U. S. Environmental Protection Agency
Blog Round-up
Prepared by the Office of Public Affairs

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PEOPLE ARE TALKING

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With the internet, blogs, Twitter, forums - people are talking about EPA 24/7
Here's a sampling of what was said on May 26, 2010:

NOTE: To read the entire blog entry, click on underlined URL. To learn more about the blogger, click on the name/link in first line. Notes and headings are from OPA.

Lisa Jackson

EPA's Jackson "Prays" For Gulf Success: "Like so many people down there, I am praying that it is successful," EPA ...
Posted by: katefullcot 6:40 pm Full post: http://bit.ly/bkNFya

EPA can make BP pay. Sign our petition to @lisajackson & help block billions in BP federal contracts.
Posted by: stephaniejane 5:40 pm Full post: http://bit.ly/d4BVVZ

@EPAgov administrator @LisaPJackson cancels appearance at a political fundraiser. |
Posted by: WVaChamber 1:42 pm Full post: http://j.mp/cjcEQr

Gulf Oil Spill & EPA Response

BP CEO: effort to plug oil spill going as planned, it'll be a day before "top kill" considered a success
Posted by: thenewspress 7:00 pm Full post: http://bit.ly/cEYyZe

USA Today Poll: Majority give Obama, feds failing grade on oil spill response.
Posted by: Dckranz 6:10 pm Full post: http://usat.me?94381

Newsweek: Can Obama Control Oil-Spill Political Damage?
Posted by: danny6114 6:02 pm Full post: http://bit.ly/brONdS
(Note: Thad Allen remains the "National Incident Commander" under the terms of a 1990 federal environmental law that governs this kind of situation. The law does not adequately regulate offshore rigs, he said. The law relates to cleaning up spills, not preventing them per se)

Reuters: More than 100 miles of Louisiana's shoreline affected by oil spill, says Gov. Jindal
Posted by: BreakingNews 5:20 pm Full post:

300+ sea birds, nearly 200 turtles and 19 dolphins found dead in 1st 5 weeks of #BP #oilspill
Posted by: greenforall 5:45 pm Full post: http://bit.ly/9N4q7q

Christian Science Monitor: EPA girds for a fight with BP over dispersants in Gulf oil spill.
Posted by: EHPonline 4:05 pm Full post: http://bit.ly/aKg3Zm

@eponline so what is the EPA doing about Gulf spill? Instead of wringing hands, sop up oil and then burn it!
Posted by: 5sahandful 3:10 pm Full post:

Texas and Air Permits

EPA May Federalize Texas Air Program
Posted by: nprnews 6:05 pm Full post: http://n.pr/9eJ8QD

AP NewsBreak: EPA may federalize Texas air program (AP)
Posted by: GoodDay999 5:55 pm Full post: http://bit.ly/cYRvXe

Gov. Rick Perry: EPA's action on refinery permitting hurts Texas economy
Posted by: dallas_news 5:25 pm Full post: http://bit.ly/aCXKA7

GHG Regulations and Climate Change

EPA Chief Defends Endangerment Finding
Posted by: Pheobemxcyp 4:45 pm Full post: http://tinyurl.com/34fszzz

Feds cannot agree on U.S. Climate Bill as Chu disagrees with EPA's Jackson.
Posted by: chemicallygreen 2:47 pm Full post: http://bit.ly/9L3Xrd

AGW Scam: Even Obama's EPA Admits Cap & Trade Bill Will Have NO Effect on World CO2 #teaparty
Posted by: redostoneage 2:51 pm Full post: http://bit.ly/x1ggW

ROUND-UP OF MAJOR BLOGS

BP SPILL

May 27, 2010

EPA May Take Over Texas Air Program Because State Is Violating Clean Air Act (*Huffington Post*)

RAMIT PLUSHNICK-MASTI | 05/26/10 06:32 PM |

HOUSTON — The Environmental Protection Agency may take over the entire job of regulating air quality in Texas if the state keeps violating the Clean Air Act, an EPA official told The Associated Press on Wednesday – intensifying a dispute over regulating pollution from the largest U.S. refineries and petrochemical plants.

The comment by regional EPA chief Al Armendariz comes a day after he said the federal government would issue the operating permit for one refinery in Corpus Christi and planned to take over 39 other permits.

Now, Armendariz said, the agency is studying how to federalize what has always been a state job and hiring eight permitting engineers and attorneys – partly to deal with Texas.

"Do we also think the deficiencies are serious enough to go that route? The answer is yes," Armendariz said. "If we have to, we will. The takeover of a state program and the federalizing of a state program is a lengthy process and doesn't happen overnight."

Armendariz had said the EPA wanted assurances by July 1 that Texas will comply with federal law.

The EPA's plan is sure to set off fireworks in Texas.

State regulators have consistently said they disagree with the EPA's conclusion that Texas allows the petrochemical industry to spew out an unmeasured amount of toxins as it refines one-third of the nation's gasoline and produces thousands of other chemical products and plastics.

"It would take years and kill millions of jobs and the economy would suffer eventually, and we're seeing no environmental benefit," Bryan Shaw, chairman of the Texas Commission on Environmental Quality, told the AP.

Now, the dispute is rapidly becoming a battle over federal and state rights.

Gov. Rick Perry, who is running for re-election and campaigning on an anti-Washington platform, said the EPA's action is another attempt by the federal government to wrest control from states.

"The Obama administration has taken yet another step in its campaign to harm our economy and impose federal control over Texas," Perry said. "On behalf of those Texans whose jobs are threatened by this latest overreach and in defense of not only our clean air program but also our rights under the 10th Amendment, I am calling upon President Obama to rein in the EPA."

The EPA's next major step will likely come next month, when it plans to officially block a 16-year-old Texas permitting program that never received the required federal approval and which the EPA says violates the law. Documents obtained by The Associated Press indicate the EPA believes the flexible permits let some plants emit double the admissible levels of toxic pollutants, including cancer-causing benzene and butadiene.

Texas's so-called flexible permits set a general limit on how much pollutants an entire facility can release. The federal Clean Air Act requires state-issued permits to set limits on each of the dozens of individual production units inside a plant. The EPA says Texas' system masks pollution and makes it impossible to regulate emissions.

However, because Texas began issuing the permits in 1994 – and the EPA never stopped the practice – it will take at least five years to issue new permits to about 140 affected facilities, including Exxon Mobil's largest U.S. refinery in Baytown near Houston, Shell's Deer Park refinery and the Pantex Plant in Amarillo, Texas – a facility charged by the U.S. Department of Energy with maintaining the nation's nuclear weapons stockpile.

Until the plants have permits that allow for effective monitoring, the EPA and environmental activists say their true pollution will remain a mystery.

Shaw insists the EPA is relying on faulty data and said the federal move caught the state by surprise. Texas, he said, is willing to revise and explain the program to the EPA.

"It was somewhat out of left field," Shaw said. "It indicates the discussion and the negotiation are over ... I'm hopeful that we can get back to the table and roll up our sleeves and make some progress and quit having turf wars."

Last year, the EPA presented state officials with data showing that the Shell Deer Park facility outside Houston was releasing more than double the amount of sulfur dioxide allowed by law. Sulfur dioxide is a respiratory irritant and one of only six pollutants whose levels are strictly monitored by federal law.

The EPA also accused Texas of allowing Shell to do 11 additional sulfur dioxide projects when the EPA's rules would have allowed only one. In 2007, the EPA said, Texas allowed Shell to increase benzene emissions by 18 percent "solely based on company's request."

At Exxon's Baytown facility, the EPA argued the plant was being allowed to release more than double the allowable volatile organic compounds, toxins that include benzene and butadiene. The EPA said the facility released 6,245 tons per year instead of the EPA limit of 3,098 tons per year.

Bill White, the Democratic candidate for governor and a former deputy energy secretary in the Clinton administration, blamed Perry.

"Because of Rick Perry's mismanagement of the state's environmental agency, our state is now losing our ability to make our own decisions about air quality and the economy," White said in a statement. "I guarantee you that as governor, I'll ensure Texas complies with the law and I'll bring the ability to regulate the refineries back to Texas where it belongs."

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Bill ChameidesDean of Duke's Nicholas School of the Environment
Posted: May 27, 2010 10:57 AM BIO Become a Fan Get Email Alerts Bloggers' Index

The Chemical Marketplace: Triclosan (*Huffington Post*)

Chemicals , Chlorinated Aromatic Hydrocarbon , Ciba , Consumers , Dioxin , Environmental Protection Agency , Federal Insecticide , Food And Drug Administration , Fungicide , Halocarbon , Halogenated Hydrocarbon , Health , Pollution , Toxic Substances Control Act , Triclosan , Waterways , Green News
Crossposted with www.thegreengrok.com

More than 80,000 chemicals are produced and used in United States. This is one of their stories.

I was reading my toothpaste tube the other day and noticed something I hadn't expected in the list of "active ingredients." In addition to the familar-sounding hexafluoride, I found triclosan. Doing a little more detective work, I discovered that same ingredient on the labels of a variety of personal care products including deodorants, soaps, shaving creams, and mouthwash. A little more snooping on the Internet revealed that triclosan is also added to cleaning products like dishwashing liquids, as well as toys, socks, and trash bags. Impressive but ...

What Is This Pervasive Stuff Called 'Triclosan'?
Triclosan's actual chemical name is 5-Chloro-2-(2,4-dichlorophenoxy)phenol, which makes it a chlorinated aromatic hydrocarbon. Another one of those halogenated hydrocarbons, like PCBs, DDT and Freons, that seem to have magical properties and often end up doing a whole lot of mischief.

According to Ciba -- a conglomerate owned by the Germany-based BASF that aims, its web site reads, to "produc[e] high-value effects for its customers' products" -- triclosan was developed in Ciba's labs 40 years ago. The product is sold by Ciba/BASF under the brand name Ciba Irgasan. Other companies now produce and sell it too. It is the active ingredient in Microban and BioFresh products. Triclosan is the generic name.

Why Is Triclosan in My Toothpaste and Shaving Cream?
The key to triclosan's presence in consumer products is its antibacterial properties; its antifungal and antiviral effects make it an attractive prospect too. There's no question that we're all increasingly concerned about the spread of disease -- staph infections in hospitals, salmonella from contaminated cooking surfaces, influenza from shaking hands. We are bombarded by advice to get clean, wash our hands and wipe down the counters -- to be as antiseptic as possible. So, one would ask, why not add an extra layer of safety through something like triclosan to as many things as we can think of?

Indeed, Ciba claims that for "more than 40 years ... [triclosan] has proven itself time and again to be a safe, reliable high-quality antimicrobial ingredient used in many well-known consumer, healthcare and professional products."

Do We Really Need It?
I am sure that triclosan is, as Ciba claims, a reliable antimicrobial (depending on its concentrations). But how useful is it really?

For example, some studies do suggest that triclosan added to toothpaste does a better job of eliminating bacteria from your mouth than triclosan-free toothpaste.
On the other hand, both a Food and Drug Administration panel from 2005 and a University of Michigan study from 2007 concluded that regular old soap was just as good at getting rid of the microbes as the souped-up antibacterial soaps.

And here's another thing or two:

While triclosan has some antiviral properties, studies (like this one) suggest it's not terribly effective.
Triclosan, a nonspecific biocide, kills microbes indiscriminately -- including microbes, like those in our gut, that are beneficial.
The use of antibacterials is a double-edged sword: the more they're used, the less effective they become, as the microbes they're designed to attack develop resistance. (Note: this doesn't happen with soap and water since the effective agent in that case is simply the washing away of microbes.)
That Stuff in Toothpaste and Antibacterial Soaps Is a Pesticide

And what about its safety?

Triclosan is a pesticide. It has been registered as such since 1969. And under the Federal Insecticide, Fungicide, and Rodenticide Act, the Environmental Protection Agency regulates its uses. The agency is currently in the midst of a reregistration of the chemical as a pesticide, and plans a comprehensive review of its health effects starting in 2013.

The use of triclosan in consumer products falls under regulation by the FDA.

The jury it still out on triclosan's effects on human health, but there are suggestions that they may not be good.

Studies show that triclosan is linked to bacterial resistance and impairment of thyroid function in animals.
And it's not just triclosan itself, but also the chemical's byproducts that potentially pose a danger. Mixing triclosan in tap water can lead to the production of the gas chloroform, a carcinogen and nervous system depressant.
Other triclosan breakdown products include dioxins. A study published last week in Environmental Science & Technology by Jeffery Buth of the University of Minnesota and colleagues found that increases in dioxins derived from triclosan in stream beds over the past 30 years correlate closely with the increase in triclosan use. Such findings indicate that, given declining levels of dioxin from other sources, triclosan use may become an important source of dioxins in the environment.
In the meantime, triclosan keeps showing up in strange and unexpected places. Studies [pdf] have found it in human breast milk, urine and blood.

Interestingly (and worrisomely?), a study of Swedish mothers even found triclosan in the blood and breast milk of women who did not use personal care products with triclosan -- the implication being that their exposure likely came from products that included but were not labeled with triclosan.

Triclosan's definitely in the water and sediments of our streams, lakes and estuaries too, which in turn could have gotten there by way of wastewater treatment plants where a small percent is known to pass through. (See here, here, and here.)

So What's To Be Done?

The FDA asserts it doesn't have enough information to change its recommendations for the time being, but, in light of recent questions, is performing a safety review that's due out next spring.

In the meantime each one of us is on our own where triclosan is concerned. Many decisions we make in life are about choosing between different levels of risk, and this is one more. Is the risk from the presence of microbes in your mouth or armpits or on your hands worth the risk of putting a pesticide on and in your body? If the answer is no, you'd better start paying closer attention to the active ingredients listed in the fine print of the labels of products you pile into your supermarket cart. I know I will.

Further Reading
For a full database of information on triclosan, go here and type "triclosan" into the search box at the top left of the page (then click "Go").
Triclosan [CAS 3380-34-5] - Supporting Information for Toxicological Evaluation by the National Toxicology Program - FDA and Department of Health and Human Services - ntp.niehs.nih.gov/ntp/htdocs/Chem_Background/ExSumPdf/triclosan_508.pdf
"Water Pollution Caused by Cosmetic Chemicals, Cleaning Supplies and Plastics: » Triclosan" - Environmental Working Group - www.ewg.org/node/21840

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May 27, 2010
Posted: May 27, 2010 11:17 AM

GOP's Calling Gulf Spill Obama's Katrina Bogus (*Huffington Post*)

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This one could have been mailed in. Sarah Palin predictably knocked President Obama for as she put it in garbled colloquialism failing to "dive in there" and solve the Gulf spill disaster. Louisiana Governor Bobby Jindal and a rash of GOP senators were slightly more grammatically intelligible but still pounced on Obama for being too cozy with BP and not pulling out all stops to staunch the spill. The GOP's political attack plan is crude and transparent. Compare the Gulf spill to Bush's Katrina bumble, liken Obama to Bush and heap the same blame on him.

It won't fly. Before Katrina hit, government tracking systems, weather satellites, and countless news reports warned that the hurricane potentially posed a grave threat to New Orleans and the Gulf. Bush administration officials well knew this. They also knew that the sea walls there were in terrible shape and could give way. When the storm hit, Bush hesitated, dithered, and minimized the immediate impact of the storm, and made no effort to counter the wild, sensational and thoroughly false reports of looting, rape and vandalism. The colossal loss of property, the thousands dead and injured, the horrendous displacement of residents were the direct result of government ineptitude. Five years later thousands remain uprooted, and whole neighborhoods remain gutted. New Orleans and the Gulf are still paying the high price for Bush's abysmal delay. After an international army of volunteers and donors sped aid and relief to the area, Bush eventually recovered and kicked relief efforts into high gear.

Obama's response to the Gulf spill stands in stark contrast. He sent cabinet secretaries, and an armada of homeland security, Environmental Protection Agency, FEMA and Coast Guard personnel, engineers, scientists, technicians and clean-up workers to the Gulf; more than 20,000 responders in all. There are multiple staging areas, and ships in the area involved in the clean-up. Nearly 2 million feet of containment boom, and a million gallons of chemical dispersant have been used to fight the spill. Obama has asked Congress for $130 million for clean-up operations. The White House has churned out reams of releases, statements, and reports to keep the public updated on the progress and problems in containing the spill.

Obama correctly points the blame finger at BP and oil executives for their duck and dodge of full responsibility for the spill, and their inability to successfully contain it. They deserve the blame. But as environmental disasters go, off shore drilling spills are rare. The industry's forty year safety record on drilling has been fairly good. But the BP mess shows that all it takes is one drill

disaster to cancel out the industry's record and paint the industry as a greedy, safety plagued, environmentally irresponsible menace.

The spill should be a wake-up call on the potential and real hazards of ultra deep water oil drilling, and the urgent need to devise new and better safety and equipment standards and controls. The Obama administration has been hands on in supervising BP's efforts to stop the spill. This provides it with terrible but needed teaching moment on the need for the government to ramp up oversight and monitoring of the industry. And beyond that for the Obama administration to rethink and reexamine the potentially devastating environmental hazards and drawbacks of expanded off shore drilling as well as its potential to dent America's energy dependent shackle.

Public opinion polls now show that more than half of Americans say they disapprove of Obama's handling of the disaster. An even bigger percentage says they have no confidence in the government's ability to prevent another spill. The public's heightened jitters over the spill are understandable given the nightmare environmental messes that the oil industry has at times made in the past. The public is also right to be deeply suspicious and outraged over the far too lax and cozy relationship between government regulatory agencies and the oil industry.

The Gulf spill, though, is not solely an environmental catastrophe to Palin and the GOP or even a matter to them of government officials in bed with an industry. If that was there real concern they'd point the same blame finger at themselves as they do at Obama for their sweetheart relation with the oil industry. According to the Sunlight Foundation, BP has dumped six million in campaign contributions to congresspersons in past years. Seven of the top ten recipients of BP contributions have been GOP senators and congress persons, and one of the principal recipients has been GOP Senate Minority Leader Mitch McConnell.

But the facts are irrelevant. The Gulf spill is simply too juicy a political opportunity for the GOP to pass up to ream President Obama for a disaster that he could not foresee, did not make, and has made a best effort to solve. What better way to drive the political nail in the box than to call the Gulf spill the politically loaded Obama's Katrina. It's a bogus call.

Earl Ofari Hutchinson is an author and political analyst. His new book is How Obama Governed: The Year of Crisis and Challenge (Middle Passage Press).

Follow Earl Ofari Hutchinson on Twitter: http://twitter.com/earlhutchinson

Obama Needs To Stop Deferring To Foreign Oil Giant BP And Start Calling The Shots (*Wonk Room*)

Written with Tom Kenworthy, Center for American Progress Senior Fellow.
The catastrophic explosion of the Deepwater Horizon exploratory rig off the coast of Louisiana one month ago cost eleven lives and now threatens the entire Gulf of Mexico with ecological devastation. BP, the foreign oil giant responsible for the disaster, has claimed it was

unforeseeable and inconceivable, despite an industry history of similar accidents and years of warnings.

There are obvious limits to how much control the federal government can exert over the frantic and so far hapless effort to stem the catastrophic oil eruption that threatens the entire Gulf of Mexico with ecological devastation. Interior Secretary Ken Salazar has recognized the sobering reality the government does not have the equipment or technical expertise to simply shove aside BP and its industry partners:

This administration has done everything we can possibly do to make sure that we push BP to stop the spill and to contain the impact. We have also been very clear that there are areas where BP and the private sector are the ones who must continue to lead the efforts with government oversight, such as the deployment of private sector technology 5,000 feet below the ocean's surface to kill the well.

But if government has little choice but to keep the perpetrator on the job at the immediate crime scene, it does have a choice when it comes to operations beyond the urgent task of quelling the erupting well. In addition to the efforts to stop the leaks, BP now controls claims processing, environmental contractors on land and sea, volunteer assistance, access to the disaster site, and data collection.

Federal and state governments in the gulf must take greater charge of containing the ecological impacts and coordinating the response, as the President has full authority to do. This requires a greater mobilization than exists today, and Washington needs to send the message that it is in full command of the disaster response with the following actions:

– One highly visible leader at the White House should lead the command and coordination at the cabinet level between the Department of Homeland Security, the Department of the Interior, the Department of Commerce, the Department of Energy, the Environmental Protection Agency, the Department of Justice, the White House Office of Energy and Climate Policy, the White House Office of Science and Technology, and the Department of Defense. Two excellent choices for this role would be Vice President Joe Biden or energy advisor Carol Browner. This leader should also work directly with the affected states' governors.

– The Federal Emergency Management Agency should be in charge of onshore coastal recovery and disaster response, assisted by the Army Corps of Engineers. The National Guard under the control of each state's governor should be fully deployed, with Army units if necessary. The EPA, NOAA, and U.S. Fish and Wildlife Service should exercise relevant oversight. And any environmental and disaster response contractors working for BP should instead work directly for the federal government.

– The U.S. Coast Guard should clearly be in charge of surface-water recovery and maritime disaster response. The Vessels of Opportunity and other maritime contractors now working for BP should be under contract with the federal government, including research vessels. The Coast Guard with the EPA, NOAA, and U.S. Fish and Wildlife Service oversight should manage dispersant use for cleanup.

– Claims for damages and lost revenues should be put under the authority of the U.S. Coast Guard National Pollution Funds Center. As the scope of this disaster far exceeds the NPFC's traditional resources, other federal, state, and local claims processing resources must be brought to bear, particularly from the Coast Guard's sister agency FEMA.

– EPA, the Justice Department, the Internal Revenue Service, and other law enforcement branches of the federal, state, and local government should be exercising subpoena authority if necessary to seize or monitor all ongoing communications and data collection.

– The EPA should immediately bar BP from new federal contracts — including drilling in federally controlled oil fields — because of its repeated environmental crimes.

– The EPA and the Centers for Disease Control and Prevention must begin a health monitoring program for the most at risk populations so there is a baseline from which to measure health impacts.

– Federal agencies, not BP, should handle spill response hotlines for volunteers, technology ideas, affected wildlife, and others. Full call records need to be logged with incident reports and technology ideas presented publicly on dynamic websites.

– The State Department should continue to reach out to other nations that have experience with disastrous oil spills to see if assistance and ideas are available. This should be a government-to-government effort, not one undertaken by private companies.

BP is required as the responsible party for this apocalyptic disaster to provide full and instant funding for the response by the federal, state, and local governments and their contractors. BP personnel and equipment being used for disaster response in the Gulf should be put under governmental control during the crisis.

BP's funding should come in the form of an escrow account that draws on BP's $100 billion in capital reserves, without limit. The federal government should require BP to use its first quarter 2010 profits — $5 billion – to establish the escrow account.

View the original, extended version of the column at the Center for American Progress.

RECYCLING

When recycling goes bad - 'Dumpsites in Disguise' (*GRIST*)

by Sue Sturgis
27 May 2010 7:17 AM

After coal is burned at power plants, leaving massive heaps of ash, not all of the waste ends up in landfills and impoundments like the one that failed catastrophically in east Tennessee in December 2008.

A growing share of the nation's coal ash is being reused and recycled, finding its way into building materials, publicly used land and even farmland growing food crops. And despite the presence of toxins like arsenic, chromium and lead found in coal ash, these reuses go largely unregulated by state and federal officials.

The latest report from the American Coal Ash Association, the industry group representing major coal ash producers, found that of the more than 136 million tons of coal ash produced in 2008, about 44 percent -- 60 million tons -- was reused. Some of the reuses for coal ash, such as recycling it into concrete, are not very controversial even among environmental advocates, since they're believed to lock in toxic contaminants.

But there are growing concerns about other reuses of coal ash. For example, the recent revelation that Chinese-manufactured drywall made with coal ash was releasing noxious chemicals inside people's homes spurred a CBS investigation that also found problems with U.S.-made drywall products. The discovery led the Consumer Product Safety Commission to call for a closer look at drywall products made with coal ash.

Another popular destination for coal ash that is raising concern is its use as a substitute for fill dirt in construction projects. Because this reuse can put coal ash directly in contact with groundwater, environmental and public health advocates fear serious contamination problems. Right now, the Environmental Protection Agency is mulling new rules for the use of coal ash, including whether it should strictly regulate ash used in fills or simply put forward guidelines and leave oversight up to the states.

As federal officials consider how to regulate reuse of coal ash, North Carolina's experience in overseeing structural fills provides a case study with valuable lessons for the entire country.

North Carolina: A case study in neglect?

North Carolina has long been a leader in promoting the use of coal ash as structural fill. Heavily dependent on coal, with 60 percent of its electricity generated by coal-fired plants, the state has a glut of ash to contend with -- and has been encouraging utilities to use it as fill for more than 20 years.

"It is encouraging to see the commitment being made to develop reuse applications for the coal ash as opposed to the continued use of county landfills," stated a 1989 letter from North Carolina's solid waste chief to ReUse Technology, now known as Full Circle Solutions. The Georgia-based firm is a wholly owned subsidiary of Charlotte-based Cogentrix, which in turn is a wholly owned subsidiary of The Goldman Sachs Group and operates a number of small coal-fired power plants in the eastern U.S.

The letter continued, "The Solid Waste Management Section has and will continue to support the reuse and recycling of waste materials when performed in a manner consistent with the environment."

But the use of coal ash as fill has not always been done in a manner "consistent with the environment." Even though North Carolina began overseeing coal ash fills in 1994 after groundwater contamination was found at one fill site, state records and independent research show that the rules -- which were cooperatively written by utilities and state regulators -- have failed to prevent coal ash fills from damaging the environment and threatening public health.

Facing South examined records from the state Division of Waste Management, which oversees the use of dry coal ash as fill, and the Division of Water Quality, which is responsible for fills that use wet coal ash from impoundments like the one that failed at the Tennessee Valley Authority's Kingston plant. We also considered the findings of a recent report from the Sierra Club's North Carolina chapter titled "Unlined Landfills? The Story of Coal Ash Waste in Our Backyard."

The public record shows that dry coal ash was used as a substitute for fill dirt at more than 70 locations across North Carolina from the late 1980s through 2009 (click here for a spreadsheet with details about the locations). Sites sitting on top of coal ash fills include airports, roads, industrial parks, shopping centers, office buildings, a municipal gym, a church, a science center at Duke University, a rifle range at a Marine base, and livestock pens at a commercial hog farm.

Unlike new surface impoundments where coal ash is dumped in North Carolina, which now must be lined under state law, liners are not mandated for even the largest fill sites. As a result, coal ash has contaminated groundwater or surface water in at least three structural fill sites across the state:

* At the Alamac Road site in Robeson County, N.C., about 45,000 tons of coal ash from small power plants owned by Cogentrix were used as structural fill on 12.8 acres of land. ReUse began placing ash at the site in 1992 without proper state authorization, and state tests of groundwater near the site found levels of contaminants exceeding state groundwater standards. In 1993, the North Carolina Division of Solid Waste Management issued a notice of violation, stating that tests showed "levels of arsenic, cadmium, chromium, lead, selenium, sulfate and total dissolved solids" exceeding safety standards -- and that some of the contaminated samples came from a monitoring site near a private residence thought to have a drinking water well.

In response, ReUse removed the coal ash from the site in 1995 with plans to use it elsewhere, including at an agricultural demonstration project testing the ability of coal ash to enhance crop yields -- an increasingly common way for coal ash to be reused, especially in the Southeast and Midwest.

The EPA's new proposals for coal ash regulation don't address the agricultural use of coal ash, but the agency and the U.S. Department of Agriculture are currently studying such uses and are scheduled to release a report of their findings in 2012.

* At the Swift Creek site in Nash County, N.C., ReUse placed coal ash from Cogentrix plants as fill on a property along Highway 301 beginning in 1994. Two years later, the company got special permission from the Division of Waste Management to also use ash from a facility burning a mix of coal and shredded tires, which contain arsenic and other toxic substances.

A 2004 letter from the state agency to ReUse, which by then had changed its named to Full Circle Solutions, reported that state tests of groundwater samples taken near the site found arsenic at almost three times the state standard for groundwater and lead at more than four times the standard. The letter stated, "The detection of contamination beyond the boundary of the fill shows that constituents from the [coal ash] are migrating."

* Though our own review of the division's files did not turn up any mention of violations at the location, Sierra Club found records showing that state environmental inspectors discovered high levels of arsenic, iron and selenium in wetlands at the Arthurs Creek coal ash fill site in Northampton County in 2009. Since 2004, the 21-acre site has been the dumping ground for ash from Kentucky-based energy giant E.ON's Roanoke Valley Energy plant near Weldon, N.C. There are plans to eventually build office buildings and a parking lot atop the fill.

The problem of groundwater contamination at structural fill sites across North Carolina may be even more widespread, because state law does not require groundwater monitoring at such sites -- or even require regular inspections. Most of the problems that have been found to date were discovered following complaints from nearby residents.

The areas of North Carolina contaminated by coal ash fills are notable for being poor and having large African-American, Latino and Native American populations.

While the statewide poverty rate is 14.6 percent, the poverty rates for the counties with known damage cases from coal ash fills are much higher -- 15.5 percent in Nash County, 26.6 percent in Northampton, and 30.4 percent in Robeson, according to Census Bureau data. Those counties' non-white populations are also greater than the state's 26.1 percent, at 39.4 percent in Nash, 59.4 percent in Northampton and 64.2 percent in Robeson.

Building a community on coal ash

Water contamination is not the only problem that's occurred at structural fill sites across North Carolina. At some of the sites, work occurred without the required notification of state regulators. At others, the companies improperly excavated the sites before placing the ash, increasing the risk that the coal ash would come in contact with groundwater. And in some instances, coal ash generators may have made ash available for use as fill that shouldn't have been allowed because it contained excessive levels of contaminants.

For example, state Division of Water Quality records show that Progress Energy distributed ash for fill use that exceeded limits for arsenic. "Based on your 2007 annual report, 14,025 tons of ash was distributed in December of 2007 in which the arsenic concentrations of all three samples exceeded the ceiling and monthly average concentration," according to a March 2009 letter from

the agency to the company. "Based on the 2008 annual report, five out of the 12 ash samples exceeded the ceiling concentration."

Progress Energy's permit allows coal ash with arsenic concentrations exceeding those limits to be distributed for fill as long as it will be overlain by impervious surfaces like pavement so rainwater can't penetrate and leach out contaminants. But the division was apparently not sure that was the case: It asked the company for a site plan showing where the ash was used, but no plan was included in the files.

Furthermore, some coal ash fill sites in North Carolina had problems with erosion that left the toxic waste exposed -- posing a direct threat to local residents.

Among those was the Fountain Industrial Park site near the city of Rocky Mount in Edgecombe County, N.C. In 1989, ReUse Technology in cooperation with the Edgecombe County Development Corp. began placing at the site ash from various Cogentrix plants as well as from the coal-fired cogeneration facility at the University of North Carolina at Chapel Hill.

Following Hurricane Floyd in 1999, the industrial park was turned into a trailer park for about 370 eastern North Carolina families displaced by the disaster. Many of the residents were from Princeville, a historic African-American community that was devastated by flooding from the storm. By that time the soil covering the fill had eroded, leaving ash exposed.

Employees of a nearby correctional facility, who for years had watched industrial-sized trucks dumping large quantities of unknown materials at the site, began asking if this was a good place to locate a trailer park. They brought their concerns to the attention of Saladin Muhammad with the group Black Workers for Justice, who was working with trailer park residents. He in turn discussed the situation with graduate students at the University of North Carolina's School of Public Health, and one of them -- Aaron Pulver -- investigated the situation for his master's paper.

Pulver's experience in trying to track down the history of the site shows how difficult it can be under the current regulatory environment for the public to get information about the use of coal ash for structural fill.

While the Edgecombe County development officer told Pulver a study of the land had been done prior to construction of the trailer park, she refused to release it to him -- as did the director of the N.C. Office of Temporary Housing.

When Pulver finally managed to get a copy of the report, he discovered there had actually been no thorough testing of the site for possible health impacts before the placement of the trailers. His adviser, UNC epidemiology professor Dr. Steve Wing, raised concerns about inhalation of the coal ash dust and children ingesting it while playing in the dirt.

In response to mounting worries about the site's safety, epidemiologists with the state health department collected samples from the trailer park for testing, comparing the results to EPA's standards for potential health effects. One of the samples exceeded those standards for two

contaminants, with arsenic at 25 millograms per kilogram compared to a recommended level of 22, and chromium at 31 mg/kg compared to the standard of 30.

However, a press release put out by the N.C. Department of Health and Human Services -- under the headline "SOIL TESTS FIND NO PROBLEMS AT FOUNTAIN TRAILER PARK" -- said only that the soil samples "showed no significant risk" for the residents. It did not mention the elevated arsenic and chromium levels.

'We've been unable to bring attention to this'

The problems that have occurred at coal ash structural fill sites across North Carolina highlight the difficulty states face in overseeing ash placement programs in the absence of federal regulations.

Under North Carolina's rules, companies placing dry coal ash as fill are supposed to record its presence on the property deed -- a provision fought by Duke Energy, which along with Progress Energy is one of the state's two big investor-owned utilities and a major producer of coal ash.

However, the Sierra Club found that only 56 percent of the closed structural fill sites that held 1,000 cubic yards or more of coal ash had complied with the deed-recording requirement.

State officials aren't required to do their own tests of coal ash fill to see if it has potentially dangerous levels of arsenic of other contaminants -- that's left up to the companies, and there's no rule to check the accuracy of what the companies report. No advance permits are required for fills, even for the largest sites. And while the state can comment on a company's coal ash fill plans, it does not have the power to deny them.

Following the Kingston disaster in Tennessee in 2008, state Rep. Pricey Harrison (D-Guilford) tried to change the way coal ash is regulated in North Carolina, including its use in structural fills. In 2009, she introduced a bill that would have created a permitting system for coal ash fills -- but the final version of the legislation that passed the General Assembly and was signed into law by Gov. Beverly Perdue (D) had the structural fill provision stripped out.

Instead, the measure simply subjected the state's massive coal ash impoundments to dam safety rules, an approach aimed at preventing catastrophes like Kingston but that does nothing to protect against potentially more insidious environmental contamination from ash fills.

But even that basic safeguard was difficult to win at the state capitol, with the politically powerful utility companies and electric cooperatives working against it. "They fought every aspect of the bill tooth and nail," Harrison said. "They lobbied hard against even a hearing."

This week Harrison introduced another bill to better regulate structural fill sites in North Carolina. And as co-chair of the state Environmental Review Commission and House Environment Committee, she is also planning on holding hearings on coal ash next month.

Meanwhile, spurred by the Kingston coal ash disaster in Tennessee, North Carolina regulators have stepped up their inspections of structural fill sites. In 2009, they visited 48 sites -- and found violations at 28 of them, ranging from water contamination to a lack of cover that could stop coal ash from escaping fill sites.

But the regulators themselves acknowledge that more must be done.

"We've been unable to bring the attention to this that we feel it needs," said Paul Crissman, chief of the Division of Waste Management's Solid Waste Section, which oversees dry coal ash fills.

Since the recession-triggered state budget crisis began in 2008, Crissman's staff has declined from 54 to 49 people, while the workload has increased. He does not expect that situation to change any time soon, with state lawmakers facing a $1 billion budget gap.

"We've got more work to do in a day than workers to put at it," Crissman added.

While North Carolina's regulatory approach to coal ash fill has proven inadequate for ensuring against environmental damages, the administration of Gov. Perdue does not support strict federal regulation of coal ash as hazardous waste. In fact, her departments of Transportation and Commerce are both on record opposing that regulatory approach. The state's Utility Commission and the commission's Public Staff also oppose strict regulation, citing cost concerns.

What next from Washington?

The lack of strong state rules for using coal ash as structural fill in places like North Carolina has caused community health and environmental advocates to rest their hopes for protective standards on Washington.

The EPA's much-anticipated new proposals for regulating coal ash released earlier this month allow for the continued recycling and reuse of coal ash. However, they draw a distinction between turning the waste into manufactured products, which would not be regulated under the proposals, and the reuse of coal ash in large fills, which as the EPA notes pose "an array of environmental issues" and would be regulated as a type of land disposal.

How the EPA will address the issue won't become clear until after the comment period for the proposed rules end and final regulations are announced. The agency has not announced any time line for that.

In the meantime, patchwork and scatter-shot state regulations like those in North Carolina continue to carry the day -- a situation that environmental advocates say amounts to allowing utilities to push their ash waste problems onto the public in dangerous ways.

"Because this 'reuse' is subject to little or no regulation in many states," contend the watchdog groups Earthjustice and the Environmental Integrity Project, "some structural fills may be little more than dumpsites in disguise."