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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 had the real pleasure of sitting down with Jim Aidala, Senior Government Affairs Consultant at Bergeson & Campbell and its consulting affiliate, The Acta Group. As a former Assistant Administrator in what is now the U.S. Environmental Protection Agency's [EPA] Office of Chemical Safety and Pollution Prevention [OCSP] and current Government Affairs Consultant here at the firm, Jim has a truly unique and exceedingly focused perspective on EPA and Congressional initiatives involving the Federal Insecticide, Fungicide, and Rodenticide Act, fondly known here as FIFRA. Unsurprisingly, the new (or maybe not so new) Administration has taken positions on key FIFRA issues that are quite different from the prior Administration. We cover pollinators during our discussion, [Pesticide Registration Improvement Extension Act] PRIA renewal, the Endangered Species Act [ESA], and a host of other FIFRA hot topics, reported as *only* Jim can describe, given his extraordinary experience and entertaining style. Now, here is my conversation with Jim Aidala.

Jim, I am so excited about chatting with you today. I always look forward to conversations with Jim Aidala.

James V. Aidala (JVA): Enough said, right? Go ahead.

LLB: True that. Listen, if you had one word to describe the new FIFRA sheriff, Dr. Michal Freedhoff, of course, who is Assistant Administrator [AA] of the OCSP, what would that word be?

JVA: I think best might be "distracted," mostly because the TSCA office issues, given the TSCA amendments -- and someday we'll stop calling them "the new amendments," given that it's been almost six years now -- but they *are* new. It took the FIFRA side of the house about 30 years to get to a similar point. And that said, it's distracted. Those TSCA issues really

dominate the concerns, the AA's time, the senior staff time, just what weighs on you mentally in a leadership position. And that's not to discount all the easy things in Pesticide Land, like the ESA, which has only been a problem now for 17 years. So it depends on how you want to look at the *soup* of issues that dominate any front office. And I think "distracted" is a good, polite word. I almost would say "besieged," but everyone always claims it's a hard life, and it *is*. Those jobs are hard. And there's always a million things to do and time to do about a third of them.

LLB: As only you would know, right, Jim?

JVA: Exactly. So again, this is an informed audience, and I think I at least got PG-rated. But the bad day in that job -- but it happens regularly -- is when you are not sure you have enough time to go to the bathroom in the middle of all the meetings. That may be easier with Zoom, but we won't talk about why.

LLB: Indeed. Well, the prior Administration and the current one are pretty *different*, for a whole variety of reasons. That said, the policies of EPA's OCSPP have changed, but have they changed as much as you would expect, given some of the remarkable differences between the prior Administration and this one? And if so, Jim, in what way, in your view?

JVA: It's a cliché, but true, that elections have consequences, right? Yes, there's different political leadership all throughout the organization. What people often forget is whether your media program has in the case of OCSPP about -- what is it? It should be 1,500 people like in my day -- that's one of Michal's complaints. But even if it's a mere 1,200, or 1,000, or whatever that number is, that's a lot of people. And there are basically only three or four senior political positions that help really drive that office from a political point of view. So you just don't have as much time and bandwidth as you might like. And even if you appoint a bunch of political deputies and things like that -- everyone seems to be a DAA [Deputy Assistant Administrator] now; it's like getting a medal at a soccer match. But anyway, the upshot is that you've got limited bandwidth, and that's good. The bureaucracy is designed to keep going. Good news, bad news, like a beehive, there's a whole lot of what happens under the water line, right? Under the horizon, depending on your metaphor and whether you're a sailor or army guy. But the upshot being that you don't see all the thousands of things that go on, literally thousands of things. How many decisions are made with 2,000 PMNs and 5,000 me-toos that go on at OCSPP? Almost all of that is things that never get anywhere near the front office. And again, that's one of the reasons change is hard, change is slow. I used to describe it as not just turning around a ship in a stiff wind, it's turning around the Titanic in a sea of molasses when you're trying to institute change.

And so there is a conservative thing, so that conservative element's not political. It's the conservation of trying to enforce change, even if you *want* to do radically different things, whether you're Mr. Trump and his team or Mr. Biden and his team. So that's the starting point. Beyond that, yes. Is it political? Sure it is. Are questions about farm worker safety and EJ [environmental justice] issues and climate the same for Mr. Biden and Mr. Trump? I think we know the answer to that. Chlorpyrifos decision would have been different, in my opinion, under Mr. Trump, basically just carrying on what that Administration had decided six months before they left office. So elections have consequences. There is a big P. Issues occasionally come into play, whether it be, again, an ESA policy, a general decision about chlorpyrifos, even dicamba. Again, the previous Administration for dicamba had renewed the registration with additional label restrictions, but this Administration wants to pick that up and say, "Let's maybe think about a few more. And depending on when I say few, is it

only or fully a few, and it's not a few if you're on the other side of that decision from a certain point of view.

LLB: I think you alluded to the answer to the question I'm about to ask a minute ago, Jim, but maybe you could embellish. What are the -- at least at this time of the Freedhoff Administration -- the self-described priorities that she and Ed Messina, as Director of the Office of Pesticide Programs [OPP], have both established and articulated to the regulated community?

JVA: Well, the Administration as a whole came in and on -- literally day one -- said that the priorities of things like environmental justice, especially for this program and pesticides, "Let's bring about the farmworker exposure's potential and whether the farmworker regulations are adequate" and so forth in that space, but not just, not just farmworkers, but even then workers under TSCA decisions for the office for Michal.

And then you have science. "We're going to follow the science," and science integrity policies. And then, if you will, a general what I call the bucket term, an "un-Trump." "We're going to review the decisions of the last guys." That's not new per se, but they were very explicit about making some decisions differently than the previous Administration. That's going to happen any time you have a party change. But that was affirmatively part of the agenda.

For climate, which is obviously a huge issue for this Administration, and for EPA as a whole, OCSPP has a bit of a minor role compared to others, but it's not an absent role, because some of the things you do in pesticides have climate implications. Things like no-till farming will reduce some energy use in farming practices. If you encourage more green things to grow, is that locking in carbon? Can you lock in carbon in the soil more by certain agricultural practices and things? And by the way, you deal with some of the pesticide and especially nutrient issues. And nutrients aren't just in the water program. It's also partly a pesticide program because of the products that are in that space, too.

LLB: We talked a little bit about this previously. Dr. Freedhoff misses *no* opportunity to mention the very significant resource deficits, as she describes them in her office. Dr. Freedhoff manages both the FIFRA program and, of course, the TSCA program, which has been, as you noted earlier, Jim, very resource intensive because of implementation of the Lautenberg amendments. How do you see this playing out? Will Dr. Freedhoff get additional resources? Will the case be made that "No, we really need more people!" TSCA has been a huge burden, and EPA's been noted to kind of steal from Peter to pay Paul, with respect to some of the scientific resources in the various program offices. That was particularly the case in the FIFRA program, when COVID was raging and we needed a lot more assistance to address some of the list end products coming online. Should the private sector be doing more? After all, when EPA can't process applications, whether they're for TSCA or FIFRA, at the end of the day, the private sector has a pretty big stake in that resource deficit. So what is your response to all of those issues?

JVA: Yes.

LLB: In a word.

JVA: Okay, next. The resource needs are obvious, both in -- not just TSCA, but even FIFRA -- I mean, when I was there, we had about 900 people-plus to deal with FQPA [the Food Quality Protection Act]. We had a big slug of money right after enactment. This team has not really

seen that fortune, certainly on the Toxics side. But even just in the FIFRA side, even with PRIA being reauthorized, and actually being invented! That wasn't invented until after I left. And so we're providing that slug of resources. You're still down 30-plus percent of the resources that were available under FQPA. Now the work is a little different, given that FQPA was the shiny thing at the time, and so had a higher priority in certain ways. But there's been no equivalent bump in the Toxics side. And they've had a harder time getting resources in from the fee-generating schedule under the Toxics Amendments, that quote "new TSCA."

And so that's a big issue. Yes, and huge differences between the history of the pesticide program. That said, I am surprised that as an AA, you -- like every other federal employee -- take up whatever bureaucratic oath -- you literally -- it's official you're supposed to be against the law to badmouth the President's budget. I'm not saying she is going over that line, but she's come closer than most, in terms of pointing out the resource limitations. And by the way, truth is an absolute defense in many forms. She does really have a shortfall of resources, which leads to a couple of things.

First of all, it's not just in Toxics; it's also Pesticides, because you've got PRIA deadlines always being renegotiated. PRIA 5 is under consideration in some quarters, trying to get the Hill to readdress some of the needs there. And none of that up to now has really taken in the resource needs of ESA, which are, to say the least, non-trivial. So that's only going to add a huge amount of more work for all involved, for all stakeholders. Meantime, the budgets don't look great; they've pretty much been even. And even if they get a bump of, say, five percent, which ordinarily would be huge, might not be enough.

So on both programs, there is a resource constraint. And meantime, as we just talked a little bit about, Administration priorities. "Okay, guys, what are you doing about climate? That's the number one priority for everybody in the planet."

"We need more money to do PMN reviews." I'm not saying that's entirely divorced from the world of climate, but it doesn't sound like it's right there. Again, it's going to be hard to compete among the media programs because again, when the Administrator, let alone the Administration, identifies a priority, everyone's starting to say, "Oh yeah, even though I'm the people running the buses that move people around between EPA buildings, we have a climate impact. We're buses. So we need more money for buses," or OECA [Office of Enforcement and Compliance Assurance], or ORD [Office of Research and Development]. And that's just the internal conflict for resources, even when there are more to be had. And there's not so much more to be had. One problem with the current tendency of Congress to do Congressional continuing resolutions in Congress is that you end up with pretty much level budgets, and that's deadly over time. And so again, they need more money. In PRIA Land, that may mean, "Look"; it may mean the industry needs to cough up more. I think they're willing to, and I'm certainly not speaking for them at all, but I'm just saying it's a clear recognition of that reality. And in the Toxics side, it's just sort of, "Boy, we could -- if you gave us more, we'd need more after that." And that's what Dr. Freedhoff's been talking about here and there. And again, I'm just surprised at the bluntness of it. It does mean you're going to miss deadlines. That may help over time with some of the internal negotiations about, "We have these deadlines we have to meet. Therefore, we need to have more money." And that sometimes can be successful, but that's not any immediate relief. That's going to play out over time.

LLB: And I'm guessing, you'd mentioned buses, Jim, and it reminded me that the consolidation of offices, bringing OPP from across the river in Crystal City into EPA headquarters in D.C.

probably is resulting in some savings and economizing, right? I heard last week that the new folks that were brought in actually now have phone numbers assigned to them. I don't think people are physically back at EPA. It's mid- to late April, and that will come. But I know that is likely to achieve some cost savings, but those savings won't be plowed back into the program. I'm sure that's not the way it works.

JVA: I have to hold myself back from shouting into the microphone, because "At last, yes! OPP has made it to the Promised Land! It's being integrated with the rest of EPA." Long planned. I was there when basically the front office -- I was a pup in the front office with Steve Jelinek, for those of you that are historians on the phone. He was the AA for President Carter. Yes, it does go way back, and I go that far back, and we had purchased how many ever thousands of yards of carpet to carpet the building that at that time it was going to be OPPT moving over to Crystal City to join OPP, in order that the AA-ships could for once at that time in history, be unified. And so that didn't happen, obviously. And now finally at last, the OPP is coming over to headquarters. And yes, they just got phone numbers because obviously those 703 numbers weren't going to work well downtown. So anyway, yes, it's an achievement. It's going to be interesting to see what that means over time. The theory has always been that maybe there'll be more cross-pollination, quote unquote.

LLB: Right. That's what we've heard. And that makes sense, right? It makes sense.

JVA: Right. Maybe OPP will get a little more respect in the game, compared to their brethren across the river -- I don't mean from OPPT, I mean from the other media programs -- because ironically, *OPP* has really been the driver, more -- I used to like to say, at least under my breath at these interagency meetings -- OPP does more risk assessment in a day. And OCSPP would do more risk assessment in a day than the rest of the Agency put together in a month or a year or so. And they were never appreciated for that, given the development of cancer guidelines, risk assessment policies, and things. Yes, they're Agency-wide, as they should be. But a lot of that knitting has been done trying to decide over pesticide issues over history. But again, this is not the academic seminar on the subject, but it's good that they're together, and it's not clear what, over time, the integration will finally mean for some of these kind of issues, for everything from integrating policies to just hallway talk, as they say, right? In the era of Zoom, again, it's a little bit different. But hallway talk between professionals, integrating some policies, risk assessment ideas, and everything else.

LLB: Jake Lee, DAA for Pesticides, is, by all accounts, the ESA czar. Not sure he necessarily wishes to *be* that, recognizing that you noted a moment ago that ESA is at least a 17-year-old problem. What is that ESA problem with Pesticides, and do you see success, however that is defined at the end of this particular tunnel?

JVA: Well, Jake is, notwithstanding my snarky comment about DAAs a few minutes ago, but Jake is a *great* DAA. And it's great that he's there to be able to try and bring ESA to something resembling a better place. And ESA has been a problem for years, even long before 17 years ago when the litigation started that's really starting to come home now. Well, actually, to them more like 19 years, but the whole point is that it's been a long time. And now ESA's been on the books since 1974. In 1989, again for historians, the program tried an approach that got shot down by Congress. We had the bigger, whatever immediate things to worry about during the Clinton Administration, focusing on FQPA and the tolerance issues. And so ESA has really become the dominant issue that confronts the program over the next number of years. That's not to dismiss the importance of again, the farmworker regulations or safety issues with the pesticide exposures and things like that.

But it's really the fly in the ointment to say that the program is running as a well-oiled machine in terms of cranking out registration reviews that meet judicial scrutiny and everything else. And so it's a problem, again, the overly short assessment is many have tried; all have failed. It's been a priority for Mr. Bush Jr., Mr. Obama, the Trump time, and all the rest, to try and find a way to integrate the approaches of ESA and FIFRA together to have a fairly efficient, fairly predictable process to get to a conclusion, a decision that's compliant with the laws, both of them. And that's hard.

And Jake is unique in his ability, given his background. He has spent time, a significant amount of his career, with the Defenders of Wildlife organization. And he was a downtown lawyer before that, and spent time with a little consultation with some pesticide registrants to try and find, shall we say, a path forward. And so he intimately knows ESA, and what it is, and what it means, and the *players* in that space, not just in the respective federal agencies, but also the various stakeholders in the NGO [non-governmental organization] community. They've been quite concerned with ESA implementation. And so it's a unique set of skills. I think everyone involved wishes him well on all sides of the issue. And he's working real hard on it. So we'll see if that actually can make a difference in the next couple of years, given the timeframe the Administration functionally has before they have to get worried about things like reelection and everything else.

LLB: Jim, the new Administration (or not so new), but the newest Administration has reviewed several Trump Administration decisions. You alluded to some of those a moment ago, including the chlorpyrifos revocation for food tolerances, and the dicamba review of drift incidents in ESA threats. Maybe you can provide a little background on how important those decisions are and what listeners and pesticide registrants can infer from them.

JVA: Again, in summary, first of all, they're good and green decisions, meaning greener than the Trump Administration was going to be. And again, that's not expected, one of the earlier things we talked about. And what are the differences in Big P politics in this space? So at some level, no big surprise that in chlorpyrifos, they took a really hard line and revoked all the tolerances and things like that. Dicamba, they're adding more restrictions to the label than the decisions of the Trump Administration. For chlorpyrifos, I think the biggest surprise, and again, sort of more behind the scenes -- it's not secret, but you really have to follow all the nuts and bolts of the long trail on that pesticide and know a little bit about even further back how the program normally has dealt with even a problem child in the pesticide space.

Obviously, if there's an immediate health concern, you act regardless, frankly, of party. You react to protect the public. That's just your job. In this time, of course, there's debate. Some people think it's causing immediate and terrible harm, and other people thinking it's meeting the standard. So what do you do? And that's the classic conundrum of any tough regulatory issue, whether it be under Pesticides, Toxics, or really any other program. And not just in EPA, for that matter, across government. So in this case, though, in chlorpyrifos, there were, according to the documents that were cited in the revocation notice, some parts of some uses that would still meet the standard.

So, for example, apples as a whole, the apple used as a whole might not meet the standard, but apples grown in certain regions would still meet the standard. I'm not going to get into the gory details, but if you follow all the weaving through the documents that they said were the basis of the revocation notice -- in addition to the court order -- to say you must revoke and things -- but they didn't say you must revoke everything, period. They say you must revoke unless you can show it meets the standard. And the documentation showed that some

uses looked like they could still meet the standard. Normally, EPA would, even if they took seven eighths of the use off the market, would allow that other eighth, or allow time to figure out whether the other eighth really can make it.

And here, they didn't do that. Here, they just said, "Nope. We're done. We're just going to --" The court told us, basically, "The bias is against all of them. We'll just revoke them all." But then the documents that they cited allowed -- seem to say -- some of these uses could still meet the standard. And that's a problem, just in the history of the way the program's dealt with controversial chemicals. It may have some risk issues. Again, that's not to say they've always approved every use or even allowed some use of every chemical. Sometimes you find that nope, nothing passes. And in this case, they said, "Well, some might pass, but the court told us we really need to move. For the 15th time, they told us, we have to really, really, really decide, so we're just going to yank them all now." And that's a bit of a different template for how to move forward.

LLB: Very different.

JVA: And legally, the argument would be that, "Look, we decided on this label. This label included all those uses. So when you look at them all, for sure, they don't meet the standard. As opposed to if we carved out seven eighths of them, or three fourths of them, or whatever that fraction was, it would still -- it *could* meet the label, and so we *could* meet the standard, and that label *could* meet the standard. And that's usually how you negotiated the outcome of these kind of situations over the decades. This is not Trump vs. Biden. This is since the '70s, under -- the new FIFRA, with 72 amendments at the time. And so that's a different way of operating, and that could have implications over time, as you find in the future, problems with pesticide uses. There's still a number of older uses that are of controversy for health and safety issues, not just ESA. And so this kind of problem could come up again over time and certainly, probably will, just given the odds of, and the numbers of products involved. That's chlorpyrifos.

For dicamba, again, not a surprise that they took a tougher approach to the issues behind the dicamba label. But playing the ESA card, saying, "We need more restrictions because of ESA"? That's a bit of a different wrinkle. ESA has been sort of whatever creature in the woods we knew, with the dramatic music in the background, might have an impact, but so far has not really imposed a lot of different and new label conditions on actual use of a pesticide. That's been one of the complaints of the environmental community that cares about these issues. And so this is now the first time, in real, practical terms, that there's severe use restrictions in light of ESA concerns. And so it's not the first time absolutely. There are a couple of counties in Colorado that were labeled off for the red-legged frog, or the first Enlist label, too, had restrictions in certain places because of a couple of species. So it's not the first time it's ever happened, but it's the first time in some sort of broad way that it applies to numerous counties over large fractions of the country and use community. And so that's a new precedent.

LLB: That's an important precedent.

JVA: Obviously, there's going to be more. Yes. And there's going to be more before there's less because ESA has got to get implemented, right? I mean, the courts are getting kind of cranky there, too, about, "Gee, we keep saying this. We keep putting you on court schedules to go decide things, and the clock keeps ticking. And there is this thing that's been on the books since 1974. Getting a little bit long, even by Washington's standards." And so we might have to see more mitigation in the meantime, as part of ESA compliance. And so

that's -- again, I hesitate to say the word new -- but it's certainly different and could be an implication for a lot of other products.

LLB: Let's talk a little bit about the Pesticide Registration Improvement Act. PRIA is a big deal. What is the status of PRIA renewal in your view, Jim? Is the system working as well as it should, as Congress and stakeholders and registrants hope it does? Or are deadlines under PRIA routinely being renegotiated?

JVA: I think the number is, because there's debate about the numbers; there's about 35 percent, about a third of the universe face renegotiated deadlines. That's a raw, crude number. I think the problem comes when I think registrants would say that, especially likely for a new product as opposed to a new use with an older product or existing product -- doesn't have to be *very* old, just even an existing product. And that is the mother's milk of innovation and just new technology, new products, getting to market. Companies like that; of course, that's where the revenue comes, especially a source of revenue for continuing research and development, but also for growers. It's addressing a new need, a new pest control need, right? That's why it's a new market -- I mean, a new product. And so, that's good.

LLB: Is that number -- can you contextualize that? Is that number relatively static, or is one third higher or lower than it has been in years past? Do you know?

JVA: Well, my opinion is it's not that much different than it's been. I think that's not a bad, steady-state average over some period of time. It depends on whose product and who was really looking forward to it. There may be differences between those; I just was talking a little bit about new uses of existing, already registered products and new products. And again, it's just another sign of the resource strain, and new products have hundreds of studies that have to be looked at. So just by way of probabilities, if you've got some probability of running into a resource constraint of X percent, well, if you've only got 12 new studies to look at, for EPA to look at, for a new use versus the hundred studies, hundred-plus studies for a new active, it's more likely the new active -- The problem comes in that EPA calls up the registrant, often late in the process -- at least from *their* point of view -- and says, "Gee, we need more time to look at the packet of information."

"Well, what do you mean? Your deadline is coming up in six months."

"Well, we're not going to meet it."

"Why, why not? I mean, you've had it for a year and a half now, and we're six months away planning to get to market."

And EPA says, "Well, we can't. And so here are your choices. You can either take a renegotiated deadline, or we'll just deny you now. Which one would you like?"

LLB: Right.

JVA: And of course, everybody chooses to, even with whatever muttering and gritting of teeth, they take the renegotiated deadline. And that frustration is not going to stop, regardless. Not to -- hopefully as a program person -- you don't try and just do that, you know, in a blasé fashion. But it's real.

"Look. Here are your choices. We're not done. We're not going to get done because of these resource constraints and things like that."

So that brings us to PRIA and PRIA 5. And PRIA 5 needs to be reauthorized at the latest as part of the next farm bill. The last farm bill -- it just so happened that the Farm Bill Authorization period aligned, in this cycle, with the next need for PRIA to be reauthorized. And good news, bad news in the farm bill, you get swept up -- is it a positive or a negative? You get swept up in about 100 different things, most of which are more important to almost everybody than PRIA? Or it's good that you're one of 100 things, and you might -- it's a less controversial, just if for no other reason that people don't have time for the big controversies about conservation policy or ethanol programs and things like that. Last time, it helped leave PRIA reauthorization be left on the cutting room floor. So, oh my, that's a bad thing -- it really was -- for some interim period. And so, the decision now is to see if Congress might be willing -- if you forge a consensus, forge a coalition left and right, Republican/Democrat -- can you get it authorized in 2022 before waiting for the 2023 Farm Bill?

And some think that's a fool's errand. But on the other hand, if you *can* get a working coalition, and you *can* get bipartisan cooperation -- again, generally, that might be fantasy land, coming into a midterm election year. But if you *can*, maybe you can pull off PRIA 5, and at least there's going to be some attempt to do that in this year.

LLB: Interesting. Well, the all-important registration review deadline is coming up in about six months, at the end of October of this year. Is OPP on track to achieve the deadline?

JVA: Well, the short answer is no, but not a surprise. They've made -- to me, it's phenomenal how much they've gotten done, but they -- if you read even something that says it's the final registration review decision, it's final *interim*! But why? What the heck? Is that a Washington thing? It's a final interim, which is an oxymoron by definition. Well, what that means is while we haven't finished ESA -- we just talked about that -- and if you read the fine print, we still are working on the whole endocrine review thing. P.S. That was first required to be done by 1999. So again, this may be a second in line because ESA was supposed to be complied with in 1974. Again, only in Washington do those sentences make some kind of sense. And so the upshot for both is that they -- my prediction, it's not newsworthy -- but they'll face -- They have to do all this by the start of the new fiscal year in October 2022, and they'll, as of October 1, right? New fiscal year. On October 2, 2022, they'll face a lawsuit for missing their deadlines. And so that's what's probably going to happen. And there was already a petition filed that was a kind of interesting petition because it said, "This is how you should complete registration review by October," which is an interesting petition to try and grant, saying a future-oriented event that you haven't done yet, but you better do it this way or else. But I'm not a lawyer. And so that's what the petition says. EPA hasn't responded to that specific petition, but to me, it's an indicator and a template for what the lawsuit is going to be on October 2, literally or figuratively, of this year.

It basically says, "Look, you have to do -- you really can't call it completing registration review until you've done ESA and endocrine." And there's a point there, and I'm sure the courts will opine upon it. There may be a deadline settlement. Again, I'm speculating and all of that, and that may help with some of the resource question we talked about earlier. Who knows?

LLB: Jim, you are a political animal, and I get all of my political insights from you. This is an election year. With the midterms approaching and the Republicans widely expected to take

at least the House and perhaps the Senate. What impact, if any, will the midterm election results have on EPA decision making?

JVA: Well, maybe your political skills are limited by the fact you take advice from me. But that said, they and --

LLB: That's because you're very observant, Jim.

JVA: Okay, that's why.

LLB: I've known you a long time. You're spot on.

JVA: Yes. And my mother's very proud. Anyway, but the upshot is that, yes, they'll take the House. I think that's not, you know, I'm not going to buck the conventional wisdom. The math is better than it looked like it was going to be because redistricting hasn't been as bad. But again, there's other webinars all over Washington you can listen to for that kind of prognostication. I think, in the Senate -- thank God for Dr. Oz. I rarely get to say that, but it may help flip the Pennsylvania seat to Democrat, and that will help greatly with them holding the Senate. Either way, though, I mean, even if they quote, "just get the House," you've got a divided government, even -- We've got a divided government now, with Democrats in control of House, Senate, and the White House. So it's tough. I don't think on a day-to-day basis, it will affect EPA that much. There may be a little more quote, "oversight" of some of the things we've talked about. Are you being overly aggressive? Misread off on ESA, or what about that chlorpyrifos decision and that idea of the precedence and template I mentioned before?

At the end of the day, it's not going to change the appointees in the Administration per se. It may not help the budget situation, because, for example, for this current year, at least EPA's proposed budget was quite significantly increased because of the CRs [continuing resolution] and other kinds of things. The net effect hasn't been that great, but that may be even further dead on arrival, that OCSPP gets a significant bump in resources. Back to the problem you mentioned earlier with the Toxics program needs more, PRIA needs more -- excuse me, OPP needs more even with PRIA, and so forth. So that's probably the biggest single impact is going to be budget potential. And then secondly, it's going to be more oversight. *If* you get enough complaints about EPA behavior in whatever space, you could see Congress asking for more hearings and asking, sending more nasty grams -- a formal term -- and things like that over to EPA. And that just takes time. If they have a bunch of hearings where they want the Administrator (or the Assistant Administrator) to show up -- literally show up -- that takes just a lot of staff time. And one problem for some -- we talked again earlier about just a limit to the time in the day to have the senior leadership pay attention to issues. And that may be further limited under a divided Hill, between House and Senate. Or again, even if the -- only would be worse if both houses flip. And again, I'm less sure that the Senate is going to flip. But again, you know, stay tuned, sports fans. I mean, baseball is back, and so is election year. So --

LLB: Fast forward to the end of the Biden Administration's first term. Where do you see OPP at that time?

JVA: Downtown, finally, with OPPT! Elections have consequences. Who is leading it is hugely important. People, Republican, Democrat, independent, or loony, go out and vote. And that's one message I've said for decades. Elections matter, and so better to vote than just sit

around and complain later, or try to capture your governor, at least here in Michigan. But anyway, the -- for those who are listening, I live in Michigan, just for the record.

OPP is not going to be *that* different. Hopefully, it means that by the end of the first term, you said, Jake Lee has been working hard on ESA. That has got great potential to be a significant, important difference by the end of the first term. Budget and things are going to be -- even if they're increased, they'll be linear, they'll be incremental. They're not going to be -- it's not like EPA or Toxics or Pesticides or for EPA as a whole are going to get, you know, 30 percent increases. Even when the President, even when Mr. Trump would propose to cut EPA's budget by 20 or 30 percent, that was never going to happen. Even if someone proposes to increase it by 30 percent, that's pretty much not going to happen either. So all that is the folderol about the President's budget. Again, not trivial, but not terribly meaningful on a day-to-day basis to the programs.

So for OPP, this business of how to deal with ESA is pretty important. Has there been some improvement in PRIA and renegotiations and things? Separate from the fact that it almost always has to happen to some degree, are there improvements that can be made, even without PRIA, even outside of the PRIA legislative space? But simply why are 35 percent not being able to be met on time? Is it the registrants' problem because they are putting in certain things in their applications that if they did better, it would reduce that negotiation rate -- renegotiation rate? Is it EPA needs to improve some element of their review process scheduling? They need a new workspace Adobe planning program? I don't know things that people get paid to worry about efficiency claim to have some knowledge about. So those things get a little bit of improvement on PRIA. You *do* get a little bit of better recruitment and staffing, filling vacancies. You get better -- there has been a demographic shift as a lot of people who joined EPA in the '70s and '80s now face retirement. I've always talked about the demographic problem of EPA in other parts of government, but for EPA, for things we care about, and so those people -- new people have to come in. They have to get recruited, trained, and start to be the mid-level people, with the experience and knowledge about the programs, whether it be Toxics or Pesticides and things like that.

So all those things. Hopefully, by definition, everyone will be two years older two years from now. And so by the end of the Biden Administration, some of those things might be better. Hopefully, Congress won't be so incredibly bitter and divided, although I'm not going to bet against *that* changing. But it would be nice, and that may help things a little bit, even on budget discussions. And again, win, lose, or draw, a little more experience on ESA, whether the Jake Lee efforts are coming to some kind of fruition. Are the courts still getting very cranky about it? What's the impact of judicial appointments? I'm not even looking at the Supreme Court, but just simply the litigation pattern among and between pesticide cases and what districts and all that kind of thing will go into it. So those are the potential things that will impact what happens by the end of his first term. But at the end of the day, again, remember my first comments early on -- which were most things that happen in the bureaucracy are below the waterline, for any program. And that'll still apply here.

LLB: Well, I'm going to take from your comments, Jim, that on the whole, it could be favorable, with COVID, we hope, winding down and no new pandemic on the horizon. The consolidation of the offices, progress made on ESA, and in a perfect world, Congress would be far less contentious than it is now. Maybe there are good things on the horizon.

JVA: Well, my version of that, in part, would be that registration review, all the caveats. There'll be sound and fury and litigation, but at the end of the day, they've made a lot of progress on registration review, more than I would have expected otherwise. But I'm -- again, as -- no,

the first time registration review -- if you want to call it that -- where it was required, was to be done by 1975, from the 1972 amendments, and I think many would claim that it really didn't get done until after the FQPA deadline was met in 2006, so it took them from '72 to 2006 to do the first round. And so even taking a much longer than 2022 is not so bad. And I would agree with that, not to sound either snarky or cynical. I think that is an achievement for this current regime and past regimes, including our time as the Clinton Administration, but it goes even further back than that.

And so progress has been made, and now ESA is the new confrontation to deal with, just like groundwater contamination was in the late '70s or trying to deal with whether there is developmental neurotoxicity in the late '90s and 2000s. And just like still outstanding questions about endocrine disruptors then and now, but we'll resolve it one way or the other, over time. And that's the progress of both regulatory reviews and better legislation, better science, and all those other discoveries that make the policy soup what it is.

LLB: On that hopeful note, Jim, we'll leave it. I want to thank you for stopping in and sharing your excellent thoughts on FIFRA and topics that range far beyond that, in the Office of Chemical Safety and Pollution Prevention. Thanks so much.

JVA: Sure. Always a pleasure.

LLB: My thanks again to Jim for speaking with me today about FIFRA hot topics. If you wish more on this subject, Jim and my colleague Lisa Campbell are joined by EPA Office of Pesticide Program Director Ed Messina in a webinar on this topic on April 20. Go to our webinar to download the recording and slides.

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