



Episode Title: What to Expect on Capitol Hill in 2024 -- A Conversation with Jim Aidala

Episode Number: 20240125

Publication Date: January 25, 2024

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

This week, I had the pleasure of sitting down with Jim Aidala, Senior Government Affairs Consultant at B&C and our consulting affiliate, The Acta Group, to discuss FIFRA Hot Topics. As many of our listeners know, Jim is a former Assistant Administrator of the Toxics Office at the U.S. Environmental Protection Agency (EPA), has worked on Capitol Hill, is a widely recognized pesticide policy expert, and a keen student of all things political. We discuss what to expect this year in 2024 from Capitol Hill and EPA's Office of Chemical Safety and Pollution Prevention (OCSPP) when it comes to chemical matters. We cover an awful lot of territory in our conversation: EPA staffing deficits, a keenly divided Congress, and the many challenging legal, scientific, and policy issues that this OCSPP is tasked with solving or at least managing in 2024 as it stares down national elections in about ten months and all the uncertainty that this fact invites. Now here's my conversation with Jim Aidala.

Jim, welcome back to the studio. It's always a pleasure to listen to you. I'm thrilled to be having this conversation, as there's a lot to discuss.

James V. Aidala (JVA): I'm glad to be here. I sort of always wonder about my voice when I hear myself, but I'm -- well, this sounds okay, so that's a good start.

LLB: Yes. No, you're sounding great. This year -- we're always very pleased to remind our listeners that we issued about a week ago our 2024 *Forecast for U.S. Federal and International Chemical Regulatory Policy*. This 106-page document is just chock full of important information, some of which we're going to talk a little bit about today, but it's available on our website. If anybody wants a hard, bound version, just let me know. I'd be happy to pop one in the mail. But in the *Forecast*, Jim -- let's just get right into it -- you note, EPA will need to manage just a whole bunch of competing priorities this year.

Before we talk about the subject of our discussion this morning -- Capitol Hill, and what to expect in the New Year -- maybe you can give our listeners an overview of what might be going on in the OCSPP right now, given the fact that you've been there; you've been Assistant Administrator, but it's staring down a national election in about ten months. Just give us a sense of what senior leadership in OCSPP might be experiencing.

JVA: Sure. I was privileged to go through two elections -- that's one way to put it -- and the time of year, at this point, is you're basically showing how you should be reelected very specifically. For example, when Mr. Clinton was reelected, then in the middle of his two terms, but it's a little bit of a repeat, because you have to show your accomplishments. In this case, I think every politician says that the one coming up is the most important election of our lifetime. This one may have a little more meat to that than some other times in the past, but basically, the cabinet departments are then asked to list their accomplishments, to show that it's kind of mission accomplished, or "We delivered on what we said we were going to do." Literally that list -- they ask for a list -- and then they slice and dice it in various places. The Administrator's office will take it and make an EPA list, and then that will go off to the White House, and they'll slice and dice it further, and so forth.

The other thing that happens is that you'll see the [Assistant Administrators] AAs and other -- they're sort of a senior political advisor who might be worth, shall we say, listening to -- go out into the hustings and gee, I think they'll probably be in places like Michigan, Pennsylvania, Georgia -- I'm just randomly picking names right now -- Wisconsin.

LLB: Yes, nothing to do with the important states.

JVA: Right. The swing states, and where the president and his or her administration will show that again, what I just said, that they delivered. "We care about you. We delivered. We wanted to do action. We did it." Or to whatever extent we did. And promises for the future: "If you want to see those high-speed trains continue in this part of Philadelphia, see how they're now running." I was reading a story recently in the paper about that. Or in whatever state, Michigan. "Look at all the investments we have for the auto industry and other just general infrastructure projects that may resonate here, or some highway, or whatever that was built with that money." That's what you go and do, and then at some level, you're finishing some important policies. You do worry a little bit -- and I think we'll get into it later even in more detail.

But what if we don't get reelected? Are there things that we need to get finished before we go? That's got a little more of a level, given the fear of what may happen if party control changes hands again. What are the things we need to get done now in our area? I predict for OCSPP, that gets a little more granular about *their* list, right? What do they care about? ESA [the Endangered Species Act], for example, would be way high on my list for the OPP [Office of Pesticide Programs] part of the office. For toxics [Office of Pollution Prevention and Toxics], it's a lot of the things that they've been trying to do for the TSCA Lautenberg amendments and set them more in stone: how to do a chemical assessment, the assessments of -- the assumptions, I'm sorry -- the assumptions about evaluating a PMN (premanufacture notice) and things like that. That's what you'll see a lot of time and energy spent on. That would be standard protocol for this time in the election cycle.

LLB: Especially since many of our listeners are -- have TSCA first and foremost on their minds, it seems to me a statute that it is amenable to metrics, right? Like how many risk assessments or risk management rules have been put in final? How many PMNs are pending? Has that backlog been cleared? Those are maybe too granular for the general public, but for those of

us attuned to the OCSPP agenda, that might be something that Assistant Administrator Freedhoff and others are focusing on, trying to pump up the numbers a little bit because, to some extent, they've been lagging over the last several years.

JVA: I'm sorry. That's what I mean by accomplishments and things, too. How many new chemicals have we approved, whether it be new chemicals in Toxics and the PMN side, or how many new chemicals in the pesticide side, pesticide registrations? How have we tried to help the innovation in those industries? How have we tried to -- contrary to perhaps some criticism -- taken responsible actions on things like that? Those are what you'll get ready for.

Again, the issues of OCSPP, with some exception, aren't probably going to be the kinds of things on the campaign trail, even in a, say, state race for a senator or something like that, or congressperson's office. But you never know, and you want to make it sound like you did your homework: "How I Spent the Taxpayer Dollars." That's back to the list of accomplishments. And to some extent, trying to insulate the criticism you expect to have.

LLB: The metrics is a good pivot to another topic that has been relentlessly discussed last year, and that's EPA funding. It was *such* a huge issue, pretty much during the entire Biden-Harris Administration's tenure. As we are facing down yet another potential shutdown, as we record this podcast, what do you think is going to happen over the next month as we have two funding deadlines, over the next several weeks, though this is getting to be so routine and predictable, it's a little annoying. But what are your thoughts, Jim?

JVA: Sure, the budget fight is a recidivist activity. But in this case, I think there may be a short shut down. I don't think anyone is expecting -- of course that may mean it happens -- no one's expecting a long shutdown, if at all. I think they may well find a way to cut a deal. But again, there's -- as we've all read -- there's all kinds of twists and turns that may take. I was just literally -- there's everything from the border issues to the general shutdown desire to make a point, to all kinds of issues that are off budget but still there just because you want to make a certain point or certain statement by one party or the other. I think there may be a short shutdown.

At the end of the day, it won't be anything long. I think that's not a bad bet, and not one that'll be too impactful. At the end of the day, what's the budget going to look like? That's sort of more important, especially for EPA, because some of the earlier proposals were -- had in mind something like cuts of 20, 40 percent, things like that. There's a lot of money at EPA that was put in by the infrastructure acts and things like that that people don't really focus on, literally many, many billions of dollars. That's part of what EPA's been working on as an institution. Again, that doesn't affect OCSPP altogether, but it has affected things like recruitment and personnel movement through the system, just because they've had to hire -- literally on paper, they've got plans to hire hundreds of new people to process some of those funds that were delivered to EPA for something, quote, "like infrastructure projects," which, again, is not an OCSPP issue but affects them, because then when OCSPP is trying to move their personnel actions through the system, they're just stalled or just stuck in line -- number one.

And then number two is just a flat budget. A relatively flat budget is certainly not going to help OCSPP. Assistant Administrator Freedhoff has said quite often and quite publicly the TSCA implementation has been hindered by lack of resources that have been allocated. She obviously would like to see more, and it's not entirely irrelevant to the Pesticides Office

because they've seen their personnel numbers go down (and down and down) compared to whatever baseline of previous years.

That's affecting PRIA (Pesticide Registration Improvement Act) implementation, for people who care about the movement of registration actions through OPP. Budget is important, to say the least, and it's probably going to be flat or thereabouts. With a fairly large COLA, a cost of living adjustment, I think the federal workforce had a significant COLA, relatively, given the inflation situation, and that's got to be eaten. So even if EPA got a two percent or three percent budget increase for personnel, it may not result in more staff being hired just because it's getting eaten up by the COLA.

LLB: Let's pivot to Capitol Hill. I know, speaking very personally, my expectations are so very low with regard to output in the next 11 months. I don't really have any expectations, but given the well-publicized dysfunction that really characterizes the politics up there, do you expect any legislation this year, let alone legislation specific to the chemical sector?

JVA: Nothing really, in terms of pesticides and chemical legislation per se. You could see some one-off kinds of things about a particular thing, possibly. One of my favorites, for example - - now, this isn't going to become law -- but one of the things that was part of the House legislation on EPA's budget was to reduce the -- Jake Lee, who I think most of us know, if you know the pesticide program, but Jake Lee is in charge of the ESA -- attempt to try and make ESA and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) be integrated and have a somewhat cohesive plan in a somewhat effective way to kind of merge those two assessment regimens.

Jake's office -- I'm sorry -- Jake's position was reduced to having him be paid one dollar for his efforts, so it was to reduce his salary to one dollar. That actually was approved by a roll call vote in the House of Representatives. Actually, as a former political person at EPA, I would just say that's a high point of praise in a certain way for Jake. But it's not going to become law, and he just gets to tell his grandchildren about it, so it's kind of cool.

More specifically, I think the only thing that may happen legislatively is the Farm Bill needs to be extended, although it can never lapse. Functionally, just because if it lapses, all kinds of crazy things happen because the original legislation written in the '30s -- long time ago -- somehow obtains, given all the gyrations of the Farm Bill. So, again, those who follow these kinds of issues much more closely than I do expect some kind of extension, even a simple extension. But then again, the budget issues get into play, to say the least. There are some people who think certain parts of it should have, for example, some kind of increase in the payment scheme or some kind of changes in the payment schemes and things, because the Farm Bill is obviously a very large money bill. And so, the budget issue pretty quickly can collide with the Farm Bill issues. But at the same time, the underlying legislation needs to be reauthorized. So again, smart money says a simple extension, again, maybe with some tweaks. None of that's really going to affect the ways and programs of OCSPP. But it could, just because at the outside you could see some kind of -- something EPA -- excuse me, USDA [U.S. Department of Agriculture] is supposed to do related to some activities, perhaps in the ESA, perhaps about a pesticide, but it's unlikely.

LLB: Do you expect, Jim, even more Hill personnel retirements, and even to the extent you can speculate, EPA senior leadership posts? These election years always bring about change, people reevaluating what they want to do, where they're going? The uncertainty of the election cycle might hasten some of those internal conversations. But do you see anything in that regard, either at EPA or on Capitol Hill?

JVA: For EPA and any agency, if you're going to leave before the president is up for reelection, you tend to do that the summer before, in other words, ideally about 18 months before. Certainly --

LLB: -- so last summer.

JVA: Yes, last summer. Could it happen? Of course. I mean, all kinds of things can happen. You can be recruited for the job that you always wanted. I remember one former AA always wanted to be baseball commissioner.

LLB: There you go.

JVA: Mr. Gamse, for those of you remembering the Carter Administration appointees, which starts to show my age. Anyway, but the upshot there is pretty much you're not going to see personnel moves. You might see something for health or because some recruitment is just sort of too good to pass up, but it's mostly unlikely. If you're going to leave EPA, or a political position and you have any real portfolio, you would have done it by now. Again, with exceptions, but pretty much that's the situation for any political -- the Senate-confirmed appointments, the PAS [presidential appointments requiring Senate confirmation] appointments.

At the same time, on the Hill, for OCSPP, you could see some changes. Obviously, party control makes a huge difference between Democrats in the House and Senate, who's got party control, hearings and agendas, and all the rest. But very specifically for the world of OCSPP, Debbie Stabenow, Senator from Michigan, she's announced her retirement, so that'll be a change. If it's the Democrats -- even if it stays in Democratic Senate control, you would see, I think -- and again, this is all the really Vatican white smoke, black smoke stuff happens for the next Congress. But that said, it could well be Senator Klobuchar from Minnesota. Okay, she's sort of a centrist-y Democrat relative to some, but at the same time, she's from Minnesota. Okay, that's pretty aggie; that's appropriate for the Ag Committee. I'm sure that's why she got on the Ag Committee when she came into Congress, came into the Senate.

At the same time, she's likely to run for president. Well, okay, that means a different set of things and some different constituencies, perhaps. We'll see if it's Ms. Klobuchar to be Senate Chair in the Senate. If it's the Republicans, well, it almost doesn't matter what happens. It matters; it doesn't matter near as much on the Democratic side. And that would likely -- expected to be Senator Boozman, from Arkansas. Arkansas, big ag state, obviously Republican, from the South, so that would be very different than Ms. Stabenow.

On the EPW [Environment and Public Works] side, relevant to TSCA, you've got Senator Carper. He's also retiring, the current Chairman. And so instead of Mr. Carper, if the Democrats hold, it looks like it might be Mr. Whitehouse from Rhode Island. And he's more of a hardcore -- it's a very safe seat. It's not like Mr. Carper wasn't, but as far as I understand those politics in those states. But Mr. Whitehouse has sort of said more blunt things and more strict, speaking to some of the environmental constituencies and things, so that might make a bit of, at a minimum, a tone difference. And if it's a Republican, control in the Senate would be expected to be Senator Capito from, or CAP-ito. I'm probably mispronouncing her name, I believe, from West Virginia. And so, again, a West Virginia senator taking over the Environmental Committee instead of a Democrat -- it's expected, shall we say, may change a few things.

LLB: Yes, just a few there, Jim. What about hearings? The last several years, we've seen just some spectacular political theater. EPA detractors continue to weaponize the process whenever we have an assistant administrator up there talking about per- and polyfluoroalkyl substances (PFAS), or TSCA implementation, or water, or air. My sense is that this year will be just pretty spectacular in that regard. Do you do share that expectation?

JVA: For those of you who know my background, I'm obviously a big fan of political theater. But that said, it's an election year, so you'll see the election year, what I call baiting or sort of making statements. So you might see hearings to show fill-in-the-blank: that the other side will be catastrophic if they got elected or our side has, as I said before, the themes, we delivered. "We need to be reelected in order to continue this wonderful agenda that we have." Obviously, the Senate and House are split by party control, so both sides might have hearings. Both sides of the Hill could have hearings, to reinforce some of those messages back to their base. So that's the kind of thing you would see.

For example, in the Republicans, you'd see more of that "EPA's out of control. They're crazy, crazy environmental stuff. They're going to force everybody to walk to work or at least drive an electric car, probably an electric bike, given those kind of people, you know them," and things like that. At the same time, for the Democrats in the Senate, it might be "Look at how important it is that we maintain our strong environmental protection big budgets. Look at the environmental justice attempts we've tried to fix in the past. We have to continue that work that. TSCA needs to have, again, more work," in the Senate point of view. And in the House side, it might be "Look at those terrible business impacts," whatever they are, real or imagined and alleged.

And last but not least, I'll just say in the spirit, because it's sort of a sleeper issue sometimes, if you think about it, that farm worker safety -- and farm worker safety is likely not to be a big issue, but one thing I would point out to people who don't follow day-to-day life in Washington, but the chairman of the Biden campaign itself is the granddaughter of Cesar Chavez. The idea that farm worker issues could make it to some more national level focus, it's possible and wouldn't ordinarily be likely. EPA did update their regulations, and those are finally settled down. They've changed the certification, and training programs have been changed and finally getting fully implemented across all the states. I think there may be one exception currently, but basically mostly that dust is settled, so to speak. At the same time, it might be the kind of issue for environmental justice concerns or speaking to the Hispanic and immigrant constituencies and things. You might see some more focus on some things like that.

LLB: I did not know that the granddaughter of Cesar Chavez is Biden's Reelection Committee Chair. Interesting. Interesting insight, Jim.

It's way too soon to speculate on election outcome, even though pundits seem to do that daily. But one thing that's always fascinated me, having been a fan of *West Wing*, and this may or may not be accurate, speaking of political theater is what *is* going on in the White House right now? What might it be thinking? Does it kind of prepare for a Plan A -- "We win! Yay!" -- and continue on course? Or Plan B -- "We don't win. How are we going to be allocating resources, and how do we plan?" What is the mindset right now in the White House?

JVA: In general, it's just like a football team. We're never going to plan to lose, to say the least. We're worried about it, if it *could* happen. And it shouldn't happen, it would be terrible, and so on and so forth. Primarily, what are the messages? We have to stick to the game -- not to

continue the sports metaphors -- but continue the game plan, and things like that, so for this administration, finish the job. We've had a lot of successes. We've been thwarted. There's been some talk about a kind of a Truman-esque, do-nothing Congress has thwarted our attempts to do even more for you, the average citizen, and things like that, so it's mostly "Finish the job." And "We need more Democrats in Congress to help finish that job. We need bigger majorities, right? We need to flip the House control. We need to continue to increase the size of the majorities in order to be better able to complete this thing that we promised you then and we're promising more of now." It's, again, continue, shall we say, continue finishing the job.

Does that mean -- back to your question about the hearings and things like that -- gee, like I said before, where people may appear, might there be field hearings in places like, again, Pennsylvania, Wisconsin, Michigan, wherever you think the base needs to be shored up? There are certain issues in Nevada and Arizona, Colorado, etc. You might see some field hearings in places, where the Administration people are emphasizing some of the work they've done and things like that. Now, Plan B, again, what if we lose? In my mental notes, I always think things like, well, shock, fear, and chaos, right? The British burned the White House once, and maybe these guys will do it a second time, whoever these are. And especially given the nasty tone you're likely to see in the election rhetoric.

LLB: Oh, yes.

JVA: But basically, then after that initial shock, for lack of a better phrase, and even if you're keeping your eye on it because, even if you're a -- if you're a good bookie, you don't just bet on who you think's going to win. You bet a little bit on the other side, just in case it happens. It's a soft market it's called. In the insurance market, it's actuaries and things like that. You always wonder what if? The bottom line on Plan B would be "Okay, if we lose, we better make sure there are certain things we get done before we go." And then you also have things -- the silly things are things like taking the W off the keyboards if you remember that one.

LLB: Yes, I sure do.

JVA: George Bush was elected, after defeating Mr. Gore at the end of the day. And so besides the silly things, though, you try and have your certain policies that are set in stone, that are hard to undo. Sometimes you might do things you know that the other side is going to undo, but you put them out there anyway because it's going to delay the ability to do it. You may have settlements, court settlements and things, that criticism. You might do more court settlements to lock in an agenda, lock in some activities that must, quote, that "must be done," or at least certain schedules, because you're fearful of things not getting done. Otherwise, you're getting ignored.

The overall analysis is, again, how do you set up for your constituencies some litigation traps and things where you might see, here's a program we know we're going to say this about that, interpret a law, interpret a policy a certain way, and that would be hard to undo or even if the other side undoes it, it'll take some time. And again, the last election cycles have seen, Mr. Trump came in and said, "I'm going to do everything opposite of Mr. Obama." Mr. Biden came in and said, "I'm going to do everything opposite of Mr. Trump." I suspect you'll see similar rhetoric now. So again, it's -- if you're a SpongeBob fan, it's opposite day, one of the better episodes in the history of SpongeBob. But again, that's a separate matter, too.

But again, it's opposite of those guys, whoever they are. That will be part of the agenda, and you know that going --you know that if you lose, what can you get done? And then one thing that is much more cerebral than SpongeBob generally, is the Congressional Review Act. The Congressional Review Act says that Congress has 60 days -- well, 60 days in Congress -- sometimes they count them differently: 60 legislative days --

LLB: Right.

JVA: -- which is an arcane element. And so, long story short, a rule has to become final, I estimate, to be sure, October 1? October 10? We can do the math in a certain way. Again, it's a black art how you count legislative days, but the bottom line is there'll be some push to get some of those things in place by about that time, October of this year, in order to make sure that if there is a change in administration, they can't be undone. Well, they can be undone, but they'd have to write a rule. And as we all know, writing rules is hard and takes a lot of time and effort. Therefore, it would be less likely to change, or at least not change immediately.

LLB: Thank you, Jim. As we are recording this podcast, we've had sustained, really lousy weather, lots of snow, this incredible cold. Anybody watching the Iowa caucuses, it's -- the cable news just kind of went off the rails on focusing how many -- what the below-zero temperatures are there. The Buffalo Steelers game had to be rescheduled because of the inclement weather in Buffalo. All of these climate impacts that we seem to just take for granted now. My point is, what type of analysis, if any, do you think is underway with regard to an environmental platform for the Democratic convention this summer? Is there any sense that these types of issues are likely to be part of the campaign? My sense is no, but I'm interested in your observations.

JVA: I think climate will be talked about. And reading about some of the constituencies that have to get motivated, and demographic slicing and dicing. Young people -- well, most groups are younger than me, but however you want to say, the group, the generic phrase "young people" seem to be especially concerned about the climate issue. Not that the rest of us aren't, but especially could be motivated. And you would see, perhaps, a pretty stark contrast between Democrats and Republicans on that issue. Both sides may think they've got a good angle on, gee, look at gas prices. And that's what happens if you don't have more production of fossil fuels versus the potential -- again, contributing to the climate challenge from continued use and reliance on fossil fuels, and things like that. It may be a good issue for both sides to highlight a certain way to speak to their base. Climate, I think, will be talked about to some extent. Certainly in the platforms, I think both sides will have things about it, but platforms don't usually drive a lot, other than it's paying off constituencies and some other things. But it is a -- it's a platform.

It's a bit of a forum and a place to state your goals. For OCSPP-type issues, I think the most likely thing would be something about PFAS and chemical cleanup kind of things. PFAS could be an issue just because it's out there. It could also be one that's very important locally. For example, if the Democrats really thought that they had a shot in North Carolina -- North Carolina has obviously been a hotbed of PFAS activity. If it looked like it was an issue that needed to be shored up to some way of stating something about PFAS in certain states that mattered to whoever, that would be something you might say is something to add, or certainly, again, congressional and House Representatives and Senate elections, it may be an issue for those races that matter.

If it's a race -- we could have a close Senate race here in Michigan, because Miss Stabenow is retiring. That could be an issue because PFAS is a moderately large issue here in Michigan, where I live, and things like that. You could see some discrete things that it could be about. Again, something like PFAS, something like the chemical that's of local notoriety -- not that New York's ever a swing state anymore. But New York, for example, Hudson River cleanup with PCBs [polychlorinated biphenyl] was always a big issue, and things like that. You could see discrete things come up in House elections or Senate elections.

LLB: Yes, PFAS in particular, because there's a lot coming out in the regulatory agenda with regard to identifying a couple of PFAS as Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) contaminants for which cleanup will be required. All of the legal pundits are speculating that litigation will continue to just be off the rails this year, and next, with regard to cleanups and just anything having to do with PFAS. You had mentioned earlier about field hearings; that's not too much of a reach to envision additional hearings focusing on PFAS contamination: water, soil, you name it. That is definitely an issue that has captured the hearts and minds of electorates everywhere. How the parties address it will probably be quite different.

What else, Jim, on your horizon, have we not discussed? Trade, European Union (EU) stuff? Speaking of PFAS, we've talked about it in the context of cleanup and as an industrial contaminant, but it's also been an issue talked about in terms of agrochemical issues because of pesticide containers. Maybe you want to spend a minute or two talking about that aspect of the PFAS issue.

JVA: Sure, I'll do that. And then for pesticides, for that part of our audience, I think, the ESA implementation is a never-ending story. But we'll get to that in a second after PFAS.

The issue of potential -- it's been identified as some kind of contamination, low-level contamination of PFAS compounds, from the way that you make a plastic container where many -- like 30 to 40 percent -- or 30 percent, I think, is the estimate of pesticide containers are plastic and come in these containers that have been basically, has a chlorine gas that's inserted or sprayed inside, if you will, inside the container after manufacture, so that it protects the lining of the container, so that it can be more resistant to chemicals, or whatever else it's transporting. It's not just pesticides; it's also industrial chemicals that these are used, too. This is an issue where -- hold it! But it's a very small amount. But PFAS is kind of an odd term. It's not really a thing. PFAS is a bucket term, I call it, of hundreds, if not thousands, of different compounds that vary in their potential toxicity. Although we don't know exactly the magnitude among and between all of them -- which is part of why that issue is so confounding right now to regulators and the public generally.

It means that hold it! If 30 percent of the pesticide containers have some problem, what's that going to mean, even if we just regulated it generally or banned it tomorrow? At the same time, can we replace 30 percent of the containers tomorrow? What else are these containers good for -- these kinds of containers? The manufacturing process to make containers, what is it? What's the value of it? Is there something easy to substitute, and is there a cost and supply issue? And other things. The PFAS in containers issue is non-trivial, certainly for the pesticide industry, but even potentially for the chemical industry also, and other industries. It's something that's going to --

LLB: FDA [U.S. Food and Drug Administration] as well.

JVA: Yes. I was just going to say food. FDA has got to wrestle with this, because, again, it's only a small amount, but sometimes a small amount of certain things can be something that you worry about as a regulator. That's just all ongoing as we speak, and evolving, and it's certainly not clear how it's all going to play out.

LLB: You had mentioned ESA and the fact that it has so many different aspects to a thorny problem. What might we be looking at this year in that regard?

JVA: ESA could be the subject of a three-day extravaganza. I don't know if there's ever been a three-day podcast, but if there needed to be any --

LLB: We can pioneer that, Jim.

JVA: Yes, we're innovative, but not that innovative. ESA is moving along, and that's a statement that's been hard to say in the past 20 years. That's to the credit of the current set of constituencies, not just EPA, but EPA in concert with some of the constituencies, everything from NGO [non-governmental organization] groups and pesticide registrants. That's good. There's finally some real -- we can point to some things that are real progress. At the same time, EPA has been attempting to put out so-called strategies, for example, something called the herbicide strategy, to be followed by the insecticide strategy, to be followed by the disinfectant strategy, not to try and be cute, but again, the buckets of major pesticide categories, if you will. And so, that's how ESA might be applied in terms of now that we understand more about how ESA and FIFRA should be integrated, and how might it work. At the same time, some of the things that they've announced have scared the bejesus -- I think that's a technical term --

LLB: It's a legal term. Yes.

JVA: Out of the, yes. Well, it sounds fancier in Latin, right?

Anyway, the grower groups are quite concerned, and the grower groups have put in -- for example, there's one set of comments on a document, a description of what they called an ESA Pilot and species pilot project, and how that would all work, specific about certain chemicals and applied to certain sort of indicator species. The comments that were submitted and signed by over 200 agricultural groups say that basically -- and it's literally like a quote -- that "it will end American agricultural production." That's a strong statement, and one that regulators can't ignore. It's not totally "sky is falling" kinds of things that often happen when constituencies don't like some regulatory proposal, and things like that. There are some things that have been stated by some of the various EPA people over time that give a little more credence to that potential outcome.

At the same time, other -- more senior, thankfully, in a certain way, thankfully -- senior EPA people have said more soothing words, about they're going to be able to have flexibility and some ability to sort of tinker and tailor the kinds of ESA assessments and ESA -- I should say, ESA requirements, given their assessments in light of things like how do you maintain production, and how do you maintain species protection, both? Both are, shall we say, they're good goals, and it's good to have goals.

How do you square those circles, which, in a certain way has been the fundamental conundrum of ESA for many, many years. But the good news is they're getting specific about it. And that is part of the -- it's a little bit, if you've read the history of the 2008-2009 economic crisis, where then-Treasury Secretary Geithner was saying, "Some plan beats no

plan.” We don’t know quite what to do, or how we’re doing it here, because this was all uncharted at that time. Some plan beats no plan. And we can tailor *some* plan, because if we just have no plan, it just -- nothing gets done. That’s been a bit of the characterization of ESA in a certain way for many years. Having some plan and how to try and adjust it appropriately to avoid -- still protect species -- but at the same time avoid really catastrophic impacts on agriculture. That’s the mission.

They’re working on it. At the same time, because they’re working on it, that’s one of the big events over 2024. Then in particular, back to my point earlier, you’re trying to lock in methods and protocols, and not so much outcomes, because you can’t do that or, can’t really have a program that’s going to guarantee what’s going to happen in ten years. But you could lay out a program that’s sort of a fixed template for now, or at least the initial template. There’s some court settlement deadlines that will basically force EPA to have the outline of how to do these ESA assessments, and how they would apply to pesticides. Those will be done -- if you meet the court settlement dates and believe in them -- by the time Mr. Biden were to leave office if he were to not be reelected. I think one of the deadlines is -- I don’t know, it was an arbitrary date; I don’t know how they came up with this. I think it’s like January 18, 2025, is one of the deadlines. I don’t know how they picked that date. I’m curious.

LLB: It’s perilously close to Inauguration Day. That’s interesting.

JVA: Yes, exactly. I mean, that’s unsubtle, but it’s there. It’s the kind of thing that you do -- back to your earlier question about what you do to try and lock in -- and in fact, one of the things you do is try and lock in certain -- again, you can’t, you can’t. You can still undo that, but to undo it will take more work than if you just had a general policy that wasn’t established by policy, rule, guidance, and all those kinds of things.

LLB: One final question, Jim, and that relates to trade. We’ve talked off and on about some of the issues relating to trade issues and pesticides. I tend to focus on trade issues and industrial chemicals. We do a lot of advocacy, urging EPA to be mindful of lack of approvals of new chemicals in this country, which often is not coextensive with approvals in other countries, and offshoring production. Offshoring new technologies is often a point of discussion with OCSPP. What about some of the trade issues on pesticides? Can you just briefly sum up what we might be looking at? And also, both Mexican issues and also EU import tolerances?

JVA: I was just going to say those are the two big buckets. Mexico is on track to quote “ban glyphosate” because of whatever issues about it and whatever their interpretation of data, and other such things. That has a big impact potentially on trade between the United States and Mexico, especially on the grain trades. It’s something that was a big achievement in the past few years that would be undone if you couldn’t use glyphosate, because glyphosate is so important to so many commodities, corn in particular, glyphosate-resistant corn trades that are among those that are sent out as part of the animal feed. That’s become a major element of trade between the United States and Mexico.

For the EU, in addition to the -- what I might call a baseline indigestion among trading partners on the EU’s precautionary principle, which some critics would say is, “Gee, if there’s somewhere out there, someone who says there’s a hazard of a material, we are going to prohibit it here in the EU.” Of course, almost always someone out there thinks there’s a hazard to something or the other. Again, hazard, not risk, and that whole debate about the distinction between a hazard of a compound versus the true risk, given the exposure *and*

hazard taken together. That's the precautionary principle debate that's been around, and it's going to be around for --

LLB: -- Yes, for a long time.

JVA: Yes. Just keeps on giving. What's more interesting is there's currently a proposal -- basically rooted because of restrictions that the Europeans want to impose, or maintain the imposition of -- on neonicotinoid (neonics) that is switching concerns. What's interesting there is that the health profile -- again, there are others who would disagree, but the health profile is pretty good for the neonics. You can't just ban them because you're worried about a potential health concern. Again, there are people who would disagree with that sentence.

But that aside, what they're saying in the EU policy proposals currently is, there is an environmental effect from use of the neonics, and because of the general impact, general environmental impact, for example, on pollinators -- again, that's a separately debatable point. But the larger trade issue is that would seem to be contrary to the trade agreements, where they say countries have a right because of health issues to protect their public. That you can have a stronger health standard because you may decide -- you and your country and your sovereign right to better protect the health of your consumers in your country.

It's not the same for the environmental potential effects. That would, on its face, appear to be a trade violation, a trade agreement -- a violation of the trade agreements. There is a movement afoot to try and have the United States take a strong position, exactly stating that, and perhaps even file a trade challenge on that point. That's something that's going to play out potentially certainly in 2024.

We can all speculate if Mr. Trump comes in with more of an America-first kind of policy and some other things what that might do on either side of that equation, the EU reaction, as well as the U.S. position in some of these trade negotiations.

LLB: Well, thank you, Jim, great observations. You've given our listeners plenty to think about and watch for as the next ten, 11 months unfold. Always appreciate your observations, and I think we might be onto something there within ESA pod-athon. We can go three solid days and talk about all the intricacies and nuances of the Endangered Species Act. Stay tuned, listeners, and Jim and I will be back with plenty more on that front. Thanks so much, Jim.

JVA: My pleasure. As always, stay tuned, sports fans, in every metric.

LLB: Indeed. Thanks again to Jim for speaking with me today about his insights, presented as only Jim can, on what we as chemical aficionados can expect from EPA and Capitol Hill in 2024.

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