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**ADMINISTRATOR JACKSON**

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**BP Continues to Use Surface Dispersants in Gulf Despite EPA Directive (*New York Times*)**

BP PLC has applied 272,000 gallons of dispersants to the surface of the Gulf of Mexico in the four weeks since U.S. EPA directed the company to stop using the chemicals, except "in rare cases" when other approaches to fighting the ongoing oil leak proved unworkable, according to government records.

The oil giant's dispersant strategy has come under scrutiny from scientists who warn that adding unprecedented volumes of the chemicals to the Gulf environment could pose unknown risks to human and marine health. But the surface use of dispersants, in some cases spread aerially by planes, stirs a specific worker-protection concern for National Institute for Occupational Safety and Health (NIOSH) Director John Howard.

"From a health and safety perspective, I'm not a fan of dispersants" sprayed from the air, Howard told Greenwire. "Unless you make sure you don't have workers underneath the spray. That would be great."

Controversy over BP's compliance with the May 26 directive (pdf) issued by EPA and the Coast Guard on dispersant use flared anew this week when Richard Denison, a senior scientist at the Environmental Defense Fund, released calculations that showed the oil giant had cut its average daily dispersant use by 68 percent relative to the previous daily maximum levels. EPA had set a 75 percent reduction as the "overall goal" for the company.

A separate portion of the EPA directive, however, told BP to "eliminate the surface application of dispersants." The company was required to file a written request to the Coast Guard seeking permission to use surface dispersants "[i]n rare cases when there may have to be an exemption," citing the particular weather or mechanical factors that were forcing the use of chemicals to break up oil, as opposed to skimming or burning.

The Joint Incident Command in New Orleans did not respond to several requests for a copy of the written justification that BP is required to provide before using surface dispersants. A request that BP release the document was not answered by publication time.

Wilma Subra, a Louisiana chemist who has assisted local environmental and public-health groups since the Gulf spill began, said she and her partners "were getting lots of reports from workers that they were being sprayed [by dispersant] and getting assurances by a bunch of high-up national officials that they were taking tons of precautions, that no one was being sprayed."

Symptoms experienced by the workers included headaches and nausea as well as skin, eye and respiratory irritation, according to Subra. Despite the government's assurances, she added, "we continue to get calls ... [workers] are very reluctant to seek medical care because they are afraid to lose their jobs."

As of Tuesday, daily reports from the JIC and EPA show that BP had applied 272,000 gallons of surface dispersant since EPA's May 26 directive, compared with 342,000 gallons of sub-surface dispersant.

EPA spokeswoman Adora Andy released a statement yesterday that affirmed EPA's ability to secure a reduction in overall dispersant use since the directive was issued to BP. "On the evening of May 23, Administrator [Lisa] Jackson and Coast Guard Rear Admiral [Mary] Landry sat down with BP and ordered them to ramp down dispersant use -- with an overall goal of 75% from its peak usage of 70,000 gallons on May 23," Andy said.

"The next day, May 24, dispersant use dropped more than 50%. Since Administrator Jackson and Admiral Landry met with BP on May 23 to demand a reduction, dispersant use is down 68% from its peak," Andy said in the statement.

Andy's statement also addressed the continuing use of surface dispersant, noting that the Coast Guard "has the authority to grant waivers for the use of more dispersant based on changing conditions at sea."

The ingredients in BP's Corexit 9500 dispersant, now the primary chemical product used to break up the oil into smaller droplets, include the common solvent propylene glycol, light petroleum distillates and the detergent dioctyl sodium sulfosuccinate (Greenwire, June 9). Material safety data sheets released by Corexit's manufacturer identify the three substances as potentially hazardous, advising users to avoid getting the dispersant "in eyes, on skin, on clothing."

The Occupational Safety and Health Administration (OSHA), which enforces worker-safety standards onshore and near shore in the Gulf, continues to affirm that its tests show no risk of unsafe chemical exposures among responders to the spill.

Jordan Barab, deputy assistant secretary at OSHA, told reporters yesterday that his agency is monitoring "on the beaches, in the swamps, on the boats, everywhere that workers are. ... [W]e have found no exposure levels to any chemicals that are of any concern."

## EDITORIAL / OP-ED / COMMENTARY / LETTERS

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### EPA’s action on ethanol would harm all Americans (*The Hill*)

By Charles T. Drevna, President of the National Petrochemical & Refiners Association - 06/24/10 06:55 PM ET

If you own a car, boat, or gasoline-powered equipment such as a lawnmower or a chainsaw, you should be worried about a well-funded advertising and public relations campaign now being waged by ethanol producers to rush through hasty Environmental Protection Agency (EPA) approval for higher levels of ethanol in the gasoline you use.
If you own a car, boat, or gasoline-powered equipment such as a lawnmower or a chainsaw, you should be worried about a well-funded advertising and public relations campaign now being waged by ethanol producers to rush through hasty Environmental Protection Agency (EPA) approval for higher levels of ethanol in the gasoline you use.
Bob Dinneen, head of the trade association that promotes ethanol, lays out the argument in favor of having the EPA raise the amount of ethanol in gasoline from the current 10 percent to 15 percent in his opinion piece ("EPA procrastinates on declaring independence from imported oil," June 23).

Not surprisingly, Mr. Dinneen neglects to mention that numerous problems with higher ethanol blends have prompted widespread opposition from a broad range of groups, including those representing the environmental and public health communities.
The opponents include the American Lung Association, Friends of the Earth, the Natural Resources Defense Council, the Sierra Club, the California Air Resources Board, the Delaware Department of Natural Resources and Environmental Control, and the New Jersey Department of Environmental Protection.
These and other groups believe EPA is moving too fast on making a decision regarding an increase in the amount of ethanol mixed with gasoline before the completion of adequate testing that will take several years and cost millions of dollars.

Testing will need to evaluate existing data and engineering judgments suggesting a 15 percent ethanol blend (known as E15) may: lead to a significant increase in emissions of environmental pollutants from some engines; damage car and non-road engines; and pose a safety hazard to people operating gasoline-powered equipment.

Consumers whose vehicles and equipment was ruined by E15 — or who suffered serious injury or worse as the result of engine malfunctions — would have the right to file lawsuits seeking monetary damages.

This leaves the manufacturers of cars, trucks, boats, gasoline-powered equipment, and gasoline potentially liable for huge amounts of damages resulting from E15 use.

If Mr. Dinneen and the ethanol industry are so certain E15 would not cause environmental, personal injury and engine problems, the industry should step forward to assume legal liability to pay for any such harm caused by E15. The fact that the industry is unwilling to do this shows that its claims about E15 are based more on rhetoric than reality.

Science — not speed — should be EPA's guiding principle regarding ethanol levels in gasoline. It's important that EPA make its decision based on accurate and complete scientific testing, rather than lobbying and political arguments by those who stand to benefit financially by big increases in ethanol consumption.

*Charles T. Drevna, President of the National Petrochemical & Refiners Association, Washington*

**Ethanol damages cars, pollutes environment**

Bob Dinneen's June 22 op-ed ("EPA procrastinates on declaring independence from imported oil") chastises the EPA for choosing to fully study ethanol's potential impacts on cars before allowing higher levels to be blended into gasoline. But the oil gushing uncontrollably into the Gulf of Mexico shows what can happen when we blindly follow an industry's overly-optimistic self-assessment, rather than doing careful research.

The ethanol industry and the Department of Energy have not completed adequate, scientifically and statistically sound testing on car engines to show that ethanol blends of 15 percent, the higher ceiling pushed by the industry, will not cause damage. In fact, even at today's 10 percent ceiling, ethanol is harming engines: Last year, Lexus recalled more than 200,000 vehicles for damage from ethanol. Studies have also found that increasing the ethanol percentage in conventional gasoline leads to more air pollution and global warming emissions.

On top of these safety and environmental concerns, ethanol, just like the oil it's supposed to replace, is an expensive drain on taxpayer wallets. Mr. Dinneen claims in his op-ed that the ethanol industry contributes $15.9 billion in federal, state, and local taxes to the economy each year, but conveniently omits the fact that at the federal level alone the industry costs taxpayers $11 billion each year. More than $5 billion of this pot ends up in the coffers of Big Oil.

Of course this isn't the only connection between Big Oil and ethanol. Ethanol production requires oil: Massive quantities are used in fertilizers for growing corn, to run ethanol factories, and to transport ethanol.

And water pollution from ethanol production was fueling an environmental crisis in the Gulf of Mexico even before the oil spill, creating a Dead Zone the size of Massachusetts where no marine life can survive.

Ethanol is damaging cars, polluting our environment, exacerbating our oil dependence — and certainly not providing a good return on taxpayers' investment. More realistic, but still optimistic, job impact studies of the ethanol industry result in numbers that are one-seventh of the ethanol lobby's.
The outcry by the ethanol lobby to increase the blend rate in gasoline is simply another attempt to pad corporate profits, not a genuine call for freedom from oil. The EPA is right to be hesitant to approve any increase in ethanol levels in gasoline, and should be given time to complete thorough testing, without bullying from expensive lobbyists.

*Kate McMahon, Energy Policy Campaigner for Friends of the Earth, Washington*

June 24, 2010

**Editorial: Delaying E15 ruling is limiting ethanol industry (*Sioux Falls Argus Leader*)**

Editorial Board
Argus Leader
From our vantage point in South Dakota, it's hard to understand why the Environmental Protection Agency is delaying a decision about ethanol blends yet again.

In many ways, waiting puts some plans for the growing industry - one that's key to South Dakota's future - on hold.

It's the EPA's job to ensure that the Clean Air Act standards are met, but it also feels as though officials at the agency are dragging their feet.

Ethanol producers have talked about making higher ethanol blends for years, and in March 2009, industry trade group Growth Energy formally requested a waiver allowing a 15 percent blend to be used by all vehicles.

The EPA tested two newer-model vehicles by Dec. 1, the deadline for its response to the request.

The conclusion? Wait until June.

But the agency's letter explaining its decision held out hope: "We fully expect the testing to support the use of E15 and even higher blends in all passenger vehicles on America's roads today."

Now it's June, and we're told to wait until November.

The EPA's explanation is that tests on newer vehicles are incomplete so testing now will be conducted on older models.

However, the repeated delay smacks of typical governmental procrastination and leaves a confidence gap for the industry. Should it move forward with plans to boost ethanol blends?

The EPA needs to restore faith that it will, in fact, be done testing by this new deadline and finally produce a decision one way or another. The future of the ethanol industry deserves that much.

June 25, 2010

**State needs 'new blood' in elected positions (*Statesman Journal)***

Before you people vote for your next governor, know the facts.
The state of Oregon is broke and the way the weather is, you're going to have a short supply of food. It's going to be the year of the green tomatoes. Hay could be in short supply and vegetables will also be in demand.
We spend more time worrying about the wolves and the trees. You better put them aside and worry about how you're going to eat.
People in Salem and Washington, D.C., don't have a clue what's happening here in Oregon. We have too many rules and regulations, now more taxes. We need employment in Oregon, not taxes and regulations.
We need to clean out the forest to stop fires, as these are our resources. We need to get EPA out of here — they haven't a clue — they only know what they heard or read in someone's book.
Get the Americans back to work, not collecting unemployment. Vote the bums out and put in new blood. Those who have been where we're all going: unemployed.
— Loyd Fery, Stayton

**AIR**

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**Ranchers decry EPA gas oversight (*Abilene Reporter-News*)**

Staff Reports
Thursday, June 24, 2010
Jerry Lackey
Special to the Reporter-News
The U.S. Senate has given the Environmental Protection Agency approval to regulate carbon dioxide and other greenhouse gases by voting down a resolution that would have prevented the agency takeover, and ranchers are bracing for an increase in operating costs as a result.
“If the federal government wants to regulate greenhouse gases, that debate should happen in Congress — where agriculture has representation — not through a backdoor approach,” said Dave Scott, rancher and president of Fort Worth-based Texas and Southwestern Cattle Raisers Association.
The resolution to prevent the EPA from moving forward on its greenhouse gas regulatory takeover was filed by U.S. Sen. Lisa Murkowski (R-Alaska) after the EPA released an endangerment finding giving themselves the authority to regulate GHGs. The Senate vote was 47-53.

The cattle raisers and more than 100 other agricultural organizations sent a letter to Murkowski in support of her resolution.

The letter states that “the EPA’s findings put the agricultural economy at grave risk based on allegations of a weak, indirect link to public health and welfare despite the lack of any environmental benefit.”

By voting down Murkowski's resolution of disapproval, the Senate has allowed the EPA to unilaterally regulate greenhouse gas emissions under the Clean Air Act, and not wait for the complex issue of climate change to be handled through the proper channels of thoughtful congressional debate, said Steve Foglesong, president of National Cattlemen's Beef Association.

"We'll see a significant negative economic impact not only on agriculture, but on the entire USA economy," Foglesong said. "Title V operating permits alone would cost farmers over $866 million in agriculture operations. These increased costs will be a direct result of greenhouse gas regulations on the energy and other economic sectors."

"By driving the cost of energy higher, it will also increase the cost of growing food and fiber not only for Texas, but our nation," said Texas Farm Bureau President Kenneth Dierschke of San Angelo.

The Waco-based Texas Farm Bureau, the state's largest farm organization with more than 500,000 members, opposes any greenhouse gas legislation until other countries meet or exceed U.S. requirements, Dierschke said.

"Methane emissions from all livestock production accounted for only 2.6 percent of all U.S. greenhouse gas emissions," Foglesong said. "Nitrous oxide emissions from total manure management were only 0.2 percent of all emissions."

**EPA pollutant testing at Kansas City federal complex shows no concerns (*Associated Press*)**

**Story also appeared: *Columbia Missourian***

Thursday, June 24, 2010 | 5:38 p.m. CDT
BY The Associated Press
KANSAS CITY — The Environmental Protection Agency announced a second round of air tests at the Bannister Federal Complex in Kansas City showed no health concerns.

The EPA's regional office in Kansas City, Kan., said Thursday that indoor air tests for several forms of PCBs, toxic organic pollutants, at two buildings raised no health concerns. Earlier testing for PCBs also showed no problems.

PCBs have been banned for years and have been linked to cancer.

Also this week, the National Institute for Occupational Safety and Health said initial results of a health evaluation of employees at the complex would be ready in late August at the earliest. Results had been expected in June.

The 310-acre complex has about 5,000 employees, has housed various federal facilities and has been the subject of several environmental inquiries.

**Texas Commission on Environmental Quality to consider Barnett Shale in emissions plan, official says (*Fort Worth Star-Telegram*)**

Texas
June 25, 2010 Friday
SECTION: B
Texas Commission on Environmental Quality to consider Barnett Shale in emissions plan, official says
By BILL HANNA; billhanna@star-telegram.com
ARLINGTON -- State environmental regulators "absolutely" will consider Barnett Shale emissions as part of a new plan to bring North Texas into compliance with federal ozone standards, an official with the Texas Commission on Environmental Quality said Thursday night.

Susana Hildebrand, the agency's chief engineer, said "everything is on the table" to bring the nine-county region into compliance with the 1997 EPA ozone standard of 85 parts per billion.

"We are particularly concerned about those emissions in Tarrant County," Hildebrand said. "I'm telling you, we are looking at those monitors. Our plan will look at those sites."

But most of the audience in the packed Arlington City Council chambers seemed skeptical.

Calvin Tillman, the mayor of the Denton County town of Dish, which has been a focal point in the testing of Barnett Shale emissions, said the agency is ignoring the natural gas industry as an ozone source.

"Are you here to protect the citizens, the people who came out here today, or are you here to protect large corporations?" Tillman asked. "Because frankly, I don't know whose side you're on."

Hildebrand responded that vapor recovery systems will be considered as part of the plan.

Industry praise

One of the few speakers not critical of the agency was Ed Ireland, executive director of the Barnett Shale Energy Education Council, an industry group. He praised TCEQ for installing air-monitoring systems and encouraged the agency to install more.

He said the air-monitoring sites in Dish and other locations have shown that the air near gas drilling sites is safe.

The EPA is in the process of reclassifying the Dallas-Fort Worth noncompliance area

from moderate to serious. That will officially happen by Dec. 15.

The area's eight-hour ozone average for 2007, 2008 and 2009 was 86 parts per billion, placing it outside the 1997 standard.

The TCEQ will have a year to create a plan once the EPA reclassifies the area, and it will go into effect Dec. 15, 2013.

The EPA is also expected to rule by the end of August on the new standard, which will be between 60 and 70 parts per billion.

Even as the new standard is announced, the 1997 rules and deadlines will still apply, the EPA said.

Anthony Spangler, a spokesman for state Sen. Wendy Davis, D-Fort Worth, read a statement from Davis urging that selective catalytic reduction systems similar to one that will be installed on the Lafarge North American cement kiln in Illinois be used on Midlothian cement kilns.

According to Davis, the systems can reduce nitrogen oxides by 80 to 90 percent. Davis also urged the state agency to consider transporting salt water from oil and gas drilling operations through pipelines rather than diesel trucks.

BILL HANNA, 817-390-7698

**PSC will review need for Clark Co. coal plant (*Lexington Herald-Leader*)**

East Ky. Power project probably dies If it rescinds approval for plan

The state Public Service Commission announced Thursday it will review whether East Kentucky Power Cooperative needs to build a controversial coal-fired power plant in Clark County.

The project has become a lightning rod for environmentalists who say it's too costly and will produce too much pollution.

The PSC will examine whether the proposal is the least-costly option for meeting customer demand and what effect construction of the Smith plant would have on the co-op's overall finances, which have deteriorated in recent years.

The PSC gave its blessing for the plant in 2005, when East Kentucky Power planned to bring a 17th co-op, Warren Rural Electric, into its fold. However, Warren later pulled out of the deal. The PSC then approved a revised version of the power plant plan that included fewer natural-gas-powered turbines. The turbines are used on days with extreme temperatures to help meet extra demand.

There is no time limit for how long the review by the PSC might last. A public hearing is expected this year.

Should the PSC withdraw its approval of the plan, it essentially would kill the idea because the utility could not recover the project's costs through rate increases.

The PSC's review is another setback this year for the plant. In April, the co-op itself asked to delay PSC approval needed for up to $900 million in financing for the plant. While East Kentucky Power would have obtained the money from banks and other lenders, such action requires the approval of the three-person commission, which regulates utilities in Kentucky.

The cooperative's leadership said at the time that it thought financial prudence required it to reassess its immediate need for financing. The cooperative stated it would refile the application "pending this reassessment."

Spokesman Nick Comer said Thursday that the co-op is continuing to reassess whether it needs the plant.

"East Kentucky has been in the process of developing or plans to develop a lot of the information that's asked for in the order," Comer said.

Asked what it might do, Comer said, "As our CEO has said, all options are on the table."

Financial issues

Finances have been a major issue in recent years for the co-op, which produces power for 16 member co-ops that serve more than 500,000 homes, farms and businesses throughout Central and Eastern Kentucky. The co-op lost money during 2004 and 2005 and narrowly had a profit in 2006. It since has applied for and received approval for two rate increases, and this year it requested another increase.

The cost of the plant is among the factors most often pointed to by its opponents. Nationally, financing of coal-fired plants has become a major issue. In the past, cooperatives nationwide had access to cheap money from the federal government, but concern about the carbon footprint of coal-produced power has helped choke off that funding.

Environmentalists have assailed the plant with studies detailing the pollution it would emit. The U.S. Environmental Protection Agency also has criticized the plans recently and objected to methods used by the state Division for Air Quality in granting the project a permit.

The PSC's moves were praised by Lauren McGrath of the Sierra Club, which has opposed the plant. The opposition also includes the Kentucky Environmental Foundation and Kentuckians for the Commonwealth.

"Our major concern at this point is (the co-op is) not taking it seriously enough to protect ratepayers and make investments in cleaner energy ..." McGrath said. "Ultimately, we want to see EKPC be the one to say, 'We're going to pull the plug on Smith and invest in energy efficiency and clean energy.' "

The PSC review of the need for the plant will not focus on the environmental questions raised; that is outside its jurisdiction.

However, the opponents might bring up those concerns in the context of how federal environmental regulation could affect costs and financing.

Reach Scott Sloan at (859) 231-1447 or 1-800-950-6397, Ext. 1447.

**Scientists question EPA estimates of greenhouse gas emissions (*R&D Magazine*)**

Posted In: Environment
By EurekAlert
Thursday, June 24, 2010
MADISON, WI, June, 2010 – The approach the U.S. Environmental Protection Agency (EPA) uses to estimate greenhouse gas emissions from agricultural anaerobic lagoons that treat manure contains errors and may underestimate methane emissions by up to 65%, according to scientists from the University of Missouri.

Anaerobic lagoons treat manure on some animal feeding operations prior to application to crops as a fertilizer. Methane, one byproduct of the treatment process, has 21 times the warming potential of carbon dioxide.

A 2007 U.S. Supreme Court ruling mandated the EPA consider greenhouse gases a pollutant. This led the EPA in 2009 to approve greenhouse gas reporting requirements for any facility that annually releases 25,000 metric tons or more of carbon dioxide equivalents to the atmosphere. The objective of these reporting requirements is to quantify emissions as a first step towards developing strategies to reduce greenhouse gas losses.

Direct measurements of methane emissions from anaerobic lagoons are technically difficult and very expensive, so the EPA adopted a calculation method to estimate methane emissions from anaerobic digesters. They relied on the method used by the International Panel on Climate Change (IPCC) in their 2006 worldwide estimate of greenhouse inventories.

An interdisciplinary team of scientists from the University of Missouri evaluated the EPA and IPCC approach to estimate greenhouse emissions from anaerobic lagoons. They reported the results of their analysis in the May-June 2010 issue of Journal of Environmental Quality, published by the American Society of Agronomy, Crop Science Society of America, and Soil Science Society of America.

The team documented errors in the approach, which the EPA and IPCC adapted from a method used to estimate methane production from anaerobic digesters. A literature review of the performance of uncovered anaerobic lagoons indicated that there are important difference between anaerobic lagoons and anaerobic digesters that were not accounted for in the EPA and IPCC approach. They found that uncovered anaerobic lagoons were more efficient at converting waste to methane than predicted using literature based on digesters. The team also found mistakes the equations that the EPA and IPCC used.

John Lory, a member of the team that reviewed the EPA rule, said "Our calculated estimates of methane emissions from anaerobic lagoons indicated that the EPA approach could substantially underestimate methane emissions from these facilities, perhaps by as much as 65%."

The report also suggested that some other operations currently excluded under the rules may in fact produce emissions beyond the threshold. Manure storage facilities are the only on-farm source required to report under the current rules. The most likely manure storage facilities to meet the current reporting requirements are anaerobic lagoons. EPA projected that operations with more than 3,200 dairy cows or 34,100 pigs would likely meet the reporting requirement.

Lory emphasized that there have been few direct measurements of methane emissions from anaerobic lagoons and the few measurements that exist indicate that both the University of Missouri calculated estimate and the EPA calculated estimate of methane loss from these facilities may be high.

Though the research team outlined a different approach to measuring methane emissions, but pointed out that understanding of anaerobic lagoons is still evolving. "More research is needed before we can provide accurate estimates of methane losses from anaerobic lagoons," added Lory.

**Clean air testing expands to BA (*Tulsa World)***

June 25, 2010

Air Hygiene Inc. hopes to hire up to 15 employees.

Tulsa's Air Hygiene Inc. sees clear skies ahead for the clean air business.

The 13-year-old air emissions testing firm is expanding into a headquarters in Broken Arrow and hopes to hire up to 15 employees during the next 18 to 24 months.

The firm does emissions tests primarily for utility firms that are building power generation plants. It also has small offices in Shreveport, La., and Philadelphia.

"The testing is getting tougher and more specific every year," said Air Hygiene President Quinn Bierman, who runs the company with his brother Swanson. "I definitely see this as a growth industry."

The company also builds, outfits and services its testing equipment, including 20 mobile testing labs contained in box trucks.

Bierman said the company has done work for major players in the power industry, such as General Electric; American Electric Power, parent company of Tulsa-based Public Service Company of Oklahoma; and Duke Energy.

The emissions testing industry has been fueled in recent years by the increasing price of fuel and tougher standards by the Environmental Protection Agency.

Bierman said despite regulatory rules, most power production companies are interested in emissions testing simply to ensure efficiency.

"When a company burns fuel more efficiently, they use less fuel overall, saving money," he said. "They also run cleaner and that is better for the environment as a whole."

He said he sees strong growth potential because

there are few companies in the industry and the drive for more efficiency and fewer pollutants is accelerating.

The facility in Broken Arrow, a $2.5 million project, will give Air Hygiene and its current employees about 32,000 square feet of space. The building is located near the Broken Arrow Expressway and West Albany Street, near other firms, such as Skycam Inc. and Oseco Inc.

The facility will also include a new testing and training lab that will have a simulated "stack" to imitate those at power plants. Bierman said that gives the company the opportunity to train employees from outside companies, as well as better prepare their own workers.

"One of the hardest parts of the job is actually just working with the stacks — sometimes 200, 300 or 400 feet up," Bierman said.

The facility should be finished in about a year.

Air Hygiene Inc.

06/25/2010

**EPA Seeks To Limit Burden From Likely Disapproval Of Texas Air Program (*Inside EPA*)**

Even before EPA takes the widely expected step of disapproving a controversial Texas air permit program, the agency is already seeking to provide industry with different avenues to revise their permits to address alleged flaws while limiting the burden the agency would face were it to take over Texas' program.
"EPA is hiring . . . both lawyers and engineers to work on this air permitting stuff, but I think they want to take over the Texas program like they want a hole in their foot," says one environmentalist.

The activist says EPA and the Texas Commission on Environmental Quality (TCEQ) are focusing on providing "a bunch of different avenues for industry to come in and fix their permits," including a pending proposal requiring already-permitted facilities to conduct voluntary audits -- a move that would put the burden on permitted facilities to identify flaws and remedy them -- though EPA is not ruling out the possibility of enforcement actions based on the audits.

"We believe the Audit Program has the potential to result in beneficial reductions in the levels of air pollutants being emitted by flexible permit holders as well as providing industry a regulatory framework for continuing operations until independently federally-enforceable permitting authorizations can be obtained," according to a notice published in the *Federal Register* June 17. *Relevant documents are available on InsideEPA.com.*

The agency is also intervening in select cases to correct flaws in pending Title V operating permit cases, setting a precedent for new permits the state may seek to issue in the future. In a decision announced May 25, EPA Region VI Administrator Al Armendariz said the agency will bar such a flexible operating permit for the Flint Hills East refinery in Corpus Christi, TX, because the permit violates the Clean Air Act. Instead, EPA will write the refinery permit itself, and will do so for dozens of other facilities as well if Texas does not overhaul its permitting program.

And, the source says, the agency is also working with TCEQ to develop a process for industry to exchange flexible permits for ones with strict emissions limits.

EPA faces a June 30 deadline to finalize its proposal to disapprove Texas' "flexible" permit program, which the state submitted as an amendment to its state implementation plan (SIP) for meeting federal air standards. The program allows facilities to adopt plant-wide pollution caps and then make modifications without triggering federal new source review (NSR) requirements, which can result in mandates for strict new emissions controls.

TCEQ and industry representatives say the flexible permit program is environmentally beneficial and fulfills all federal requirements, but EPA and environmentalists say the program allows large emitters to avoid NSR requirements. A final rejection by EPA would pose significant potential liability concerns because it would raise questions over the validity of a slew of flexible permits that Texas has issued to petrochemical and other major industrial facilities in the last several years.

The date for finalizing EPA's decision is mandated under a consent decree in the case *BCCA Appeal Group, et al. v. EPA* in the U.S. District Court for the Northern District of Texas, and sources expect EPA to confirm its proposal and throw out the permit program. The suit was brought by several state industry petitioners seeking to force EPA's action on the SIP submissions, and also sets a timeline for approving or rejecting several other SIP submissions.

**On the eve of EPA's decision on whether Texas' flexible air permit program is lawful,** Texas officials have proposed changes to the program in a bid to stave off an EPA rejection, but EPA and others say the proposal is unlikely to impact the agency's June 30 decision.

"Last week's action by TCEQ will take many months for the state to complete and send to EPA for consideration. It may or may not establish a new flexible permit program in Texas at a future date," an EPA spokeswoman says in prepared statement.

The statement echoes EPA's recent action disapproving another Texas program. Earlier this year, EPA disapproved Texas' so-called qualified facilities program -- which issues NSR exemptions to facilities that the state says fall below the threshold for triggering requirements -- despite last-minute state efforts to strengthen the program. EPA finalized its disapproval of that program in a notice published in the April 14 *Federal Register*.

In its June 16 proposal to amend its flexible permit program, TCEQ says the proposal is intended "to address the EPA's concerns, so that . . . the flexible permit program can continue."

The rulemaking would add various clarifying provisions to the current rule, including a specific reference to federal standards for pollution control, such as best available control technology; a requirement for flexible permit applicants to determine federal NSR applicability; language to emphasize that applicants may not use the program to circumvent NSR requirements; a requirement to demonstrate, through air quality analysis, that any new permit or amendment to any existing permit would not interfere with attainment and maintenance of the federal national ambient air quality standards; and several recordkeeping requirements, among others.

"The proposed rules would tend to increase the cost of obtaining a flexible permit or flexible permit amendment, and would impose more limitations as to what units could be included in an emission cap," according to the summary. "However, this is still preferable to the disapproval of the flexible permit program," TCEQ says.

While the proposal would amend the program in an effort to address EPA's concerns, it also defends the legality of the existing program and cites its environmental benefits, including the permitting of grandfathered units, meaning facilities that predated the 1971 initiation of the Texas permitting program.

The proposal says the original intention of the flexible permitting program was "to provide grandfathered facilities with a voluntary authorization mechanism that would reduce emissions," and a TCEQ statement accompanying the proposal notes that Texas no longer has any such facilities.

Texas will take comment on the proposal from July 2 to Aug. 2, and plans to finalize the rule by Dec. 1, but the rule may do little to change EPA's course toward rejecting the flexible permit rule. TCEQ took similar action for the qualified facilities program on March 30, proposing changes to address EPA concerns, but EPA finalized its disapproval of that program the very next day.

And the environmentalist says TCEQ's proposal for the flexible permit program will have very little impact on EPA's decision because EPA is already working to fix existing permits to ensure they comply with any new SIP.

"I don't think [the proposed rule is] going to stop EPA's process of going forward and fixing all the permits. They may try to negotiate with TCEQ to get further changes to the rules to end up with a [program] that may be approvable, but I don't think the current version is," the source says.

The environmentalist adds that although the new proposal does restrict the use of the flexible permit emission "caps" to similar units, rather than a whole facility, it still allows facilities to avoid having permitted emission limits based on best available control technology, a standard required under NSR reviews.

06/25/2010

**Activists, GOP Spar Over Stringency Of Revisions To EPA Ozone Standard (*Inside EPA)***

Environmentalists are meeting with top EPA officials to urge the agency to adopt the strictest proposed standard when it issues its final ozone national ambient air quality standard (NAAQS) later this summer, while House Republicans are questioning the costs and science associated with any tightening of the existing standard.
Western states meanwhile are raising concerns over EPA's strict proposed range for the standard, warning it will create many areas out of attainment with the standard even though the ozone levels in those areas is the result of naturally high background ozone levels that will be difficult if not impossible to reduce to comply with EPA's NAAQS. Western states say they will need technical and financial help from EPA to reduce emissions regionally.

EPA proposed earlier this year to tighten its existing 8-hour primary ozone standard designed to protect human health from 0.075 parts per million (ppm) to a range between 0.060 and 0.070 ppm. The Obama EPA is reconsidering the Bush EPA's ozone standard, issued in March 2008, in response to lawsuits brought by environmentalists, states and industry challenging the NAAQS. EPA says it intends to issue a final revised standard in September.

Ahead of the agency's final decision, representatives from roughly a dozen environmental groups June 16 met with EPA Administrator Lisa Jackson and other high-ranking agency officials to argue for a final standard not less stringent than 0.060 ppm. "We want [Jackson] to promulgate the most stringent standard. . . . We want to help her move it down," one source says of the reason for seeking the meeting, which the source called "congenial."

Among the groups attending were Environmental Defense Fund, Sierra Club, Natural Resources Defense Council, Earthjustice, American Lung Association, the Texas Environmental Justice Advisory Service, the Galveston-Houston Association for Smog Prevention and the Connecticut Coalition for Environmental Justice.

Another source says the groups made the case for a 0.060 ppm standard by providing data that they said justified a strict NAAQS to protect public health, the environment, and environmental justice communities. Sources say EPA officials were in "listening mode" and did not indicate their preferred standard.

While environmentalists push the strictest possible NAAQS within EPA's proposed range, key House GOP members are raising major concerns over any tightening of the existing standard.

In a June 11 letter to Jackson, House Energy & Commerce Committee ranking member Joe Barton (R-TX) and oversight panel ranking member Michael Burgess (R-TX) question the scientific and economic justification for EPA's proposed tightening of the standard -- even though under the Clean Air Act the agency cannot consider costs in setting its NAAQS. *The letter is available on InsideEPA.com.*

The lawmakers note that EPA estimates the implementation costs of the proposed standards, if set at the stricter end of the proposed range, from $19 billion to $90 billion per year, or nearly $1 trillion over 10 years. EPA estimates the health benefits would range from $13 billion to $100 billion per year.

EPA's proposed NAAQS range would also put hundreds of new areas out of attainment, the lawmakers say, and many of these locales -- particularly rural and remote areas -- might never be able to develop plans for emission controls on local sources to escape nonattainment. This is because the standard would be stricter than these areas' natural background ozone levels, or pollution levels created by foreign emissions that the United States cannot regulate.

The lawmakers ask Jackson to respond within two weeks to a series of questions on the standard, including the costs of implementing the 1997 ozone standard of 0.08 ppm

relative to the proposed new standard; how many counties would be placed in nonattainment for the first time under the proposed standard; and what happens to areas that cannot meet the standard due to "a lack of economically or technically feasible technology."

An EPA spokesman says that the agency cannot comment at this stage on the House Republicans' letter, but adds that the agency "will respond to the congressional inquiry appropriately."

06/25/2010

**Activists' Challenges Aim To Set Precedents On Key Air Permit Provisions (*Inside EPA*)**

Environmentalists in recent challenges to Clean Air Act permits in several states are striving to set precedents on key permit issues, including pressing EPA to mandate fuel-switching as a tool to cut emissions; revoking policies that allow "averaging" of emissions across a fleet of facilities; and imposing case-by-case air toxic limits at more facilities.

If the environmentalists succeed in their various challenges, they say it would result in significant emission cuts that could help states meet strict new and pending federal rules for air toxics, criteria pollutants and other emissions. Industry however has raised concerns about the costs and feasibility of meeting some new rules.

In Kentucky, activists opposing a coal-fired power plant's expansion will use the dispute to push EPA toward requiring that air permits mandate fuel switching to cleaner fuel sources to cut emissions, citing EPA's own arguments criticizing the Army Corps of Engineers for failing to support alternative fuel sources in its review of the expansion.

The East Kentucky Power Cooperative (EKPC) wants to expand a power plant in Clark County, KY, using circulating fluidized bed (CFB) coal combustion, and Kentucky has proposed approving a Clean Air Act Title V operating permit for the expansion. EPA is objecting to that proposed permit because it treats large particulate matter (PM10) as a "surrogate" for calculating fine particulate matter (PM2.5) emissions from the expansion.

But EPA in a May 24 letter to the Army Corps -- recently leaked by activists -- also raises concerns that the Corps did not endorse alternative, cleaner fuel sources than CFB when the Corps developed a draft supplemental environmental statement (SEIS) for the project's potential adverse impacts on the Kentucky River.

One environmentalist says that EPA's push for the Corps to support alternative fuel sources in the SEIS gives critics of the permit a chance to argue that it should require fuel switching if changing the facility's fuel source would cut emissions below the expansion's expected pollution level. That could bolster proponents in a broader push to

have EPA mandate fuel switching in all clean air permits, according to environmentalists.

The source says that environmentalists are preparing a new objection to file with Kentucky over the permit in July, which "will bring up clean fuels, and bring up cleaner combustion technology."

But another environmentalist cautions that although EPA is signaling through the letter to the Corps that clean air permits should include consideration of alternative fuels and technologies, the agency is still not requiring certain fuel types to serve as emission control technologies in permits.

In the letter, EPA says the Corps' SEIS is deficient in several aspects, including the fact it endorses CFB as the preferred combustion source even though other fuel types and technologies are available. The Corps assessed alternatives, including integrated gasification combined cycle (IGCC), but ultimately endorsed CFB.

"EPA objects to the proposed selection of the CFB technology over the lower-emitting alternatives evaluated in the draft SEIS. Of all the fossil fuel options presented in this draft SEIS, EPA prefers [natural gas combined cycle] because it has the lowest emissions of a fossil fuel facility," according to EPA's letter. *The letter is available on InsideEPA.com.*

Of the coal-based options considered, EPA prefers IGCC, which was not considered in an earlier SEIS and not preferred by the Army Corps. "The proposed CFB technology would cause substantially higher emissions than IGCC technology," EPA notes.

While EPA has recently encouraged consideration of alternative fuel sources in air permits, it has repeatedly stressed that no permitting authority is required under the Clean Air Act to choose one fuel type or technology over another.

**Meanwhile, environmentalists are also protesting Wisconsin's first-time proposal to allow** companies to average emissions across their entire fleet of facilities for the purposes of meeting air permit requirements for nitrogen oxide (NOx) -- an approach EPA condones but says is used infrequently by states -- arguing that the policy fails to guarantee pollution cuts from older, dirtier facilities.

The outcome of this dispute could potentially influence other states that may be considering adopting the approach, though EPA spokespeople were unable to say which states currently use fleet-wide averaging.

EPA in a recent *Federal Register* notice proposed to approve Wisconsin's proposed rule establishing standards for reasonably available control technology (RACT) to help meet EPA's 8-hour ozone standard.

The rule says that companies would have flexibility in satisfying requirements to cut emissions of the ozone precursor NOx so long as their approach cuts average emissions over the company's total facility fleet.

Environmentalists say the averaging approach is flawed because it gives companies an incentive to rely heavily on reducing emission cuts from newer, cleaner plants than installing costlier controls at older facilities.

Sierra Club and environmentalist group Clean Wisconsin sent EPA a letter criticizing Wisconsin's rule. The groups want EPA to ensure that Wisconsin's Department of Natural Resources "eliminate multi-source averaging options, as RACT by definition is source-specific," according to the letter.

An EPA Region V source says "averaging is allowable" under 1992 EPA guidance.

**The Sierra Club is also vowing to sue EPA to force the agency to require a case-by-case,** facility-specific maximum achievable control technology (MACT) standard to cut mercury and other emissions at a Kentucky power plant, while EPA is proposing to bolster its Clean Air Act authority for imposing such case-by-case standards.

In a notice-of-intent-to-sue filed with EPA June 22, the Sierra Club claims the agency failed to respond within an air act 60-day limit to the group's April 6 petition objecting to a Title V operating permit granted for the Hugh L. Spurlock power plant in Maysville, KY.

Environmentalists say the air law's MACT "hammer" provision requires the agency to order a case-by-case assessment for what level of control technology to require after a court has vacated a sector-wide MACT.

There is currently no MACT for electrical generating units (EGU) such as the Spurlock facility. The Bush EPA finalized a cap-and-trade rule for reducing mercury emissions but it was vacated by the U.S. Court of Appeals for the District of Columbia Circuit. In the absence of any federal MACT for EGUs, environmentalists are pushing for the Spurlock plant to include a facility-specific MACT.

06/25/2010

**Industry Opposes EPA Plan To Revoke Bush-Era NSR 'Aggregation' Rule (*Inside EPA*)**

Industry groups are criticizing EPA's proposal to revoke a Bush-era new source review (NSR) rule allowing facilities to avoid "aggregating" emissions from different facilities on the same site by warning it would create permit confusion, though environmentalists support the proposal and say the rule makes it easier to avoid NSR requirements.
EPA took comment through June 16 on its March 29 proposal to withdraw the January 2009 aggregation rule, which changed the way existing industrial facilities combine upcoming construction projects to determine if they trigger NSR, which can require the installation of expensive pollution controls. EPA justified the proposal by saying it has concerns that the 11th-hour Bush EPA rulemaking would make the NSR permitting program less effective.

The rule amended NSR requirements to say that companies could avoid aggregating emissions unless their plant modifications were "substantially similar" and not simply part of a facility's overall function.

Critics claimed that the rule undid years of NSR precedent and helped companies avoid NSR requirements because counting the emissions from different pollution sources on the same site separately would be unlikely to trigger the NSR threshold, whereas aggregating those same emissions as one source could meet the threshold.

EPA cited similar concerns about the rule undermining NSR's effectiveness in its proposal to revoke the rule, something long sought by the Natural Resources Defense Council (NRDC). NRDC also filed suit over the rule in federal appeals court, but that suit is in abeyance pending the outcome of the agency's rulemaking.

But industry in its comments on the proposed revocation says that considerable permit confusion existed prior to the Bush EPA rule, and that the uncertainty would return if the Obama EPA scrapped the rule.

In its June 16 comments, the National Petrochemical and Refiners Association (NPRA) claims that EPA's reconsideration is illegal under the Clean Air Act because "this interpretation of current regulations is both new and unsupported in the record by sufficient evidence." NPRA claims that "the proposed rule does not include a sufficient statement of its basis and purpose, include the factual data on which the proposed rule is based, the methodology used in obtaining data, or the major legal interpretations and policy considerations," all of which are required under the air act. *Relevant documents are available on InsideEPA.com.*

In comments filed June 16, the Council of Industrial Boiler Owners (CIBO) says it "supports EPA's efforts to bring long-overdue clarity to the NSR program but believes that EPA's reconsideration of its final action creates confusion" that is unnecessary, as the last-minute Bush revision "was consistent with past policy on aggregation in most respects." If EPA revokes the doctrine requiring projects be "substantially related," the agency should revert to an earlier requirement that projects be "dependent upon one-another" to trigger aggregation, CIBO says.

NRDC, however, welcomes the agency's proposal to scrap the NSR aggregation rule, saying in its June 16 comments that the Bush EPA rule "did not 'clarify' the regulation, rather, it mired the NSR analysis with vague consideration of 'a substantial technical or economic relationship.'"

The National Association of Clean Air Agencies, which represents state and local air regulators, meanwhile says in May 14 comments that the Bush EPA aggregation rule would "impermissibly narrow the circumstances for aggregation and result in greater uncertainty for permitting authorities."

06/25/2010

**Bid By Industry, Senators To Soften EPA Boiler Rule Spurs Activist Outcry (*Inside EPA*)**

Industry and a bipartisan group of nine senators are urging EPA to soften its proposed strict air toxics rule for boilers by setting risk-based standards rather than stricter technology-based standards for certain pollutants, but the effort is sparking strong opposition from environmentalists who say the approach is not allowed under the Clean Air Act.
State air officials, meanwhile, are raising concerns with the legality of EPA's approach of "subcategorization" in the proposal, which sets varying baseline controls for 11 subcategories of boilers based on unit design.

EPA in a June 4 *Federal Register* notice proposed a maximum achievable control technology (MACT) standard for "major" source boilers. The proposal would limit mercury, hydrogen chloride (HCl) and other emissions from the units and require companies to install emissions controls. Major sources are those with the potential to emit 10 tons per year (tpy) or more of any hazardous air pollutant (HAP), or 25 tpy or more of any combinations of HAPs.

In the proposal, EPA discussed, but did not propose, the health-based threshold approach -- known by critics as risk-based "off-ramps" -- to set limits based on a facility-specific risk assessment. Section 112(d)(4) of the Clean Air Act gives EPA authority to set the health-based standards for pollutants that have a threshold under which no observable health effects occur. *Relevant documents are available on InsideEPA.com.*

EPA has set weaker health-based standards for other industries, including pulp and paper. But environmentalists oppose use of the risk-based off ramp, and the U.S. Court of Appeals for the District of Columbia vacated a Bush EPA boiler MACT issued in 2007, prompting EPA to abandon the risk-based approach.

Nevertheless, industry associations in recent testimony for hearings on EPA's proposal argue that the agency's final boiler rule should drop the technology-based approach and use the risk-based off-ramp. Comments are due on the proposal July 19, and EPA this month held three public hearings on the plan.

In testimony submitted for a June 15 hearing in Arlington, VA, the American Chemistry Council said that based on its own research and EPA's support for a risk-based off-ramp in the vacated Bush-era boiler MACT, the group "strongly recommends that the agency consider the fact that the proposed standards for HCl are far more stringent than needed to ensure the protection of public health within an ample margin of safety."

The American Forest & Paper Association and the Council of Industrial Boiler Owners also submitted testimony to the same hearing arguing that EPA should use its section 112(d)(4) discretion under the air act to set the softer health-based standard in its final rule.

In recent weeks, a bipartisan group of nine senators also tried to buoy efforts to have EPA set a health-based boiler rule. The senators -- five Republicans and four

Democrats -- sent a March 25 letter to EPA Administrator Lisa Jackson urging her to to soften the boiler proposal to avoid its potential adverse economic impacts. They urged the agency to "balance economic and environmental interests" in setting its MACT for boilers.

Senators backing the push for health-based standards include Environment & Public Works Committee Republicans George Voinovich (OH), Lamar Alexander (TN) and Christopher Bond (MO), as well as Sens. Richard Lugar (R-IN), Sherrod Brown (D-OH), Evan Bayh (D-IN), Mark Warner (D-VA), Jim Webb (D-VA) and John Cornyn (R-TX). *Inside EPA* contacted all of the senators' offices for comment, but none responded at press time.

EPA in an April 12 response says it will consider the senators' concerns, but in the proposal published June 4 in the *Federal Register* says that the agency lacks the scientific basis to set the weaker health-based standards in this rule, which affects a "'large and diverse source category," but seeks comment on the measure.

Environmentalists, however, say the push for health-based standards in the proposal is unlikely to succeed, since the Senate letter was neither strongly worded nor specific and fails to provide solutions to the legal and scientific barriers that EPA cites in the proposal as preventing it from pursuing a risk-based off-ramp.

In the proposal, EPA discusses at length the potential for a health-based standard but declines to propose the less-stringent approach due to what it says are statutory limitations, gaps in emissions data, and a lack of scientific basis. "[W]e have concluded that we do not have sufficient information at this time to establish what the health-based emission standards would be for HCl or the other acid gases," according to EPA's June 4 notice.

**BP SPILL**

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June 24, 2010

**BP Continues to Use Surface Dispersants in Gulf Despite EPA Directive (*New York Times*)**

By ELANA SCHOR of Greenwire

BP PLC has applied 272,000 gallons of dispersants to the surface of the Gulf of Mexico in the four weeks since U.S. EPA directed the company to stop using the chemicals, except "in rare cases" when other approaches to fighting the ongoing oil leak proved unworkable, according to government records.

The oil giant's dispersant strategy has come under scrutiny from scientists who warn that adding unprecedented volumes of the chemicals to the Gulf environment could

pose unknown risks to human and marine health. But the surface use of dispersants, in some cases spread aerially by planes, stirs a specific worker-protection concern for National Institute for Occupational Safety and Health (NIOSH) Director John Howard.

"From a health and safety perspective, I'm not a fan of dispersants" sprayed from the air, Howard told *Greenwire*. "Unless you make sure you don't have workers underneath the spray. That would be great."

Controversy over BP's compliance with the May 26 **directive** (pdf) issued by EPA and the Coast Guard on dispersant use flared anew this week when Richard Denison, a senior scientist at the Environmental Defense Fund, released calculations that showed the oil giant had cut its average daily dispersant use by 68 percent relative to the previous daily maximum levels. EPA had set a 75 percent reduction as the "overall goal" for the company.

A separate portion of the EPA directive, however, told BP to "eliminate the surface application of dispersants." The company was required to file a written request to the Coast Guard seeking permission to use surface dispersants "[i]n rare cases when there may have to be an exemption," citing the particular weather or mechanical factors that were forcing the use of chemicals to break up oil, as opposed to skimming or burning.

The Joint Incident Command in New Orleans did not respond to several requests for a copy of the written justification that BP is required to provide before using surface dispersants. A request that BP release the document was not answered by publication time.

Wilma Subra, a Louisiana chemist who has assisted local environmental and public-health groups since the Gulf spill began, said she and her partners "were getting lots of reports from workers that they were being sprayed [by dispersant] and getting assurances by a bunch of high-up national officials that they were taking tons of precautions, that no one was being sprayed."

Symptoms experienced by the workers included headaches and nausea as well as skin, eye and respiratory irritation, according to Subra. Despite the government's assurances, she added, "we continue to get calls ... [workers] are very reluctant to seek medical care because they are afraid to lose their jobs."

As of Tuesday, daily reports from the JIC and EPA show that BP had applied 272,000 gallons of surface dispersant since EPA's May 26 directive, compared with 342,000 gallons of sub-surface dispersant.

EPA spokeswoman Adora Andy released a statement yesterday that affirmed EPA's ability to secure a reduction in overall dispersant use since the directive was issued to BP. "On the evening of May 23, Administrator [Lisa] Jackson and Coast Guard Rear Admiral [Mary] Landry sat down with BP and ordered them to ramp down dispersant use -- with an overall goal of 75% from its peak usage of 70,000 gallons on May 23," Andy said.

"The next day, May 24, dispersant use dropped more than 50%. Since Administrator Jackson and Admiral Landry met with BP on May 23 to demand a reduction, dispersant use is down 68% from its peak," Andy said in the statement.

Andy's statement also addressed the continuing use of surface dispersant, noting that the Coast Guard "has the authority to grant waivers for the use of more dispersant based on changing conditions at sea."

The ingredients in BP's Corexit 9500 dispersant, now the primary chemical product used to break up the oil into smaller droplets, include the common solvent propylene glycol, light petroleum distillates and the detergent dioctyl sodium sulfosuccinate (*Greenwire*, June 9). Material safety data sheets released by Corexit's manufacturer identify the three substances as potentially hazardous, advising users to avoid getting the dispersant "in eyes, on skin, on clothing."

The Occupational Safety and Health Administration (OSHA), which enforces worker-safety standards onshore and near shore in the Gulf, continues to affirm that its tests show no risk of unsafe chemical exposures among responders to the spill.

Jordan Barab, deputy assistant secretary at OSHA, told reporters yesterday that his agency is monitoring "on the beaches, in the swamps, on the boats, everywhere that workers are. ... [W]e have found no exposure levels to any chemicals that are of any concern."

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**Raining oil in Louisiana? Video suggests Gulf oil spill causing crude rain (*Christian Science Monitor*)**

Raining oil? A video purports to show the aftermath of an oily rain that has left a rainbow sheen on the streets of River Ridge, Louisiana. The EPA says that an oily rain is highly unlikely.
Temp Headline Image

By Eoin O'Carroll, CSMonitor.com
posted June 24, 2010 at 6:07 pm EDT

Raining oil in Louisiana? An unsettling – and unverified – amateur video shows what appears to be the aftermath of an oily rain in Louisiana, some 45 miles inland from the Gulf of Mexico.

It's unclear from the video whether the oily sheen seen on the ground really fell from the sky. Crude oil normally doesn't evaporate, but some are speculating that oil mixed with Corexit 9500, the dispersant that BP is using on the ever-growing slick, could take to the air.

The US Environmental Protection Agency has issued statements saying that the agency "has no data, information or scientific basis that suggests that oil mixed with dispersant could possibly evaporate from the Gulf into the water cycle."

IN PICTURES: Response to the oil spill on the Gulf Coast

The auto blog Jalopnik dug up a 2003 study that shows that oil on the open ocean could evaporate under the right conditions. And it's unclear how the Corexit 9500 dispersant affects evaporation.

If it were raining Corexit 9500 in River Ridge, that would be very bad news. Calling the dispersant unnecessarily toxic, the EPA has ordered BP to stop spraying it on the slick, an order that the oil company has so far ignored.

Is the video for real? For now, skepticism is warranted.

June 24, 2010

**Despite concerns, dispersant use continues on gulf oil spill (*St. Petersburg Times*)**

By Craig Pittman, Times staff writer
No option is found to a chemical whose effects are unclear.
A month ago the Environmental Protection Agency ordered BP to stop spraying so much dispersant on oil gushing from the Deepwater Horizon well and to find a less toxic alternative to the chemical it was using.
BP is still spraying the same stuff - under the brand name Corexit - that led to EPA concerns in May. Although it has decreased the total amount used, BP has exceeded the recommended daily level of 15,000 gallons sprayed beneath the surface of the Gulf of Mexico. And so far, neither BP nor the EPA has found an effective but less toxic alternative to Corexit.
Meanwhile, federal scientists confirmed this week what University of South Florida researchers and others had found: plumes of tiny oil droplets that stretch for miles underwater, which "is consistent with chemically dispersed oil." Some of it, they found, had oozed into shallower waters close to shore.

"That's particularly troublesome," said Ernst Peebles, a biological oceanographer at USF. Contaminants in the shallower water - about 30 feet deep - can be blown around more easily by wind, spreading it along the gulf's biologically rich continental shelf, he explained.

The bottom line, Peebles said, is that thanks to the dispersants "the oil is more broadly distributed than it would have been, and the oil droplets do have toxic properties. It appears to be creating layers of microscopic oil droplets that are spread throughout the gulf."

But EPA Administrator Lisa Jackson said this week that her agency will continue allowing dispersant use because "dispersants are one tool in a situation that could not be more urgent" - even though, she acknowledged, "We know that they come with environmental trade-offs."

About 1.47 million gallons of dispersant have been applied to the gushing oil so far, an unprecedented amount. Of that, 972,000 gallons were sprayed on the surface, while 493,000 gallons were sprayed deep underwater - the first time anyone has sprayed dispersant below the surface.

The company has sprayed 272,000 gallons of it on the surface since the EPA edict was issued a month ago, and 342,000 gallons below the surface.

"We're using the product that's been approved by the government," BP spokesman Bryan Ferguson said. As for the subsea plumes of dissolved oil droplets, Ferguson said, "We're still evaluating and investigating that and we have no comment."

In May the EPA ordered BP to cut total dispersant use by 75 percent from the peak of 70,000 gallons a day. So far, Jackson said, the company has cut its total use by 68 percent.

In letters sent Thursday to the EPA and Coast Guard, House Energy and Environment Subcommittee chairman Ed Markey, D-Mass., complained that the dispersants were "contributing to a toxic stew of chemicals, oil and gas with impacts that are not well understood."

Scientists do know that some marine life is more sensitive to dispersants than others. Crustaceans, algae and fish larvae find low concentrations of Corexit toxic, according to Carys Mitchelmore, a University of Maryland expert on oil dispersants.

Dispersants mixed with oil can be as toxic, if not more toxic, than the oil itself. In fact, Mitchelmore testified to a congressional panel last week, dispersants may actually make it easier for fish, oysters, mussels and other marine life to absorb the oil.

Ideally the dispersed droplets would be consumed by oil-eating bacteria that live throughout the gulf. But when there's a large concentration of oil in the water, the bacteria can flock to it in such numbers that they use up all the dissolved oxygen in the water nearby, suffocating other marine life.

Though the ship sent by the National Oceanic and Atmospheric Administration found no signs of a lowered oxygen level around the plume, scientists who studied test results warned that the dissolved oxygen "could decrease approximately 10 percent in the deep

water if a significant fraction of oil remains subsurface and the rate of dispersion of the oil is low."

Some Louisiana cleanup workers have complained of being sprayed with dispersant from planes hired by BP, and reported skin irritation, headaches and nausea. But federal officials said they had been monitoring the dispersant use and so far had found no human exposure problems.

*Information from the New York Times was used in this report. Craig Pittman can be reached at* craig@sptimes.com or (727) 893-8530.

**Gulf oil spill reinforces environmental concerns over sunken tugboat in Lake Champlain (*Los Angeles Times*)**

**Story also appeared: *Sacramento Bee, Contra Costa Times, Seattle Post Intelligencer, News Max, Morning Call, Lexington Herald Leader, Fort Worth Star Telegram, Wichita Eagle, San Jose Mercury News, Idaho Statesman, Buffalo News, St. Paul Pioneer Press, Anchorage Daily News, Palm Beach Post, Salt Lake Tribune, Burlington Free Press***

June 24, 2010
ON LAKE CHAMPLAIN (AP) — For almost 50 years a tugboat that once hauled barges between Vermont and New York on Lake Champlain has sat upright 160 feet underwater, hardly changed since the November night in 1963 when it ran aground on a reef and went down.

The paint on the William H. McAllister appears barely faded in recent video footage, and fire hoses remain coiled on the deckhouse walls. There's also a chance that the tug's fuel tanks still could be holding as much as 14,000 gallons of diesel fuel.

That has federal officials, environmentalists and residents who know about it concerned.

The threat of what could happen if those tanks were to fail and belch fuel into the 120-mile-long lake that separates Vermont and upstate New York drew an expedition last week of federal environmental officials and engineers to the lake. They sent a remotely operated vehicle onto the McAllister to try to determine if there's fuel that could leak out.

"It's in such good condition after all these years," said Don Dryden, a commercial diver who was there to provide technical expertise about the condition of the tugboat for McAllister Towing and Transportation of New York, the successor to the company that owned the tug in 1963.

The federal Environmental Protection Agency will analyze last week's findings and perhaps send divers into the tug later this summer to determine how much fuel is in the tanks. If necessary, the remaining fuel would be pumped out, said Paul Kahn, a

coordinator for the EPA working at the scene.

Dryden isn't convinced there's still fuel in the tanks. "Oil being lighter than water, in all probability this thing was empty 30 or 40 years ago," he said.

Concern grew in 1997 after an oil sheen was discovered on the water above the McAllister.

There are numerous scenarios with bad outcomes, said Art Cohn, who heads the Lake Champlain Maritime Museum, which was hired to conduct the latest inquiry. An experienced scuba diver could unscrew a fuel tank cap and unwittingly cause a catastrophic release of fuel, he said. Other unforeseen events or natural deterioration also could cause the tanks to fail, Cohn said.

The McAllister is a reminder of a time when Lake Champlain was a vital commercial waterway that for more than 150 years moved cargo to and from upstate New York and Vermont through canals and systems of locks. The McAllister is believed to be the last significant commercial vessel to sink on the lake.

The focus on the McAllister began before the Gulf of Mexico oil spill that followed an April 20 explosion and fire on a drilling rig. But the comparison between possible threats posed by the McAllister and what is happening in the gulf is on the minds of people looking at the sunken tug.

If, in a worst-case scenario, 14,000 gallons of diesel fuel were to be released all at once, it would cause the same problems and concerns as the gulf oil spill, said Mary Watzin, a University of Vermont professor who has studied the lake for 20 years.

"There would clearly be impacts for fish and wildlife that use the lake," Watzin said. "We would have the same kind of oiling problems with water birds that we've seen in the gulf."

There are similarities between the McAllister and a cargo ship that sank 80 miles west of Lake Champlain more than three decades ago.

In 1974, a freighter carrying iron ore ran aground in more than 200 feet of water off Massena, N.Y. People reported seeing an oil sheen on the water in 2003. The next year, the Coast Guard oversaw the successful removal of about 6,000 gallons of fuel oil from the ship.

"We do take these things very seriously," said Lt. Cmdr. Carl Kepper, supervisor of the Coast Guard's marine safety unit in Massena.

The wreckage of the McAllister was first discovered in 1988. Nine years later, experts recognized the threat of leaking fuel. But the EPA determined that the McAllister's tanks probably contained less than 1,000 gallons of diesel fuel when it went down, and that it

had long since leaked out.

When the McAllister struck Schuyler Reef on Nov. 17, 1963, its eight-man crew scampered to safety on the barge it was hauling. No local newspaper accounts could be found mentioning large amounts of fuel washing ashore. At the time, the McAllister company considered raising the $250,000 vessel, but nothing came of the plan.

"Had the diesel fuel leaked out there should have been an adverse impact, which would have been reported in the news," Kahn said.

The EPA is using money from a Coast Guard fund to pay for the investigation into whether the McAllister poses a threat, Kahn said. It paid the Maritime Museum $75,000 for last week's assessment. If the tanks need to be pumped out, McAllister Towing would be responsible for the cost, Kahn said.

McAllister Vice President Bucky McAllister said the ownership of the tug isn't clear-cut; the current company wasn't created until six years after the tug sank.

"We are certainly approaching this with an effort to be good corporate citizens," McAllister said.

"Right now we're not sure who owns the William McAllister. We have searched our own records and have not been able to find them. We are searching insurance records right now to get more facts."

06/25/2010

**Oil Spill Suit Could Set Precedent For Quick Court Action Under Water Act (*Inside EPA*)**

An environmentalists' lawsuit filed against BP alleging violations of the Clean Water Act for the massive spill in the Gulf of Mexico aims to test a never-used provision of the law that allows citizen lawsuits to proceed before the expiration of the usual 60-day notice period, a move that would allow activists to seek immediate injunctive relief from courts when companies violate new source performance standards (NSPS) and toxic release limits established by EPA.
The case, *Center for Biological Diversity (CBD) v. BP et al*, was filed June 18 in U.S. District Court for the Eastern District of Louisiana, less than three weeks after the environmental group sent the company of a 60-day notice of its intent to file under the water act's citizen lawsuit provisions. *The lawsuit is available on InsideEPA.com.*

In its filing, CBD highlights an exception in the act that allows citizen suits to proceed before the notice period is up in cases involving a violation of NSPS cases or that exceed toxic effluent limits.

If the case is allowed to proceed, it could set a precedent for future activist lawsuits to seek immediate injunctive relief from courts -- such as an order to shut down a polluting facility -- without having to wait through the 60-day notice period, which is designed to allow EPA or state officials to pursue their own legal action against an alleged polluter and preempt citizen action.

A source familiar with the lawsuit acknowledges there is little a judge could do to force BP or the government to do more then they already are doing to cut off the flow of oil in the Gulf of Mexico, but the source says the court could order BP to release additional information it has about the flow rate of the leaking oil and the toxic constituents that are in the oil.

The source says there is no existing precedent for use of the CWA provision that allows for lawsuits to be filed immediately -- setting up the new case as a potential test of the issue. Section 505(b) of the CWA states that lawsuits may not be filed prior to 60 days of informing a defendant of the intent to sue, "except that such action may be brought immediately after such notification in the case of an action under this section respecting violations of sections [306 and 307(a)] of this title."

Those sections authorize the EPA administrator to set NSPS for various industry sectors and establish effluent standards or prohibitions for the release of toxic chemicals.

CBD's lawsuit alleges BP's oil spill violated those sections. EPA NSPS regulations for offshore oil and gas extraction do not allow any release of oil, and the agency sets limits for a variety of toxic pollutants CBD says have been released as a result of the spill, including benzene, toluene and arsenic. The lawsuit provides estimates of the level of toxic releases but suggests that BP has more specific information it is not releasing. "Upon information and belief, BP has analyzed and knows the exact concentrations of each of the toxic pollutants present in the oil coming from its wells," the suit says.

The lawsuit also alleges that BP's ongoing release of oil and toxic chemicals violates the Comprehensive Environmental Response Compensation & Liability Act and Emergency Planning & Community Right-to-Know Act.

Next steps for the lawsuit remain unclear, the source says. At least 25 cases related to the oil spill have been referred to Judge Carl Bieber of the Eastern District of Louisiana Court, and there are motions pending before the Multidistrict Litigation Panel to consolidate all related cases into a single case, according to the court. The source says CBD's filing could be consolidated with the other pending challenges when the panel meets next month in Boise, ID.

A separate coalition of activists -- including the Gulf Restoration Network, Louisiana Environmental Action Network and Environment America -- have also given BP notice of their intent to sue, in a May 28 letter to the company alleging CWA violations. However, that coalition does not cite the provision of the statute that could allow for an immediate filing of the lawsuit in the letter and have not yet filed a formal complaint.

The local activists' suit claims that the spill violates the general discharge permit issued to the Deepwater Horizon offshore platform and that, under the statute, a permittee is required to take all appropriate actions to prevent a discharge -- which the notice says BP failed to do -- and is also required to provide accurate information with regard to the flow rate and amount of pollutants being discharged. Several organizations also have issued Freedom of Information Act requests to EPA and other federal agencies seeking information on EPA's authorization of the use of chemical dispersants and other information about the spill. -- *Nick Juliano*

06/25/2010

**EPA Plans Broad Review Of Oil Spill Prevention Rules For 'Fixed' Facilities (*Inside EPA*)**

In response to the Gulf of Mexico oil spill, EPA is planning to undertake a broad review of its rules, guidelines and procedures for preparing and responding to oil spills on land and at "fixed" facilities that could discharge oil into U.S. waters, according to the agency's draft strategic plan for fiscal years 2011 through 2015.
EPA is also reassessing two existing key water program goals for the next few years to possibly make changes to account for the spill's impact, according to the plan. One goal sets a target for reducing nutrients throughout the Mississippi River Basin to cut the hypoxia "dead zone" in the Gulf, and the other on improving regional coastal aquatic ecosystem health, which is measured by indicators for sediment, fish contamination and other criteria.

The strategic plan, in the works long before the Gulf spill began in April, details the agency's broad "long-term vision, strategic goals and objectives, and strategies to achieve them," according to EPA's website. To achieve the goals, the plan includes strategic measures -- "the specific measurable environmental and human health outcomes the agency will achieve over the next five years." EPA will take comment on its draft strategic plan through July 30. *A copy of the strategic plan is available on InsideEPA.com.*

The plan identifies five strategic goals that mirror many of EPA Administrator Lisa Jackson's stated priorities: protecting America's waters, cleaning up communities, ensuring the safety of chemicals and preventing pollution, enforcing environmental laws, and taking action on climate change and improving air quality.

But in the wake of the Gulf oil spill, EPA has made last-minute changes to the draft strategic plan that reflect early steps to reassess the agency's regulations for preventing and responding to oil spills.

EPA has several rules on oil spills, including a spill prevention, control and countermeasure rule that requires facilities to prepare and implement plans to address the potential for an oil discharge. The agency also has a facility response plan rule that

requires certain facilities that store and use oil to submit plans to respond to a worst-case discharge of oil and to a substantial threat of such a discharge, according to EPA's website.

Other regulations and guidance include a National Contingency Plan schedule of spill-mitigating devices and substances that may be authorized for use on oil discharges, and requirements that facilities must report discharges of oil or releases of hazardous substances to EPA and other federal, state or local agencies.

With the spill posing "one of the largest environmental disasters" and an "urgency" to respond to cleanup and restoration of the Gulf of Mexico, EPA says that by 2015 it will review and update its current rules, guidelines and procedures on spills. According to the draft plan, EPA will "ensure that is has the appropriate tools to prepare, respond and recover from such incidents, acting within its jurisdiction, as defined by appropriate authorities."

In a footnote to the draft plan, EPA says several federal agencies have jurisdiction and authority for oil spill preparedness, response and recovery in addition to EPA, including the Department of Transportation and the U.S. Coast Guard. "EPA's efforts will focus on those aspects of the national oil spill program for which they have authority and responsibility, primarily the inland area and fixed facilities," according to the draft plan.

EPA says that while it is still assessing the "unprecedented" environmental damage from the spill and the agency actions necessary to address the damage and prevent similar disasters in the future, it has added two new measures to the plan as a "preliminary step to reflect the urgent challenge ahead" -- efforts to clean up the environmental damage, and efforts to modernize the agency's oil spill program and regulations.

EPA also intends to reassess its targets for cutting hypoxia, or oxygen depletion, in the Gulf and for protecting aquatic life. EPA's current draft objective for FY11-15 is to reduce releases of nutrients throughout the Mississippi River Basin to cut the size of the Gulf of Mexico hypoxic zone to less than 5,000 square kilometers (km2), as measured by a 5-year running average of the size of the dead zone. EPA is using a baseline from 2005-2009 that says the average size of the zone is 15,670 km2. But the spill has prompted some concerns that the oil gushing into the Gulf could grow the size of the dead zone, because it may encourage the growth of bacteria that feed on the oil but consume oxygen.

The spill is also prompting EPA to reassess its water program objective of improving regional coastal aquatic ecosystem health, as measured on a "good/fair/poor" scale in its National Coastal Condition Report, which describes the ecological and environmental conditions in U.S. coastal waters. EPA's 2009 baseline from the report says a "fair" or 2.8 rating is based on a five-point system ranging from 1.0 to 5.0 in which 1 is poor and 5 is good, using the report's indicators for water and sediment, coastal habitat, fish contamination, and benthic index -- a measure of a habitat's biological integrity. -- *Anthony Lacey*

**Senate confirms information chief, chemical board members (*Greenwire*)**

(06/24/2010)
Gabriel Nelson, E&E reporter
The Senate voted yesterday to confirm nominees to head U.S. EPA's environmental information office and for a chemical oversight board that will investigate the April explosion on the Deepwater Horizon oil rig.
As assistant administrator for EPA's Office of Environmental Information, corporate information technology specialist Malcolm Jackson will be tasked with overseeing the collection, maintenance and distribution of environmental data both within the agency and to the general public.

Most recently senior IT director in CIGNA Corp.'s disability insurance division, Jackson has also worked at Monsanto Co., General Dynamics Corp. and Shell Oil Co. His new job -- more commonly known as chief information officer -- has historically been held by former state officials rather than industry veterans, said Gary Bass, executive director of advocacy group OMB Watch.

"To have someone coming in from CIGNA is very different," Bass said earlier this year, adding that it would be positive to have an official with IT experience lead the office (*Greenwire*, April 29).

Jackson replaces acting Assistant Administrator Linda Travers. The last official confirmed by the Senate for the position was President George W. Bush's appointee Molly O'Neill.

**Chemical watchdogs**

Also confirmed yesterday were President Obama's choices for two vacancies on the Chemical Safety and Hazard Investigation Board, a watchdog agency that has been tapped by the House Energy and Commerce Committee to investigate the cause of the Gulf of Mexico oil spill.

With yesterday's Senate vote, Rafael Moure-Eraso will take over as the board's chairman and Mark Griffon will become one of the board's five members. John Bresland, a George W. Bush appointee currently leading the agency, will step aside but remain a board member.

Moure-Eraso comes from the University of Massachusetts, Lowell, where he is an occupational health professor and chairman of the work environment department.

Griffon has sat for the past eight years on the Federal Advisory Board on Radiation and Worker Health. He is also the founder of Creative Pollution Solutions Inc., a New Hampshire-based consulting firm that handles environmental and workplace safety issues.

The two appointees will immediately be tasked with helping oversee one of several probes of the circumstances surrounding the April explosion on BP PLC's Deepwater Horizon oil rig. Last week, the board agreed to conduct an investigation requested by Energy and Commerce Chairman Henry Waxman (D-Calif.) and Rep. Bart Stupak (D-Mich.), chairman of the Oversight and Investigations Subcommittee.

The board, which typically focuses on chemicals rather than oil and gas drilling, was chosen because of its experience investigating the deadly 2005 explosion at BP's Texas City refinery. In a 2007 report, the board concluded that cost-cutting measures and poor management contributed to the accident, which killed 15 workers.

The board makes recommendations rather than issue fines, though the information produced by an eventual investigation could provide the basis for additional lawsuits and penalties against BP.

In a **letter** replying to the request by Waxman and Stupak, Bresland said the board hopes that "nothing similar ever occurs again."

"The CSB's past work on BP's safety culture and corporate safety oversight places us in a unique role to understand important aspects of this tragedy," Bresland wrote, agreeing to begin the probe. "Although we will be vigilant for any similarities to the Texas City explosion, as suggested in your letter, we believe it is also important that this investigation be approached without any preconceptions and that all possible underlying factors and causes are thoroughly and objectively examined."

**Salazar tosses support to Senate regulatory-reform bill (*Greenwire*)**

(06/24/2010)
Noelle Straub, E&E reporter
Interior Secretary Ken Salazar today threw his support behind bipartisan Senate legislation to reform and restructure federal oversight of offshore drilling.
Senate Energy and Natural Resources Chairman Jeff Bingaman (D-N.M.) and ranking member Lisa Murkowski (R-Alaska) introduced a bill that would formalize changes Salazar made by secretarial order last month splitting what had been the Minerals Management Service into three bureaus to separate its leasing, enforcement and revenue collection functions.

The committee should not wait to act on the legislation until investigations into the ongoing Gulf of Mexico spill are completed, Salazar said. "I think this kind of legislation has been long in coming and it should have come long ago," he said. "It is absolutely the right thing to do, and the right time to do it."

The legislation also would increase the safety requirements for drilling wells, establish new research programs, create an independent advisory board for the department, create a fee on companies to pay for inspections, increase the penalties on bad

operators and increase the time the department has to carry out reviews before approving exploration plans.

Bingaman said the committee plans to mark up the legislation Wednesday. "These matters are urgent," he said.

Murkowski said the legislation adds several new elements of review and consultation for offshore drilling, which "in and of themselves certainly are not bad ideas," but added that she wants to ensure the bill will not result in greater economic uncertainty.

Salazar called the legislation "a great step forward." Noting that the federal offshore drilling agencies were created by secretarial order, he said they need to be established by law.

Murkowski expressed concern that creating the new agencies and adding to the "alphabet soup" involved in oil spill response could increase inefficiencies and delays. "One of the concerns I think has been, and I think we're seeing this play out in the Gulf, who is in charge? Who's really running things?"

Michael Bromwich, the new director of the new Bureau of Ocean Energy Management, Regulation and Enforcement, said he understood the reluctance to see creating more agencies as a "cure-all." But he said he has been very impressed with the work done so far and that he will examine the proposal more closely in the next week or two.

Salazar said he supports a two-year revolving-door ban, depending on the level of employee, and that a lifetime ban could be considered for those who head the agency.

The legislation correctly requires companies to demonstrate they would have the financial ability to respond to spills, Salazar said. Asked whether it provides the department sufficient authority on that point, Salazar said the bill is "moving in the right direction."

**Tough questions on commission**

Sens. John Barrasso (R-Wyo.) and Robert Bennett (R-Utah) both questioned the appointment of the head of an environmental group, the National Resources Defense Council, to the presidential commission set up to investigate the causes of the spill and make recommendations for changes. They said the commission does not include a specialist on oil and gas issues.

Bennett said it was the equivalent of appointing the CEO of an oil company to the commission. "Doesn't this strike you as a conflict of interest?" Bennett asked.

Salazar said the commission is headed by "very distinguished people," including former Florida Sen. and Gov. Bob Graham (D) and Bill Reilly, the former head of U.S. EPA under President George H.W. Bush, who will "transcend ideology and partisanship." He also said Reilly had been on the board of an oil and gas company, that the commission will have a professional staff, and that all points of view will be heard.

"We're confident this commission will do the job and get the root causes of what happened here," Salazar said.

Bennett said he was not completely convinced by Salazar's arguments but that the secretary is working in good faith.

Barrasso also said the American people know that "neither BP nor the administration have any idea" how to stop the leak today. But Sen. Mary Landrieu (D-La.) blasted him for the comment, saying the former administration did not leave instructions on how to do that, either.

"This is not the time to take what I would consider a cheap shot," Landrieu said.

**Other issues**

Salazar again defended the six-month moratorium on new deepwater drilling put in place by the administration that a judicial decision recently lifted. He said the department is looking at "all of the issues related to the moratorium" and that it should be kept in place until "we get to a level where we can provide a sense of safety to the American people."

The administration plans to reimpose the moratorium, but there will probably be some modifications to it, Salazar said. While he did not provide any details today, he said those would come soon.

Having 62 inspectors currently responsible for nearly 4,000 offshore production facilities is "extraordinarily and woefully inadequate," Salazar said, and the newly reorganized agency will need about 330 additional full-time employees to work on inspection, enforcement and environmental compliance. Robust work "cannot be done with the resource levels the Minerals Management Service has today," he said.

Salazar vowed a Gulf Coast restoration plan that will see the area "restored to a condition that is better than it was" before the Deepwater Horizon explosion. The procedures used to restore the Everglades is "the kind of template" that should be considered, he said. Interior will work with the committee to create a Gulf Coast restoration authority so "we don't get caught up in paralysis that sometimes affects restoration projects," he added.

From the initial reports he has seen, Salazar said there were actions taken 10 days before the April 20 explosion that "might have ended up creating this disaster" and that perhaps no level of enforcement or regulation could have prevented that because of the "recklessness" that occurred.

He also said that while industry had thought there was no way to test blowout preventers once they are deployed at the bottom of the ocean, such subsea tests have occurred on the ones installed for the relief wells being drilled to permanently stop the leak.

The committee also heard from three senators who offered their own bills on offshore reforms. Sen. Scott Brown (R-Mass.) testified on his bill that would require oil companies to have viable, peer-reviewed oil spill response plans in place before drilling. It also would require the Government Accountability Office to investigate whether the administration used all available resources to respond to the spill, Brown said.

Brown said the bills could be combined with other legislation with similar reform goals.

Sen. Robert Menendez (D-N.J.) spoke about his bill that would prohibit federal regulators from accepting gifts from the industry, make it a felony for them to take a job with the industry within two years of leaving government service and require financial disclosure by senior regulators.

"My concern is a future administration may not be as interested in keeping an arms-length relationship between itself and Big Oil," Menendez said.

Sen. Mark Udall (D-Colo.) promoted his bill, co-sponsored by Bingaman, that would focus existing Energy Department funding for oil and gas research and development on well safety and accident prevention.

**BP continues to use surface dispersants despite EPA directive (*Greenwire*)**

(06/24/2010)
Elana Schor, E&E reporter
BP PLC has applied 272,000 gallons of dispersants to the surface of the Gulf of Mexico in the four weeks since U.S. EPA directed the company to stop using the chemicals, except "in rare cases" when other approaches to fighting the ongoing oil leak proved unworkable, according to government records.
The oil giant's dispersant strategy has come under scrutiny from scientists who warn that adding unprecedented volumes of the chemicals to the Gulf environment could pose unknown risks to human and marine health. But the surface use of dispersants, in some cases spread aerially by planes, stirs a specific worker-protection concern for National Institute for Occupational Safety and Health (NIOSH) Director John Howard.

"From a health and safety perspective, I'm not a fan of dispersants" sprayed from the air, Howard told *Greenwire*. "Unless you make sure you don't have workers underneath the spray. That would be great."

Controversy over BP's compliance with the May 26 **directive** issued by EPA and the Coast Guard on dispersant use flared anew this week when Richard Denison, a senior scientist at the Environmental Defense Fund, released calculations that showed the oil giant had cut its average daily dispersant use by 68 percent relative to the previous daily maximum levels. EPA had set a 75 percent reduction as the "overall goal" for the company.

A separate portion of the EPA directive, however, told BP to "eliminate the surface application of dispersants." The company was required to file a written request to the

Coast Guard seeking permission to use surface dispersants "[i]n rare cases when there may have to be an exemption," citing the particular weather or mechanical factors that were forcing the use of chemicals to break up oil, as opposed to skimming or burning.

The Joint Incident Command in New Orleans did not respond to several requests for a copy of the written justification that BP is required to provide before using surface dispersants. A request that BP release the document was not answered by publication time.

Wilma Subra, a Louisiana chemist who has assisted local environmental and public-health groups since the Gulf spill began, said she and her partners "were getting lots of reports from workers that they were being sprayed [by dispersant] and getting assurances by a bunch of high-up national officials that they were taking tons of precautions, that no one was being sprayed."

Symptoms experienced by the workers included headaches and nausea as well as skin, eye and respiratory irritation, according to Subra. Despite the government's assurances, she added, "we continue to get calls ... [workers] are very reluctant to seek medical care because they are afraid to lose their jobs."

As of Tuesday, daily reports from the JIC and EPA show that BP had applied 272,000 gallons of surface dispersant since EPA's May 26 directive, compared with 342,000 gallons of sub-surface dispersant.

EPA spokeswoman Adora Andy released a statement yesterday that affirmed EPA's ability to secure a reduction in overall dispersant use since the directive was issued to BP. "On the evening of May 23, Administrator [Lisa] Jackson and Coast Guard Rear Admiral [Mary] Landry sat down with BP and ordered them to ramp down dispersant use -- with an overall goal of 75% from its peak usage of 70,000 gallons on May 23," Andy said.

"The next day, May 24, dispersant use dropped more than 50%. Since Administrator Jackson and Admiral Landry met with BP on May 23 to demand a reduction, dispersant use is down 68% from its peak," Andy said in the statement.

Andy's statement also addressed the continuing use of surface dispersant, noting that the Coast Guard "has the authority to grant waivers for the use of more dispersant based on changing conditions at sea."

The ingredients in BP's Corexit 9500 dispersant, now the primary chemical product used to break up the oil into smaller droplets, include the common solvent propylene glycol, light petroleum distillates and the detergent dioctyl sodium sulfosuccinate (*Greenwire*, June 9). Material safety data sheets released by Corexit's manufacturer identify the three substances as potentially hazardous, advising users to avoid getting the dispersant "in eyes, on skin, on clothing."

The Occupational Safety and Health Administration (OSHA), which enforces worker-safety standards onshore and near shore in the Gulf, continues to affirm that its tests show no risk of unsafe chemical exposures among responders to the spill.

Jordan Barab, deputy assistant secretary at OSHA, told reporters yesterday that his agency is monitoring "on the beaches, in the swamps, on the boats, everywhere that workers are. ... [W]e have found no exposure levels to any chemicals that are of any concern."

**Bills related to oil spill move ahead (*Los Angeles Times*)**

June 25, 2010 Friday
Home Edition
MAIN NEWS; National Desk; Part A; Pg. 14
Bills related to oil spill move ahead;
As environmental measures advance, crude washes ashore in Mississippi, Florida.
By Richard Simon and Margot Roosevelt
WASHINGTON AND LOS ANGELES

A congressional stampede to pass oil spill legislation gathered momentum Thursday as a Senate committee voted to impose tougher penalties on water polluters, and lawmakers unveiled a comprehensive bill to strengthen environmental and safety rules on offshore drilling.

The measures expected to advance in the wake of the Deepwater Horizon blowout also include a rewrite of decades-old maritime liability law and a tightening of ethics rules for officials who oversee offshore drilling.

"The incident is a game-changer in the way we manage America's offshore energy resources," said House Natural Resources Committee Chairman Nick J. Rahall II (D-W.Va.), who introduced the measure to strengthen off-shore drilling regulations.

The flurry of activity came as alarm continued to mount on the Gulf Coast. A mass of tar balls swept into the Mississippi sound, a biologically rich area surrounding Mississippi's barrier islands. And Florida officials closed a quarter-mile section of the popular Casino Beach in Pensacola Beach after thick masses of oil washed ashore.

"It's pretty ugly -- there's no question about it," said Florida Gov. Charlie Crist.

It is unclear whether Congress will pass a series of individual measures or wrap legislation into a sweeping energy bill that would also seek to boost renewable resources and cut greenhouse gas emissions.

That legislation, which had passed the House but stalled in the Senate before the oil spill, is backed by President Obama and many Democrats as a way to address **global warming.** But it is opposed by the oil industry and other businesses, along with most

Republican lawmakers who say it will boost energy costs.

The lack of consensus was evident Thursday as lawmakers broke into partisan finger-pointing over the administration's efforts to impose a six-month moratorium on deepwater drilling.

Sen. John Barrasso (R-Wyo.) accused the administration of "putting ideology over scientific integrity" in imposing the moratorium. During a Senate Energy and Natural Resources Committee hearing, he also attacked the presidential commission that is investigating the rig explosion as "stacked with people who philosophically oppose offshore exploration."

Interior Secretary Ken Salazar, who was testifying before the committee, shot back: "There is nothing political about this. It's an issue about safety and making sure that we're protecting the environment."

The moratorium was struck down by a federal judge earlier this week who said the administration had failed to prove that the 33 rigs affected by it were operating unsafely. On Thursday the judge declined to delay his ruling while the government appeals the decision.

The administration is preparing a detailed brief to argue the necessity of the moratorium. Salazar told the committee that initial reports on the April 20 blowout suggest that "there were actions taken before April 20 which might have ended up creating this disaster, and perhaps no level of enforcement or regulation could ever have prevented that because of the recklessness that occurred here."

The Environmental Crimes Enforcement Act, the water-pollution bill passed by the Senate Judiciary Committee, would require restitution to victims when oil companies or others violate the **Clean Water Act.** Currently, restitution is not mandatory. Another provision would mandate new guidelines so that prison terms reflect the seriousness of an environmental crime.

Meanwhile, a group of senators called on Transocean to delay any dividend payment until the company's liability for the gulf disaster is determined. "It seems inexplicable to us that, while a full accounting of your company's financial responsibilities is not yet clear, you are still planning to issue $1 billion in dividends as if no accident had occurred," the senators wrote in a letter to the company's chief executive.

BP's new public face, Robert Dudley, met with administration officials in Washington on Thursday, and told reporters that the company was back to recovering 25,000 barrels a day from the spill after a 10-hour hiatus Wednesday in which the containment cap had to be removed and adjusted.

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**BUDGET**

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06/25/2010

**House Plan To Bypass Budget Resolution May Stall EPA FY11 Funding Cut (*Inside EPA*)**

House Democrats' plans to bypass voting on a non-binding long-term budget resolution this year could delay a proposed fiscal year 2011 funding cut for EPA by creating confusion over the FY11 appropriations process and spurring lawmakers to instead pass a measure to fund the agency at its FY10 enacted budget level for at least part of FY11.
A decision to not vote on a budget resolution this year would create major uncertainties in the appropriations planning process that could prevent committee markups on specific spending bills for EPA and other federal agencies and departments, sources say. President Obama has proposed a slight cut in EPA's budget from $10.5 billion enacted in FY10 to $10 billion in FY11, and House lawmakers have suggested further cuts for EPA in FY11.

House Majority Leader Steny Hoyer (D-MD) gave a June 22 speech in Washington, DC, saying that Democrats would work to pass a shorter-term budget "enforcement" resolution that will advocate discretionary funding levels below President Obama's FY11 request. Hoyer said it "isn't possible to debate and pass a realistic, long-term budget" until lawmakers review the findings of a bipartisan deficit reduction task force, due in December.

One House GOP source says that Hoyer's remarks create "more questions than answers," but says that without a budget resolution, it is possible that House leaders will not be able to tell subcommittees of the Appropriations Committee their allocations that determine how much money they can award to agencies in their FY11 bills.

The budget resolution provides a blueprint for total federal revenues and spending for the upcoming fiscal year and at least four subsequent fiscal years. While non-binding, it provides an indication of how lawmakers intend appropriators to allocated agencies' discretionary spending.

The Senate Budget Committee in April marked up its budget resolution that would open the door to a $400 million increase in EPA's FY11 budget, but that resolution is yet to pass the full Senate.

The House source is "optimistic" that staff on appropriations subcommittees will nevertheless be able to craft spending bills for their respective agencies, including the appropriations interior subcommittee's bill for EPA's FY11 budget. However, the source says that prospects for moving the legislation much further than subcommittee are dim, due to factors including a tight congressional calendar and partisan fighting in an election year.

"The assumption right now is that few, if any, of the subcommittee bills will get to full committee. That would be historic, but it would also be disappointing," according to the source.

The lack of a budget resolution could also increase prospects that lawmakers will ultimately pass a continuing resolution later this year -- likely in September -- to ensure EPA and the rest of the federal government receive funds for a least a few months after the end of FY10 Oct. 1. The resolution would fund EPA into the early part of FY11 at its FY10 funding level.

That would allow the agency to initially avoid a slight spending cut that has been proposed for FY11. EPA's current funding stands at roughly $10.5 billion, but the president has requested $10 billion for EPA in FY11.

While Hoyer said the short-term budget enforcement resolution will advocate discretionary spending cuts below the president's requested amount for FY11, it is unlikely that demand will have any impact on EPA's budget if Congress fails to pass an agency FY11 appropriations bill and instead funds EPA at FY10 levels.

The White House has meanwhile has asked all agencies to assess ways to cut five percent in discretionary spending as they plan their pending FY12 budget requests (*Inside EPA*, June 18). -- *Anthony Lacey*

**Citing Cost-Benefits' Limits, Key EPA Official Touts 'Pragmatic Precaution' (*Inside EPA*)**

A key EPA official says the agency is using a "pragmatic precaution" approach to determine whether to regulate in the face of scientific uncertainty rather than relying solely on cost-benefit analysis, which the official says falls short of assessing the impact of disasters and the distribution of environmental impacts across communities.

Robert Verchick, the deputy associate administrator in EPA's policy office, told a June 15 event sponsored by the conservative Federalist Society that a "pragmatic precaution" approach allows EPA to prevent risks even when the science is uncertain, while taking into account practical considerations, such as cost.

"Concerning regulation, almost everything that EPA does is driven by some version of what I'll call pragmatic precaution. And what I mean by that . . . is that first, when a threat to public health is sufficiently serious, the agency should address it. . . . Second, it

should do so even if the cause and effect relationship is not completely understood by science. And three, in addressing the threat, practical considerations like workability, often cost, even sometimes benefits, should be taken into account," he said.

Verchick compared the pragmatic precaution approach to cost-benefit analysis, which monetizes and compares monetary and non-monetary costs and benefits of regulations. He said EPA usually takes the pragmatic precaution approach because it is "hard wired" into the statutes. In contrast, EPA conducts cost benefit analysis primarily for the purposes of oversight from the White House Office of Information and Regulatory affairs, he said.

However, other speakers at the Federalist Society event urged increased use of cost-benefit analysis. For example, Ronald Cass, the president of Cass & Associates, said proponents of the precautionary principle -- which seeks action on risks even if the science on risks is uncertain -- are really just trying to promote their own agenda. "In today's world in a lot of different areas, not just in the environmental area . . . people talk about the precautionary principle, which really means 'I don't want to do the careful weighing and balancing, I want my bias of one sort or another to win.'"

Cass argued that you cannot consider the health risks of chemicals and pesticides without also considering the risks of not using them. "If you wind up growing fewer crops more expensively, then there are people who won't get as much food, they won't get it with the same level of freshness, the same level of quality. . . . All of these things are effects of biasing decisions one way. There isn't a way to take risk out of the equation," Cass said. The widely used pesticide atrazine was a key topic of discussion at the event because EPA is currently reviewing its risks.

And Jeffrey Clark, a partner with Kirkland and Ellis, argued that Congress has abdicated its responsibility to decide when cost-benefit should be used in regulations, leaving courts to struggle with the question. To solve this uncertainly, Congress should enact a "clear statement" rule that says if a law is silent on the issue, cost-benefit should be assumed to apply. "Why shouldn't there be a clear statement rule for cost-benefit analysis that essentially says that if Congress doesn't make clear how to treat cost-benefit analysis that agencies should be required to do it? That would make it judicially reviewable and that would solve this abdication problem."

## CLIMATE CHANGE

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06/25/2010

### Key Appeals Court Grants EPA Delay For Suits Over Climate Risk Finding (*Inside EPA*)

The U.S. Court of Appeals for the D.C. Circuit has granted EPA's request to delay consolidating multiple cases challenging EPA's climate endangerment finding, giving EPA until Aug. 16 to first respond to the slew of administrative petitions demanding a withdrawal of last year's climate risk determination before proceeding with the legal challenge.
In a June 16 decision, the court ordered that the case "be held in abeyance until fourteen days after EPA's decision on the petitions for reconsideration or August 16, 2010, whichever comes first." At the same time, the court ruled that motions by groups challenging the endangerment finding "to adduce additional evidence be denied in light of the pending petitions for reconsideration." *A copy of the decision is available on InsideEPA.com.*

EPA's finding that greenhouse gases endanger human health and welfare, which was finalized last December, enables the agency to begin regulating greenhouses gases using its authorities under the Clean Air Act. In addition to conservative and industry groups, including the National Association of Manufacturers and the U.S. Chamber of Commerce, the finding is being challenged by a dozen states.

In a separate development, the conservative Southeastern Legal Foundation earlier this month made good on its promise to challenge EPA's recently issued greenhouse gas "tailoring" rule, which seeks to limit the applicability of the agency's climate regulations to large, stationary emitters. The foundation is joined in the challenge -- filed June 3 in the D.C. Circuit -- by 14 House Republicans who are also petitioning EPA over the endangerment finding.

06/25/2010

**Supreme Court Could Soon Face Plea To Hear Key Climate Tort Appeal (*Inside EPA*)**

The Supreme Court could within weeks receive a request to hear an industry or federal government appeal of a key global warming tort nuisance lawsuit as the deadline for seeking high court review of the suit fast approaches.
Utility industry defendants and the federal government face a July 6 deadline to seek Supreme Court review of State of Connecticut et al. v. American Electric Power (AEP) et al., in which the U.S. Court of Appeals for the 2nd Circuit rejected defendants' efforts to curb a nuisance suit by states seeking abatement of emissions by the power sector. The 2nd Circuit in March rejected a request for rehearing of its earlier ruling ordering a lower court to proceed with the case.
Environmentalist plaintiffs in a separate 5th Circuit suit alleging climate-related damages from Hurricane Katrina, *Comer, et al. v. Murphy Oil, et al.*, may also only have high court appeal left as a legal option to keep the case alive after the 5th Circuit agreed to rehear the case but subsequently dismissed it without rehearing.

A third climate nuisance case seeking damages for utilities' global warming impacts, *Native Village of Kivalina v. ExxonMobil Corp.*, is on appeal in the 9th Circuit, after a lower court dismissed it in part by arguing that the issue of damages was political question and therefore not a subject for the courts to decide.

But the Supreme Court could have an opportunity to weigh in on global warming tort litigation if the utility defendants in *Connecticut* or Tennessee Valley Authority -- a quasi-governmental body that is also a defendant in the case -- seek high court review, or if the plaintiffs in the *Comer* nuisance suit ask for Supreme Court intervention.

Should a request be filed with the high court, one source predicts sparring over whether pending greenhouse gas rules make nuisance suits moot -- an issue that could play into whether the court agrees to hear the cases.

Participants in *Comer and Connecticut* declined to say whether they will follow through with Supreme Court petitions, but the defendants in *Connecticut* have already asked the 2nd Circuit to extend until July 6 the deadline for filing a high court appeal to its original September 2009 decision turning aside a range of arguments by defendants.

**Environmental groups poised to spend $11 million on climate ads (*Washington Post*)**

1. Four liberal groups are planning an $11 million campaign beginning next week on ads designed to pressure Senators on the need for comprehensive energy reform.

The money, which is coming from the League of Conservation Voters, the Sierra Club, Service Employees International Union and VoteVets.org, will be spent primarily on television ads targeting a half-dozen Senators for their recent vote on a proposal that would stop the Environmental Protection Agency from regulating greenhouse gas emissions. (The measure failed 53-47.)

"We will hold key Senators accountable who vote the right way and who vote the wrong way on comprehensive energy and climate reform," promised LCV president Gene Karpinsky.

The ads are rightly regarded as a warning shot for wayward Senators ahead of what many in the environmental community expect will be a debate on the floor over the idea of comprehensive reform sometime next month.

It's far from clear -- ads or no -- that Democrats have the 60 votes for any sort of comprehensive plan, however. (President Obama canceled a bipartisan meeting of Senators to discuss a way forward yesterday as the firing of Gen. Stanley McChrystal dominated his time.)

And, for vulnerable Democrats looking at an angry electorate, it's far from clear whether taking on another hot button issue like climate change this close to an election is a road they will want to go down.

2. Senate Majority Leader Harry Reid (Nev.) is up with a new television ad charging that former state Assemblywoman Sharron Angle (R) is "just too extreme" for Nevada voters.

"My grandfather wouldn't even take his Social Security check because he said he was not up for welfare," Angle says in the ad, which uses a clip of a May interview she did with Nevada's KNPR radio station. The ad finishes with a spokesperson for the Alliance of Retired Americans calling Angle's comments "just plain insulting" and "crazy."

Patriot Majority, a Democratic-aligned independent group, is also up with TV ads slamming Angle on Social Security.

While Reid's camp has wasted no time in launching ads on Angle's record, Angle has yet to go up on TV -- so far she has only released a Web ad charging that Reid is "using special interest money" to launch "brutal" attacks against her.

American Crossroads, a conservative group based in Washington, did launch ads hitting Reid on his support for President Obama's economic stimulus package, however.

Angle seems to be spending much her time staffing up. In recent days, she has announced that she's hired Brabender Cox to handle media and Public Opinion Strategies' Gene Ulm as her pollster. John Yob, a Michigan-based consultant, is also on the team.

While she has largely avoided the press to date, Angle will face a major test when she sits for an interview with Fix friend and king of Nevada political journalism Jon Ralston next week.

3. Former Iowa Gov. Terry Branstad, the Republican nominee for governor this fall, is expected to announce his choice for lieutenant governor today. And, while the LG pick is is usually a low-profile affair, Branstad is under considerable pressure to pick one of his former competitors for the GOP nod -- Bob Vander Plaats.

Vander Plaats, a social conservative who finished second to the more moderate Branstad in the June 8 Republican primary, has not yet publicly thrown his support behind his onetime rival. Vander Plaats finished with 40 percent in the primary, behind Branstad's 50 percent. Vander Plaats was the gubernatorial ticketmate of former Rep. Jim Nussle in 2006 when the duo was swamped by Gov. Chet Culver (D).

Reporting out of Iowa this morning suggests that state Sen. Kim Reynolds is the frontrunner for the nod.

Evangelical Christian groups, a powerful force in Iowa GOP politics, have been split over whether to back Branstad in the general and speculation has been mounting that Vander Plaats may pursue a gubernatorial bid as an independent.

Vander Plaats supporters reportedly have been mulling whether they will make a push to nominate Vander Plaats for lieutenant governor at this weekend's party convention.

While Branstad leads Culver comfortably in recent polls, an independent bid by Vander Plaats would likely siphon votes away from the Republican nominee and hurt his chances of prevailing in the fall.

The only clues that Branstad has given is that he's said he'll choose a candidate that's younger than himself and with whom he shares a similar ideology.

Among the other names floated as possible running mates for Branstad include: former state Senate President Jeff Lamberti, former 3rd district candidate Jim Gibbons and state Rep. Rod Roberts, who finished third in the GOP primary earlier this month.

4. Former Ohio Republican Rep. John Kasich's gubernatorial campaign hit a rough patch Wednesday as a press aide's comments on Gov. Ted Strickland's (D) humble upbringing became a national news story.

In a statement Tuesday, Kasich spokesman Rob Nichols made reference to Strickland's childhood, suggesting the governor doesn't know about urban issues because he grew up "in a chicken shack on Duck Run."

Strickland's meager beginnings, which he often mentions on the campaign trail, are politically dicey territory -- especially when the GOP nominee is being painted as a Wall Street and Washington insider in ads paid for by a group affiliated with the Democratic Governors Association.

Realizing their error, Kasich's campaign issued an apology for the comment.

Adding to Kasich's not-so-good day, the Ohio Democratic Party launched a website aimed at highlighting comments the Republican nominee made regarding Cleveland Cavaliers forward LeBron James, whose pending free agency has captivated the state (and much of the country).

During an appearance on Fox Radio last week, host Alan Colmes broached Kasich's absence from a music video, which featured many politicos, begging James to stay. "I'm not singing in any chorus for LeBron James," Kasich said. Whoops.

Polling has shown Strickland opening up a small but steady lead over Kasich in recent months although both sides expect a very competitive fight in the fall for one of the major prizes of the 2010 cycle.

5. Illinois state Treasurer and Democratic Senate nominee Alexi Giannoulias' name came up Wednesday at the trial of former Illinois Gov. Rod Blagojevich (D).

There's was no smoking gun -- or anything close to it -- but with Rep. Mark Kirk (R-Ill.) struggling mightily beneath his misrepresentations of his military record, Republicans' hopes of tying Giannoulias to the trial and changing the subject could be buoyed.

At the end of a Chicago Sun-Times blog post on the trial is a recorded exchange between former Blagojevich chief of staff John Harris and the governor, in which Harris passes along a note from Giannoulias. The state treasurer, according to Harris, had called about the Senate seat President-elect Obama was set to vacate.

"So Alexi called me. He wanted to have a discussion about the Senate seat," Harris is heard telling Blagojevich. "I imagine he'll tell me ... Barack wants Valerie (Jarrett)."

Blagojevich responds, according to the Sun-Times: "Listen to me, don't see him today. Just ... let's run the clock now."

Blagojevich is accused of attempting to effectively sell the Senate seat.

The recording, which is from a phone call about a month before Blagojevich and Harris were arrested, suggests Giannoulias is serving as some kind of intermediary for Obama.

Not true, said Giannoulias spokeswoman Kathleen Strand. "Alexi did not call Harris at the behest of President Obama," she said. "Alexi thinks very highly of Valerie Jarrett, and it was well known that he thought she would make a terrific senator. So naturally, he was an advocate for her appointment."

For Republicans, the back and forth between Harris and Blagojevich gives them something with which to tie Giannoulias to the trial and the deeply unpopular former governor. But nothing in the brief tape suggests any wrongdoing on GIannoulias' part.

With Felicia Sonmez and Aaron Blake

By Chris Cillizza | June 24, 2010; 7:13 AM ET

**ENERGY**

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Jun 25, 2010 6:36 AM

**Detroit Diesel plant cuts energy consumption (*Truck News*)**

REDFORD, Mich. -- Detroit Diesel has won been recognized by the US Environmental Protection Agency (EPA) for its energy efficiency in manufacturing.
The company was named one of the first manufacturing facilities to meet the requirements of the Energy Star Challenge for Industry initiative.
The program requires manufacturing sites to establish an energy intensity baseline, set a 10% reduction goal within five years, implement energy efficiency projects, track energy use and verify savings.
Detroit Diesel says its Engine Manufacturing Center exceeded the EPA's goal by reducing its energy intensity by 17% within one year.
"The entire team at the Engine Manufacturing Center has played a significant role in reducing energy waste and developing new strategies for environmental efficiencies," said Ken Saari, director of core facilities for Detroit Diesel. "From our line of fuel-efficient engines that feature the most advanced emissions technology to our manufacturing processes, Detroit Diesel is committed to reducing environmental impact at every turn."
Detroit Diesel also won an Industrial Sustainable Energy Program of the Year award in the state of Michigan.

**US: Detroit Diesel receives energy reduction accolade (*Automotive World*)**

*Friday, June 25, 2010, AutomotiveWorld.com*

Detroit Diesel has announced that its Engine Manufacturing Center in Redford, Michigan, has been recognised by the US Environmental Protection Agency (EPA) as one of the first manufacturing facilities to meet the ENERGY STAR Challenge for Industry.

Under the EPA's ENERGY STAR Challenge for Industry, manufacturing sites establish an energy intensity baseline, set a 10% reduction goal within five years or less, implement energy efficiency projects, track energy use and verify their savings.

Detroit Diesel's Engine Manufacturing Center exceeded the EPA's reduction goal by reducing its energy intensity by 17% within one year. Detroit Diesel has been an ENERGY STAR partner since 2009.

In addition, the Engine Manufacturing Center was also recognised for Outstanding Achievement at the DTE Energy and The Engineering Society of Detroit's Energy Conference and Exhibition for the Industrial Sustainable Energy Program of the Year. The award recognises the Michigan-based industrial company that has made the most contributions in the area of energy conservation.

On June 18, Detroit Diesel announced that it will invest approximately US$194m to expand existing operations at the manufacturing facility in Redford Township. Expansion-related construction at the site is expected to begin in July 2010 with completion projected for September 2011.

*Published on Friday, June 25, 2010*

**FUEL**
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**EPA Told to Lead, Follow or Get Out of the Way (*Hoosier AG Today*)**

06/24/2010
NAFB News Service
In the push to expand use of ethanol in American vehicles Representatives Earl Pomeroy of North Dakota and Stephanie Herseth Sandlin of South Dakota say federal agencies need to lead, follow or get out of the way. They plan to hold the EPA and Department of Energy's feet to the fire until they approve the use of more ethanol. According to Pomeroy - family farmers and ethanol producers have had the patience of Job while waiting for these agencies to get the job done. He says nothing justifies the delay and the foot-dragging is hurting the ethanol industry and slowing efforts to reduce the nation's dependence on foreign oil. Sandlin adds that each day of delay holds the nation back from meeting the Renewable Fuels Standard. Both say family farmers, ethanol producers and the country have waited long enough.

E85 Fueling Dispensers Approved

On the heels of the release of USDA's Biofuels Strategic Production Report - which called for transforming existing ethanol infrastructure - Underwriters Laboratory has certified two E85 fueling dispensers. Renewable Fuels Association President and CEO Bob Dinneen says the approval opens a pathway for delivering more ethanol directly to the consumer - and means drivers will have access to thousands of new locations offering higher level ethanol blends.

RFA has joined forces with the American Coalition for Ethanol or ACE to form the Blend Your Own campaign. It's aimed at installing five-thousand blender pumps over the course of three years

6/25/2010

**EPA May Ease National Gas Conversion Rules (*Truckinginfo*)**

The Environmental Protection Agency has issued a proposed rulemaking to change the certification requirements for natural gas vehicle aftermarket conversions.

Under the proposed rulemaking, the agency would approve systems for use on vehicles older than two years, but would not require the Certificate of Conformity for these vehicles. In addition, the agency has also proposed three potential options for engines that have exceeded their regulatory useful life.

NGVAmerica, an organization that promotes the use of natural gas or biomethane, spoke out in support of the agency's move, saying the current regulations are too restrictive.

"Until there are sufficient numbers of original equipment manufacturers' products available in the marketplace, our industry will continue to need aftermarket conversions to help us grow, to help us justify the necessary investments in fueling stations, and to help us increase market penetration," said Jeff Clarke, general counsel and director of regulatory affairs for NGVAmerica. "Conversions fill a void unmet by original equipment manufacturers and demonstrate consumer demand for new applications. Conversions also provide a ready means of addressing the emissions and fuel consumption of medium and heavy duty vehicles that will continue to be in operation for many years to come."

During a hearing on the proposed rule changes, Clarke said the EPA should state that converting a vehicle does not void the original equipment manufacturers warranty. The change should also allow aftermarket manufacturers to pay the certification fees at the end of each quarter or annually based on the total number of vehicles sold, rather than based on expected sales. NGVAmerica also recommended the agency specifically state that manufacturers can seek both a Certificate of Conformity for the new vehicle and approval for converting this vehicle after two years. Clarke also said manufacturers should be able to use chassis testing that has been approved by EPA.

June 24, 2010

**As Ethanol Booms, Critics Warn of Environmental Effect (*New York Times*)**

By ERICA GIES
SAN FRANCISCO — Scrambling to find a silver lining to the dark cloud of oil in the Gulf of Mexico, ethanol advocacy groups are pressing for more government support for the biofuel industry, with advertising campaigns targeted at lawmakers in Washington.
One group, Growth Energy, has blanketed the Metro subway station closest to the U.S. Capitol with ads that send a pointed message: “No beaches have been closed due to ethanol spills,” they read, calling ethanol “America’s clean fuel.”
But is it?

There has been hot debate about whether carbon emissions from ethanol production and use are lower than those from oil and whether the 33 percent of the U.S. corn crop diverted to ethanol drives up the price of food. Local effects of ethanol production, however, including water pollution and consumption, have received less scrutiny.

Encouraged by legislative measures, including notably the 2007 Energy Security and Independence Act, which mandated the use of 36 billion gallons, or 136 billion liters, of biofuels annually by 2022, the U.S. ethanol industry has boomed in the last few years. There are now at least 200 ethanol plants in at least 27 states, almost all using corn as a feedstock.

Nearly all the gasoline sold in the United States today is mixed with 10 percent ethanol, known as E10. Because ethanol provides about two-thirds the energy content of oil per unit, that 10 percent volumetric replacement equals about a 6 to 7 percent gasoline displacement, minus fossil fuel inputs for growing and processing.

The industry is on track to produce 12.5 billion gallons this year and is therefore nearing market saturation to supply E10, as the United States consumes about 138 billion gallons of oil annually. In March 2009, Growth Energy petitioned the U.S. Environmental Protection Agency to grant a waiver to allow gasoline to be blended with 15 percent ethanol. Because the fuel can corrode conventional car engines at higher percentages, the agency is running tests. A final ruling had been expected this month but has now been pushed to the fall.

Refineries that blend ethanol into gasoline receive a tax credit of 45 cents per gallon, making the market for ethanol more viable. The credit is set to expire at the end of 2010, but ethanol groups are advocating its extension.

The Environmental Working Group, a research and advocacy organization, reported that U.S. taxpayers spent more than $22 billion on the tax credits from 2005 to 2010 and will pay another $31 billion if the credits are extended to 2015.

As ethanol plants have sprouted, mostly in the midwestern Corn Belt, environmental effects have followed. An analysis by Perry Beeman, a reporter for The Des Moines Register in Iowa, found 394 violations of environmental regulations by ethanol processing plants in that state between 2001 and 2007.

Still, corn farming is the biggest source of pollution associated with ethanol production. Corn requires vastly more fertilizer and pesticides than soybeans or other potential

biofuel feedstocks, such as perennial grasses, according to a 2007 report from the National Academy of Sciences. “Per unit of energy gained, biodiesel from soy requires just 2 percent of the nitrogen and 8 percent of the phosphorous needed for corn ethanol,” and the differentials in pesticide use are similar, the report said.

Fertilizer and pesticide runoffs from the U.S. Corn Belt are key contributors to “dead zones” in the Gulf of Mexico and along the Atlantic Coast. A 2008 study by independent researchers, published in the academy’s Proceedings journal, calculated that increasing corn production to meet the 2007 renewable fuels target would add to nitrogen pollution in the Gulf of Mexico by 10 to 34 percent.

Careful use of fertilizer and irrigation water and the preservation of unplanted land buffers between crops and water bodies can reduce fertilizer pollution, soil erosion and water consumption. “The efficiency of fertilizer application has increased tremendously in the past 10, 15, 20 years,” said Geoff Cooper, research vice president for the Renewable Fuels Association, an ethanol trade group.

Buffer zones, however, have shrunk by about 3 million acres, or 1.2 million hectares, between 2008 and 2010, according to the U.S. Department of Agriculture, as farmers have returned conservation land to cultivation.

“There may be a small number of acres coming into production, but they are likely highly environmentally sensitive,” said Craig Cox, senior vice president for agriculture and natural resources for the Environmental Working Group and a former undersecretary for natural resources at the Agriculture Department.

Water use for ethanol also concerns scientists, particularly in light of a 2003 U.S. Government Accountability Office report that found that water managers in at least 36 states expect shortages by 2013.

“It can be a very local problem. If an ethanol plant is withdrawing groundwater from major pumping wells, they can have a deleterious effect on local wells,” said Mr. Cox, who lives in Iowa.

Modern plants use about three gallons of water to produce one gallon of ethanol. The National Academy of Sciences report estimated that a plant producing 100 million gallons a year uses as much water as a town of 5,000 people.

Still, that is a lot less than older plants, countered Tom Buis, the chief executive of Growth Energy. “Back in the mid-1980s when the ethanol industry was getting started, it took 16 gallons of water to produce a gallon of ethanol,” Mr. Buis said.

Mr. Cooper, of the Renewable Fuels Association, said ethanol plants were required to have water use permits before construction. “This industry is not going to be expanding in areas that already have significant pressures on water resources,” he said.

But the permit requirement does not cover water used for irrigation. According to a G.A.O. report last year, 12 Midwestern states produced 89 percent of the U.S. corn crop in 2007 and 95 percent of the ethanol, using 7 to 321 gallons of water for corn irrigation for every gallon of ethanol produced.

The 2007 report by the National Academy of Sciences calculated that it required 780 gallons of irrigation water to produce a gallon of ethanol in Nebraska, the second-largest U.S. ethanol producer, behind Iowa.

Reflecting environmental concerns over the expansion of biofuel crops, the 2007 energy bill called for 20 billion gallons of biofuel to be made from “advanced” feedstocks, such as cellulosic ethanol or algae, which are believed to have a lighter environmental footprint.

But there are no commercial-scale cellulosic ethanol or algae plants operating in the United States, mainly because they are not yet competitive on costs. U.S.D.A. projections this year show corn as the primary feedstock for U.S. ethanol production through 2020.

Nevertheless, the industry views the 2007 target as a launching pad, not an end goal. “We think biofuels can contribute much larger volumes in the long term,” Mr. Cooper said. Both his organization and Growth Energy want the government to require car manufacturers to make vehicles that could run on higher ethanol blends and to help pay for filling station infrastructure. Yet even with increasing corn yields, there are doubts about whether U.S. land and water resources can support the projected production.

A 2009 study by Jan F. Kreiger, a University of Colorado chemical engineer, found that at just 25 percent gasoline displacement, corn ethanol would require 180 gallons of water per gallon of fuel and use 51 percent of all U.S. cropland. Even cellulosic ethanol would require 146 gallons of water per gallon and 35 percent of the cropland.

“Our appetite for transportation fuels is too gargantuan,” said Jerald L. Schnoor, lead author on the National Academy of Sciences report. “We can’t grow our way out of it.”

Investment in corn ethanol “seems like a very expensive detour from an energy policy point of view,” said Mr. Cox, of the Environmental Working Group. “This is really agricultural policy masquerading as energy policy.”

**EPA Postpones Ruling on More Ethanol in Gasoline (*The Log*)**

By: Log News Service | Thursday, June 24, 2010 12:00:00 AM Last updated: Thursday, June 24, 2010 2:42:00 PM

LOG NEWS SERVICE -- The federal Environmental Protection Agency said it will wait until this fall to decide whether U.S. engines -- including boat engines -- can handle higher concentrations of ethanol in gasoline. The agency had been expected to decide this month whether to increase the maximum allowable ethanol blend from 10 to 15 percent, in response to a strong lobbying effort from Growth Energy, a consortium of ethanol producers originally led by Gen. Wesley Clark.

The EPA said June 17 that initial tests on 15-percent Ethanol blends “look good” and should be completed by the end of September. A decision will come after the Energy Department completes the testing of the higher blend on vehicles built after 2007.

The ethanol industry has maintained that a 15 percent ethanol blend in motor fuel (E-15) will not harm the performance of car engines. But marine industry groups oppose an EPA waiver for E-15 on the grounds the blend will cause irreparable harm to boats. They have called on the agency to do extensive testing on marine engines before approving E-15, so that the decision would be based on sound science, not politics.

The National Marine Manufacturers Association (NMMA) said that although there have been cases where E-10 gasoline has negatively and significantly affected recreational marine engines and fuel systems, it did not oppose the use of ethanol blended at 10 percent or lower levels in gasoline.

However, the NMMA said, increasing the ethanol content in gasoline above that level would be an entirely different story. The EPA, it said, has recognized in its determination that E-15 is not “substantially similar” to E-10.

“For the marine sector as with all other engine manufacturing sectors, one of the most substantial concerns with any fuel change is the enormous and diverse array of nearly 17 million legacy marine products currently operating in the United States -- and those boats, engines, and fuel systems currently being manufactured -- none of which has

been designed, calibrated or certified to be compatible with any gasoline containing more than 10 percent ethanol by volume," the NMMA said, in a statement.

Pro-ethanol lobbyists immediately expressed disappointment with the delay. Tom Buis, president of Growth Energy, the group that filed the original petition for the increase, used the oil spill in the Gulf of Mexico as an argument for higher blends of ethanol in fuel, in a letter to President Barack Obama June 17.

"With fossil fuels getting dirtier, costlier and riskier to extract, as we are witnessing with the epic catastrophe in the Gulf of Mexico, now is the time we should move on expanding the production and consumption of clean, renewable fuels like ethanol," Buis wrote.

This is the second time the EPA has announced a delay in its decision on increasing the allowable ethanol level in fuel. The agency pushed the decision to June last December, saying further testing was needed.

*-- A report from the Associated Press was used in this story*

06/25/2010

**Ethanol Industry Weighs Options To Fight EPA Delay On E15 Waiver (*Inside EPA*)**

The ethanol industry is weighing its legal and legislative options for challenging EPA's recent announcement that it will delay a decision on approving ethanol blends above 10 percent (E10) until September while it waits for results on the impact E15 could have on engines.
Tom Buis, CEO of Growth Energy, held a June 18 teleconference criticizing EPA's announcement earlier this week that the agency will delay a final decision on the group's Clean Air Act waiver request to allow the sale of ethanol blends above E10 up to E15. The agency says it is waiting on the Department of Energy (DOE) to complete tests on on how E15 could affect vehicles.

EPA told Growth Energy to expect a decision by mid-year and is now suggesting September at the earliest, Buis said. "Obviously we find that unacceptable. We feel we've submitted enough data to support the waiver going up to E15 for all vehicles." The group is now weighing "our legal options, our legislative options" to find out the reason behind the delay, Buis said.

Growth Energy is already having briefings with members of Congress, including a June 18 conference call with lawmakers on the Senate Agriculture Committee, Buis added.

At least one lawmaker, Sen. Mike Johanns (R-NE), has issued a statement criticizing EPA's decision to postpone a decision on the waiver until DOE completes its current testing of higher ethanol blends' impacts on vehicles. "I urge EPA to expedite any

further testing to encourage growth in the renewable fuel industry and reduce our dependence on foreign oil," Johanns said.

Buis did not elaborate on legal options for challenging the delay, but section 211(f) of the Clean Air Act requires EPA to make a decision on waiver requests within 270 days. Growth Energy filed its request in March 2009 meaning EPA has now exceeded the air act deadline, which could potentially give the company an opening to sue to force a decision on the request.

For now, Buis said Growth Energy is crafting a letter to DOE asking for a full explanation of the department's testing and whether it is required under the air act. "We think we met" all the data requirements to support the waiver, Buis added.

Buis also sent a June 17 letter to President Obama raising concerns with the delay, asking the president to direct the federal agencies involved in the waiver to expedite the testing process by adding extra staff, additional shifts "or whatever other steps necessary" to complete the testing. *A copy of the letter is available on InsideEPA.com.*

DOE is on track to complete testing by September to determine the impact of higher ethanol blends on vehicles built after 2007, EPA said in a statement. DOE is also testing some vehicles built before 2007 and testing tanks and other fuel handling equipment to see how it may be affected by E15. "While results from the tests conducted to date look good, EPA will not make a final decision until DOE completes its current comprehensive testing of the newer vehicles."

EPA said it expects to make a final waiver decision this fall, and the agency is widely expected to approve E15 but limits the approval to model year 2001 or newer vehicles.

Robert Dinneen, president and CEO of the Renewable Fuels Association, has already said that industry could challenge that limited approval as "scientifically unjustified," though he did not say whether it would be an administrative or legal challenge.

Buis was also asked on the call about food processing giant Archer Daniels Midland Company's recent request asking EPA to approve the use of E12 in response to Growth Energy's request for blends up to E15, and whether that complicates the E15 request.

Buis said, "I would point out that our waiver allows for EPA to use all the data we submitted to grant up to E15. That could be E12, it could be E13. We've asked for that process. That could be part of their decision. Who knows?"

Meanwhile, Buis also said that it is important to fund an infrastructure for blender pumps that can handle higher blends. He advocated the government mandating the production of flex-fuel vehicles and the installation of blender pumps. And if the Senate takes up energy legislation, Growth Energy will "push real hard" to get provisions in that bill on developing a greater infrastructure for the sale of higher ethanol blends, he added.

Agriculture Secretary Tom Vilsack in a June 18 statement said EPA is taking "a significant step forward by discussing their timeline to expand E15 to vehicles. This

provides a roadmap to build a stronger domestic biofuels industry by creating a market to expand the use of ethanol in America."

**Feds assess risk from sunken Lake Champlain tug (*Associated Press*)**

By WILSON RING (AP)

ON LAKE CHAMPLAIN — Federal officials are trying to determine if any fuel remains in a tugboat that sank in Lake Champlain almost 50 years ago.

The Environmental Protection Agency and the Coast Guard sent a remote operated vehicle down 160 feet in Lake Champlain to the wreckage of the William H. McAllister. It was the first step of a possible effort to pump up to 14,000 gallons of diesel fuel out of the boat.

The McAllister sank in November 1963 after running aground in New York waters on a reef near Port Kent, N.Y. and Burlington, Vt.

Experts say that if a large amount of fuel were to escape into Lake Champlain it would cause an environmental disaster.

**GENERAL**

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06/25/2010

**Senators Confirm Next EPA Inspector General By Unanimous Consent (*Inside EPA*)**

The Senate by unanimous consent June 22 confirmed Arthur Elkins to be EPA's next inspector general (IG), after Republicans lifted their rotating hold on the nominee -- though it is unclear what concessions, if any, the GOP won to allow the confirmation to proceed.
Elkins' nomination was noncontroversial and vocal Republican critics of the Obama EPA, including Senate Environment & Public Works Committee ranking member James Inhofe (R-OK) and oversight subcommittee ranking member John Barrasso (R-WY), had expressed their support for the nominee.

Still, Elkins found his nomination caught up in a broader Republican stalling tactic over more than 60 Obama administration nominees subject to secret "holds" blocking the candidates from consideration on the Senate floor. Sen. Claire McCaskill (D-MO) had

led efforts in recent weeks to try and force senators to claim the secret holds and explain the reasons behind them.

One Republican aide says the GOP allowed a unanimous consent agreement to take place June 22 on 64 nominees, including Elkins, after the White House "dropped its insistence on including a controversial nominee who is already serving as a result of a recess appointment." It is unclear which nominee the aide was referring to, but it is not any official at EPA.

Prior to being nominated for IG, Elkins was an associate general counsel within EPA's Office of General Counsel (OGC), where he supervised "the delivery of legal counsel, opinions, litigation support and other legal services in support of the EPA OGC's Information Law Practice, Employment Law Practice and Intellectual Property Law Practice," according to a Nov. 17 White House press release on his nomination.

**HAZARDOUS WASTE**

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06/25/2010

**EPA To Clarify Whether Strict Coal Ash Rule Would Apply To Inactive Sites (*Inside EPA*)**

EPA officials say they will work to clarify industry's concerns about whether the agency's proposal to issue a first-time hazardous waste rule for the disposal of coal ash would retroactively apply to coal waste surface impoundments that are no longer operating, which industry says could impact hundreds of inactive sites.
The agency plans to soon issue a clarification of intent about whether the proposal would capture inactive sites so that groups commenting on the agency's plan can adjust their comments accordingly, an EPA official says.

Jim Roewer, executive director of the Utility Solid Waste Activities Group (USWAG), said recently that EPA's proposal to regulate ash as hazardous under subtitle C of the Resource Conservation & Recovery Act (RCRA) amounts to an "expansion of RCRA" because it would retroactively apply to inactive disposal sites. The agency is also taking comment on less-stringent regulation of coal ash as solid waste under subtitle D of RCRA.

Roewer said at a June 17 Environmental Law Institute (ELI) event in Washington, D.C., that industry has major concerns with the validity and cost of subjecting inactive sites -- some of which may not have received coal ash shipments for many years -- to strict hazardous waste rules. Roewer claims hundreds of inactive facilities could potentially be affected. If EPA decides to pursue a subtitle C rule, Roewer said EPA would have to tweak its regulatory text to explicitly exempt all inactive sites from any hazardous ash disposal rules.

The language in the proposed coal waste rule that is prompting the concern appears in subpart FF of the proposal and states that owners "or operators of surface improvements that cease receiving" coal ash "must comply with the closure requirements" of RCRA subtitle C regulation and that facilities "that have not met these closure requirements by the effective date of this regulation would be subject to the requirements."

At the ELI event, EPA waste official Betsy Devlin said of the language at issue, "I can can read this two different ways. . . . I need to make sure that is our intention" to capture inactive sites with the rule.

Devlin, associate director for materials recovery in EPA's waste management division, said she would have to clarify with her EPA colleagues whether it is the agency's intent to subject the inactive facilities to the subtitle C proposal. Devlin said EPA would issue a clarification of its intent -- likely on its website -- so that stakeholders could adjust their comments on the proposal accordingly before submitting them to the agency.

EPA published the proposal in the June 21 *Federal Register*, kicking off a formal 90-day comment period.

Also speaking at the ELI event, Environmental Integrity Project Executive Director Eric Schaeffer suggested that rather than granting industry's request for a blanket exemption for inactive sites, EPA should first check to see what if any environmental monitoring had been conducted at the inactive facilities and determine whether they were causing any environmental harms that need to be addressed through possible new regulation. "There needs to be some way of determine whether the inactive sites pose a threat," Schaeffer said.

**Meanwhile, Devlin said that if EPA decides not to regulate ash as hazardous, the agency might** consider pursuing a separate financial assurance requirements for coal waste facilities under section 108 of the Superfund law. This is because a RCRA subtitle D solid waste rule would not have financial assurance requirements -- designed to ensure that companies have financial resources available to pay for cleanup in the event their facilities cause environmental contamination -- built into it, whereas a subtitle C hazardous waste rule would.

Currently, EPA is pursuing financial assurance regulations under section 108 of Superfund for a wide range of industries, including the chemical, petroleum, electricity and hardrock mining industries. But the agency is facing opposition from the industries who argue they are already doing a good job managing their hazardous waste and that the agency's rationale for the rules may be illegal (*Inside EPA*, April 16).

On coal ash, ndustry officials during the ELI seminar reiterated their claim that companies would stop pursuing the beneficial reuse of coal ash if EPA classifies it has hazardous waste due to the liability concerns.

Similarly, Schaeffer reiterated environmentalists' position that EPA should not take industry on its word, arguing that industry has in the past made such claims in

opposition to the creation of other environmental laws and regulations that ultimately did not harm them.

Devlin said EPA would need specific anecdotal examples and preferably hard data from industry to show that such ash recycling operations were stopping. Roewer said industry officials could provide examples of companies that produce coal ash containing products being solicited by competitors producing non-hazardous alternatives to coal ash for use in their products to underscore industry's claim.

**MINING**

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06/25/2010

**Activists Sue Appalachia Mines After EPA Objects To Selenium Limit Delay (*Inside EPA*)**

Environmentalists have filed several lawsuits against a host of mines in West Virginia for violating their permits' limits for the water pollutant selenium, after the mines' deadline to meet the limits expired and EPA objected to the state's efforts to give some of the mines more time to meet the limits.
Sources have said the mining permits are examples of where EPA is moving to strengthen the adequacy of compliance schedules contained in state clean water permits, putting new pressure on industry to comply with strict permit limits -- even as activists are challenging the legality of such schedules (*Inside EPA*, June 18).

The Ohio Valley Environmental Coalition, West Virginia Highlands Conservancy, Coal River Mountain Watch, and Sierra Club filed three lawsuits on June 17 and 18 in district court in West Virginia against a number of mines and mine complexes that the activists say are violating selenium permit limits. The mines are subsidiaries of three large coal mining companies, Arch Coal, Massey Energy and Patriot Coal.

The suits come after EPA Region III May 27 sent letters objecting to draft modifications to permits for 13 West Virginia mining operations that would give the mines until mid-2012 to comply with permit limits to meet the state's standard for selenium, rather than the current deadline set for April 5, 2010.

The letters, addressed to the West Virginia Department of Environmental Protection, argued that the mines had a number of years to come into compliance with the limits and that the state had proven "no unexpected intervening event" that would prevent the mines from meeting the standard.

Sources said the letters would test the amount of the amount of time states are allowed to give industry in compliance schedules to meet strict permit limits. One informed

source said EPA's objection letters would also means the mines' compliance schedules expired on April 5, 2010, allowing activists to sue the mines to meet the limits.

Now, environmentalists are following through with the suits against the mines, some of which were the subject of the EPA objection letters. *Relevant documents are available on InsideEPA.com.*

In each of the suits the groups argue the mines "discharged and continue to discharge selenium -- a pollutant designated as toxic by the [EPA] -- into waters of the United States in persistent violation of Section 301 of the Clean Water Act, and of the conditions and limitations of . . . West Virginia/ National Pollution Discharge Eliminations System . . . Permits issued by the State of West Virginia pursuant to Section 402 of the Clean Water Act."

The complaints seek declaratory and injunctive relief to halt discharges in violation of the permits, as well as civil penalties of up to $37,500 per day of violations.

**W.Va. official apologizes for remarks about agency (*Greenwire)***

(06/24/2010)
A West Virginia official who said that federal regulators will "pay the price" for "unfair" enforcement of strip mining permitting apologized for his tone yesterday, while maintaining that he will see the regulators in court.
State Department of Environment Protection Secretary Randy Huffman apologized to U.S. EPA yesterday, according to the DEP. But Huffman maintains that EPA holds West Virginia to higher standards for strip mining than any of the other five states it issues permits for.
He predicted that the issue will end up in court.

EPA issued new water-quality standards in six states on April 1, which Huffman said is unattainable and unfairly enforced. The other states -- Kentucky, Pennsylvania, Ohio, Virginia and Tennessee -- are not coming under the same scrutiny, he said.

Staff from the DEP will be meeting with EPA to discuss the issue this week. Representatives from environmental agencies in Virginia, Maryland and Pennsylvania, and officials from the U.S. Fish and Wildlife Service, the Office of Surface Mining and the Army Corps of Engineers will also be there.

EPA's new policy aims to curtail mountaintop mining, which blasts mountaintops apart to remove the coal. The waste is dumped into valleys and streams, increasing salt levels in the waterways and harming fish and wildlife. The new standards are meant to protect 95 percent of aquatic life, EPA said.

The new standards will shut down strip mining, according to the industry. West Virginia and Kentucky are already feeling the effects, with permit approvals at a halt (AP/*Charleston* [W.Va.] *Gazette*, June 23). **--GV**

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**PESTICIDES**

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06/25/2010

**Activists Fear 'Micro' Products May Escape Oversight Under EPA Nano Policy (*Inside EPA*)**

EPA is facing early concern from environmentalists and some industry groups that its upcoming definition of nanoscale materials in pesticides may preclude regulation of "micro" materials, some of which -- such as microcopper -- are highly toxic and should be regulated.

EPA is expected this month to announce a new policy that would use the agency's existing authority under section 6(a)(2) of the Federal Insecticide, Fungicide, & Rodenticide Act (FIFRA) to require reporting of the presence of nanomaterials in pesticides. The policy is expected to define nanomaterials as particles that range in size between 1 and 100 nanometers in at least one dimension, according to Bill Jordan, senior policy adviser for EPA's Office of Pesticide Programs (OPP), who described the new policy to the Pesticide Programs Dialogue Committee (PPDC) last April.

But the agency has yet to define micromaterials, and no definition has yet gained widespread acceptance.

The new policy, scheduled to be announced in a *Federal Register* notice later this month, would consider a pesticide containing any nanoscale material as an active or inert ingredient to be new -- and requiring more agency scrutiny -- even if a non-nanoscale form already exists as a registered product, according to Jordan's presentation.

Jordan noted in his presentation that "at least one" pesticide currently on the market, nanosilver, matched the criteria outlined in the new definition, though it was approved without EPA knowing it contained a nanoscale product. Jordan's presentation acknowledged there are "likely other registered pesticides that contain nanoscale materials," and stressed the importance of identifying them and ensuring they met FIFRA standards for safety.

Industry groups have already raised concern that EPA's new interpretation fails to discriminate among different types of data and could taint all nanomaterials as having adverse effects.

Now environmentalists are raising concerns that the proposed new policy does not go far enough because it does not allow regulation of "micro" and other small but toxic ingredients in pesticides.

The International Center for Technology Assessment (ICTA) -- a group that advocates for restrictions on the use of nanomaterials, which could pose risks to human health or the environment -- has filed Freedom of Information Act requests with EPA for information regarding microcopper pesticide products on behalf of two wood preservatives industry representatives.

One of the products ITCA requested more information about is registered by EPA as a "non-restricted use pesticide" and certified as an "Environmentally Preferrable Product (EPP)," according to the product's website.

Copper-based wood preservatives have caught activists' interest, in part because EPA has been promoting the use of the products as an alternative to arsenic since 2008, while tightening restrictions on products containing arsenic, a source with the group says. Competing industry has felt increased pressure to begin using the new "micronized" copper products, but getting information about them has been difficult, and little is known about potential environmental and health risks. Nanocopper has "really flown under the radar," the ICTA source says.

EPA acknowledges that there are concerns about the difference between the toxicites of nanocopper and microcopper -- a distinction the ICTA source indicates may be true for other materials as well as copper.

OPP's Jordan acknowledged certain concerns about the unknown potential human health risks of exposure to nanomaterials during his April 29 presentation to the PPDC. He cited "micro" copper as "acutely less toxic than nanocopper," a distinction that ICTA argues highlights the need for more information about the risks of both chemicals.

**In addition to raising concerns about EPA's definition of nanoscale materials,** environmentalists are also planning to raise concerns about the risks posed by microscale products when they file upcoming comments on a draft EPA guidance for avoiding misleading product brand names in pesticides.

The draft guidance, "False or Misleading Pesticide Products Brand Names," reiterates that false or misleading statements of any type, when made on pesticide labeling, are violations of FIFRA and certain regulations promulgated under FIFRA. "Whether they appear in product brand names or elsewhere on labeling, false or misleading statements have the potential to directly or indirectly misinform those who read them. Depending upon the nature of the false or misleading statement, such misinformation could bias a customer's selection of which product is most appropriate to buy and apply for a particular pest problem," according to a May 19 *Federal Register* notice. *The notice is available on InsideEPA.com.*

06/25/2010

**High Court Affirms Use Of NEPA Injunctions Without Setting New Test (*Inside EPA*)**

The Supreme Court is reaffirming the test for when judges can block projects under the National Environmental Policy Act (NEPA) in a ruling that avoids raising the bar for activists seeking to block harmful projects, while emphasizing that injunctions are "extraordinary" remedies that lower courts should not grant easily.
In a 7-1 decision in *Monsanto, et al. v. Geertson Seed Farms, et al.*, the court backed Monsanto's claims that a lower court judge overstepped his authority in issuing a nationwide permanent injunction against the planting of Roundup Ready alfalfa -- a genetically engineered seed -- while the U.S. Department of Agriculture (USDA) conducts an environmental impact statement (EIS) to allow the planting. *A copy of the decision is available on InsideEPA.com.*

The lower court had earlier ruled that an EIS was required, vacating the less-stringent environmental assessment (EA) USDA had conducted as inadequate, and then issued the injunction preventing the planting of the alfalfa during the new, more stringent NEPA review process.

Environmentalists often seek injunctions to bar projects from proceeding during NEPA reviews, arguing that blocking the projects is the only way to realistically get the government to comply with the act, which requires an assessment of environmental harms, mitigation options and consideration of a range of alternatives.

Activists had feared that in this case, the court could raise the bar on what plaintiffs need to show before courts can grant injunctions for NEPA violations.

But instead the court reiterated the four-part test that courts have traditionally used to determine whether to grant an injuction. The test requires plaintiffs to show they have suffered an irreparable injury; that available remedies, such as monetary damages, are inadequate to compensate for that injury; that, considering the balance of hardships, a remedy is warranted; and that the public interest would not be disserved by a permanent injunction.

"An injunction should be issued only if the traditional four-factor test is satisfied. In contrast [lower courts] appear to presume that an injunction is the proper remedy for a NEPA violation except in unusual circumstances. No such thumb on the scales is warranted," Justice Samuel Alito wrote in the June 21 majority opinion.

The opinion goes onto say that the lower court abused its discretion by rejecting a proposal by USDA to allow partial planting of the alfalfa while it conducted the EIS.

Alito was joined by six of the seven other justices who participated in the case. Justice John Paul Stevens issued a dissent and Justice Stephen Breyer recused himself because his brother was the district court judge who issued the original opinion in the case.

In response, Monsanto officials welcomed the ruling, saying they expect USDA's Animal & Plant Health Inspection Service (APHIS) to immediately authorize partial planting of the seed. Additionally, Monsanto's general counsel Dave Snively on a June 21 press call says the ruling sends strong guidance ahead of a July 9 district court hearing on whether to issue a permanent injunction against Monsanto's Roundup Ready sugar beets after the lower court ruled that the EA for that product was also inadequate. That judge already rejected granting a temporary injunction earlier this year.

But environmentalists and food safety advocates are downplaying the scope of the ruling, and say Monsanto's claims that APHIS will quickly act to allow alfalfa planting ahead of completing its EIS -- expected within a year -- are categorically untrue, noting that APHIS has indicated it is not considering partial planting during the EIS process.

APHIS in response to a question about its plans says it is reviewing the decision and "awaiting any future ruling on remand" by the district court "before making decisions about its next regulatory actions.

In a statement on the high court ruling, USDA said it continues to move forward with completion of the EIS, which it issued in December and has said could be complete within a year. "Nothing in the Supreme Court's decision affects that ongoing process," the statement says, adding that the ruling stresses the agency's duty to "ensure compliance with environmental statutes such as NEPA while USDA works to create the environment where all types of producers and an do produce all types of crops.

**Meanwhile on the press call, Monsanto's Snively said he believes the high court has significantly raised** the bar for NEPA injunctions. "There is no presumption that an injunction should issue," he said. "The court made that crystal clear to the 9th Circuit which has repeatedly not followed that guidance. . . . With that template being set as the law of the land in plain language it is very clear that the regulatory framework . . . can't be hijacked through litigation. I do believe at the end of the day it helps bring clarity to NEPA law in this country."

However environmentalists disagree that the ruling establishes any major changes to NEPA precedent. One source says the opinion "clearly doesn't change the status quo" and that there will be no substantive change "in the real world." The source agrees that the justices admonished the 9th Circuit to be more careful in issuing injunctions "but in fact I don't think that means injunctions will be harder to get in NEPA cases where they are warranted."

Another NEPA expert says the case is "fact bound" about the appropriateness of the scope of the remedy for Roundup Ready alfalfa. "The opinion stands as a reminder that injunctive relief is an extraordinary remedy that shouldn't be granted lightly. The court seemed to feel that the district court had not gone through an adequately intensive analysis of factors, but I don't think the case would prevent a district court in the future from granting an injunction -- it merely . . . encourages a future district court judge to really dot the i's and cross the t's."

The Center for Food Safety, a respondent in the case, is claiming victory with the decision because the group says it means planting of the alfalfa is still banned. "The injunctive standard remains the same," a source with the group says.

But an environmental law professor says while the decision does not radically change NEPA case law, it is "as expected, a bad thing for NEPA plaintiffs" because the ruling will apply broadly, compared to a high court NEPA ruling issued last year that barred injunctions when the activity in question was addressing national security, *Donald Winter, et al. v. Natural Resources Defense Council, et al.* "It was possible to read *Winter* very narrowly. It's not possible to read this case that narrowly," the source says.

The source adds that even if the Monsanto ruling does not create new precedents, "the rhetoric of the decision makes very clear that the court thinks injunctive relief has to be justified, it can't be assumed to be the norm, which is what the 9th Circuit was doing." The case also further emphasizes "that the Supreme Court is really hostile to NEPA," and that Justices Sonia Sotamayor can be added to the list of foes. -- *Dawn Reeves*

06/25/2010

**EPA Agrees To Float Stricter Rule For Human Studies In Pesticide Decisions (*Inside EPA*)**

EPA has struck an agreement with a coalition of environmental and farmworker groups that requires the agency to propose ways to strengthen its scientific and ethical standards governing use of human test data for pesticide decisions -- a move that activists say could make it more difficult for industry to rely on the data to weaken regulations.
EPA's current rule outlining its test standards "allows pesticide companies to use intentional tests on humans to justify weaker restriction on pesticides," Dr. Margaret Reeves, a senior staff scientist with Pesticide Action Network North America, said in a June 17 statement announcing the agreement. "Pesticide companies should not be allowed to take advantage of vulnerable populations by enticing people to serve as human laboratory rats," she said.

The coalition sued EPA in 2006, saying its rule setting standards for use of human test data in pesticide decisions -- titled *Protections for Subjects in Human Research* -- violated language in the fiscal year 2006 appropriations law that authorized it. Congress asked EPA to incorporate the Nuremberg Code on medical experiments and recommendations from the National Academy of Sciences (NAS) into the rule, as well as a restriction on testing on pregnant women and children, according to a source with the Natural Resource Defense Council (NRDC), a coalition member.

The settlement, announced by NRDC and other groups June 17, requires EPA to promulgate amendments to its rule along the lines required by the congressional language. According to the settlement, EPA will sign a notice of proposed rulemaking within seven months and issue a final rule within 18 months. The coalition will file a

motion to stay the case as EPA proposes and implements the rule, and the case will be dismissed if the final rule is consistent with the settlement, an NRDC source says. *A copy of the settlement is available on InsideEPA.com.*

The source says the proposed rule language in the settlement would close a loophole that allowed some tests to be conducted on pregnant women and children, would eliminate a provision that allowed an "authorized representative" to consent to the testing on behalf of a subject, and would require human testing to adhere to a set of scientific and ethical standards based on the NAS recommendations.

NRDC said in the statement that it will limit industry's ability to use human test data to argue for weaker rules. The group says the industry has used human test data -- which is often not as conservative as default modeling based on animal test data -- to argue for weaker regulations.

**RECYCLING**

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06/25/2010

**EPA Neutrality May Move E-Waste Standard Fight To Recycler Marketplace (Inside EPA)**

EPA is for the first time backing environmentalists' e-Stewards certification for recycling electronic waste (e-waste) in addition to supporting its own Responsible Recyclers (R2) program, a step that could move the fight over the competing standards to the recycling market and prompt new efforts by activists and recyclers to gain the upper hand. Some recyclers say one standard will win over the other while others are taking a wait-and-see approach and arguing that there could be a place for both standards in the marketplace.

"EPA supports and will continue to push for further safe and protective recycling efforts and encourage improvement in best management practices for recyclers. There are existing recycling certification programs, such as R2 and e-Stewards that EPA believes advance environmentally safe practices and includes standards for use in third-party certification of such efforts," an EPA spokeswoman says.

The agency's statement builds upon recent remarks by EPA Administrator Lisa Jackson at a May 25 INTERPOL e-waste meeting, where she called for new regulations and legislation to limit exports of e-waste and urged work toward ratifying the Basel Convention on hazardous waste trade, while underscoring the importance of certifications.

E-waste has long been a point of contention between industry and environmentalists. Domestic recyclers must comply with environmental laws but activists are concerned

that much e-waste is exported to countries where the waste is processed and disposed of in ways that harm health and the environment. Industry argues that export of electronics for repair and reuse is safe, and that facilities in other countries that use good practices should be able to participate in the market.

Certification for e-waste recyclers has been a key sticking point in the debate. EPA convened and facilitated a certification process that resulted in R2, which industry backs and which the agency promotes on its website. Activists participated in the development of R2, but walked out in the end, arguing the standard was not strict enough because it would allow for the disposal and incineration of some materials, such as circuit boards, and violates international law because it allows for the export of some hazardous materials contained in the e-waste.

The activist group Basel Action Network (BAN) then developed its own stricter standard known as e-Stewards, which it manages and promotes and which it has pushed EPA to back. While the BAN standard is not listed on the agency's website, EPA has made recent statements supporting e-Stewards.

**A BAN source says EPA's neutrality is "real progress" but says EPA should also promote** e-Stewards on its website. The source argues that EPA should take a neutral stance on the standards and then step back and let the market decide which certification wins out. "I think if we don't have the EPA's steady hand on the scales tipping in one direction . . . we have a really good chance of getting the upper hand."

The source argues that in every instance where activist-backed standards have competed with industry-backed standard, the activists' standard has succeeded because the public trusts that environmental groups are not guided by profit, the source says. And while some argue that the group's standard does not have multi-stakeholder governance, BAN has representatives from many different sectors advising the group on the standard, the source says.

Another benefit of e-Stewards is that it has stable financing -- since fees companies pay to be certified go toward promoting and maintaining the standard, the BAN source says. While the two standards have very similar data security requirements, the e-Stewards standard also prohibits prison labor, which helps assure data security, the source says.

BAN is already taking steps to try to win over the market. The group has announced e-Stewards Enterprises, which are big corporations like banks that have promised to give preference to e-Stewards recyclers. BAN also plans to certify the whole supply chain, for example, by planning a certification for e-waste collectors.

However, one industry source argues that e-Stewards may not win backing from government agencies and big companies because it was not developed in an open and transparent process.

Certification processes are supposed to be developed in an open process and in the case of R2, EPA hired a third party facilitator and invited input from all stakeholders in developing the standard. E-Stewards was closed to input from many stakeholders both

in its development and management and can be changed at any time, which would raise concerns for private and public customers, the source says.

BAN's standard is also so strict that it can have the effect of promoting disposal rather than repair and reuse, which has negative environmental impacts, the industry source says. "The last thing you want to do is send that thing to a shredder after 3 years. E-stewards is so strict frankly, that that is the outcome," the source says.

**SUPERFUND**

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June 25, 2010

**EPA begins interviewing residents about mine issues (*Reno Gazette Journal*)**

*By Keith Trout*
*News Editor*

While the Anaconda/Yerington mine site has not been placed on the U.S. EPA's National Priorities List as a Superfund site, EPA Region 9 community involvement officials are starting work towards a community involvement plan for the site.

That effort included being in Mason Valley last week to conduct interviews of over a dozen community members, as part of preparing just such a plan.

The local mine site clean-up project is currently under regulatory authority of the EPA as a Section 106 site under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).

That includes the Superfund program; however, the site hasn't been placed on the National Priorities List (NPL), which would make the site a full-fledged Superfund site and eligible to receive Superfund money collected from the Superfund tax (mainly on the gas and oil industry).

In town last week for the interviews were Svetlana Zenkin, a Community Involvement Coordinator with EPA's Region 9 Superfund office, and Carolyn Hunter, a community involvement manager for Tetra Tech, a consultant on the local mine project with the EPA.

Zenkin said the community involvement plan would be a document that "will identify local issues and concerns related to the Anaconda Mine site," while at the same time stressing that they only discussed the possibility of the site being placed on the NPL.

The EPA is now supporting the Arimetco-owned portion of the mine site be cleaned up under the NPL, since Arimetco is bankrupt, but Zenkin said no decision on a listing has been made and any decision would take into account stakeholder and public input.

Among those interviewed on Friday were representatives of the Lyon County School District, and School Trustee Jason Sanderson of Yerington stressed the school district and board is neutral on the mine site designation, that they neither support nor oppose Superfund listing.

Sanderson noted the EPA representatives requested the interview to gather community input, and the LCSD doesn't support being included on the NPL; however, he noted the district received a lot of good information, including to help schools be resources for this project.

The LCSD also provided information about approaching the community for its involvement, he said.

Zenkin said they are still interviewing local residents for the community involvement plan and received more suggestions of people to interview during last week's sessions. Among those interviewed last week, she said, were residents who live north of the mine site, members of the Yerington Paiute Tribe, people who are significantly involved with the Yerington community (services clubs, school system), local business owners, and members of the agricultural community.

Those wishing to be interviewed may contact Zenkin at 415- 972-3805 or at Zenkin.Svetlana@epamail.epa.gov.

"While we may not be able to meet with all of them, we will do our best to get as comprehensive a representation as possible," she said of the additional names provided for interviews

Zenkin explained the community involvement plan would identify local issues and concerns related to the mine site and continued that some of the issues discussed in the interviews included potential health impacts, project pace and the possibility of site placement on the NPL.

The EPA website says community involvement is "the process of engaging dialogue and collaboration with community members." It also says, "The foundation of Superfund's community involvement program is the belief that members of the public affected by a Superfund site have a right to know what the Agency is doing in their community and to have a say in the decision-making process."

The mission of the community involvement program, according to the EPA's 'Superfund Community Involvement Handbook, is "to advocate and strengthen early and meaningful community participation during Superfund cleanups."

Zenkin reported that based on the feedback from those interviewed, "The EPA will outline how they will inform and involve the community in environmental cleanup decisions at the Anaconda Mine site."

She continued that the community involvement plan would "also provide background information about the Anaconda Mine site; demographic information about the local community; a list of past community involvement activities; applicable regulatory requirements; and contact information for the cleanup team."

The finished CIP document will also be made available to the public, Zenkin said.

06/25/2010

**Backed By EPA, Democrats Eye Legislative Vehicles For Superfund Taxes (*Inside EPA*)**

Democrats are eying various legislative proposals on jobs, tax and energy policies as potential vehicles for reinstating the long-expired Superfund taxes on industry, with sources saying the effort won a boost from EPA's new push to reinstate the taxes in order to generate billions of dollars in new revenue and help cut the deficit.
EPA Administrator Lisa Jackson sent a June 21 letter to the House and Senate urging lawmakers to take up the Obama administration's proposed one-page language for reinstating the taxes. The letter came one day before a Senate Environment & Public Works Committee Superfund panel oversight hearing of EPA's Superfund program. *The letter is available on InsideEPA.com.*

At the hearing, Sen. Frank Lautenberg (D-NJ) made the case for his legislation that would reinstate the Superfund taxes through Jan. 1, 2017, which he says is necessary given the slow pace of Superfund cleanups -- a problem the Government Accountability Office has previously highlighted (*see related story*).

Rep. Earl Blumenauer (D-OR) has also introduced legislation to reinstate the taxes through Jan. 1, 2018 and a spokeswoman for the lawmaker says the Democrat worked closely with the administration prior to Jackson issuing her letter. Blumenauer, a member of the House Ways & Means Committee that has jurisdiction over tax issues, is now trying to schedule a hearing on his legislation to reinstate the taxes, the spokeswoman says.

Blumenauer introduced his latest version of the bill last year, but at the time told *Inside EPA* that work towards advancing the legislation would likely have to wait until Congress resolved the then-pending debate on health care reform and other high profile legislative priorities. In addition, environmentalists who backed the legislation expected that Congress would not address the issue until after it also settled the debate on climate change legislation.

But the BP oil spill in the Gulf of Mexico has "certainly drawn attention" to broader issues of cleanup liability, the Blumenauer spokeswoman says, adding that Congress must pass legislation to ensure that funding is available for so-called orphan Superfund sites where there is no viable responsible party to pay for the site cleanup.

And because proponents of reinstating the Superfund taxes -- which expired Dec. 31, 1995 -- say it would bring in billions of dollars in new revenue, spur job creation at cleanup sites and shift the tax burden from citizens to polluting industries, there is a wide range of potential legislative vehicles for which the Superfund tax language could be a germane attachment, sources say, including any bills dealing with taxes or job creation.

Pending legislation on energy and climate change, once seen as an obstacle to reinstating the Superfund taxes, could also provide a potential vehicle for the language, one source says, adding, "There are a lot of options."

Jackson in her letter said the draft legislation would, if enacted, provide a "stable, dedicated" source of revenue for the Superfund trust fund to pay for the cleanup of contaminated sites. The bill would apply for taxable years beginning Jan. 1, 2011, through Dec. 31, 2020. If enacted this year the bill would bring in $1.2 billion in revenue in 2011, raising up to $2.2 billion in 2020 for a cumulative total of $18.9 billion between 2011 and 2020.

Blumenauer echoed the jobs and funding argument in a June 21 statement on Jackson's letter, saying, "This is a win for the environment, a win for local communities, and a win for the economy."

But the American Chemistry Council in a statement issued the same day criticized the legislative proposal, saying, "It would be inappropriate and unfair to impose Superfund taxes on companies with no responsibility for site contamination. . . . The budget challenges facing Congress are not a valid justification for taking action that will cost U.S. jobs and damage our nation's global competitiveness without positively affecting site remediation."

The administration's language differs slightly from the Lautenberg and Blumenauer bills with an alternative end-date for the taxes. It is notably different from another bill, by Sen. Bill Nelson (D-FL), that would reinstate the taxes and adjust them for inflation, but would drop a broad-based corporate environmental tax on all corporations with an income above $2 million, regardless of whether they produce oil or hazardous chemical-based products. Under the Nelson bill, only the oil and chemical industries would pay the tax.

06/25/2010

**Lautenberg Touts GAO Findings To Push Renewal Of Superfund Tax (*Inside EPA*)**

Sen. Frank Lautenberg (D-NJ) is touting a Government Accountability Office (GAO) finding that EPA's costs to remediate existing and future Superfund sites will likely exceed its current funding levels as a reason to pass his legislation reinstating the long-expired Superfund taxes on industry.
Republicans however are pushing back against the effort, and accusing Democrats of trying to exploit anti-oil industry sentiment caused by the BP oil spill by taxing the industry, along with others.

John Stephenson, director of natural resources and environment for GAO, summarized the results of a new report during a June 22 subcommittee hearing chaired by Lautenberg. The GAO report says that cleanup remedy construction for fiscal years 2011 and 2012 will cost between $253 million and $414 million more that the $267 million in annual funding the agency allocated for remedial actions in fiscal year 2009.

EPA estimates that between $123 million to $199 million in funding from other sources -- such as settlement agreements with polluters -- could be available to supplement the annual appropriations, but the GAO says that such a supplement would still not be enough to cover the estimated total costs for the two fiscal years.

According to the report, 60 percent of the 75 non-federal sites on EPA's National Priorities List (NPL) that have unacceptable human exposure have all or more than half of the work remaining to complete remedial construction. At federal sites, the polluting federal agency -- often the Defense Department -- is responsible for funding cleanup.

Ultimately, EPA has plans to control human exposure at all of the 75 sites with unacceptable human exposure, but EPA regional officials expect 41 of the sites to continue to have unacceptable exposures until fiscal year 2015 or later, GAO says. *The report is available on InsideEPA.com.*

Remedy construction has not been conducted in the most timely and cost-efficient manner at some sites because EPA has had to balance limited program resources among various program activities, the report adds. At one site in Utah, where people are facing human health risks due to contact with soil and dust contaminated with lead from mining activities, EPA officials estimated that an additional $3 million to $5 million per year would have allowed them to complete remedy construction at the site three to four years earlier than currently anticipated. Such delays have come despite a fiscal boost the Superfund program received from the economic stimulus package, the GAO says.

In addition, GAO found that most EPA and state officials expect that more sites will be added to the NPL in the next five years than had been during the previous five years. Some Democrats had criticized the agency under under the Bush administration for adding on average only about 16 new sites per year, but officials estimate the average will increase to between 20 to 25 sites in the coming years -- which the GAO notes will mean increased costs.

During the hearing, Lautenberg touted the GAO's findings as a reason to support his Superfund tax legislation, which he noted has seven cosponsors in the Senate. EPA

Administrator Lisa Jackson sent a letter recently to congressional leaders June 21 encouraging them to approve the legislation (*see related story*).

But Sen. James Inhofe (R-OK), the ranking member on the Environment & Public Works Committee, said Jackson's letter shows the administration is seeking to exploit the BP spill. "The Obama administration has consistently supported that tax -- but until recently, other than mentioning it in budget documents, its public support was muted," Inhofe said. "But the spill has changed that--now they feel the political climate is right to tax oil and gas companies."

Inhofe also argued that Democrats' claim they want to reinstate the tax to ensure that polluters -- rather than the public -- pay to cleanup up contamination is inconsistent with the federal government's recent bailout of the auto industry that Democrats supported. Inhofe claimed that the bailout allowed auto companies to escape liability for cleanups at their former facilities and argues that private citizens will have to fund the cleanups through tax dollars.

Inhofe also took aim at the Obama EPA's integrated cleanup initiative (ICI), which he said is an example of the agency spending Superfund money on administrative items rather than actual cleanup. ICI, which among other things establishes new metrics to measure progress at Superfund sites, amounts to EPA "essentially using taxpayers hard-earned dollars to create a public relations tool," Inhofe said.

Inhofe argued that reinstatement of the Superfund tax would essentially cause companies that are already paying to clean up their own sites to also pay for the cleanup of sites for which they are not responsible. Lautenberg, however, countered that without the tax, so-called orphan sites, at which viable responsible polluters no longer exist, are payed for with taxpayer dollars. "I will continue to fight to ensure that the polluters pay," Lautenberg said.

## TOXICS

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### 2nd source of pollution found near Lejeune well (*Charlotte Observer*)

North Carolina
June 25, 2010 Friday
SECTION: B
By Barbara Barrett; Washington Bureau
WASHINGTON
Federal scientists studying the history of water contamination at Camp Lejeune have learned of another source of spilled fuel that occurred years ago - this one less than a football field away from a drinking well that once served thousands of Marines and their families.

That well was closed in December 1984 after benzene was found in the water.

The source of contamination that scientists now are exploring was once an on-base refueling station within an area of the Marine base known as Hadnot Point. The refueling facility, known as Building 1115, contained seven underground storage tanks that ranged in size from 1,000 to 5,000 gallons.

The extent of the historic contamination across the Marine base - and its sources - are important details for federal scientists at the Agency for Toxic Substances and Disease Registry, an arm of the Centers for Disease Control in Atlanta.

Scientists are working on extensive water modeling research to understand the health impacts of the various contaminants. Those include trichloroethylene (TCE), tetrachloroethylene (PCE), benzene and vinyl chloride. Benzene is a key component of gasoline and a known carcinogen.

It's estimated that up to a million people were exposed to the contaminated water at Lejeune from the mid-1950s to the mid-1980s.

Nearly three decades after contaminated wells were shuttered, monitoring wells are finding poisons at thousands of times the drinking water safety standards in the aquifers below the military base, according to state documents.

As recently as January, benzene was tested at as high as 18,600 parts per billion from one untreated groundwater monitoring well at Lejeune. The federal standard for drinking water from the Environmental Protection Agency is 5 parts per billion; the state of North Carolina pegs it at 1 part per billion.

**EPA delays enforcement of lead paint rule (*Chicago Tribune*)**

By Mary Ellen Podmolik, Tribune Reporter
6:29 PM CDT, June 24, 2010
The U.S. Environmental Protection Agency has delayed until Oct. 1 the date by which contractors must be certified to safely remodel homes built before 1978 that may contain lead paint.
The Lead Renovation, Repair and Painting Rule, which involved specific safety precautions and criteria for contractor certification, went into effect April 22.

The agency has faced criticism for more than a year from remodeler trade groups that argued there was not adequate time to get firms certified.

The EPA said contractors still must follow the safety precautions of the new rule, but the agency is giving companies more time to take the required training courses and to file the paperwork documenting their use of lead-safe work practices.

The agency said it will not take enforcement action against any company until October.

More information on the rule and the dangers of lead poisoning is available at epa.gov/lead.

mepodmolik@tribune.com

**EPA ordered not to destroy documents in contamination suit (*Greenwire*)**

(06/24/2010)
Union Pacific Corp. said U.S. EPA is destroying documents regarding a $200 million lead contamination lawsuit the railroad brought against the federal agency.
The government and railroad have been trying to settle for years who is responsible for cleaning up 5,600 contaminated properties in Omaha, Neb. While analyzing more than 1 million pages of EPA documents, the railroad found an e-mail in which the supervisor of the lead site encouraged employees to delete e-mails so they could not be subject to public records requests.
At Union Pacific's request, a U.S. district judge issued a temporary restraining order yesterday ordering EPA not to destroy any records the railroad requested.

"The documents we're requesting would show what EPA knows about the true cause of lead in Omaha soils and whether the hundreds of millions of dollars EPA is spending will solve the problem," said Donna Kush, spokeswoman for Union Pacific.

EPA does not comment on pending litigation, spokesman Dale Kemery said (Josh Funk, AP/Yahoo News, June 23). **-- LP**

06/25/2010

**EPA Study Reviews May Force Major Delays For Key Risk Assessments (*Inside EPA*)**

EPA's recent decision to reconsider six risk assessments due to questions about data it used from a controversial Italian lab could pose major delays for those assessments, including assessments for widely used substances such as vinyl chloride and methanol, but is expected to have a limited impact on the agency's broader risk assessment program, observers say.
EPA announced June 15 that its draft assessments of methanol, the fuel additives methyl tertiary butyl ether (MTBE) and ethyl tertiary butyl ether (ETBE), and the plastic ingredient acrylonitrile, will be held pending EPA's further review of Ramazzini Institute studies used in the assessments. The agency says it is also "reviewing" its long-

standing assessments of vinyl chloride and 1,1 dichloroethylene (DCE) "to determine what action is needed to assure their scientific integrity."

EPA's announcement follows a June 11 report from the National Toxicology Program (NTP) that raised questions about the results and methods of Ramazzini's studies on methanol's carcinogenicity and found a lower incidence of lymphoma or leukemia in Ramazzini's test rats exposed to methanol than what Ramazzini scientists had found (*Inside EPA*, June 18).

Sources say the agency's assessments of vinyl chloride and methanol could be especially vulnerable to lengthy delays and especially close scrutiny as the agency relied on Ramazzini data to set numeric risk levels, which EPA and other regulators rely on to set regulatory levels.

A significant delay is expected "only where [the assessment] relies on Ramazzini data to quantify" risk, says a source with the Natural Resources Defense Council (NRDC).

The draft methanol assessment, released in March, bases its estimate of oral cancer potency on a study published in 2002 by Ramazzini scientist Morando Soffritti and colleagues. Similarly, EPA's vinyl chloride assessment, published on EPA's Integrated Risk Information System (IRIS) website in 2000, uses studies published by Ramazzini founder Cesare Maltoni in 1981 and 1984 to calculate its estimate of inhalation cancer risk.

EPA assessments of ETBE and DCE do not include cancer safety standards as the methanol and vinyl chloride assessments do because the agency determined it did not have the data it needed to calculate these numbers. But the agency performed a weight of evidence analysis for ranking the chemicals' carcinogenicity -- a ranking that can result in consumer deselection of chemicals -- based on Ramazzini data.

In the case of ETBE, a Ramazzini study is the only study EPA cites for its determination that "under EPA's Guidelines for Carcinogen Risk Assessment there is suggestive evidence of human carcinogenicity of ETBE based on the only oral cancer bioassay in Sprague-Dawley rats (Maltoni et al., 1999)."

Similarly for DCE, which EPA published on the IRIS website in 2002, the agency's classification of the chemical is again based on a Ramazzini study. Though the assessment cites numerous other cancer bioassays, the assessment notes that, "None of these bioassays was conducted by a protocol that meets current standards." The assessment goes on to note that "The only bioassay showing some evidence of carcinogenicity was the study in Swiss-Webster mice (Maltoni et al., 1985)." As a result, the agency concluded that the study provides "suggestive evidence of carcinogenicity by the inhalation route of exposure."

EPA's draft assessments of acrylonitrile and MTBE have yet to be publicly released, so it is unknown to what extent those rely on Ramazzini data.

EPA's draft assessment of formaldehyde, released June 2, dodged the controversy by refraining from mentioning any of the several Ramazzini studies published on the chemical. References to two Ramazzini studies of formaldehyde, both published in 2002, appear in a March inter-agency review draft of the document. By the time the agency released a draft of the assessment in June, both studies were deleted from the list of references.

Sources say that each of the six delayed assessments will have to be reviewed but it is unclear yet what if any changes EPA will make. Should the agency decide it is necessary to re-do its calculations or weight of evidence analyses based on new studies, revisions to the assessments could be delayed for months in the internal, interagency and peer review processes that IRIS documents typically undergo.

Still, EPA's ongoing review of its assessments and its efforts to determine if additional assessments reference Ramazzini data "shouldn't slow down" the overall program's pace "significantly," says the NRDC source. The source adds that the reviews are unlikely to effect the overall IRIS program much because "Ramazzini doesn't even review that many chemicals -- they do long, lifetime exposure studies."

Similarly, one industry source calls EPA's announcement "a big speed bump" that has "no greater bearing on the integrity of the program." The source and others note that only six of the hundreds of completed and ongoing IRIS assessments are highlighted for additional review in the announcement.

The source indicates other overall concerns with the IRIS program, chiefly a "growing chorus of entities questioning why it keeps coming out with absurdly low [risk] values. It raises broader questions about the programmatic approach of IRIS."

Another industry sources sees EPA's announcement as "quite significant," explaining, "for regulatory purposes, it looks like EPA is unprepared to reply on the judgment of the Ramazzini lab. That's the policy issue." The source argued that when researchers at two different institutions look at the same tissue slides and reach different conclusions about diagnoses, and "one person calls it cancer and one person calls it inflammation, that's profound."

**One informed source argues that EPA's decision to review the assessments "shifts the burden** of proof right back on to the public." The idea of whether EPA must prove a chemical poses too great a risk to remain on the market without limitation or whether industry must prove a chemical is safe to gain entry to the market has been a key argument in the ongoing debate over how to reform U.S. chemical management law, which currently requires EPA to prove that chemicals are too risky to remain on the market.

The source argues that there must be a "high bar" -- and one much higher than existed in the current situation -- before EPA chooses "not to use science by independent, non-industry funded" scientists.

"The findings are not sufficient to support or refute the Ramazzini study," the informed source says of NTP's report. "They're not supporting it, but it's on the fence."

The source also notes that NTP's report indicates the Ramazzini lab meets Good Laboratory Practice (GLP) standards -- a certification industry often touts as a strength of the studies it suggests federal agencies base their regulations on. The certification indicates that the labs meet GLP standards of cleanliness, record-keeping and animal husbandry practices. The NTP report also describes "very organized and clean facilities."

The report says that the Ramazzini "staff appears to apply meticulous detail to the necropsy, recording, collecting and archiving of materials/tissues from their studies. The same methods have been consistently applied over decades to provide an ability to compare studies over time."

The NTP pathology review was only a partial review process, and the report cautions that its findings are "not sufficient to support or refute the overall conclusions" of the Ramazzini studies.

NTP recommends that Ramazzini convene a "working group review" with pathologists to settle the disputes about the accuracy of the data, according to an NTP source. The source said it is not known whether Ramazzini would agree to the recommendation, leaving the affected IRIS assessments in limbo. -- *Maria Hegstad*

06/25/2010

**EPA Readies New Effort To 'Transform' Research & Development Office (*Inside EPA*)**

EPA research chief Paul Anastas is preparing an effort to "transform" the agency's Office of Research & Development (ORD) to make its work more "relevant," a top priority for Anastas when he took office.
Anastas has temporarily reassigned the directors of ORD's laboratories and research centers to work on the office's transitional strategy. The seven directors of ORD's labs and centers now make up the "Delta Team," and began meeting together the week of May 31 to "focus on the specific actions needed to further implement" Anastas' vision for ORD over the next 60 days, according to an EPA spokesperson.

Senior ORD staff began considering how to "transform" ORD to make its research more relevant, focusing on "problems of broad national significance" conducted by interdisciplinary teams of agency researchers during the transition between the Bush and Obama administrations.

Though senior staff have expressed support for the program, agency union officials have raised questions about what it will mean for EPA scientists. Anastas in March sent

all staff a memo supporting the effort and laying out his own vision for changes to ORD, called "the path forward."

"The Delta Team is developing recommendations for action for the purpose of jump starting the Path Forward," according to the EPA spokesperson. "The action plans will include milestones and identify responsible parties for specific actions. Once developed, action plans will be presented to Paul Anastas for his consideration."

One source says senior ORD staff are currently holding a retreat to discuss the effort.

Among those temporarily reassigned is Peter Preuss, the long-time director of EPA's National Center for Environmental Assessment, which manages EPA's critical risk assessment database, known as the Integrated Risk Information System database, and writes the assessments for it.

An agency source indicates that Anastas "wants [Preuss] to help with the transformation of ORD." The source says Anastas "is very interested in putting his hallmark on the organization, and likes the way [Preuss] thinks. . . . [Anastas] feels [Preuss] would be a good partner in reforming how ORD does its business."

The other Delta Team members are Sally Gutierrez, director of the National Risk Management Research Laboratory; Jonathan Herman, director of the National Homeland Security Research Center; Robert Kavlock, director of the National Center for Computational Toxicology; Larry Reiter, director of the National Exposure Research Laboratory; Bill Sanders, director of National Center for Environmental Research; and Hal Zenick, director of the National Health and Environmental Effects Research Laboratory.

**Science Advisers Set Back EPA Proposal For Assessing Risks Of PAHs (*Inside EPA*)**

EPA's science advisers are strongly criticizing the agency's planned approach for assessing the cancer risks of polycyclic aromatic hydrocarbons (PAHs) -- the ubiquitous class of chemicals found in crude oil, asphalt, vehicle emissions and other sources -- charging that the agency's approach is inadequate for assessing such a wide range of chemicals and calling for significant revisions.
At a June 21-23 meeting, a special panel of EPA's Science Advisory Board (SAB) recommended that the agency overhaul its approach for assessing the chemicals' risks in the near time while working on a complex methodology for assessing the risks posed by mixtures of PAHs in the longer term.

EPA's draft plan, issued by the agency's National Center for Environmental Assessment (NCEA) earlier this year, cites data that challenges its own assertions about the activity of chemicals in mixtures, and "discusses a number of other uncertainties, some of which cannot currently be validated or dismissed, that further undermine the logical and scientific basis for the assumptions on which [EPA's proposed method] is based," the

SAB panel said in a preliminary draft analysis of the agency's methodology. *Relevant documents are available on InsideEPA.com.*

The panel also reiterated industry demands that EPA update its 1994 cancer risk assessment of one key PAH before it proceeds with its methodology -- a demand to which agency officials have agreed.

Lynn Flowers, NCEA's acting associate director for health, defended the agency's approach by explaining that data to support an alternative method, "just wasn't there" and EPA needed a relatively expedient way of assessing human health risks for the widespread chemicals so regulators could set regulatory levels. "In a regulatory setting, it's difficult to step back and say 'Oh, I have to go do a bioassay,'" Flowers said.

The panel's recommendations represent a major victory for key industry groups, including oil, electricity and road-building sectors, who had blasted EPA's proposed methodology as a flawed scientific approach for measuring risks of complex mixtures and one that relied on outdated cancer data.

Earlier this year, NCEA proposed a method for calculating the toxicity of PAHs -- an effort that is crucial to regulators who will use the new formula to calculate regulatory limits for a range of media exposures, including water contamination from runoff from roads, railroads and other sources of the chemicals.

In the Feb. 26 draft document, Development of a Relative Potency Factor Approach for PAH Mixtures, the agency proposed a relative potency factor (RPF) approach that assigns PAHs a potency relative to one index chemical, benzo(a)pyrene (BaP), as a way to assess the toxicity of mixtures of PAHs.

But industry groups charged that the RPF method is flawed because relying on the toxicity of a single chemical does not accurately predict the toxicity of multiple PAHs in mixtures. In addition, the industry groups called on EPA to delay finalizing the RPF document until after the agency had updated its 1994 cancer assessment of the risks posed by BaP (*Inside EPA,* June 11).

At their June 21-23 meeting, SAB panelists echoed industry concerns, saying that NCEA's draft document failed to demonstrate an adequate scientific basis for choosing an RPF approach to assess PAH risks over other available methods. Joshua Hamilton, senior scientist at the Bay Paul Center for Comparative Molecular Biology and Evolution and the lead discussant on the issue on the advisory panel, expressed concern that the RPF method's reliance on one index chemical is a "two-edged sword" that may cause regulators to focus on for other compounds that look or behave similarly to BaP, thus possibly excluding other PAHs that may contribute to carcinogenicity but in ways that do not resemble BaP's metabolic response.

"I think that's something that we need to give serious consideration to when we're understanding cancer risk of really complex mixtures," Hamilton said. "The carcinogenicity from coal tar may be significantly different than a pure agent chemical, supporting the argument that the RPF approach is not the best method," Hamilton said.

**After lengthy debate, the panelists agreed that though far from ideal, the RPF method** is the most pragmatic short-term approach to calculating risks for PAHs, but that EPA should only continue to use it in the interim while working toward a complex mixtures-driven approach -- and even then only with significant revisions.

The panel advised EPA to make a number of adjustments to the document, including increasing the number of compounds used in the study, extending a "daisy chain" of other PAHs with good RPF values, including more recent bioassay data, and revising the way RPF values are calculated in the studies.

The panel agreed that EPA should, even while revising its existing RPF approach, work to test a portfolio of perhaps 12-15 different mixtures, using *in vivo* tumor studies, to represent the most common of the mixtures EPA encounters in substances including coal tar, gasoline exhaust, diesel exhaust, coke oven emissions and use these for comparison purposes. "It is recommended that the agency should set this goal as a strategic initiative, with a specific timeline and benchmarks, and that lays the foundation for an underlying concerted research program to achieve this goal," the panel's preliminary report said, adding a 5-10 year time frame for when they would like to see the task completed.

In addition, the panel discussed a recommendation that would involve developing a suite of short-term assays and biomarkers that reflect the carcinogenic potential of an in vivo exposure to these mixtures for use in both animal and human epidemiological studies. "This might produce a very accurate risk assessment model," Hamilton said.

Panel members also called for a partial overhaul of the way RPF values are calculated for the PAH chemicals, saying more cancer bioassay data was needed to validate the RPF approach. "Cancer related endpoint data alone was not considered adequately justified," panel member John DiGiovanni, of University of Texas at Austin, said. The panel also felt strongly that EPA needed to develop some kind of weighting system for measuring the data from individual studies used to generate the RPF values. The RPF values were calculated by averaging together the results of the studies.

"Some type of sample weighting scheme needs to be introduced based on quantity and quality of existing data," said panelist David Gaylor, of Gaylor and Associates.

Panel members agreed that BaP was the most logical choice to serve as an index or reference chemical because EPA has the most data on it, but validated industry concerns that cancer risk data for BaP was 15 years old, stipulating that EPA must finish updating a 1994 Integrated Risk Information System assessment of BaP before finalizing their RPF approach.

The panel seemed unable to reach consensus on several issues involving how to advise EPA to revise the RPF calculations, including whether RPF values based on a single dose study should be completely exlcluded from the formula until more bioassay data becomes available. -- *Bridget DiCosmo*

06/25/2010

**Activists Float Draft Rider To Boost EPA Lead Renovation Rule Funding (*Inside EPA*)**

Activists and healthy housing groups are floating draft language to attach to unspecified appropriations legislation, aimed at improving implementation of EPA's lead paint renovation rule after the agency delayed enforcement of the rule's controversial certification requirements until the fall in response to GOP and industry demands.
The groups claim that President Obama's fiscal year 2011 budget request does not include adequate funding to implement the lead paint renovation, repair and painting rule, so are circulating to lawmakers draft appropriations rider text that would provide $80 million in grants for training renovators to meet the rule's certification requirements, $30 million in grants to states to implement the rule, and $20 million to raise awareness of the rule.

Home building groups, Republicans and others have long raised concerns about the number of properly trained and qualified contractors that would be available to carry out renovations under the rule.

The rule requires contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities and schools built before 1978 to be certified to follow specific work practices to prevent lead contamination. Critics, such as Sen. James Inhofe (R-OK), have been pushing for a one-year delay in order to provide more time to adequately certify renovators.

The activists' spending bill rider could target concerns about funding for the rule's implementation because it would require the agency to reinvest funds collected from renovation firms and training providers under the rule to directly offset the costs of the certification process and other implementation costs associated with the rule.

It is unclear whether activists will push to attach the rider to emergency appropriations legislation, or EPA's regular FY11 spending bill -- though sources say the agency's funding bill may not pass Congress (*see related story*).

The appropriations push comes after EPA released new guidance to delay implementation of key provisions of the rule until the start of the fiscal year. In a June 18 memo, Cynthia Giles, EPA's assistant administrator for the Office of Enforcement & Compliance Assurance, tells EPA toxics officials and regional enforcement chiefs that the agency will not take enforcement actions against individual contractors if they have enrolled in the necessary training by Sept. 30, 2010. Contractors must complete the training by the end of the year, according to a supplemental guidance memo. *A copy of the memo is available on InsideEPA.com.*

Published Thursday June 24, 2010

**EPA can't destroy lead records (*Omaha World Herald*)**

By Juan Perez Jr.
WORLD-HERALD STAFF WRITER
«
A federal judge has temporarily barred the Environmental Protection Agency from destroying records sought by Union Pacific in the legal battle over who should pay millions of dollars to clean up lead-contaminated properties in Omaha.

U.S. District Judge Laurie Smith Camp issued a temporary restraining order Wednesday.

She ordered the federal agency to preserve any records pertaining to the railroad's public records requests.

Camp issued the ruling in response to a lawsuit by the railroad alleging that the EPA was intentionally destroying agency e-mails and environmental records in an effort to avoid their discovery by U.P.
Advertising

In the lawsuit, the railroad quotes from several e-mails in which an EPA supervisor encourages employees to delete messages so that they won't be released as public records.

Doing so prevented U.P. from seeing information that the EPA used to make decisions in the case and destroyed evidence that would have harmed the EPA's position, according to the lawsuit.

The dispute revolves around an approximately 27-square-mile section of Omaha that contains residential areas where some surface soil has been contaminated with lead.

About 5,600 properties are affected, and determining who is responsible for the contamination is the crux of the dispute.

The EPA says the contamination came from particles emitted by smokestacks owned by two former lead processing operations, a portion of which was once on land owned by U.P. and is now parkland owned by the City of Omaha and Douglas County.

The railroad argues that it shouldn't be held responsible because it leased the property to a smelting company, Asarco, and then sold the land to Asarco in 1946.

Union Pacific also argues that lead-based house paint caused the contamination.

The next federal hearing on the case is scheduled for July 13.

This report includes material from the Associated Press.

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**EPA approves Tech cotton technology for use in Deepwater Horizon oil spill cleanup (*Daily Toreador*)**

By Merideth Murphey
Staff Writer
Fibertect™, a nonwoven cotton-carbon material, created by Seshadri Ramkumar, an associate professor of nonwoven materials for The Institute of Environmental and Human Heath, has been approved by the Environmental Protection Agency as a sorbent for oil application in the cleanup of the Deepwater Horizon oil spill.

The EPA approval came after First Line Technologies, a Virginia-based company that commercializes Fibertect™, sent a crew to Grand Isle, La. to test the absorption material on oil that had washed ashore.

“It was observed that when the oil was viscous, and even semi-solid,” Ramkumar said, “the Fibertect™ was able to absorb the oil.”

Not only is the oil spill contaminating the surface of the water, but recently the National Oceanic and Atmospheric Administration — NOAA — has reported plumes below the surface releasing toxins.

Ramkumar said Fibertect™ will prove to be more successful in cleaning than other methods that are being used, such as dispersants, because it is a non-toxic material that eliminates harmful vapors released by the oil.

“Recently, there have been some reports, which have been endorsed by NOAA,” Ramkumar said, “that even at a depth of 400 meters below the surface of sea there are some plumes, the oil is seen as a plume from which volatile gases such as benzene and other volatile forms of the oil are emanating, and these volatile gases are known to have carcinogenic effects, and they are also known to give some catastrophic damage to the marine life, so this is one important finding.”

He said these plumes are reducing oxygen levels by up to 40% and that Fibertect™ not only absorbs oil, but also combats the oxygen depletion.

Originally, Ramkumar did not develop Fibertect™ for oil absorption but said although this oil spill is a tragedy, it was a perfect fit for his research and the advancement of the technology.

“My original application was to develop a wipe, cleaning material for soldiers and fighter planes,” Ramkumar said, “just dealing with toxic vapors.”

The use of Fibertect™ to clean the oil spill has led to the EPA approval which will lead to the development of new Fibertect™ materials such as gloves, face masks that block toxins, carpet, industrial and household cleaning materials and more.

Amber Dean, associate managing director of licensing and business development of technology commercialization for Tech, said the EPA approval of Fibertect™ is bringing notoriety to the university and Ramkumar.

“There has been a lot of interest,” Dean said, “Texas Tech has been in the news quite a bit because of it.”

She said it is also bringing funding for the university.

“In addition to a portion coming back to Tech,” Dean said, “a portion is going to the researcher. There’s also a portion going to Ramkumar’s college and Ramkumar’s department for additional research. So, it’s very beneficial for us to license a technology and for there to be revenues generated from the sales of that technology.”

Fibertect™ has licensing agreements with First Line Technologies as well as Hobbs Bonded Fibers in Waco.

Todd Reno, director of business development at the Reese Technology Center and Tech alumnus, said this approval will help bring Tech to a new level of recognition.

“When Tech can get out in front and be the spokespeople and be the problem solvers for any kind of issue that’s a good thing,” Reno said, “but when it’s something of this magnitude, obviously it’s going to bring additional attention to Tech and to the university.”

He said Ramkumar and his invention will help bring Tech to status as a National Research University because researchers and students from all around the world want to work with him.

“Part of the Tier One plot is you have to bring in researchers,” Reno said. “You have to bring in this top-notch talent.”

Ramkumar said within a year there will be new products on the market and High Plains cotton farmers will see an increase in revenues.

**WATER**

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**U.S. invested in Mexico's environment (*USA TODAY*)**

The New River, polluted with untrated sewage, flows north through an opening in the U.S.-Mexican border.
Enlarge image Enlarge By Omar Ornelas, The Desert Sun
The New River, polluted with untrated sewage, flows north through an opening in the U.S.-Mexican border.

By Keith Matheny, USA TODAY
When Mexican officials cut the ribbon on a new wastewater treatment plant in Tijuana in April, U.S. Environmental Protection Agency representatives and San Diego area environmental watchdogs were among those on hand applauding.

The United States is more than an interested observer in its southern neighbor's efforts to clean up the environment. It's an investor and partner in projects along both sides of the more than 2,000-mile border with Mexico.

The EPA has spent $550 million to help construct 88 water and sewer projects. The money comes from the Border Environment Infrastructure Fund, an offshoot of the 1993 North American Free Trade Agreement.

Projects using U.S. funds in Mexico have also removed tons of hazardous waste from abandoned factory sites and developed air-quality management programs.

The total cost so far is $1.6 billion, half of it spent on the Mexican side of the border, EPA environmental engineer Thomas Konner says.

'Diseases don't recognize borders'

The EPA is targeting the money at Mexican border cities that are experiencing explosive growth, some that have inadequate sewer systems or none at all and some small cities on the U.S. side that bear the brunt of the pollution from Mexico, says Tomas Torres, director of the EPA's San Diego border office.

"We're at the end of the pipe, like it or not," says Ben McCue, a coastal conservation program manager with Wildcoast, a non-profit environmental group working to improve the Pacific coastal region near the border. "It makes more sense to use our tax dollars on that end than here."

Rep. Ciro Rodriguez, a Texas Democrat whose district includes much of the state's western border with Mexico, supports the cross-border projects.

"The community on the other side is usually five to 10 times larger," he says. "That always has an impact on our environment on this side of the border. Tuberculosis and other types of diseases don't recognize borders."

Under a cooperative agreement between the EPA and its Mexican counterpart agency (SEMARNAT, Secretaria de Medio Ambiente y Recursos Naturales), projects must be within 100 kilometers, about 62 miles, of either side of the border.

Mexico must pay at least half the cost of its projects but usually pays more, says Gilbert Tellez, environmental engineer for EPA border projects in the region that includes Texas and much of the Gulf Coast. Mexican-side projects must have a demonstrable environmental benefit for the U.S. side, Konner says.

Douglas Eberhardt, chief of the infrastructure office for the EPA's western region, says that when he started working on Mexican border projects in 1989, "you had 13 million gallons of raw sewage a day coming across the border in the Tijuana River."

Improving quality of life

Border Patrol agents in 1994 sued the U.S. government to receive hazard pay for working along the polluted Tijuana and New rivers flowing across the border into the United States. The officers settled the case in 2005 for $15 million and were supplied with protective gear for use when working near the rivers, says their attorney, Gregory McGillivary.

The EPA has invested $42 million in wastewater collection and treatment projects in Tijuana and nearby Rosarito, Mexico, since 1998 — about 40% of the projects' $98 million cost. That doubled, to 80%, the share of homes in the Tijuana area with sewer service, the EPA's Douglas Liden says.

The EPA also contributed $41 million for planning and construction of two large wastewater treatment projects in Mexicali that totaled more than $98 million in construction costs, Liden says.

The two projects together remove more than 40 million gallons a day of untreated sewage from the New River, he says.

Environmental problems persist, he says, but the river and Salton Sea's environmental conditions have "drastically improved," and public health risks have been reduced.

The program isn't without problems. A Government Accountability Office report last year found that projects had been less effective than they should have been because government agencies involved — including the U.S. Department of Agriculture, Army

Corps of Engineers and Housing and Urban Development — failed to assess needs adequately and coordinate efforts.

Annual funding for the EPA border projects has dropped from a high of about $100 million several years ago to $17 million this fiscal year.

McCue would like to see the program expanded.

"I think it's more difficult for people who aren't local, who can't see the benefits and say, 'Why are we spending U.S. taxpayer dollars in Mexico?' " he says. "But it really comes down to the most efficient and effective way to spend that money. You can get more done by working collaboratively in Mexico rather than unilaterally here in the U.S."

06/25/2010

**SAB Review Hints At EPA Bid To Expand Strict Mining Water Pollution Test (*Inside EPA*)**

EPA is asking its Science Advisory Board (SAB) whether the agency's method of setting water pollution benchmarks to protect aquatic life -- a key tool for EPA's review of mountaintop mining permits -- could be expanded to other regions and other pollutants, a move sources say could affect a broad range of industries.
SAB is reviewing agency studies of the impact of mountaintop mining on Appalachian streams, particularly the impact of salinity, measured through conductivity, on aquatic life. EPA sent a June 11 memo to SAB outlining charge questions about the studies the agency would like the advisers to address. SAB is meeting July 20-22 in Washington DC to discuss the review. *The memo is available on InsideEPA.com. See page 2 for details*

EPA used the studies to justify its strict April 1 guidance on mining water permits, which the agency predicted would end most uses of so-called valley fills to dispose of rock blasted from mountaintops in nearby streams. If the SAB review endorses EPA's approach, it could help the agency argue that its new approach to mountaintop mining is scientifically valid and should continue for future mountaintop mining permit reviews.

EPA's memo appears to open the door to expanding the approach to other regions and other pollutants, which could in turn apply to other sectors. For example, the agency asks its advisers whether the approach the agency used to set a conductivity benchmark in Appalachia would be transferable to developing a conductivity benchmark for other regions where the chemical composition of the water may be different.

The agency also asks, in light of increasing amounts of field data and analysis capability, whether the advisers believe it is "feasible and advisable" to apply the same field-based approach to set benchmarks for other pollutants.

One informed source says industry has criticized EPA for only applying the strict approach to the coal industry. The agency's questions about applying the approach in other ways could be in response to this concern, the source says.

One mining industry source says there is no reason other industries like home and road building wouldn't be "ensnared" in the conductivity approach the agency has used in the case of Appalachian mining, because any activity that disturbs earth has the potential to increase conductivity. For example, road building would routinely exceed the 300-500 microsiemens per centimeter (uS/cm) conductivity level EPA has proposed, the source says.

One report EPA used, "The Effects of Mountaintop Mines and Valley Fills on Aquatic Ecosystems of the Central Appalachian Coalfields," assesses the state of the science on the ecological impacts of valley fills, including impacts on headwater streams, downstream water quality, stream ecosystems, as well as the cumulative impacts of multiple mining operations and effectiveness of reclamation and mitigation, the memo says.

A second report, "A Field-based Aquatic Life Benchmark for Conductivity in Central Appalachian Streams," uses field data to set a benchmark for conductivity in Appalachia intended to protect aquatic life, the memo says.

EPA used the studies to set conductivity benchmarks in the guidance to protect Appalachian watersheds from mining, the memo says. In the guidance, EPA proposed to deny permits that would increase conductivity above 500 uS/cm and to require additional scrutiny if conductivity exceeds 300 uS/cm.

Industry has strongly opposed the conductivity benchmarks, arguing they exceed background levels of conductivity in some areas. Industry has also argued that EPA is unfairly targeting the Appalachian region and has raised concern that the approach could apply to any industry that disturbs earth, including home and highway construction.

The benchmark EPA has proposed is not defensible scientifically, because the studies do not prove a connection between mining and conductivity levels in Appalachia, and is not achievable, the industry source says. "The premise of this entire approach . . is attempting to build an entire new edifice on an very weak foundation."

But if the standard is unreasonable for mining, it would be unreasonable for other industries as well, the source says. "We certainly don't think it should be expanded. If it is not good for us, I can't understand why it would be good for other enterprises that routinely require earth to be turned over," the source says.

06/25/2010

**Key House Republicans Seek Hearings On Clean Water Act Jurisdiction Bill (*Inside EPA*)**

Key House Republicans are pushing for hearings in a number of committees on a controversial bill that they charge would expand the reach of the Clean Water Act (CWA), even though several of the panels do not have jurisdiction over the measure. In a June 22 letter, the GOP lawmakers urge Transportation & Infrastructure Committee Chairman James Oberstar (D-MN) -- whose committee has primary jurisdiction over his CWA bill, H.R. 5088 -- to allow the committees on natural resources, agriculture and small business to hold hearings on the bill.

Each of their committees should "be allowed adequate time to hold and participate" in hearings this summer on H.R. 5088, the letter says. *The letter is available on InsideEPA.com.*

The letter was signed by GOP Reps. Doc Hastings (WA), ranking member on the Committee on Natural Resources, Frank Lucas (OK), ranking member on the Committee on Agriculture, and Sam Graves (MO), ranking member on the Committee on Small Business. The four lawmakers are all members of the House Rural America Solutions Group.

But according to Congress' legislative tracking service, the bill has only been referred to Oberstar's committee, not any of the committees where the GOP lawmakers are seeking hearings. Still, the lawmakers argue that the legislation would affect issues over which their committees have jurisdiction -- Western irrigation projects, farming and ranching operations, and mining and small businesses -- and that their committees need time to hold and participate in hearings this summer, since Oberstar has set a public goal to consider the bill on the House floor by September.

Oberstar's bill, introduced May 22, would remove the word "navigable" from the water act's definition of which waters EPA and other agencies have authority to regulate. Supporters say the legislation is necessary to clarify the law's original intent after two high court rulings -- *Solid Waste Agency of Northern Cook County (SWANCC) v. Army Corps of Engineers* and *Rapanos v. United States* -- undermined regulators' ability to protect key waters.

But the bill has prompted a firestorm among critics -- including Democrats from rural and Western districts -- who charge that it would expand EPA's ability to make local land use decisions.

**EPA is cleaning oil spilled near Arcadia Lake (*NewsOK*)**

A leak of 250 barrels of oil from an abandoned pipeline in the Deep Fork of the Canadian River near Arkadia Lake is being cleaned up by the EPA.

BY JOHN A. WILLIAMS Oklahoman  Comment on this article 9
Published: June 24, 2010

Cleanup from an oil spill into the Deep Fork of the Canadian River found Monday is expected to continue into next week. The 250-barrel leak happened two miles south of Arcadia Lake.

An absorbent pad lies on oil Wednesday in the Deep Fork River where it crosses Britton Road in Oklahoma City. PHOTO BY PAUL B. SOUTHERLAND, THE OKLAHOMAN

EPA is cleaning oil spilled near Arcadia Lake

Gary Heavin, an Oklahoma County field inspector for the Oklahoma Corporation Commission, said the leak came from a pipeline that had been abandoned for decades. The leak has been sealed, and the spill has been contained, he said.

The leak was found by a Department of Transportation bridge inspector where the Deep Fork flows under Britton Road.

"He saw the oil sheen and reported it to the Department of Environmental Quality, and they reported it to us," Heavin said.

Workers from DCP Midstream, which does not own the pipeline, traced the leak to a pipeline near Wilshire Road and Interstate 35.

"It had a small pinhole in it leaking oil into the river," Heavin said. "It was 8,000 feet long from point of origin, but because of the slow-moving current, it was easily contained."

No tar balls expected
Heavin said the leak was plugged with a clamp. The pipeline was not under pressure because it is no longer active, he added.

"You're not going to see tar balls floating up" on Arcadia Lake, he said.

The Environmental Protection Agency is coordinating the cleanup using skimmers, containment and absorbing booms, pumps and a vacuum truck.

EPA spokesman Joe Hubbard said the agency is looking for the owner of the leaky pipeline. "Once we figure out who that party is, then they will be responsible for the cleanup," he said.

Though the Deep Fork feeds into Arcadia Lake, which supplies water to Edmond, the oil does not present a health hazard, Heavin said.

Edmond Water Resources Superintendent Fred Rice said he does not think the amount of oil spilled will have any affect on drinking water.

"Because of the sophistication of our water plant, we don't believe this would create much of an issue," he said.

Buck Ray, an environmental biologist with the state Department of Wildlife Conservation, said the crude oil spill likely will not harm fish or wildlife.

"The more manufactured and refined it is, the worse off it is," he said. "The crude is a little bit heavier and tends to stay on the surface of the water and not spread. It's not as bad as gasoline which will spread through the water column."

Pipelines like the one that leaked are used to gather crude oil to go to a refinery, Heavin said.

Read more: http://www.newsok.com/epa-is-cleaning-oil-spilled-near-arcadia-lake/article/3470788#ixzz0rmBN5DV1

**EPA seeking penalties against two Massachusetts companies (*WaterTech*)**

6/24/2010 11:17:08 AM
BOSTON — The U.S. Environmental Protection Agency (EPA) has filed an enforcement action seeking penalties against two companies constructing a residential development in Ayer, Mass., according to a press release.

EPA's New England regional office has issued a complaint under the federal Clean Water Act to Crabtree Development, LLC of Ayer, Mass. and R.A. Powell Construction Corp. of Lunenberg, Mass. for unauthorized storm water discharges from a construction site, the release stated.

Crabtree Development is the developer of a residential development called Pingry Hill in Ayer, and Powell is the general contractor.

On two separate occasions in 2009, an EPA inspector observed that storm water contaminated with sand, dirt, sediment, suspended solids, residues of construction material and turbidity was running off the site into adjoining waters and wetlands, according to the release.

EPA's complaint seeks a penalty of up to $177,500 for the violations.

**No State Park beaches closed due to E. coli (*News Leader*)**

No Missouri State Parks swimming beaches will be closed due to elevated E. coli levels this weekend.
The public beach at Mark Twain State Park will remain closed due to high water. Samples drawn Monday from the beach were under the EPA's recommended single-sample maximum of 235 E. coli colonies per 100 milliliters of water.
However, those samples, when combined with results from previous weeks, continue to keep the park in excess of the department's geometric mean standard for E. coli at state park beaches A geometric mean takes into consideration the results of the previous samples drawn from the same beach.

Samples drawn from state park beaches are only relevant to those beaches and do not indicate overall water quality in a large body of water.

In order to provide a safer beach experience, DNR will close a state park beach if that beach's geometric mean for E. coli exceeds 126 E. coli colonies per 100 milliliters of water.

The department will also close a state park beach if a single sample is above 235 E. coli colonies per 100 milliliters of water, which is also the U.S. Environmental Protection Agency's single-sample guideline for a swimming beach.

The beach at Mark Twain has been posted with signs notifying visitors of the closure and will remain closed until E. coli levels – and, in the case of Mark Twain State Park, the overall water level – meet the department standard.

No other state park beaches tested high for E. coli levels. However, bacterial levels often rise after heavy rains and lake users should use their judgment when swimming after heavy rains.

The latest information on beach closings at state parks is available online at http://mostateparks.com/beaches/index.asp.

June 24, 2010, 10:12AM ET

**Fed report confirms underwater oil cloud near well (*Bloomberg Businessweek)***

By JOHN FLESHER
NEW ORLEANS

A federal report confirms what independent scientists have been saying for weeks about the Gulf oil spill: Undersea oil plumes extend for miles from the ruptured well.
The report may help measure the effectiveness of spreading chemicals to break up the oil.
Government researchers released a summary Wednesday of water sampling conducted last month near the site of the leaking well.
It describes a cloud of oil starting around 3,300 feet deep up to 4,600 feet deep and stretching up to 6 miles from the well. Levels of oil and gas within the cloud are significantly higher than concentrations closer to the surface.

The Environmental Protection Agency says there's been no significant harm to sea life, but marine scientist Vernon Asper of the University of Southern Mississippi says the levels are enough to kill fish.

Oil has been pouring into the Gulf from a blown-out undersea well since the April 20 explosion and fire on the drilling rig Deepwater Horizon. Transocean Ltd. owned the rig and leased it to BP PLC, which is in charge of cleanup and containment. The blast killed 11 workers.

**EPA has new harbor cleanup plan (*South Coast Today*)**

June 25, 2010 12:00 AM

NEW BEDFORD — A 30-day public comment period starts today on a proposal by the U.S. Environmental Protection Agency to use a different technique — burying contaminated sediment in the harbor under a layer of clean sand — for portions of the ongoing cleanup.

The technique, known as a confined aquatic disposal, or CAD, cell would be used to remediate primarily the contaminated sediment in the lower harbor, south of the Coggeshall Street bridge.

According to David Dickerson, a co-project manager with the EPA, the contamination in the lower harbor could be cleaned up by 2014 if a CAD cell is used.

The contamination in the upper harbor will continue to be addressed using hydraulic dredging.

A copy of the proposed plan revision, known as explanation of significant difference, is available at the New Bedford Free Public Library and will be posted on the EPA Region 1 website.

CHARIS ANDERSON

**Asian Carp to Damage Michigan & Great Lakes Fishing Industry... (*Gather.com)***

June 25, 2010 01:52 AM EDT (Updated: June 25, 2010 01:56 AM EDT)
An Asian Carp was located by Lake Michigan is in a huge concern for the environment as well as the Michigan fishing industry, which currently produces $7 billion annually.
The Asian Carp has the capacity to grow to a whopping 4 feet long and grow to a weight of 100 pounds.
With the Asian Carp being able to get so massively large, it can actually eat so much that it winds up starving out other fish species, because they no longer have food to eat.
In order to stop these Asian Carps from coming into the Great Lakes, the United States Environmental Protection Agency (EPA) has chosen to intervene.
The EPA had the Army Corps of Engineers create an electric barrier to stop these Asian Carps for entering into the Great Lakes. The fish electric barrier was placed between the Great Lakes drainage basin and the Mississippi River.
But now another Asian Carp has been spotted, so the EPA is going to have to reconsider the electric barrier that was set in place back in 2007 or the fishing industry in Michigan and possible regions around the Great Lakes will be gravely affected.

**2nd source of pollution found near Lejeune well (*Charlotte Observer)***

June 24, 2010
Federal scientists studying the history of water contamination at Camp Lejeune have learned of another source of spilled fuel that occurred years ago - this one less than a football field away from a drinking well that once served thousands of Marines and their families.

That well was closed in December 1984 after benzene was found in the water.

The source of contamination that scientists now are exploring was once an on-base refueling station within an area of the Marine base known as Hadnot Point. The refueling facility, known as Building 1115, contained seven underground storage tanks that ranged in size from 1,000 to 5,000 gallons.

The extent of the historic contamination across the Marine base - and its sources - are important details for federal scientists at the Agency for Toxic Substances and Disease Registry , an arm of the Centers for Disease Control in Atlanta.

Scientists are working on extensive water modeling research to understand the health impacts of the various contaminants. Those include trichloroethylene (TCE), tetrachloroethylene (PCE), benzene and vinyl chloride. Benzene is a key component of gasoline and a known carcinogen.

It's estimated that up to a million people were exposed to the contaminated water at Lejeune from the mid-1950s to the mid-1980s.

Nearly three decades after contaminated wells were shuttered, monitoring wells are finding poisons at thousands of times the drinking water safety standards in the aquifers below the military base, according to state documents.

As recently as January, benzene was tested at as high as 18,600 parts per billion from one untreated groundwater monitoring well at Lejeune. The federal standard for drinking water from the Environmental Protection Agency is 5 parts per billion; the state of North Carolina pegs it at 1 part per billion.

**Dallas officials hope to keep bacteria at bay as heat raises risks at public pools, spray parks (*Dallas Morning News*)**

June 25, 2010
It's June, it's hot, and humans will seek water.
But when you visit the beach this weekend, or splash park, or pool, there's something obvious public health officials would like to say: "Don't drink the water."

It's that time of the year when nasty-sounding waterborne bugs – E. coli, Giardia, Shigella – are spread among swimmers by an equally nasty-sounding method, fecal-to-oral transmission.

"Some of this stuff seems obvious, but anytime there's water-related recreation and entertainment by the public, there's precautions that need to be taken," said Tony Jenkins, assistant director of environmental health at Dallas County Health and Human Services.

Only last week, an East Texas lake closed its beaches because of elevated levels of E. coli bacteria. It's outbreaks such as this that prompt health officials to offer these tips:

• Don't swim if your stomach is upset or you have diarrhea.

• Shower with soap before entering the pool.

• Wash your hands after going to the restroom.

• Change babies' diapers often – but not at poolside.

"People need to take restroom breaks," he said. "And they need to get out of the pool to do so."

But even with caution, reasonable hygiene and proper chlorination, one parasite – the resilient cryptosporidiosis, or "crypto" – can infect swimmers who swallow even small amounts of water. Symptoms are cramps, nausea, fever and severe diarrhea.

In 2008, the fierce single-cell parasite ran through Dallas pools and spray parks, infecting about 750 people and prompting parks and recreation officials to come up with new methods to keep the bug at bay.

This year, there have been no reported waterborne illnesses at the city's eight spray parks and seven pools.

"We have a very rigorous maintenance regimen that we developed with the health department last year," said Willis Winters, an assistant director in the city's facilities services department.

"But the only 100 percent way to get rid of crypto is using an ultraviolet light treatment."

Some older parks are drained, cleaned and hyperchlorinated twice a week. Others are "shocked" once a week, and two – the Lake Highlands North and the Ferguson spray grounds – are treated as needed because they are equipped with the new ultraviolet light treatment.

Winters said city officials focus on spray parks because they attract younger children and are unmonitored – meaning city staff cannot enforce hygiene standards.

Michele Hlavsa, an epidemiologist who specializes in recreational water illnesses for the Centers for Disease Control and Prevention, said the public shouldn't assume city governments are monitoring and treating pools and spray parks.

In 2008, a CDC study found that about one in every eight pools inspected was closed immediately because of serious code violations.

Hlavsa suggests that people buy test strips at their local hardware store and check the water before entering. The free chlorine level should be between 1 to 3 parts per million and the pH should register 7.2 to 7.8.

If the water fails the test, she suggests notifying supervisors at the pool and contacting the local health department.

"When we ride bikes, we wear helmets. And we wear seat belts when we ride in cars," Hlavsa said. "This is just another easy thing people can do to protect their health."

On Thursday morning at the Lake Highlands spray park, Jill Newman smiled at the recommendations. Americans, she can, can be overly risk-averse.

"It's something I think about in the back of my mind, but I'm not going to let it keep me in the house," she said while feeding a cracker to her 22-month-old daughter, Reese.

"You need some bacteria to build up your immune system. A little common sense goes a long way."

Not all risk resides in public pools.

Last week, seven beaches were closed at Lake O' the Pines in East Texas because of elevated E. coli levels, according to Bobby Hamrick, lake manager for the Army Corps of Engineers.

Results from water tests Thursday prompted Hamrick to keep the swimming areas closed.

The state limit is 400 E. coli colonies per milliliter. Water runoff and high temperatures are likely keeping the bacteria levels high, he said.

On Wednesday, the Texas Commission on Environmental Quality will consider relaxing the state's water-quality standards. That move that could save $1 million over three years in what the agency says is unnecessary monitoring.

Any changes would have to be approved by the EPA, which could take as long as a decade.

"We're not going to do anything to endanger public health," Hamrick said. "It makes sense to play it safe when it comes to this stuff."

Article published Jun 25, 2010

**South Bend to consider sewer rate hike (*South Bend Tribune*)**

South Bend council to hear plan Monday.
By JEFF PARROTT Tribune Staff Writer
SOUTH BEND -- The city's Common Council Monday night will consider the mayor's proposal to increase sewer rates about 9 percent a year over the next four years.

Mayor Stephen Luecke says the hike is needed to finance improvements mandated by the U.S. Environmental Protection Agency. The city has been under pressure for years to reduce combined sewer overflows and the contaminants they send into the St. Joseph River.

The improvements are part of a $400 million plan. Since 2006, the city has invested more than $43 million to reduce CSOs. Work has included expansion of the 54-year-old

wastewater treatment plant and efforts to separate storm and sanitary sewers.

The city already increased sewer rates a cumulative 79 percent from 2006 through 2009. The council is considering increases of 8 percent this year, effective July 1, and 9 percent each year from 2011-13.

For the average homeowner, that will mean an increase of about 10 cents a day, the administration said.The council is expected to vote after a public hearing on the increase at its 7 p.m. meeting in the County-City Building's fourth-floor council chambers.

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