, gathering information from recent discussions and projects by the OECD Working Group on Chemical Accidents, with particular attention on results of an analysis of accidents linked to such aging.

The working group will hold an expert workshop in May on developing guidance for ownership changes in hazardous installations. It will aim to finish guidance to help stakeholders identify the main “risk drivers” during a change of ownership at a hazardous facility, Kearns said.

United Nations

Ship Emissions Next Target of United Nations Climate Push in 2017

Shipping companies could face new greenhouse gas limits as the United Nations system turns its attention to limiting emissions from marine vessels, aircraft, agriculture and food waste.

Chief among the UN’s 2017 priorities will be a push from its International Maritime Organization to prepare “a strategy on reduction of greenhouse gas emissions from ships,” said a spokeswoman for IMO Secretary-General Kitack Lim.

A working group will launch talks early this year to debate ways to reduce the 870 million metric tons of carbon dioxide in 2017 or about 2.2 metric tons of the world’s total that international shipping accounts for, spokeswoman Natasha Brown told Bloomberg BNA. The group will help set an agenda in time for the Marine Environment Protection Committee’s 71st meeting to be held May 8–12 at the IMO’s London headquarters.

The quandary is that deep-sea shipping is currently completely reliant on fossil fuel with no carbon neutral alternative even on the horizon,” Simon Bennett, director of policy and external relations at the London-based International Chamber of Shipping, told Bloomberg BNA.

“This makes agreeing a commitment which enjoys consensus across the industry that is ambitious but realistic, whilst being deliverable and affordable, a very significant challenge,” he said.

The shipping group represents more than 80 percent of the world’s merchant fleet.

Ballast Convention Other notable priorities include preparing ships for new rules on how to treat and manage ballast water to prevent invasions of aquatic species, strict pollution prevention regulations in Arctic and Antarctic waters, and new safety standards for ships using gases or other low-flashpoint fuels, Brown said.
Another urgent concern for the shipping industry ‘‘will be to clarify the implementation schedule for the Ballast Water Management Convention,’’ which enters into force Sept. 8, said Tore Longva, principal consultant of international regulatory affairs at Norway’s DNV GL, a provider of service for managing risk in shipping and other industries.

The convention will require ships to install ballast water management systems that can filter out the aquatic microbes, algae and animals that can cause environmental damage when they enter non-native ecosystems.

But the shipping industry is uncertain how these new rules will co-exist with the current treatment equipment used by the U.S., which is not a party to the ballast water convention, Bennett said.

**Alternative Fuels for Aircraft Eyed** After countries reached a deal in 2016 to reduce greenhouse gas emissions from aircraft, the International Civil Aviation Organization, or ICAO, will examine alternative fuels for the aviation industry in 2017.

A spokesman for the organization told Bloomberg BNA that a set of talks scheduled for Feb. 8–9 in Montreal will review the state of alternative fuels in aviation and start the process of mapping out alternate strategies. Information from that seminar will form the basis for a full conference on alternative fuels to be held in October in Mexico.

The agency will host a series of four-day regional seminars between March 27 and April 27 on national action plans to reduce emissions and implement the landmark Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) that the ICAO Assembly adopted last October. They will be followed by an international seminar in Montreal May 23–25.

**Agriculture, Food Waste Targeted** UN agencies in 2017 also will look at ways to reduce the environmental impact of agriculture and minimize food waste.

Sustainable agriculture will be a top priority for the Rome-based UN Food and Agriculture Organization (FAO). At a December 2016 conference Director General Jose Graziano da Silva told Bloomberg BNA that sustainable agriculture can help lift poor farmers out of poverty and reduce the environmental impacts of agriculture across all countries.

“This has to be a top priority,” Graziano da Silva said. “We have to act quickly and decisively or the problem will grow worse.”

FAO officials said they are continually working on guidelines and some financial assistance for poor farmers.

**UNEP** The UN Environment Program this year will facilitate the start of a wide-ranging effort to reduce food waste worldwide to curb the strain on food production systems and cut back on waste.

The initiative includes participation from more than 70 individual countries along with several multilateral groups including the European Union, members of Paris-based Organization for Economic Cooperation and Development, FAO, and multiple private sector entities. A three-year period to for tackling the issue starts next year, with two meetings scheduled for 2017 and others to be held through 2019.

In November 2016, UNEP reported that around 20 percent of the food produced in the EU alone with a value of nearly $160 billion was wasted each year. Unconsumed food puts a strain on food production chains, increases transportation costs, spreads disease and adds to the worldwide waste disposal problem.

There are parallel efforts to reduce food-packaging waste, with the Interpack 2017 conference to be held in May in Dusseldorf the centerpiece of the discussions.

**By Ali Qassim, Eric J. Lyman and Peter Menyasz**

To contact the reporters on this story: Ali Qassim in London, Eric J. Lyman in Rome and Peter Menyasz in Ontario at correspondents@bna.com.

To contact the editor responsible for this story: Greg Henderson at ghenderson@bna.com

Pesticides

Uncertainty the Theme Of 2017 for Pesticides and Biotech

When it comes to environmental regulation of the agriculture industry, the theme for 2017, at least at the outset of the new year, is uncertainty.

Several key decisions about pesticides and genetically modified crops that federal agencies had expected to finalize in 2016 have been pushed back to this year, including a determination about whether the world’s most widely used weed killer poses unacceptable risks to use.

Additionally, the law that allows the Environmental Protection Agency to use fees from pesticide makers to review and license the industry’s products expires at midnight Sept. 30. If Congress doesn’t reauthorize the law before this deadline, the regulatory processes that allow the pesticide industry to function could grind to a halt.

Meanwhile, the EPA’s senior leader, its top chemicals regulator and the head of its pesticides office are all scheduled to be leaving the agency at the end of January or shortly thereafter.

And, of course, all of this will take place under a new president, Donald Trump, who to date has been averse to spelling out specific details about the policies he’ll prioritize. Greater clarity on this won’t be found in this story: multiple e-mails from Bloomberg BNA posing questions to the president-elect’s transition team went unanswered.

Glyphosate Depend on your perspective, the EPA’s upcoming decision on the risks of glyphosate will either be 2017’s most significant pesticide regulatory development or its least.

On the one hand, glyphosate is likely the most used pesticide in the world. It’s the active ingredient in dozens of products, including Monsanto’s signature weed killer, Roundup. Because of its ubiquity—especially among genetically modified, herbicide-tolerant crops—even minor restrictions on how glyphosate can be used could have seismic economic effects on the agrochemical and agriculture industry.

But on the other hand, the EPA has been signaling for months that, despite a 2015 report from the World Health Organization that found the chemical is a probable carcinogen, the agency would likely determine that glyphosate doesn’t pose an unreasonable environmental threat.

Earlier this year, the EPA inadvertently posted online, and then withdrew, an internal report that reached an opposite conclusion from the WHO study. It then reposted the report months later, along with many other scientific studies supporting its non-carcinogenic finding.

Both anti-pesticide activists and pesticide industry representatives told Bloomberg BNA that they believe the EPA’s stamp of approval for glyphosate is all but a foregone conclusion.

“I don’t think the EPA is about to cancel glyphosate,” Lori Ann Burd, an attorney with the conservation group Center for Biological Diversity, said.

Chlorpyrifos Conversely, the EPA is very likely—though not certain—to take significant measures in 2017 to rein in the use of chlorpyrifos, an insecticide developed by Dow Chemical Co. that is widely used on cotton, corn and many other fruit and vegetable crops.

The agency is under a court order to make a determination by March 31 on whether it’s safe for any amount of chlorpyrifos to be used on food crops. If the EPA determines the chemical isn’t safe, as it has long been indicating it would, the agency would be required to enact a near-total ban on the use of it.

Theoretically, the incoming Trump administration could ask the federal appellate judges hearing the chlorpyrifos case for an extension on the March 31 deadline. But these judges have already extended this deadline once and have harshly criticized in the past the EPA’s delay in making a decision on chlorpyrifos (In re: Pesticide Action Network, et al v. EPA, 9th Cir., No. 14-72794, 9/10/14).

Or, the agency’s new leadership could make a determination that chlorpyrifos doesn’t pose an unreasonable health risk. However, to do this it would have to earn judicial approval to disregard the voluminous scientific evidence to the contrary that EPA scientists have been compiling during the Obama years.

Jay Vroom, president of the pesticide industry trade group CropLife America, said that how the EPA moves forward on chlorpyrifos may be less important than how, or whether, it develops a clear, predictable process for analyzing new types of pesticide science. To make its case on the dangers of chlorpyrifos, the EPA took the approach of relying mainly on human-based epidemiology studies rather than its usual animal-based lab tests.

“We would hope the EPA would finalize a very clear procedure for taking into account epidemiology,” Vroom told Bloomberg BNA. “You need to get all of that right ... before you establish precedents.”

CropLife formally petitioned the EPA to halt its regulation of chlorpyrifos and other similar pesticides until it establishes a transparent, public process for using epidemiology studies.

Pollinators The EPA’s work on pollinator protection is one area that may be the most affected by this November’s election results, according to one environmental activist who closely tracks the agency’s work.

In 2017, the EPA is scheduled to finalize several initiatives that were key parts of the White House Pollinator Health Task Force’s landmark 2015 report. That’s according to Michael Goodis and Yu-Ting Guilaran, two
senior officials in the agency’s Office of Pesticide Programs, who spoke at a meeting at OPP’s Arlington, Va., headquarters.

The agency will continue to release scientific risk assessments for several neonicotinoid insecticides that look at the effects these controversial chemicals have on bees and other beneficial insects. It’s also planning on finalizing new restrictions on the use of neonicotinoids and other insecticides on farms while bees have been brought in to conduct pollinating services.

However, Nichelle Harriott, science and regulatory director with the activist group Beyond Pesticides, said she believes this second initiative likely will never be finalized. She told Bloomberg BNA that, given the agriculture industry’s strong opposition to this measure and the general pro-business stance of the president-elect, the EPA’s new leadership may simply elect to stop working on this.

Under a Trump administration, “that may be one of the things that may go into a black hole,” Harriott said. “I’m not very optimistic about that.”

PRIA Vroom said he was very confident that Congress would meet its Sept. 30 deadline to pass a reauthorization of the Pesticide Registration Improvement Act, which provides the EPA with the legal authority to collect fees from pesticide makers to license them.

In the past, both environmental activists and industry trade groups have joined together to advocate for the law’s renewal, because without it the EPA might be unable to clear new pesticide products for sale or to conduct risk reviews of existing pesticides.

Vroom said a draft version of the bill is currently being reviewed by legal staffers in the House and Senate agriculture committees, and there’s even a remote chance it could clear both chambers during the current session of Congress.

The latest iteration of PRIA will likely be similar to the version currently in place, which Congress approved in 2012, Vroom said. The most significant change, he said, will likely be more authority for the

Gina McCarthy
Administrator
Political appointee

Jim Jones
Assistant Administrator for Chemicals
Political appointee

Jack Housenger
Office of Pesticides Programs Director
Career employee

Arnold Layne
Deputy Director for Management
Career employee

Rick Keigwin
Deputy Director for Management
Career employee
EPA to use pesticide fee money to comply with provisions of the Endangered Species Act.

Lawsuits from environmental groups over the years have prodded the EPA to set up a process for consulting with other federal wildlife agencies on pesticide approvals, as required by the ESA. But the development and execution of this process has been heavily time- and resource-intensive for the EPA and has, thus far, resulted only in draft endangered species analyses for just three pesticide chemicals.

If, for some reason, Congress doesn’t meet the Sept. 30 deadline, the EPA can dip into cash reserves that it established after the 2013 government shutdown to keep its pesticide regulatory operations going, Vroom said.

But, he added, “that’s not an outcome that has any possibility of happening. It would just be a matter of a few weeks if it did.”

**Regulatory Overhaul** When it comes to the regulation of genetically modified agriculture, one of the more significant items on the horizon is an overhaul of the way USDA scrutinizes new GM crops. This overhaul could make it easier for companies like DuPont Co. and Bayer AG to gain regulatory approval for their new GM seeds (RIN: 0579-AE15).

In February, the department announced it would examine several different options to change the way it reviews these crops before they hit the market. Its current process was created at the dawn of the age of genetically modified organisms in the 1990s, when fears and unknowns were high.

USDA’s top biotechnology regulators have for years talked about changing the regulatory language that requires them to conduct pre-market environmental reviews of the types of crops that have now been successfully planted at farms across the country for decades. A draft version of this regulatory overhaul is currently under review at the Office of Management and Budget and could be formally unveiled as early as this month.

**Transition of Power** Dana O’Brien, a vice president at the industry trade group BIO, said this effort bears eerie similarities to the last time USDA floated a proposal to overhaul its GMO review regulations during the waning days of the Bush administration. Amid criticism from biotech companies for its vagueness in key areas, the ensuing Obama administration never acted to finalize its predecessor’s proposal. In 2015, it finally opted to formally scrap the proposal, clearing the way for this latest effort.

O’Brien said it’s entirely possible the Trump administration also could choose to sit on its predecessor’s proposal for years.

Because of this, he said, it might benefit the USDA to wait to formally unveil the proposal until after Obama leaves office. This is because once a proposed regulation has been published, federal laws make it difficult for agencies to have informal discussions about the proposal with affected parties. O’Brien said these laws handcuffed the USDA during the Obama administration and prevented it from gaining input on how to improve the Bush-era regulatory rewrite, leading eventually to its being discarded.

“There are pros and cons to getting it out now,” he told Bloomberg BNA. “If they publish something that is super-flawed, you have potential for having it languish for a long time ... Then you get into these unusual periods when things are published and agencies go quiet.”

**Genome Editing** However, O’Brien said the benefit to issuing the proposed rewrite now is that, even if it never gets finalized, it could send a strong signal to the marketplace about how federal regulators are viewing new genetic modification technologies known as genome editing.

Scientists are increasingly using genome editing methods to make hyper-precise changes to the genomes of plants. But they are increasingly posing quandaries for USDA because genome editing allows scientists to genetically modify a plant without needing to introduce any foreign DNA, which is what typically triggers regulatory oversight from the department.

This, in essence, allows these plants to avoid the environmental reviews that other plants that were created with more well-established techniques must undergo.

Should the plants and animals developed using genome editing be subject to the same scrutiny as other, more traditional GMOs? It’s a question Bernice Slutsky, a senior vice president with the American Seed Trade Association, would like USDA to definitively answer in 2017, in one way or another.

Even if the department doesn’t answer this question as part of its regulatory overhaul, Slutsky said even a non-binding public statement of some sort, such as a guidance document, would be significant because it could clarify the legal status of these crops and avoid any potential snags in their overseas trade.

“It’s a topic a lot of countries are discussing. We want the U.S. to be part of that discussion,” she said. “We don’t want to end up with a patchwork of different regulations around the world.”

Ultimately, Slutsky said she hopes the Trump administration continues its predecessor’s work here and doesn’t take a knee-jerk stance toward enacting any new regulations.

“Hopefully they’ll understand what USDA is trying to do through this rule,” she told Bloomberg BNA. “Rule-making in itself is not necessarily a negative thing.”

BY DAVID SCHULTZ

To contact the reporter on this story: David Schultz in Washington at dschultz@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com
Water

Water Rule Fate Uncertain Until Trump EPA Sets Priorities

A rule clarifying which waters can be regulated by the federal government may die on the vine—even before a court decides its legality—if the Justice Department under President-elect Donald Trump refuses, as expected, to defend it against dozens of legal challenges.

Litigation over this rule, also known as the waters of the U.S. rule (WOTUS) and others under the Clean Water Act, including one setting discharge limits for power plants, is being closely watched by water attorneys and others hoping for a more relaxed regulatory climate.

During the presidential campaign, Trump singled out the Clean Water Rule (RIN:2040-AF30) as one he would roll back upon taking office. However, he hasn’t mentioned it since the election.

Attorneys interviewed by Bloomberg BNA don’t expect the Trump administration to mount much of a defense of the rule, which is being challenged in nine federal district and appeals courts by 31 states and a myriad of manufacturing, business, agriculture and property rights groups as well as some environmental groups. It has been stayed nationwide by the U.S. Court of Appeals for the Sixth Circuit (In re Murray Energy Corp. v. EPA (In re EPA and Dep’t of Def. Final Rule), 6th Cir., No. 15-03751, 11/14/16).

“Going forward the rule is dead,” Fredric Andes, a partner in the Chicago and Washington, D.C., offices of Barnes & Thornburg LLP, told Bloomberg BNA. “The Waters of the U.S. rule and the Clean Power Plan are dead, whether the Trump administration does it through notice and comment or through an executive order. That much is clear.”

“We feel very positive and confident about the scientific and legal foundation of the Clean Water Rule, and are incredibly proud of its accomplishment,” Joel Beauvais, deputy assistant administrator for water at the Environmental Protection Agency, told Bloomberg BNA in a telephone interview.

The government’s brief in litigation before the Sixth Circuit is not due until Jan. 18, after which the plaintiffs will have one last chance to make their argument for overturning the rule. The appeals court already has indicated that it will hold oral arguments shortly after the briefing ends in early March.

Environmental Advocates to Intervene If the Justice Department refuses to defend the Clean Water Rule, then other intervenors that have the status of parties, such as the National Wildlife Federation, could still step in to mount a defense.

Jan Goldman-Carter, National Wildlife Federation senior attorney and manager for wetlands and water resources, told Bloomberg BNA her organization would not hesitate to jump in to defend the rule if the U.S. chooses not to.

The U.S. also could just undergo a rulemaking to withdraw the regulation, which, if successful, would render the lawsuits moot, Andes and Jeffrey Longsworth, another attorney with Barnes & Thornburg LLP, said. Such an action could take months or a year or more and would require the EPA to publish a Federal Register notice proposing the withdrawal and soliciting public comment. The government would then notify the court of its impending action. The DOJ also could ask the court to hold the litigation in abeyance while it returns the rule to the agency for a rewrite, according to the lawyers.

Regarding the lawsuit over power plant effluent guidelines (RIN:2040-AF14) (Sw. Elec. Power Co. v. EPA, 5th Cir., No. 15-60821, 12/5/16), Longsworth said its fate rests with Oklahoma Attorney General Scott Pruitt, Trump’s pick to head the EPA, and more specifically the person chosen by the president-elect to lead the agency’s water programs.

“Clearly Trump has signaled that he is much more energy friendly than Obama. Whether that extends to power plant effluent discharges or not, it is hard to say at this time,” Longsworth said.

Claudio Ternieden, government affairs director for the Water Environment Federation, said Pruitt is not altogether unfamiliar with water rights and shortages, as he hails from Oklahoma, which has considerable experience with reusing water from oil and gas operations.

Pruitt also is among the state attorneys general who are challenging the WOTUS rule.
Cooling Water Litigation Likely to Continue

Lawsuits have also been filed challenging an EPA rule (RIN:2040–AE95) concerning the design, structure and construction of cooling water intakes at coal, oil, gas and nuclear power plants (Cooling Water Intake Structure Coal. v. EPA, 2d Cir., No. 14-04645, 11/16/16).

Andes said it is unlikely that the agency will withdraw from this litigation because it has already rewritten the rule, under Section 316(b) of the Clean Water Act, in response to earlier litigation. The EPA staff has invested a lot of time and energy into this regulation intended to protect aquatic life from being trapped or sucked into systems that draw in water to be used for cooling in industrial processes.

“I expect the EPA under the Trump administration will let this litigation proceed and adjust accordingly,” Andes said.

The new administration can’t do much about Clean Water Act rules that have already been argued in court and await rulings, such as one exempting water transfers from discharge permits requirements—unless a decision is issued that is unfavorable to the EPA’s position, Longsworth added. In that case, the EPA can modify the rule or appeal the decision.

Another final rule (RIN:2040–AF25), this one governing how states and the EPA operate the National Pollutant Discharge Elimination System, won’t be issued until August 2017. Initially, it was scheduled for November 2016, but Beauvais said more time was needed to address and resolve objections raised by states and municipalities over a provision to treat administrative continuations of permits as proposed permits, subject to public notice and agency veto.

Andes said he hopes the Trump EPA will remove this provision before issuing the NPDES program rule in its final form.

Whither Study of Refinery Discharges? It also is unclear whether the EPA will pursue its study of wastewater discharges from petroleum refineries as a prelude to updating effluent guidelines for that sector or if that effort will be dropped, Andes said.

As part of this study, the EPA has sought data on the discharge of metals and dioxin from petroleum refineries, including, for example, the sources of these contaminants, either in crude oil or in the refining process, the effects of new air pollution controls on wastewater discharges at refineries and information on current and future trends in oil refining processes.

With Pruitt as Trump’s pick to head the EPA, environmental groups such as Friends of the Earth said they expect rules regulating the oil industry and electric power sectors to be either withdrawn or weakened.

“By appointing Oklahoma Attorney General Scott Pruitt to head the Environmental Protection Agency, Donald Trump has made it clear that he intends to wage war on clean air and clean water,” Benjamin Schreiber, the climate and energy program director at the environmental group, said in a statement. “As the Attorney General, Scott Pruitt did the bidding of the oil and gas industry and fought many of the laws he will now be tasked to enforce.”

The EPA isn’t expected to issue any further rules on stormwater, but Beauvais said the agency will continue to provide technical assistance to communities that are interested in managing stormwater as part of their long-term plans.

Using Backdoor to Regulate Flow Longsworth said he is concerned that the EPA is taking a backdoor approach to regulating stormwater by seeking to control the volume, frequency and duration of stormwater runoff rather than the pollutants contained in the stormwater.

A general discharge permit for stormwater that the EPA issued for Massachusetts is a case in point. The National Association of Home Builders, as well as many municipal challengers, claimed the general permit regulates stormwater flow as a surrogate for controlling actual pollutants. Longsworth, who is representing the builders, said the litigation will proceed.

The EPA in the past has argued that nothing in the statute precludes it from regulating flow under the NPDES program, but Longsworth said the Clean Water Act doesn’t list stormwater as a pollutant, so it can’t be regulated.

The coming year will see how cities and counties with fewer than 100,000 people implement regulatory changes to the municipal general stormwater permit issued by the EPA (RIN:2040–AF57) in response to a U.S. Court of Appeals for the Ninth Circuit remand. The remanded rule, unlike its predecessor, requires municipalities to seek public comment on the general permits for stormwater, a process that can be both time-consuming as well as costly for states.

The National Association of Clean Water Agencies, which represents publicly owned treatment plants that also manage stormwater, is concerned that the municipalities will have to levy fees to comply with the public notice requirements of the remanded rule that governs stormwater permits for cities and suburbs with fewer than 100,000 people. Prior to the remand, these stormwater permits didn’t require public input.

“In a pro-business atmosphere that is anti-regulation, you will get a lot of members who are resistant to paying for stormwater,” Amanda Waters, NACWA general counsel, told Bloomberg BNA regarding the possibility of cities having to impose fees. “We will see more litigation on that front.”

Uptick in Citizen Suits In fact, NACWA expects an all around uptick in citizen suits from environmental groups that will challenge any attempt by Trump to weaken environmental regulations, said Nathan Gardner-Andrews, the group’s chief advocacy officer.

“How that will impact our members remains to be seen.”

Steve Fleischli, NRDC senior attorney and water program director, said the group is taking a wait-and-see approach.

“The new rule is a mixed bag,” Fleischli said. “As is often the case with the EPA, we will have to look very carefully at how the rule is implemented.”

Environmental groups, however, have made it clear they will be watching the Trump EPA very closely and will have no qualms with filing challenges at the very first blush of a rollback in environmental rules.

“If they issue regulations that are arbitrary and capricious, then we need to be there to challenge those. Where progress is threatened we need to push hard,” Fleischli said. He said the groups also would be track-
ing legislation that they say would weaken stormwater regulations in certain communities.

Skirting the Law For instance, Fleischli said he was concerned that a bill similar to the Republican-sponsored Water Quality Improvement Act (H.R. 6182) could be reintroduced in the 115th Congress. The bill, which Rep. Bob Gibbs (R-Ohio) introduced in September, would allow cities and towns to determine which costly stormwater and wastewater overflow projects should be tackled first based on whether it can afford to carry them out.

The environmental groups claim H.R. 6182 would allow municipalities to use the inability of their residents to pay water and sewer bills to skirt compliance with water quality standards.

“Integrated Planning and Permitting, when done correctly, allows municipalities to meet the requirements of the Clean Water act by sequencing investments in wastewater and stormwater infrastructure by highest priority, without changing existing regulatory or permitting standards,” the nonprofit American Rivers and NRDC explained in a fact sheet about the H.R. 6182.

“Affordability is a part of integrated planning and permitting, but it should not be used as an excuse to defer real progress in meeting water quality standards,” the groups said.

The U.S. Conference of Mayors backs the bill and will probably support its reintroduction in the 115th Congress, according to water attorneys familiar with the bill. NACWA didn’t take a position on this bill, but has supported the concept of affordability because many municipalities lack revenues to make mandated repairs to their water infrastructure or treatment systems to meet water quality standards.

Fleischli said he understands municipalities are hurting for revenues, but “there has to be accountability.” Municipalities can’t keep asking for funding, but then shy away when it comes to showing results, he said.

“They can’t have it both ways,” Fleischli said.

Drinking Water Challenges On the drinking water front, all eyes will be on the EPA and its much-awaited revisions to the lead-copper rule (RIN:2040-AF15) expected in June. The EPA shared an insight into how the rulemaking would unfold. For instance, an agency white paper in October floated the idea of replacing aging lead service lines in their entirety as one of the regulatory options. The EPA pointed to the experience in Lansing, Mich., and other cities, where lead service lines were replaced entirely using innovative financing mechanisms.

Hazardous algae blooms caused by excessive runoff of nitrogen and phosphorus compounds remain a challenge for the next EPA. Beauvais pointed to the national drinking water action plan that the EPA just released as the blueprint to protect drinking water supplies.

The plan, released Nov. 30, calls on all levels of government to work with utilities and community groups to increase the safety and reliability of the nation’s drinking water.

The plan identified six areas that address issues such as building capacity for small and disadvantaged communities to finance and manage infrastructure, advancing oversight of the Safe Drinking Water Act, strengthening source water protection, addressing unregulated contaminants and reducing lead risks.

‘One-Stop Shop’ for Infrastructure Funding For instance, the action plan calls for a “one-stop” online water infrastructure funding portal to assist communities with identifying funding sources and financing approaches and showcasing case studies for funding water infrastructure capital projects and predevelopment or other planning requirements. The plan also calls for promoting best practices to utilize state revolving funds in financially disadvantaged communities.

EPA Administrator Gina McCarthy in a December speech on water opportunities expressed hope that Trump would also focus on water infrastructure, which is integral to growing the U.S. economy. She said the EPA had issued a rule (RIN:2040-AF63) that spells out how the fledgling Water Infrastructure Financing Innovation Act, or WIFIA, will begin issuing Treasury-backed credit or direct loans for water infrastructure improvements that cost at least $20 million (81 Fed. Reg. 91,822).

Beauvais said a proposed rule (RIN:2040-AF64) imposing fees to process WIFIA loan applications would become final early in 2017 (81 Fed. Reg. 91,890).

Trump Seeks to Triple Infrastructure Funding Subsequently, Trump as part of his one trillion-dollar infrastructure package has proposed to triple the funding for drinking water and clean water state revolving funds.

The last time these funds were tripled was in February 2009, when the Democratically controlled Congress passed the American Recovery and Reinvestment Act, which the newly inaugurated President Barack Obama signed into law. That bill added $4 billion to the base funding of $689 million for the clean water state revolving fund and $2 billion to the base funding of $829 million to the drinking water state revolving fund.

Senate Majority Leader Mitch McConnell (R-Ky.) expressed his skepticism about Trump’s stimulus package just before he left for December recess because it was similar to the 2009 bill, while at least one Republican House leader, Rep. Bill Shuster (R-Pa.), was cautious in his support.

Ternieden, of WEF, said Trump’s proposal is different because at the time the investment was needed to bring the economy out of the Great Recession. “This funding is necessary to replace water infrastructure that is aging,” he said. WEF along with other national drinking water and wastewater groups is optimistic that Congress will approve more money for the state revolving funds but not to the extent that Trump is seeking. Ternieden said to expect a combination of tax breaks and incentives along with increases in the funds.

EPA Remains Under Fire In the meantime, the EPA is being sued by the Waterkeeper Alliance Inc. for missing at least 10 deadlines for monitoring and regulating contaminants under the Safe Drinking Water Act in the past several years.

Specifically, the alliance wants the EPA to revise national primary drinking water regulations for acrylamide, epichlorohydrin, tetrachloroethylene (PERC), tri-chloroethylenne (TCE) and chromium that are long overdue. The nonprofit also wants the agency to issue a regulatory determination to move forward with developing rules for strontium.

“If Trump’s future actions come anywhere near his campaign rhetoric, then hey, it will be a very busy four years for us,” NRDC’s Fleischli said.
California Changes, Flint Aid

Passage of the Water Infrastructure Improvements for the Nation Act in December set the stage for changes to federal and state water management in California, over the objections of environmental activists.

California typically has a winter rainy season that can produce surplus water—surplus in terms of what is needed for the health of endangered fish species. Federal and state operators of pumps on the river channels will be authorized this January, February and March to capture more of that water for use and storage.

Emergency federal assistance in 2017 will go to Flint, Mich., and other cities with severely deteriorated drinking water systems thanks to authorization by the water infrastructure act. The biggest portion of that assistance will be $100 million in direct aid, but other provisions add tens of millions of additional dollars for related activities, such as a lead exposure registry.

An additional federal assistance program for water utilities, under the Water Infrastructure Finance and Innovation Act of 2014, will launch in 2017 with $20 million authorized by Congress under the water infrastructure act and appropriated in the interim spending resolution for fiscal year 2016.

**By Amena H. Saiyid**

—With assistance from Alan Kovski in Washington

To contact the reporter on this story: Amena H. Saiyid in Washington at asaiyid@bna.com

To contact the editor responsible for this story: Larry Pearl at lpearl@bna.com