**U. S. Environmental Protection Agency**
**E-Clips**
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**ADMINISTRATOR JACKSON**

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**Top bay cleanup officials meet in Baltimore (*Annapolis Capital*)**

By PAMELA WOOD, Staff Writer
Published 06/03/10

BALTIMORE - The top officials in charge of Chesapeake Bay restoration efforts unveiled a new website to track pollution reduction Thursday.
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The website was announced at the semi-annual meeting of the Chesapeake Executive Council in Baltimore. The Executive Council is comprised of the governors from the states around the bay, as well as the head of the Environmental Protection Agency and a representative of state lawmakers. They chart the course for the official state-federal bay cleanup efforts.

In a press conference following their closed-door meeting at the Living Classrooms Foundation in Harbor East, members of the council made no new policy announcements.

The new website, ChesapeakeStat, is not entirely new, either, as the Executive Council had said earlier that it planned to create it.

The ChesapeakeStat website, http://stat.chesapeakebay.net, is modeled after Maryland's BayStat program and website.

At ChesapeakeStat, people can track pollution reduction efforts in all of the states around the bay.

Notably absent from the meeting was Pennsylvania Gov. Edward G. Rendell, who sent an assistant environmental secretary instead.

EPA Administrator Lisa P. Jackson, who chairs the council, also was absent, because she is in Louisiana dealing with the oil spill in the Gulf of Mexico. She sent a deputy administrator to the meeting.

**EPA toughens standards on sulfur dioxide pollutant (*Associated Press)***

**Story also appeared: *New York Times, Wall Street Journal***

COLUMBUS, Ohio — The Environmental Protection Agency on Thursday issued a new health standard for the first time in 40 years on sulfur dioxide emissions, a pollutant linked to smog and acid rain blamed for aggravating asthma and other respiratory difficulties.

The EPA said the health benefits of the new rule range from between $13 billion and $33 billion annually. These include preventing 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year, according to the agency. The estimated cost in 2020 to fully implement this standard is approximately $1.5 billion.

"We're taking on an old problem in a new way, one designed to give all American communities the clean air protections they deserve," EPA administrator Lisa Jackson said.

About three-quarters of the SO2 emissions come from coal-fired power plants and 20 percent from other industrial facilities.

The rule likely means higher costs for some utilities that may need to install equipment, such as scrubbers, to control emissions of S02 and other pollutants from coal-fired power plants.

How the rule will affect utilities with coal-fired plants is not exactly clear since states will be able to develop plans to bring areas into compliance with the rule.

Some utilities with older coal-fired units have opted to shut them down instead of investing in new emissions controls because of pending rules.

Progress Energy said last year that by 2017 it will close 11 coal-burning power plants in North Carolina that don't have scrubbers. The company said that the cost to retrofit and operate these plants, more than 50 years old, will increase dramatically because of expected new environmental regulations.

The company plans to build a massive power plant fueled by cleaner natural gas.

Annual average SO2 concentrations have decreased by more than 71 percent since 1980, the EPA said.

The new standard will be 75 parts per billion, measured per hour. The current standard is 140 parts per billion over 24 hours.

States will have until 2014 to develop plans to bring areas that don't meet the new standard into compliance.

**EPA Seeks To Strengthen E-Waste Export Rules But Stops Short Of Ban (*Inside EPA*)**

06/04/2010
EPA is endorsing new measures to cut down on harmful exports of electronic waste (e-waste), including seeking legislation to limit illegal export, standards to draw a "bright line" between safe and unsafe practices, and steps toward ratifying a key international treaty, but the agency appears to be stopping short of heeding activists' call for a complete export ban.

The Obama EPA's position on the issue -- outlined by EPA Administrator Lisa Jackson in a May 25 speech at an INTERPOL Global E-Waste Crime Group meeting -- could place the agency at the center of ongoing efforts to revise the United States' approach to e-waste, including upcoming House legislation seeking a consensus approach to the issue.

But Jackson was silent on key, controversial aspects on the debate, including whether the agency backs ratifying the Basel Convention governing the trade of hazardous waste with or without amendments that ban e-waste exports to developing countries. Jackson also did not provide details about the agency's legislative or regulatory efforts.

Activists and industry have long disagreed about how to approach the issue of e-waste. Companies that recycle e-waste domestically must comply with environmental laws, but critics say companies that recycle e-waste overseas often extract valuable metals and dispose of the remaining waste in ways that are hazardous to health and the environment. As a result, many critics are calling for legislation to impose a total ban on exporting e-waste.

However, industry sources have long argued that a complete ban on the export of used electronics is "outside the realities of commerce" and would prevent the existing legitimate exportation of used electronics to developing countries for reuse, refurbishment and resale.

Now, EPA's top official is wading into the debate for the first time during the Obama administration, arguing that stronger export rules are needed but stopping short of backing a full ban. "We need to make some changes to ensure safe management of our used electronics," Jackson said, according to her prepared remarks. "This includes legislative fixes that will help limit harmful exports that are happening under the name of legitimate reuse, refurbishment and recycling -- until a more enforceable framework can be enacted and implemented," she said. *The remarks are available on InsideEPA.com.*

Her speech follows remarks by Rep. Gene Green (D-TX) that he plans to reintroduce "sooner rather than later" more stringent e-waste legislation. Green introduced a bill last year, H.R. 2595 -- which sought to limit e-waste exports to developing countries -- but it

was rejected by environmentalists who argued it created a loophole allowing continued exports to developing countries without safeguards.

At press time, Green had not introduced a new bill.

Meanwhile, Jackson's speech is prompting measured praise from both industry and environmentalists. For example, a source with the Institute of Scrap Recycling Industries (ISRI) says industry was "somewhat pleased" to hear that Jackson did not advocate an export ban, and instead suggested some export controls and "opportunities to demonstrate and share our industry know-how and technology with economies in transition and developing countries."

At the same time, activists say Jackson's comments show she is prioritizing the issue and that she shares their concerns about illegal export under the guise of reuse, refurbishment and recycling. "We are very hopeful now after this speech that EPA will also support legislation that would close this loophole," a source with Basel Action Network (BAN) says. Any legislation should limit reuse exports to working products and have strict controls on products being exported for repair under warranty, the source adds.

Jackson's speech also shows that the agency's international affairs and enforcement offices are playing a key role in its e-waste efforts. Last year, sources said EPA's enforcement, waste and international affairs offices were at odds over the agency's e-waste policy (*Inside EPA*, Oct. 16). The waste office, which has historically led the agency's efforts, has pushed in the past for a more moderate course on the issue than activists, but sources say the international affairs and enforcement offices are seeking a more aggressive stance.

The administrator in her speech emphasized enforcement, saying, "Enforcement is the right place to start, since all the laws and regulations in the world cannot do a thing without the proper enforcement." In addition, EPA's chief of international affairs, Michelle DePass, has had at least three meetings with electronics industry and recycling representatives in the last three months.

Jackson also argued for new e-waste rules and standards. "Through a combination of legislation and regulation we can create incentives to spur the design of better, safer electronics -- stopping some of the problems before they begin; we can establish standards and certification processes that will draw a bright line separating the safe from the unsafe; and we can take steps toward ratifying the Basel Convention."

Recycling certification has been a key sticking point in the e-waste debate. Industry is backing the Responsible Recycling (R2) program, a certification developed through a stakeholder process facilitated by EPA. While activists participated in the R2 negotiations, they eventually walked out because they said the approach would violate the Basel Convention.

Industry continues to support the R2 program and has released new industry policy that tracks closely with it. However, BAN has created a competing program called e-Stewards, and recently announced the first certified recyclers and a number of so-called e-Stewards Enterprises, which are corporations that have promised to use e-Stewards recycling facilities when possible.

Jackson made no mention of either certification in her speech. However, one industry source says industry has been pushing -- and EPA has seemed receptive to -- the idea of developing one or more environmentally sound standards for certification.

The BAN source says it is good that Jackson did not back a particular standard in her speech, but adds that EPA should no longer play a role in certifications. EPA should allow the market to determine which standard succeeds, according to the source, who says consumers expect something more than R2.

Jackson's speech also did not clarify whether EPA backs ratifying the Basel Convention with or without amendments that ban export of e-waste to countries that are not a party to the convention. The ban was adopted in 1995, but it has not yet entered into force because an insufficient number of countries have ratified the amendment, the Basel Convention Web site says. The agency drafted legislation during the Bush administration to ratify the convention, but without amendments. -- *Kate Winston*

**New EPA sulfur dioxide rules may mean more monitoring for Montana facilities (*Great Falls Tribune*)**

By KARL PUCKETT • Tribune Staff Writer • June 4, 2010

The U.S. Environmental Protection Agency on Thursday issued a tougher health standard for sulfur dioxide (SO2) pollution, which can aggravate asthma and cause other respiratory difficulties.

In Montana, additional monitoring and modeling of emissions will be conducted at power plants, oil refineries and other industrial facilities in Cascade, Rosebud, Richland and Yellowstone counties to see whether they meet the new standard, said Bob Habeck, air program manager for the Montana Department of Environmental Quality.

Those are the only counties in the state with known sources of SO2, according to the DEQ.

"They're pretty much meeting the standard now," Habeck said.

The current 24-hour emissions standard is being revoked in favor of a one-hour standard of 75 parts per billion, which is designed to protect against exposures ranging from five minutes to 24 hours, according the EPA.

EPA estimated the rule would prevent 2,300 to 5,900 premature deaths and 54,000 asthma attacks and save up to $33 billion in health costs a year.

Speaking personally, and not for department, John Coefield, a meteorologist with the DEQ in Helena, said the new rule is a good idea. He has asthma.

"It's pretty clear there were a lot of short-term impacts on asthmatics," Coefield said.

Yellowstone County, home to coal-fired power plants, oil refineries, a sugar factory and a sulfur-
recovery plant, is the only county out of 56 in the state that's not meeting the new emissions
threshold, according to the EPA.

Montana Refining Co. oil refinery in Black Eagle is an SO2 source in Cascade County.

New emissions limits and control plans might be required at some of the Montana facilities, Habeck said.

"We're taking on an old problem in a new way, one designed to give all American communities the clean air protections they deserve," EPA Administrator Lisa P. Jackson said in a statement announcing the change.

The estimated cost in 2020 to implement the standard is $1.5 billion.

The state has until June 2011 to see if the standards are being violated, Habeck said. Each state will be required to give a list to the EPA of areas where SO2 is being emitted and whether standards are being met.

EPA expects to designate areas not meeting the new standard by June 2012. Any new monitors required by the rule must begin operating no later than Jan. 1, 2013.

Reach Tribune Staff Writer Karl Puckett at 791-1471, 800-438-6600 or kpuckett@greatfallstribune.com.

**EDITORIAL / OP-ED/ COMMENTARY / LETTERS**

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06/03/2010

**Obama's Oily Mess (*White Mountain Independent*)**

By: Rick Manning

I am desperately hoping that what I am writing is proven to not be true, but when the Obama Administration declared that they are now focused upon "containment" of the Deepwater oil spill, it sent off alarm bells.

The one truly effective thing the Obama team could have been doing over the past month and a half is containing the spill. Apart from convening the world's top deep water drilling experts to consult on the problem and offer possible solutions, and providing whatever resources were needed to BP, there was little that the federal government could do in plugging the leak.

Now that "top kill" has failed and shooting golf balls and tire parts into the hole hasn't fixed the problem, the Obama Administration is finally focused upon containment.

Where have they been the past month and a half?

This is the same federal government, through the ever-mindful environmentalists at the Environmental Protection Agency (EPA), which tried to stop BP from spreading dispersant on the oil spill, according to a May 20 EPA press release. Apparently, these "green" regulators didn't like BP using a dispersant, approved by their own agency, and demanded they cease and desist and submit an alternative plan. Apparently, Obama didn't let EPA Administrator Lisa Jackson know that this was a crisis that had his full attention.

This "boot on the throat" approach of the Administration has been counter-productive. Rather than breaking down barriers and helping to solve the problem, they have thrown up roadblocks toward containing this spill.

Louisiana Governor Bobby Jindal's well-publicized battle with the Administration's Army Corps of Engineers over constructing temporary sand bars in front of environmentally sensitive coastal wetlands is another prime example. These sand bars would disrupt the natural environment in the short term, but early construction could have stopped much of the environmental damage that we are currently witnessing.

Obama could have and should have cleared the way to take whatever containment steps were necessary, as this was both in his power and ability - or to get out of the way of Louisiana, BP, or anybody else that was trying to prevent the spread of the spill. Yet he didn't, and his failure to do so is the real reason that Obama rightfully bears the brunt of the negative political fallout for this catastrophe.

The question that needs to be answered, now that Obama has awakened to the scope of his political problem, is what took him so long, and this is where I hope that an independent review of e-mail and text messages prove me to be wrong.

I fear that Obama and his Chicago political henchman Rahm Emanuel made the political calculation that once they got involved and took charge of the spill containment that they would bear the responsibility if it failed or only partially succeeded. I can almost hear the reasoning. Once the leak is stopped, no one is going to remember BP, the focus will be on the containment effort, and if one drop of oil hits the marshlands or beaches, we will get tarred with at least part of the blame.

I hope that Obama did not choose to allow the oil to spread to an unmanageable level because he had a valid scapegoat in BP, and did not want to risk getting his hands dirty by pitching in and actively working the containment effort from day one.

Weeks ago, I wondered why Obama's crew didn't follow the Saudi government's actions when they were faced with a massive tanker spill a few years ago. The Saudi's deployed five massive empty supertankers around the spill and literally sucked up the oil/water mix to limit the spread. The situation is clearly different, but removing some of the oil from the water early and continuously would seem like an obvious approach to containment.

Why didn't we hear Interior Secretary Ken Salazar and Homeland Security Secretary Janet Napolitano giving daily briefings on the containment effort? The obvious answer is that a month and a half into the crisis, there wasn't a containment effort to report on.

It is fair to ask if this Administration, which has thrived on taking advantage of crises for political gain, may have failed to take steps to mitigate this oil leak crisis in order to avoid responsibility.

While the Obama team worried about retroactively changing the oil spill liability limits to give their trial lawyer friend's free reign into BPs coffers, the oil spill got worse.

While the Obama team blocked attempts by the Louisiana state government to minimize the damage, the disaster got worse.

While the EPA seemed strangely out of step through its attempts to block the use of dispersant to allow easier clean up, the black ooze washed ashore in Louisiana and the disaster got worse.

Now, Obama is talking containment as the leak is projected to continue through August. Somehow I suspect that in this case the word containment is less about the Gulf coastline, and more about political damage.

I hope that I am wrong, and that this Administration has just been exposed as being woefully incompetent rather than being willfully negligent in this crisis. Congress needs to immediately demand the Administration's e-mail and text message traffic to determine if politics trumped our national interest.

Tragically, the hands of those who made the decision to not immediately implement, and instead to actively obstructed, efforts to contain the disaster are covered in oil every bit as much as those responsible for the original leak. If the decision was made for political purposes or to avoid taking responsibility, those decision-makers should be fired. America deserves better from her government.

Rick Manning is the Director of Communications for Americans for Limited Government, and the former Public Affairs Chief of Staff for the U.S. Department of Labor.

**Stop EPA's regulatory assault (*Milwaukee Journal Sentinel*)**

By Phil Kerpen And Mark Block
Posted: June 3, 2010

The Environmental Protection Agency is intent on shoehorning vast, costly global warming regulations into the 1970 Clean Air Act. Congress has been content to look the other way and allow it to happen, but on June 10, every senator will be on the record. That's when the Senate will vote on a resolution, S.J. Res. 26, introduced by Sen. Lisa Murkowski (R-Alaska), that would overturn the EPA's global warming regulations.

It's privileged and not subject to filibuster. There is no place for weak-kneed senators to hide. In a week, we'll know where every member of the Senate stands, including Wisconsin's Russ Feingold.

The EPA is out to regulate cars, trucks, buses, motorcycles, planes, trains, ships, boats, tractors, mining equipment, RVs, lawn mowers, forklifts and just about everything else with a motor. And because there is no control technology for greenhouse gases, the EPA would require complete redesigns and operational changes. It also would regulate stationary sources, which could include commercial kitchens that use natural gas and eventually even large, single-family homes.

Democrats have a huge majority in the Senate, but many Democrats will not walk the party line on this one. To start, three Democrats are co-sponsors of Murkowski's resolution: Arkansas' Blanche Lincoln, Nebraska's Ben Nelson and Louisiana's Mary Landrieu.

And at least one more key Democrat, Jay Rockefeller of West Virginia, has expressed concerns about what the EPA is doing. He said in a news release: "We cannot wait any longer to send the message that relying on EPA is the wrong way to go. The fate of our entire economy, our manufacturing industries and our workers should not be in the hands of EPA."

The stakes in Wisconsin are huge, and some officials have raised concerns. Department of Natural Resources Secretary Matt Frank, according to comments he sent to the EPA , "believes that EPA has greatly underestimated the number of PSD permitting actions the regulation of (greenhouse gas) will cause." He said many of Wisconsin's 3,000 schools, 83 hospitals and 42 paper and pulp manufacturers could be subject to permitting. Frank also said the process "will further overwhelm state permitting resources, diverting them from other permit actions that may have a greater environmental benefit."

Regardless of the outcome of next week's vote, we'll learn where Sen. Feingold stands. Will he vote to say a rogue agency can shortcircuit the legitimate legislative process, disregard public opinion and impose its own constraints on the Wisconsin economy? Or will he take responsibility as a member of the legitimately elected legislative branch of government and rein in the EPA by voting yes on S.J. Res. 26?

Phil Kerpen is vice president for policy and Mark Block is Wisconsin state director at Americans for Prosperity (www.RegulationReality.com).

**EPA puts ideology ahead of common sense (*Washington Examiner*)**

Examiner Editorial

June 4, 2010
A new Environmental Protection Agency rule regarding lead paint requires that the renovation of any building built before 1978 affecting six or more square feet of paint must be overseen by a government-certified renovator.

Do you recall what you were doing on April 22, 2010? Odds are good that lead paint in structures built before 1978 was not in your thoughts that day, but the issue was very much on the minds of the bureaucrats at the Environmental Protection Agency. That was the day their agency's newest rule -- Lead: Renovation, Repair and Painting -- officially took effect. While Lead RRP addresses a legitimate public health concern, it is also a massive addition to the hundreds of thousands of pages of existing EPA regulations covering much of the U.S. economy.

Ostensibly, the Lead RRP regulation is meant to protect pregnant women and children from exposure to unhealthy levels of lead paint. Even so, the rule illustrates how EPA is currently driven more by progressive ideology and bureaucratic inefficiency than common sense. The rule requires that any renovation of any building built before 1978 affecting six or more square feet of paint must be overseen by a government-certified renovator and conducted by a government-certified renovation firm. Certification requires completion of an EPA-approved training course and payment of a fee to the agency.

The rule applies to anybody -- including painters, electricians, plumbers, and carpenters, plus general contractors and property owners -- who "disturbs painting" in covered structures. But as of April 22, EPA had certified exactly 204 trainers to cover the millions of workers who generate approximately 18 percent of the country's annual gross domestic product. No wonder the EPA just got a sharp rebuke on Capitol Hill. The Senate adopted on a 60-37 vote a measure sponsored by Republican Sens. James Inhofe of Oklahoma and Susan Collins of Maine to prevent EPA from imposing a "levy against any person [or] any fine, or to hold any person liable for construction or renovation work" as a result of Lead RRP.

For the time being, the EPA has bigger concerns than fighting Congress over implementation of the Lead RRP regulation. For example, EPA recently ordered BP to use a less toxic oil dispersant without knowing beforehand that none currently exists. And EPA Administrator Lisa Jackson has been vigorously pushing a declaration by the agency that carbon dioxide is a health hazard that contributes to global warming. Jackson has threatened to implement the declaration if Congress fails to adopt the Obama administration's proposed cap-and-trade, anti-global warming program. This is the same EPA that imposed a training requirement on millions of American workers without first making sure it had enough trainers to do the job.

**AIR**

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**E.P.A. Tightens Rule on Sulfur Dioxide (*New York Times*)**

June 4, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 18
By JOHN M. BRODER
WASHINGTON -- The Environmental Protection Agency issued a new health standard on Thursday for sulfur dioxide emissions, the first such revision in nearly 40 years.

The agency said the new standard, adopted under the Clean Air Act, would prevent 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year. The agency estimates the cost to industry of adopting the new rule at $1.5 billion over the next 10 years, and the value of the health benefits at $13 billion to $33 billion a year.

Sulfur dioxide, or SO2, is a major element of the exhaust from coal-burning power plants and a component of acid rain. It has been linked to many health problems, including respiratory distress, asthma, emphysema and bronchitis.

The previous standard was based on a 24-hour measurement of sulfur dioxide concentrations; the E.P.A. is moving to a one-hour measuring period to protect against short-term exposure.

"We're taking on an old problem in a new way, one designed to give all American communities the clean-air protections they deserve," said Lisa P. Jackson, the E.P.A. administrator. "Moving to a one-hour standard and monitoring in the areas with the highest SO2 levels is the most efficient and effective way to protect against sulfur dioxide pollution in the air we breathe."

The agency is also requiring that new monitors be set up by 2013 in the areas that are subject to the highest concentrations of sulfur dioxide.

States with metropolitan or industrial areas that do not meet the new standard will have to submit plans no later than August 2017 showing how they will come into compliance, generally by requiring the sources of the emissions to install upgraded equipment to capture them. Compliance will be measured by the 470 monitoring stations already in operation; the new rule will require installation of about 40 monitoring sites.

The first standards for sulfur dioxide were set in 1971, establishing limits both for public health and for the environment. They have not been significantly altered since then, although a federal court ordered a revision in 1996 after the agency declined to set a new standard. Thursday's action came in response to that court decree. The agency says it is working on a secondary standard to address the environmental effects of sulfur dioxide.

In 1990, the federal government imposed limits on nationwide emissions of sulfur dioxide from power plants and major sources, resulting in a reduction of nearly 50

percent in releases of the chemical. Emissions declined further in recent years when the E.P.A. ordered cuts in the sulfur content of diesel fuel.

Thursday's action set a new air-quality standard for sulfur dioxide. The current standard calls for concentrations of no more than 140 parts per billion, averaged over 24 hours. The new rule reduces the ceiling to 75 parts per billion, measured hourly.

Frank O'Donnell of Clean Air Watch, an advocacy group, praised the action. "Although the final standard is a bit less strict than we and the American Lung Association had urged," Mr. O'Donnell said in a statement, "it is well within the range recommended by E.P.A.'s independent science advisers."

"This action will mean fewer kids and adults will have asthma attacks," he said. "Fewer people will go to the hospital. And fewer people will die prematurely from air pollution."

**EPA tightens rules on sulfur dioxide (*St. Petersburg Times*)**

The **Environmental Protection Agency** on Thursday set a new health standard that coal-fired power plants and other industries will have to meet on sulfur dioxide, a pollutant that triggers asthma attacks and causes other respiratory problems. It is the first time the standard has been changed since the original one was issued in 1971. The **EPA** estimated that cleaner air as a result of the new standard would mean 2,300 to 5,900 fewer premature deaths and 54,000 fewer asthma attacks per year. It said the estimated cost to upgrade pollution controls was about $1.5 billion.

**If air is important, the choice for Texas governor is clear (*Fort Worth Star-Telegram*)**

Texas
June 4, 2010 Friday
SECTION: A
The sudden flare-up of hostilities between the EPA and state environmental regulators should make for a clearer choice in November's election for Texas governor.

If you're a refinery manager or a petrochemical plant owner, Republican Rick Perry is the candidate for you. Caricature of the rough-ridin' Texan that he has become, the nine-year governor has gone to battle against "Washington's command and control approach" and make it easier for you to poison the air.

Democrat Bill White -- while his campaign has been slow to seek any real leverage from it -- was an environmental crusader during his six years as Houston's mayor. He fought for stronger regulations to reduce toxic emissions from the massive refining and

chemical plants in and near the city.

The difference couldn't be more clear.

The **EPA** said last week that it will take away the state's ability to issue operating permits for heavy industries because the process followed by the Texas Commission on Environmental Quality does not comply with the federal **Clean Air Act**.

The Washington agency delegated its permitting power to the state in 1992, but since then Texas has changed its plan more than 30 times with no formal federal approval or disapproval. The **EPA** said there had been "lingering disagreements with Texas because of potential inconsistencies with federal air permitting regulations."

The feds stepped up their complaints in 2006 under President George W. Bush. Perry blames an Obama administration "campaign to harm our economy and impose federal control over Texas." Apparently Barack Obama was able to exert extraordinary influence on the Bush administration well before there was an Obama administration.

Then a group calling itself the Business Coalition for Clean Air, along with the Texas Association of Business and the Texas Oil and Gas Association, sued the **EPA**, seeking relief from the regulatory purgatory that had sprung from years of negotiations between the **EPA** and TCEQ. The business folks wanted the feds to hurry up and get out of the way.

The **EPA** agreed to hurry things along. In September, the agency published a notice in the Federal Register citing 17 points of law under which it planned to formally reject TCEQ's permitting plan. It has continued negotiating with TCEQ, but the expedited schedule calls for the state to submit a plan to comply with the **Clean Air Act** by June 30.

So Perry's in a tizzy. It's all "a blatant example of obsession with red tape" and "yet another federal power grab." It's "on the verge of killing thousands of Texas jobs."

He cites ways in which Texas air quality has improved since 2000, but they all have to do with lower levels of ozone and its precursors.

There's more to air pollution than that, and White has seen it big time. Perry is right to say Texas refines more than 25 percent of the nation's fuel supply and manufactures roughly 60 percent of the chemicals used in the U.S.

But while White was mayor, Houston issued a report showing that Texas has almost 50 percent of the nation's carcinogen emissions related to petroleum refining. Texas refineries, the report said, emit more cancer-causing benzene per barrel of oil produced than those in any other state.

Last year, White fought renewal of an operating permit for Houston Refining, which he

said emits more benzene into the air than any other refinery in the nation. TCEQ had amended the permit 17 times without full public input. It did so again this time, albeit with a long list of new emission caps.

Who can guess what would have happened if White had not spoken up? I can.

Mike Norman is editorial director of the Star-Telegram/ Arlington and Northeast Tarrant County.

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**EPA move on sulfur dioxide credited with boosting natural gas prices (*Fort Worth Star-Telegram*)**

(Texas)
June 4, 2010 Friday
The Environmental Protection Agency is tightening health standards for sulfur dioxide emissions from power plants and other industrial sources, a move that was credited Thursday with helping boost natural gas prices and some energy companies' stock prices.

The agency said Thursday that the new standard, adopted under the Clean Air Act, would prevent 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year.

Sulfur dioxide is a major element of exhaust from coal-burning power plants and a component of acid rain. It has been linked to many breathing problems, including asthma, emphysema and bronchitis. The new rule calls for concentrations of no more than 75 parts per billion of sulfur dioxide, measured hourly. The current standard is 140 parts per billion, averaged over 24 hours.

Some power plants have been using more natural gas, instead of coal, to run generators because gas burns cleaner, with lower emissions.

Natural gas futures rose 26.6 cents to close at $4.69 per 1,000 cubic feet on the New York Mercantile Exchange on Thursday.

Natural gas producers were among the biggest gainers in an otherwise lackluster trading day.

Fort Worth-based Quicksilver Resources (ticker: KWK ) and Range Resources ( RRC ) both saw their shares jump more than 6 percent, as did Oklahoma City-based Chesapeake Energy ( CHK ). Union Drilling ( UDRL ) of Fort Worth, which is active in shale gas development, saw its shares rise more than 4 percent.

**EPA approves tougher pollutant limits (*Houston Chronicle*)**

Standards will be felt most in areas using coal power plants
By MATTHEW TRESAUGUE
HOUSTON CHRONICLE
June 3, 2010, 9:36PM

Federal environmental regulators on Thursday set new limits on sulfur dioxide emissions for the first time in 40 years, a move intended to reduce respiratory diseases and early deaths.

The new rules, which take effect under court order, will prohibit short-term spikes of sulfur dioxide, or SO2, which is primarily emitted from coal-fired power plants and other industrial facilities.

The tougher standard will be felt mostly in the East and Midwest where coal plants are most common. Texas has 17 coal plants, with another dozen in the works across the state.

The U.S. Environmental Protection Agency said the stricter rules could prevent thousands of asthma attacks and premature deaths while reducing health care costs.

The EPA estimates the cost to industry of retrofitting power plants to comply with the new rules at $1.5 billion during the next 10 years and the value of the health benefits at $13 billion to $33 billion a year.

The previous standard called for concentrations of no more than 140 parts per billion, averaged over 24 hours. Under the new rules, the allowable level of sulfur dioxide would drop to 75 parts per billion in one hour to guard against short-term spikes.

“We're taking on an old problem in a new way, one designed to give all American communities the clean air protections they deserve,” EPA Administrator Lisa Jackson said in a statement. “Moving to a one-hour standard and monitoring in the areas with the highest SO2 levels is the most efficient and effective way to protect against sulfur dioxide pollution in the air we breathe.”

Health and environmental groups said the EPA could have imposed a tougher limit, based on the latest science about health risks posed by breathing the widespread pollutant, but they still praised the action.

“Although the final standard is a bit less strict than we and the American Lung Association had urged, it is well within the range recommended by EPA's independent science advisers,” said Frank O'Donnell of Clean Air Watch, an advocacy group. “We would certainly give it a high passing grade — a B-plus or A-minus.”

Jefferson County is the only area in Texas that would fail the tougher standard.
‘Very stringent' rules

Although Harris County would comply with the new limits, the EPA will require two monitors to measure concentrations of sulfur dioxide in the area.

Industry officials said the rules are “very stringent,” noting that power plants have reduced emissions of sulfur dioxide by 70 percent since 1980.

“Some communities will look to power plants for cuts” to meet the standard, said Dan Riedinger, a spokesman for the Edison Electric Institute, an association of power plant owners. It's likely the states will have to cast a wider net to reach attainment.”

Riedinger also said the new rules should not be a hurdle to development of coal plants in Texas because those facilities would have state-of-the-art emissions controls.

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## Industry Eyes Bid To Revive BACT Exemption For Impending GHG Limits (*Inside EPA*)

06/04/2010
Industry officials are crafting a plan to revive a controversial exemption from best available control technology (BACT) emission reduction requirements for facilities that meet energy efficiency and other criteria, which could help facilities avoid having to undergo an extensive first-time BACT review for limiting greenhouse gases (GHGs).

Environmentalists and some state officials, however, are attacking the plan as a violation of the Clean Air Act, pointing to a series of court rulings striking down Bush-era efforts to ease BACT requirements.

At a May 26 meeting of EPA's Clean Air Act Advisory Committee (CAAAC) in Washington, DC, industry lawyer Robert Wyman outlined a "BACT Light" approach that could help facilities win exemptions from reviews to determine BACT for meeting permitted emission limits, for example if the facilities met several requirements such as energy efficiency measures that cut GHGs and only modestly increase criteria pollutants.

Wyman told a combined meeting of CAAAC's permitting, toxics, BACT and new source review (NSR) panels that they are now facing a "last chance" to craft an alternative to

the BACT review process before EPA starts requiring companies to assess BACT for meeting GHG permit limits, beginning next year.

BACT is the level of emission controls that facilities must meet in their air permits if they are located in areas in attainment with EPA's national ambient air quality standards. For areas out of attainment with EPA air standards, NSR applies and requires the installation of lowest achievable emission rate technology.

EPA recently finalized its GHG "tailoring" rule, which sets the thresholds for when facilities must begin installing BACT to control GHGs, starting next year at facilities that emit 100,000 tons per year. However EPA, states, industry and others continue to wrestle over what technology can qualify as BACT for GHGs. That is prompting Wyman and others to craft a plan that could offer an exemption from the BACT review process.

Wyman said that under his "BACT Light" plan facilities could win exemptions from BACT requirements if they met several criteria for improving energy efficiency; preventing any additional adverse impact to the health of nearby communities; and if the exemptions were limited to certifiably "clean" technologies.

The exemption could help spur investments in so-called clean energy facilities that cut various pollutants -- which may address past industry criticisms that the BACT process is so costly that it has prevented investment in clean energy projects. "Let's identify those that we want and create some kind of exemption process," Wyman said.

Wyman said the plan could help companies get an exemption from BACT requirements if a facility agrees to install controls that achieve massive cuts in GHGs -- even if it results in a modest increase in non-GHG criteria pollutants. Similarly, a facility could win an exemption from BACT requirements if it took steps to significantly cut pollutants even if future utilization of the source resulted in total mass emissions increasing, Wyman said.

CAAAC member Eric Svenson, from the electric utility Public Service Enterprise Group, asked Wyman to submit a memo to the panel on the idea, but Wyman told *Inside EPA* he has no timeline for doing so.

Wyman declined to elaborate further on the process for winning BACT exemptions, saying he is "just now outlining it," but at the meeting outlined four scenarios where the exemption could be useful.

First, it could apply at a modification of an existing source that significantly reduces emission rates for all pollutants but that through increased future utilization could increase total mass emissions.

Secondly, the exemption could be useful for a situation where the addition to an existing facility of a new source of electricity or steam significantly reduces regional GHG

emissions but causes the facility's net emissions to increase for one or more pollutants, including GHGs.

The third scenario where the exemption could be useful is for a modification of an existing source that results in significant reduction of most pollutants, but also results in the real or potential net increase in emissions for one or more pollutants, for example nitrogen oxide, according to Wyman.

Finally, the exemption could also help for a new emissions source "that outperforms clearly recognized emissions performance benchmarks for all relevant pollutants," he said.

Industry officials at the meeting supported Wyman's idea, with Lisa Gomez of Sempra Energy Utilities saying that it could help companies that are reluctant to pursue environmentally beneficial projects simply because they would trigger BACT review. Gomez could not be reached to provide an example by press time.

Environmentalists and some state officials at the meeting, however, strongly objected to the idea of exemptions from the NSR/PSD control technology review process. John Walke, an attorney with the the Natural Resources Defense Council, told *Inside EPA* that Wyman's scenarios largely describe situations that would decrease some emissions but increase others -- something that Walke said courts have ruled must trigger NSR.

"NSR applies on a pollutant-by-pollutant basis," Walke said in an interview. He also cautioned that the process detailed by Wyman for winning exemptions from BACT requirements risked rehashing fights over Bush-era NSR reforms that were ultimately struck down by the U.S. Court of Appeals for the District of Columbia Circuit. "I'm afraid that what we're doing is reviving some of the NSR religious wars of the previous decade," Walke said at the CAAAC meeting, citing a series of three court rulings that he said would preclude EPA from crafting NSR exemptions for clean technology.

Walke first cited a 2007 Supreme Court decision in *Environmental Defense, et al. v. Duke Energy Corporation, et al.*, in which the court ruled 9-0 that an increase in the annual rate of emissions triggers NSR review.

He also attacked the legality of Wyman's plan by citing a 2005 ruling in the U.S. Court of Appeals for the District of Columbia Circuit in *State of New York, et al. v. EPA*, in which the court rejected EPA's "clean unit exemption," which based the definition of an emissions increase on potential rather than actual emissions.

Finally, Walke also said the exemptions would be at odds with a 2007 D.C. Circuit vacatur, in *State of New York, et al. v. EPA, et al.,* of EPA's "equipment replacement rule," which said that NSR is only triggered if the replacement was valued at 20 percent of the facility's cost, allowing greater flexibility for industry to make modifications without triggering pollution control requirements (*Inside EPA*, May 4, 2007).

Walke, in an interview with *Inside EPA,* also rejected the "false conflict" between NSR reviews and efficiency projects, as promoted by the Bush administration and industry representatives. "What industry meant then and means now when they say an energy efficiency improvement is a project that makes a unit marginally more efficient on an hourly basis but that will generate significant increases of smog or soot pollution and probably will cause significant increases in [carbon dioxide] pollution, with all measured on an annual basis," he said.

Bill Becker of the National Association of Clean Air Agencies, which represents state and local air agencies, said at the meeting that the exemption described by Wyman would likely be illegal. "My members may like this but . . . I want to make sure we're not wasting our time," Becker said at the meeting.

And Becker told *Inside EPA* that he also believed Wyman's arguments for the exemption process lacked merit, saying that it is another chance to attack a permitting program that industry has long despised.

However, Bill O'Sullivan of the New Jersey Department of Environmental Protection said that discussion on some type of "BACT Obvious" provision to streamline NSR approval for clearly clean technologies, such as combined cycle power plants, has potential. "It's easy for my staff to approve combined cycles," O'Sullivan said. -- *Molly Davis*

**EPA Finds Formaldehyde Causes Cancer, Opening Door To New Air Rules (*Inside EPA*)**

06/04/2010
A just-released draft EPA study finds a causal link between formaldehyde exposure and several types of cancer, and is expected to drive a host of strict new agency air quality regulations for stationary and mobile sources, including natural gas turbines, refineries and other sources that emit the gas.

Even before EPA's June 2 release of the draft assessment, agency officials said the new safety standards will drive an increase in the agency's estimates of the national cancer risks from formaldehyde.

Lydia Wegman of EPA's Office of Air Quality Planning & Standards in a recent presentation to state air officials said that the agency will use its new formaldehyde risk factor in EPA's pending update to its National Air Toxics Assessment (NATA).

The latest version of NATA -- an air emissions database used by EPA and states to identify pollutants of the greatest concern -- will show that estimated formaldehyde cancer risks "will increase significantly" and it will become a "national risk driver," Wegman said. While NATA itself is not designed to be the sole basis of regulation, its

findings can be used to prompt further research that may spur rules to limit exposures to a pollutant.

Industry has also been predicting that the assessment will drive strict new regulation of numerous industries, including a rule on natural gas turbines, which also emit formaldehyde. The Bush EPA delisted the turbines as a source category subject to air toxics regulations until the Integrated Risk Information System (IRIS) assessment was updated and an agency source said last year that new science was expected to help the agency justify relisting the turbines.

The draft IRIS assessment could also drive strict new rules governing plywood facilities as the IRIS assessment includes a cancer risk estimate more stringent than EPA's existing assessment as well as the modeling data the Bush EPA used as the basis for its regulation on formaldehyde emissions from plywood facilities.

EPA lists a host of sectors that could be subject to new requirements, noting that "major sources of anthropogenic emissions of formaldehyde are motor vehicle exhaust, power plants, manufacturing plants that produce or use formaldehydes or substances that contain formaldehyde (i.e., glues), petroleum refineries, coking operations, incineration, wood burning, and tobacco smoke."

But industry officials are already vowing to fight any effort to strictly regulate the chemical. "Any regulatory decision based on incomplete information could cause significant harm to an industry that supplies so many products critical to the home and commercial building, automotive and aerospace industries, as well as defense-related applications and vaccines used worldwide to prevent polio, cholera, diphtheria and other major diseases," the Formaldehyde Council International (FCI), an industry group that represents the chemical's users and manufacturers, said in a June 2 statement.

While any new effort to regulate releases of the gas is provoking industry opposition, the draft risk assessment is also proving scientifically controversial.

Of particular concern to industry is EPA's decision to include data from human epidemiological studies linking formaldehyde exposure to various leukemias -- a connection that industry sources have long feared the agency would include in the assessment but which they have argued is biologically impossible because the chemical does not enter the blood stream and cannot cause any type of leukemia.

"The theoretical link between formaldehyde and leukemia is biologically implausible as it requires that the basic biochemistry of the molecule be ignored. The most recent, state-of-the-art studies demonstrate that inhaled

formaldehyde cannot cause systemic harm at typical or even elevated exposure levels," FCI says.

EPA acknowledges in the draft assessment that it does not know how formaldehyde could cause leukemia, but argues that there is sufficient evidence that it does to include it in the risk estimate. "Although it is largely unknown how inhalation exposure to formaldehyde would influence bone-marrow derived malignancies, new evidence supports formaldehyde-induced bone marrow toxicity as well as damage to circulating stem cells which may be of importance to formaldehyde's leukemic potential," EPA says.

FCI also disputes EPA's claim that formaldehyde causes nasal cancers -- a finding that some industry sources have long accepted. FCI said in a statement that some nasal cancers "are likely due to factors other than formaldehyde. Due to the very high concentrations needed to produce cell damage in human nasal tissue, formaldehyde simply will not cause [nasopharyngeal cancer (NPC)] at today's workplace exposure levels because these levels are already regulated to ensure low exposure."

EPA's draft IRIS assessment -- released ahead of the start of a National Academy of Sciences (NAS) review slated to begin June 7 -- calculates an upper bound lifetime unit risk estimate of 0.13 per part per million, or $1.1 \times 10^{-4}$ per microgram per cubic meter ($ug/m^3$) "for the three cancer types (NPC, Hodgkin lymphoma and leukemia) combined."

The new cancer risk estimate is a factor of 10 stricter than EPA's previous cancer risk estimate, published in 1991, which is set at $1.3 \times 10^{-5}$ per $ug/m^3$. *The draft assessment is available on InsideEPA.com.*

EPA's cancer number also reflects the agency's determination that the chemical's risk must be modeled linearly, indicating there is no safe level of exposure to the chemical. EPA does so because of its determination that formaldehyde causes cancer, in part, through a mutagenic mode of action. The agency also increases the stringency of its assessment by adjusting the risk estimate with a factor intended to provide additional protection to children from chemicals thought to cause cancer by mutagenic means.

The new draft assessment also includes a first-time estimate of non-cancer risk that formaldehyde poses. The reference concentration (RfC) is the amount EPA considers can be inhaled on a daily basis over a lifetime without experiencing adverse non-cancer health effects. EPA calculates multiple RfCs based on several different studies of children exposed to formaldehyde in their homes, resulting in asthma, allergic sensitization, and/or respiratory disease symptoms. The agency combines the calculations from these studies to produce two RfC estimates of 4 parts per billion (ppb) and 9 ppb.

The agency does not indicate which of the numbers it is proposing, and instead seeks advice from the NAS panel which will review the draft on how to address uncertainty in its data.

"EPA is considering four options to address database uncertainties in the final RfC," according to the document. "It is unclear what uncertainty factors are appropriate to

account for human variability and deficiencies in the overall database. For this reason, several alternatives have been presented. EPA is seeking advice from the NAS and the public on this matter."

EPA released the draft IRIS assessment of formaldehyde's risks from inhalation exposure just days before the NAS panel of experts is scheduled to begin its review of the assessment. The review is scheduled to begin June 7 in Washington, DC. -- *Maria Hegstad*

**Activists Threaten EPA With Lawsuit To Force Action On Texas Air Policies (*Inside EPA*)**

06/04/2010

Environmentalists are warning EPA that they will soon file a lawsuit to try and force the agency to address what they say are long-standing Clean Air Act violations by Texas, including EPA's failure to pursue action against the state for an allegedly poor track record in taking steps to reduce ozone and particulate matter (PM) air pollution.

Earthjustice, on behalf of Sierra Club, filed a June 2 notice of intent (NOI) to sue EPA, saying it will file the suit if EPA does not act on three lingering air quality issues in Texas -- the lack of a federal implementation plan (FIP) to limit interstate air pollution from Texas; EPA's failure to make a decision on Texas' state implementation plan (SIP) to cut PM emissions; and EPA's failure to issue a FIP to force the state to comply with EPA's 1997 ozone standard.

Sierra Club attorney Bruce Nilles said on a conference call the same day that EPA took an "important first step" to addressing activists' long-running concerns with Texas' air quality programs with its recent blocking of a "flexible" air permit for an oil refinery. Texas' flexible permits regulate emissions from entire industrial complexes rather than individual emissions sources within facilities, and opponents charge the program allows industry to illegally avoid federal permitting requirements.

But Sierra Club's Neil Carman said on the call that environmentalists are threatening the suit over broader air quality FIP and SIP issues in order to address larger problems with the state's inability to attain EPA air standards. The NOI says that EPA has 60 days to take action on the activists' concerns before they file the suit.

When EPA sets a national ambient air quality standard (NAAQS) states must submit to EPA SIPs that detail the steps they will take to come into attainment the standard. If states fail to submit a plan, or if the agency rejects the plan, then EPA can issue a FIP to impose federal requirements on state sources to achieve attainment.

In the NOI, Earthjustice says Texas should have developed a SIP that complied with EPA's 1997 eight-hour ozone and fine PM (PM2.5) NAAQS and addressed interstate pollution transport by July 2000, but like all other states failed to do so, according to EPA's own 2005 finding. *The notice is available on InsideEPA.com.*

Earthjustice argues that the subsequent introduction of the Clean Air Interstate Rule (CAIR) did not remove EPA's legal obligation to introduce a FIP on pollution transport issues within two years of Texas' failure to produce a satisfactory SIP -- i.e., by 2007. CAIR was a cap-and-trade program for reducing sulfur dioxide and nitrogen oxide emissions in more than a dozen states, and was a key part of many states' strategy for attaining various NAAQS.

In the NOI, activists also charge that despite a finding by EPA in 2008 that Texas submitted a complete SIP to address other Clean Air Act requirements relating to the 1997 PM2.5 NAAQS, the agency has failed in its legal duty to approve or disapprove the SIP definitely within twelve months, i.e. by October 22 last year.

Environmentalists also charge in their NOI that EPA missed a two-year window triggered under the Clean Air Act to impose a FIP after Texas, according to a 2008 EPA finding, failed to submit a complete SIP with respect to compliance with aspects of the 1997 NAAQS not related to interstate pollution.

EPA in a Jan. 7 proposal suggests a new 8-hour ozone NAAQS in the range of 0.060 to 0.070 parts per million (ppm), tougher than the contested 2008 NAAQS of 0.075 ppm. This would, Carman says, place many more areas of the state including Austin and San Antonio in nonattainment, making corrective actions by EPA all the more urgent because it underscores the need for the state to find ways to aggressively cut ozone pollution.

An EPA spokesman did not respond to a request for comment by press time, but EPA Region VI Administrator Al Armendariz said in recent press reports he wants to ensure Texas' air programs are adequate.

Armendariz made his comments after EPA blocked the flexible permit for a refinery in Corpus Christi, TX, and suggested EPA could take over dozens of other permits if EPA believes they violate the air act. Under a court-approved settlement in *BCCA Appeal Group, et al. v. EPA* in the U.S. District Court for the Northern District of Texas, EPA will July 1 make a decision on whether to approve Texas' flexible permits and other air programs.

Nilles claimed on the environmentalists' teleconference that Texas Gov. Rick Perry's (R) administration does not have an effective air pollution policy, and said its failings "are greater than just the flex permit program."

Perry's office however issued a statement June 2 reiterating Perry's view that EPA's apparent move to take over air permitting in the state because of the flexible permitting

dispute is an unjustified power grab. "The EPA seems to believe that federal controls and bureaucracy are more important than clean air results," Perry says.

**EPA tightens standard for SO2 spikes (*Greenwire*)**

Robin Bravender, E&E reporter
06/03/2010
U.S. EPA strengthened air standards today aimed at protecting human health from short-term spikes in sulfur dioxide.

The **final rule** sets an SO2 standard of 75 parts per billion (ppb) averaged over an hour. EPA proposed last year to set the one-hour SO2 limit between 50 ppb and 100 ppb (*Greenwire*, Nov. 17, 2009).

EPA said the one-hour standard is needed to protect against short-term exposure, which can aggravate asthma and cause other respiratory problems. The current limits are 140 ppb measured over 24 hours and 30 ppb measured over a year.

"Moving to a one-hour standard and monitoring in the areas with the highest SO2 levels is the most efficient and effective way to protect against sulfur dioxide pollution in the air we breathe," EPA Administrator Lisa Jackson said in a statement.

EPA's final rule marks the first ever one-hour standard and the first update to the health-based SO2 standards since they were first set in 1971.

The agency revoked its current daily and annual standards for SO2. The science indicates that short-term exposures are of the greatest concern and the existing standards would not offer additional health benefits, EPA said.

EPA said it has also revised SO2 monitoring requirements to ensure that monitors are located in areas where pollution affects populated areas.

Clean Air Watch President Frank O'Donnell gave EPA's new standard a "high passing grade -- a B plus or A minus."

"It's not quite as aggressive as we had hoped, but it certainly is a positive step in the right direction," he said.

Clean Air Watch and the American Lung Association had urged EPA to set a one-hour standard at 50 ppb and to retain the existing annual standard.

Industry groups, however, had cautioned EPA against setting tighter standards, saying new rules would impose substantial costs without notable health benefits.

"We are surprised that EPA revoked the daily and annual standards because these standards have been successful," said Howard Feldman, director of regulatory and scientific affairs at the American Petroleum Institute. He noted that annual SO2 levels dropped 71 percent between 1980 and 2008.

With the new limit, he said, "EPA is moving the standard below the level that's requisite to protect public health."

EPA estimates that implementing the standard will cost about $1.5 billion by 2020 and that health benefits will range between $13 billion and $33 billion annually.

The Clean Air Act requires EPA set national limits for SO2 and other harmful pollutants. States with areas that don't meet the new standard will be required to slash emissions by requiring industries to install pollution controls or through other measures.

According to EPA, no areas are currently exceeding the nearly 40-year-old standards, but the agency expects that the tougher new standards will require some areas to curb their emissions.

About 60 counties -- mostly in the eastern United States -- currently exceed the new one-hour standard and EPA estimates that 24 counties will violate the standard by 2020. EPA plans to designate nonattainment areas by June 2012, EPA said.

The agency plans to address the secondary SO2 standard aimed at protecting public welfare and the environment as part of a separate review to be finalized in 2012.

**BP SPILL**

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JUNE 4, 2010, 7:33 A.M. ET

**OSHA Says Cleanup Workers Don't Need Respirators (*Wall Street Journal*)**

By MELANIE TROTTMAN

WASHINGTON—The head of the Occupational Safety and Health Administration on Thursday said workers hired by BP PLC to clean up spilled oil don't need respirators, despite complaints from some employees and lawmakers about toxic fumes.

David Michaels, assistant secretary for the Department of Labor's OSHA, said in an interview Thursday that based on test results so far, cleanup workers are receiving "minimal" exposure to airborne toxins. OSHA will require that BP provide certain protective clothing, but not respirators.

Questions about widely publicized complaints from cleanup workers are likely to continue. Two members of Congress on Thursday demanded that BP provide respirators for workers.

**The Gulf Oil Spill**

Rep. James Oberstar (D., Minn.), chairman of the House Transportation and Infrastructure Committee, and Rep. Jerrold Nadler (D., N.Y.), a senior member of the committee, sent a letter to the Environmental Protection Agency and the Department of Labor citing incidents of workers in the Gulf of Mexico who have complained about nausea, shortness of breath and other respiratory ailments. The congressmen demanded that all response and recovery workers be provided "proper protective equipment, including respirators."

Mr. Michaels said he remains worried about heat illnesses, given the high temperatures, long hours and resulting fatigue. He also is concerned about injuries "because there are many hazards out there" such as bites from wildlife, wet and slippery or uneven surfaces, boats and use of heavy equipment.

Mr. Michaels had sharply criticized BP in a May 25 letter to Coast Guard Admiral Thad Allen, citing "significant deficiencies" in how BP handled worker safety as part of its oil-spill response. That included heat-related illnesses linked to lack of shade and hydration, a lack of planning for severe weather that could cause worker fatalities and loose controls on who was entering cleanup sites, which resulted in workers being assigned to tasks for which they were untrained. Mr. Allen helped to communicate the concerns to BP, which has since addressed "many" of them, Mr. Michaels said Thursday.

In recent days, OSHA has been working more closely with BP and continues to monitor working conditions daily with the help of about 20 agency staffers across the Gulf, Mr. Michaels said.

"When we see concerns, we report them to the Coast Guard and to BP.

BP is responsible for abating the hazards," he said.

A BP spokesman said the company is satisfied that the Unified Command has dealt with the concerns raised in the OSHA letter. He said safety and health plans were developed as a "top priority" as soon as the spill response began more than a month ago and that training programs were developed with the help of OSHA. "It is an absolute requirement that all personnel working on-site have to have safety training. As and when any deficiencies have been brought to the attention of the Unified Command, they have been put right," he said.

OSHA's top challenge now is to keep pace with the changing exposure levels to toxins that could harm cleanup workers. Crude oil is a hazard that can irritate the skin or eyes.

"As exposures change, we will have to change our requests both around training and equipment" needed, said Mr. Michaels. "The biggest challenge will be to stay on top of this." Taking frequent measurements of environmental exposures will help, he said.

In his letter to Mr. Allen, Mr. Michaels had warned that if BP didn't take immediate steps, OSHA would have to move into "enforcement mode," which could result in fines for violating regulations. Mr. Michaels said Thursday that the improvements had prevented any need for enforcement action and OSHA is focusing on helping BP comply with existing regulations.

BP has also responded to an OSHA complaint that the company staffer in charge of cleanup-worker safety didn't appear to have the authority needed to do the job. Now, OSHA is working with a different person, "who has the authority to deal with the issues," Mr. Michaels said.

**Write to** Melanie Trottman at melanie.trottman@wsj.com

**The Ongoing Administration-Wide Response to the Deepwater BP Oil Spill (*San Angelo Standard Times*)**

UPDATED June 2, 2010 7 PM
Prepared by the Joint Information Center
Thursday, June 3, 2010
SAN ANGELO, Texas — PAST 24 HOURS

Admiral Allen Provides Operational Update for Unified Area Command

National Incident Commander Admiral Thad Allen today provided a briefing to inform the American public and answer questions on the progress of the administration-wide response to the BP oil spill from the Incident Command Post in Houma, La., the headquarters for response operations for the state of Louisiana. A transcript is available here.

Administrator Lubchenco Outlines Role of Science BP Oil Spill Response

Admiral Allen was joined at his briefing by NOAA Administrator Dr. Jane Lubchenco, who outlined the critical role that science has played in the U.S. government's response to the Deepwater BP oil spill. From the beginning, the administration's response to this unprecedented event has been based on the best science available in both the public and private sectors, as responders have worked to measure and mitigate the impacts of the oil, monitor air and water conditions and assess any and all impacts to the environment as well as human health.

Administrator Lubchenco also highlighted the NOAA Ship Thomas Jefferson, which returned to sea today to continue conducting research—including the collection of water samples and the net sampling of pelagic species throughout the water column. Read her full remarks here.

Administrator Jackson Observes Cleanup Efforts of Impacted Shoreline

Continuing her fourth trip to the Gulf Coast, EPA Administrator Lisa Jackson observed ongoing efforts to survey and clean up impacted beaches and wetlands in Port Fourchon Beach, Grand Isle Beach and Cocodrie Bay, La.

Admiral Allen Approves Five Additional Barrier Island Projects to Protect Louisiana

Consistent with all the work undertaken in recent weeks to assess Louisiana's barrier island proposal and gather input from local officials, environmental experts, and top scientists and engineers, Admiral Allen directed BP to pay for five additional barrier island projects in addition to the one he approved last week as part of our continuing commitment to do everything possible to protect our vital coastal communities from BP's leaking oil. Based on a thorough expert analysis, the administration believes that these six total projects, which will be constructed expeditiously in the areas most at risk for long-term impact by oil, will effectively stem potential damage to these fragile shorelines.

Notifying Governor Jindal of his determination this afternoon, Admiral Allen reiterated that this administration will hold BP responsible for providing full payment for any strategy that will protect our valuable coastal communities from the impacts of their catastrophe.

Admiral Allen Announces that Response Assets are being Moved to All Gulf States

In addition, the administration is moving critical response assets across all the Gulf Coast states in preparation for potential near- and long-term oil impacts. In Alabama, the Coast Guard Cutter Cypress arrived in Mobile Bay today to protect Dauphin Island from the north and west. Tomorrow, we will commence a surge of boom to Alabama's Katrina Pass that will be positioned to create a funnel to collect oil that comes in with the tide. Additionally, we have deployed four coast patrol boats to coordinate response in Alabama's coastal waters.

Four helicopters are being deployed to the Alabama, Mississippi and Florida coast to provide surveillance information to help skimmers position their efforts strategically to collect the most oil threatening the shore possible. The Coast Guard Cutter Tampa has a flight deck that will allow for these helicopters to refuel offshore, and the Coast Guard Cutter Elm is currently in the area off the coast of Pensacola, Fla., working around the clock to skim oil from the surface.

Fishing Restrictions Expanded; One Section Re-Opened; 63 Percent Remains Open

NOAA has expanded some boundaries of the closed fishing area in the Gulf of Mexico to capture portions of the slick moving beyond the current boundaries—the most significant expansion includes an area off southwest Florida that covers waters just to the west of the Dry Tortugas—this federal closure does not apply to any state waters. Closing fishing in these areas is a precautionary measure to ensure that seafood from the Gulf will remain safe for consumers. Additionally, the agency reopened a 2,637 square mile area of the western-most boundary south of Louisiana. Oil was projected to be in this area, but was never actually observed there.

The closed area now represents 88,502 square miles, which is approximately 37 percent of Gulf of Mexico federal waters. This leaves more than 63 percent of Gulf federal waters available for fishing. Details can be found at http://sero.nmfs.noaa.gov/.

Property Damage Claims Processed

The administration will continue to hold the responsible parties accountable for repairing the damage, and repaying Americans who've suffered a financial loss as a result of the BP oil spill. BP reports that 31,987 claims have been opened, from which more than $40.2 million have been disbursed. No claims have been denied to date. There are more than 510 claims adjusters on the ground. To file a claim, visit www.bp.com/claims or call BP's helpline at 1-800-440-0858. Those who have already pursued the BP claims process and are not satisfied with BP's resolution can call the Coast Guard at (800) 280-7118.

SBA Approves Additional Deferments on Existing SBA Disaster Loans

The Small Business Administration has granted deferments on 219 existing SBA disaster loans for small businesses in the Gulf Coast region impacted by the BP oil spill, totaling $892,300 per month in payments—in addition to the 33 economic injury assistance loans, totaling $1,192,300, for impacted small businesses in Louisiana. For information on assistance loans for affected businesses, visit the SBA's Web site at www.sba.gov/services/disasterassistance, call (800) 659-2955 (800-877-8339 for the hearing impaired), or email disastercustomerservice@sba.gov.

By the Numbers to Date:

* The administration has authorized 17,500 National Guard troops from Gulf Coast states to participate in the response to the BP oil spill.

* More than 20,000 personnel are currently responding to protect the shoreline and wildlife and cleanup vital coastlines.

* More than 1,900 vessels are responding on site, including skimmers, tugs, barges, and recovery vessels to assist in containment and cleanup efforts—in addition to

dozens of aircraft, remotely operated vehicles, and multiple mobile offshore drilling units.

* Approximately 2 million feet of containment boom and 2.1 million feet of sorbent boom have been deployed to contain the spill—and approximately 625,000 feet of containment boom and 1.8 million feet of sorbent boom are available.

* Approximately 13.8 million gallons of an oil-water mix have been recovered.Approximately 993,000 gallons of total dispersant have been deployed—755,000 on the surface and 238,000 subsea. More than 364,000 gallons are available.

* 125 controlled burns have been conducted, efficiently removing a total of more than 3.2 million gallons of oil from the open water in an effort to protect shoreline and wildlife.

* 17 staging areas are in place and ready to protect sensitive shorelines, including: Dauphin Island, Ala., Orange Beach, Ala., Theodore, Ala., Panama City, Fla., Pensacola, Fla., Port St. Joe, Fla., St. Marks, Fla., Amelia, La., Cocodrie, La., Grand Isle, La., Shell Beach, La., Slidell, La., St. Mary, La.; Venice, La., Biloxi, Miss., Pascagoula, Miss., and Pass Christian, Miss.

Resources:

* For information about the response effort, visit www.deepwaterhorizonresponse.com.

* For specific information about the federal-wide response, visit http://www.whitehouse.gov/deepwater-bp-oil-spill.

* To contact the Deepwater Horizon Joint Information Center, call (985) 902-5231.

* To volunteer, or to report oiled shoreline, call (866) 448-5816. Volunteer opportunities can also be found here.

* To submit your vessel as a vessel of opportunity skimming system, or to submit alternative response technology, services, or products, call 281-366-5511.

* To report oiled wildlife, call (866) 557-1401. Messages will be checked hourly.

* For information about validated environmental air and water sampling results, visit www.epa.gov/bpspill.

* For National Park Service updates about potential park closures, resources at risk, and NPS actions to protect vital park space and wildlife, visit http://www.nps.gov/aboutus/oil-spill-response.htm.

* For Fish and Wildlife Service updates about response along the Gulf Coast and the status of national wildlife refuges, visit http://www.fws.gov/home/dhoilspill/.

* For daily updates on fishing closures, visit http://sero.nmfs.noaa.gov.

* For information on assistance loans for affected businesses, visit the SBA's Web site at www.sba.gov/services/disasterassistance, call (800) 659-2955 (800-877-8339 for the hearing impaired), or email disastercustomerservice@sba.gov.

* To file a claim with BP, visit www.bp.com/claims or call BP's helpline at (800) 440-0858. A BP fact sheet with additional information is available here. Those who have already pursued the BP claims process and are not satisfied with BP's resolution, can call the Coast Guard at (800) 280-7118. More information about what types of damages are eligible for compensation under the Oil Pollution Act as well as guidance on procedures to seek that compensation can be found here.

For information about the response effort, visit www.deepwaterhorizonresponse.com.

**BP disaster darkens U.S., world fuel future (*Washington Times*)**

June 4, 2010 Friday
A, PAGE ONE; Pg. 1
BP disaster darkens U.S., world fuel future;
Projects face costs, scrutiny
By Patrice Hill THE WASHINGTON TIMES
It was supposed to be the future, both for the United States and the world.

When the Deepwater Horizon oil platform sank six weeks ago, it may have taken down with it America's best hopes for remaining an oil-producing powerhouse while waterlogging the fastest-growing source of new oil in a world thirsty for fuel, analysts say.

Most newly discovered oil in the United States and the rest of the world in recent years has come from the deep ocean waters. The contribution to new U.S. oil output from depths of a mile or more in the Gulf of Mexico was expected to rise to 72 percent in 10 years before last month's catastrophic spill, according to the U.S. Energy Information Administration.

But now President Obama has slammed the lid on new deep-water drilling activities for at least six months while his administration investigates what caused the incident and ratchets up regulation of the industry.

With the massive spill demonstrating that there is no foolproof way to safeguard the environment while drilling at such great depths - where no humans can reach and existing technology falls short - many analysts doubt that the oil spigot will ever be

turned back on to more than a trickle in the U.S., despite the nation's heavy dependence on oil to fuel American lifestyles and to power economic growth.

"The BP spill is likely to throw a wrench" into plans in the U.S. and rest of the world to extract more and more oil from the deep oceans, said Richard Heinberg, an analyst at the Post Carbon Institute.

"Heavier regulations, and higher and more-expensive standards are on the way," he said. "Future deepwater projects could be delayed by years."

Mr. Heinberg said nations have increasingly plumbed the ocean depths in search for oil because "we've already chewed our way down through" most of the more readily available sources. "There's very little onshore or shallow-water oil left to find. So down we go," he said.

The problem is, "as the industry is forced to drill deeper in ever more hostile environments, there are more things to go wrong; and when problems happen, they are harder to fix," he said. "An event such as the Deepwater Horizon explosion becomes more likely with every passing year, despite the continuing development of superior technology" that for the first time opened up the ocean depths in the past decade.

Even if the U.S. does not extend the regulatory ban on activity, oil companies will run into major financial obstacles in the future as insurance costs and liability claims soar, and investors balk at financing deep-water projects that they fear could go haywire like the BP venture, he said.

Gregory Lemaire-Smith, an associate energy analyst at Datamonitor, a business research group, said "any restriction in the exploration of offshore areas would be bad news" because of the critical role such drilling was expected to play in the future, not only in the U.S. but worldwide.

Offshore oil in the Gulf has become so essential to the U.S. - accounting for 40 percent of U.S. oil production overall - that he doubts Mr. Obama would make the drilling ban permanent despite the disaster and pressure from environmental groups.

In a sign that Mr. Obama remains reluctant to impose an all-out ban, the administration this week decided to continue allowing new drilling in the shallow waters of the Gulf of Mexico, where protection against disaster is more easily assured but less oil is available. It is allowing production to continue at deep-water wells that are already up and running.

"The state of the oil market doesn't allow the U.S. the luxury of closing offshore regions to activity - a fact that both political parties are all too aware of," Mr. Lemaire-Smith said.

Effects on projects would ripple worldwide if the U.S. permanently rules out further exploration for oil in deep waters, where oil companies already face high costs and risks to access the oil, he said.

Exploration has been expanding off the coasts of Brazil, Nigeria, Angola and other countries, and the International Energy Agency recently projected that within 10 years, deep-ocean waters would be supplying 40 percent of all oil extracted worldwide.

"If the accident in the Gulf of Mexico triggers a spiral effect, the impact on the global oil and gas offshore industry could be alarming," Mr. Lemaire-Smith said.

Analysts now expect the brakes to be applied to the burgeoning deep-water industry. Environmental groups are inciting public outrage over the spill and calling on their allies in Congress and the administration to outlaw further deep-water drilling.

"The massive oil spill in the Gulf will end up halting further oil and gas exploration in the United States for years to come," said Brian Sussman, a San Francisco meteorologist and author of a book about climate change.

"The Gulf oil spill is the perfect 'out' for a presidential administration which relishes taking advantage of a crisis" to push its political agenda, he said.

"Obama never had any real plans to drill, and now this disaster will allow the Democrats to move forward with cap-and-trade" to limit energy production and emissions without having to accommodate drilling advocates in Congress, he said.

The White House order suspending deep-water drilling a week ago already has halted work at 33 exploratory wells in the Gulf of Mexico employing tens of thousands of workers and costing $330 million a day in lost output, according to the National Ocean Industries Association.

In addition, the move has made it economically ineffective to produce crude from seven recently discovered wells, likely costing the government $7.6 billion in forgone revenue, the group estimates.

"The need to act in the face of the ongoing crisis is understandable," said Burt A. Adams, association chairman. "Nobody wants to just rush into deep-water drilling during this ongoing crisis, but ... considering that the deep-water regions generate 80 percent of the Gulf's oil production and 45 percent of its natural gas production, a six-month work stoppage will have severe and perhaps long-lasting impacts."

Mr. Obama touted himself as a moderate advocate of offshore drilling only weeks before the accident by presenting a plan to allow drilling in limited areas off the coasts of North Carolina, Virginia, Florida and Alaska.

But because those areas are not thought to be as rich in oil as the Gulf - and because he left off limits big known fields off the coasts of California and Alaska - the effect of his decision was to push oil companies even further toward deep-water drilling in the Gulf, where oil is more plentiful and fewer restrictions exist, analysts said.

"President Obama's drilling proposal keeps some of our most promising oil fields off limits, forcing the industry to explore and drill in more costly deep-water locations," said Bernard Weinstein, associate director of the Maguire Energy Institute at Southern Methodist University.

The Gulf, since the beginning of deep-water exploration in the 1990s, has always been a laboratory and showcase for pioneering technologies. The Gulf contains the world's deepest wells and produces more oil from deep waters than anywhere else in the world.

While small consolation to the millions of workers, citizens and wildlife affected by the BP spill, oil executives say, the incident will serve a purpose in forcing the industry to develop safer technologies to protect the environment, just as the Exxon Valdez spill did a generation ago.

Whether the U.S. remains a major oil power may depend on the industry's success. A century ago, when all drilling was on land, the U.S. was the world's only oil superpower, with its rich fields in Texas quenching much of the industrializing world's newfound thirst for oil.

But even before the spill, the biggest active U.S. fields were depleting rapidly while major fields holding promise in Alaska, California and elsewhere had been ruled off limits, causing U.S. production last year to fall to 5.3 million barrels a day - nearly half of peak production levels set in the early 1970s.

While the U.S. remains third in yearly production worldwide, behind Saudi Arabia and Russia, that has been in no small part because of furious exploration activity in the deep-water Gulf. Despite those efforts, levels of production are not high enough to satisfy even a third of the nation's 18.7-million-barrels-a-day oil habit, according to the U.S. energy agency.

**Product is not EPA Approved, But It's Used in Other Countries (*First Coast News*)**

Jessica Clark
ST. AUGUSTINE, Fla. -- Ecosafe, an Ocala-based company, has cleaned up an oil sludge pit in Wyoming and is working on an oil spill in the Amazon.

Now Ecosafe wants to take its all-natural product -- a tan colored liquid -- to clean up the oil spill in the Gulf of Mexico.

MORE: First Coast News' Gulf Coast Oil Spill News Center

Fernando DeTorres is the man who created Ecosafe, the product. It's made of fruits, vegetables and other plant extracts.

Referring to the Gulf oil spill, he said, "We could treat marsh, swamps, estuaries, and open water."

When added to crude like in the sludge pit in Wyoming, the Ecosafe emulsifies or degrades the oil, disintegrating it into safe elements.

"The product is one hundred percent biodegradable," said DeTorres.

David Clark is Ecosafe's administrator. "It has zero toxicity. Basically it degrades itself in 28 days after its dispersed and used."

When motor oil is poured into Jessica Clark's hand and then poured some of the Ecosafe into the mixture. When combined, they turned white, which means the mixture has emulsified. The mixture seemed instantly less oily.

While the U.S. Department of Energy, Florida Department of Environmental Protection, a congressman, and a leading environmental agency have praised the patented Ecosafe.

But the U.S. Environmental Protection Agency has not approved it, and until it does, Ecosafe cannot be used to clean up the Gulf oil spill.

"We only want the opportunity that's been given to everybody to address the spill created by BP," said DeTorres.

It's heartbreaking for Ecosafe's administrator, Clark, who wants to help the people along the Gulf Coast.

With tears in his eyes, Clark said, "There is a public out there without hope. They think, 'we can't remediate our marshes.'"

But DeTorres and Clark said there is hope, and they've bottled it.

The company plans to travel to Louisiana this weekend and demonstrate the product for local and state leaders. They hope those leaders will urge the EPA to approve Ecosafe.

**Graham: Spill panel would have subpoena power (*Associated Press*)**

By WILL LESTER (AP)

WASHINGTON — A leader of the presidential commission investigating the Gulf oil spill says he has been told his panel will have subpoena power if needed to get a full accounting of the disaster.

Former Fla. Sen. Bob Graham, a co-chairman of the commission, said in an CBS interview aired Thursday he's not sure if that subpoena power will be necessary.

Graham says that "the whole industry was largely unprepared" and that deep-sea drilling technology was not accompanied by a similar investment in the oil rig safety and spill response.

Former Environmental Protection Agency chief William Reilly, the other co-chairman, says he's surprised he hasn't seen more progress in the technology available to handle a spill more than 20 years after the Exxon Valdez calamity.

THIS IS A BREAKING NEWS UPDATE. Check back soon for further information. AP's earlier story is below.

WASHINGTON (AP) — The new presidential commission investigating the Gulf oil spill will include two experts who have been active on the subject of global warming, including one who wrote just last month that the country should redouble efforts to lessen its dependence on oil, The Associated Press has learned.

The two will join former Florida Sen. Bob Graham and former Environmental Protection Agency chief William Reilly, whose roles as co-chairmen of the seven-member panel were previously announced.

Together, the backgrounds of the four panel members selected so far suggest the commission will look at more than just what went wrong, including the bigger picture of the country's conflicting environmental and energy needs.

The third and fourth commission members are Donald Boesch, president of the University of Maryland's Center for Environmental Science, and former Alaska Lt. Gov. Fran Ulmer, currently University of Alaska Anchorage chancellor, the AP has learned. The appointments were expected to be announced publicly soon.

"These appointments portend an impact in both the policy and science of coastal management and restoration and oil spill response," said Virginia Burkett, the Louisiana-based chief climate change scientist for the U.S. Geological Survey. She praised both picks.

Wes Tunnell of Texas A&M University Corpus Christi said the selections indicate the panel will look at broad energy policies. "That's too bad," he said. "We need to focus on what happened here and what we can learn from this."

President Barack Obama hinted as much Wednesday in a speech in Pittsburgh, saying he was naming the commission "so that the American people will have answers on exactly what happened." But he added: "We have to acknowledge that there are inherent risks to drilling four miles beneath the surface of the Earth, and these are risks that are bound to increase the harder oil extraction becomes. We also have to acknowledge that an America run solely on fossil fuels should not be the vision we have for our children and our grandchildren."

Boesch is a native of New Orleans and a biological oceanographer who has been a leader in studying how man affects coastal areas. He helped write two books on oil spills and the environment and was the first executive director of the Louisiana Universities Marine Consortium and a prominent researcher in the Gulf of Mexico dead zone.

Boesch was a co-author of last year's massive federal study on how global warming will affect Americans' daily lives. He has chaired four large studies by the National Academies of Sciences, all on coastal environmental and science issues. And he has written more than 70 research studies published in scientific journals.

In a May 9 column for the Washington Post's website, Boesch wrote that the spill might be part of what he called "the winds of change" on oil and energy. He acknowledged, however, that the amounts of oil spilled from offshore development have been less than spilled in tanker accidents.

"Earlier I commented here that expanded offshore production would not significantly reduce dependence on foreign oil and that we should be redoubling our efforts to get off oil," Boesch wrote. "I hope for Earth's sake that the winds will blow Congress out of its long-winded debate."

Tunnell said the appointment of Boesch, who donated $750 to Obama's presidential campaign, is "a good thing; he's got a long history of helping marine science." Burkett said he's an excellent communicator of science.

In the oil-based economy of Alaska, Ulmer said during a failed campaign for governor that she strongly supported opening the Arctic National Wildlife Refuge for oil and gas drilling. But she was criticized in the state for not supporting drilling enthusiastically enough.

Ulmer, who was lieutenant governor from 1994 to 2002 and a Democratic leader in the Alaska House before that, was defeated in 2002 by then Sen. Frank Murkowski.

She later taught at the University of Alaska Anchorage and was named its chancellor, the No. 2 position there. She announced her retirement earlier this year.

Ulmer, a lawyer and former mayor of Juneau, has also been a member of the Commission on Arctic Climate Change run by the Aspen Institute, a Colorado think tank.

Thomas Lovejoy, former president of the Heinz Center for the Environment, serves on that panel with Ulmer and praised her.

"Fran is a very accomplished academic administrator, understands scientific issues well, is very evenhanded," Lovejoy said. "She knows what the story is and what the science says."

He added: "The three (panel members) that I know well, Bill Reilly, Bob Graham and Fran are people who are really solid and have a lot of experience in environmental issues. They'd be on anybody's panel."

Fran Ulmer's university biography: http://www.uaa.alaska.edu/chancellor/bio.cfm

Don Boesch's university biography: http://www.umces.edu/people/president

**James Cameron says BP turned away his offer to help with Gulf oil spill (*New York Daily News*)**

BY Sean Alfano
DAILY NEWS STAFF WRITER
Thursday, June 3rd 2010, 11:53 AM
James Cameron, who knows something about underwater disasters, floated a "titanic"putdown of BP, calling the embattled oil company a bunch of "morons."

The award-winning director of "Avatar"and "Titanic" said Wednesday that BP had rejected his offer to help fight the massive oil spill spewing in the Gulf of Mexico, reports Reuters.

"Over the last few weeks, I've watched, as we all have, with growing horror and heartache, watching what's happening in the Gulf and thinking those morons don't know what they're doing," Cameron said at the All Things Digital tech conference.

Cameron has done extensive work with robot submarines and underwater filming in his movies.

Earlier in the day he attended a conference with the Environmental Protection Agency and pushed to have the government get its own independent look at the leak.

"If you're not monitoring it independently, you're asking the perpetrator to give you the video of the crime scene," Cameron said.

The Deepwater Horizon rig exploded April 20, killing 11 workers and sparking the worst oil spill in U.S. history.

**Small-government proponents seek federal help in cleanup (*Greenwire*)**

06/03/2010
Conservatives and members of the "tea party" movement may argue for smaller government, but many say it is the government's responsibility to step up its involvement in the oil spill cleanup in the Gulf of Mexico.

"There's nothing inherently contradictory in saying we believe in smaller government and demanding that the government protect public safety," said Ben Brooks, a Republican state senator from Alabama.

Likewise, Louisiana Gov. Bobby Jindal, a Republican, has demanded that the Obama administration boost its spill response effort. The fiscal conservative is famous for rejecting some federal stimulus money last year. But he was also elected on the heels of a lackluster response from Democrats within the state to Hurricane Katrina, so his calls for aggressive action in the disaster are not unexpected.

"I think it's a pretty predictable response: 'We've got a problem that's beyond our control. Get the federal government in here to take control,'" said Louisiana State University political science professor Kirby Goidel.

Others in the region, including a bipartisan group of attorneys general, are calling for federal help in getting information about BP's response to the spill and have called on the company to shoulder the financial responsibility. But there are still calls for the government to contribute in the ecological cleanup and help those in the region whose jobs are at risk (Emily Wagster Pettus, AP/*San Francisco Chronicle*, June 3). **– JP**

**CLIMATE CHANGE/GLOBAL WARMING**

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**When climate, public relations meet (*Washington Times*)**

June 4, 2010 Friday
B, BOOKS; Pg. 7
By Anthony J. Sadar SPECIAL TO THE WASHINGTON TIMES
Environmentalism may be the world's fastest- growing religion. And, like other religions, its ability to win converts often relies on crises. After the scare over the coming ice age failed to materialize in the 1970s, environmentalism was given a real boost when the global warming crisis revved up.

To manage a crisis well, you need good public relations. Enter the PR gurus and their revelation "Climate Cover-Up: The Crusade to Deny Global Warming." The authors of "Climate Cover-Up" and the associated website DeSmogBlog.com do some crusading of their own for the cause of the faith.

The sinners are easy to spot: Any individual or think tank supported by the usual evil-industry suspects, "Big Oil," "Big Coal," "Big Tobacco," and the like. In addition, anyone who dares to question "Nobel laureate Al Gore," "best in the world" Intergovernmental Panel on Climate Change (IPCC) climate scientists, and other such saints, or the anthropogenic global warming orthodoxy in general, will be subject to exposure, ridicule and enthusiastic belittlement by the ever-vigilant guardian angels.

If even half the sins exposed in "Climate Cover-Up" are true (and I suspect more than half are), the contrarian camp has some serious penance to deal with. However, the authors imply that such conditions (like Big Energy funding, shaky credentials and Orwellian language games) make the contrarian position a weak one. Note, though, such arguments go both ways. Volumes have been written wedding the same faults to the "consensus" position.

But some of these foibles, as identified by "Climategate" for instance, are actually defended or mitigated by "Climate Cover-Up" and DeSmogBlog. And, what about funding? Because "Climate Cover-Up" looks at Big Energy as something akin to inherent evil, Big Energy's money is dirty. However, its contributions to its causes are quite small by comparison with that of say "Big Government" largesse, which "Climate Cover-Up" seems to favor, at least when it comes to IPCC research and forcing people to cut their carbon emissions.

Regarding the IPCC, note that its role is "to assess on a comprehensive, objective, open and transparent basis the scientific, technical and socioeconomic information relevant to understanding the scientific basis of risk of human-induced climate change, its potential impacts and options for adaptation and mitigation." Thus, as Mr. Gore has referenced Upton Sinclair's quote, so do his disciples in "Climate Cover-Up," proclaiming "It's difficult to get a man to understand something when his job depends on him not understanding it."

All this aside, I believe the authors would agree that it's the truth that matters, not the fallible evangelists of it. Here is where the authors, neither of whom has even an undergraduate degree in science, have to take the science of human-caused climate

change on faith. They believe their faith is well grounded, since it is in "incredibly intelligent people who are doing a Nobel-prize winning job." And, there is some reliance, for example, on climate-science training by Nobel laureate Al Gore. Such training apparently trumps an education and subsequent career in a science field either in, or closely related to, climatology.

Nevertheless, it should take only a little education in science and perhaps a lot of common sense to see through the billowing incense when anyone or any group, no matter how intelligent, saintly and sincere, assures you it sufficiently deciphered the mysteries of climate to be able to confidently foretell global conditions 10, 20, and even 100 years from now.

I certainly agree with the authors that "you should read up on climate science." Perhaps you should start with a book that was misread and subsequently mischaracterized in "Climate Cover-Up." The book is "The Deniers: The World Renowned Scientists Who Stood Up Against Global Warming Hysteria, Political Persecution and Fraud" by Lawrence Solomon. In "Climate Cover-Up," the authors state that "Solomon admits [on page 45 of 'The Deniers'] that none of his subjects were deniers. Not a single one."

Unfortunately for "Climate Cover-Up," Mr. Solomon was clearly referring to the few climate scientists with whom he began his book. Mr. Solomon was saying that those several scientists were skeptical of the conclusions of consensus climate science in their own specialized area, but rather convinced of man-made global warming outside their own area. Thus, not being true deniers.

This is a very strong defense of the fact that many people, even specialized climate researchers themselves, rely on others' expertise. Mr. Solomon then focuses primarily on true skeptics in the remainder of his work. But, the subsequent couple dozen highly qualified, climate-related scientists biographied by Mr. Solomon are then conveniently dismissed by "Climate Cover-Up" as being included in the "Not a single one" category.

By the way, while "The Deniers" may well be at least a partial justification against some of the sanctimony in "Climate Cover-Up," try the website icecap.us against DeSmogBlog.com.

Finally, we can prophesize stepped-up and even more-bizarre PR spins in hyperdrive for impertinent skeptics of the consensus view. "Climate Cover-Up" was "recommended reading" in the substantial cover-story special report in the May 15, 2010, issue of New Scientist, where one of the book's authors also had a sidebar piece. The New Scientist collection of feature articles under the title "State of Denial," began with, "From climate change to vaccines, evolution to flu, denialists are on the march. Why are so many people refusing to accept what the evidence is telling them?" Of course, in the magazine's coverage, climate-change contrarians are also lumped in with Holocaust deniers and flat-earthers.

Skeptics of consensus climate science should consider themselves forewarned: You have been psychologically profiled. And, as you can see, environmentalism does not take too kindly to unbelievers.

Anthony J. Sadar is a certified consulting meteorologist and primary author of "Environmental Risk Communication: Principles and Practices for Industry" (CRC Press/Lewis Publishers, 2000).

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CLIMATE COVER-UP: THE CRUSADE TO DENY GLOBAL WARMING

By James Hoggan, with Richard Littlemore

Greystone Books, $15

240 pages

**EPA Publication Of GHG 'Tailoring' Rule Triggers Clock For Filing Lawsuits (*Inside EPA*)**

06/04/2010
EPA is slated to publish in the June 3 Federal Register its final "tailoring" rule on applying greenhouse gas (GHG) limits in Clean Air Act permits, triggering a 60-day countdown for opponents to file expected lawsuits seeking to overturn the regulation.

Major rules, such as the tailoring rule, cannot take effect until 60 days after their publication in the *Register*. Under the Clean Air Act, the publication of EPA's tailoring rule will also trigger a two-month period for petitions for judicial review of the rule to be filed in the U.S. Court of Appeals for the District of Columbia Circuit. *The rule is available on InsideEPA.com.*

The rule raises the threshold for triggering prevention of signification deterioration and Title V permits limits from 100 or 250 tons per year (tpy) for conventional pollutants to much higher amounts for GHGs, starting in 2011 at 100,000 tpy. EPA says the rule is vital and an "administrative necessary" because without raising the threshold for triggering GHG permit limits, it would greatly increase the number of required permits and overwhelm permitting authorities. Stationary sources subjected to the rule will be required to determine the best available control technology (BACT) to install to cut GHGs.

An industry lawsuit over the tailoring rule is highly expected. Seth Jaffe, a lawyer at Foley Hoag, wrote in May 14 blog, "It's near certain that someone will challenge [the

tailoring rule]. While environmental groups support it and have suggested that opponents may not have standing, I'm skeptical."

Jaffe also said it is "likely that someone with standing" will challenge the rule -- which could include industry associations whose members would be impacted by the GHG permitting mandate. Jaffe predicted that there is a "reasonable chance" that courts would overturn the rule, given what he said is EPA's dubious administrative necessity argument in justifying the rule.

Cal Dooley, president of the American Chemistry Council, in a May 13 statement said he is "extraordinarily concerned" about the rule and said it will "create legal uncertainty due to possible litigation, permitting uncertainty due to insufficient state resources for reviewing and issuing permits, state statutory uncertainty due to the need to amend state laws to conform with the federal tailoring rule, and technical uncertainty due to as-yet undefined" BACT.

The environmental group Center for the Biological Diversity has previously outlined possible legal arguments that could support a future lawsuit against the rule. However, the group last year pledged not to challenge the tailoring rule.

Even if the rule is struck down, Jaffe argued that a court would be unlikely to vacate it and instead keep the rule in place "while giving EPA time to figure out how to comply with conflicting mandates in a way that doesn't bring the world as we know it to an end."

**U.S. Manufacturers Challenge EPA Regulation of GHGs (American Iron and Steel Institute)**

June 3, 2010
Steel Business Briefing
The National Association of Manufacturers (NAM) and 19 other business organizations have filed a federal appeal seeking to overturn the US Environmental Protection Agency's (EPA) decision to apply controls on greenhouse gas emissions from a wide range of domestic manufacturers.

As *Steel Business Briefing* reported last month, the EPA's phased-in approach is set to start in January 2011, when permitting requirements for GHGs will kick in for large facilities that are already obtaining Clean Air Act permits for other pollutants.

NAM believes the EPA is overreaching in regulating GHGs under the Clean Air Act and says the debate should be handled by Congress, not by "a bureaucratic agency that has no accountability to the American people."

"EPA's power grab creates uncertainty and adds costly new burdens on manufacturers, while further complicating a permitting process the EPA and state environmental

enforcement agencies are not equipped to handle," NAM president John Engler said. "Further, these actions will stifle job creation and harm our competiveness in a global economy by adding compliance, administrative and legal costs."

The issue of EPA regulation of GHGs was discussed at SBB's Green Steel Summit last month in

Washington, DC. American Iron & Steel Institute president Thomas Gibson, speaking during the conference, said regulating GHGs through the EPA would be "the wrong vehicle and would be extremely damaging to the steel industry."

The move would unilaterally raise US steelmakers' costs while allowing competitors to increase their emissions, resulting in lost American jobs and no environmental benefit, Gibson said.

**Power companies lie back as push begins for Senate bill (*Greenwire*)**

Darren Samuelsohn, E&E reporter
06/03/2010
Some of the country's largest electric utilities were among the most enthusiastic supporters last month when Sens. John Kerry (D-Mass.) and Joe Lieberman (I-Conn.) rolled out their climate and energy bill.

"This is a historic achievement," proclaimed Tom Kuhn, president of the Edison Electric Institute (EEI). Standing nearby were the heads of three major power companies: FPL Group, Duke Energy Corp. and Public Service Enterprise Group Inc.

But several weeks later, utility industry officials have largely stayed clear of the spotlight on lobbying for the plan that would place mandatory limits on their greenhouse gas emissions, which contribute about a third of the nation's annual total.

Their silence worries environmentalists and others who face a shrinking window to pass legislation this year and are throwing millions of dollars into their own last-ditch ad campaigns aimed at swaying swing-vote senators.

"If the utilities really want to put their money where their mouth is, there's a lot more they can be doing to help push us forward," said Margie Alt, executive director of Environment America. "I hope they do as much as we're doing to get this to happen."

Electric utilities first went public about the need for a legislative solution on climate change back in 2008, when George W. Bush was in the White House. Fueled by concerns over a new Democrat-led Congress and the prospect of U.S. EPA and state-

based climate regulations, the industry started making the case for a long-term price signal on carbon.

EEI, the trade group representing investor-owned utilities, played a critical role alongside some of its member companies in driving last June's passage of a House climate bill. And the industry got many of its demands met in the Kerry-Lieberman proposal unveiled last month, including valuable allocations that help compensate customers for otherwise higher energy prices and pre-emption of both existing state climate laws and future EPA rules.

"Overall, it's hard to walk away from a bill that essentially provides a political solution to address what was asked for substantively," said Mark Menezes, an industry attorney at Hunton & Williams and a former Republican counsel to the House Energy and Commerce Committee.

**Wait and see**

Still, the industry continues to send mixed signals about just how much it wants Congress to pass a climate bill.

While EEI and a few of its member companies were at the Kerry-Lieberman bill rollout, the trade group hasn't organized a coordinated fly-in since Dec. 1, 2009, when CEOs came to Washington for face-to-face lobbying sessions with lawmakers.

Several utility industry sources explained that the uncertainties over whether President Obama and Congress can really accomplish anything this year on climate change are driving the latest round of complacency. In particular, officials are doubtful of the Senate bill's chances of notching the all-important 60 votes after Sen. Lindsey Graham (R-S.C.) abandoned negotiations with Kerry and Lieberman in April over a separate political spat involving immigration.

"There's no clear path on what the congressional leadership is going to make time for before the elections," Menezes said. "The industry is willing to go along with a reasonable plan to get it done. But they don't believe it's their responsibility to engender the grass-roots effort necessary to get climate change enacted."

"We've always said we want to be in it," said Tom Williams, a spokesman at Duke Energy. "I don't see that changing, certainly. As to when and how, we just got to see where it's going to go. Is it going to go straight to the floor? Or to various committees? We will wait until that's determined and then weigh in as that path is set out."

Duke was among a handful of big power companies that did join more than three dozen other businesses -- including FPL, General Electric Co., American Electric Power, AES, National Grid, NRG Energy, Constellation Energy, PG&E Corp., DTE Energy, PNM Resources and Exelon Corp. -- last week with a letter to the White House and Senate leaders urging passage of a comprehensive climate bill.

Jim Connaughton, an executive with Baltimore-based utility Constellation Energy and former President George W. Bush's top environmental adviser, said part of the slowdown also comes from the sheer size of the nearly 1,000-page Senate proposal and the ongoing number crunching at U.S. EPA, the Energy Information Administration and beyond.

"Everyone is in a position of regrouping as they're evaluating the bill and waiting to see both the external and internal analysis," he said. The EPA data are expected to be released next week, and EIA's figures by the middle of the month.

Dan Lashof, a climate change expert with the Natural Resources Defense Council, said he's concerned the utility industry is sitting on the sidelines at a critical juncture in the Senate debate as Democrats try to count votes and the White House makes its push for the proposal with a connection to the Gulf of Mexico oil spill.

"I don't think the implications of the spotlight that the spill has put on this issue has been fully internalized in some of these companies who got very pessimistic about the prospects when Graham walked away from the table," Lashof said. "I think they need to really understand the politics are changing for a different reason than what they were expecting."

**Power plant-only approach a 'possibility'**

Ultimately, the utility industry may end up being the sole focal point of the Senate climate bill.

In their proposal, Kerry and Lieberman want limits first on power plants starting in 2012, followed six years later with restrictions for heavy manufacturing. Transportation emissions would face their own emission caps, but the industry cannot participate in any trading with the other industrial sectors.

But in the hunt for 60 votes, key players on and off Capitol Hill are talking about legislation that just puts limits on the utility sector (*Greenwire*, May 28). Last week, Graham floated the idea as a way to sidestep the thorny political fight over transportation emissions, which critics are poised to label a "gas tax."

"We do need to price carbon to make nuclear power and wind and solar and some alternative technologies economically viable," Graham said. "On the transportation side, maybe you can reduce emissions without a cap. I don't know. But you need to put a price on carbon in the power production area at a minimum to jump-start these other technologies."

While Graham's comments aren't reflected in any legislative text, a handful of utility industry officials say they won't knock down the idea, either. A cap-and-trade plan for them makes the most sense, given the industry's history implementing the 1990 Clean Air Act provisions on acid rain. And among all regulated sectors, power companies are

the most in need of certainty as they look to make significant new investments over the next several decades.

"It's a possibility," said Duke's Williams of the power plant-only approach. "We're still pushing for a comprehensive plan. But we've we said before, it if it comes down to that, we'd certainly support it."

Connaughton said he, too, sees reasons for the industry to accept a plan focused on the power industry, especially considering the number of federal regulations already on the books to improve the nation's fuel economy standards, including some concepts he helped formulate while working in the White House.

"I'm confident people will begin to reconcile various components of the mandatory approach and various components of a incentive-based approach and zero in on the gaps," Connaughton said. "It's very important to EEI that whatever is done is economywide. And now folks are looking at what exactly that means."

"It'd be logical when you recognize what's already on the books," Connaughton added. "What we're really looking for is more cost-effective approaches."

EEI's Brian Wolff last week said the power plant-only approach has "not been baked at all." And Kerry warned against fiddling with his carefully constructed "puzzle."

"Every time you take one piece away, you make it more expensive for the other pieces to do it alone," he told reporters recently. "And if you take certain pieces away, there's no money to be able to help people transition and cushion for it."

But power company CEOs who have been on the sidelines in recent weeks are sure to discuss the idea when they meet June 13-16 in Hollywood, Fla., as part of an EEI-sponsored annual convention.

**2 climate change experts to sit on investigation panel (*Greenwire*)**

06/03/2010
The presidential commission being formed to investigate the Gulf of Mexico oil spill will include two academics active on the subject of global warming, according to the Associated Press.
Experts say their selection suggests the commission will examine the nation's overarching environmental and energy needs, rather than just what went wrong in April at the Deepwater Horizon oil rig.

The choices are Donald Boesch, president of the University of Maryland's Center for Environmental Science, and former Alaska Lt. Gov. Fran Ulmer (D), who is now chancellor of the University of Alaska, Anchorage, reported the news service.

Boesch and Ulmer will sit on the seven-member panel with former Florida Sen. Bob Graham (D) and William Reilly, administrator of U.S. EPA under President George H.W. Bush.

"These appointments portend an impact in both the policy and science of coastal management and restoration and oil spill response," said Virginia Burkett, chief climate change scientist at the U.S. Geological Survey, who praised their selection.

Boesch co-authored last year's federal study on the effect of global warming on Americans' everyday lives. He wrote last month that the oil spill could kick up "the winds of change" needed to wean the United States off petroleum.

As a politician in Alaska, Ulmer backed oil and gas drilling in the Arctic National Wildlife Refuge but was criticized for being an unenthusiastic supporter of the industry. She has also been a member of the Commission on Arctic Climate Change run by the Aspen Institute, a Colorado-based think tank.

Critics say the commission should focus on offshore drilling practices and what can be learned from the spill. During a speech yesterday, President Obama said he is forming the commission "so that the American people will have answers on exactly what happened."

He added: "We have to acknowledge that there are inherent risks to drilling 4 miles beneath the surface of the Earth, and these are risks that are bound to increase the harder oil extraction becomes. We also have to acknowledge that an America run solely on fossil fuels should not be the vision we have for our children and our grandchildren" (Seth Borenstein, AP/*San Francisco Chronicle*, June 3). **-- GN**

**EPA publishes 'tailoring' rule, and lawsuits begin (*Greenwire*)**

Robin Bravender, E&E reporter
A limited-government group is suing U.S. EPA over its "tailoring" rule that is aimed at shielding small sources from greenhouse gas permitting rules.

The Southeastern Legal Foundation, which has already sued over several major EPA climate policies, filed a petition today asking the U.S. Circuit Court of Appeals for the District of Columbia to review the rule, said Shannon Goessling, the foundation's executive director and chief legal counsel.

The Atlanta-based group filed the petition on behalf of itself, 14 House Republicans, and a coalition of business groups including forest products, transportation and other industries.

EPA's rule will limit greenhouse gas-permitting requirements to only large sources starting next January, when the agency begins to regulate the heat-trapping emissions from tailpipes. Those automobile standards will trigger Clean Air Act permitting rules for industrial facilities like power plants and refineries. Without the tailoring rule, EPA says, even very small sources would need to get New Source Review and operating permits for greenhouse gases.

But Goessling said the rule is illegal.

"They're acting outside of congressional authority by modifying the Clean Air Act so that they can change the standards," she said. "They should not and do not have the authority to modify the Clean Air Act to fit into the niche that they want."

EPA's rule was published in today's *Federal Register*, opening a 60-day window for challenges in court.

Opponents of EPA's so-called "tailoring" rule have until Aug. 2 to challenge the policy in the U.S. Circuit Court of Appeals for the District of Columbia, according to the **notice** published today.

EPA officials say their approach is legally correct and would avoid an administrative nightmare that would be caused if the rule weren't in place because small sources would be required to obtain permits.

Without the rule, about 6 million facilities could need permits when the automobile standards kick in next January, EPA air chief Gina McCarthy said last month.

EPA has also asked state regulators to submit letters to the agency by Aug. 2 detailing whether they will need to make regulatory or legislative changes to implement the tailoring rule.

Some states have laws and regulations on the books that include lower thresholds than the tailoring rule or that block state agencies from regulating greenhouse gases (*Greenwire*, June 2).

For states that are unwilling or unable to adopt EPA's approach by Jan. 2, 2011 -- when the permitting requirements will kick in -- the agency plans to limit its approval of the states' federally approved plans for curbing emissions.

**FUEL**

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**Car fuel-efficiency methods, costs weighed (*Los Angeles Times*)**

June 4, 2010 Friday
Home Edition
BUSINESS; Business Desk; Part B; Pg. 3
By Justin Hyde, Hyde writes for the Detroit Free Press/McClatchy.
A long-delayed federal report on technology for making vehicles more fuel-efficient finds several options that could boost mileage 50% but add as much as $9,000 to the cost of a new vehicle.

The study by the National Academies of Science was supposed to be released in 2008, but took longer than expected and was outpaced by Congress, the Obama administration and California officials as they set new fuel-economy standards. The government has set a target for new U.S. vehicles to average 34.1 miles per gallon by 2016, with reductions in carbon emissions raising the requirement to 35.5 mpg.

The panel found that based on a 2007 vehicle, available technology could boost a typical gasoline engine's efficiency 29% at a cost of $2,200. Switching to diesel engines would offer a 37% increase for $5,900 per vehicle, while a gas-electric hybrid could offer up to a 50% improvement for $9,000.

Many of the technologies listed in the report have already been adopted to some degree by automakers, which are rolling out 2011 model-year vehicles now and are close to completing engineering work through the 2013 year.

The study also considered more exotic technology, such as plug-in hybrids and homogenous charge combustion, in which gasoline engines use diesel-type compression rather than a spark for ignition. But it said forecasting what technology would work best for the lowest cost was too difficult beyond a five-year window.

It also recommended that the Environmental Protection Agency rework window stickers on new vehicles to give fuel-consumption figures -- such as gallons burned per 100 miles traveled -- in addition to fuel-economy numbers, so that owners know more about how much fuel they use.

**EPA revokes Mobil's licence after leak (*Hobsons Bay Leader*)**

04 Jun 10 @ 02:21pm by Georgie Haberfield
MOBIL has vowed to clean up its act after the EPA revoked an accreditation licence from its Altona plant.

The EPA revoked the licence, which Mobil had held since 2001, after a spate of poor performance at the site.

In March, a pipe leaked butane gas, and in February a tank leaked 30,000 litres of petrol.

In May, the refinery lit up the night sky after some equipment was damaged.

Mobil is still licensed to operate, but losing its accreditation licence means it faces harsher scrutiny and no longer receives a 25 per cent discount on its licence fee.

All works at the site must be now be approved by the EPA.

Mobil spokesman Alan Bailey admitted the company's actions were not good enough.

"We acknowledge that incidents such as the December 2006 pipeline leak in Newport (Champion Rd) and the recent tank leak at the refinery are unacceptable, both to us and the community,'' he said.

"Incidents like that do not reflect the intent and efforts that the refinery makes to manage its operations in a safe environment."

EPA chief executive John Merritt said the authority was "less than impressed with Mobil's track record, in which there has been a number of incidents at the site all with the potential for environmental and community risk".

EPA spokeswoman Ruth Ward said Mobil would need to go through a lengthy process to reapply for the accreditation licence.

"They must demonstrate, over a couple of years, good performance. It's not just filling in paperwork and paying a fee and it's ticked off," she said.

## HAZARDOUS WASTES

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### EPA Poised To Broaden Use Of New Test For Measuring Waste Leaching (*Inside EPA*)

06/04/2010
EPA is poised to broaden its use of new test methods for determining the extent of contamination that leaches from reused waste material -- referring to the new method for the first time in a regulatory sense in its recent coal ash proposal but saying it will not use the new method for regulatory purposes but rather as a tool alongside other methods on a site-specific basis.

According to EPA's website, the agency is in the final process of establishing protocols to include the new leaching environment assessment framework (LEAF) in its waste analytical methods guidance, known as SW-846, which is the waste office's protocol of sampling methods.

EPA earlier this year distributed samples to laboratories to ensure that the LEAF tests are replicable, and those tests are still under way, sources say, but once complete the new methods will formally be listed in SW-846, which guides how the tests must be conducted in a lab but not what the test is used for, sources explain.

However, the agency does not appear poised to replace the toxicity characteristic leachate procedure (TCLP) regulatory method with LEAF, but only to determine whether a planned beneficial reuse of coal waste or other waste material is likely to leach hazardous materials at a particular site governed by the Resource Conservation & Recovery Act (RCRA), sources say. The document is used "primarily as a guidance document setting forth acceptable, although not required, methods for the regulated and regulatory communities to use in responding to . . . RCRA-related sampling and analysis requirements," according to EPA's website.

EPA suggests in the coal ash proposal that the new LEAF method will act as a supplement to the existing test method, known as the TCLP, that has faced longstanding criticism from agency science advisors and others for inaccurately estimating the leaching risks posed by waste material. "[A] considerable body of evidence has emerged indicating that the TCLP alone is not a good predictor of the mobility of metals in [coal combustion residues] under a variety of different conditions," EPA says in the coal ash proposal.

And the agency said in the May 4 coal waste proposal that once the LEAF methods are validated, EPA intends for them "to be used in situations where TCLP is not required or best suited, and where waste management or reuse conditions are known, to provide an estimate of release tailored to a particular environmental scenario or defined range of conditions."

Sources say the TCLP will still be used to determine whether a leaching waste is hazardous, while LEAF will be used to determine whether a planned beneficial reuse is likely to leach contaminants at a particular site.

Agency officials have been working for years to improve TCLP, the most commonly used test for determining leaching from waste material. Industry and environmentalists alike have criticized TCLP, arguing that it overestimates or underestimates potential risks. The agency lost two lawsuits in the 1990s over the test, with the U.S. Court of Appeals for the District of Columbia Circuit describing a use of TCLP as "inaccurate" in its 1998 ruling in *Columbia Falls Aluminum Co. v EPA*.

A year later, EPA's Science Advisory Board (SAB) urged the agency to improve the leaching test, saying TCLP -- designed to test for toxic leaching in a municipal solid

waste landfill -- is applied too broadly and may overestimate or underestimate leaching potential. SAB called on EPA to "improve leach test procedures, validate them in the field, and then implement them," in a 1999 letter to then-Administrator Carol Browner. The National Academy of Sciences (NAS) has also criticized the method.

In its coal ash proposal, EPA notes that TCLP did not provide a clear indication of the extent of leaching from coal ash, noting that each of the four main types of coal ash, when subjected to a TCLP leach test, "yields a different amount of trace element constituents."

EPA is soliciting public comment on whether "in light of these differences in the mobility of hazardous metals between the four major types of ash, regulatory oversight should be equally applied to each of these CCR types when destined for disposal," the proposal says.

The proposal also cites the development of LEAF, which is designed to better replicate leaching that would occur in the natural environment when waste is exposed to varying weather conditions and acid rain, rather than a lined landfill environment. It is also specifically designed to test whether air pollution controls, which remove toxics from smoke stacks, mean more of the materials could potentially contaminate groundwater or drinking water.

**While a power industry source downplays the significance of EPA's referencing LEAF** in the coal ash proposal, environmentalists are already citing LEAF in pushing EPA to declare CCRs hazardous, and are also noting the test has implications for a broad range of other waste materials, such as mining and construction waste.

For example, Earthjustice in a May 5 blog notes that the new data shows that coal ash pollution in some cases "far exceeds the thresholds for hazardous waste," and says EPA should end use of TCLP for regulatory purposes and replace it with LEAF. "The new leaching data is cited in EPA's proposed rule, and this should end, once and for all, the reliance on a test that has no scientific basis," the blog says. "The utility industry and coal ash reuse industries argue that coal ash is not hazardous waste, relying on obsolete testing methods that are nearly 20 years old. But there is new science now being used by EPA that shows unequivocally that some ashes and sludges behave just like hazardous waste."

Another environmentalist calls TCLP "a quick and dirty test to compare how much would leach if it was in a sanitary landfill," despite the fact that a sanitary landfill is "not the appropriate benchmark" for where coal waste is stored.

However, the power industry source and others say while TCLP has its flaws it is unfair to compare TCLP and LEAF results. The new test "doesn't have any regulatory implications to define the bright line between hazardous and nonhazardous," the power industry source says. "TCLP is the test that establishes that bright line. The [new] data can help inform management decisions but it would be short sighted to merely compare

the results of those leach tests with the TCLP regulatory levels." That is an unfair comparison and those arguing that the new test shows CCRs "are hazardous are cherry picking numbers," the source adds.

Additionally, Ken Ladwig of the Electric Power Research Institute, which has been working with EPA and others to develop the new test methods, says the LEAF results -- because they include a range of outcomes -- cannot be fairly compared with a single TCLP level to say the new tests show more leaching or more toxicity. "That is not a correct use of the data," Ladwig says.

The LEAF methods are specifically designed to understand how waste material will behave in a different environments, so they can be used once the disposal environment is known, but it is difficult to use it as a test with a single limit, the way TCLP is used, to determine whether a material is a hazardous waste, he explains. However, Ladwig adds, "I can't say down the road [EPA] won't try to do that."

EPA in response to questions says "it is important to note" that EPA is not planning to revise or review the regulatory use of the TCLP, which it says "was developed for a particular purpose, and remains a valid and useful tool for identifying wastes that are likely to contaminate groundwater if improperly disposed."

EPA in an April 26 document included in its coal waste rule docket says results from the new leach test methods "suggest that the total amount of metals in CCRs is a less important predictor of leaching than the mobility of the metals. These data indicate that mobility is linked to [air pollution control (APC)] technology, coal rank and CCR management conditions." *The document is available on InsideEPA.com.*

The document adds that LEAF is being developed to address the earlier SAB and National Academy of Sciences push for "a more accurate source term for use in environmental or risks assessments through the consideration of waste form, pH, and liquid-to-solid ratio." -- *Dawn Reeves*

**SOLID WASTES**

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**Ban on single-use bags advances in Calif. (*Greenwire*)**

Debra Kahn, E&E reporter
06/03/2010
The California Assembly approved a bill yesterday that would make California the first state to ban single-use plastic and paper bags.

The measure, **A.B. 1998**, is aimed at reducing litter and wastes associated with bag production and to protect wildlife from plastic debris.

Starting in January 2012, grocery stores and chain pharmacies can provide reusable plastic or recycled paper bags, but they will have to charge at least a nickel for that convenience.

The bill sponsored by state Rep. Julia Brownley (D) also requires manufacturers of reusable bags to certify them every two years and pay a $2,000 fee. Paper bags would have to be at least 40 percent post-consumer material. The bill defines "reusable" plastic bags as lasting for at least 100 uses. Convenience and liquor stores would be subjected starting in July 2013.

Plastic bags without handles would still be permitted when "used to protect a purchased item from damaging or contaminating other purchased items."

California already has a law requiring stores to collect plastic bags for recycling. That law would be repealed starting in 2013. A loophole would allow San Francisco stores to sell compostable plastic bags, in accordance with the city's 2009 mandatory composting law.

The bill now moves to the Senate, where state Sen. Mark Leno (D) is the co-author. Gov. Arnold Schwarzenegger (R) has signaled his support.

The California Grocers Association and United Food and Commercial Workers are also supporting the bill. Plastics manufacturers attacked it yesterday.

"The last thing California consumers need right now is to have what amounts to a $1 billion tax added to their grocery bills," said Tim Shestek, the American Chemistry Council's state affairs director. Brownley says the bill would be cost-neutral.

**TOXICS**

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**Painting this old house will cost more if it has lead paint (*Lincoln Journal Star*)**

By ALGIS J. LAUKAITIS / Lincoln Journal Star | Posted: Thursday, June 3, 2010 11:00 pm
Homes and businesses built before 1978 likely have some lead-based paint.

And giving those older buildings a fresh look could cost more now, especially if remodeling or painting is done by professionals.

The U.S. Environmental Protection Agency in April implemented new lead-based paint regulations to protect children and adults from the toxic effects of lead dust and paint chips.

Painters, plumbers, carpenters, electricians and other contractors now must be get trained and EPA-certified if they plan to disturb paint surfaces in homes or child-occupied facilities built before 1978.

The EPA estimates that about three-quarters of homes built before then have some lead-based paint. The U.S. Consumer Product Safety Commission banned the use of lead-based paint in housing in 1978.

Mandatory training and certification, through EPA-sanctioned classes, will cost as much as $300. But the real expense will come in buying and installing plastic and other equipment needed to protect workers, occupants and buildings from lead contamination.

Jim Stauffer, a painting contractor in Lincoln, estimates the new regulations and lead-containment requirements could boost the price of painting an older home by as much as $1,000.

Workers will have to cover the ground outside homes or buildings with plastic and create enclosed areas to trap dust and flakes. Some of this is done now, but the new rules call for tighter containment.

In extreme cases, contractors may have to place entire buildings in plastic cocoons. Then, lead-paint dust and chips will have to be disposed of properly.

"We know and we understand the need for the protection of kids. We need to do this for the contamination," Stauffer said.

Changing the rules now, though, will cost contractors money and the timing is bad given today's economy, he said.

Stauffer also doesn't like the fact that only contractors are required to follow the new rules.

"The homeowner should be required to do containment," he said.

Tyler Thody, manager of the Sherwin-Williams paint store in the Alamo Shopping Center, said he's gotten mixed reaction about the new EPA regulations.

"I've got some guys -- they're just not going to do that type of work. ... Older guys nearing retirement don't want to make the investment," Thody said.

Younger painters are embracing the new rules, he said.

"They see that as an opportunity because they know some people don't want to mess with it."

Thody agreed the new rules will cost owners of older homes more, but he didn't have any estimates.

"It's not going to be cheap. It depends on the size of the job. It could add many thousands of dollars to the job, especially if you have outside work."

David Bryan, a spokesman for EPA Region 7 in Kansas City, said the rule applies to homes, day care centers and other buildings that are going to have children in them. He said EPA has been working on the new rules for nearly two decades.

While individual home and business owners are exempt, Bryan said, the federal agency hopes they will follow the guidelines to protect themselves and their family.

Five-year certification is $200 for individuals and $300 for companies, he said. Violators face fines as high as $37,500 per day.

Contractors are obligated to give homeowners pamphlets explaining potential health hazards of lead-based paint and safe removal practices. They also have to provide training and certification credentials.

Bryan said the agency has had no enforcement actions in Nebraska, yet.

"We realize some of the contractors are scrambling to get the training and get certified," he said.

Bryan said not enough contractors nationwide got trained in 2009 -- the grace period for the new rules --so the EPA began pushing hard in March.

"The numbers looked awful," he said.

New regulations do not apply to minor maintenance or repairs in which less than six square feet of lead-based paint is disturbed in a room, the EPA says, or in which fewer than 20 square feet of lead-based paint is disturbed on an exterior. Windows are not exempt.

Initially, Bryan said, homeowners could opt out if they hired contractors, so long as they were provided information about the dangers of lead-based paint. EPA took out that provision in the interest of public health and safety.

Lori Pippitt, chairwoman of the Remodelers Council of Lincoln, said people who signed opt-out agreements before the EPA action must have work done by July 1.

"A lot of people are trying to get the work done," she said.

The council started two years ago to inform its 70 or so members about the coming rules and worked last year to get quite a few certified. She said many members are concerned about the added cost in the struggling economy.

"But it's a federal law and we have to comply with it," Pippitt said, adding that once contractors get used to them, the new regulations won't be a big issue.

Lead is a highly toxic metal, and, when absorbed by children, can damage the nervous system, reduce IQ and cause learning disabilities and behavioral problems.

Children are much more likely to get lead poisoning because they put their hands in their mouths after coming into contact with dust and may eat paint chips.

In adults, lead poisoning can increase blood pressure, cause irritability and poor muscle coordination, and damage kidneys, nerves and the brain, according to EPA.

Said Bryan: "The body has no use for any type of lead."

Reach Algis J. Laukaitis at 402-473-7243 or alaukaitis@journalstar.com.

**Senate GOP Seeks Oversight Into EPA Implementation Of Lead Paint Rule (*Inside EPA*)**

06/04/2010
Days after the Senate voted to delay implementation of EPA's recently enacted lead renovation rule, Senate Republicans are calling for oversight hearings to examine "inconsistent and confusing" implementation, a move aimed at easing future implementation of the regulation.

Sen. James Inhofe (R-OK), ranking member on the Senate Environment & Public Works (EPW) Committee, and other Republican senators sent a May 28 letter to EPW Chair Barbara Boxer (D-CA) asking for a hearing about the implementation of EPA lead paint renovation rule, which went into effect April 22. Republicans 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 letter is available on InsideEPA.com.*

"Holding a hearing before the EPW committee would help to create public awareness of this rule and its requirements for renovators," the letter says. "It will also allow us to discuss the most expeditious and cost-effective means of ensuring that enough instructors are trained, enough contractors are certified and homeowners are educated so that pregnant women and children can actually realize the benefits of this rule."

The letter says there is "significant bipartisan support" on EPW to address concerns with the rule's implementation and cites bipartisan passage May 29 of an amendment, introduced by Sen. Susan Collins (R-ME) to the supplemental appropriations bill, that would delay the full implementation of EPA's new lead paint renovation rule until this fall.

The amendment, which passed 60-37 with bipartisan support, prohibits EPA from using funds in the supplemental appropriations bill to levy fines against contractors under the lead renovation, repair and paint rule before Sept. 30, 2010. Nineteen Democrats voted for the amendment, including Sen. Max Baucus (MT), the only environment committee Democrat to vote for the measure. A source says the GOP could reach out to Baucus for support this week.

EPA's 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. The final rule aims to cut children's exposure to lead, which can be released during renovations of older homes containing lead-based paint.

EPA and healthy housing groups have encouraged full implementation of the lead rule, saying a delay would stymie agency efforts to protect children. "We don't think at this point a rider to delay will be helpful to accomplish that goal of protecting children," Peter Grevatt, head of EPA's Office of Children's Health Protection & Environmental Education, said at a May 25 meeting of the National Safe & Healthy Housing Coalition.

**Ruling Upholding Lead NAAQS May Bolster Other Rules To Limit Exposure (*Inside EPA*)**

06/04/2010
A key federal appeals court has rejected industry's challenge to the Bush EPA's tightening of the lead national ambient air quality standard (NAAQS), a ruling seen as boosting EPA's ability to pursue other stringent rules for lead in air, water and other media after the court broadly endorsed EPA's novel scientific approach in setting the NAAQS.

The U.S. Court of Appeals for the District of Columbia Circuit's May 14 ruling in *Coalition of Battery Recyclers Association (CBRA) v. EPA* backed the agency's first-time approach of using adverse impacts on IQ as justification for tightening the lead NAAQS, which EPA said warranted a strict ambient concentration level. Health advocates say the ruling may boost EPA's ability to use IQ impacts as justification for strict lead rules in other media.

According to EPA's National Program Manager guidance for fiscal year 2011, lead efforts that EPA is working on include a waste office program guidance to consider the

latest human health assessment of lead toxicity; the air office's development of a proposal to cut lead in aviation gasoline; and the pesticide office's regional divisions' goal to reduce disparity in blood lead levels between low income and non-low income children.

EPA is also stepping up its focus on addressing risks from drinking water lead contamination after strengthening the NAAQS and issuing a strict rule to reduce exposure to lead-based paint.

In the lead NAAQS suit, the court in its ruling rejected CBRA's challenge to the Bush EPA's November 2008 revision to the lead standard, which tightened the NAAQS from 1.5 micrograms per cubic meter (ug/m3) to 0.15 ug/m3. In briefs to the court, industry criticized EPA's scientific approach to setting the stricter standard.

Industry's claim that the tighter standard is "overprotective because it is more stringent than necessary to protect the entire population of young U.S. children ignores that the Clean Air Act allows protection of sensitive sub-populations," according to the ruling. The court also endorsed EPA's new risk framework for calculating the link between lead emission exposure and IQ loss, and rejected other challenges industry raised over the standard.

At issue was whether EPA acted lawfully in developing its novel framework to correlate lead exposure and IQ loss; in selecting a subset of children's blood studies in order to evaluate how IQ loss corresponds to air exposure; in choosing an averaging time to implement the selected NAAQS level; in withholding data underlying a contested study; and in denying industry's request to provide NAAQS attainment waivers for less-hazardous forms of lead.

The court's ruling supports EPA on each challenge raised by industry, noting in particular that "EPA's decision to base the revised lead NAAQS on protecting the subset of children likely to be exposed to airborne lead at the level of the standard was not arbitrary or capricious." The court further found that the petitioners' challenge to EPA's IQ-based risk framework, and to EPA's broader transition to IQ decrements rather than blood lead levels, is "without merit." *The ruling is available on InsideEPA.com.*

A ruling in favor of EPA was seen as likely following oral arguments, where judges appeared highly skeptical of industry's arguments challenging the agency's approach in setting the standard.

The ruling also upheld of other aspects of the NAAQS in the face of the industry challenge. On the averaging time -- which is the time period over which air pollutant concentrations are averaged for the purpose of determining attainment with the standard -- the court rejected industry's criticism that EPA's decision to shorten the averaging time from a calendar quarter to a three-month period should have been accompanied with an adjustment of the level.

The court said the rulemaking "demonstrates that EPA adequately explained that it did not determine the 0.15 ug/m3 air lead level by assuming exposure to that level over a period of one year, and that EPA reasonably concluded and adequately explained that a lead NAAQS of 0.15 ug/m3 measured as a three-month rolling average is requisite to protect public health with an adequate margin of safety."

A National Center for Healthy Housing source says the ruling bolsters EPA's attempts to justify strict rules on the adverse IQ impacts of exposure to lead, since EPA is now linking IQ effects and lead exposure more closely in its risk framework and the ruling may help to solidify that link in public opinion.

**Industry Raises Concerns About Broad EPA Authority In House TSCA Bill (*Inside EPA*)**

06/04/2010
Industry groups are raising broad concerns about the draft House bill to reform the Toxic Substances Control Act (TSCA), saying it would "significantly expand" the scope of the law and EPA's jurisdiction and could stymie chemical innovation in the United States by imposing strict new data requirements on new substances, according to industry comments on the bill obtained by Inside EPA.

Reps. Henry Waxman (D-CA), chairman of the House Energy & Commerce Committee, and Bobby Rush (D-IL), chairman of the committee's consumer protection panel, released the "discussion draft" April 15, the same day Sen. Frank Lautenberg (D-NJ) introduced a companion bill in the Senate. Since the House draft was released, the Energy & Commerce Committee has convened a stakeholder process to gather feedback on the language, accepted formal written comments and is expected to introduce a formal bill for markup by July, sources say.

Ahead of the bill's introduction, industry groups described the draft as a "good start" and an "honest effort" toward meeting their calls for TSCA reform. But in the comments obtained by *Inside EPA* they also outlined major concerns with the bill including its apparent broad new authority for EPA on chemicals management and other issues.

"The potential universe of chemical substances, and the burdens of the new law, would skyrocket," according to May 28 comments from the Society of Chemical Manufacturers & Affiliates (SOCMA), which represents small batch chemical makers. The bill would broadly expand EPA's authority under TSCA by requiring minimum data sets for all new chemicals and mixtures coming to market, SOCMA says. "Mixtures are treated just like chemical substances for most if not all purposes, including the minimum data set and safety determination requirements."

The definition of a mixture under the draft bill is expanded to include mixtures in articles, which could further stretch TSCA authority, sources say. "EPA's regulatory authority has

been expanded to virtually every aspect of the U.S. economy," according to May 24 comments from the American Chemistry Council (ACC).

ACC, the Consumer Specialty Products Association (CSPA) and many other industry groups in their written comments on the draft bill also question the appropriateness of the new safety standard for assessing chemicals included in the draft, how the draft deals with new chemicals, expedited action on chemicals of concern, and confidential business information (CBI).

Unlike the existing TSCA standard for assessing chemicals, which requires EPA to demonstrate that chemical poses an unreasonable risk, the draft House bill says EPA shall apply "a standard [that] takes into account aggregate and cumulative exposure to a chemical substance or mixture and that provides a reasonable certainty of no harm, including to vulnerable populations, and protects the public welfare from adverse effects, including effects on the environment." Activists have long argued that the current TSCA standard has been ineffective in regulating chemicals.

Many in industry are questioning if the proposed standard, which is based on a similar safety standard for pesticide tolerances on food in the Food Quality Protection Act (FQPA), can be the basis for determinations about industrial chemicals. For example, the FQPA standard dealt with a narrower set of exposures, fewer substances and fewer exposure pathways, says Mike Walls, ACC's vice president of regulatory and technical affairs.

"The FQPA applies in a narrowly focused range of possible exposure scenarios," according to the ACC comments. "ACC is concerned that in the context of industrial chemicals with hundreds of uses, the term 'no harm' could be interpreted as a zero-risk standard. No chemical, not even water, can be reasonably certain to pose 'no harm.'" Walls also says the consideration of cumulative exposure could push regulators to use risk assessment methods that have "never been tried before." *Relevant documents are available at InsideEPA.com.*

ACC also says the bill could expand the safety standard to other agencies and statutes, including the Food & Drug Administration, Occupational Safety & Health Administration and the Consumer Product Safety Commission.

Still, Walls said the draft bill makes an "honest effort" to address the principles introduced last summer by the group as well as a separate set released in September by EPA.

Phil Klein, senior vice president for CSPA, which represents one set of downstream users, also says the House stakeholder process so far has been a "good start" for negotiations towards a "reform package that is a gold standard, but also workable." CSPA filed its comments in conjunction with other downstream chemical users the Grocery Manufacturers Association and the Soap & Detergent Association.

CSPA supports a new safety standard under TSCA, but in its comments on the draft bill also questions the use of the "no harm" standard. Any new standard should be tied to a chemical's specific uses and based on use categories, rather the for specific uses, mixtures or products, the CSPA comments say.

ACC also says that the draft bill would eliminate an exemption for polymers, which can currently be exempted from regulation if they meet criteria showing they do not pose a risk to human health or the environment.

**Industry groups are also raising questions about the effect the draft language could have** on development of new chemicals and new uses of existing chemicals, which they say could stifle innovation and create a disincentive for bringing new chemicals to market in the United States by requiring a minimum data set for all new chemicals before they can enter the market. ACC's Walls says most new chemicals entering the market have very low volumes and low exposures, and requiring a a full data set for each new chemical would dampen innovation.

SOCMA questions the loss of TSCA section 5(b)(4), which allows chemicals produced in amount less than 10,000 kilograms/year to undergo an abbreviated review period. "To promote innovation and a move to greener chemicals, this provision will prove more critical than ever," the group says. "The way this section is currently written, unfortunately, creates a bias toward continued use of existing chemicals. Again, we believe the bias should favor innovation."

Laura Madden, director of government affairs at CSPA, says the draft bill's approach to new uses of existing chemicals, as currently written, could require consumer product makers to go through a new approval process in order to make a slight change to a chemical formulation.

The industry groups also raise concerns about the draft bill's approach to expedited action for certain chemicals. Section 33 of the House draft includes a "hit list" of some 31 chemicals and chemical categories that would require expedited action from EPA, in addition to a revolving list of 300 chemicals that would also be targeted for safety determinations by the agency at any one time. The chemicals and categories list could ultimately affect as many as 500 substances, source say. "How is EPA going to assess its work," says ACC's Walls.

ACC argues that EPA should have the ability to identify high-priority chemicals for review and potential action, but calls the identification of substances in the bill as "premature and highly prejudicial," and raises questions about limitations on new uses of the substances and categories on the list.

CSPA's Klein says the downstream user group has long pushed for the bill to include a prioritization screen, which could be used to develop a list of 50-100 chemicals for immediate action, but questions the inclusion of a list in bill language.

Many in industry agree there could be some common ground on the issue of CBI, and most industry groups support some sort of more strict rules governing trade secrets. For example, the CSPA is supportive of up-front substantiation of CBI claims, but says the 5-year limit on CBI in the draft is "arbitrary" and re-substantiation, if needed, should be triggered by an external factor rather than a built-in time line.

The ACC comments say the provisions in the draft would require manufacturers to declare "almost everything about its chemicals, including chemical identity, production, volume known uses and all customers who receive it."

The comments continue, "Immediately upon filing this declaration, every competitor can have access to this information with the simple filing" of a Freedom of Information Act request, which Walls says could create a disincentive for research and development. -- *Aaron Lovell*

**Chinese drywall problems suspected in 2006, documents show (*Greenwire*)**

06/03/2010
Homebuilders in Florida used drywall with an unusual smell despite internal "panicking" over the product as far back as 2006, according to internal letters and e-mails revealed during an ongoing court case.

The smell prompted builders to investigate at the time, tracing the problem to a single Chinese manufacturer.

But Miami-based Banner Supply Co. did not go public with its concerns, and neither did builders GL Homes of Florida Corp. and WCI Communities Inc. The drywall's foul smell made it difficult to sell some of their houses, but it was at least two years before homeowners started reporting corrosion linked to hydrogen sulfide emissions from Knauf Plasterboard Tianjin Co.'s drywall.

"What I can say for the consumers? They were duped," said Ervin Gonzalez, an attorney for two homeowners claiming their house was damaged by the drywall. Their jury trial, the nation's first related to Chinese drywall, begins Monday in federal court in Miami.

The Consumer Product Safety Commission has received about 3,300 complaints about the drywall, and hundreds of lawsuits have been filed in state and federal court. Some lawsuits claim the drywall is responsible for illness as well as property damage.

Scott Giering, an executive at Banner Supply, said in a sworn deposition last month that he didn't know about any problems with the Chinese-made drywall sold by his company until the issue become the subject of multiple news reports. But WCI and GL Homes

were "panicking" over the drywall in November 2006, according to an e-mail sent that month by Banner Supply executive Mickey Coblentz.

"Every day is getting nastier," Coblentz wrote (Nirvi Shah, *Miami Herald*, June 2). **-- GN**

**WATER**

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**Region leaders cite progress in Chesapeake Bay cleanup; ecologists want EPA to act (*Washington Post*)**

By Aaron C. Davis
Washington Post Staff Writer
Friday, June 4, 2010; B06

Leaders of the District, Maryland and Virginia on Thursday claimed major progress toward meeting pollution reduction deadlines for the Chesapeake Bay next year, even as environmentalists questioned those assertions and said that if leaders are wrong, the federal government must step in and levy penalties against the jurisdictions.

Maryland Gov. Martin O'Malley (D), Virginia Gov. Robert F. McDonnell (R) and District Mayor Adrian M. Fenty (D) gathered in Baltimore, along with Mayor Stephanie Rawlings-Blake (D) and EPA Deputy Administrator Bob Perciasepe in the first meeting of the so-called Chesapeake Executive Council since McDonnell took office in January and since a settlement last month of a lawsuit brought against the EPA by bay advocates. They say that settlement requires the EPA to hold states strictly to their 2011 deadlines for improvements to the bay, which include reducing nitrogen, phosphorous and other pollutants, planting cover crops to prevent erosion and cleaning up leaky septic systems.

O'Malley said Maryland had broadly reached 44 percent of its goals so far. McDonnell said his state is making progress on several fronts, including achieving its goal for phosphorous reduction.

However, environmentalists said McDonnell must have been mistaken, or thinking of a more narrow measure of phosphorous reduction from wasterwater discharge. "I don't know what he was talking about," said Beth McGee, a senior water quality scientist for the Chesapeake Bay Foundation. "When you look at the total loads, I don't know how he can say they are making it."

Following the meeting, William Hayden, a spokesman for Virginia's Department of Environmental Quality, said McDonnell had been referring to wastewater, but that in fact the state is close to meeting its total 2011 goal for reducing phosphorous pollution. If

true, it would be another measure of good news for the Chesapeake Bay, which has recorded a surprising, 60-percent rebound in its blue crab population, according to a recent estimate and slight water quality improvements.

Perciasepe, a former Maryland environmental secretary, attended the meeting in place of EPA Administrator Lisa Jackson, who was busy with oil cleanup efforts in the gulf. He announced the launch of a new Web site (http://stat.chesapeakebay.net) where he said residents can track bay cleanup efforts.

"We're entering a time of unprecedented accountability," Perciasepe said. "With the technology and our ability to measure and monitor, we are learning more and more about how to be transparent and open and accountable for the progress we need to make."

Will Baker, president of the foundation, said he was still skeptical the states would come close to meeting the most important goals, and stressed that not meeting them is now a federal issue for states.

**EPA orders 2 Va. farms to stop discharging unpermitted waste into Shenandoah River tributaries (*Associated Press*)**

**This story also appeared: *Washington Examiner***

Associated Press
06/03/10 12:25 PM EDT
RICHMOND, VA. — The Environmental Protection Agency is ordering two Virginia farms to stop discharging pollutants into Shenandoah River tributaries.

The EPA says during inspections the farms were discharging pollutants, including nitrogen and phosphorus from animal manure, into the streams without a permit required by the Clean Water Act.

The federal agency is ordering the farms to stop until they have received a permit.

Turley Creek Farms in Linville and the farm of Windcrest Associates in Timberville are both located in the Chesapeake Bay watershed.

The EPA says the actions were part of the agency's efforts to implement an executive order to protect the Chesapeake Bay watershed.

**EPA Begins Developing Rule To Address Sewer Overflows, 'Blending' (*Inside EPA)***

06/04/2010
EPA is moving forward on a rule to address a variety of controversial issues related to so-called wet weather events -- a move that responds to a long-standing push from industry and environmentalists to clarify Clean Water Act permitting requirements for sanitary sewer overflows (SSOs), "blending" fully and partially treated wastewater during significant storm events and previously unregulated satellite collection systems.

EPA in a May 27 statement announced that it is initiating a rulemaking "to better protect the environment and public health from the harmful effects of [SSOs] and basement backups," which "discharge untreated wastewater that contains bacteria, viruses, suspended solids, toxics, trash and other pollutants into waterways." *Relevant documents are available on InsideEPA.com.*

Additionally, the agency says it is considering whether and how it should resolve issues related to a 2005 draft blending policy and is considering clarifying the regulatory framework for municipal satellite collection systems, which are sanitary sewers owned or operated by a municipality that convey wastewater to a publicly owned treatment works (POTW) operated by a different municipality.

According to a June 1 *Federal Register* notice, EPA plans to ask about the framework for an SSO policy, and, among other questions, is asking stakeholders how such a framework should be established, and what it should require as far as monitoring, reporting, public notifications, and recordkeeping.

The agency is also considering a "standard permit condition with requirements for capacity, management, operations and maintenance (CMOM) programs based on asset management principles," the *Federal Register* notice says, and are asking stakeholders to comment on the need for a standard permit condition for CMOM, how it should be tailored for small communities, and whether it would help with taking a more holistic approach to peak flows.

EPA is planning a series of meetings in June and July around the country and online to collect information on a variety of wet weather issues, an approach one industry source says is welcome, since since the last time the agency gathered such information was in the late 1990s.

While EPA is leaving a wide range of options on the table for now, and collecting information before proposing a draft rule, EPA officials have previously said the SSO rule may mimic one proffered during the Clinton administration. During a May 27 BNA webinar on water act issues, EPA Deputy Assistant Administrator for Water Nancy Stoner said the agency is re-evaluating the Clinton SSO rule. "We're looking to see what the thinking was then and to see how the thinking has changed," she said.

POTW officials have long argued that a national policy is needed to avoid a piecemeal approach that could result in confusion over what wastewater treatment plants are required to do. But the rulemaking is likely to be controversial when it comes to details of addressing blending, dealing with a so-called "affirmative defense" for POTWs in the event of an overflow and permitting satellite collection systems, which currently do not receive National Pollutant Discharge Elimination System (NPDES) permits unless they have been the target of EPA enforcement.

EPA says it is considering "whether to address long-standing questions about peak wet weather flows at municipal wastewater treatment plants to allow for a holistic, integrated approach to reducing SSOs while at the same time addressing peak flows at POTWs," which is when blending occurs.

The industry source welcomes EPA including blending as part of an overall SSO policy, noting that "blending was never intended to be handled on its own." The National Association of Clean Water Agencies, which represents POTWs, and the Natural Resources Defense Council developed a compromise blending proposal in 2005, but the source says that compromise only went forward because the "administration at the time didn't think they could get SSOs done," the source says. "So they said, 'Well maybe we can take a piece of this and get it accomplished.'"

**Regulators Join Industry In Opposing EPA Use Of Water Law To Curb CO2 (*Inside EPA*)**

06/04/2010
State water regulators are joining with power plants and other industry groups in opposing possible EPA regulation of carbon dioxide (CO2) under the Clean Water Act, saying the law was never intended to address airborne pollutants and that the scientific understanding of ocean acidification -- thought to be caused in part by CO2 emissions -- is too paltry to justify using the water law to mandate cuts of airborne emissions.

In May 21 comments to EPA, the National Association of Clean Water Agencies (NACWA) says the Clean Water Act was designed to regulate pollutants directly discharged into a waterbody, and warns that seeking to use the law to regulate air pollutant deposition would result in "the diversion of resources from state water quality improvement programs that are addressing locally controllable sources of pollution." *Relevant documents are available on InsideEPA.com.*

NACWA has joined dozens of groups weighing in on whether EPA should address ocean acidification under the Clean Water Act after the agency, as part of a landmark legal settlement with environmentalists, published a March 22 *Federal Register* notice soliciting comment on what considerations the agency "should take into account when deciding how to address listing of waters as threatened or impaired for ocean acidification" under the water law's 303(d) program, which could require the agency to

develop a total maximum daily load (TMDL), which is a regulatory limit on the amount of pollution that can enter a body of water without violating water quality.

EPA's notice also asks for advice on what issues it should take into account when considering TMDL development for waters deemed to be impaired by acidification.

The deadline to file comments was May 21, and EPA will review those before completing the second phase of its March 10 settlement with the Center for Biological Diversity (CBD), which requires the agency to issue a memo by Nov. 15 detailing how it plans to address rising pH levels in oceans.

NACWA adds in its comments that if EPA opts to move forward with regulation, "The primary consideration for addressing any source of impairment . . . must be the development of scientifically defensible water quality criteria against which to assess impairment. The work on methodologies and endpoint evaluation cannot be delayed." NACWA maintains that impairment criteria must be "site-specific" in light of the various factors that can affect a waterbody's pH.

At the same time, the U.S. Chamber of Commerce is arguing in its comments that if EPA does begin regulating CO2 under the 303(d) of the water law, the agency could unintentionally force itself to regulate CO2 and other greenhouse gases (GHGs) as hazardous air pollutants (HAPs) under the Clean Air Act. According to the chamber, that is because section 112 of the air law defines a HAP as a pollutant that may adversely impact the environment through "ambient concentrations" as well as through "deposition."

"A declaration under the [water law that GHGs impair the oceans] would almost certainly trigger a petition" to add GHGs to the list of HAPs under the clean air law, the chamber says. This would lead to a situation where "tens of millions" of sources, such as commercial and residential buildings, would be subject to strict maximum achievable control technology permits.

However, a CBD attorney denies the chamber's claims, noting the group has already petitioned EPA to regulate CO2 as a "criteria air pollutant" under section 108 of the law, which would preclude regulation of GHGs as HAPS.

Meanwhile, electric utilities are asserting that EPA cannot take the enormous step of imposing broad regulations on stationary sources of CO2 by simply adding a pollutant to the TMDL list, which would allow states to develop the rules. Instead, they argue EPA must undertake a formal rulemaking process.

However, CBD and the Natural Resources Defense Council say in their comments that EPA can and must issue guidance for states on setting TMDLs under the water law, which could lead to restrictions on CO2 emitters.

**Activists, administration challenge states on cleanup progress (*Greenwire*)**

06/03/2010
Officials from Maryland, Pennsylvania and Virginia said yesterday that they are on track to meet short-term goals for reducing pollution in the Chesapeake Bay, but activists called for federal intervention, and the administration official overseeing cleanup efforts said he is "not pleased" with the states' progress.

With state and federal officials slated to meet in Baltimore today for a summit on the health of the bay, the states touted their efforts to follow an interim cleanup plan whose implementation started last May. Now halfway to the 2011 deadline, Maryland officials said efforts to date would cut nitrogen pollution by 44 percent of the promised reduction.

But advocacy groups say states have fallen well behind on other initiatives, such as getting farmers to fence in their livestock away from streams and encouraging the planting of "cover crops" that soak up fertilizer-laden runoff.

Charles Fox, U.S. EPA's senior adviser on the Chesapeake Bay, said in an interview that it's too early to tell whether states are making progress, and that he has "no reason to believe what the states have said is not true."

But speaking before protesters at a rally in Annapolis, Fox said the Obama administration is "not pleased with the progress to date" and will push for "real progress" on reducing pollution in the bay.

"The states have not been able to do it themselves, despite promises to do so," said William Baker, president of the Chesapeake Bay Foundation. "Even their most recent milestones to be done by 2011 are behind" (Timothy Wheeler, *Baltimore Sun*, June 2). **-- GN**

Thu, 2010-06-03 20:00

**EPA Requires Permit for Pesticide Application to U.S. Waters (*Eco Factory*)**

WASHINGTON, DC, June 3, 2010 (ENS) - The U.S. Environmental Protection Agency is proposing a new permit requirement that would decrease the amount of pesticides discharged to U.S. federal waters.

The action is in response to an April 9, 2009 appeals court decision that found that pesticide discharges to U.S. waters are pollutants, and so they require a permit under the Clean Water Act.

The new Pesticides General Permit was developed in response to a decision by the Sixth Circuit Court of Appeals in the case National Cotton Council of America v. EPA.

The court vacated the Bush-era EPA's 2006 rule that said National Pollution Discharge Elimination System permits under the Clean Water Act were not required for applications of pesticides to U.S. waters.

Two different groups of petitioners - environmental interest groups and industry interest groups - opposed the EPA's Final Rule as exceeding the EPA's interpretive authority.

Before the court, EPA lawyers defended the Final Rule by arguing that the terms of the Clean Water Act are "ambiguous" and that the Final Rule is a "reasonable construction" of the Clean Water Act entitled to deference from this Court.

A helicopter sprays pesticide to control the invasive plant, phragmites, in Virginia's False Cape State Park. (Photo courtesy of the Virginia Department of Conservation and Recreation)

In its ruling, the court stated, "We cannot agree. The Clean Water Act is not ambiguous. Further, it is a fundamental precept of this Court that we interpret unambiguous expressions of Congressional will as written."

On February 22, 2010 the U.S. Supreme Court declined industry's request to review the Sixth Circuit's decision in the National Cotton Council, v. EPA case.

The proposed permit, which the EPA released today for public comment was developed in collaboration with states. It would require all operators to reduce pesticide discharges by using the lowest effective amount of pesticide, prevent leaks and spills, calibrate equipment and monitor for and report adverse incidents.

Additional controls, such as integrated pest management practices, are built into the permit for operators who exceed an annual treatment area threshold.

"EPA believes this draft permit strikes a balance between using pesticides to control pests and protecting human health and water quality," said Peter Silva, assistant administrator for EPA's Office of Water.

EPA estimates that the pesticide general permit requirement will affect approximately 365,000 pesticide applicators who perform 5.6 million pesticide applications annually.

The agency's draft permit covers mosquito and other flying insect pest control; aquatic weed and algae control; aquatic nuisance animal control; and forest canopy pest control.

It does not cover terrestrial applications to control pests on agricultural crops or forest floors.

EPA is soliciting public comment on whether additional use patterns should be covered by this general permit.

The agency plans to finalize the permit in December 2010 and it will take effect April 9, 2011.

Once finalized, the pesticide general permit will be used in states, territories, tribal lands, and federal facilities where EPA is the authorized permitting authority.

In the 44 states that conduct their own pesticide permitting as authorized by the EPA, states will issue the pesticide general permits.

The EPA has been working with these states to concurrently develop their permits.

During the comment period EPA will hold three public meetings, a public hearing, and a webcast on the Pesticides General Permit. At the meetings, anyone may provide written or oral statements and data pertaining to the draft permit.

Public meetings will be held in:

* Albuquerque, New Mexico: Public meeting on Monday, June 14, from 12:00 pm to 3:00 pm, at the CNM Workforce Training Center, Room 101, 5600 Eagle Rock Avenue, N.E., Albuquerque
* Boise, Idaho: Public meeting on Wednesday, June 16, from 12:00 pm to 3:00 pm, at the Bureau of Reclamation, rooms 206 & 219, 1150 North Curtis Road, Boise
* Boston, Massachusetts: Public meeting on Monday, June 21, from 1:00 pm to 4:00 pm, at EPA Region 1, 5 Post Office Square, Suite 100, Conference Room 1529, Boston

A public hearing will be held in Washington, DC on Wednesday, June 23, from 10:00 am to 1:00 pm, at the EPA East Building, Room 1531, 1301 Constitution Avenue, NW, Washington, D.C.

To present a statement at the public hearing, please contact Virginia Garelick at 202-564-2316 to register. Speakers will be given up to three minutes, or as time allows, to provide their comments on a first come first served basis. Any additional comments must be provided in writing. EPA will consider all comments received and will include copiesof them in the Administrative Record.

EPA has scheduled a webcast to provide information on this draft permit and to answer questions for interested parties that are unable to attend the public meetings or hearing. The webcast will be broadcast on June 17 from 1:00 pm to 3:00 pm Eastern Standard Time.

EPA will accept written comments on the draft permit for 45 days after publication in the Federal Register. More information on the draft permit: http://www.epa.gov/npdes

**Md., Va. governors meet on bay restoration (*Associated Press*)**

**Story also appeared: *Lebanon Daily News***

By ALEX DOMINGUEZ Associated Press Writer
Updated: 06/03/2010 06:26:51 PM EDT

BALTIMORE—The governors of Maryland and Virginia met Thursday with an EPA official on Chesapeake Bay restoration efforts with Maryland's leader saying the state was less than halfway toward reaching goals in its first two-year restoration milestone.

Virginia Gov. Bob McDonnell, meanwhile, said his state had a "ways to go" on reducing some pollutants, such as nitrogen and sediment, but has achieved its phosphorus reduction goals and initiatives in place to cut other pollutants are beginning to work.

Maryland Gov. Martin O'Malley said the state had achieved 44 percent of its goals 55 percent of the way through the first two-year milestone in the latest effort to restore the nation's largest estuary.

O'Malley and McDonnell are two of the members of the Chesapeake Executive Council, which guides bay restoration efforts. The council met for the first time since the unveiling last month of a Chesapeake Bay restoration strategy developed by the federal Environmental Protection Agency in response to an executive order by President Obama last spring.

The strategy puts the federal government at the head of a previously state-led effort that has been fraught with missed deadlines and suits by conservation groups.

EPA Deputy Administrator Robert Perciasepe said states would have some flexibility in implementing their plans.

"So, that is the key ingredient we need to be focused on right now, success in those plans and then beginning to Quantcast implement them," Perciasepe said.

O'Malley said the state had fallen behind in planting cover crops, which absorb excess nutrients from fertilizer that runs off farm fields, noting rain had slowed the effort last year. However, he said the state was looking to make up ground in other areas.

"In those areas, where we have fallen short we will look for other areas where we can accelerate so that we hit our two-year milestones," O'Malley said.

Washington Mayor Adrian Fenty, who is also on the council, also attended Thursday's meeting. Fenty said D.C. was on schedule in making upgrades to its Blue Plains wastewater treatment plant, one of the large pollution sources in the watershed.

Brad Heavner of Environment Maryland said a key question for him was what would the consequences be for failing to meet goals. Will Baker, the head of the Chesapeake Bay Foundation, which recently settled a suit with the EPA over restoration, said he was also concerned that Pennsylvania sent a deputy environmental secretary and not Gov. Ed Rendell, one of the council's members.

Baker noted Pennsylvania is responsible for half of the fresh water entering the bay.

"It's not as if there haven't been some advances in Pennsylvania, but the Chesapeake Bay is a single six-state system and it's got to be managed as a single system. And for one state to be absent from these meetings sends a very bad signal," Baker said.

Updated: 7:28 PM Jun 3, 2010

**EPA Steps Up Inspections in Shenandoah Valley (*WHSV*)**

Rockingham County
The Environmental Protection Agency has asked two farms in the Shenandoah Valley to clean up.
Posted: 6:38 PM Jun 3, 2010
Reporter: Janelle Lilley
Email Address: jlilley@whsv.com

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The Environmental Protection Agency has asked two farms in the Shenandoah Valley to clean up.

EPA inspectors found that a farm in Linville and a farm in Timberville were not doing enough to keep nitrogen pollution out of the water.

For both farms, it was just a matter of not knowing the rules, which is something the EPA is trying to correct.

Recently, the EPA has been stepping up its presence in the Shenandoah Valley, meeting with farm bureaus and federations and sending more inspectors out into the field.

"We are regularly out in the field and have been focusing on the Shenandoah Valley," says EPA inspector David McGuigan.

McGuigan says the EPA is dealing with multiple threats.

"We're dealing with threats to local waterways. We're dealing with threats to the Chesapeake Bay. We're dealing with threats to groundwater and drinking water quality," explains McGuigan.

Nitrogen from manure was leaking into nearby creeks that flow into the Shenandoah River. Neither farm was fined, and both say they are willing to change the way they operate to limit the pollution.

According to Virginia Poultry Federation President Hobey Bauhan, educating farmers on the rules is better than fining them for violations.

"I think it's important that the EPA not come into the Shenandoah Valley with a heavy hand," says Bauhan.

He says the poultry federation has been very proactive in working with the EPA and protecting the waterways from pollution. He says caring about natural resources is in a farmer's nature.

"They live where they work. They care about water quality and most by in large are doing a good job," comments Bauhan.

**Area leaders cite progress on bay (*Washington Post*)**

June 4, 2010 Friday
Suburban Edition
METRO; Pg. B06
Maryland
By Aaron C. Davis
Leaders of the District, Maryland and Virginia on Thursday claimed major progress toward meeting pollution reduction deadlines for the Chesapeake Bay next year, even as environmentalists questioned those assertions and said that if leaders are wrong, the federal government must step in and levy penalties against the jurisdictions.

Maryland Gov. Martin O'Malley (D), Virginia Gov. Robert F. McDonnell (R) and District Mayor Adrian M. Fenty (D) gathered in Baltimore, along with Mayor Stephanie Rawlings-Blake (D) and **EPA** Deputy Administrator Bob Perciasepe in the first meeting of the so-called Chesapeake Executive Council since McDonnell took office in January and since a settlement last month of a lawsuit brought against the **EPA** by bay advocates. They say that settlement requires the **EPA** to hold states strictly to their 2011 deadlines for improvements to the bay, which include reducing nitrogen,

phosphorous and other pollutants, planting cover crops to prevent erosion and cleaning up leaky septic systems.

O'Malley said Maryland had broadly reached 44 percent of its goals so far. McDonnell said his state is making progress on several fronts, including achieving its goal for phosphorous reduction.

However, environmentalists said McDonnell must have been mistaken, or thinking of a more narrow measure of phosphorous reduction from wasterwater discharge. "I don't know what he was talking about," said Beth McGee, a senior water quality scientist for the Chesapeake Bay Foundation. "When you look at the total loads, I don't know how he can say they are making it."

Following the meeting, William Hayden, a spokesman for Virginia's Department of Environmental Quality, said McDonnell had been referring to wastewater, but that in fact the state is close to meeting its total 2011 goal for reducing phosphorous pollution. If true, it would be another measure of good news for the Chesapeake Bay, which has recorded a surprising, 60-percent rebound in its blue crab population, according to a recent estimate and slight water quality improvements.

Perciasepe, a former Maryland environmental secretary, attended the meeting in place of **EPA** Administrator Lisa Jackson, who was busy with oil cleanup efforts in the gulf. He announced the launch of a new Web site (http://stat.chesapeakebay.net) where he said residents can track bay cleanup efforts.

"We're entering a time of unprecedented accountability," Perciasepe said. "With the technology and our ability to measure and monitor, we are learning more and more about how to be transparent and open and accountable for the progress we need to make."

Will Baker, president of the foundation, said he was still skeptical the states would come close to meeting the most important goals, and stressed that not meeting them is now a federal issue for states.

**Prosecuting Crimes Against the Earth (*New York Times*)**

By DAVID M. UHLMANN.
David M. Uhlmann, a law professor at the University of Michigan, was the chief of the environmental crimes section at the United States Department of Justice from 2000 to 2007.
Ann Arbor, Mich.

"IF our laws were broken ... we will bring those responsible to justice," President Obama pledged on Tuesday, in announcing an investigation of the events leading to the April

20 explosion of the Deepwater Horizon drilling rig. His words may have been, in part, political damage control; efforts to contain the spill remain dire. But federal prosecutors have been working behind the scenes for weeks to determine whether BP, Transocean (the owner of the rig) and Halliburton (the company that did the cementing job on the deep-ocean well) should be charged with crimes.

Now, it's up to Attorney General Eric H. Holder Jr. to ensure that the legal response to the calamitous oil spill in the Gulf of Mexico is better than the emergency response.

If the spill had resulted from a hurricane or lightning strike, or if it had been an unavoidable accident -- an equipment failure that happened without warning -- it wouldn't warrant criminal prosecution. Increasingly, however, it appears that there was negligence or worse in the events leading to the explosion of the rig.

News reports have described warning signs that went unheeded and deviations from standard industry practice: Gas was seeping into the well. The blowout preventer was leaking. Concerns were raised about the well casing. There were signs of trouble with the cement in the well. Mud circulation was limited. A final concrete plug was not properly installed. And when disaster struck, the blowout preventer failed.

Prosecutors must examine all witness statements, internal documents and any physical evidence that remains after the explosion. But if the news articles are accurate, the Justice Department should bring criminal charges against BP, and possibly Transocean and Halliburton, for violations of the Clean Water Act, the Migratory Bird Treaty Act and the Refuse Act -- the same charges brought in the Exxon Valdez case. Exxon ultimately paid a criminal fine of $125 million, the largest ever for an environmental crime.

In this case, though, a fine of that size may not satisfy the many people who are outraged by the gulf spill. The public expects felony charges and multibillion-dollar fines.

All three of the environmental laws that may have been broken provide for criminal penalties, but only the Clean Water Act includes felony charges. For the government to prove a felony violation of the act it would need to demonstrate that the defendant knew oil would be discharged into United States waters. A felony violation can be easy to prove when a business dumps waste into a river, but it's harder in the case of an oil spill.

No one thinks BP, Transocean or Halliburton intended to spill oil into the gulf. But given good evidence, the government could argue that the companies cut corners or deviated so much from standard industry practice that they knew a blowout could happen. Or, the government could argue that, even if the initial gusher involved only negligence (a misdemeanor under the Clean Water Act) each additional day represents a knowing violation. Both approaches are untested, because there have been so few oil spill cases -- but the gulf disaster warrants trying aggressive strategies.

Ultimately, the public would like to see oil company executives brought up on felony charges, leading to jail time that might inspire more careful drilling in the future. But only those directly involved in misconduct can be charged with crimes, and it is likely that executives of BP, Transocean and Halliburton played no such personal role in the disaster.

Faced with these challenges, the Justice Department must find out whether BP or the other companies misled the government about the integrity of the well, or the amount of oil gushing from it. This could be the basis for charges of felony obstruction of justice against the companies and individuals involved.

The Justice Department's case against BP will be strengthened by the company's history of criminal violations, which offer evidence of a culture that puts profits before the environment and worker safety. After a 2005 explosion at its Texas City refinery, which killed 15 workers, BP pleaded guilty to violating the Clean Air Act by failing to maintain a safe facility. It also pleaded guilty to violating the Clean Water Act by having corroded pipelines that caused oil spills in Alaska's Prudhoe Bay in 2006.

Criminal prosecution cannot restore the gulf or end the suffering of the people who live along its shores. But it could ensure just punishment. And it would make it more likely that the companies involved would pay all claims for damage to the gulf coast, because the $75 million cap on liability, set by the Oil Pollution Act of 1990, does not apply in criminal cases.

Most important, criminal prosecution would send a clear message that an environmental disaster of this magnitude cannot be allowed to happen again.

**Ontario moves to shift funds for overflow upgrade (*Mansfiedl News Journal*)**

BY LOU WHITMIRE • News Journal • June 4, 2010

ONTARIO -- Council is preparing to move $25,000 into the sewer maintenance fund to comply with an order from the Environmental Protection Agency.

The money would help buy and install a sanitary sewer overflow outlet with a flow monitor at the Rock Road lift station. Heavy rain creates an overflow at the location, Mayor Larry Collins said.

The EPA has given the city five years to correct the situation.

"That means we do an equalization basin, and there's many forms that basin can take. It can be an underground, an above-ground type of thing. It can be a silo," Collins said. "We do have to present a plan to the EPA by July 31."

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