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Lynn L. Bergeson (LLB): Hello, and welcome to All Things Chemical, a podcast produced by Bergeson & Campbell, P.C. (B&C[®]), a Washington, D.C., law firm focusing on chemical law, litigation, and business matters. I'm Lynn Bergeson.

This week, I was totally thrilled to sit down with Jim Aidala, B&C's Senior Government Affairs Consultant, and Dr. Rich Engler, B&C and The Acta Group's, our consulting affiliate, Director of Chemistry, to discuss what to expect in 2022 with regard to industrial and agricultural chemical regulation. As our listeners know, each year we publish a Forecast, a written summary of our best professional judgment as to trends and key developments we expect in the New Year. Our 2022 Forecast is a monster -- 103 pages of well-written expert analysis on global chemical regulation. My conversation, spirited and candid, with Jim Aidala and Rich Engler focuses on domestic, industrial, and pesticide policy trends and regulatory developments. Now here is my conversation with Jim Aidala and Rich Engler.

Good morning, gentlemen. It is wonderful to be speaking with you today. I've been so looking forward to this meditation on the first year of the Biden Administration. Jim, you first. In your view, what are the major successes and major misses of the Office of Pesticide Programs [OPP] and the Office of Pollution Prevention and Toxics [OPPT] over the past year?

James V. Aidala (JVA): For both, it may be a little different, but let me just start with OPP, or the Office of Pesticide Programs. The biggest headline there, and I think it's the overall headline for the year, is they've got incredibly better momentum trying to figure out the conundrum of implementing the Endangered Species Act (ESA) with FIFRA [the Federal Insecticide, Fungicide, and Rodenticide Act]. And that's very important, to say the least. It's really the threat to the industry over the next indefinite number of years because -- and again, it's been going on for over 15 years -- so better late than never. But there's just again incredible momentum with especially the appointment of a senior political person who's really not just dedicated to the task, but also very good at it. Jake Li, Deputy Assistant Administrator (DAA), comes from a background that gives him credibility with the left

NGO [non-governmental organization] groups that have been harassing [the U.S. Environmental Protection Agency] (EPA) on this issue. And when I say harassing, it makes it sound trivial, but again, the complaint is that the ESA has been a major problem for the program for three administrations.

LLB: Forever, right.

JVA: And there really is some new momentum there, and I'm sure we'll be talking about that as we go on in this podcast, number one.

Number two, a little bit more critical, on chlorpyrifos, it's not news that on chlorpyrifos they were taking action to severely restrict or altogether remove the pesticide. That was sort of predictable the day after the election. But the way they did it has left a bit more of a mess in the wake, everything from dealing with some of the stakeholders to -- and specifically, to get a little inside baseball -- in the documents they used to support their decision, it actually states on the record that there are some uses that could still maybe meet the standards -- still *do* in their calculations -- meet the standard, but they could have been left on the label. And that's a hard communication message to say. "We got to get rid of all of them, but some of them did meet the standard." But at the same time, we're not going to let *those* continue. And there's reasons for that. Again, you could get into a whole -- we could have a separate hour on that issue as well.

LLB: Just on that topic.

JVA: But that said, it's a communications problem. And similarly, with dicamba -- another pesticide issue that's in the news -- in the community, it's saying that, "Oh, well, you can still use it this year, but by the way, we're not even sure it quite meets the standard anymore because of ESA issues." And again, it's just sort of a mixed message. It's got at least the grower community quite concerned and paranoid. Not that whenever they see a Democrat coming through the doorway, they get a little concerned anyway. So that's a bit of a problem. And again, it doesn't mean you have to keep everybody happy, but there's ways to maybe do it a little more gently. I'll defer to Rich in terms of OPPT, good and bad, but I'm sure we'll be getting into those over time with this.

LLB: Same question to you, Rich. What are the major successes and major misses with regard to OPPT?

Richard E. Engler (REE): OPPT has done a pretty extraordinary job of managing the PIP (3:1) [phenol, isopropylated phosphate (3:1)] debacle that really began at the beginning of 2021. There was clearly miscommunication in the development of the rule. The rule would have been extraordinarily disruptive to not just industry, but to the American economy, and nobody wanted that. So when industry finally got in the game, communicated what the concerns were with EPA, EPA reacted with alacrity. They did the best that they could with the tools that they had and provided some relief. They've been taken to task for that, but I think the alternative -- the economic consequences of the alternative -- would have been utterly unacceptable. I have to give them credit for handling a tough job pretty well. Something else that we'll talk more about, I'm disappointed that there hasn't been a more aggressive move to fill out the roster in OPPT. There are some key permanent positions that are either unfilled or filled only with acting folks, and that certainly makes OPPT's job harder.

LLB: Yes. Okay. Rich, while I have you on the line here, this is a question I would like both of you gentlemen to answer. But as you've reflected over the first year of the Biden Administration, what has surprised you the most, and what has been the biggest disappointment? Rich, since you were just chatting, let's start with you.

REE: My answer is the same. And that's OPPT still has not really grappled with what "reasonably foreseeable" means. We've been talking about this for five and a half years now?

LLB: I was just going to say, seemingly forever.

REE: Since June 22, 2016, and I was hopeful that they would take this opportunity, this new start, to really wrestle that term to the ground. And not only has that not happened, but we hear statements that if something doesn't *always* happen, then it's reasonably foreseeable. And that seems to me to really be quite different than the meaning. I know we don't really want this to be adjudicated. This is something that I would hope that stakeholders would want to work out with EPA. But I don't know how to resolve this. It's been troubling us for quite a while, and it seems to linger as a serious issue.

LLB: Jim, what in your mind was just totally surprising? And any major disappointments?

JVA: Well -- and they're related at some level -- similarly to the idea, as I said, about chlorpyrifos, it's not a surprise where the ultimate decision was going to be in the leanings of a Democratic Administration. That's not news, but the way it was done was a little surprising. For example, the idea that the new administrations are going to come in and reverse a lot of the decisions the previous administration, that's like, yeah, and the sun rises in the east. But the un-Trump -- I call it the un-Trump perspective -- and the un-Trump motivations have been so dominant and even mentioned in press releases and things, which to me is a little extraordinary about individual cases, not just a broad statement of, "Hey, we're the new guys in town. We're better. That's why we got elected." That's normal, in the good sense. But it's made it sound like all you have to do is look at what was the decision in the past four years, and it'll be reversed. There's literally, in the pesticide space, for example, there's thousands of decisions that are made each year about pesticides, and it is under the waterline.

You see the sexy, big, high-profile decisions; you don't see the other thousands of decisions. And by definition, thankfully in a certain way, the system goes on, and most of those decisions don't become political in *any* sense of the word. And so what's that mean if you're going to say everything is going to be different than before? And there's a similar theme and again -- to my ear -- to the science integrity discussion, and the Administration, and in particular, leadership of OCSPP [the Office of Chemical Safety and Pollution Prevention] has come out and said, "Gee, we're going to have more science integrity," and that's fine. It's one thing to say, and even the Inspector General has backed some of that up, for the comparison of this Administration to the previous Administration. At the same time, though, however, that's sort of led to questions and gets at the credibility of the program just under the guise of, well, does that mean it was all political? Does that mean there was no science integrity before *ever*, in all those thousands of decisions? And that erodes at the confidence about the decisions of the program altogether.

LLB: Yes. Speaking of -- you noted a couple of seconds ago the inclusion of Jake Li, the addition of him as DAA for Pesticide programs and Team OCSPP. The ESA has been a kind of code red for a long, long time. And you alluded to the fact that there were several in the community that really praised the addition of Mr. Li in this leadership position. What's your

best guess, Jim, as to the outcome of the ESA? Will it get sorted out? If so, when? At what cost? This is just a hugely problematic statute, which has confounded the OPP literally for years. What's your prognosis here?

JVA: It's partly sunny and positive, but chance of rain, right? My snarky answer to the question in general about the 15-year, 20-year almost arc of implementing the Endangered --

LLB: Failure.

JVA: Yes, okay, here it is. It's many have tried; all have failed. Every administration since Mr. Bush Jr. has tried to sort it out. It's been on the books, technically since 1974, just for the record, so it's 50 years and counting, almost. But Jake's got a unique ability -- I shouldn't say unique ability, well, awfully unique ability -- but unique résumé that really is helpful, as I said earlier. The fact that he's got very good credibility with the left groups that have been suing. For example, he comes from not the most hard-core group, but he comes from the Defenders of Wildlife originally, has also spent time separately trying to be a consultant in the space of bringing people together on the subject, and has just good knowledge and contacts over at the services, at the Fish and Wildlife Service and the Fisheries people at [the] Department of Commerce. It's important that he has all those relationships, and it hopefully will result in something that's clearly progress going forward. And it's not just that. That's an important linchpin point in a coordinating role, but in particular, too, the industry, to be blunt, is also -- seems to have a renewed spirit of making sure they *try to* figure it out. Not that they haven't for the past 15 years also, but rather, "Okay, if we have to make earlier concessions on some mitigation strategies and things, that's much more of an active discussion in terms of the possibilities and possible policy options as we speak." There's a renewed effort with the industry to figure out a way. There's renewed emphasis and energy, if you will, among the agencies to try and come together, so it's not just "I don't like the way you do it." "No, I don't like the way you do it." Hopefully, all that can come together and gel into actually making progress.

LLB: Good. Well, that's encouraging. Good to hear.

Rich, over to you. You had mentioned -- either in the context of a disappointment and/or a major miss -- your concern about staffing in the OPPT. Importantly and surprisingly -- and maybe you can shed some light on this -- the OPPT Office Director position remains unfilled. What's with that?

REE: I don't know. Honestly, it's a mystery to me. I know it's a tough position to fill. It takes -- it's a pretty specialized job. It sort of gives lie to the fact that senior executive service people can do any job anywhere. There are really some special skills that are involved in being OPPT Office Director. But I would have hoped that Dr. Freedhoff would have selected at least someone to be *acting* in that position. It's been essentially empty for about a year, and Mark Hartman and Dr. Tala Henry have been carrying the weight, and it's a tremendous weight these days. OPPT's got a lot on its plate: existing chemicals, new chemicals, all this - - all the other Lautenberg implementation things that are still going on. There's a lot happening, and they just need more senior leadership. I'm surprised, and I really have no explanation.

JVA: Now, if I can comment on that, too.

LLB: Sure, Jim.

JVA: First of all, I assume, Rich, you're not interested. Lynn, you're not interested.

LLB: That's a big hard no.

JVA: I'm getting too old. So anyway, just for the record. Kidding aside, as Rich says, it's an incredibly tough job. That's one reason none of us are volunteering -- right? -- to even be thinking about it. But specifically, a problem that results is the middle managers don't quite know what to do, who's going to be coming in, what's going to be his or her emphasis, and things like that. Not that middle managers again, as Rich hinted at, an SES [Senior Executive Service] person is supposed to be able to drop in as an SES position here in EPA, the Air program, or the Toxics program or working somewhere in USDA [the U.S. Department of Agriculture], or anywhere else.

And technically, that's true, but in reality, obviously, this just takes a lot of skill set and knowledge about related subjects. It doesn't mean you have to just hire internally, but all the issues that you could imagine with implementing [the Toxic Substances Control Act] (TSCA) are, shall we say, a long list. Familiarity -- risk assessment, policy implementation, sorting out how to do chemical assessments (a large number of them in a very short time), and then even dealing with resource issues, because -- [there's] been some trade press on that. The resource issues are, again, a very important issue for the Toxics program. It's not just that every budget is important to any program, but it is a real skills mix and shortage kind of issue that is hurting the implementation of the statute. And that will continue.

LLB: I appreciate your insight, Jim. As a former Assistant Administrator (AA) in the OCSPP, formerly referred to as a different office name, of course, that perspective is important.

Jim, you had mentioned a bit ago science integrity, a term that covers a lot of real estate and is particularly perplexing in the OCSPP. Do you expect this issue to continue and linger in the new year? And more to the point, what is the impact internally when staff in the office hear repeatedly emphasis on scientific integrity? Is there a unique downside to that refrain mentioned over and over again?

JVA: I think so. Two comments. One answer specifically to your direct question, yes, it will continue, emphasis. Even in my day back at EPA, under the Clinton Administration, at the time, the simplistic model was you're either for science or protecting children. And I would start speeches to public groups saying things like, "Anybody here against good science? Okay, thank you. And if you are, please leave the room." And similarly about protecting children. So trying to cut through and past the rhetoric, one downside of it is the emphasis on science integrity, again, it implies that everything done by the previous Administration *didn't* have that, and that's obviously an overstatement. But internally, I think it's potentially more corrosive, just because there are clearly disagreements. And Rich can speak to this, having worked in the guts of the programs, too, that there's internal disagreements when you -- over a science issue, over science interpretation, *honest* science disagreements that don't ever get anywhere near the political leadership. And someone has to decide.

And the Agency, like any good agency, has a number of different mechanisms to attempt to sort that out. Internal peer review. You've got reviews up and down the chain. You've got cross-program, cross-division kind of review teams to try and sort tough science issues out. And these are often tough science issues. And so if someone's got to decide, some process has to be used to get to that decision. And it can be checked. It gets checked by external peer review. Both programs have an external peer review group now that takes science issues to

-- or even specific decisions that are very important or potentially not clear, controversial. And those are all the mechanisms to come to an answer and come to a conclusion.

Meantime, if you keep saying that science integrity is so important, does that mean that every individual scientist has to be not just heard? Because they should be heard, and listened to, and considered, but it does not mean that their opinion will prevail. And that's a problem, then, because you empower people to feel like, "Well, I'm not really -- my decision's just not been heard, and that's why the ultimate decision -- excuse me, my opinion has not been heard. That's why the decision is contrary to what my opinion was." I really feel strongly about this, and that happens. And so, how do you have the organization as a whole make a decision, when you've got everybody empowered or feeling empowered that their opinion is supposed to hold sway? Rich, I don't know. Did you ever have that problem or observation in your time?

REE: Yes, there were definitely disagreements, and usually those disagreements would be -- when two scientists disagree, which one is right? Right? Presumably the one with more science behind them. So if you can provide the scientific basis for your view and ground it in, whether it's experiments or scientific guidance, international scientific guidance, whatever it may be, then that should be the prevailing view for a decision made by OPPT or OCSPP.

Jim, as you point out, if individuals feel like they have the last word, if any individual scientist at EPA can overrule the organization, then the organization will cease to function, because you'll have someone with a view -- regardless of how out of the mainstream it might be -- and they can just hide behind a scientific integrity claim. Anybody in the chain that says otherwise is interfering with their science. And anybody who calls them to account is retaliating. There is a -- we read about it in the trade press, I hear about it from my former colleagues -- there is a toxic environment. And it is pretty clear, based on decisions that are being made, that people within the staff, within OPPT, are not willing to speak up about statements made by their colleagues and challenge their colleagues to document their view. And it leads to -- we've seen a particular case, particular submission. We put it in twice now, and there have been two different assessments with two different answers and no explanation. And I think it's just, folks inside are not willing to say, "Hey, wait a minute. You need to justify this." Just asking somebody to justify is seen as a challenge to scientific integrity, political interference and scientific integrity. And that's a terrible thing for a body like OCSPP.

LLB: I agree, Rich. I hope the pendulum swings back, because it seems like there's been some overcorrection, because these issues are just too, too important not to get right.

Let's pivot to the midterms. There's been a great deal of speculation, and it's only going to increase as we get closer to November, that the Democrats will lose one or both chambers of Congress in the midterms. My own view is with polling as poor as it is, no one really knows. But this uncertainty is almost certain to inspire more urgent advocacy on industry's part, on the NGO community's part, on everybody's part. That's just my speculation, Jim and Rich. What are your thoughts? Midterm elections tend to either paralyze rulemakings and legislative initiatives, or jumpstart them. Which way are we going to go?

JVA: I'll start. The good news is it doesn't have that same level of impact as a general election, which is really [when] you see that kind of impact, where everyone's getting increasingly crazy -- it's a technical term -- because they are worried about what might happen. So I think here with the rhetoric, as you've indicated, quote "smart money" -- which is a bit of an oxymoron -- smart money says that the Democrats will certainly lose the House and may

well lose both the House and Senate. Won't lose the Administration, by definition, so that's a help. I think what it means, though, for both sides -- to the extent there's only two in our binary rhetorical world -- for the environmental community, it may be more of a press to try and get things done, quote unquote "before the --" quote, "before they" -- whoever they, the other side -- comes in. I think that's a little exaggerated just because Congress -- even if Congress changes, they don't -- maybe for climate, maybe for the [Waters of the United States] (WOTUS) rule and the water program -- that might have an impact, or most day-to-day decisions in most every program, including almost everything in OCSPP. That's not to denigrate anything else OCSPP is up to, but it's not going to be the kind of thing that's going to be a subject of Congressional action.

You could have it. You have Congressional appropriations riders. You have other kinds of things that can be very blunt tools. Similarly, for the industries that are regulated -- the regulated community -- if Congress changes, what's really going to change? The leadership at EPA is not going to change just because of that. The Administration is not going to change just because of a change in party control in the Congress in the midterm. So it makes a difference. Everything taken together may have some emphasis that changes and some things like that. Congress can do hearings, and you can get yelled at, but getting yelled at is just part of the job if you're the appointee.

"Okay, you're going to do more hearings and make my life more miserable, but okay." I'm not sure which is worse, having my quote, "allies," in my same party yell at me, or the other side. And at the same time, budgets and things and budget riders, those matter. And not -- again -- to make light of what the Congressional role is, but the midterms will have an impact, but it's just that the paranoia level may be larger than the actual impact level. And we'll see. And like you say, we don't know what's -- at the end of the day, by the way, we don't know what's going to happen.

LLB: No, clearly no one does. In the run-up, what preparations or emphasis, if any, is given to help with the upcoming election?

JVA: There you have, again, only more so even than the general election, especially a reelection campaign, the agencies will be asked for a listing of their achievements so you can tout that: "Here's all the things we've done, and you've got to keep us in power to do more of that good stuff." Speaking to the constituencies, basically, it's like motivating the base and speaking to the base. At the same time, they'll probably send out the political leadership. They'll send out, for example, AA Freedhoff to do more speeches and appearances.

Sometimes you may wonder. There's a big deadline coming, but people are saying they really can't get briefings with leadership. I'm talking internal briefings with leadership. Why is that? Well, the boss is off giving a speech to the fill-in-the-blank, what would *sound* like an obscure element of the constituencies. But well, it's an election year. We're rounding up the troops. For example, again, the examples are easier in election years, presidential election years. Why is the boss giving speeches in Georgia, Arizona, Wisconsin, Nevada? Hmm. I wonder, and things like that. So you've got -- and it has a real impact because if the Administrator is not around -- or the AA is not around, you can't get that decision briefing upstairs and up the chain. And every time that happens, there may be another two-week delay by the time you have another window of opportunity to brief leadership, and things like that. Those little mechanics behind the scenes can have an impact over time.

LLB: Indeed. I want to ask both of you gentlemen the next question. And I'll start with you, Jim. As we know, the OPP, long located across the river in Crystal City [Virginia], is now co-

located in D.C. with OPPT. Have you heard, or seen, or observed any perceptible changes in operational efficiencies? And I get that, of course, the federal government is still working remotely, but still, it was a huge move. Many of us were looking forward to it for a variety of reasons. But has it made a difference, given the little track record we have right now?

JVA: No, not yet. It has not made any kind of difference, but I must emphasize to people as an old timer that this has been brewing since 1978. The then-political DAA, at the time called Associate Assistant Administrator, Toby Clark -- I'm going to show my age -- had purchased literally thousands of square yards of carpet for the move, for OPP to move down to then Waterside headquarters. Again, I'm sorry telling my Grandpa, Grandpa stories, but the point is it has been long in the making. It was proposed since, like 1978, I think, is when Toby bought the carpet. And I think that was some of the carpet, by the way, that had issues with perhaps making some of the employees sick.

But again, we're really not trying to replay that issue from way back when. But the point is it's been long planned, and all that -- besides historical trivia aside -- over time, it may mean that the integration of the Pesticide Program practices, procedures, what I think some people -- cynics perhaps -- would say the attitude of the pesticide people will change over time. And it's not that it was bad before or they haven't been integrated. They've been part of EPA right from day one, by definition. But just having the kind of cross-fertilization, cross-pollination, all those metaphors about having people that are there both working in the Water program, shoulder to shoulder with people in the Toxics program and Pesticide program. I think one of the things that could be most interesting is the Pesticide and Toxics staff, science staff, being close together, working on things, meeting in the hallways, and things like that, over time, over time, over the years. And I think that will help, perhaps if nothing else helps, even the reputation of the Pesticide program among its brethren programs across the Agency, because being isolated, quote unquote back and away from the rest of the herd in Crystal City has led to everything from a sort of an occasional derision of the Pesticide program staff and/or a feeling like, "Oh, those people just don't understand how we do and what we do here in the Pesticide program." And that could make a difference over time, again, especially -- for example, in risk assessment issues, risk -- there's been more risk assessment innovation, cancer policy development, things like that, in the Pesticide program that goes pretty much unnoticed over the years, over the decades. The cancer policies from, again, way back when -- in the '70s and '80s -- were basically developed because they had to deal with big, hairy pesticide issues and things like that. And over time, that integration will perhaps help them improve science protocols and assessment methods for the entire program.

LLB: Yes. Rich, that raises some interesting issues. You were with OPPT for 17 years. In that duration, did you interact with OPP staff at all? And did you regard that as a lost opportunity, given the fact that there are so many different skill sets that both offices really utilize, risk assessment, obviously, being one of them?

REE: Yes, it was -- occasionally I would travel to Virginia and sit in on an OPP meeting when there was some cross issue between the OPPT and OPP, a TSCA to FIFRA handoff in terms of some new chemical. I would also sometimes go over and participate on a Green Chemistry issue. But it was unusual. It certainly was not something that I did frequently. So having the OPP folks back in the D.C. headquarters, I agree with Jim. It could lead to some cross-pollination. Part of it depends on how co-located the groups are. Are they sharing a floor, or are they split by floors? And I don't know the details of the move and the space consolidation that went on. But it's still true that there's basically nobody in the office. So it

will be -- it won't really happen until everyone's back and going into the physical office again.

LLB: I'm going to move the lens up to a more 5,000 above level here with this next question, and that relates to the identification of EPA broad objectives that were specified pretty early on last year: Address climate change, make environmental justice a more central component of all decisions made by EPA, and of course, to follow the science wherever it may lead. What letter grade would you each assign to EPA's success in achieving these objectives? Rich, you want to go first?

REE: Climate change has been tough for OPPT. It's not a significant -- or it doesn't appear to be a significant overlap. I remember when the Obama Administration came in, and people were scrambling to try to talk about how much OPPT does in terms of climate change. And there was a huge push to put together "Oh, this is -- here's the OPPT hook on climate change." And it's not that there isn't one, but it struck me as really stretching. There certainly are chemical substances that contribute to climate change, and there can be an opportunity for TSCA to be brought to bear to address that, or climate change can be evaluated as part of a new chemicals review. But it's also true that many new chemicals help reduce climate change. They make things more efficient. And they reduce the carbon footprint of whether it's a manufacturing process or an end product, wherever it is in the supply chain. So there is a nexus between TSCA and climate change, but it's less preminent than straight toxicity. And so that's something that Dr. Freedhoff could do is try to make sure that the programs that she's leading are considering climate change effects as part of their risk decisions. But that would be a bold new step. It's not typically one that's done and hasn't been for quite a while.

LLB: You very carefully avoided not giving a letter grade, Rich. Is that --?

REE: I would say the grade is incomplete.

JVA: Let me do it in the opposite order. Let me give the Agency as a whole a grade, and then I'll talk about OCSPP. In that spirit, in my head, I would give climate a B-plus. And the reason I say it that way is it's clearly an Administration priority. Clearly, it's something EPA emphasizes, spending lots of money and so forth. The proof will still be had, right? I mean, it's everything from Secretary Kerry [U.S. Special Presidential Envoy for Climate] and [former EPA] Administrator McCarthy going off to various meetings and things, but again, it is an emphasis, and it's one that they have followed through on. Hopefully, whatever's left of the Build Back Better plan -- I've just read this morning, they're talking about spending \$500 B --billion -- on climate. That will make a sound; that'll make a dent; that will have an impact. And so perhaps that means an A if they actually get all that further underway.

And back to your previous question, Lynn, about the impacts of elections and things, there, you could see more of an impact at that kind of high level. For example, if nothing else, Appropriations. Even if they have \$500 billion set aside, it has to then be implemented.

For environmental justice, A for effort. That's where I would give them an incomplete. Not that they haven't done a lot of things, and that perhaps is across the Agency. And again, even that does get more clearly relevant to OCSPP. It *is* an emphasis. They clearly are spending more time and energy and effort and attention to it. And at the same time, where is the difference? Does this mean you're not going to cite facilities in disadvantaged neighborhoods, so-called, and things like that? So what's the real difference, and what's the real effort? In Pesticides, there was already a lot of activity. It's just emphasized more for

things like worker protection issues, specifically the worker protection standard or the Pesticide program that was changed significantly by the Obama Administration. And change -- when I say change, it's reviewed after 25 or so years and then upgraded and updated, for example, more frequent training and more language translations of manuals, and things like that, which are, again, important details that can make a difference.

In terms of the general science integrity issue, as we talked about earlier, I'd give that in my head a B for now, meaning I don't want to give it a C, because I don't want to make it sound like science integrity is unimportant or has been a detriment to the programs. But simply, that rhetoric has a downside, as we talked about earlier, that it may make people think that everything and every individual scientist has to have his or her opinion hold sway, number one, and/or that there wasn't any science integrity previously.

For OCSPP, I'll just say about climate that pesticides actually can have a bit of a climate impact. You've got an ability with herbicide use to have less carbon input into the production of crops. You've got ability to perhaps hold more material into the ground for some carbon loadings. You've got less runoff that can cause environmental harms could eventually be a climate impact, and things like that. The climate issue is a little more real in the pesticide space, but not so directly, but it's clearly a benefit from some of the technologies that are available.

LLB: Yes. That's helpful. I think if I were to assign grades, it would be very similar to yours, Jim. And when we had AA Freedhoff on the podcast here, I know she spent a lot of time talking about the environmental justice initiatives that EPA OCSPP was up to, which continues, of course. Listeners may wish to go to EPA's website to really appreciate the diversity and number of initiatives. It's a hard topic to message. We in the environmental community look for these initiatives, but Brenda Mallory at [the Council on Environmental Quality] (CEQ) and everyone at EPA is really working hard on all of these issues. But understanding with specificity and granularity what they *are* is sometimes hard to grasp.

Let's pivot to some of the legislative initiatives that might be upon us this year. We've talked about this already. *Is there any legislative priority in 2022, an election year?* Jim, you alluded a minute ago to Build Back Better, and if there is a \$500 B -- billion -- allocation, there certainly would be a number of initiatives worth considering there legislatively. But what are your thoughts on that? And then, Rich, maybe you can jump in and talk a little bit about some of the chemical-specific issues; [per- and polyfluoroalkyl substances] (PFAS) comes to mind, for example.

JVA: We talked about the election generally earlier, and the real point is, *will* there be any legislation in 2022? Period. Not to be too snarky about it, but even if there's, quote, "just" appropriations and things like that, right now, one of the hidden things that's injuring OCSPP is the fact that the Congress, in its wisdom and capability, keeps continuing with continuing resolutions (CR) instead of an appropriations bill. And what that's done is, there's slated by the President's budget to be a huge increase in EPA spending, and EPA -- I'm sorry, EPA appropriations, which leads to EPA spending -- and then you would have significantly more resources for OCSPP, primarily going to the Toxics program. I'll let Rich talk about that in a second.

But no, the point is that with a stalemate, it's bollixed up the appropriations process, number one. Number two, the real legislative priority -- just as we said about the 2022 election -- it's really a lot of signaling. Okay, so as Congress holds hearings to emphasize issues, if they *do* get a budget across, if they *do* have proposed legislation, even if it's destined to not go

anywhere in the Senate. And that's what I think I wrote in one of our pieces we have on our website: the Dead Sea of the Senate. If nothing gets done, okay, does that mean there's no legislative priority? No, it's a priority; it just hasn't gotten done. And it may set an agenda for later on. So again, it's sort of not clear what the priorities would be. It'd be great if they could get a budget; it would be great if they even get, quote, "a couple of these really big bills." If you get \$500 billion on climate change, suddenly you're going to see OCSPP saying they got something to do with climate change because they want a piece of that pie. And that's part of the internal dynamic among the media programs at EPA when there is a source of new revenue coming down the pike. Rich, I'll let you talk about OPPT and especially let you talk about PFAS because that's an interesting issue. I'll leave it at that. All yours.

REE: Yes. As Dr. Freedhoff said in her testimony to the House Committee, the New Chemicals Division is understaffed by about half. I'm not sure that the number is not more than that. At the pace things are moving, they're going to need to be staffed up much more to get back to keeping even with the pace of submissions of new chemicals. But clearly, they need more people, they need more -- especially more risk assessors -- and most notably, they need health assessors. So OPPT definitely needs help in new chemicals. They also need help in existing chemicals. Existing chemicals is struggling with the workload as well. They need more people there. So, yes, will appropriations get passed that give EPA what it needs? I hope so. I think we've seen requests from basically across the political spectrum that OPPT get additional resources. But will the bill get passed, or will they just limp along with the CRs? I really don't know.

We also might see, as happened with the National Defense Appropriations Act, where there was the TSCA Section 8(a)(7) provision tucked in there about PFAS reporting under TSCA Section 8(a). I think that the way that was written was it put EPA in a tough spot legally. They don't seem to think they have a lot of options under the language of the statute. And there's been a lot -- I know they've taken criticism, especially from industry, about the ten-year look-back period. But that was Congress's ten-year look-back period, not EPA's. It's not something EPA had discretion on.

Might we see some of the PFAS Act provisions tucked into a big appropriation bill? We might. I worry about that because some of the PFAS positions, I think, are pretty extreme and not supported by the science. They're supported by the emotion and the rhetoric, and usually that's what drives bills. But that doesn't necessarily mean it's the right scientific decision or the right economic decision. I don't know what's going to happen there. And I think we just have to wait and see how things play out between now and November.

LLB: It sounds like maybe Congress legislating about chemical-specific issues, whether it's PFAS or anything else, is probably a little bit of a mixed bag, right? Because as you correctly note, Rich, the TSCA [Section] 8(a)(7) provision has been a difficult challenge for EPA to implement because of some of the blowback and some of the lack of discretion that the Agency believes it has in tinkering with the legislative language. But on the other hand, it certainly helps to highlight the urgency of certain issues and might put pressure on EPA to engage in regulatory activities that it might not otherwise, but for legislative activity. Either of you, mixed bag? Good thing, bad thing, or what's your take on Congressional activity engaging in chemical-specific issues?

REE: Yes. Congress may say, "Hey, OPPT, we really want you to do X," and if I were sitting over in Dr. Freedhoff's spot, I'm like, "Okay, you want me to do more? With what? I'm already overloaded. You're telling me to do more, but you're not giving me the resources to do it."

And even if they do plus up the number of [full-time employees] (FTE), it's going to take a while for EPA to fill those positions and get the contract support in place. It's not easy to -- if Congress doesn't say, "Okay, we want you to do this *instead* of that," if they just say, "We want you to do more," that's going to make things worse, not better.

JVA: Looking back then, on my time in Congress -- I was a Congressional staffer in various capacities for almost a decade -- and I guess sometimes it means any one of us who worked on the Hill as staff are partly responsible for this, but it's easy to, quote, "make a law," right? Let's make a law to get rid of that problem. Easier said than done, even if Congress were to say -- and occasionally they do things like try to say, "Let's -- we should eliminate one of the elements of the atomic table" -- which is a little hard. Then you have the problem of it's easy to have the political signaling, the political mandate, the directive to the, quote, "stupid, lazy bureaucrats," whatever characterization you might want to use. But then implementing it over the next many years can become just a problem because it disrupts your program. Then I talk about it as a Program Manager, right? And then it can disrupt your program, draw attention to less important things.

I just have almost [post-traumatic stress disorder] (PTSD) talking about some truck with [polychlorinated biphenyl] (PCB) waste made a left turn and made a mistake and entered Canada for ten seconds and then couldn't get out. The way the PCB provisions of the original TSCA were set, which seemed to be straightforward, Congress is saying something again to the world: "We will get rid of PCBs." And 30 years later, you're still getting dogged by that problem. That's not to make light of the importance of PCBs as a contaminant and controlling that contamination and things, but you then end up having to spend an inordinate amount of time sometimes on that last part of the problem.

The old 80-20 rule: anybody working in government can get rid of 80 percent of the problem in a pretty quick amount of time. But then the last 20 percent is what can eat you up in terms of budget, time, attention, and things like that. Those are the kind of problems that Congress "in its wisdom," and that's in heavy quotes, decides to take on a specific directive, often again voiced because of frustration or identifying a political priority. And that's Congress's job; that's appropriate. But then it's appropriate to signal it, but then they don't want to have the appropriations to follow the appropriate signal. So sometimes that's a problem, and often is, because Congress is not -- the only thing harder than the bureaucracy to really sort out a very tough science issue, especially in the chemical and pesticide space -- is Congress, having Congress try to sort it out, because everything from the political dynamic behind any issue and, shall we say, the scientific skills mix of Congress, and things like that?

LLB: Thank you for that. Jim, I'm going to pitch this one to you because of your role as former AA, but just based on our own observation and experience here at the firm and things I've been picking up from others, what do you make of Administrator Regan's seeming reluctance to meet with some company heads? Isn't outreach to a diversity of constituencies a worthwhile endeavor?

JVA: Oh, absolutely. It doesn't mean they gotta be your friend or you gotta be their friend. But, if nothing else, it helps allay some of the almost inevitable paranoia and conspiracy theories. "They're not meeting with us because they had some big thing brewing and don't want to give us the bad news," and things like that. And it could be something as simple as, "Yes, I'm busy," and I don't know if anyone's a *Ted Lasso* fan, but -- I won't go into particular characters and scenes -- but there's the famous line there, "Yeah, I'm busy."

“Well, what were you doing?”

“Well, I was busy. That’s why I told you, ‘I’m busy.’”

And so sometimes a cigar is just a cigar, to quote other famous phrases. The point is simply that if you don’t have that kind of outreach and be willing to meet with stakeholders, and even if it’s a quote, “pain,” or we don’t have time, again, the Administrator’s time, the AA’s time is a very valuable commodity. But you have to make that effort. Otherwise, you have people A, feeling left out, which is, “Okay, boo hoo” at some level, but on the other hand, over time, that can lead to other problems. Like I say, paranoia, conspiracy theories, other kinds of things, and then that can also become a separate issue. And some of it’s even within the AA-ship for OCSPP. There are similar noises about, in the pesticide space at least, that unwillingness to meet and unwilling to talk about things, and all like that. And that’s a problem, just because sometimes it could be totally untrue, that, look, we’ve had five meetings, but five more wanted to have meetings. Okay. You don’t have time to meet with everybody, but if you have a pattern that makes it look like it really is excluding that effort - - or not exuding that effort -- and also excluding some groups and things, it can eat away at you and cause you more trouble down the road. Congress getting cranky, Congress demanding -- one way constituencies can demand a meeting is have their Congressional representative demand a meeting, and you’re not going to be able to hold that off forever, and things like that. So pay me now, pay me later. It’s worth doing, and it’ll help address problems over time.

LLB: I agree. And I know in our experience anyway, visiting with AA Michal Freedhoff has been no problem whatsoever. Very, very, very accessible. Just been less successful in securing face time, CEO to CEO, with the Administrator. And hope that that changes. And as noted, certainly you’ve heard that from others.

As we wind down our conversation, gentlemen, I was hoping we could extract from each of you your short list of things that our clients should be paying attention to in the immediate months ahead. What issues are important that perhaps are not receiving as much trade press or other coverage as they should? Jim, do you want to go first?

JVA: Sure. We talked about it some, but it can’t be emphasized enough, this budget problem. If the CRs continue and EPA -- and therefore OCSPP -- just get small, incremental gains, if any, that’s a problem, especially for our friends in OPPT. But it’s also a non-trivial impact on OPP because they’ve spent a lot of time and extra effort on COVID disinfectant reviews and things like that. There’s only so much air in the balloon, and it has to come from somewhere. And so budget is, again, it’s not an under-noticed thing, but it’s really got a corrosive impact if it just even stays stable, let alone gets effective cuts because of cost of living increases and things like that.

I think the one thing that -- we haven’t talked about it here, but over time in general -- there’s no -- there will be no shortage of litigation in the space. It’s just the modern way. But the courts -- for pesticide issues -- the court’s been more and more receptive to contemplating vacatur, just eliminating the registration because it didn’t follow procedures of some kind or the other, not just in the ESA space. And so that’s unnoticed. Well, Lynn, you’re the lawyer on the line. And so vacatur is -- I think, at least up until now -- a pretty drastic tool. And it seems to be one at least that’s more commonly contemplated.

And the other thing is, though, to worry a little bit about even though all the optimism, as I indicated that’s serious about ESA, integration with FIFRA and the ESA’s requirements that

the growers may be, shall we say, an obviously important element of the mix, because the customers out there are the ones that have to eliminate – excuse me. The growers out there are the ones that are responsible for implementing any change to the labels. There’s more talk now, for a lot of reasons, about early mitigation and taking some steps early in the process to help implement ESA issues. And there you could see some reluctance to agree to that, because, hold it; the ESA process hasn’t completed, or we think there are some serious problems with the ESA assessment still. And so why are we changing these labels now?

And last but not least, PFAS -- all this may be a good segue to Rich and his answer -- PFAS in containers, PFAS residues in pesticide containers. Talk about an unnoticed -- some estimates have been that there’s 20 to 30 percent of pesticide containers have been treated with some kind of perfluorinated compound that may be leaving some residue in the final product as it’s applied to the fields, or applied in real life, and that could be an issue over time. Rich, your turn.

LLB: Indeed.

REE: Yes, it’s not just pesticide containers, right? Those containers are used across a wide variety of sectors to contain mostly liquids. But yes, the potential PFAS contamination in things from those fluorinated containers is an issue that EPA has really got to get their hands around -- not just EPA, but [the U.S. Food and Drug Administration] (FDA) -- get their hands around and see what can be done to minimize any potential contamination from the use of those containers. I just don’t know that we know enough yet to see if it’s a big problem or if it’s an isolated issue, and a lot of work needs to be done to take care of that. One of the things that’s on the Reg[ulatory] agenda, that I’ll be very interested to see what comes out is a proposed TSCA [confidential business information] (CBI) rule.

EPA has apparently developed, and a proposed rule is at [the Office of Management and Budget] OMB. I’m dying to see it. It could be quite impactful. It depends on what’s in there. I think people really need to be paying attention, watch for it, see what it has. I think we’re going to see a bunch of -- there are a bunch of obligations on EPA and submitters’ part to manage CBI, and I expect that this rule will codify some of EPA’s policies, but also put obligations on both industry and EPA to make sure that the communications are handled efficiently so that CBI claims can be made and supported, and that when those claims sunset, that EPA is in a position that it can contact the submitter and make sure that the submitter is aware of the sunset, and they can resubstantiate claims as necessary or withdraw claims. So these are just some nuts and bolts that will be very important in terms of protecting CBI and complying with the law.

JVA: I have one more I forgot to mention, and that is, given the fallout from the way that EPA developed their logic trail on chlorpyrifos, will it have implications for the larger organophosphate class? Again, separate from the rollout and communications, there are some real science issues there, to say the least, and controversies. The bottom line is that many would be fearful that all the, quote, “all” the OPs will be banned. I’m not sure that’s the case, but let’s just go with that presumption for the moment. And if that *is* the case, then there’s going to be big resistance issues and big problems with what the alternatives are, because the alternatives have other issues, that we don’t have time to go into. But the whole point is that if you get rid of that entire class, for whatever reasons -- on science, on the merits, on politics -- that’s one of those watch-out kind of issues over time that you asked about.

LLB: All right. You have the last word there, Jim. I want to thank you both for this really wonderful, rich discussion about OPPT and OPP priorities in the New Year. And for our listeners that are not otherwise in receipt of our Forecast, you can access it at www.lawbc.com. As the expression goes, there's plenty more where this comes from in our very detailed Forecast. Thank you, gentlemen, so much. Really enjoyed our discussion.

JVA: My pleasure.

REE: Always a pleasure.

LLB: My thanks again to Rich and Jim for speaking with me today about what to expect in 2022 from EPA in the area of TSCA and FIFRA developments.

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