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

**Prepared by the Office of Public Affairs**

Monday, February 18, 2013

Table of Contents
(BNA articles can be viewed online **http://Intranet.epa.gov/desktop/news.htm**

**Friday, July 30, 2010**


ADMINISTRATOR JACKSON ..... 4
More worry litters the gulf (*Los Angeles Times*) ..... 4
Gulf of Mexico Has Long Been Dumping Site (*New York Times*) ..... 6
Michigan oil spill: Could this have been prevented? (*Detroit Free Press*) ..... 11
North Texas clean air panel looks for fresh approach on fighting smog (*Dallas Morning News*) ..... 14
EPA rejects Va. AG's greenhouse gases challenge (*Associated Press*) ..... 17
Critics of EPA's Jackson say she bows to both extremes (*Legal News Line*) ..... 17
Environmental, Industry Groups Oppose E15 Waiver In Senate Energy Bill (*Inside EPA*) ..... 20
EPA: Michigan oil spill may have exceeded 1M gallons (*USA TODAY*) ..... 21
EDITORIAL / OP-ED / COMMENTARY / LETTERS ..... 22
Giving Up on a Climate Change Bill (*New York Times*) ..... 22
Atrazine has been studied enough now (*DesMoines Register*) ..... 23
Editorial: Senate wilts on warming (*Philadelphia Inquirer*) ..... 24
AIR ..... 25
EPA rejects climate study petitions (*Boston Globe*) ..... 25
Texas sues EPA over flexible permit ruling (*Examiner*) ..... 26
In Alaska's expanses, who looms larger?; (*Washington Post*) ..... 27
*Texas proposes new rules for shale gas drilling (*Associated Press*)* ..... 32
Texas Files Suit Over EPA Disapproval Of 'Flexible' Air Permitting Program (*Inside EPA*) ..... 34
Ruling Could Hinder Activists' Push For Climate, Emissions Nuisance Suits (*Inside EPA*) ..... 34
Senators Urge EPA Against Pursuing Stricter NAAQS For Coarse Particles (*Inside EPA*) ..... 38
Activists Claim Voinovich Riders Would Weaken Senate Air Pollution Bill (*Inside EPA*) ..... 39

Advisers Push Non-Binding EPA Standards To Reduce Indoor Air Risk (*Inside EPA*) ..... 40
BP SPILL ..... 42
Team of federal investigators forms to launch criminal inquiry on spill (*Boston Globe*) ..... 42
Dispersants Used on BP Oil Spill Still Cause for Concern (*Newsinferno.com*) ..... 44
BP media blackout news: Whistle blower claims conspiracy between BP and EPA to hide oil spill impact (Examiner) ..... 45
Whistle blower: BP dispersant poses greater risk than admitted: EPA does flip flop on Corexit (*Examiner*) ..... 46
BUDGET ..... 47
Democrats Block GOP Efforts To Limit EPA Authority In FY11 Budget Bill (*Inside EPA*) ..... 47
CLIMATE CHANGE ..... 49
Senate Impasse On Climate Legislation Shifts Focus To Regulatory Efforts (*Inside EPA*) ..... 49
Key Groups Quietly Push Tiered CCS Liability Plan For Future Climate Bill (*Inside EPA*) ..... 51
ENERGY ..... 54
U.S. crackdown forces Calif. to yank home retrofit loans (*Greenwire*) ..... 54
Pipeline Permit Delay May Allow State Dept. To Address GHG Concerns (*Inside EPA*) ..... 55
ENFORCEMENT ..... 57
Lawmakers Plan Bill Giving EPA 'Solid Waste' CCR Enforcement Authority (*Inside EPA*) ..... 57
ENVIRONMENTAL JUSTICE ..... 60
Corps backs New Hill waste plant (*News & Observer*) ..... 60
EPA Bids To Institutionalize Equity Reviews Before Administration Change (*Inside EPA*) ..... 61
FUEL ..... 64
Oil leak threatens Lake Michigan (*Washington Post*) ..... 64
Dive to Lake Champlain tug now set for the spring (*Associated Press*) ..... 65
Story also appeared: *Washington Post* ..... 65
Regulators Warned Company on Pipeline Corrosion (*New York Times*) ..... 65
EPA says Michigan spill appears contained (*Reuters*) ..... 67
Mich. spill larger than originally thought; company's response questioned (*Greenwire*) ..... 68
EPA delays dive on sunken Lake Champlain tugboat (*Press Republican*) ..... 69
OMB reviews new fuel-economy labels crafted with green cars in mind (*Greenwire*) ..... 70
Engine Makers Wary Of Retailer, Refiner Liability Protections In E15 Bills (*Inside EPA*) ..... 71
GENERAL ..... 74
Sunstein Sets High Bar For New Regulatory Review Executive Order (*Inside EPA*) ..... 74
GRANTS ..... 75

Going eye to eye with rural poverty (*St. Petersburg Times*) ..... 75
HAZARDOUS WASTE ..... 77
EPA Overcomes DOD Resistance To Issue Munitions Cleanup Guide (*Inside EPA*) ..... 78
Draft DOD Cleanup Manual Reignites Munitions 'Waste' Debate With EPA (*Inside EPA*) ..... 80
MINING ..... 81
Coalition Seeks Cuts To Federal Programs While Preserving EPA Funding (*Inside EPA*) ..... 81
EPA Quietly Expands Mountaintop Mine Guidance Benchmark To Alabama (*Inside EPA*) ..... 82
PESTICIDES ..... 86
Court Rejects Industry Bid For Novel EPA Hearing On Pesticide Safety Ruling (*Inside EPA*) ..... 86
SUPERFUND ..... 88
$13M deal to speed cleanup of Mass. Superfund site (*Associated Press*) ..... 88
Story also appeared: *Boston Herald, Boston Globe* ..... 88
Nuclear Waste Blending Proposal Could Violate Superfund Cleanup Policy (*Inside EPA*) ..... 89
Rep. Pallone Says Prospects 'Doubtful' For Reinstating Superfund Tax (*Inside EPA*) ..... 90
TOXICS ..... 91
Two High companies settle with EPA (*Lancaster Online*) ..... 91
EPA Urges House To Pass Bill On Toxic Substances Control (*NASDAQ*) ..... 93
Democrats Expand Whistleblower Protections In Revised TSCA Reform Bill (*Inside EPA*) ..... 94
Revised House TSCA Bill Fails To Quell Industry Concerns Over Scope (*Inside EPA*) ..... 96
Senate Oil Spill Response Bill Requires Disclosure Of 'Fracking' Chemicals (*Inside EPA*) ..... 99
WATER ..... 100
Enviro group, Md. farmers petition 'Big Chicken' (*BusinessWeek*) ..... 100
EPA Announces Study to Re-Examine the Health Risks of Hydrofracking (*Circle of Blue WaterNews*) ..... 101
EPA Eyes Alternative Authorities To Address Concerns Over Fracking (*Inside EPA*) ..... 103
Fate Of Chemical Security Bill Likely To Hinge On Conference Negotiations (*Inside EPA*) ..... 106
Appellate Court Backs Strict EPA Approach For New Gulf Drilling Wells (*Inside EPA*) ..... 109
House Spill Bill Bars Dispersant Use Pending Inter-Agency Study Results (*Inside EPA*) ..... 111
Iowa Cities' Suit May Test Strict New EPA Limits On Wastewater Discharges (*Inside EPA*) ..... 113

## ADMINISTRATOR JACKSON

### More worry litters the gulf (*Los Angeles Times*)

July 30, 2010 Friday
Home Edition
LATEXTRA; National Desk; Part AA; Pg. 2
More worry litters the gulf;
BP has hauled tons of oily debris to landfills. A Mississippi county is raising safety issues.
By Molly Hennessy-Fiske
Even though BP's busted well has stopped spewing oil, the disaster is still generating tons of soiled boom and other oily waste that federal and state laws allow to be buried at specially designated dumps, some near residential neighborhoods.

Officials in one Mississippi area, however, raised concerns about the magnitude and safety of the oil spill waste being buried nearby. On Thursday, Harrison County officials blocked it from being dumped in their community -- potentially opening the door for others in the region to do the same.

County supervisors voted in June to stop BP from dumping waste at subcontractor Waste Management Inc.'s Pecan Grove landfill in Pass Christian, Miss. When Waste Management balked, the county board commissioned independent testing of the waste and subpoenaed the company's test results that reportedly showed it was not hazardous.

But rather than prolong the dispute, BP and Waste Management decided to stop dumping at Pecan Grove. The county, however, has continued with its waste testing and results are pending, said Tim Holleman, the county board's attorney.

"Ultimately, I think people will raise the same issue elsewhere," Holleman said.

A BP spokesman confirmed the agreement but defended the company's waste management plan.

"This is industrial waste, and it's suitable for industrial landfills," said BP spokesman Mark Proegler. "If the localities have concerns about that, we're certainly willing to talk with them."

Spill waste is hauled from beaches and the ocean to more than 50 regional storage sites in all four gulf states, where it is packaged for shipment to recyclers, liquid waste processors and landfills. So far the spill has generated about 35,600 tons of solid waste.

In Louisiana, the formerly abandoned Grand Isle Shipyard has been transformed into a waste storage site, where about 150 workers pump oil from skimmer boats into storage tanks. More than 7.7 million gallons of oily liquid waste have been collected. At the docks, workers dump plastic bags of oily debris into dozens of dumpsters.

The sprawling operation is indicative of the cleanup industry that has grown out of the nation's worst oil spill disaster. The now-capped well was spewing as many as 60,000 barrels of oil a day since the April 20 explosion of the Deepwater Horizon rig.

"Typically with a spill you'd have a bell-shaped curve where you deploy the boom, recover it and go home," said Joe Kramer, project manager with BP subcontractor Miller Environmental Services Inc. "It's more of an ongoing operation here."

Waste samples are tested at storage sites by BP subcontractors to ensure they are, by law, nonhazardous. Much oil industry waste is not considered hazardous under a 1980 exemption carved out of the federal law.

Oil waste can be dumped in industrial-graded landfills, which are more strictly monitored than municipal dumps but not as isolated or restricted as hazardous waste sites.

"These are the type of facilities you want this waste to go to," said Sam Phillips, solid waste permits administrator for the Louisiana Department of Environmental Quality. "If something goes wrong, there are things we can do to prevent it from getting into a drinking-water aquifer."

Members of Congress from the Gulf Coast said they intended to hold BP accountable for the health and safety of communities where spill waste was dumped.

"Gulf Coast residents have a right to be concerned about the waste placed in their landfills, and BP and its agents should do everything they can to work with local officials to address these concerns," said Sen. Thad Cochran (R-Miss.) after a trip to spill-affected areas this month.

Environmental Protection Agency Administrator Lisa Jackson said tests by BP and her agency had shown that oil spill waste was not hazardous.

"The constituents of most of it are industrial waste, not hazardous, man-made chemicals, and it's testing that way," said Jackson, a chemical engineer by training. To reassure residents, Jackson ordered more EPA testing last month and required BP to release more information about waste testing, tracking and disposal.

But many gulf residents still worry.

"Anything that's man-made can fail," Harrison County Supervisor Marlin Ladner, a Mississippi lawmaker, said of the landfills. "The rig shows us that."

molly.hennessy-fiske@ latimes.com

**Gulf of Mexico Has Long Been Dumping Site (*New York Times*)**

July 30, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 1
By CAMPBELL ROBERTSON
HOUMA, La. -- Loulan Pitre Sr. was born on the Gulf Coast in 1921, the son of an oysterman. Nearly all his life, he worked on the water, abiding by the widely shared faith that the resources of the Gulf of Mexico were limitless.

As a young Marine staff sergeant, back home after fighting in the South Pacific, he stood on barges in the gulf and watched as surplus mines, bombs and ammunition were pushed over the side.

He helped build the gulf's very first offshore oil drilling platforms in the late 1940s, installing bolts on perilously high perches over the water. He worked on a shrimp boat, and later as the captain of a service boat for drilling platforms.

The gulf has changed, Mr. Pitre said: "I think it's too far gone to salvage."

The BP oil spill has sent millions of barrels gushing into the Gulf of Mexico, focusing international attention on America's third coast and prompting questions about whether it will ever fully recover from the spill.

Now that the oil on the surface appears to be dissipating, the notion of a recovery from the spill, repeated by politicians, strikes some here as short-sighted. The gulf had been suffering for decades before the explosion of the Deepwater Horizon rig on April 20.

"There's a tremendous amount of outrage with the oil spill, and rightfully so," said Felicia Coleman, director of Florida State University's Coastal and Marine Laboratory. "But where's the outrage at the thousands and millions of little cuts we've made on a daily basis?"

The gulf is one of the most diverse ecosystems in the hemisphere, a stopping point for migratory birds from South America to the Arctic, home to abundant wildlife and natural resources.

But like no other American body of water, the gulf bears the environmental consequences of the country's economic pursuits and appetites, including oil and corn.

There are around 4,000 offshore oil and gas platforms and tens of thousands of miles of

pipeline in the central and western Gulf of Mexico, where 90 percent of the country's offshore drilling takes place.

At least half a million barrels of oil and drilling fluids had been spilled offshore before the gusher that began after the April 20 explosion, according to government records.

Much more than that has been spilled from pipelines, vessel traffic and wells in state waters -- including hundreds of spills in Louisiana alone -- records show, some of it since April 20.

Runoff and waste from cornfields, sewage plants, golf courses and oil-stained parking lots drain into the Mississippi River from vast swaths of the United States, and then flow down to the gulf, creating a zone of lifeless water the size of Lake Ontario just off the coast of Louisiana.

The gulf's floor is littered with bombs, chemical weapons and other ordnance dumped in the middle of last century, even in areas busy with drilling, and miles outside of designated dumping zones, according to experts who work on deepwater hazard surveys.

The likelihood of an accident is low, experts said, but they added that federal hazard mitigation requirements are not strong enough to guarantee the safety of drillers working in the gulf.

Even the coast itself -- overdeveloped, strip-mined and battered by storms -- is falling apart. The wildlife-rich coastal wetlands of Louisiana, sliced up and drastically engineered for oil and gas exploration, shipping and flood control, have lost an area larger than Delaware since 1930.

"This has been the nation's sacrifice zone, and has been for 50-plus years," said Aaron Viles, campaign director for the Gulf Restoration Network, a nonprofit group. "What we're seeing right now with BP's crude is just a very photogenic representation of that."

History of Neglect

All along the coast, people speak of a lack of regulatory commitment and investment in scientific research on the gulf by state and federal lawmakers.

They note, for example, that over the last decade, the Environmental Protection Agency's financing for the Chesapeake Bay Program, a regional and federal partnership, was nearly five times the amount for a similar Gulf of Mexico program, and a Great Lakes program was given more than four times as much.

"The funding had never been equivalent to other great water bodies," said Lisa Jackson, the administrator for the Environmental Protection Agency. "That's absolutely true. But it's also absolutely true that this administration changed that long before the

spill."

While the Gulf of Mexico program financing remains at roughly the same levels, Ms. Jackson pointed to other programs to address gulf health that have been created and received tens of millions of dollars in the last two years.

On July 19, the Obama administration announced the recommendations of the Interagency Ocean Policy Task Force, a committee created in 2009 to coordinate governance over the country's major bodies of water.

The White House also announced the creation of a gulf restoration road map before the spill to address the long-term problems on the Louisiana and Mississippi coasts.

The details of some of these federal plans remain vague, and the financing is viewed as just a start, but they have raised hopes of a more effective federal approach to the gulf's problems -- an approach that has long been missing, say scientists, lawyers and environmental advocates here.

Ms. Jackson added that it is not all about money. Some of the key coastal issues, like control of the Mississippi River, present thorny jurisdictional complications between the federal government and the states.

And while billions of dollars would be required to restore the coast -- much more than has already been committed -- the maintenance of a healthy gulf also demands rigorous enforcement of regulations.

Some of the strongest resistance to tough regulation, as well as the most permissive attitude toward industry and property development, has come from the Gulf States themselves.

While the states formed an alliance in 2004 to address the gulf's overall health, the group includes some of the poorest states in the country, and they are concerned that tighter rules could chase away jobs.

In a federal ranking of states for annual toxic release, 3 of the top 10 are along the gulf.

This has led to a cycle of lax oversight. Members of several national environmental groups said they had found much of the gulf a hostile fund-raising and political atmosphere -- a point echoed by Paul Templet, a former secretary of the Louisiana Department of Environmental Quality.

"They don't have any support in state government," Mr. Templet said of the groups. "They do a cost-benefit analysis, and they decide to spend their money elsewhere."

A Regional Difference

But without the aggressive watchdog role played by well-financed environmental groups in places like California and the Mid-Atlantic, threats to the gulf have largely gone unmonitored.

Kieran Suckling, a founder of the Center for Biological Diversity, said he was shocked in the days after the Deepwater Horizon spill to discover the United States Minerals Management Service's lax oversight of the offshore drilling industry.

"The blatant, extremely public actions of the M.M.S. would not survive for 10 minutes if they were doing this very same thing in the Northeast or the Pacific Northwest," he said.

But his organization, like many others, did not have an office on the gulf.

"The environmental movement was either so far removed from it that it was unaware, or it was aware and afraid to challenge it because of local politics," Mr. Suckling said. "Or it was unwilling to challenge because it has written off the gulf as America's dumping ground."

By the time the environmental movement gained steam, in the 1970s, the Gulf of Mexico had already established a reputation as a place where the country did its dirty work.

Oil and gas companies have been drilling offshore in the central and western gulf for more than 60 years, providing tens of thousands of jobs for states with ailing agrarian economies.

In that time, only the Ixtoc I spill off Mexico in 1979 has come close to the Deepwater Horizon disaster. But still, a report from the Ocean Studies Board and other federal scientific advisory groups found that the waters of the northwestern gulf take on more oil on average per year, from spills, natural seeps and land-based sources like coastal refineries and everyday transportation, than any other North American marine waters.

According to data from the Minerals Management Service compiled and analyzed by Toxics Targeting, a firm that documents pollution and contamination, at least 324 spills involving offshore drilling have occurred in the gulf since 1964, releasing more than 550,000 barrels of oil and drilling-related substances. Four of these spills even involved earlier equipment failures and accidents on the Deepwater Horizon rig. Thousands of tons of produced water -- a drilling byproduct that includes oil, grease and heavy metals -- are dumped into the gulf every year. The discharges are legal and regulated by the Environmental Protection Agency.

But in the early 1990s, Robert Wiygul, an environmental lawyer who works on the Gulf Coast, brought at least a half-dozen lawsuits against companies that were found to be dumping produced water in shallow areas along the coast without any permit at all, citing little to no enforcement by the E.P.A. and little concern from regional politicians.

The E.P.A. later tightened regulations, including an outright ban on dumping produced waters near shore. But Mr. Wiygul described the situation as typical.

"If you'd had high-level politicians saying, 'Y'all need to do this, this needs to happen,' you would have seen a different situation there," he said.

A Double-Edged Sword

Some of the alternatives to oil and gas could present their own problems to the gulf. While many farm groups, along with the Obama administration, are pushing for an expansion of ethanol-based fuels, such an expansion could mean more corn grown in the Midwest. That in turn could mean more nitrogen-rich fertilizer pouring into the gulf from the Mississippi River.

The nitrogen discharged into the Mississippi -- 1.5 million tons of it yearly, from fertilizer, as well as urban runoff and sewage plants -- creates a feeding frenzy among the phytoplankton when it enters the gulf. When the phytoplankton decompose, oxygen in the water is reduced so significantly that little life can exist.

That man-made area of dead water, called a hypoxic zone, is second in size only to a similar zone in the Baltic Sea. And its source, for the most part, is in states hundreds of miles from the gulf.

"One of the problems with the gulf as an ecosystem is its insults come from so damn far away," said Oliver Houck, a lawyer at the Tulane Environmental Law Clinic in New Orleans.

The Clean Water Act has been effective at regulating "point source" pollution from specific factories and waste plants. But the act leaves much up to the states when it comes to regulating more diffuse sources of pollution, like runoff. And agricultural runoff is explicitly exempt from regulation under the act.

That does not mean that the states and the E.P.A. are powerless to curtail upstream pollution, said Nancy Rabalais, an expert on gulf hypoxia and executive director of the Louisiana Universities Marine Consortium. They just have been reluctant to do so in the past.

She said some positive steps had been made recently, including a new four-year, $320 million federal initiative dedicated to substantially reducing the nitrogen coming into the gulf by working with agricultural states upriver. But the plan is only a start, she said, and she has not seen the states along the Mississippi, including those in the gulf, push for the financing needed to make a measurable difference.

Mr. Pitre is skeptical that anything will change, given the economic realities. The BP spill aside, much of the damage to the gulf has been gradual and piecemeal. And people still believe that the gulf is big enough to absorb it.

"You can fool people," Mr. Pitre said. "But you can't fool the fish."

URL: http://www.nytimes.com

Posted: July 29, 2010

**Michigan oil spill: Could this have been prevented? (*Detroit Free Press*)**

Firm notified of potential problems along pipeline
BY ERIC D. LAWRENCE, CHRISTINA HALL and CHRIS CHRISTOFF
FREE PRESS STAFF WRITERS
MARSHALL -- The company that owns the pipeline that leaked thousands of gallons of oil into the Kalamazoo River near here was notified twice this year of potential problems involving old pipe prone to rupturing and an inadequate system for monitoring internal corrosion -- one of a pipeline's biggest threats.

Officials with Enbridge Energy Partners, the Canadian company that owns the pipeline, said Wednesday that the company invests heavily in safety, and the leak's cause has not yet been determined.

When asked about potential problems cited in government oversight reports involving Enbridge's 1,900-mile Lakehead System -- which includes the Line 6B section where the oil leaked -- company spokesman Joe Martucci said that he hasn't seen them but "overall, Enbridge has an ongoing integrity management program for its pipeline system."

It was not clear whether the company acted on the government notices -- sent early this year -- or whether the concerns played any role in the leak.

In one report, the federal Pipeline and Hazardous Materials Safety Administration raised concerns in January about Enbridge discontinuing the use of monitoring systems for corrosion inside Line 6B, saying its plans for ensuring pipe safety while a new monitoring system was brought on line didn't meet standards.

The PHMSA didn't penalize the company, but the agency advised it to correct the problem.

The National Transportation Safety Board continued its probe Wednesday.

Gov. Jennifer Granholm sharply criticized the Environmental Protection Agency and Enbridge for a "completely inadequate" response to the spill, which has reached Morrow Lake.
Granholm fights for spill help

Hazelett Kent surveyed the tar-colored pond a few feet from the Kalamazoo River on Wednesday as recovery hoses sucked oil into waiting tankers.

The 61-year-old mail carrier has lived a few feet from this spot downstream from the Ceresco dam near Battle Creek for 20 years.

"Just sadness, no anger," he said of the oil from a pipeline leak that has blackened his yard. "I happened to be in the wrong place at the wrong time."

Jesse Jacox won't be canoeing the river this week as he has for years.

"It's a cheap source of entertainment," the 55-year-old builder said as he watched rainbow swirls of crude oil float by on the water's surface. "It saddens me to death. I don't see any way they're going to clean all that."

Gov. Jennifer Granholm criticized the Environmental Protection Agency and the Canadian-company Enbridge for their response to the oil spill, which she said threatens to contaminate a stretch of the river that is undergoing contamination cleanup under the federal Superfund program.

If that happens, the governor said, it would "completely explode" the cost of pollution cleanup in the area that stretches about 80 miles to Saugatuck.

The governor said the eight boom sites were a fraction of the 20 boom sites that she was told by the EPA would be in place -- along with more vacuum trucks and skimmers. Granholm said the oil has reached Morrow Lake between Kalamazoo and Galesburg, about 35 miles, and could reach Lake Michigan without more intense containment measures. The Coast Guard, she said, has been called in to assist with the spill.

"The situation is very, very serious," Granholm said in a conference call with the news media. She was accompanied by Capt. Tom Sands, deputy director of emergency management for the Michigan State Police.

The EPA issued a statement Wednesday night saying that about 25 miles of the river were affected.

"EPA and other federal and state agencies mobilized immediately in response to this spill and have taken a series of steps to minimize the damage this spill does to the river and surrounding communities," EPA Administrator Lisa Jackson said. "This is a serious spill that has the potential to damage a vital waterway and threatens public health."

But Robert Hainer Jr., who owns property on Morrow Lake in Comstock Township, east of Kalamazoo, confirmed Granholm's report of the oil reaching the lake. He said he could smell a strong odor of oil and saw an oil sheen on the lake a foot off shore on Wednesday afternoon.

Hainer added that a sign was posted Wednesday afternoon by the Kalamazoo County Health Department on the edge of his property along the 1,000-acre lake warning people that the river and lake were off-limits to swimming, boating and fishing until further notice. "Recent contamination as a result of the Enbridge Energy oil spill has made this river unsafe to use," the sign stated.

Patrick Daniel, Enbridge president and CEO, said Wednesday that the company's spill estimate remained at 19,500 barrels, or 819,000 gallons, of oil. Staff from the office of U.S. Rep. Mark Schauer, a Battle Creek Democrat, said that the EPA had told them the amount of oil spilled could top 1 million gallons.

Cleanup workers continued their efforts as torrential rains early Wednesday afternoon added to water levels in the river, which was already at flood stage. Enbridge spokeswoman Terri Larson said the impact of the estimated three-quarters of an inch of rain is expected to be minimal.

Matt DiPaola, an Enbridge inspector working at the point where Talmadge Creek carried oil from the spill into the Kalamazoo River south of Marshall, told the Free Press on Wednesday that workers have stopped any more oil from getting into the river.

But Granholm, property owners evacuated from along the river and others questioned whether the effort may be too little too late as the oil continued to work its way toward Kalamazoo. Hydrologists with the National Weather Service have previously said the oil, if not stopped, could reach Lake Michigan by Sunday.

Enbridge officials also have come under fire about the timing of the spill report. Company officials reported the spill as soon as they were allowed under government regulations Tuesday morning, but on Wednesday, that time was revised to 1:33 p.m. Tuesday. But 911 calls of natural gas odor were reported in the area Sunday evening -- more than a dozen hours after Enbridge said it learned of the leak.

Durk Dunham, Calhoun County's director of emergency management, said the time line is being investigated.

Larson said the company is continuing to try to contain the leak and stop the flow down the river, with at least 1,000 barrels of oil and water taken to a company terminal. It is doubling its workforce to 400 and has built an access road to the area, which was flooded from a prior rainfall. Crews plan to excavate around the pipe to determine whether the flow has stopped, Larson said.

A Wednesday night news conference to provide an update of the spill was postponed because of scheduling conflicts.

Health officials continued to warn residents Wednesday to stay away from the river.

Air and water quality sampling is being conducted to check the levels of benzene and other volatile organic compounds. Oil fumes continued to waft from the river Wednesday, but some residents said the smell had lessened in spots.

The full extent of the impact on wildlife remained unclear, and a Free Press reporter and photographer were told they could not enter a wildlife recovery center set up Wednesday in the Marshall area.

An official with the Michigan Department of Natural Resources and Environment said wildlife recovery efforts were being hampered by a lack of respirators for personnel.

Contact ERIC D. LAWRENCE: elawrence@freepress.com. Staff writer Zlati Meyer contributed to this report.

**North Texas clean air panel looks for fresh approach on fighting smog (*Dallas Morning News*)**

12:33 AM CDT on Friday, July 30, 2010
By RANDY LEE LOFTIS / The Dallas Morning News
rloftis@dallasnews.com
ARLINGTON – A local environmental effort has begun with a big mandate: to rethink how to make the air healthy for people.

Past attempts to cut smog in North Texas have yielded some success – levels are down, especially since 2007 – but not nearly enough, two decades of ozone readings show.

In addition, air pollution from the recent boom in Barnett Shale gas drilling might be boosting smog in ways that no previous plan considered.

A volunteer committee of elected officials and business and environmental representatives started work on the task Thursday. Over months, the newly reconstituted North Texas Clean Air Steering Committee, which last met in 2006, will look for new ideas and re-emphasize some old ones that were never implemented.

New realities could lead to demands for a whole new approach: deeper pollution cuts, more earth-friendly electricity, and greener ways of manufacturing products and of moving goods and people around town.

That's because more of the same might not be enough to meet new health-based federal smog limits due next month, which will be the toughest yet, or to satisfy medical researchers, who say evidence of smog's harm to people keeps piling up.

An analysis by The Dallas Morning News shows that at the current rate of improvement, the North Texas air might remain unhealthy for a decade.

Earlier state plans were often aimed at meeting minimum federal requirements, a strategy that some committee members and planners said won't work now.

"It would be unfortunate if [the new steering committee] took that approach," Larry Starfield, deputy regional administrator of the Environmental Protection Agency, told the group.

Michael Morris, transportation director for the North Central Texas Council of Governments, said the public is demanding a comprehensive attack on air pollution.

"They want us to launch a very aggressive effort," he said.

Texas' top environmental regulator has criticized the Obama administration's tougher approach on ozone, but he told the committee that state officials will aim to meet the new standard.

"We're working toward that," said Bryan Shaw, chairman of the Texas Commission on Environmental Quality.

Outside the committee meeting, Shaw, a former Texas A&M environmental engineering professor, said he disagreed with the administration's interpretation of medical evidence against ozone. The state has sued the EPA to prevent a tighter ozone standard.

That doesn't mean Texas will resist complying, Shaw said. "Once it's the standard, it's the standard," he said.

More pollution cuts

Because the air in North Texas still has too much ozone under the existing standard, the EPA this week said it would reclassify the region from being a moderate smog violator to a serious one. That decision, dictated by the Clean Air Act, will require a new round of planning and some additional pollution cuts.

Evidence shows that North Texas smog levels have declined, despite a 24 percent population increase in the region from 2000 to 2009.

Reasons for that are uncertain. Shaw credited a state smog-fighting plan adopted in 2007, a major state investment in incentives for cleaner industrial engines, and nationwide federal rules that mandated cleaner vehicles and fuels.

The recession is another possible factor. Construction and manufacturing slowdowns and a drop in truck traffic may have led to less pollution.

North Texas regional planners are studying transportation figures to see if hard times might have played a role in reducing emissions. If so, an economic rebound, while good news overall, might wipe out some of the observed gains.

This year, the region almost achieved a national ozone standard, or limit, that dates from 1997. Since then, medical researchers have learned that the ozone level allowed by that standard, 85 parts per billion, poses health threats.

New standard on way

In 2008, the EPA under President George W. Bush adopted a tighter standard of 75 ppb that many experts said was still too high. President Barack Obama's EPA administrator, Lisa Jackson, is expected to announce a new standard between 60 to 70 ppb by Aug. 31.

The EPA's Starfield told the steering committee that he didn't know the new level. He said that the EPA estimates that a 70 ppb limit would prevent 2,200 heart attacks, 23,000 asthma cases and 770,000 missed work or school days a year.

"This is what we're talking about," Starfield said.

The News examined ozone readings from 1991 to 2009 and projected the current downward trend to future years. Ozone levels would not reach 70 ppb for at least 10 years.

The gas-drilling boom in the Dallas-Fort Worth region's Barnett Shale area introduces another wild card. Drilling, pumping, compressing and transporting natural gas emits smog-causing compounds, but the Texas Commission on Environmental Quality is just now compiling numbers that might show how much and what effect they might have.

Those numbers will be critical to writing an effective smog plan but might not be available in time, said Rita Beving of Dallas, a steering committee member representing Public Citizen and the Sierra Club.

TCEQ officials have questioned whether Barnett Shale emissions are boosting local smog, as EPA Regional Administrator Al Armendariz maintained in an academic study he wrote before joining the EPA last year.

David Brymer, director of the TCEQ's air quality division, noted that smog levels kept declining even as gas companies drilled thousands of new wells since 2007. He stopped short of saying the gas industry isn't adding to smog.

"I'm not trying to make a statement about causality," Brymer said.

Others say gas drilling can't be ruled out as a smog contributor. The highest local smog levels used to be recorded in Frisco, but now they're in western Tarrant County.

Planners need to "find out what's going on in the west," said Morris, the regional transportation director.

The steering committee has no power except to suggest approaches to the state. In 2006, the panel adopted 15 resolutions calling for pollution cuts, including tighter limits on cement kilns. They didn't make it into state plans.

"We turned them in to Austin; Austin ignored them," committee member Jim Schermbeck, director of environmental group Downwinders at Risk, told TCEQ's Shaw.

Shaw denied ignoring the 2006 ideas but pledged to work more closely with local interests.

"I have a great deal of respect for local input," he said.

**EPA rejects Va. AG's greenhouse gases challenge (*Associated Press*)**

July 29, 2010, 5:53PM
RICHMOND, Va.
Virginia Attorney General Ken Cuccinelli's challenge to the federal government's conclusion that greenhouse gases are dangerous to people has failed on the regulatory front but remains alive in court.

The Environmental Protection Agency on Thursday rejected 10 petitions for reconsideration of its finding that carbon dioxide and other emissions contribute to dangerous global warming. One of those petitions was filed by Cuccinelli, a global warming skeptic.

Cuccinelli also has asked a federal appeals court to review EPA's findings. He said Thursday that the court is likely to find that EPA has considered new information without notice or public comment.

EPA Administrator Lisa Jackson said the petitions were based on selectively edited data and provided no evidence refuting the agency's conclusions.

**Critics of EPA's Jackson say she bows to both extremes (*Legal News Line*)**

BY JUSTIN ANDERSON
Jackson
Soon after President Barack Obama tapped Lisa P. Jackson to take the reins at the federal Environmental Protection Agency, the agency announced it would be re-reviewing the commonly used farming pesticide atrazine and its potential health effects.

This after the EPA, during the term of President George W. Bush in 2006, declared that atrazine posed no such health risks.

Some critics of the re-review say it's an activist-driven action.

So what's the story? Who, if anyone, is guiding Jackson's decisions?
The EPA says proper stewardship of public health and new scientific research that points to potential health effects of atrazine is the reason for the re-review.

And while Jackson was quoted in the New York Times as saying at her confirmation hearing in January 2009 that, "Science must be the backbone of what EPA does," some have criticized Jackson as bowing to either of both extremes in the environmental debate -- industry and environmental activists.

A month prior to her confirmation hearing, a group called Public Employees for Environmental Responsibility pleaded with Obama to reconsider appointing Jackson to head the EPA.

In a news release, the group said that while Jackson headed the New Jersey Department of Environmental Protection, she kept strange company - with industry leaders and lobbyists.

Meanwhile, the group says, the state saw an increase in the contamination of drinking water and mismanagement of toxic waste clean up under Jackson's watch.

The group chided Jackson for appointing a lobbyist for the New Jersey Builders Association as an assistant commissioner to deal with water quality and land use permits. The group added that Jackson convened an "industry-dominated task force" to overhaul the state's pollution guidelines.

"While Ms. Jackson has a compelling biography, little of what occurred during her 31-month tenure commends her for promotion," the group's executive director, Jeff Ruch, said in the release. "Under her watch, New Jersey's environment only got dirtier, incredible as that may seem."

Ruch went on to characterize Jackson as "a pliant technocrat who will follow orders."

"If past is prologue, one cannot reasonably expect meaningful change if she is appointed to lead EPA," Ruch said.

He added, "Given what actually transpired in New Jersey, putting Ms. Jackson in a key position for guiding a national global warming effort would be imprudent. The Obama transition should take a little more time to find the right choice for this critical job."

Nevertheless, according to Jackson's biography on the EPA Web site, New Jersey Gov. Jon S. Corzine declared after her confirmation: "The American people have gained a tireless public servant and a tenacious guardian of the environment."

But not all Jackson's critics suspect she's partial to industry.

Dr. Gilbert Ross, medical director for the consumer education group American Council on Science and Health, said that the group suspects Jackson's call to have another look at atrazine is nothing more than part of an "anti-chemical," "anti-business" agenda.

In a column Ross published in Forbes magazine, he declared: "This effort will do nothing to promote public health while raising needless anxiety and spurring expensive, useless regulation and litigation."

Ross said in the column that the overall push by the EPA to take another look at a wide variety of chemicals has the environmental lobby in a position to push hard because there is a sense that industry fears heavy penalties for non-compliance with any new regulations coming down the pike. Ross cites that the American Chemistry Council has endorsed the EPA's push.

"Too bad ACC thereby implies that its member companies' products have been poisoning our kids all these years," Ross said. "That isn't the case; nonetheless they now want to be perceived as very sorry, eager to mend their ways and thankful for the EPA's help."

Ross added, "If the anti-chemical activists and their colleagues at the EPA actually cared about (public health) issues, they would downplay their chemophobia in the best interests of humanity. Unfortunately, with their goal in sight, that is most unlikely to happen."

The first African American ever to head the EPA, Jackson also served as New Jersey Gov. Corzine's chief of staff following her stint as head of that state's DEP, according to her EPA biography. Before she was named commissioner of the DEP, she was its assistant commissioner for compliance and enforcement and land use management.

Prior to working for the New Jersey DEP, Jackson spent 16 years with the EPA in Washington, D.C. and New York City.

She was born in Pennsylvania and grew up in New Orleans and holds degrees in chemical engineering from Princeton University and Tulane University's School of Chemical Engineering.

Natalie Roy, executive director of the Clean Water Network, called Jackson a "breath of fresh air," compared to the previous administration.

"Our experience thus far has been that she and her senior staff, particularly the water division, appear committed and anxious to be proactive on water quality and quality concerns."

Roy went on to say that Jackson and the EPA could be doing more to address the nation's "water crisis."

"The agency ... needs to take aggressive measures to protect all of our nation's waters including rivers, streams, lakes, coastal areas and wetlands," Roy said in a statement.

"We hope that in the next year, Jackson can follow the model of some of the earlier EPA Administrators, throw partisanship out the window and focus on addressing our country's major environmental issues which include global warming and water adaptation issues among others."

07/30/2010

**Environmental, Industry Groups Oppose E15 Waiver In Senate Energy Bill (*Inside EPA*)**

Environmental and industry groups are jointly urging senators not to include language allowing sale of blends of ethanol above 10 percent (E10) in upcoming energy legislation, warning that such a move would "short-circuit" EPA's ongoing review of a request to allow blends above E10.

In a July 26 letter a coalition of 36 groups calls on Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-KY) to oppose any amendment to the energy bill that would authorize the commercial sale and use of mid-level ethanol blends such as E12 or E15. The groups say that blends above E10 should not be allowed for sale until EPA, the Energy Department (DOE) and industry complete research into possible engine damage from higher blends. *The letter is available on InsideEPA.com.*

"Sound science, environmental protection and consumer safety -- not politics -- must guide this important decision," the groups say. Organizations that signed the letter include the American Lung Association, American Petroleum Institute, Earthjustice, Engine Manufacturers Association, the National Petrochemical & Refiners Association and others.

Ethanol group Growth Energy, which did not sign the letter, has asked EPA for a Clean Air Act section 211 waiver to allow the sale of blends above E10. The agency recently said it would delay a decision until at least September, when DOE is expected to complete its engine testing.

The environmental and industry groups do not identify any senator as pushing an amendment to allow blends above E10 in the pending Senate energy bill, but they urge

Reid and McConnell to reject any such rider. "Such an amendment would be bad for consumers, bad for safety, bad for the environment, and, by placing sound politics over sound science, bad public policy."

The groups also argue that granting higher blends through the energy bill would "short-circuit" the regulatory process under section 211, which requires a "detailed scientific review" before new fuels, additives or fuel blends are introduced into commerce.

Meanwhile, three ethanol groups -- the American Coalition for Ethanol, the National Corn Growers Association and the Renewable Fuels Association -- sent a July 26 letter to EPA Administrator Lisa Jackson asking her to immediately allow the use of E12.

The groups cite suggestions that EPA could conclude its waiver review by approving E15 but only for use in model year 2001 or newer vehicles. "Based on the EPA's delay in acting upon the full E15 waiver and on our concerns that the Agency will restrict the use of E15 to cars made in 2001 and thereafter, we encourage the EPA to formally approve the use of E12 for all motor vehicles as an immediate interim step pending any ongoing additional testing on E15," the groups wrote.

"The EPA has a clear basis and the authority to approve E12. While we think delay on E15 is unnecessary and will slow progress on expanding the use of ethanol, we all agree that approval of E12 is a vital interim step that EPA can and should take," the groups wrote.

Jul 29, 2010

**EPA: Michigan oil spill may have exceeded 1M gallons (*USA TODAY*)**

More than 1 million gallons of oil may have spilled into a major river in southern Michigan after a 30-inch pipeline in Marshall burst Monday, the Environmental Protection Agency now estimates.

The EPA released the update Wednesday evening shortly after Michigan Gov. Jennifer Granholm criticized efforts to contain oil flowing into Talmadge Creek, which runs into the Kalamazoo River.

Granholm warned of a "tragedy of historic proportions" if the oil reaches Lake Michigan, which is at least 80 miles downstream from where oil has been spotted, the Associated Press reports.

"The last thing any of us want to see is a smaller version of what has happened in the Gulf," Granholm said Wednesday. "From my perspective the response has been anemic."

The EPA said it requested the Coast Guard make $2 million available to fund the federal government's operations in response to the spill and the EPA will move additional vessels into the area within days to assist in the response.

EPA Administrator Lisa Jackson said in a statement the agency and Enbridge Inc. are taking action on the "serious spill," the Detroit Free Press reports.

But Granholm publicly criticized efforts, saying more resources brought by the pipeline company and the EPA to fight the spill are " wholly inadquate," according to the Press.

The leak in the 30-inch pipeline, which was built in 1969 and carries about 8 million gallons of oil daily from Griffith, Indiana to Sarnia, Ontario, happened near Enbridge's Marshall, Mich., pump station early Monday. The cause of the spill is under investigation, the AP reports.

The pipeline and pumps were shut down when the spill was discovered. Enbridge crews and contractors used oil skimmers and absorbent booms to control the spill, the Post-Tribune reports.

"This is our responsibility," Enbridge's president and chief executive Patrick D. Daniel told the AP Tuesday evening. "This is our mess. We're going to clean it up."

## EDITORIAL / OP-ED / COMMENTARY / LETTERS

### Giving Up on a Climate Change Bill (*New York Times*)

To the Editor:
Ross Douthat describes cap-and-trade legislation as a "leap in the dark" ("The Right and the Climate," column, July 26). But unchecked global warming is an equally unknown and far more perilous leap. Will it lead to increased crop yields in poor nations or increased flooding?

Greater access to arctic resources or a second Dust Bowl? We can't know for sure.

But unlike cap and trade, which can be repealed, a warming globe is something we're all stuck with unless we act now.

Louis Evans New York, July 26, 2010

To the Editor:

Ross Douthat says that conservatives doubt climate change because the population bomb that was touted in the 1970s never materialized. It is true that the more extreme predictions did not come to pass, but this was in no small part because the developed world and China, especially, actually succeeded in lowering their rates of population growth.

More important, however, nearly all the crises we now face -- among them energy shortages, pollution, fresh water shortages and climate change -- are a result of the world's continued population increase. It wasn't a "bomb." It is more like a room slowly filling with smoke.

Christopher Green Toronto, July 26, 2010

To the Editor:

Re "With a Whimper" (editorial, July 23):

How could the Senate Democrats give up their fight for a climate change bill? Senators often cite their grandchildren's future as the reason for their political stands. My grandchildren, old enough to be promoters of environmentalism and fully aware of the dangers that climate change presents, tell me that they are not sure they have a future.

How can I explain to them that our senators put profits for big business ahead of protecting the future for everyone?

Sayre Sheldon Arlington, Mass., July 23, 2010

The writer is president emerita of Women's Action for New Directions, a national peace organization.

**Atrazine has been studied enough now (*DesMoines Register*)**

July 30, 2010
Recently, the Environmental Protection Agency startled farmers with its decision to conduct an
unplanned review of the agricultural herbicide atrazine, a crop-protection tool in use for 50 years.
It's been said no molecule has received more intensive study than atrazine. In 2006, the EPA
finished a 12-year re-approval process, reporting  atrazine posed no harm.

There is concern that the EPA is taking its marching orders from special-interest groups such as the National Resources Defense Council, which has called for a ban of atrazine.

What would happen if the EPA were to accept the demands of the NRDC and outlaw atrazine? Don Coursey, University of Chicago, studied the question from an economic perspective ("Sound Science, Not Politics, Should Guide Atrazine Regulation," Des Moines Register July 7). He estimated farming costs would increase so much that as many as 48,000 workers could lose their jobs in the Corn Belt.

A by-product of an ideological crusade against atrazine would be the destruction of thousands of
jobs.

- Bill Horan, Rockwell City
-

**Editorial: Senate wilts on warming (*Philadelphia Inquirer*)**

Friday, July 30, 2010
Studies predicting how global warming will harm the Earth continue to be produced. But the reports are about as innocuous as gnats to the Senate Republicans, who successfully blocked passage of any significant climate-change legislation.

A new report from the National Resources Defense Council concludes that a third of all the counties in the contiguous United States will face water shortages by 2050 as a result of global warming. Among the 400 highest-risk counties, eight are in Pennsylvania, including Philadelphia, and seven are in New Jersey.

Guess that doesn't matter to those who fought the climate bill. After all, that's 40 years away, and some of them don't believe in global warming anyway.

To be sure, the climate bill had faults. To garner support, the bill, crafted by Sens. John Kerry (D., Mass.) and Joe Lieberman (I., Conn.) was stuffed with goodies sought by the opposition to mitigate its impact on the fossil-fuel industries. But the biggest piece of candy turned rancid.

President Obama's calculation that he could win GOP votes by agreeing to expand offshore drilling was dashed to smithereens by the Deepwater Horizon disaster. The April 20 oil-rig explosion killed 11 people, polluted the Gulf of Mexico, and has endangered the livelihoods of thousands.

Senate Republican Leader Mitch McConnell (R., Ky.) and others argue that America can't walk away from offshore drilling just because of the tragedy. That's a hard sell for some, but it has support among folks in hard-hit coastal towns urging an end to the job-

killing moratorium on drilling.

Lifting the moratorium, though, won't mean an expansion of drilling anytime soon. There's still uncertainty over whether the oil leaking into the gulf has been stopped. In the meantime, Senate Democrats are pushing a more modest climate bill defining BP's liability for the spill and tightening energy-efficiency standards.

Missing will be the controversial plan to reduce carbon emissions through a cap-and-trade program. The House narrowly passed cap-and-trade in June, with eight Republicans voting for it. But the Senate never voted on its bill, which means House Republicans who voted yes have nothing to show for braving to cross the aisle.

Does that mean there will never be a cap on carbon emissions? Never may be too strong, but it is difficult to envision when such restrictions would be imposed. Recent articles report Canada, France, and Japan are also having trouble passing cap-and-trade plans. U.S. leadership would help.

As the impacts of climate change become more certain, the public will demand action. Right now, people are more concerned about the jobs that could be lost if industries are forced to drastically reduce emissions. People aren't focused on how global warming will create water shortages that may make it hard for their grandchildren to grow food.

## AIR

### EPA rejects climate study petitions (*Boston Globe*)

July 30, 2010 Friday

NEWS; National; Pg. 2
EPA rejects climate study petitions
By Bloomberg News,
WASHINGTON - The Obama administration rejected challenges to its finding last year that climate change caused by greenhouse gas emissions is a danger to public health.

The Environmental Protection Agency found that 10 petitions contesting the decision ``provide no evidence to undermine our determination,'' administrator Lisa Jackson said yesterday. Industry groups, including the US Chamber of Commerce, have said the EPA's carbon rules will be a drag on the economy.

The agency's action removes a potential obstacle barring the United States from regulating carbon-dioxide emissions from cars, trucks, power plants, oil refineries, and factories under the Clean Air Act.

Groups such as the chamber and Pacific Legal Foundation asked the EPA to reconsider

its decision, announced Dec. 7, saying that the finding was flawed or that the agency erred in evaluating scientific evidence.

The America Petroleum Institute in December said the EPA rules will be ``inefficient and excessively costly."

**Texas sues EPA over flexible permit ruling (*Examiner*)**

July 29, 6:39 PM · Caroline Calais - Dallas Environmental Policy Examiner
Texas Attorney General Greg Abbott is challenging the U.S Environmental Protection Agency's (EPA) decision earlier this month to disapprove Texas' flexible permits program. The State's petition for reconsideration was filed with the U.S Court of Appeals for the Fifth Circuit in New Orleans earlier this week.

"The TCEQ submitted its Flexible permits program rules to the EPA in 1994", Abbott said". Although the TCEQ has been issuing flexible permits without interference from federal government since the first term of the Clinton Administration, the EPA rejected the rules and disapproved the Texas program on July 16, 2010".

EPA announced a final disapproval of Texas' flexible air permit program in early July, saying it violated several national Clean Air Act requirements. But the conflict between EPA and Texas had been heating up since mid June when the federal agency took over two state issued air permits, one for Garland Power and Light's natural gas fired Ray Olinger plant on lake Lavon in Collin County, and one for Chevron Phillips Chemical Co's Baytown plant.

"This legal action is the next step in our ongoing commitment to fight back against the Obama Administration's ever-widening effort to undermine our air quality initiatives and force a heavy-handed federal agenda on the people of Texas", Governor Perry said.

In 1995 the Texas legislature passed a law allowing certain qualified facilities to implement physical and operational changes to their sites without having to undergo additional regulatory process, provided that the changes neither increased emission nor resulted in the release of new contaminants. In 1996 the Texas Commission on Environmental Quality (TCEQ) submitted Texas' qualified facilities rule to the EPA and has since then been regulating qualified facilities.

EPA official Al Armendariz has said that Texas' flexible air permit program allows companies to avoid certain federal clean air requirements by lumping emissions from multiple units under a single cap rather than setting specific emission limits for individual pollution sources at their plants.

In February Texas sued EPA over EPA's decision to regulate greenhouse gases.

**In Alaska's expanses, who looms larger?; (*Washington Post*)**

July 30, 2010 Friday
Met 2 Edition
STYLE; Pg. C01
Maryland
In Alaska's expanses, who looms larger?;
Murkowski is far ahead in Senate race, but faces Palin-endorsed rival

By Jason Horowitz

FAIRBANKS, ALASKA
In the perpetual daylight of Alaskan summer, Sen. Lisa Murkowski spotted Rich Doran tying one of her campaign signs to a tree on the bank of the Chena River.

"So how you be?" Doran greeted her, as she climbed a grassy slope.

"I be fine," Murkowski said, admiring the sign. "Got good friends supporting me."

"Between your dad and you," responded the craggy-faced Doran, who was wearing campaign buttons boosting both Murkowskis and former Republican senator Ted Stevens, "I've probably built over 1,000 yard signs that say Murkowski on them."

For all Sarah Palin's nationwide recognition, the first name in Alaskan Republican politics is still Murkowski. Actually, it's Lisa.

"Hi, Lisa!" and "Hey, Lisa, shake my hand," and "Lisa, could we take a picture?" coffee-sippers on lawn chairs shouted as Murkowski, 53, marched a parade route past the Aurora Energy factory and the Ice Museum ("See a bit of winter inside"), handed out hot dogs to old couples and self-fashioned frontiersmen and then cheered competitors in the one-foot high kick and the blanket toss at the World Eskimo-Indian Olympics. During her campaign sweep through Fairbanks last weekend, it was clear that the state's senior U.S. senator, who was originally appointed to the job by her father, Frank, had succeeded in making a name for herself.

But Palin, who took the governor's mansion from Murkowski's father only to prematurely relinquish it last year, finds Murkowski lacking. Despite Murkowski's "mama grizzly" cred as a mother of two teenage boys and the state's most prominent female official, Palin upset the Republican establishment in June by instead endorsing Joe Miller, a stubble-cheeked and baritone-voiced conservative who is good buds with her husband, Todd.

"It strikes me as odd," Murkowski said.

The endorsement has complicated the race for Murkowski but has also created an opportunity for clarity. After political observers have spent months scouring races

nationwide for evidence of Palin's right-wing reach vs. the staying power of bring-home-the-bacon Republicans like Murkowski, it turns out that the ideal testing ground may be the women's own Alaskan back yard.

"Relationships are key in a state like this," said Murkowski, who is the Alaskan Republican establishment's last best hope for a bridge to somewhere. Sitting in a rocking chair in a longtime fundraiser's house, she called herself the hometown girl from Ketchikan, where she was born; but also Juneau, where she lived as a kid; and Fairbanks, where she went to high school; and Anchorage, where she practiced as a lawyer and now lives. Over the years, she said, she had gotten to know all the "people who are moving and shaking" in Alaska. "And I don't know Joe Miller, and I think that says something."

She argued that her intensified opposition to the Obama administration and her controversial -- and ultimately unsuccessful -- resolution to prevent the Environmental Protection Agency from regulating carbon dioxide emissions from power plants and factories had nothing to do with protecting her right flank from Miller's accusations that she is a RINO, or Republican in Name Only. Nor, she said, did it have anything to do with a "directive" Senate Minority Leader Mitch McConnell (R-Ky.).

"Everything that I do," she said, "is what is best for the people that I represent."

* * *

This has been the mantra of the Murkowskis, and the Alaskan political establishment, for half a century.

Frank Murkowski ruled Alaska in a GOP triumvirate with Stevens and Rep. Don Young for decades. At one point, they were one of the most senior delegations in Washington and brought home billions in federal aid for state projects, some more necessary than others. In 2002, to the chagrin of much of the state, the elder Murkowski appointed his daughter to the Senate seat he vacated to become governor. Murkowski: The Next Generation redeemed herself with a hard-fought, validating victory over popular Democrat Tony Knowles in 2004 and started amassing real power in Washington. In recent years, Murkowski took on a leadership position under McConnell in the Senate minority; became the ranking member on the Energy and Natural Resources Committee, which her father had chaired; and took Stevens's place on the Appropriations Committee. She is poised to play a decisive role in both approving and appropriating funding for the Interior Department, which essentially controls 65 percent of Alaska.

In the meantime, her father and his allies, engulfed by scandal, have gone in the opposite direction. Frank Murkowski, who did not respond to a request to comment, badly lost a 2006 primary to Palin, an outsider from Wasilla vowing to clean up the politically corrosive oil industry. Then, in 2008, Stevens, under the cloud of a corruption investigation, lost a bid for his seventh term to Mark Begich, son of Rep. Nick Begich,

who had defeated Murkowski to win the state's sole House seat three decades earlier. And 19-term congressman Young, by no means a stranger to corruption investigations, is increasingly a target for upstarts. With one generation of the establishment fading, Young argued that Alaska needed someone with seniority to take care of the state.

"Continuity is very, very important," said Young, who is supporting Lisa Murkowski. He added that upon her appointment in 2002, he made Murkowski promise that "she would serve no less than three terms."

Palin, who already shook up the establishment once in Alaska, has other ideas. But this time, instead of entering the fray as a candidate, she is playing kingmaker from the comfort of her Facebook page. Murkowski doesn't appreciate it.

The impact of a Palin "Facebook endorsement" was particularly unclear in Alaska, Murkowski said, because this was "the first election since Governor Palin has stepped down from office."

Murkowski defended, however, Palin's right to weigh in, saying that if Mitt Romney, Tim Pawlenty and other presidential hopefuls were not criticized for "thinking ahead" by strategically bestowing endorsements and PAC money, Palin shouldn't be, either. "I don't think that we should suggest that her motives are any different from anybody else who is looking to do something more."

Palin did not respond to a request to comment.

* * *

For all of Alaska's politicians, complaining about Washington and the sacrifice of being away from home is a requirement. But Murkowski is the first member of the congressional delegation to have been born in Alaska. Sorting through seal-skin slippers at an Eskimo-Indian craft fair, answering friendly salutations from strangers, and just walking near the white-spruce forests and rushing rivers seemed visibly restorative. She arrived Friday night from Washington in a creased gray pantsuit, exhaustedly wheeling a small silver suitcase past the stuffed polar and grizzly bears overlooking the luggage carousel. By the time she left, on Sunday afternoon, she was skipping around, talking about the "northern vigor" of Alaskan peonies, saying "fantabulous" at state picnics and waxing poetic about the majesty of snow.

Her weekend started in the parking lot between the Carlson Center and the Fairbanks Curling Club, where floats gathered for the Golden Days parade, which celebrates the gold-rush roots of Fairbanks. Slate-colored clouds temporarily blotted out the sun, and women walking around in ruffled, rain-dampened 19th century costumes. A house-size inflatable rubber duck leaked air and nearly collapsed onto a neighboring float as a long-shot gubernatorial candidate playing guitar on top of a truck sang: "I'm asking for your vote. I'm a truck-driving man."

By comparison, Murkowski looked remarkably regular. With her rail-thin figure clad in jeans and her unfussy hair hidden under the hood of a rain-beaded slicker, she arrived to talk up her own float, which was really just a flatbed decorated with a "Thanks Fairbanks, You're My Hometown" sign. Her affable husband, Verne Martell, a former owner of Alaska Pasta, tied state flags to the float with fishing wire.

Across the parking lot, Miller, Murkowski's primary opponent, held court in front of his own flatbed featuring an American flag fashioned out of red, white and blue garlands, plus chicken wire. With his back to two Army Stryker vehicles, Miller sipped from a tall white can of Rockstar energy drink and nodded as one of the soldiers encouragingly observed that Sharron Angle, who also had "tea party" support, came from out of nowhere to win the Republican Senate nomination in Nevada. A recent poll showed Miller trailing badly, but the candidate, a combat veteran and graduate of Yale LawSchool, dismissed the data point as a throwaway question on a Democrat's survey. The real evidence of the closeness of the race, he said, was that Murkowski "has been here continuously" to campaign.

Murkowski, he said, was "part of the ruling class, the aristocratical leadership or lack thereof." He complained that she was a Democratic enabler who voted for Obama's Wall Street bailout and perpetuated the mind-set that Alaska needed the largess of the federal government. "Alaskans are concerned about the state of the government and are willing to tighten their belts a little bit," he said. This race, he said, was not about Palin, though he allowed that her "endorsement certainly assisted us on the national stage."

About 10 a.m., the rain stopped, and Murkowski, now sporting a maroon windbreaker, started hitting her stride.

"Bernie!" she shouted upon seeing a man dressed in a stovepipe hat and driving a turn-of-the-century car. "He's Mr. Renewable Energy," she explained ebulliently. "He has a vehicle powered by french-fry oil." Friends and supporters came over to say hello while Martell lined up pink buckets of loose candy and dog treats. A woman in a golf cart approached to announce the parade's marching order.

"Lisa's people," she shouted. "You are following the duck."

Murkowski was a handshaking machine. Behind her, campaign workers gave out candy to little kids holding yellow bags sponsored by BP that read, "Alaskans for Litter Prevention and Recycling. Keeping Alaska Beautiful." The aides shook their heads in exasperation as Murkowski kept falling behind to chat with voters.

"I hope you beat Miller!" shouted Mary Demientieff, 60, as she shook the senator's hand. "Thank you, I'm working hard," Murkowski replied.

"But I'm a Democrat," Demientieff said as Murkowski marched on toward the rubber-duck float, which had overheated and broken down.

Demientieff explained that she appreciated Murkowski's moderate Republican politics.

"She wouldn't want to hear that, but I respect her for that," she said. "She's different. I like her more than her father."

* * *

Alaska is the largest state in the union. It is also the emptiest. Rivers outnumber roads. Vast acres of white spruce forests, mud flats, mountains and lakes chilled by glacial blue ice separate the cities. Population is concentrated in Anchorage, Fairbanks and Juneau. Power is even more concentrated.

Murkowski's campaign argues that the small political class is more family than ruling gentry. New members constantly appear, and she just happens to be second-generation. A stroll with her through Fairbanks on Golden Days weekend was like following a popular aunt around a family reunion.

After the parade, the Murkowski team staked out spots on a small bridge to watch the weekend's rubber duck race, in which a yellow flotilla of bobbing bath toys is dumped into the river, each with a number corresponding to a ticket sold for a big cash prize. On the bridge, they bumped into Hollis French, a Democratic candidate for governor, and his wife. The two couples talked warmly about family and the time Murkowski's duck, to her mortification, came in first and she had to donate the prize to charity. As Murkowski hung over the bridge to see duck No. 4,139 cross the finish line, French mocked current Republican governor and Palin loyalist Sean Parnell for refusing to back Murkowski in the primary.

"She's going to be around for a long time," he said of Murkowski. "The state likes her and she's in a position of power."

Down the road, Murkowski bumped into Ethan Berkowitz, another Democratic candidate for governor and a friend from Murkowski's days in the state legislature. They joked about his graying hair and gushed about a former Murkowski intern who had gone to work for him.

According to Berkowitz, who commissioned the poll that showed Murkowski 32 points ahead of Miller, the departure of Stevens from the political scene meant "a recalibration of what politics we need and practice," and that while power had been dispersed, Murkowski was "at the top of the list of the people who assume that mantle."

The Murkowski campaign team piled into a Mercury Mariner hybrid and drove to a fundraiser in nearby North Pole, a town where the McDonald's sits on Santa Claus Lane. The senator, who has $2.4 million on hand -- 20 times more than Miller -- arrived at a McMansion version of a log cabin, with walls of stacked spruce trunks and turquoise doors. In the garden outside, bear pelts were perched on sticks like toupees

to keep moose away, and a white tent shaded donors from the bright evening sun as they lined up for fresh salmon, potato salad and buckets of beer and wine. Murkowski schmoozed with about 30 donors.

She said hello to Roger Burggraf, who keeps a 10.6-ounce gold nugget in his pocket. She discussed Japanese icebreaker ships with Syun-Ichi Akasofu, director emeritus of the International Arctic Research Center at the University of Alaska at Fairbanks, who had some reservations about her CO{-2} emissions resolution.

She asked him what papers he was working on. "Well, one is on aurora," he said, referring to the northern lights.

She grabbed a glass of red wine and talked about wintertime with Linda Hulbert, a New York Life agent.

"There are these incredible ice crystals that are bigger than these gold nuggets," the senator said, pointing at Hulbert's necklace. The cold, she said, is so intense that your nostrils stick together and your teeth ache. But the "crunch of the snow is so loud it hurts your ears. It's so stunningly beautiful."

Murkowski excused herself and Hulbert clucked disapprovingly about Palin's endorsement of Miller.

"Sarah's being an ideologue, which is unfortunate, because she didn't used to be that way," said Hulbert. "I respect Sarah, I like her. Her endorsement means nothing to me."

The supporters took seats under the tent, and Murkowski gave a rambling speech about the importance of slowing down an Obama administration that could be disastrous for Alaska, about how Washington is a form of "purgatory" between her weekend retreats and how she would do everything in her power to keep delivering for the state.

Suddenly her voice took on urgency as she pleaded with her longtime supporters not to get complacent, especially in the face of an enthusiastic primary opponent.

She paused to look at the group. "Everybody is watching us," she said. "Everybody is watching us."

### *Texas proposes new rules for shale gas drilling (***Associated Press***)*

(AP) – 2 hours ago

HOUSTON — Texas environmental regulators have formally proposed beefing up regulations on oil and gas drilling, in an attempt to reduce air pollution caused when companies use new technology to extract natural gas trapped in deep shales.

The Texas Commission on Environmental Quality formally submitted the proposal on Wednesday, and the rules will enter a one-month public comment phase on Aug. 13.

The new rules come after the Texas Commission on Environmental Quality was accused of having weak regulations that contributed to air pollution and high levels of cancer-causing toxins were found in Barnett Shale drilling sites in a tiny north Texas town.

The gases in Barnett, and other shales, had long been inaccessible, but a new method of extracting the fluid known as fracking — or hydraulic fracturing — has led to a new boom in the industry. Many of the shales are in populated areas, and the U.S. Environmental Protection Agency is now studying the drilling's impact on human health and water quality.

The rapid expansion of shale drilling, especially around urban areas, forced the agency to review its regulations, TCEQ chairman Bryan Shaw said in a statement.

"This is the latest step in our efforts to ensure safe air quality in areas where oil and gas production is ongoing," Shaw said.

But environmental groups say the rules don't go far enough, especially because they apply only to new permits.

"Existing gas wells are one of the largest sources of air pollution in Dallas-Fort Worth, about equal to that of all the cars and trucks in the region," Luke Metzger, director of Environment Texas, said. "Excluding them from coverage is yet another hand out to Governor Perry's contributors from the oil and gas industry and a blow to healthy air."

Anne Inman, a TCEQ official in the air permits department, said most of the proposed rules apply only to new equipment or changes that would increase emissions. However, all sites must provide the agency with identifying information by 2013 and meet limits for maintenance, start-ups and shutdowns by Jan. 2012.

The agency is also attempting to better monitor air pollution in areas with a large amount of shale drilling. The agency already has four operating monitors and the hourly results are posted on a TCEQ Website. It plans to install three additional monitors.

07/30/2010

**Texas Files Suit Over EPA Disapproval Of 'Flexible' Air Permitting Program (*Inside EPA*)**

Texas has filed a lawsuit in federal appeals court challenging EPA's recent rejection of the state's "flexible" air permit program, arguing that the agency erred in concluding that the Texas program would result in weaker emission controls than federal permitting requirements.

Texas Attorney General (AG) Greg Abbott (R) July 23 filed suit in the U.S. Court of Appeals for the 5th Circuit over EPA's July 15 decision to reject the flexible permit program. In the petition for review, Texas argues that its flexible permits fully comply with the requirements of the Clean Air Act and therefore EPA has no grounds to justify disapproving the program. *The petition is available on InsideEPA.com.*

EPA's decision was required by a consent decree with industry groups, who sued the agency over its failure to respond to Texas' request for approval of the permit program in a 1994 amendment to its state implementation plan, an air quality blueprint for meeting federal air standards.

EPA in its rejection said it does not oppose the concept of flexible permits, but has concerns that Texas' approach allowed facilities to avoid new source review (NSR), which can result in mandates for strict new emissions controls.

But in its petition for review Texas says EPA's decision is in error and that, "No provision of the Texas [flexible permits program] may be read to circumvent federal major NSR requirements because the 1994 rules expressly require compliance with all applicable requirements relating to nonattainment and prevention of significant deterioration review."

Texas says in the filing that its program has resulted in the permitting of some grandfathered units and has achieved "substantial emission reductions from the installation of controls based on a comprehensive evaluation of emission impacts."

EPA's decision to reject the program "threatens a regulatory program that has successfully reduced harmful emissions" in Texas, according to the state AG's website. Emissions data from the Texas governor's office indicate that the program achieved a 22 percent reduction in ozone and a 46 percent reduction in nitrogen oxide over an unspecified time frame, according to the AG's website.

07/30/2010

**Ruling Could Hinder Activists' Push For Climate, Emissions Nuisance Suits (*Inside EPA*)**

A federal appeals court has rejected a lower court's finding that neighboring states are creating a public nuisance with air pollution in North Carolina, dealing what sources say is a major blow to environmentalists' and others push to file tort nuisance cases to force cuts in emissions of conventional pollutants and greenhouse gases (GHGs).

The U.S. Court of Appeals for the 4th Circuit July 26 ruled in *State of North Carolina v. Tennessee Valley Authority (TVA)* that a lower court wrongly sided with the state and environmentalists in deciding that conventional air pollutants emitted from TVA power plants in Tennessee and Alabama constituted a common law public nuisance. The 4th Circuit said it is "difficult" to see how emissions permitted and regulated by EPA and states can be a public nuisance.

Industry officials and environmentalists agree that the ruling represents a major setback for activists' attempts to file common law nuisance suits to try and force reductions in power plant emissions of conventional pollutants, because it will make it significantly more difficult to claim that emissions are causing a nuisance. But the sources are split over the implications for GHG nuisance suits, given the nascent nature of federal regulations of GHG emissions.

North Carolina filed the suit in a bid to have a court declare a nuisance from the TVA emissions and to require the installation of pollution controls at four power plants -- a novel strategy that critics oppose because, they say, courts do not have the expertize to determine what pollution controls facilities should install.

A district court in *North Carolina* imposed an immediate injunction calling for stringent emissions controls on the TVA plants at issue in the lawsuit. However, the 4th Circuit's ruling overturned that order, along with the underlying finding of nuisance. *The ruling is available on InsideEPA.com.*

The district court's ruling "was flawed for several reasons," the appeals court says. "If allowed to stand, the injunction would encourage courts to use vague public nuisance standards to scuttle the nation's carefully created system for accommodating the need for energy production and the need for clean air," the court continues.

"The result would be a balkanization of clean air regulations and a confused patchwork of standards, to the detriment of industry and the environment alike," the court says, adding that such a multiplicity of standards could actually lead to weaker environmental protections in some areas than currently afforded by federal rules. Effectively, the court said that the existence of the Clean Air Act frustrates any attempt to bring a nuisance suit, because power plant emissions are permitted and regulated under the air law, which provides remedies for violations.

The 4th Circuit's ruling says, "it is difficult to understand how an activity expressly permitted and extensively regulated by both federal and state government could somehow constitute a public nuisance."

The court found that public nuisance law is ill-suited to dealing with problems of environmental degradation, as it does not set clear standards for emissions, and was conceived for entirely different circumstances: "If we are to regulate smokestack emissions by the same principles we use to regulate prostitution, obstacles in highways, and bullfights . . . we will be hard pressed to derive any manageable criteria" for controlling pollution, the court says.

According to the ruling, the district court also erred in applying North Carolina's legal standard for nuisance in its Clean Smokestacks Act emissions law rather than the nuisance laws of Alabama and Tennessee.

"This is certainly a setback, not only for environmentalists, but also for community health advocates who want to protect the health and welfare of individuals harmed by pollution," says one legal expert.

The 4th Circuit had little choice but to throw out the nuisance finding and injunction, because the principle of "judicial economy," established by the Supreme Court, discourages the creation of new mechanisms for legal relief where such mechanisms already exist, as for example in the air act, according to an industry lawyer.

Broadly, "a case like this could go a long way toward making tort litigation less attractive as a mechanism to address air pollution," the source says. The precedent set by the ruling will make emissions nuisance suits even harder to bring, given that nuisance is already notoriously difficult to prove in court, the lawyer says.

A second legal expert says "this case was a slam-dunk," and that the ruling "goes beyond saying the remedy was inappropriate. It says this suit was inappropriate." In addition to the principles relating to application of public nuisance law raised by the court, North Carolina's case was further weakened by the state's failure to claim negligence or breach of federal or state permitting requirements in Alabama or Tennessee, the source says.

North Carolina Attorney General (AG) Roy Cooper (D) described the ruling as "disappointing," but a spokeswoman for the AG says no decision has been made on whether to appeal the decision.

TVA in a July 27 statement says the court found that TVA has already installed "numerous" emission controls on its coal-fired power plants and that "unlike TVA, power plants in North Carolina historically had not put sufficient controls on their emissions but instead relied on buying emission allowances from others."

**While environmentalists and legal experts agree that the ruling could significantly complicate** future nuisance suits for conventional pollutants, they remain split over its implications for GHG tort litigation.

The first legal expert says that while the ruling may preclude conventional pollutant nuisance suits, it might not have the same impact on suits over GHG emissions. Several climate tort suit cases are ongoing. For example, The Supreme Court will shortly receive a request to hear an industry appeal of *Connecticut, et al. v. American Electric Power (AEP)*, a key global warming tort nuisance lawsuit. The 2nd Circuit earlier this year upheld plaintiffs' right to bring a climate nuisance case against the power sector. The court recently granted industry's request to extend the deadline for high court appeal from July 6 to Aug. 2, and AEP says it intends to seek Supreme Court review.

Another nuisance case, *Comer, et al. v. Murphy Oil*, seeks climate damages related to Hurricane Katrina, but was dismissed on appeal by the 5th Circuit, while a third, *Native Village of Kivalina v. ExxonMobil Corp.*, is on appeal in the 9th Circuit, after a lower court dismissed it on the grounds that climate-related damages are a political issue.

The legal expert says that 4th Circuit in *North Carolina* "ignored" the question of whether the Clean Air Act's long-established pollution control mandates are adequately protecting citizens from experiencing a public nuisance caused by the emissions of a pollutant, and also ignored the factual findings of the district court that TVA's emissions constituted a nuisance. The expert believes the question of air act adequacy could be revisited in climate tort suits, which should be unaffected by the ruling because EPA climate regulation under air act authority is an emerging legal issue.

But the industry lawyer questions the claim that because regulation of GHGs is only a very recent development compared to the decades of experience regulating traditional pollutants under the air act, nuisance suits over GHGs will not necessarily be derailed. The Supreme Court in its landmark 2007 ruling in *Massachusetts v. EPA* clearly established that GHGs fall within the scope of the statute, the lawyer notes, and the agency has since moved to regulate mobile sources of GHGs and will regulate stationary sources of GHGs starting in 2011.

Therefore, environmentalists looking to file climate tort suits will struggle to argue that GHGs should be treated differently to conventional pollutants subject to Clean Air Act regulation, the source adds.

Moreover, the precedent set by the 4th Circuit's ruling goes beyond the inclusion of a pollutant under air act regulation, to preclude nuisance suits in any area where a clearly articulated national regulatory policy exists. President Obama has outlined precisely such as strategy for GHGs, the lawyer argues, by establishing federal controls on vehicle GHG emissions and vowing EPA regulation of GHGs if Congress fails to pass a climate law.

The second legal expert says that courts will likely treat GHGs as subject to the air act in the same way as conventional pollutants, restricting the potential for climate nuisance suits in the future. -- *Stuart Parker*

07/30/2010

**Senators Urge EPA Against Pursuing Stricter NAAQS For Coarse Particles (*Inside EPA*)**

A bipartisan coalition of 21 senators is urging EPA not to tighten its national ambient air quality standard (NAAQS) for large particulate matter (PM10), warning that a stricter standard could impose significant costs on the agricultural sector -- a large source of PM10.

In a July 23 letter to EPA Administrator Lisa Jackson, the senators urge EPA to retain the PM10 air standard of 150 micrograms per cubic meter (ug/m3) and claim that a stricter limit might be impossible for some states to meet. EPA's latest policy assessment for its ongoing review of the standard includes a first-time proposed stricter range of between 65 and 85 ug/m3. *The letter is available on InsideEPA.com.*

"A coarse PM NAAQS of 65-85 ug/m3 would be twice as stringent as the current standard. The current standards have been difficult if not impossible for industries in the Western portion of the country to attain, including agricultural operations," the senators say.

The farming and mining industries are large sources of PM10, and they have already criticized the July 8 policy assessment as difficult to attain. Dust emitted by the industries contributes to PM10 formation, but the sectors argue that they are already taking all feasible steps to control dust and there may be no options for cutting their dust emissions to meet a stricter standard.

"I think that agricultural operations . . . would have a very difficult time achieving a standard set that low," a National Cattlemen's Beef Association source said recently (*Inside EPA*, July 23).

The senators echo these arguments in their letter to Jackson, warning that a tougher standard would be "extremely burdensome for farmers and livestock producers." The senators point to projected higher costs to farmers stemming from "excessive dust control measures."

The senators also highlight EPA's statement in its policy paper of considerable uncertainty associated with PM10, caused by limited monitoring data and other restrictions. The senators say this uncertainty could justify EPA retaining its existing NAAQS. "Since EPA would be justified in retaining the current standard, then the current standard should be retained," they write.

The letter comes as EPA's Clean Air Scientific Advisory Committee July 26 launched a two-day meeting to review the agency's draft policy assessment. The paper also makes recommendations for more stringent standards for fine PM.

07/30/2010

**Activists Claim Voinovich Riders Would Weaken Senate Air Pollution Bill (*Inside EPA*)**

Environmentalists are criticizing what they say are amendments that Sen. George Voinovich (R-OH) plans to offer to pending legislation to cap conventional air pollutants from utilities, claiming that Voinovich's riders would delay and weaken key requirements of the power plant legislation.

John Walke, clean air director for the Natural Resources Defense Council (NRDC), wrote in a July 27 NRDC blog post that Voinovich intends to offer the amendments at a Senate Environment & Public Works Committee markup of the power plant legislation, introduced by Sens. Thomas Carper (D-DE) and Lamar Alexander (R-TN). Walke says a markup could occur as early as next week. The panel is yet to formally announce a markup date.

Carper's bill would establish a nationwide cap-and-trade program to reduce power plant sulfur dioxide (SO2) and nitrogen oxide (NOx) emissions, and also impose a strict mandatory limit on utility mercury emissions. The bill is designed in part to replace the Bush EPA's remanded Clean Air Interstate Rule (CAIR) that would have established a NOx and SO2 trading program.

EPA meanwhile has proposed a CAIR replacement, the Clean Air Transport Rule, that would create a cap-and-trade program for NOx and SO2 emissions in 31 states. But Carper says the plan is open to legal challenge while his bill would provide industry with legal certainty.

Carper's bill would set a 3.5 million ton cap on NOx beginning in 2012 and ratchet that down to 2.0 million tons in 2015, and a 1.90 million ton nationwide cap for SO2 beginning in 2012 and dropping to 1.62 million tons in 2015. Voinovich's amendments in contrast would revive CAIR and punt the Carper 2012 caps to 2015 and the bill's 2015 caps out to 2018, NRDC says. *Relevant documents are available on InsideEPA.com.*

Voinovich's amendments would also prohibit EPA from pursuing further reductions in power plant SO2 emissions until 2025, and from further cutting annual NOx until 2023, according to NRDC.

NRDC highlights dozens of other proposed changes that Voinovich's amendments would make to Carper's bill, including "safe harbors" for power plants from certain Clean Air Act requirements. Walke in his blog post described the safe harbors as "a deceptively benign label for the loopholes and exemptions" that the changes represent.

Voinovich's amendments would also delete all references in the Carper bill to "well-established" findings on the significant human health impacts associated with SO2, NOx, particulates and ozone, according to NRDC's comparison list. Voinovich would remove the references on the basis that "those findings . . . overstate adverse health and environmental impacts of SO2 and NOx emissions."

Walke wrote in his blog post that "the actual *reason* advanced by the document itself for striking these settled facts is to protect corporate defendants against public tort suits (think nuisance and tresspass), lest Congress be seen endorsing the radical notion that air pollution is bad for people. Congress wouldn't want to be seen favoring the truth over the prerogatives of polluter defendants in lawsuits to deny that air pollution is harmful."

Voinovich's office did not respond to a request for comment.

07/30/2010

**Advisers Push Non-Binding EPA Standards To Reduce Indoor Air Risk (*Inside EPA*)**

Two key EPA advisory groups are encouraging the agency to develop guidelines that could help establish non-binding standards for safe levels of exposure to hazardous pollutants that can be found indoors, a push that could have the agency address the issue even though it lacks regulating authority.

Some advocates of greater steps to reduce indoor air pollution exposure say EPA could use its fish consumption advisory as a model. The advisory is non-binding and outlines suggested fish consumption limits to minimize exposure to mercury. Proponents say it has become a widely referenced benchmark to protect public health in lieu of regulation.

Members of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT) on a July 22 conference call said they would include language encouraging EPA to develop standards for indoor air pollutants as part of the panel's upcoming comments on the agency's draft fiscal year 2011-2015 strategic plan. The plan identifies indoor air quality as a "major concern" but does not outline any attempts to craft indoor air rules.

The panel intends to add language to its comments saying EPA "should consider approaches for taking steps to establish standards to improve indoor air quality," as part of a broader suggested goal for the agency to ensure the safety of chemicals and

preventing pollution. At press time NACEPT had not submitted its final comments to EPA.

The group will add the language to a broader goal for the agency on the safety of chemicals and preventing pollution, according to the call, which is going through a final round of changes before being sent to the agency.

Meanwhile, several members of EPA's Children's Health Protection Advisory Committee (CHPAC) during a July 21-22 meeting in Washington, DC, voiced support for the agency developing air standards for hazardous pollutants found indoors. The group is launching a work group to assess pollution in indoor environments -- a topic of key concern to the committee because young children, especially infants, spend most of their time indoors.

Some environmentalists, including members of the National Safe & Healthy Housing Coalition, have already circulated draft bill language on Capitol Hill that would require EPA to conduct increased indoor environment monitoring and develop health-based standards for exposure to hazards like carbon monoxide and radon.

EPA's Clean Air Act authority does not extend to unregulated indoor air quality. Still, the agency in the draft strategic plan says an objective is to "reduce risk from toxic air pollutants and indoor air contaminants."

CHPAC member Amy Kyle, a research scientist at the University of California Berkeley, noted the constraints on EPAs regulatory authority over indoor air during the panel's meeting. She urged the task force members to make suggestions not only to EPA, "but also identify things other agencies can do for schools and homes . . . We know a lot already about what we need to do," Kyle said. "The problem is how do we [address] these questions?"

During a discussion of the new task force's mandate and scope, CHPAC Chair Pam Shubat, of Minnesota's health department, noted the "need for guidelines on indoor air samples, mold and dust."

"I'd like to think EPA wouldn't feel constrained by the lack of regulatory [authority]," Shubat said. She explained that the model she is thinking of is a fish advisory that EPA and the Food & Drug Administration released several years ago. Intended to reduce Americans' exposure to methylmercury, it encourages young women and children to eat no more than twelve ounces of fish per week, and avoid certain species that tend to contain more mercury.

Shubat noted that the advisory is "not regulatory, it's advice" but that it has become a widely referenced benchmark. It is an example of "EPA taking a leadership role that is not part of some regulatory," Shubat told *Inside EPA* during a break in the meeting, adding that the fish advisory has had "tremendous influence" on states. "It's a great model for why EPA should not feel constrained from [acting] on indoor environments."

Another CHPAC member, Nsedu Obot-Witherspoon, noted that her group, the Children's Environmental Health Network, is "trying to work with state healthcare agencies. It would really help if there were [indoor air] standards" set by EPA, she said. "For them to feel confident, they're going to really want to see that."

EPA can indirectly regulate indoor air quality, for example through regulations to cut volatile organic compounds in household products. CHPAC member David Jacobs noted at the meeting that the agency has also issued rules addressing lead exposure levels during the indoors renovation of buildings containing lead paint.

Jacobs said that the problem of hazardous air pollutants indoors shows that new EPA authority to regulate indoor air quality is "clearly needed" and suggested that pending bills to overhaul the Toxic Substances Control Act (TSCA) could be a vehicle for giving the agency that new authority. However, TSCA reform bills recently introduced in the Senate and the House do not establish new authority for EPA over indoor air quality.

## BP SPILL

### Team of federal investigators forms to launch criminal inquiry on spill (*Boston Globe*)

July 30, 2010 Friday
NEWS; National; Pg. 6
By Jerry Markon, Washington Post
WASHINGTON - A team of federal investigators known as the ``BP squad'' is assembling in New Orleans to conduct a wide-ranging criminal inquiry that will focus on at least three companies and examine whether their cozy relations with federal regulators contributed to the oil disaster in the Gulf of Mexico, according to law enforcement and other sources.

The squad at the FBI offices includes investigators from the Environmental Protection Agency, the US Coast Guard, and other federal agencies, the sources said.

In addition to BP, the firms at the center of the inquiry are Transocean, which leased the Deepwater Horizon rig to BP, and engineering giant Halliburton, which had finished cementing the well only 20 hours before the rig exploded on April 20, sources said.

While it had been known that investigators are examining potential violations of environmental laws, it is now clear that they are also looking into whether company officials made false statements to regulators, obstructed justice, or falsified test results for devices such as the rig's failed blowout preventer. It is unclear whether any such evidence has surfaced.

One emerging line of inquiry, sources said, is whether inspectors for the Minerals Management Service, the federal agency charged with regulating the oil industry - which is itself investigating the disaster - went easy on the companies in exchange for money or other inducements.

A series of federal audits has documented the Minerals Management Service's close relationship with the industry.

``The net is wide,'' said one federal official who spoke on the condition of anonymity because he was not authorized to speak publicly.

The Justice Department investigation - announced in June by Attorney General Eric H. Holder Jr. and accompanied by parallel state criminal inquiries in Louisiana, Mississippi, and Alabama - is one of at least nine investigations into the worst oil spill in US history. Unlike the public hearings held last week in Kenner, La., by a federal investigatory panel, the criminal inquiry has operated in the shadows.

But it could lead to large fines for the companies and jail time for executives if the government files charges and proves its case.

Justice Department officials declined to comment Tuesday. Holder, in an interview with CBS News this month, confirmed that investigators are conducting a broad inquiry. ``There are a variety of entities and a variety of people who are the subjects of that investigation,'' Holder said.

In an additional avenue of inquiry, BP disclosed in a regulatory filing Tuesday that the Justice Department and the Securities and Exchange Commission are looking into ``securities matters'' relating to the spill, although no more details were included.

Scott Dean, a spokesman for London-based BP, said the company ``will cooperate with any inquiry the Justice Department undertakes, just as we are doing in response to other inquiries that are ongoing.''

Brian Kennedy, a spokesman for Transocean, a former US firm now based in Switzerland, declined to comment, as did Teresa Wong, a spokeswoman for Houston-based Halliburton.

Halliburton informed its shareholders about the Justice Department investigation in its quarterly report to securities regulators July 23.

It also noted that the department warned the company not to make ``substantial'' transfers of assets while the matter is under scrutiny.

The inquiry is in its early stages, with investigators digging through tens of thousands of documents turned over by the companies, beginning to interview company officials, and trying to determine the basics of who was responsible for various operations on the rig.

Although lawyers familiar with the case expect that environmental-related charges - which have a low burden of proof - will be filed, some doubted that investigators can prove more serious violations such as lying or falsifying test results.

``That's hard to prove,'' said one lawyer, who spoke on the condition of anonymity because details of the investigation are not public. ``It's hard to show that somebody who could have died on the rig was malicious and reckless and intentionally did something that jeopardized their own life.''

The emerging focus creates potentially awkward interactions on several levels. Investigators are probing companies, especially BP, that the government has been forced to work with in cleaning up the oil. And the former Minerals Management Service, which sources said has attracted the attention of criminal investigators, is helping to lead the federal panel that conducted last week's hearings in Louisiana.

**Dispersants Used on BP Oil Spill Still Cause for Concern (*Newsinferno.com*)**

Date Published: Thursday, July 29th, 2010
Last week we wrote that, according to the National Resources Defense Council, various components of crude oil, such as benzene, toluene, and polynuclear aromatic hydrocarbons, present risks and are all known carcinogens. Other components of oil—mercury and lead—are also toxic and there are concerns that the dispersants BP is using in unprecedented amounts to break-up the spill are also toxic. Now, CNN is reporting that in excess of 1.8 million gallons of dispersant chemicals have been dumped into the Gulf of Mexico in attempts to separate the oil moving in from the Deepwater Horizon's broken well.

Although not much is known about the potential effects of these dispersants, the U.S. Environmental Protection Agency (EPA) and U.S. Coast Guard mandated that BP use a less toxic dispersant than what it had been using in the Gulf: Corexit 9500, said CNN. Experts are concerned about the effect of these chemicals, specifically the more discreet outcomes.

BPA did not comply forcing EPA Administrator Lisa Jackson to announce that the agency would conduct its own testing, looking specifically at Corexit 9500 and "seven other common, readily available dispersants" from its "approved list," said CNN. The tests revealed that Corexit was slightly less toxic than the maker's data, and new orders were not issued, noted CNN. "We need more data before we decide whether to change dispersants," said Paul T. Anastas, the EPA's assistant administrator for research and development, quoted CNN. "Our ultimate goal in all of this is to reach a point where dispersants are no longer necessary," Anastas added.

"The only effect that's being looked [in acute toxicity tests] at is death, lethality. That is a place that testing often starts because you want to know what concentration of the

chemical will kill fish or other organisms," said Richard Denison, senior scientist at the Environmental Defense Fund, quoted CNN "But what's much more relevant in predicting the full effects of the use of dispersants and dispersed oil are the more subtle effects—that are sublethal, that may affect growth and reproduction," Denison explained.

Sub-lethal effects could decrease populations without killing organisms, affecting the more fragile and stationary larvae and eggs, said CNN. In humans, more information on dispersants are needed, including chronic and delayed effects, noted CNN. Human exposure, say scientists, is either direct, via inhaling, ingestion, or skin absorption or indirect, such as by eating seafood, wrote CNN.

Meanwhile, we recently wrote that two Louisiana State University (LSU) sociology professors released a survey detailing some of the health impacts the BP oil spill is having on people living in Louisiana's coastal communities. According to Professors Blanchard and Lee, those impacts are "real and substantial."

The two are not among the first to raise serious concerns about the health consequences of the BP oil spill for people living and working near it. The Louisiana Department of Health and Hospitals has now reported 324 cases of oil-related ills. Two hundred and forty-one of those cases involved workers on oil rigs or workers involved in the oil spill clean-up efforts, while 83 were reported by the general public. Common complaints include headache, dizziness, nausea, weakness or fatigue, and throat irritation. It is thought that at least some of those symptoms are the result of dispersant exposure.

In a summary of chemical testing posted to its website earlier this month, BP said 2-butoxyethanol was detected at levels up to 10 parts per million (ppm) in more than 20 percent of offshore responders and 15 percent of those near shore. 2-butoxyethanol is an ingredient the Corexit 9527 dispersant that BP phased out after spraying it in the Gulf during the early days of the spill. The same chemical has been linked to illnesses among people who worked on the Exxon Valdez oil spill in 1989.
This entry was posted on Thursday, July 29th, 2010 at 12:34 pm and is filed under Accident, Health Concerns, Oil Spills, Toxic Substances.

**BP media blackout news: Whistle blower claims conspiracy between BP and EPA to hide oil spill impact (Examiner)**

July 29, 1:41 PM · MARYANN TOBIN - Tampa Gulf Oil Spill Examiner

After more than 100 days, the public perception of the Gulf of Mexico oil spill disaster has changed from outrage over when the spilling will stop, to where has all the oil gone?

Whistle blower, EPA Senior Policy Analyst Hugh Kaufman believes the oil is still there, it has just been hidden under and unprecedented 1.8 million gallons of Corexit dispersant, and help from the EPA.

Kaufman claims the EPA has been quietly working with BP to downplay the impact of the spill, the clean up, and the affects of the chemical dispersant overdose BP was allowed to pour into the Gulf of Mexico. MSNBC reports, “It’s like letting the criminal clean up the crime scene.”

Kaufman said there was no reason to use dispersants at all. “The only real purpose of using so many dispersants with the oil was to cover up the volume of oil released from that well. That - and lying about how much was coming out, was a mechanism to help BP save billions of dollars in fines.” He added, “The dispersant mixed with oil and water is extremely toxic. “

It has been well documented that BP has been buying scientists with censorship contracts in an effort hide important data, thus limiting their punitive liability. Kaufman said, “I was listening to some of the “experts” who are being paid by BP at Universities who are saying that the oil has disappeared. It hasn’t disappeared.”

Corexit is known to cause internal bleeding, and not just in the thousands of dead dolphins recovered with blood oozing from their mouths and blowholes. Kaufman said some of the human clean up workers “are having the same problem.”

As more whistle blowers come forward, there is increasing evidence to suggest that the gulf oil spill media blackout reaches beyond BP’s public relations department. The United States government now appears to be part of a cover-up that should be cause for alarm. particularly for Tampa residents and others in close proximity to Gulf waters.

**Whistle blower: BP dispersant poses greater risk than admitted: EPA does flip flop on Corexit (*Examiner*)**

July 29, 6:36 PM · Maryann Tobin - Political Spin Examiner
Since the Deepwater Horizon rig exploded on April 20, more than 300 million gallons of oil and gas have gushed into the Gulf of Mexico.

With the well temporarily capped, reports are beginning to claim that there is little visible oil left, and environmental damage is not significant. However, there are both scientists and officials close to the situation who believe that data is being manipulated to hide an undesirable truth.

EPA Senior Policy Analyst Hugh Kaufman believes most of the oil spill has been hidden under an unprecedented 1.8 million gallons of Corexit dispersant, and that the EPA has been working with BP to play down negative data.

Case in point

On May 20, 2010 the EPA "ordered BP to look for less toxic alternatives to Corexit, and later ordered BP to stop spraying dispersants," citing concerns over toxicity and long term damage to the environment.

BP refused to switch to a less toxic chemical and continued to drown the oil slick with 1.8 million gallons of Corexit.

On June 30, 2010, PBS reported that the Environmental Protection Agency issued a new study claiming that BP's dispersant was "practically non-toxic."

There is something very wrong with this picture.

## BUDGET

07/30/2010

**Democrats Block GOP Efforts To Limit EPA Authority In FY11 Budget Bill (*Inside EPA*)**

House Democrats rejected several GOP amendments to EPA's fiscal year 2011 spending bill aimed at limiting the agency's regulatory authority on air, greenhouse gas (GHG) and other regulations, voting down the riders at an appropriations subcommittee markup before approving the bill that funds EPA slightly below FY10 levels.

The bill would award EPA $10.01 billion, a slight drop from the agency's FY10 enacted amount of $10.29 billion and almost identical to President Obama's requested FY11 amount of $10.02 billion. But the bill pays for several House lawmakers' priorities by taking funds from core agency accounts, for example shifting $39 million in state grants to pay for increases in other emerging areas such as programs to research the Gulf of Mexico oil spill. *Relevant documents are available on InsideEPA.com.*

Members of the House Appropriations Committee's interior panel approved the bill by voice vote July 22 after debating -- and defeating -- several Republican amendments targeting EPA's regulatory authority.

For example, Rep. Steven LaTourette (R-OH) offered an amendment to delay for two years EPA's "tailoring" rule requiring first-time GHG limits in some Clean Air Act permits. Lawmakers in both chambers have introduced stand-alone legislation with the same goal of stalling EPA from regulating GHGs. Two Democrats, Reps. Alan Mollohan (WV) and Ben Chandler (KY), supported the rider but it ultimately failed on a 7-7 vote.

LaTourette also offered other amendments: one to prevent EPA from implementing new national ambient air quality standards (NAAQS) for ozone, another to bar the agency pursuing a proposed rulemaking related to pesticide brand names, and a third ordering EPA to develop new guidelines for combined sewer overflow financial capability assessment and schedule development. All of the riders were defeated by Democrats, who said that many of the GOP's riders were inappropriately attempting to legislate on EPA action through the appropriations process.

The committee also rejected on a 5-9 party-line vote an amendment offered by interior subcommittee ranking member Rep. Mike Simpson (R-ID) to bar EPA requiring Clean Air Act Title V permits for GHGs associated with livestock emissions and to prevent reporting of GHGs from manure management systems.

Rep. Ed Pastor (D-AZ) noted that he was among 99 Democrats who supported the language last year when it was offered on the House floor to EPA's then-pending FY10 spending law, but said that he now opposes it because he has seen the negative effect of allowing livestock owners to avoid regulation.

Rep. Tom Cole (R-OK) offered a rejected amendment that would have overruled EPA's accounting of biomass GHG emissions in its July 2 reporting rule guidance; Cole argued that biomass emissions should be considered carbon-neutral because trees absorb carbon dioxide as they grow that is then released when they are burned. EPA recently put out a "call for information" notice on how to assess GHGs from biomass energy in the air permit process, after industry and lawmakers criticized the tailoring rule for ignoring biomass' climate benefits.

Simpson also offered an unsuccessful amendment to bar EPA from administering rules that would change the definition of jurisdictional waters under the Clean Water Act, arguing that the agency is attempting to remove the "navigable" designation in an attempt to regulate purely intrastate waters.

The committee did adopt one amendment offered by Simpson to be included in the committee's non-binding report language clarifying that pending EPA rules requiring facilities to prepare oil spill response plans should not apply to milk that spills at dairy farms, a concern several farmers have raised.

**Overall, EPA would receive $10.01 billion, representing a $271 million cut from the agency's FY10** enacted level, but only a $2 million cut from the president's request. The Senate is yet to markup EPA's FY11 bill.

The House bill proposes some cuts to core EPA programs, including a $227 million cut to the state and tribal assistance grant (STAG) fund from $4.97 billion in FY10 to $4.74 billion in FY11. States are likely to oppose the plan, because they have said that the existing STAG account is underfunded. States rely on the STAG account to help them implement key agency programs, including funds for air monitoring and other work.

The bill also cuts STAG's clean water fund to $1.9 billion, compared to Obama's $2 billion request and the $2.1 billion enacted level. It would also reduce the STAG drinking water fund to $1.2 billion -- more than $80 million below Obama's requested level and $181 million less than the FY10 amount of $1.39 billion.

Some programs would benefit from funding increases above the president's request, including $855 million for EPA's science and technology fund, which is $8 million more than Obama requested and $9 million above FY10. The environmental programs and management fund -- which funds staffing, enforcement and regulatory efforts -- would receive $2.92 billion, $30 million above Obama's request but $72 million below FY10.

## CLIMATE CHANGE

07/30/2010

### Senate Impasse On Climate Legislation Shifts Focus To Regulatory Efforts (*Inside EPA*)

A decision by Senate Democrats to indefinitely postpone a vote on capping greenhouse gas emissions will likely shift the focus of the debate to regulatory actions at the federal and state levels, with proponents of emission controls already ramping up calls for short-term actions under existing federal and state regulatory authorities.

While Senate Democrats and the Obama administration have asserted their intentions to continue working toward a deal that would allow for a vote on comprehensive climate change legislation this year, groups that back federal legislation are stepping up calls for policymakers to both use and protect existing statutory authorities for controlling greenhouse gases as a possible fallback strategy should Congress fail to act.

"We have always maintained that protecting [current] EPA authority was incredibly important," says one environmentalist. "It is as important as ever, if not more so," the source adds, in the wake of a July 22 announcement by Senate Majority Leader Harry Reid (D-NV) that he does not have the votes to move legislation that would impose a cap on utility emissions, and will instead introduce a narrower energy measure.

In one sign of growing debate over regulatory action in the absence of legislation, the World Resources Institute (WRI) -- a member of an industry-environment coalition that has backed carbon cap bills -- released an analysis July 23 outlining the potential for significant near- to medium-term emission cuts using existing federal and state authorities. *The analysis is available on InsideEPA.com.*

The report, which was in the works for almost a year, focuses largely, but not exclusively, on the regulatory authorities at EPA and the departments of Transportation

(DOT) and Energy. The report also says that even under the most ambitious "go getter" scenario, the reductions fall short of pledged U.S. commitments on the issue, particularly beyond 2020. The Obama administration has called for a 17 percent cut from 2005 levels by 2020. Reductions on the order of 12 percent from 2005 levels could be achieved by 2020 under the most ambitious federal scenario; a 14 percent cut from 2005 levels is possible when ambitious federal and state efforts are counted together, the analysis concludes.

At a July 23 press conference in Washington -- one day after Reid's announcement -- WRI President Jonathan Lash said of his group's new report, "I wish it weren't so timely," citing events including Reid's announcement and a recent National Academy of Sciences report on the dangers of global warming.

Lash said the WRI report shows legislation is still necessary despite the "apparent collapse" of the Senate climate effort, but that regulatory levers are crucial to buy time for Congress to act. The ultimate fate of regulatory efforts "depends very much on the political will of the administration and choices that Congress still faces about whether to limit EPA jurisdiction" on carbon dioxide, Lash said, noting there are pending congressional proposals to scale back EPA's authority. Lash called any efforts to roll back EPA jurisdiction on emissions a "job killer," noting the continuing uncertainty on carbon emission limits that is dampening future investments.

In an interview, Lash noted that discussion of regulatory options has been muted because of the focus to date on climate legislation -- which Lash's group is still calling for. However, Lash said, "I would hope that the president would have [energy and climate advisor] Carol Browner convene a set of agencies to develop a strategy for how we are going to coordinate going forward with the most cost-effective reductions." The status of any such efforts is unclear.

On specific emission-reduction options, the WRI report highlights the potential for significant reductions from the energy sector. The report also notes that particularly in the short term, it is possible to achieve roughly half the potential emissions cuts under a middle-of-the-road scenario from outside the energy sector.

With respect to EPA, the analysis contains a range of options, including cuts in hydrofluoroocarbon emissions, as well as new source performance standards (NSPS) for stationary sources, such as coal- and natural gas-fired power plants, industrial plants such as cement kilns and refineries, landfills, natural gas distribution systems, coal mines, and adipic and nitric acid plants. On power plants, WRI's minimalist scenario for an NSPS standard for existing coal power plants starts at a 5 percent efficiency improvement and goes up from there.

On mobile source emissions, the analysis cites EPA and DOT authorities related to light- duty vehicles, medium- and heavy-duty vehicles, off-highway vehicles and aircraft, as well as Federal Aviation Administration authority for encouraging aircraft operate more efficiently.

With respect to states, the group eyes emission reductions under various scenarios, including passage of state legislation with emission targets to participation in regional cap-and-trade initiatives.

Other groups are joining WRI in calling for increased regulatory action in the absence of legislation. In a July 22 statement blaming Republicans for the Senate deadlock on an emissions bill, the liberal think tank Center for American Progress argued, "It is up to the Obama administration to promptly comply with the Supreme Court by using EPA's authority to reduce global warming pollution."

**Key Groups Quietly Push Tiered CCS Liability Plan For Future Climate Bill (*Inside EPA*)**

A group of power companies, environmentalists and insurers is urging Congress to codify their tiered plan for addressing potential environmental and other liabilities for carbon capture and sequestration (CCS) operations, a key issue that industry is seeking to resolve to provide legal certainty before they deploy the climate control technology.

Southern Company, Duke Energy, Environmental Defense Fund (EDF) and the insurance company Zurich reached agreement earlier this year on a plan that divides liability for CCS operations among the facility operator, other CCS facilities and the government -- depending on the scope of any liability.

Sources say the the groups are pushing lawmakers to incorporate the approach into any legislation that will address CCS. However, the broader climate change debate is stalled, for now, as Senate Majority Leader Harry Reid (D-NV) has put aside debate on a climate bill in favor of a narrower bill that addresses the BP oil spill, promotes energy efficiency and electric and natural gas vehicles, and establishes a land and water conservation fund (*see related story*).

Nevertheless, one informed source says there is "significant interest" in the tiered plan among lawmakers. "I think there is a growing set of people on the Hill that are really looking for solutions on this issue because they would like to see CCS deployed," the source says.

But the group's approach was not included in a recently introduced Senate bill providing $20 billion worth of incentives to launch major CCS demonstration projects -- and to indemnify the projects of claims that exceed their insurance. Environmentalists are criticizing the bill introduced by Sens. Jay Rockefeller (D-WV) and George Voinovich (R-OH), saying it gives industry too much of an exemption from liability. And Sens. John Kerry (D-MA) and Joseph Lieberman (I-CT) did not address the issue of CCS liability in their draft climate bill.

In addition, it is not clear whether the group's approach would win support from lawmakers. Senate Democrats, for example, have been unwilling to provide liability relief for future oil spills, charging that requiring taxpayers to share in industry liabilities amounts to an industry "bailout."

But the informed source argues the issues are different -- that risk from CCS contamination or releases will likely be very low and the risk of a release of carbon dioxide (CO2) from a CCS well is very different from the risk of an oil spill, since CO2 is a common element in the atmosphere. "Carbon dioxide is a lot different than oil and putting carbon dioxide underground is a lot different than drilling in water. . . . The pathways for environmental exposure are pretty narrow," the source says.

At issue is how to address potential environmental and other liabilities in the event that sequestered CO2 leaks from underground wells, contaminating drinking water or being released back into the atmosphere.

Industry proponents of CCS say that without certainty on potential liabilities, they may be unwilling or unable to test or deploy what many agree is the key technology for addressing CO2 and other greenhouse gas (GHG) emissions.

The informed source says that any CCS bill must address the liability issue, especially for early development of the technology when risks are unclear, and during the operation of CCS, when risk of incident could be the highest. The source notes that some research suggests that the risk of an incident will be highest during the early operation phase as the pressure of CO2 underground grows, then risk will level off and reduce as the CO2 is stored and begins to crystallize, a process that will lock it underground.

While EPA is writing rules to permit CCS operations under the Safe Drinking Water Act, the agency says that potential liabilities after wells are closed are beyond its current authority and has called on Congress to address the issue. But so far, Congress has not addressed the issue.

**Now the stakeholder group is urging Congress to create a tiered approach,** with four layers of liability for CCS, the source says. Under the first tier, the groups are recommending that CCS operators would be liable for as much as $200 million but not less than $50 million, the source says. That liability could be paid directly by the company or through a financial assurance instrument, such as insurance, letter of credit or surety bond, the source says.

An industry-wide risk pool, comprised of as many 80 operations selected by the Department of Energy (DOE), would then share additional liabilities, up to $12.5 million per entity, the source says. This could amount to additional coverage of as much as $1 billion, the source says.

Liabilities in excess of whatever the pool chips in would be paid by the government, with the stakeholder group recommending additional contributions of $300 million to $900 million, the source says. This contribution would be a lifetime limit, so if an operator had one incident, any government funds used to redress it would be subtracted from the amount of funds available for another incident, the source says. If expenses exceed this level, the fourth layer of the plan would require the operator to cover all additional expenses.

In response to an inquiry about the plan, a spokeswoman for Southern Company said, "We are working with all stakeholders in the belief that the deployment of CCS should be a societal consensus, with support and input from every quarter."

A source with Zurich says the framework is intended to spur dialogue on the issue of liability. The company believes insurance, and the way it is priced, would encourage CCS operators to choose the safest possible methods and allow the public and policy makers to compare the costs of CCS to other GHG-reducing technologies. The source adds that the framework is still in draft form and that the stakeholders plan to continue to refine the details of the approach.

Duke Energy and Environmental Defense Fund did not respond to requests for comment by press time.

The approach contrasts with the approach adopted by Rockefeller and Voinovich in their recently introduced bill, which seeks to provide a host of incentives for CCS. Among other things, the bill would establish a "Carbon Storage Stewardship Trust Fund" within the U.S. Treasury to pay damage claims for permitted "first mover" projects that have DOE indemnification agreements and all the necessary federal and state permits for underground injection of CO2 at a suitable site. The indemnification agreements would be available for 10 demonstration projects and would indemnify owners and operators "for all or part of the costs incurred to satisfy remediation and civil claims (whenever made) that arise from injection of [CO2] into a storage facility" once the underground storage site is closed.

The indemnity would be limited to claims that exceed the liability insurance coverage that the projects would be required to buy. The indemnification agreements with DOE would also require environmental reviews for the projects under the National Environmental Policy Act.

But environmentalists are criticizing the bill's liability provisions. For example, the Natural Resources Defense Council's George Perida says in a July 16 blog that a well sited, designed and operated CCS project would have low enough risk that commercial risk management instruments like insurance policies should be adequate. "There are prudent and measured ways of helping the market develop that do not involve such broad liability relief provisions and that avoid the real danger of creating moral hazard," the blog says.

And the informed source says industry is concerned about the Rockefeller bill's trust fund approach. Industry believes the government fund could be expensive and would like to have the flexibility to move away from the trust fund structure and toward private sector approaches like insurance, the source says. "There's concern, particularly about federal management of a trust fund. Look at . . . Superfund, Social Security, I don't think you would say that any of those are universally regarded as successes." -- *Kate Winston*

## ENERGY

### U.S. crackdown forces Calif. to yank home retrofit loans (*Greenwire*)

(07/29/2010)
Debra Kahn, E&E reporter
California pulled funding for its home solar and energy-retrofit loans yesterday in response to federal mortgage overseers' negative ruling on the program.

The California Energy Commission's (CEC) decision removes $30 million in federal stimulus funds awarded by the state last February to five counties for county and municipal home energy loans. The state said the five were expected to create 4,400 jobs and avoid 187,000 tons of greenhouse gas emissions through 2012.

Loans from the property-assessed clean energy (PACE) program are tied to property tax bills, allowing homeowners to extend payments and carry loans over when the house is sold.

A 2009 bill expanded California's program to cover water-efficiency improvements in addition to energy projects, and Gov. Arnold Schwarzenegger (R) signed a bill last April establishing a $50 million reserve fund to back local government bonds.

The programs had also been gaining momentum in other states. About 18 states and dozens of local governments have passed legislation allowing governments to aggregate the loans and issue bonds to get a better interest rate for such programs.

But the Federal Housing Finance Agency (FHFA) issued a May statement against the programs, saying the loans cannot take precedence over primary mortgages. The agency followed up this month with a policy statement covering Fannie Mae and Freddie Mac, the nation's two largest mortgage finance lenders (*Greenwire*, July 7).

State officials expressed frustration with FHFA, saying they had received mixed messages on whether to back the loans with stimulus money.

"In early dialogue with DOE and Congressional leaders regarding California placing an emphasis on PACE financing ... the Energy Commission received strong encouragement to follow up California's early leadership," staff wrote in a **proposed decision** yesterday.

"FHFA's and [Office of the Comptroller of the Currency's] recent direction flies in the face of over a century of lawful priority lien tax assessments issued by local governments to finance public benefits," the paper says.

State Attorney General Jerry Brown (D) filed suit against FHFA two weeks ago, claiming the mortgage companies mischaracterized the programs as risky loans and failed to follow environmental law (*Greenwire*, July 15). But Schwarzenegger has indicated he supports finding another way to use the stimulus funding.

"I am calling on the [CEC] to adapt to the changed regulatory landscape in a way that will allow full obligation of the reallocated funds by September 30, 2010," the head of the Schwarzenegger-created California Recovery Task Force wrote to CEC, the day after Brown filed suit.

The energy commission will consider alternate funding methods for retrofits at its Aug. 6 meeting.

**Calif. expands stimulus-backed appliance rebates**

Citing lower-than-expected demand, state regulators yesterday decided to extend federal stimulus benefits to cover most energy-efficient household appliances.

CEC voted to extend benefits to cover dishwashers, freezers, central air conditioning and heaters, in addition to refrigerators, air conditioning units and washing machines.

Since beginning in April, California's program has paid $11 million to 79,000 people, out of $31.7 million total. Nineteen states have already exhausted their allotments.

07/30/2010

**Pipeline Permit Delay May Allow State Dept. To Address GHG Concerns (*Inside EPA*)**

The State Department is giving federal agencies more time to comment on whether it should issue a permit for a new pipeline that would carry high-carbon tar sands oil from fields in Canada to refineries in Texas, a move that likely delays a final permitting decision and gives the department time to respond to concerns from EPA and others over the project's potential greenhouse gas (GHG) and other environmental impacts.

The department has come under fire from EPA, environmentalists and a number of congressional Democrats over the failure of its draft environmental impact statement (EIS) to fully assess the pipeline's GHG impacts. These critics charge the project will increase the United States' dependence on one of the most carbon-intensive transportation fuels -- oil from tar sands -- at a time when the Obama administration is proclaiming its commitment to "clean energy" and combating climate change. The Energy Department (DOE) has also raised concerns with the environmental analysis and the assumptions about future oil demand being used to assess the project.

Supporters of the project, including some labor unions, argue that it will create desperately needed jobs while reducing the need for oil imports from the Middle East.

In a notice posted July 26 on its website, the department says it will now allow federal agencies to comment on whether the proposed Keystone XL pipeline serves the U.S. "national interest" until 90 days after it issues its final EIS on the project. The original deadline, September 15, was pushed back after "further consultation" with the relevant agencies, according to the notice. Environmentalists are praising the decision, saying it demonstrates the department is responding to concerns from federal agencies and others about the environmental impact of importing up to 900,000 barrels a day of tar sands oil, which EPA found emits 82 percent more lifecycle GHGs than conventional crude oil. The move to postpone the comment deadline means federal agencies will have the benefit of seeing the department's final EIS before concluding whether or not approving the pipeline makes sense.

"What's so significant here is not that the State Department has committed to doing a good, thorough review -- we have no idea what they're really going to do at this point," says the Sierra Club's Kate Colarulli. "What's significant is they've acknowledged the fact that the environmental impacts are a critical part of the national interest determination."

Department officials have not said when they will issue a final EIS, nor have they said when to expect a final permitting decision; those tracking the process, however, do not expect a decision until early next year.

The department issued its draft EIS in April, prompting scathing comments from EPA over its failure to quantify the GHG emissions associated with expanding the carbon-intensive extraction of tar sands from fields in the Canadian province of Alberta, among other concerns. House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and 50 House Democrats voiced similar criticisms of the draft EIS in separate letters to the State Department.

DOE likewise took issue with the department's environmental analysis. In comments released to the public July 26, DOE questions a number of the assumptions the State Department cites in justifying the need for the pipeline. For instance, the draft EIS asserts that there would be greater oil price volatility in the absence of the pipeline

"since crude oil supplies would continue to be sought from unstable foreign sources in the near term." *The comments are available on InsideEPA.com.*

However, DOE points out that the Keystone XL pipeline would "not eliminate U.S. demand in the international market or its exposure to price shocks propagating through that market, which affect the prices charged for supply by producers in Alberta as well. Therefore, this statement needs further examination." The State Department also assumes that approving the pipeline would preclude the possibility of tar sands being exported to Asian markets by way of a West Coast pipeline, but "it appears these two pipelines are not mutually exclusive," DOE notes.

In the notice published on its website, the State Department says it "is currently reviewing comments received on the draft EIS and determining how to respond to those comments in the EIS." It also notes that, after the "interagency consultation process is complete, the matter will be submitted to the department's decision-maker on the permit application. The department stresses that no decision has been made on this application nor will any decision be made until all necessary steps of the environmental review and interagency consultation process have been completed."

Though environmentalists maintain the department must respond to all the concerns raised by federal agencies before going ahead with a final approval, it is not clear how thorough that response will be. For instance, it is not certain that the department will conduct a thorough lifecycle GHG analysis of the proposed pipeline in its final EIS, despite one being recommended. And while EPA in its comments threatened to refer the project to the White House Council on Environmental Quality (CEQ) -- essentially giving CEQ the final say on whether it should go ahead -- "it's unlikely that will happen," says Sierra Club's Colarulli. "I think State will do its best to keep control of this project." -- *Charles Davis*

## ENFORCEMENT

07/30/2010

### Lawmakers Plan Bill Giving EPA 'Solid Waste' CCR Enforcement Authority (*Inside EPA*)

House lawmakers are poised to introduce a bill that would give EPA first-time authority to enforce solid waste rules for coal combustion residues (CCR) in an effort to reach a compromise with the agency to avoid more stringent hazardous waste CCR rules, which industry says would obliterate the coal ash recycling industry.

Rep. Heath Shuler (D-NC), the chairman of the House small business committee's rural development panel, said at a July 22 hearing on the issue that he and other lawmakers

are developing legislation to give EPA authority to enforce CCR rules under subtitle D of the Resource Conservation & Recovery Act (RCRA).

The bill, if passed, could help avoid a showdown between industry and EPA over how to regulate CCR.

However, some environmentalists are opposing the move because they say it would lead to delays in regulating CCR. They also argue the legislation is unnecessary because the revised solid waste framework would need to be almost identical to RCRA hazardous waste rules in order to be sufficiently protective.

In the wake of the massive 2008 Tennessee Valley Authority coal ash spill, EPA decided to regulate CCR and is taking comment on a June 21 proposal to either regulate disposed coal ash as a solid waste under subtitle D or as a "special waste" under more-stringent subtitle C rules for hazardous waste. Neither proposal would regulate ash if it is recycled. EPA is taking comment on the proposal until Sept. 20.

Industry is pushing EPA to regulate CCR under less-stringent subtitle D solid waste rules -- which states would oversee -- because they say subtitle C hazardous waste rules would stigmatize coal ash and damage the CCR recycling industry, which uses the ash in concrete and other building materials.

However, EPA and environmentalists say there is no proof of such a stigma and argue hazardous waste rules could actually motivate utilities to increase recycling to avoid costly new disposal requirements. The agency and activists have also raised concern that only states -- not EPA -- would have authority to enforce the solid waste rules.

Shuler says the legislation could be a way for all the parties to move forward on the issue. "We want to be able to work with everyone to get a compromise and I think a compromise is good at this point," he told *Inside EPA* after the hearing. He did not provide further details about the legislation and said he did not yet know whether the new authority for EPA would be limited to coal ash. But he said lawmakers were focusing on coal ash because of concern that new rules could harm small business.

The chairman also implied the legislation could prevent states from designating the waste as hazardous. "We have got to have some uniformity," Shuler said during the hearing, adding, "Because if one state . . . want[s] to decide it is hazardous waste, then ultimately it impacts everyone in the industry and we are talking about insurance, liability, litigation."

Shuler said he had discussed the issue with EPA, but Lisa Feldt, EPA's deputy waste chief, sidestepped the issue when questioned about it during the hearing.

Rep. Kathy Dahlkemper (D-PA) asked Feldt, "would it make sense for Congress to give EPA authority to regulate under subtitle D and create new disposal measures that can be enforced, at the same time avoiding the stigma of hazardous or special waste?"

Feldt did not directly answer, and instead said, "We currently propose two options in our rulemaking efforts and we are considering those options. And clearly we would provide any technical support necessary, but we have not decided on either of those options right now."

At least some in industry are backing the idea of legislation to give EPA subtitle D enforcement authority, though industry has argued in the past that EPA may have existing authority to enforce.

For example, Thomas Adams, the executive director of the American Coal Ash Association, said subtitle C regulation could "cripple" the recycling industry, which he said has many small businesses and helps the environment through avoided carbon emissions and other benefits. But he added, "We do know that there is a better way and we would like to suggest to you the better way is for Congress to provide subtitle D national enforcement authority to EPA."

However, at least one member of the industry witness panel at the small business hearing was not yet ready to back the approach. Robert Garbini of the National Ready Mixed Concrete Association, said, "We are still evaluating whether or not we want to see designation of EPA's control under subtitle D."

Some environmentalists are already criticizing the pending legislation. One environmentalist argues the bill would lead to a significant delay in CCR regulation because it would take time for Congress to pass a bill and for EPA to write rules to implement the legislation once it became law.

The source also argues that the lawmakers at the hearing seemed to misunderstand EPA's proposal. Lawmakers argued that storage of the ash, not reuse of the ash, should be regulated, which is what EPA's approach would achieve, the source says. The source also said that despite EPA's numerous meetings with industry, "they haven't seen a shred of evidence that the stigma theory holds any weight."

Also, subtitle D rules -- even if enforceable by EPA -- could be inadequate because solid waste rules currently only govern disposal, not the generation, transportation and storage of waste, the source says. Congress could draft the bill to give EPA authority over the entire lifecycle of coal ash and would need to do so for the approach to be protective, the source says. But in that case, the bill would be unnecessary because the solid waste framework would be almost identical to hazardous waste rules, the source says.

## Corps backs New Hill waste plant (*News & Observer*)

Raleigh, North Carolina
July 30, 2010 Friday
BY: TED RICHARDSON AND JORDAN COOKE; Staff Writers
Four western Wake County towns are a step closer to building a $327 million regional wastewater treatment plant in New Hill, an unincorporated community that has fought the plant for years.

The U.S. Army Corps of Engineers released its final environmental approval for the site Thursday. The 85-page document endorses the site as the one that will have the smallest negative environmental impact, despite being near wetlands.

"We're very happy to have reached this milestone," Cary Mayor Harold Weinbrecht said. "But there's more to go."

The towns - Cary, Apex, Morrisville and Holly Springs - formed Western Wake Partners in 2004 to begin planning the facility. The project was intended to help the towns comply with a state environmental mandate, directed at Cary, Apex and Morrisville, to return water to the Cape Fear River basin and to keep pace with the towns' rapidly-growing populations.

Opposition from New Hill residents has helped delay the project for more than three years. Those residents had hoped to persuade regulators to strike down the New Hill site, contending that it unnecessarily burdens the mostly minority, low-income residents at this crossroads near the Shearon Harris Nuclear power plant.

On Thursday, residents vowed to continue the fight, perhaps in court.

"We're disappointed, but we're not surprised with the decision," said Paul Barth, president of the New Hill Community Association. "It doesn't mean that we will give in to the decision. We will continue to work through our options, which will include litigation if necessary."

Barth declined to discuss the legal strategy. He said the group may also appeal "environmental justice issues" through the U.S. Environmental Protection Agency, but will first review the Army Corps decision.

"Until the concrete is poured, we're not going to quit," Barth said.

The four towns now will seek several state permits for the project covering aspects such as transportation, air quality and construction. If approved quickly, the plant could be built by the end of 2013, said Steve Brown, director of Cary's department of public works and utilities.

Apex Mayor Keith Weatherly was happy about the decision, but not the opposition.

"It's unfortunate that there's been some ill will, but I think the appropriate decision has been made in this case," Weatherly said. "The Army Corps of Engineers has left no stone unturned to investigate the concerns of the residents down there. ... Everybody obviously could not be satisfied with the outcome, but I think everybody should at least be satisfied with the process."

Apex, Morrisville and Cary officials, meanwhile, are paying attention to Holly Springs' next move.

Unlike its partners, Holly Springs already returns its treated sewage to the Cape Fear River basin, in Harris Lake, and is a voluntary member of the Western Wake Partners. Separately, the town has been pursuing an alternative to the New Hill plant, hoping to gain state approval to put additional treated wastewater into Harris Lake. That plan would save the town money and may allow it to avoid the legal fight over the New Hill plant.

The town can back out of its contract with the Western Wake Partners before the plant is permitted for construction, which Brown estimates could take about six months. Even though the Harris Lake option is not a sure bet for Holly Springs, the town will continue to fund an environmental study to submit to the state in support of it.

"I think the schedules are still compatible to pursue both of our alternatives," said Holly Springs director of engineering Stephanie Sudano.

Staff writer Jack Hagel contributed to this report.

ted.richardson@nando.com or 919-460-2608

07/30/2010

**EPA Bids To Institutionalize Equity Reviews Before Administration Change (*Inside EPA*)**

EPA officials say the agency is moving to quickly implement and "institutionalize" its just-issued interim guidance on weighing environmental justice in regulatory development and implementation, fearing that the next administration in either 2012 or 2016 could halt or undo the effort.

"If we don't institutionalize it, then all is for naught," Jim Jones, deputy administrator in EPA's Office of Chemical Safety & Pollution Prevention, said at a July 27 meeting of agency environmental justice advisers in Washington, DC. "I think one of the keys is to

do this early enough that it becomes part of the fabric," Jones said, adding that EPA should strive to achieve concrete results from equity analyses to demonstrate the utility of the guidance.

"I think that's part of the decision to move ahead with this process guidance right away," added Louise Wise, principal deputy associate administrator in EPA's Office of Policy, Economics & Innovation (OPEI).

Wise said that EPA Administrator Lisa Jackson has asked all deputy administrators to identify "selected rules where we really ought to concentrate our effort" implementing the guidance. It will apply "for sure" to new rules, except those in their final stages of development, she said. Wise added that the guidance is not designed for reviewing already issued rules but there may be exceptions if those rules have a significant equity impact.

Attendees at the National Environmental Justice Advisory Committee (NEJAC) meeting suggested that the rush to implement and institutionalize the guidance and make it part of EPA's "fabric" is designed to make it harder for future administrations to undo the Obama agency's efforts on environmental justice.

For example, Rhea Suh, assistant secretary for policy, management and budget at the Interior Department, referenced the fact that the Clinton administration's work on equity issues was largely dropped during the Bush administration. During a NEJAC panel July 28, Suh said she is excited to "revisit the diversity and [environmental justice] strategies that we had going in the '90s . . . and to leapfrog over some of the more dormant years that we had."

Environmentalists criticized the previous administration for undoing or downplaying President Clinton's push to have equity be a factor in agency rules. The Bush EPA drew criticism from its Office of Inspector General (OIG) for inconsistently implementing a Clinton-era Executive Order requiring agencies to ensure that minority and low-income populations are not subjected to a disproportionately high level of environmental risk.

OIG in a March 2004 report said that under the Bush administration, EPA changed the focus of the environmental justice program by de-emphasizing minority and low-income populations and emphasizing the concept of environmental justice for everyone. This action moved the Agency away from the basic tenet of the Executive Order and has contributed to the lack of consistency in the area of environmental justice integration."

Since taking office, Jackson has repeatedly said that equity is a top priority for her agency. Last year Jackson required consideration of environmental justice and other priorities during the "early guidance" and "options selections" phases of the rulemaking processes, where program managers give guidance on what issues need to be considered in the rulemaking and what regulatory options they plan to propose for consideration.

But the interim guidance issued to senior agency officials July 22 appears to go further, urging officials to ensure that rules' implementation also addresses environmental justice concerns. "As you develop your action, you should consider how you can promote [environmental justice] not only in the *development* of the action, but also in the *implementation* of the action. You should consider whether and how you can craft your action to influence its implementation in a manner that promotes [environmental justice]," the guidance says.

EPA sent the interim guidance to senior officials at the agency's headquarters, general counsel and regional offices. The interim guidance is a "step-by-step guide" to help staff incorporate environmental justice considerations in the formal rulemaking process, as well as how rules are implemented, the agency says.

EPA is also seeking comment on the interim guide to inform a revised version due out later this year as well as new technical guidance on the issue, according to a memo accompanying the guidance written by OPEI Associate Administrator Lisa Heinzerling. *The guidance is available on InsideEPA.com.*

**The guide could help ease environmentalists' fears, raised earlier this year, that initial steps** by the Obama EPA set a high bar for when the agency will take action to limit disproportionate impacts on minority communities. At the time, activists called on EPA to develop guidance for how and when to conduct analyses to realistically define disparate impact on these communities.

The interim guidance outlines a host of factors agency staff should consider in the rule-development process to determine whether the rule has the ability to create, worsen or improve disproportionate impacts. For example, staff should consider: proximity and exposure to environmental hazards; susceptible or high risk populations; unique exposure pathways, for example through diet or cultural practices; multiple and cumulative effects from a range of environmental hazards; ability to participate in the rule-making process; and physical infrastructure, such as proximity to transportation.

Staff should also consider whether equity communities have the opportunity to participate in the rulemaking process, the guidance says. "To provide meaningful involvement opportunities that are consistent with the agency's definition of [environmental justice] you will likely have to go beyond the minimum requirements of standard notice and comment procedures to engage these populations or tribes early," the guide says.

In addition, the guide says EPA staff should consider how to address equity in the implementation of the rule, not just the development of the rule. For example, staff should ensure rules consider: compliance assurance measures, including monitoring and record-keeping; enforceability, including the enforcement capacity of tribal and rural communities; and transparency, including availability of compliance information.

The guide breaks down the factors staff should consider in each of 16 steps in the rulemaking process. For example, staff should conduct an initial screening and outreach to determine if there could be equity impacts from the rule. If there are potential impacts, staff should address public involvement and equity analysis in its blueprint for developing the rule. Staff should then describe whether and how equity has been addressed in proposed and final rules, the memo says.

EPA already has statutory authority to address environmental justice, the guidance says. For example, the Clean Air Act's national ambient air quality standards (NAAQS) provisions requires EPA to consider sensitive populations and the Resource Conservation & Recovery Act gives EPA discretion to consider impacts to equity communities when setting hazardous waste rules, the memo says.

And EPA already has taken steps in recent rulemakings to address environmental justice, the guidance says. For example, additional monitoring requirements under the agency's Jan. 22 nitrogen dioxide NAAQS focused on "susceptible and vulnerable" communities, the memo says.

The memo also notes that EPA has expanded its equity process to consider the distribution of benefits to communities in addition to weighing harms.

## FUEL

### Oil leak threatens Lake Michigan (*Washington Post*)

Hundreds of thousands of gallons of oil that leaked into a Michigan river from a ruptured pipeline are heading downstream toward Lake Michigan, and the state's governor is warning of a "tragedy of historic proportions" should the oil get there.

The Environmental Protection Agency estimates that the leak dumped more than 1 million gallons of oil this week into the Kalamazoo River and a creek that flows into it. Enbridge, the company that owns the pipeline, has a smaller estimate -- 819,000 gallons.

The oil has traveled at least 35 miles downstream from where it leaked, passing through Battle Creek, and was headed toward Morrow Lake, a key point near a Superfund site upstream of Kalamazoo and about 80 miles from Lake Michigan.

Gov. Jennifer Granholm (D) has asked the federal government for more help, saying that resources being marshaled by the EPA and Enbridge were "wholly inadequate." The Calgary, Alberta-based company said Wednesday and Thursday that it was ramping up its efforts to contain and clean up the mess. Chief executive Patrick D.

Daniel said the company had made "significant progress," though he had no update on a possible cause, cost or time frame for the cleanup.

**Dive to Lake Champlain tug now set for the spring (*Associated Press*)**

**Story also appeared: *Washington Post***

The Associated Press
Thursday, July 29, 2010; 10:55 AM

MONTPELIER, Vt. -- Plans to check out a sunken tug boat in Lake Champlain for potential fuel leakage won't happen until the spring.

The Environmental Protection Agency's Paul Kahn said Thursday that there isn't time to arrange a dive before unpredictable fall weather arrives.

The William H. McAllister sank about five miles south of Port Kent, N.Y., in November 1963 after it hit a reef. Officials worry it could hold diesel fuel and lubricants that could spill and cause an environmental disaster.

The EPA is working with the U.S. Navy to supply the divers. Lake Champlain is on the border between Vermont and upstate New York.

**Regulators Warned Company on Pipeline Corrosion (*New York Times*)**

July 30, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 15
By EMMA GRAVES FITZSIMMONS
BATTLE CREEK, Mich. -- The company responsible for a massive oil spill here was warned in January by federal regulators about insufficient monitoring of corrosion on the pipeline that federal officials say leaked more than one million gallons of oil into a major waterway this week.

The owner of the pipeline, Enbridge Energy Partners, received several citations from federal regulators in recent years before the warning in January. Company officials said they had routinely tested the pipeline for corrosion.

"There was annual maintenance on 6B this year as with all of our pipelines," Patrick Daniel, the company's chief executive, said Thursday, referring to the pipeline that leaked oil into the Kalamazoo River.

Federal officials said the estimated amount of oil that spilled from the pipeline into the river on Monday was more than a million gallons, significantly more than the company's estimate of about 800,000 gallons. The leak was in a 30-inch pipeline that carries millions of gallons of oil each day from Griffith, Ind., to Sarnia, Ontario.

Mr. Daniel said the company used internal inspection tools to determine the levels of corrosion or cracking on all pipelines. There had not been any repairs or replacements made to the part of the pipe where the spill took place, he said.

State officials here have expressed grave concern over the environmental impact if the spill reaches Lake Michigan, more than 60 miles away. Officials for the **Environmental Protection Agency,** which is leading the response efforts, said Thursday that they were confident that they could prevent that from happening.

Ralph Dollhopf, a federal coordinator for the agency, said efforts by response workers had so far stopped the oil from entering Morrow Lake, about 30 miles downstream from the site of the spill.

"We do not anticipate that Lake Michigan is at risk," he said at a news conference.

Still, officials said it could take months to clean up the spill, which was believed to be among the largest ever in the Midwest. Hundreds of response workers continued on Thursday to lay boom, skim the water and conduct flyovers to assess the damage.

Gov. Jennifer M. Granholm had expressed concern on Wednesday that the oil might reach Lake Michigan if containment efforts were not strengthened. Some state officials dispute the claim that oil has not reached Morrow Lake, saying they saw oil sheen there during a flyover.

The cause of the leak was being investigated. The pipeline remained closed and cannot be reopened without approval from federal regulators.

Local emergency officials said Thursday that they would evacuate 30 more families from homes near the spill site because of health risks. They also asked residents of about 100 homes along the river to use bottled water as a precautionary measure while they tested local water sources.

Wildlife officials said that they had opened a rehabilitation center for animals and that Canada geese, swans and turtles had already been rescued.

Mr. Daniel, the chief executive of Enbridge, apologized again on Thursday, saying the company took full responsibility for the spill. "We will spend whatever it takes to clean it up," he told reporters. "We have more than enough available for that."

**URL:** http://www.nytimes.com

**EPA says Michigan spill appears contained (*Reuters*)**

By Bernie Woodall
DETROIT | Thu Jul 29, 2010 6:58pm EDT
(Reuters) - Oil spilled from a pipeline in Michigan does not present a threat to the Great Lakes and the spill has been contained on a river about 50 miles inland from Lake Michigan, federal officials said on Thursday.

U.S. Environmental Protection Agency officials overseeing the cleanup of an estimated 820,000 gallons of oil (19,500 barrels) that spilled from an Enbridge Inc pipeline said they hoped to contain the damage at Morrow Lake, just east of Kalamazoo, Michigan.

"We do not anticipate that Lake Michigan is at risk," Ralph Dollhopf, the on-scene coordinator for the EPA told reporters.

The Enbridge spill that started Monday follows the devastating BP Plc spill in the Gulf of Mexico and has been watched with concern in part because of its threat to Lake Michigan, part of the largest supply of fresh water on the planet.

Enbridge Chief Executive Patrick Daniel said the company was convinced that the was "no further oil leaking," but he declined to give an estimate of when the repair work would be done and the pipeline would be cleared to resume operation.

Daniel apologized to the people who live near the spill "for the mess that we have made to properties and to the river.

"We are responsible for the cleanup and we will be here until you are happy in this community... that we have completed our responsibilities."

Daniel said, "We have a huge job in front of us. There is no doubt about that."

Tom Sands, a Michigan state police captain overseeing Michigan's emergency response, said he had seen what appeared to be oil floating on the surface of Morrow Lake and challenged the EPA's account of its success.

"I saw the sheen. I photographed the sheen," he told reporters. "Did I test it? No."

Sands said he had reported to Michigan Gov. Jennifer Granholm that the early response to the spill appeared to be "wholly inadequate" to prevent the oil from heading further down the Kalamazoo River system toward Lake Michigan.

"This is a serious situation and we need more resources," he said.

Granholm has declared a disaster for the area along the Kalamazoo River because of the spill. Crews with containment booms have been working along the Kalamazoo River since Tuesday.

Enbridge, which ships most of Canada's oil to the United states, said it been working to dig up the damaged section of the oil pipeline on Thursday.

That is the first step toward repairing the 30-inch diameter pipe in a marshy area along the Talmadge Creek near Marshall, Michigan, company representatives said.

Local health officials said residents in about 100 homes along the Kalamazoo River near Battle Creek, Michigan had been warned to stop using their tap water because of fears of contamination from oil seeping into their wells.

Residents from another 50 houses near the worst of the pooled oil were being asked to evacuate because of the health risk from fumes.

Cereal maker Kellogg Co said it had shut down its manufacturing operations in Battle Creek for a few hours on Tuesday because it was concerned that the fumes from the oil spill could endanger its workers.

"Local and federal officials assure us that air and water quality levels are well within the range considered safe and we resumed operations," said Kris Charles, a Kellogg spokeswoman.

The damaged Enbridge pipeline runs from northern Indiana through Michigan to Sarnia, Ontario.

Refineries in Detroit, Toledo and in Ontario that use crude from the pipeline have four to five days of stored supply, plus other pipeline alternatives, so should be able to operate, Daniel said.

(Reporting by Bernie Woodall; Editing by Tim Dobbyn)

**Mich. spill larger than originally thought; company's response questioned (*Greenwire*)**

(07/29/2010)
The oil spill along the Kalamazoo River has doubled in size from previous estimates and has reached 35 miles downstream from the site of the presumed pipe rupture, Michigan Gov. Jennifer Granholm said.

In a conference call yesterday, the Democratic governor said sheen had been spotted in a dam at Lake Morrow, which Enbridge Energy Co. Inc. was trying to protect. EPA

estimates more than 1 million gallons of oil may have spilled, about 181,000 gallons more than the company's original estimates.

If the oil were to travel farther down the river, it could spill into an area of a nearby river designated as a Superfund site because of PCB contamination. The oil could affect the buoyancy of PCBs, causing them to float and disperse again.

"The company and the EPA promised us they would provide additional resources. They know the resources they have provided so far have been wholly inadequate," Granholm said.

Enbridge has been cited by the government 22 times for compliance and safety violations in eight years, including a 2002 leak on the same pipeline that sent 252,000 gallons of oil into a nearby marsh. That spill prompted the National Transportation Safety Board to issue recommendations for federal regulations on pipe transport, which are still being drafted.

The cause of the leak is still unknown and it could be days before crews are able to determine why the pipe ruptured. Enbridge said it was contracting resources to boost its staff of 300, doubling the number of booms deployed along the river and adding 10 new sites for boats to clean up the water.

Company officials said they acted as quickly as possible and shut down the pipeline as soon as they were notified. But documents released yesterday show that the spill was not reported to the National Response Center until roughly two hours after the company says it learned about the leak. Regulators say they will investigate the company's response and whether the leak started even earlier than Enbridge claims (Jim Lynch, *Detroit News*, July 29). **-- JP**

July 29, 2010

**EPA delays dive on sunken Lake Champlain tugboat (*Press Republican*)**

MONTPELIER, Vt. — The U.S. Environmental Protection Agency is delaying until next spring plans to send divers onto a tugboat that sank in Lake Champlain almost 50 years ago to determine if there is fuel in the vessel that could spill into the lake and cause an environmental disaster.

Meanwhile, the EPA is working with the U.S. Navy to supply the divers who will explore the tug William H. McAllister, which sank about five miles south of Port Kent, N.Y., in November 1963 after it hit a reef.

The EPA's Paul Kahn says there isn't time to arrange the logistics of the dive before the

weather on Lake Champlain becomes unpredictable with the arrival of cooler weather.

Officials worry the McAllister could hold several thousand gallons of diesel fuel and lubricants.

**OMB reviews new fuel-economy labels crafted with green cars in mind (*Greenwire*)**

(07/29/2010)
Gabriel Nelson, E&E reporter
With General Motors Co. and Nissan Motor Co. scheduled to release the first mass-market electric cars and plug-in hybrids late this year, U.S. EPA is moving to propose rules meant to better summarize the vehicles' energy demands on fuel-economy labels. The agency sent a draft proposal yesterday to the White House Office of Management and Budget that would "require new metrics to effectively convey information to consumers" about plug-in hybrids and electric cars. Review by OMB's Office of Information and Regulatory Affairs (OIRA) is the last stop before EPA proceeds with its proposed labeling program.
EPA plans to finalize its plan for window stickers by year's end, according to a database that tracks rulemaking.

The labeling effort won't affect the corporate average fuel economy (CAFE) standards, which were updated by EPA and the Department of Transportation earlier this year (*Greenwire*, April 1).

Fuel economy labels, last revised in 2006, have traditionally listed how many miles a car will travel on a single gallon of gasoline. But because plug-in hybrids and electrics are powered by electricity -- whose price varies from one utility to another and by time of day -- the stickers will no longer let consumers directly compare one vehicle to another.

Some experts have suggested that EPA could measure the fuel efficiency for electric vehicles in kilowatt-hours per 100 miles but that makes it more difficult to compare the cars against their gasoline-fueled counterparts. And while consumers are used to paying for gas by the gallon, most would be unfamiliar with measuring their energy consumption in kilowatt-hours.

The EPA rule has apparently drawn the attention of OIRA Administrator Cass Sunstein, who has often referenced the power that fuel-economy labels have in driving consumer decisions. Because the rule was not deemed "major," meaning that its economic impact would be less than $100 million, the office is not required by executive order to review it.

In a recent **memo** directing agencies how to address disclosure and simplification in their regulations, Sunstein cited fuel economy labels as a prime example of the value of summaries. And in a 2008 book on behavioral economics and regulation, titled "Nudge,"

Sunstein said fuel-economy stickers should be designed to make consumers realize the full cost of their actions.

The most recent changes to the fuel-economy labels moved in that direction, he wrote, but "they might be even more powerful if they computed a five-year figure for money spent on fuel. Imagine the sticker on a Hummer!"

The lack of a standard method for presenting the efficiency of hybrid and electric cars has made marketing a little more difficult for companies like GM, which boasted last year that its Chevrolet Volt would get the equivalent of 230 miles per gallon (*Greenwire*, Aug. 11, 2009.).

GM has recently backtracked. EPA's preliminary formula has not gotten final approval, said Micky Bly, the company's executive director for global electrical systems, during a recent press conference at a factory that builds batteries for the Volt.

"We just don't know right now" what the number will be, Bly said, according to a report in *USA Today*.

07/30/2010

**Engine Makers Wary Of Retailer, Refiner Liability Protections In E15 Bills (*Inside EPA*)**

Engine manufacturers are raising concerns that recently introduced legislation paving the way for a possible EPA approval of mid-grade ethanol blends, such as E12 and E15, establishes liability protections for retailers and refiners but leaves them liable for damages to older equipment due to the fuel's more-corrosive properties than current E10 blends.

In the House, Reps. Mike Ross (D-AR) and John Shimkus (R-IL) July 20 introduced H.R 5778, which requires EPA to promulgate rules under the Clean Air Act for labeling E15 pumps "to prevent the introduction of any transportation fuel . . . into a motor vehicle, nonroad vehicle, or engine that is not compatible with such transportation fuel."

The bill also requires the agency to develop guidelines under the Solid Waste Disposal Act "determining whether underground storage tanks and associated dispensing equipment are compatible with any fuel or fuel additive that is authorized by the Administrator or by statute for use in a motor vehicle, non-road vehicle or engine," and would exempt retailers from any liability if they have equipment that complies with the EPA guidelines. The bill also exempts retailers from liability for the misfueling or for the voiding of the manufacturer's warranty in the event.

And in the Senate, Sen. Amy Klobuchar (D-MN) earlier this month introduced S. 3576, a bill that seeks to promote renewable energy, which includes a waiver from "defective product claims" for ethanol or other renewable fuels. "Notwithstanding any other provision of Federal or State law, any fuel containing ethanol or a renewable fuel . . . that is used or intended to be used to operate an internal combustion engine shall not be deemed to be a defective product or subject to a failure to warn due to such ethanol or renewable fuel content unless such fuel violates a control or prohibition imposed" by EPA under the Clean Air Act, the bill says.

Introduction of the bills comes as EPA is weighing requests from ethanol manufacturers to raise the current 10 percent ethanol blend limit. While ethanol groups have petitioned EPA to raise the limit up to 15 percent, several major groups July 26 wrote EPA urging the agency to "immediately" raise the limit to 12 percent.

The groups cite suggestions that EPA may grant their request by approving E15 but only for use in model year 2001 or newer vehicles, which have engines that are equipped to handle the fuel. "Based on the EPA's delay in acting upon the full E15 waiver and on our concerns that the Agency will restrict the use of E15 to cars made in 2001 and thereafter, we encourage the EPA to formally approve the use of E12 for all motor vehicles as an immediate interim step pending any ongoing additional testing on E15," the groups wrote.

Policymakers are also considering several other measures to encourage higher-grade blends, including new incentives for construction of ethanol pipelines.

But a host of groups, including engine and equipment manufacturers, retailers and gas station owners and refiners, have long been concerned that any increase in the ethanol blend limit could subject them to new liabilities as a result of any damage that may result from the fuel, which is more corrosive than current E10 blends.

In a July 26 letter to Senate Majority Leader Harry Reid (D-NV) and Minority Leader Mitch McConnell (R-OK), a broad coalition of groups urge the Senate to reject any amendments to the upcoming energy bill that would introduce fuels higher than E10 for conventional gasoline engines (*see related story*).

Some of the groups have been especially concerned that so-called blender pumps -- which allow consumers to select their fuel blend -- could allow increased use of the fuel in engines that are not equipped to deal with it. EPA recently launched a rulemaking to beef up labeling requirements for blender pumps, a move the recently introduced House bill codifies.

To address their liability concerns, petroleum retailers and marketers, refiners and the biofuels industry sought a joint strategy to pass legislation to address liability and other concerns stemming from EPA's anticipated approval of higher grade blends (*Inside EPA*, Aug. 28).

**That strategy appears to have resulted in separate measures. Retail and ethanol groups,** including the Petroleum Marketers Association of America, the National Association of Convenience Stores (NACS), the Renewable Fuels Association and the Society of Independent Gasoline Marketers of America, are backing the House legislation.

The bill "opens up options [for retailers] to save money and still participate in the renewable fuels market," a source with NCAS says. Existing equipment, including pumps and tanks, must be approved for safety by standard-setting group Underwriters Laboratories, which has not approved equipment for blends above E10, making it important for EPA to establish a process for evaluating and certifying the existing equipment, the source says. Further, the bill's labeling provisions will address misfueling issues by making self-service consumers responsible for engine damage and air act violations that stem from using the fuel in a non-approved vehicle.

The groups are looking to avoid issues that arose from the use of *methyl tertiary butyl ether* (MTBE) in gasoline, which led to widespread liability issues for companies that manufactured, transported and sold substances containing MTBE, the source adds.

Still, one ethanol source describes the bill as "not liability protection, but a way to help marketers deal with legacy infrastructure."

But engine makers say the House bill "allays the concerns of retailers and that's about it," adding that other questions about E15 and liability remain. "It begs the question why the fuel retailers are seeking liability protection for E15 or any blend higher than E10," says one engine industry source.

The source says the Senate bill could end up extending liability protection to ethanol manufacturers. "If everyone downstream has some liability protection, it is the consumer that will be left holding the bag," the source says, adding that consumers will look to product manufacturers for relief.

If retailers and refiners have protection, consumers can return products to the manufacturers or, in the case of injury, file suit against the product maker, a second engine industry source says. "It puts the rest of us in kind of a bind," the source adds. The situation is made trickier by consumer product-makers who seek to maintain a relationship with their customers.

The first engine source says the liability issue illustrates why a more expansive approach to E15 and mid-level ethanol blends is needed. "There are comprehensive questions that are being dealt with in an *ad hoc* fashion," the source says.

With regard to H.R. 5778, the source says "people will misfuel . . . on a wide scale" despite the warning labels, pointing out that different nozzle sizes did not prevent misfueling in the move away from leaded gasoline. But there might not be a chance for similar protections for the engine manufacturers. The second engine source dismisses

the possibility of liability protection for engine-makers, citing a lack of support from Democrats in Congress and trial lawyer groups.

At the same time, multiple engine industry sources said widespread problems with E15 at the product level could lead to consumer rejection of the fuel. "That sort of blow-back should concern the ethanol industry," the first engine industry source says. -- *Aaron Lovell*

## GENERAL

07/30/2010

**Sunstein Sets High Bar For New Regulatory Review Executive Order (*Inside EPA*)**

President Obama's regulatory review chief says there is broad support for how the White House currently addresses controversial issues like cost-benefit analysis when it reviews EPA's and other agencies' regulations but he says the President could still decide to issue a new executive order revising the review process.

Cass Sunstein, director of the Office of Management & Budget's (OMB) Office of Information & Regulatory Affairs (OIRA), told the House Judiciary Committee's administrative law panel that it is "up to the president of the United States whether to amend" the long-standing executive order governing the White House review of agency regulations.

His comments could add weight to the the view of many regulatory watchers who charged recently that the administration has dropped development of the new order.

Sunstein's testimony also comes as Rahm Emanuel, the White House chief of staff, told the *Wall Street Journal* last week that Obama plans to review regulatory decisions in response to concerns from the business community to see if there are "things that can be done in a more sensible way." In the interview, Emanuel said Obama and top aides have "gone through a review process, but he's heard what [business leaders] have had to say, and he wants to have a further review to see if in fact there are some things that shouldn't be done."

The Business Roundtable (BRT) and other business groups had recently urged the administration to reduce the burden of federal regulations that they say hinder economic growth, including several EPA air, waste and other rules.

At the judiciary hearing, panel chairman Steve Cohen (D-TN) asked Sunstein if there were plans to revise Executive Order (E.O.) 12866, which outlines OMB's role in

regulatory reviews and requires the office to conduct cost-benefit reviews of key regulations. Obama, in a memo released last February, asked for advice on an E.O. to possibly replace or amend E.O. 12866. At the same time, Obama signed E.O. 13497 revoking the Bush-era E.O. 13422 -- an order that had strengthened OIRA oversight of agency rulemakings and raised the bar for agency efforts to regulate.

Sunstein said OIRA took public comment collected last year "very seriously," noting that many of the comments focused on scientific integrity and transparency, and offered "widespread approval" of OIRA's approach to cost-benefit analysis and inter-agency review.

The OIRA chief last month also issued a memo to EPA and other agency heads encouraging increased use of disclosure as a way to inform public decisions and to simplify regulations.

But the memo prompted concern from critics of the current review process, who hoped that a new executive order would limit the use of cost-benefit analysis in the White House regulatory review process. The critics are concerned that cost-benefit analysis undermines stringent regulations and is often at odds with congressional mandates.

Sunstein said at the hearing that OIRA's regulatory reviews are still governed by E.O. 12866, which was also used by the Clinton and Bush administrations, but he added that it is up to the president whether to amend it.

Panel Republicans pressed Sunstein at the hearing for details on how many rules OIRA has returned to the agencies because of the potential impact on jobs and job creation, and asked other panelists what Obama should consider in his review of regulations to cut down on uncertainty in the marketplace.

Richard Williams, with the Mercatus Center at George Mason University, recommended extending regulatory impact review to all regulations, rather than just those that are economically significant, and said OIRA should take more time to review the regulations.

To further cut down on uncertainty for industry, Williams said it was important for regulatory review to "address the systemic problems" at the market- or institution-level, rather than focus on individual problems, and make sure that additional regulations offer a "solution" to the problem.

## GRANTS

### Going eye to eye with rural poverty (*St. Petersburg Times*)

July 30, 2010 Friday
CLW; Pg. 3CLW

LACOOCHEE

The tour guide pointed out the sights as the air-conditioned bus bumped along rutted roads. Look at the old lumber mill site, where the company pulled out and so did prosperity. See the porch where an old man sits all day and drinks, the football field with no benches for the players. And that tiny shed in front of the run-down home? "That little bitty old shed," he said, "has got somebody living in it." Inside the bus, the passengers shook their heads.

The tour guide was Ronnie Deese, the Withlacoochee River Electric Cooperative official helping spearhead the effort to revitalize the power company's poorest service area - and Pasco County's poorest community.

And the passengers were mostly federal and local officials, who are looking for the money to make something happen in a community that has heard a lot of talk in the past but seldom seen improvement.

Half of Lacoochee residents live in poverty. Nearly all - 97 percent - of children at Lacoochee Elementary School qualify for free and reduced lunch.

"Can we as a society, we who sit on this bus and are better off, can we simply afford to turn our backs to these conditions and let them continue?" asked Deese.

Officials called Wednesday's meeting, organized primarily by residents and Withlacoochee, a "historic" event. The reason? They'd never before had that many people gather to talk about Lacoochee and Trilby, its somewhat better off sister community across U.S. 301.

Almost a dozen federal agencies sent representatives for the Wednesday meeting at the electric cooperative's Dade City office. County and school officials, and state Rep. Will Weatherford, R-Wesley Chapel, attended along with leaders of various social service agencies.

No one from the federal government promised any money. Instead, they told the locals about U.S. Department of Agriculture grants and loans they could get to bring water and sewer to residents and to the former mill site. They talked about clean-up grants from the Environmental Protection Agency and worker training grants from the U.S. Department of Labor.

But before they talked grants and loans, they took the tour.

Past the unpaved county road where someone keeps putting up a fence to block it, past the woman sitting cross-legged on her porch, smoking. Past the sprawling tree - what

everyone calls "the tree of knowledge" - where people gather during work hours and late at night. Past a garden of sunflowers, protected by a white fence.

"What you're seeing is a mixture of people who are trying," said Deese, "and those who have given up."

The bus stopped near Charlie Crawford's home.

"I had a friend tell me they were coming," said Crawford, 70, who used to raise hogs on a lot across the road. "I didn't know they were going to stop in front of my house."

Next to his clapboard home, where three baby kittens of unknown origin danced near his feet ("Ma'am," he declared, "I do not have a cat.") is a small shed with a tarp door. That's where his 33-year-old daughter sleeps. She comes over to his house to eat, bathe and help take care of his ailing wife.

He said he hoped the officials on the bus could lure jobs for the younger people. But he said he liked his home and rural neighborhood. "I like everything like it is," he said. "I just need to get my yard clean."

The bus stopped again, in a lot where a health clinic once stood. Altamese Wrispus, 81, climbed aboard and told officials how, when she was a little girl in Lacoochee, she fell from a tree and hurt her leg. A local doctor fixed her wounds and let the family pay in installments.

Now, 70 years later, there are fewer nearby health care options for the community's poor. Her daughter, Evelynn, told officials the area needs a health center, with parking and lighting and "beautiful shrubbery."

"We don't want you to hand it to us," she said. "We want you to help us help ourselves."

On to Trilby, where a group of Boy Scouts stood in front of the Methodist Church and waved welcome signs. And to Mount Olive AME church, where community activist Roger Kaminski climbed aboard to reiterate what the area needs: Water and sewer. Sidewalks. Streetlights.

Don't let people complain that someone will only shoot out the streetlights, he said. "The excuse that that's just Lacoochee," he said, "we've heard that long enough."

Jodie Tillman can be reached at jtillman@sptimes.com or (727) 869-6247.

## HAZARDOUS WASTE

07/30/2010

**EPA Overcomes DOD Resistance To Issue Munitions Cleanup Guide (*Inside EPA*)**

Despite years-long opposition from the Defense Department (DOD), EPA has signed long-pending guidelines that reassert the agency's authorities governing the cleanup of military munitions on former military ranges.

EPA's Munitions Response Guidelines, issued July 27 in "interim final" form, are another signal in recent months of EPA pushing back against the Defense Department on cleanup policy, particularly on munitions cleanups -- an issue expected to cost the military as much as $35 billion to remediate more than 3,500 military munitions response sites.

Top EPA federal facilities officials July 27 signed a memo to remedial project managers to use the guidelines as regulatory oversight where the military, as the "lead agency," is undertaking a munitions response action at a site other than an operational range. *The memo is available on InsideEPA.com.*

The document gives guidance to regional offices on cleanup responses at sites where explosive hazards or related contamination may pose an additional environmental threat. It specifically applies to responses related to munitions and explosives of concern (MEC) and munitions constituents (MC) at sites other than operational ranges. These include former ranges on active and closed bases and at privately owned formerly used defense sites, as well as munitions manufacturing areas, open burn and detonation areas, disposal pits and testing facilities.

DOD has long sought to insulate its operational ranges from EPA oversight, and EPA in the final guidance removes any references to agency policymaking regarding operational ranges.

However, the final guidance otherwise is largely identical to a draft version the agency issued in February 2008 but which DOD strongly opposed. The White House Office of Management & Budget (OMB), which intervened at the request of DOD, apparently never produced a decision on the matter.

EPA and DOD were unable to reach agreement during the Bush administration, Bush EPA waste chief Susan Parker Bodine said in an interview last year. And John Reeder, director of EPA's federal facilities cleanup office, said in an August 2009 interview that finalizing the guidelines was a high priority, citing munitions as one of the major challenges his office was facing.

The final guidance retains language opposed by DOD defining munitions as a hazardous substance and waste, which the military feared could result in cleanup liability under the federal Superfund law and the Resource Conservation & Recovery Act (RCRA) at operational ranges.

Under a section defining regulatory authority, EPA says MEC and MC at non-operational range sites "would meet the definition of a hazardous substance under [the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA)] if the constituents are listed hazardous substances . . . or if the MEC/MC meets the definition of [RCRA] hazardous waste." Releases of MEC or MC at non-operational ranges "should be evaluated in the same manner as any other release to determine if the material present meets the [Superfund] definition of a hazardous substance," it says.

While some material, such as munitions debris considered inert scrap, may not be a hazardous substance, "a munitions response may still be appropriate to address MEC/MC which poses a threat, and a response should be evaluated on a site-specific basis to ensure that human health and the environment are protected," the guidelines say.

In the 2009 interview, Bodine said DOD objected to the section defining EPA authority, specifically to the agency's reference to CERCLA, a law that does not distinguish between whether the munitions are on an operational range or not, even though the guidance excludes such ranges from its coverage. Bodine, who disputed DOD's legal position, said DOD, while understanding the need to clean up munitions, refused to concede that munitions are a hazardous substance under CERCLA, or a RCRA hazardous waste.

Bodine said this was problematic at sites where DOD can undertake early transfers of shuttered base property because without the coverage, some communities that receive munitions-contaminated property would be unable to pursue cleanup costs from the military (*Inside EPA*, Sept. 4).

In the document, EPA reiterates its long-held position that the exemption for munitions on operational ranges under RCRA's subtitle C "cradle-to-grave" hazardous waste management rules is a narrow one that does not bar the agency from addressing munitions risks under RCRA's emergency enforcement authority. At some point, if these remain on "locations other than operational ranges," then they would fit under the broader statutory definition of a solid waste.

"As a result, it potentially could be subject to the imminent and substantial endangerment authorities of RCRA 7003," the final guidelines say, reiterating EPA policy issued in 2005. "Regions or States should make a case-by-case evaluation of MEC, including [unexploded ordnance], and MC to determine whether it is subject to RCRA regulations, and if so, how the regulations apply," it says.

EPA and DOD's differences over when to classify munitions as waste is echoed in another similar ongoing debate between the two over a DOD cleanup guidance the department is updating. The language included in the updated version of DOD's cleanup manual restricts what munitions and explosives of concern can be labeled as a RCRA solid waste, one government source argues (*see related story*).

An EPA spokeswoman at press time said the guidelines were issued as "interim final," because they may be periodically updated. When asked whether the guidelines were changed to address DOD objections, she said it underwent "many technical changes" to reflect input from other departments, including DOD. -- *Suzanne Yohannan*

07/30/2010

**Draft DOD Cleanup Manual Reignites Munitions 'Waste' Debate With EPA (*Inside EPA*)**

The Defense Department (DOD) is updating its cleanup manual, reigniting a long-running debate between DOD and EPA over when munitions can be classified as hazardous waste -- a key to EPA's authority to compel DOD to clean up munitions at former ranges.

Classifying munitions as a hazardous waste is one of three issues that have sparked disagreement between EPA and DOD over the Pentagon's proposed update to its Defense Environmental Restoration Program (DERP) guidance manual, according to minutes from a May Munitions Response Forum meeting where a DOD official briefly outlined the disagreement. The forum includes representatives from states, EPA and DOD in an effort to tackle issues over munitions cleanup policy. The DERP manual provides guidance to the services on implementing their cleanup programs.

Over the years, EPA and DOD have periodically clashed over when a munition becomes a waste. EPA and DOD agree that the agency's military munitions rule gives a "conditional exemption" from the Resource Conservation & Recovery Act's (RCRA) subtitle C "cradle-to-grave" hazardous waste management rules when certain munitions are used for the intended purpose at operational ranges, sources say. But EPA believes that munitions, even if used for their intended purpose, at some point become solid waste potentially subject to RCRA and the Comprehensive Environmental Response, Compensation & Liability Act (CERCLA), according to agency documents. For instance, EPA in an October 2005 memo rebutted the Army Corps' stance that the munitions rule explicitly exempts munitions used for their intended purpose from regulatory control as a solid waste, including those on closed or transferred ranges.

In a draft version of the revised DERP manual, DOD describes how munitions on other than operational ranges -- previously referred to as closed, transferring or transferred ranges -- can be classified. In it, DOD says unexploded ordnance (UXO) on other than operational ranges can be deemed a "pollutant or contaminant" that may pose "an imminent and substantial endangerment to public health or welfare." And if UXO "is actively managed (e.g., excavated) for treatment (e.g., destruction) due to the UXO's reactive capability, the UXO may then be viewed as a RCRA regulatory hazardous waste and thus automatically also a CERCLA hazardous substance," the draft says.

But the DOD language restricts what can be labeled a RCRA solid waste, according to a government source who says under the DOD wording, except in cases of excavated ordnance meant for treatment, UXO and other munitions and explosives of concern left at closed or transferred ranges never become a RCRA solid waste. EPA, not DOD, is the authority to determine the point at which such ordnance is considered discarded and therefore a RCRA waste subject to cleanup authorities under RCRA or CERCLA, the source says.

If regulators deem a substance a RCRA solid and hazardous waste, unlike the terms pollutant or contaminant, then cleanup authorities under RCRA or Superfund law can be triggered. EPA could then use its cleanup authority to compel DOD to address the waste if it poses any imminent and substantial endangerment to public health and the environment.

The Justice Department in a 1998 legal brief also lays out EPA's long-held position upholding its munitions rule, explaining how the agency applies a narrower regulatory definition for solid waste for the purposes of the RCRA subtitle C waste management program, as opposed to the broader statutory definition of the term as it applies to other subtitles of the law, including a range of remedial and emergency authorities, such as abatement orders.

To that end, EPA in the 2005 letter noted that while the agency "postponed final action on a proposal that would have identified munitions remaining on a closed range as a statutory solid waste as part of the Military Munitions Rule," that "does not mean that munitions on a closed range are precluded from becoming a statutory solid waste."

A DOD spokeswoman said recently that DOD had sought informal input from EPA on the DERP manual's first update since 2001. "We received dozens of useful comments, most of which were worked into the document and some of which led to follow-on discussions," she said. She declined to comment on specifics related to the document.

An EPA spokeswoman said the agency could not respond to questions on the issue by press time.

## MINING

07/30/2010

### Coalition Seeks Cuts To Federal Programs While Preserving EPA Funding (*Inside EPA*)

As Congress prepares for a debate over how to cut the deficit, a coalition of environmentalists and anti-tax groups, along with a bipartisan group of lawmakers, is

calling for cuts to a variety of federal programs that the coalition says increase pollution and other environmental harms while preserving funding for EPA.

The Green Scissors coalition, consisting of Taxpayers for Common Sense, Environment America, Friends of the Earth and Public Citizen, along with Reps. Earl Blumenauer (D-OR), Jeff Flake (R-AZ), and Thomas Petri (R-WI), July 22 issued its annual report recommending policy changes that cut the deficit and reduce support for programs that the coalition says are environmentally harmful.

"Eliminating the subsidies and programs identified in this report will allow the federal government to protect our natural resources, reduce growth in government spending and make a significant dent in the budget deficit and national debt," the report says, adding that the issue is more critical than ever due to the $13.1 trillion debt currently faced.

The report targets more than $200 billion in cuts to a wide variety of programs that the groups say constitute both wasteful spending and ecological threats, including research for carbon capture and storage and fossil-fuel based gasoline alternatives; subsidies for nuclear plants, oil, gas, commodity crops, corn ethanol and timber; several Army Corps of Engineers projects; general fund transfers to the Highway Trust Fund; and tax cuts and other support for mining companies.

07/30/2010

**EPA Quietly Expands Mountaintop Mine Guidance Benchmark To Alabama (*Inside EPA*)**

EPA is quietly taking steps to expand the reach of strict new water quality limits outlined in its landmark guidance for mountaintop mines in Appalachia to include Alabama even though the state is outside the six-state Central Appalachian region EPA initially said the guidance would apply to, according to several informed sources.

In a statement to *Inside EPA*, the agency insists it is not expanding the application of the guidance itself, but several sources in the state say officials with EPA Region IV -- covering seven Southern states including Alabama -- recently told state regulators and environmentalists of their plans to expand application of standards outlined in the guidance, especially new limits on conductivity.

The move has effectively halted issuance of National Pollutant Discharge Elimination System (NPDES) permits for coal mines in Alabama because state officials are wary of having to comply with the guidance's strict new standards, sources say.

Industry also has concerns about the the guidance's use of electrical conductivity, a measure of salinity, as a water quality benchmark for Clean Water Act permits, saying it

should not apply to streams in Alabama. But activists say the standard is appropriate and have pushed EPA to expand the guidance's reach.

The interim guidance, released April 1 and expected to be finalized next year, has rankled industry and state regulators struggling to comply with the Obama EPA's aggressive crackdown on mining practices.

The guidance instructs regional officials to apply a variety of new standards to their reviews of state-issued NPDES permits and of so-called "dredge and fill" permits issued by the Army Corps of Engineers. One industry source in Alabama estimates about 60 NPDES permits there have been on hold since last September because of uncertainty over how EPA will apply the new standards and the scope of its application to the state.

EPA initially said its guidance applied only to the Central Appalachian region -- which includes Pennsylvania, Ohio, West Virginia, Kentucky, Virginia and Tennessee -- stemming from a June 2009 interagency memorandum of understanding (MOU) between EPA, the Corps and the Department of Interior (DOI) to improve environmental oversight of mining. "Because [Alabama] was not included in the original Memorandum of Understanding, the Guidance does not apply directly to that State," EPA says in an e-mailed July 28 statement.

However, EPA has tied review of at least one proposed dredge-and-fill permit to conductivity concerns outlined in the guidance, and state sources say they have been told that limits on conductivity will be required in NPDES permits as well. A source with the Alabama Department of Environmental Management (ADEM) says state regulators have been discussing with EPA the requirements outlined in the guidance and how to issue permits that "comply with that guidance."

Environmentalists have criticized EPA and other agencies for excluding Alabama from the MOU and lobbied for stricter oversight of mining operations in the state.

To justify expanding the conductivity limits to Alabama, EPA points to the fact that the state includes part of one "ecoregion" that the agency says is suffering water quality harms -- based on EPA's conductivity benchmark -- because of mountaintop mining, state sources say.

Industry and states have been particularly critical of the use of conductivity as a benchmark to evaluate water quality for the purposes of permits for mining projects. The guidance says mining operations that can maintain conductivity below 300 microsiemens per centimeter (uS/cm) generally would be in compliance with water quality standards while conductivity in excess of 500 uS/cm generally would violate the CWA. The benchmark was designed to aid states in interpreting narrative water quality criteria, which provides a description of how waterbodies should function, by allowing companies to demonstrate in reasonable potential analyses that conductivity would not exceed that level to avoid water-quality based effluent limits.

EPA derived the conductivity benchmark primarily from studies based on data gathered from streams in West Virginia and Kentucky. The guidance said that while it is meant for Central Appalachia, scientific literature has "identified conductivity levels above this level [500 uS/cm] in impaired streams below surface coal mining operations in Appalachian ecoregions 68, 69 and 70 and, therefore, it is generally likely that such surface coal mining operations will have a reasonable potential to cause or contribute to an exceedance of water quality standards."

A portion of ecoregion 68 stretches into northeast Alabama, and state sources say the bulk of coal mines in the state fall within the boundaries of that ecoregion. EPA ecoregions denote inter-state boundaries within which ecosystems share similar characteristics and are used to "develop regional biological criteria and water quality standards and to set management goals for nonpoint source pollution," according to EPA's website.

While EPA says it is not applying the guidance directly to Appalachia, EPA's July 28 statement reiterates the connection between conductivity and water quality impairments in the three ecoregions listed in the guidance. But, the agency says, "It will be the responsibility of the States and Regions to interpret and implement narrative water quality criteria through identification of pollutants that could contribute to an excursion above those criteria. This is accomplished by the permit applicant collecting and providing existing site specific data, or data from similar discharges, to enable completion of a reasonable potential analysis and establishment of water quality-based effluent limits to ensure that the discharge will meet water quality standards."

Local industry associations have challenged the application of the benchmark to Alabama. "Importantly, the Benchmark Study limits the proposed conductivity benchmark to specific subregions of Kentucky and West Virginia, where field data has been collected, and thus the proposed benchmark will have no applicability for water quality purposes in the State of Alabama," the Alabama Coal Association (ACA) says in comments filed on the draft study.

**There are early indications that the agency is focused more closely on enforcing the 500 uS/cm limit** that triggers permit conditions, the 300 uS/cm limit was based on a study using data only in ecoregions 69 and 70, and hence may not apply to Alabama.

In a July 26 letter to the Corps, obtained by *Inside EPA*, Region IV's water director encourages permitting a proposed project using an individual permit rather than the Corps' Nationwide Permit (NWP) 21 as had been proposed. The Corps last month suspended NWP 21 for the six-state Central Appalachian region, but did not suspend it in Alabama.

Among the conditions that James Giattina, director of EPA Region IV's water office, says should be included in the permit is a Water Quality Standards Protection Plan, which "should limit specific conductivity to below 500 uS/cm." *Relevant documents are available on InsideEPA.com.*

Industry and environmentalist sources are split over whether the conductivity benchmark should be applied to Alabama. Industry has criticized the use of conductivity in any form as a water quality benchmark, but sources say its application in Alabama is especially problematic because of different geology and stream conditions in the area that make use of the standard derived from other states inappropriate.

The state industry source says Alabama's geology differs from that of Central Appalachia and notes that most mining is done near warm-water streams, whereas the data used for the conductivity benchmark primarily were derived from cold-water streams. The source also says mine discharges in Alabama have different constituents than in other states that can affect conductivity measures and notes that background conductivity levels in many streams already exceeds EPA's benchmark. The agency's conductivity benchmark "really is just not a number we can live with down here," the source says.

Environmentalists in the state have called on EPA to include Alabama alongside the other central Appalachian states to which it is applying the guidance. A local environmentalist says state regulators traditionally have sided with industry in placing few restrictions on permits and requiring relatively little oversight or monitoring of water quality impairment. "We have been lobbying for that change," the environmentalist says of EPA's expansion of the guidance's reach.

The guidance is part of a larger EPA effort to strengthen environmental oversight of mining operations that was launched with a June 2009 MOU between EPA, the Corps and the Department of the Interior, whose Office of Surface Mining (OSM) oversees state-issued permits under the Surface Mining Control & Reclamation Act.

In comments filed earlier this year with OSM regarding enhanced oversight, a local environmental group says it was a "mistake" to exclude Alabama from the activities applied to the rest of Appalachia, pointing out that coal mining in the state is concentrated in the tail end of the Appalachian mountains. "Our situation in Alabama is largely being overlooked," say the comments from Black Warrior Riverkeeper. "I ask with sincerity that OSM include Alabama in any and all conversations and policies regarding strip mining and mountaintop removal -- our rivers, biodiversity, and natural and historic heritage are at stake."

**The delay in issuing permits is among the arguments raised by the National Mining Association** (NMA) in its recently filed lawsuit challenging EPA's mountaintop mining guidance. In the lawsuit, NMA argues that EPA is usurping state authority to implement CWA permitting programs by outlining in the guidance a presumption that most valley fills would violate water-quality standards and necessitate water-quality based effluent limits.

"EPA is now utilizing the Detailed Guidance to cause indefinite delays in the Section 402 permit process for coal mining operations. . . . In so doing, permits are held in indefinite abeyance while the state works to determine what information is missing from

the permit application package," NMA alleges in the suit, filed in the U.S. District Court for the District of Columbia, a reference sources familiar with the case says applies in part to Alabama. -- *Nick Juliano*

## PESTICIDES

07/30/2010

### Court Rejects Industry Bid For Novel EPA Hearing On Pesticide Safety Ruling (*Inside EPA*)

Pesticide industry officials have failed in their bid for a legal precedent requiring EPA to allow administrative reviews of its pesticide food safety decisions, after a key appeals court rejected industry's effort as part of a challenge to the agency's decision to revoke the standard for the pesticide carbofuran -- though the court vacated EPA's revocation of its standard for food imports.

The court's decision is prompting warnings from FMC Corporation, carbofuran's manufacturer, for giving EPA "unchecked power to cancel pesticides" because there will be "little chance for independent review" of agency decisions on a substance's safety. *The ruling is available on InsideEPA.com.*

The ruling highlights federal courts' long-standing deference to EPA's scientific findings -- and the limits industry faces in its efforts to challenge the science underlying key regulatory decisions.

The U.S. Court of Appeals for the District of Columbia Circuit's ruling July 23 in *National Corn Growers Association (NCGA), et al., v. EPA* largely sided with the agency in rejecting industry's bid for an administrative hearing under the Federal Food, Drug & Cosmetic Act (FFDCA) on EPA's decision to revoke all tolerances of the use of carbofuran, a pesticide widely used to control pests that attack major food and fuel crops, including corn and potatoes.

Under FFDCA authority, EPA sets tolerances which are the maximum amount of pesticide residue that may remain on raw or processed food, and EPA in May 2009 revoked tolerances for domestic and imported food after concluding that carbofuran levels were unsafe.

The agency's process amounted to an effective ban on the pesticide since producers and processors would be unable to sell food containing any level of the chemical. The agency adopted this approach after industry groups resisted the agency's effort to curtail the chemical's registered uses under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), prompting the agency to unilaterally revoke the tolerances

under FFDCA authority -- a more streamlined, risk-based process for the agency since it is not required to conduct a cost-benefit analysis.

NCGA, National Sunflower Association, National Potato Council and FMC filed suit over the decision claiming that EPA acted in an arbitrary and capricious manner denying their petition for a first-time public hearing to challenge the science behind the revocation.

The petitioners challenged EPA's data on the concentrations of carbofuran in surface water; groundwater; the half-life of carbofuran; and what is the "safe dose" of carbofuran that will not lead to adverse health effects. The groups argued that EPA's ban was based in part on unrealistic assumptions about carbofuran in water.

EPA in November 2009 rejected the request for a hearing, refusing to consider new documents that industry submitted during the formal objection to the final rule because industry could have provided those documents and associated arguments during the comment period on the proposed rule but failed to do so. EPA also said that all the other documents submitted in the objection and request for a hearing provided no new arguments.

The D.C. Circuit found "EPA did not abuse its discretion" by taking the position it chose in denying the objection and hearing request. The court agreed with the agency that industry cannot win a hearing based on resubmitting already-filed comments. "As the agency points out, the comment period would be redundant and superfluous if the same concerns could be raised at the objection stage" the court says.

The court also addressed EPA's refusal to review fresh data submitted at the objection stage, which the court said is in line with the "general rule of forfeiture we apply when reviewing agency decisions . . . that the court will not consider an argument the agency was not given a fair opportunity to consider during the rulemaking."

The industry petitioners failed to address the responses to their comments that EPA made in the final rule revoking all carbofuran tolerances, the court said. "In any event, we 'will not substitute [our] judgment on highly technical and factual matters for that of the agency," the court said, citing a 1985 ruling in *Community Nutrition Institute v. Young* that found that "mere differences in the weight or credence given to particular scientific studies, or in the numerical estimates of the average daily intake" are insufficient grounds for granting review.

While the court upheld EPA's decision to revoke all domestic tolerances of carbofuran, it sided with industry in vacating the revocation of the import tolerance for the chemical. The court said EPA has declared exposure to carbofuran from imported foods to be safe, but nonetheless revoked all tolerances by claiming that industry petitioners failed to make a timely request that import tolerances alone be left in effect.

"The agency's position is untenable, for the petitioners made such a request on two occasions," the court said. First, industry in its comments on the proposed ban included a table outlining several proposals, including one showing exposure estimates for import tolerances only. Second, the petitioners also sent a letter to EPA saying they wanted the agency to retain, at minimum, the import tolerances. The letter was submitted after the close of the comment period, but EPA did not suggest until oral argument that it was untimely, so the court allowed its consideration.

The court said EPA's decision to revoke the import tolerances was arbitrary and capricious, and vacated the final rule to the extent it revoked the import tolerances -- meaning EPA will now have to address that ruling.

Dr. Michael Morelli, director of Global Regulatory Affairs at FMC, said in a July 23 statement, "We are pleased the court recognized the agency had overstepped its bounds when it revoked the import tolerances for carbofuran, especially since the EPA acknowledged the imported foods are safe." But Morelli added, "We were disappointed the court did not go all the way and grant an administrative hearing" under FFDCA.

"FMC believes the appeals court gave undue deference to EPA, which will undermine [FIFRA] and the harmonization of FIFRA and FFDCA. The ruling will result in severe consequences to agriculture since there will be little chance for independent review of EPA decisions on a compound's safety," according to FMC's press release. " We are very concerned the ruling gives EPA unchecked power to cancel pesticides and to disregard the benefits to agriculture and the voices of American growers."

According to FMC's statement, "the company has not determined if further legal action will be taken regarding the continued denial of an administrative hearing until it can conduct a careful review of the court's opinion."

An EPA spokesman says the agency is reviewing the ruling. -- *Anthony Lacey*

## SUPERFUND

**$13M deal to speed cleanup of Mass. Superfund site (*Associated Press*)**

**Story also appeared: *Boston Herald, Boston Globe***

By Associated Press | Thursday, July 29, 2010 | http://www.bostonherald.com | Local Coverage

BOSTON — The Environmental Protection Agency says a $13 million settlement will speed up work on a polluted industrial site in Walpole.

The agreement reached with four companies calls for, among other things, the dredging of contaminated soil and sediment and the treating of contaminated groundwater.

The Neponset River runs through the Blackburn and Union Privileges Superfund Site, which the EPA says has been on a national priority list since 1994.

A predecessor of W.R. Grace made asbestos brake linings on the property from 1915 to 1936 and a predecessor of Tyco Healthcare used caustic solutions to make cotton fabrics from 1946 to about 1983.

The EPA says the settlement was reached with W.R. Grace and Co.-Conn., Tyco Healthcare Group and two firms that currently own the property.

07/30/2010

**Nuclear Waste Blending Proposal Could Violate Superfund Cleanup Policy (*Inside EPA*)**

Activists are raising concerns that an industry proposal to blend two classes of radioactive waste to form a less potent mixture that could be disposed at facilities subject to less stringent regulation could create new opportunities for human exposures and might violate an EPA Superfund policy that discourages dilution of waste as a means of meeting regulatory requirements.

EnergySolutions Inc., the operators of a Utah disposal facility for Class A low level radioactive waste (LLRW) -- the least potent class of LLRW -- are urging the Nuclear Regulatory Commission (NRC) to allow them to blend Class B and C LLRW -- two more potent classes of LLRW -- in order to form a Class A mixture that could be disposed at their facility. The company is offering the proposal as a potential solution to a lack of available disposal space for Class B and C LLRW caused by a recent decision to allow only states belonging to the Atlantic Nuclear Waste Compact to send such waste to its disposal facility in Barnwell, SC.

NRC staffer James Kennedy explained during a July 20 meeting of the National Academies of Sciences' Nuclear and Radiation Studies Board that under the EnergySolutions proposal, the company would blend the Class B and C waste to create the Class A mixture at a Tennessee facility before shipping it to the Utah facility for disposal. NRC staff recently drafted an analysis of the proposal, which the commission is evaluating as it weighs whether to propose a rulemaking that would allow the blending, Kennedy said.

Not everyone in industry is supportive of the proposal however. Waste Control Specialists LLC, the owner of a proposed disposal facility for Class B and C waste in

Texas that could potentially lose business if the waste is allowed to be blended and sent to Utah, is opposed to the proposal, Kennedy said.

During the public comment portion of the July 20 meeting, Diane D'Arrigo, of the activist group Nuclear Information & Resource Service, said activists are concerned that shipping the waste to the Tennessee blending facility before sending it to the separate disposal facility in Utah adds an additional step to the disposal process and therefore could open the possibility of additional human exposures to radioactivity, both near the Tennessee facility and along any relevant transportation routes.

D'Arrigo also argued that the blending proposal violates the spirit of Utah's agreement to accept Class A, but not more potent forms of radioactive waste. NRC should not propose a new rule to address what activists view as a business dispute between competing companies, D'Arrigo argued. "NRC should not change its rules to take sides in a business model debate," D'Arrigo said.

In addition, activists are concerned that allowing the waste to be blended so that it can be legally disposed as Class A waste at the Utah facility could violate an EPA Superfund policy discouraging the dilution of contaminated materials with other materials as a means of achieving a less-concentrated level of contamination called for by environmental regulations, one activist says.

**Rep. Pallone Says Prospects 'Doubtful' For Reinstating Superfund Tax (*Inside EPA*)**

A key House lawmaker says prospects are doubtful for passing a bill reinstating the Superfund tax, but says he will work to move the legislation forward in September and the "lame duck" session after the election.

Rep. Frank Pallone (D-NJ), one of several lawmakers sponsoring legislation to reinstate the expired taxes, told a July 20 meeting of EPA union members on Capitol Hill that the bill is currently in the House Ways & Means Committee and that he has asked the committee's acting chairman, Rep. Sander Levin (D-MI), for a hearing, but has yet to receive a commitment. The bill could see action in September or the "lame duck" session after the November election, though Pallone said, "I doubt it."

Activists have long argued that the lack of a Superfund tax, which expired in 1995, has forced the Superfund program to seek funds from general revenues, which in turn has constrained resources for cleaning up contaminated sites. EPA Admininistrator Lisa Jackson recently reiterated the administration's long-standing calls for the taxes to be reinstated, bolstering Democrats' push for the measure.

But industry officials are strongly opposed to the tax and the National Association of Manufacturers recently announced the creation of a task force to oppose the measure.

Pallone also questioned the prospects for another bill he introduced this session, H.R. 5310, that would reauthorize a federal brownfields program, including provisions for an EPA remediation grant program. Pallone said the bill has "a lot of support," though passage this session "depends on how much time is left and whether we can get a moving train."

Sen. Frank Lautenberg (D-NJ) has introduced a similar brownfields measure in the Senate.

## TOXICS

### Two High companies settle with EPA (*Lancaster Online*)

Intelligencer Journal
Lancaster New Era
Jul 29, 2010 21:20 EST
Read more: http://articles.lancasteronline.com/local/4/271175#ixzz0v9gQXxCI

High Steel Structures and High Concrete Group have settled alleged violations of toxic chemical reporting requirements, the U.S. Environmental Protection Agency said Thursday.

The alleged paperwork violations, which High brought to the attention of EPA inspectors, were at High Steel plants in Lancaster and Williamsport, and at a High Concrete plant in Denver.

EPA cited the sister companies for violating the Emergency Planning and Community Right-to-Know Act (EPCRA) by neglecting to list certain chemicals on its reports to the EPA.

John Sandy, a spokesman for the companies, called the actions "an unintentional breach."

High Steel agreed to pay a civil penalty of $165,000 to settle the Lancaster allegations.

However, because of the companies' prompt disclosures and corrections of the alleged omissions at Williamsport and Denver, penalties there of $227,717 and $98,866 respectively were dropped.

The act requires firms that make, use or process more than a threshold amount of listed toxic chemicals to file an annual form with EPA and the state.

Sandy said that while the toxic chemical release reports were filed, certain chemicals were inadvertently omitted from the documents.

Once the omissions were spotted by the companies, the reports were revised with the full data, he said.

"The actual amounts of these materials were completely trackable and consistently remained well within industry standards and regulations," he added.

High Steel is among the nation's largest steel engineering, fabricating and erecting firms for bridges, buildings and industrial projects.

Started in 1931, High Steel's only two locations are in Lancaster and Williamsport. They have a combined work force of 573 employees.

High Concrete is among the nation's largest producers of precast concrete for parking garages and buildings. It was started in 1977.

Besides its Denver headquarters, which employs 384 people, High Concrete also has sites in Buena, N.J., and Springboro, Ohio, with another 148 workers.

High Steel and High Concrete are part of High Industries, which is half of the High companies. The other half is High Real Estate Group.

The alleged violations at High Steel's Lancaster plant were uncovered during an EPA inspection in 2009. Sandy said company officials brought the issue to the EPA's attention.

The company did not report releases for lead, chromium and zinc dust for the years 2005, 2006 and 2007, the EPA said. The company has since submitted this information.

At the Williamsport and Denver facilities, the companies voluntarily disclosed similar reporting violations in April 2010.

Under EPA's "Self-Disclosure Policy," the company was eligible for 100 percent mitigation of the penalties for the Williamsport and Denver sites.

As part of the settlements, the companies did not admit liability for the alleged violations.

"It is High's policy to conduct all activities in accordance with all applicable federal, state and local laws and regulations," Sandy said.

"A systematic toxic release inventory reporting process has been implemented to ensure that all reports are appropriately filed in the future," he said.

tmekeel@lnpnews.com

Read more: http://articles.lancasteronline.com/local/4/271175#ixzz0v9gLDomm

**EPA Urges House To Pass Bill On Toxic Substances Control (*NASDAQ*)**

By Shayndi Raice, Of Dow Jones Newswires
WASHINGTON -(Dow Jones)- The Obama administration and environmental advocates urged a House panel Thursday to pass legislation that would give more power to the Environmental Protection Agency to regulate chemicals, while representatives from the chemical industry insisted the law would be a job killer.

Steve Owens, assistant administrator of the EPA's office of chemical safety and pollution prevention, said the Obama administration supports revising the Toxic Substances Control Act of 1976, which has never been updated since its enactment.

"The time has come to introduce [the Toxic Substances Control Act] to the 21st century," Owens said before the panel, a subcommittee of the House Energy and Commerce Committee.

The proposed legislation would update the 1976 law, which authorized the EPA to regulate chemicals that were determined to pose a risk to the public. Environmental advocates have argued that the law has not accomplished its goals because it doesn't include thousands of new chemicals created since its enactment. They also noted the EPA has not banned any chemicals under the act.

The original law "was an important step forward at the time," said Owens in testimony submitted to the House panel. "But over the years, not only has [the Toxic Substances Control Act] fallen behind the industry it is intended to regulate, it has also proven an inadequate tool for providing the protection against chemical risks that the public rightfully expects."

The Toxic Chemicals Safety Act of 2010, sponsored by Rep. Bobby Rush (D., Ill.) and Rep. Henry Waxman (D., Calif.), would give greater power to the EPA to require information from chemical manufacturers, and to ban and restrict chemicals deemed unsafe. The bill would also significantly alter the burden of proof, forcing the industry to prove the chemicals they use are safe, rather than requiring the EPA to prove chemicals are unsafe.

The bill "creates additional burdens that do not contribute to and, in fact, detract from making advances in safety, while coming up short with respect to promoting innovation and protecting American jobs," said Cal Dooley, president and chief executive of the American Chemistry Council, before the panel. He said the new standards were unduly burdensome, discourage the introduction of new chemicals and put U.S. companies at a disadvantage to foreign competitors.

The chemical manufacturing sector employs more than 800,000 people and 96% of all goods are touched by chemistry in some way, according to Dooley.

Industry representatives also noted that chemical companies were already suffering because of increased competition from abroad.

The bill "would have a substantial negative impact on a strategic American industry that is already fighting recession and foreign competition," said Beth D. Bosley, president of Boron Specialties, in written testimony. Bosley testified on behalf of the Society of Chemical Manufacturers and Affiliates, an industry group representing about 300 companies.

The political battle lines were drawn clearly around the legislation, as Democrats said that the original law was a failure and needed to be updated and Republicans argued that the new law would harm the industry.

Rush, chairman of the panel, said he recognized that the bill would not please all sides, but that his goal was to put forward one they "could actually live."

Rep. Ed Whitfield (R., Ky.), the top Republican on the panel, said that he believed the original law should be updated, but that he had serious concerns with the proposed bill.

"Many of us genuinely believe if this legislation is passed as written instead of helping us create more jobs in America, it will help us lose more jobs in America," he said.

The Senate has held similar hearings to explore revising the 1976 law and a similar bill has been introduced in the Senate.

-By Shayndi Raice, Dow Jones Newswires; 202-862-9291; shayndi.raice@ dowjones.com.

07/30/2010

**Democrats Expand Whistleblower Protections In Revised TSCA Reform Bill (*Inside EPA*)**

Proposed "whistleblower" provisions in a new House bill to reform the Toxic Substances Control Act (TSCA) could modernize and expand whistleblower protections in the chemical industry, making TSCA the first major environmental statute to be updated to be consistent with whistleblower protections in other recent laws, sources say.

The new whistleblower provisions are included in H.R. 5820, introduced July 22 by House Energy & Commerce Committee Chairman Henry Waxman (D-CA) and commerce panel chair Bobby Rush (D-IL). The provisions were not included in a draft version of the legislation that the lawmakers circulated for comment in April.

According to an energy committee summary released alongside the bill, the employee protection provisions would amend a corresponding section in TSCA "to make these provisions consistent with employee protection provisions in other federal legislation by clarifying the process for review of complaints."

Sources say industry groups such as the U.S. Chamber of Commerce and the Society for Human Resource Management have opposed expansions of whistleblower protections in the past, but say opposition could become harder in light of fatal mine and oil rig accidents this year. Further, greater protections in the TSCA reform bill and others can "fill holes in the patchwork" of employee protections across the federal statutes, according to a source with the National Whistleblower Center.

The effort comes as Congress weighs other measures to expand protections from retaliation against whistleblower employees who publicize concerns about a facility's violation of federal laws. For example, the House Rules Committee is slated to meet July 29 to set parameters for debate on a bill, H.R. 5851, to grant whistleblower protections to workers who raise concerns about their employers violating federal laws at offshore oil and gas facilities. The bill is in response to concerns about federal law violations related to the BP oil spill in the Gulf of Mexico.

Proponents of greater employee protections for whistleblowing say the provisions in the TSCA reform bill would extend the time employees can file claims and also expand the remedies available to those who file a complaint and then claim they suffer retaliation from their employers for doing so. The bill if enacted would make TSCA the first major environmental statute to have its whistleblower protections updated in years, sources say.

According to the Department of Labor's (DOL) website, key environmental statutes like TSCA allow employees to file complaints with the Occupational Safety & Health Administration "if they believe that they have experienced discrimination or retaliation for reporting alleged violations of certain environmental laws or regulations." Most environmental laws require that complaints be filed within 30 days of the alleged violation, the law says.

But the new provisions in the TSCA bill would allow employees to file complaints with DOL up to 180 days after an alleged incident and further expands the options for remedy under the act, sources say.

For example, in the toxics law reform legislation, whistleblowers who do not receive a decision from the Labor Department on a complaint within 210 days can "bring an action at law or equity for *de novo* review in the appropriate district court of the United States

with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury," according to the bill. The court can "grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages," as well as back pay, reinstatement and other damages.

Further, the bill says "any employee or employer adversely affected or aggrieved by a final order issued . . . may obtain review of the order in the United States Court of Appeals" that has jurisdiction over the order.

The source says the new protections could have broad impacts because "many bread-and-butter workplace safety issues involve toxic chemicals," and toxics issues could have overlap with other media such as air, waste and water where laws for those issues have weaker whistleblower protections -- for example in the Clean Air Act, Clean Water Act and Solid Waste Disposal Act.

The protections could also act as "an alternate avenue for private right of action" with regard to occupational safety claims because of what are widely seen seen as weaker protections under the Occupational Safety and Health Act, the source says. The act requires whistleblowers to go through a laborious process to address their claims and has also been the subject of congressional reform efforts.

The "amendment conforms to the recognized version of the whistleblower protections" seen in other recently renovated statutes, including the Consumer Product Safety Commission Improvement Act and the recently passed financial regulations law, among others, a second whistleblower reform advocate says.

In addition to congressional action, President Obama is taking administrative steps to strengthen whistleblower protections for federal employees. For example, in March 2009 Obama issued a memo aimed at improving scientific integrity, in which he ordered each federal agency to adopt procedures, "including any appropriate whistleblower protections, as are necessary to ensure the integrity of scientific and technological information and processes on which the agency relies in its decision-making or otherwise uses or prepares." -- *Aaron Lovell*

07/30/2010

**Revised House TSCA Bill Fails To Quell Industry Concerns Over Scope (*Inside EPA*)**

House Democrats' revised chemical safety legislation is doing little to quell industry concerns over the measure's scope and approach to dealing with chemical risks, prompting industry to warn that it will still need more work before it will garner

widespread support -- a fact acknowledged by the bill's lead sponsor, House energy committee Chairman Henry Waxman (D-CA).

Of particular concern to industry groups is language that grants EPA new authority under the Toxic Substances Control Act (TSCA) to regulate the safety of "articles," a term that industry warns expands the agency's current authority allowing the agency to regulate products, such as automobiles and aircraft, it has never previously regulated.

"It dramatically expands the scope of the Environmental Protection Agency's authority over every sector of our nation's economy, sets unrealistic standards and timeframes and puts unnecessary burdens on manufacturers with new and inconsistent statutory requirements," the National Association of Manufacturers (NAM) said in a July 23 statement.

Industry sources are also concerned that the bill does not address other concerns they have raised in the past, including confidential business information and state preemption. And they are concerned that the bill includes new worker protection measures that had not been included in an earlier draft, including new whistleblower provisions.

Waxman and Rep. Bobby Rush (D-IL), chair of the energy committee's commerce panel, July 22 introduced the bill, H.R. 5820, after a lengthy stakeholder consultation process to gain responses to a discussion draft the lawmakers floated last April. *The bill is available on InsideEPA.com.*

Despite the industry concerns with the bill, key officials reiterated their commitment to continue to work with lawmakers to revise the measure. Cal Dooley, president and chief executive officer of the American Chemistry Council, said he appreciates that House Democrats "have taken this issue seriously and their willingness to have an open discussion on how to approach this challenge," but adds "this is just the beginning."

Dooley continued, "The federal chemical regulatory system must ensure public safety, protect the ability of American business to innovate, and preserve American jobs. This bill will need more work to get us there."

One informed source says how EPA responds to the measure will also be a key test as the agency will need to weigh in on whether the bill is workable in its current form. The source says EPA officials have participated in talks on the discussion draft but it is not yet clear whether the agency has said whether the timeframes laid out in the bill are workable. "That is a question EPA will have to confront," the source says.

In a July 22 statement, Waxman acknowledged that policymakers and stakeholders still have much to do before they gain agreement on the measure. "There is much work still ahead, but I am confident that [the] legislation marks a critical step on the road toward reforming TSCA and enacting a smart and safe chemical policy for America," he said.

Rush said in the statement that his subcommittee will hold a July 29 hearing on the bill. "We are working with all deliberate speed, in this session of Congress, to update a law that is of major importance to American consumers," he said. EPA Administrator Lisa Jackson is expected to testify, as are representatives from industry and activist groups.

But one industry source says that there is still "significant concern" with the bill as introduced, noting that the comments from the extensive stakeholder process "had minimal impact as the bill in key respects is largely unchanged to worse." The source says the "good news" is that no Republicans or moderate Democrats are supporting the bill, a group that industry is counting on to help scale back the measure in the next Congress.

The bill as introduced is generally consistent with the discussion draft, retaining its safety standard requiring industry to show a "reasonable certainty" that no harm will result from new chemicals before EPA can approve them, provides EPA with new authority to regulate "articles" and "mixtures," details a list of priority chemicals for EPA to quickly regulate and a host of other measures that were included in the discussion draft.

**Industry sources say the bill still contains a host of problematic provisions despite some changes** that the lawmakers have made to the existing bill as well as some new measures.

For example, the bill retains the safety standard but no longer requires that the standard take cumulative exposures into account -- another major concern of industry. However, the bill requires EPA to "develop and publish guidance regarding the use of science in making determinations under" the standard based explicitly on *Science & Decisions*, a 2009 National Academy of Sciences (NAS) report on risk assessment, and update the guidance every five years. The industry source says this could "muddy the waters" around the cumulative risk issue.

The bill also scales back the number of priority chemicals EPA must quickly regulate from 31 to 19.

Industry says the scope of the bill is too broad, despite the fact that it offers better clarification on the definition of "mixture," a key concern that could have seen the scope of TSCA broadened, though sources say there is still confusion about how "articles" are covered under the draft.

Industry sources are also concerned that the bill makes few changes to other key sections, including how the bill deals with new chemicals and the extent to which it preempts states. The bill "does not do more to encourage consistency in compliance to one comprehensive federal standard but instead undermines this effort by ensuring states can adopt varying degrees of TSCA-like programs," the Society of Chemical Manufacturers & Affiliates says in a statement.

Other groups also signal ongoing issues with the bill's controls on claiming confidential business information, which they say could stymie innovation despite being revised from the draft. "[W]e urge the Committee to provide flexibility for EPA to establish appropriate 'triggers' for re-substantiation of CBI claims, rather than an arbitrary five-year expiration timeline," Chris Cathcart, president of the Consumer Specialty Products Association said in a July 23 statement. "We maintain our support for up-front substantiation for CBI that allows U.S. industry to maintain a competitive edge in a very challenging global economy."

Environmental groups meanwhile are backing the bill and provisions they say expand human health and environmental protections, and in a number of July 22 statements urged Congress to move soon on the issue. Andy Igrejas, director of the Safer Chemical, Healthy Families coalition of public health and environmental groups, said in a July 22 statement that the introduced bill "gives EPA both the authority and a mandate to begin making up for 34 years of neglect," adding that "Congress should seize this opportunity immediately."

07/30/2010

**Senate Oil Spill Response Bill Requires Disclosure Of 'Fracking' Chemicals (*Inside EPA*)**

Senate legislation to address the BP oil spill in the Gulf of Mexico includes a mandate for natural gas drillers to disclose the chemicals used in hydraulic fracturing, or "fracking," by the end of 2011 if states do not act to require disclosure sooner, but allows companies to keep secret the proprietary formulas of the chemical mixtures.

The fracking language in the bill, offered by Sen. Bob Casey (D-PA), would modify the Emergency Planning & Community Right-To-Know Act to say that states may immediately require disclosure of the list of chemicals used in fracking, "including the chemical constituents of mixtures, Chemical Abstracts Service registry numbers, and material safety data sheets." If states collect data on fracking chemicals from companies, they must make it available online.

If states do not require disclosure of the chemicals used in fracking by Dec. 31, 2011, the bill would require well operators to make the data available online within 30 days of completing drilling a well. The bill "does not require the disclosure of proprietary chemical formulas," except when such information is required by a doctor or nurse responding to a medical emergency involving someone exposed to the chemicals. Well operators may require confidentiality agreements from medical professionals to prevent further disclosure of the chemical data.

According to a press release from Casey's office, industry is injecting "unknown and potentially toxic" chemicals for fracking, often near drinking water wells -- posing a risk of contamination of those wells.

Environmentalists say chemicals used in fracking include diesel fuel, benzene, other carcinogens and endocrine disruptors, and activists have long pushed for greater transparency in the constituents of the chemicals.

Rep. Diana DeGette (D-CO) is working with some natural gas industry officials to mandate the disclosure of chemicals used in fracking, though the move is sparking a split with other gas industry officials who fear it may open the door to EPA regulations under the Safe Drinking Water Act (*Inside EPA*, July 2).

Casey praised senators' decision to include the fracking provision in the oil spill response legislation. "The explosive growth of natural gas wells in Pennsylvania and recent incidents involving some of these wells highlights the urgent need for this legislation," he said in the July 28 news release. "Pennsylvanians have the right to know what is being injected into the ground at thousands of sites across the Commonwealth," Casey added.

Sources note that similar disclosure language was stripped from the House oil spill response bill before its referral to the Rules Committee July 27 and speculate that the inclusion on the Senate side may be aimed at shoring up support from environmentalists disappointed at the removal of other environmental items from the bill.

An industry source says support for disclosure has been growing within the industry but says the language included in the Senate bill is "poorly conceived" because it does not address state disclosure requirements from 2012 on; is too vague about who must disclose what to states; and is vague on how proprietary information would be protected.

The source also criticizes the decision to include the disclosure provisions in the spill response bill that will be debated on a compressed timeframe, because it would not allow for sufficient consideration of the issue or the opportunity to offer amendments. Senate Majority Leader Harry Reid (D-NV) has not said whether amendments will be allowed to the spill bill, but Senate Majority Whip Richard Durbin (D-IL) told reporters July 27 that the bill likely would not be open to amendment in an effort to pass it quickly.

## WATER

### Enviro group, Md. farmers petition 'Big Chicken' (*BusinessWeek*)

Friday, July 30, 2010
BALTIMORE
Environment Maryland is urging the governor to help level the playing field for environmentally responsible farmers.

The environmental group released a petition Thursday signed by 55 farmers, including many organic producers and those who supply increasingly popular farmer's markets.

The petition says large poultry producers should be held responsible for pollution caused by their feeding operations to level the playing field for those already using more sustainable practices.

Fertilizer and manure runoff is a key pollution source in the Chesapeake Bay. Increasing regulation of large animal feeding operations is one of the components of the federal Environmental Protection Agency's new bay restoration strategy.

**EPA Announces Study to Re-Examine the Health Risks of Hydrofracking (*Circle of Blue WaterNews*)**

Posted By Heather Rousseau On July 29, 2010 @ 9:19 am In Energy, North America, Policy + Politics, Research + Reports, Water Policy, World | No Comments

As the federal agency launches its newest study, states have begun implementing stricter regulatory standards for the controversial natural gas drilling process.

The U.S. Environmental Protection Agency has announced a $1.9 million study that will re-examine a controversial drilling technique used to free natural gas, the AP reports [1].
Shale-290
Cropped portion of image from USGS report showing extent of en:Marcellus Formation shale (in gray shading).

The EPA's decision comes as corporate interest increases in the Marcellus Shale region—95,000 square miles of dense rock beneath the Pennsylvania New York, West Virginia and Ohio that contains enough natural gas to supply the East Coast for a half century.

Roughly 90 percent of the 450,000 gas wells in the U.S. use hydraulic fracturing—a process that uses large amounts of pressurized water mixed with chemicals to fracture land to extract fossil fuels located deep underground. Commonly referred to as "fracking," it requires a mixture of water and toxic chemicals that some fear could potentially pollute water sources. Additionally, aquifer depletion concerns have cropped up given that the average frack uses 4 million gallons of water.

In 2005 Congress ruled that fracking didn't need to be regulated by the federal government.

But the EPA's announcement comes off the heels of Pennsylvania's decision to finalize standards that will help regulate fracking in the state. In response to fish kills, building corrosion, natural gas explosions and consumer complaints about water from natural gas drilling in the region, the state's Department of Environmental Protection has ruled to monitor total dissolved solids (TDS) for the first time. TDS are a compilation of the organic and inorganic material found in liquids that can come from surface runoff.

Pennsylvania has implemented stricter standards on natural gas drilling because high levels of TDS, including sulfides and chlorides, were found in the wastewater left over from the drilling process. Abandoned coal mines in both Pennsylvania and West Virginia have added high levels of sulfates to the water, according to DEP spokesman, William Rathbun.

"We discovered that during low water and drought that the rivers were getting overwhelmed with high levels of salts chlorides and sulfates," Rathbun said.

These contaminants can lead to health risks as well as higher operational and maintenance costs.

Earlier this month, cows that had allegedly consumed toxic wastewater from natural gas drilling were pulled off the food market from a farm in northern Pennsylvania, Reuters [2] reports.

"Wastewater treatment plants were not equipped to treat for it because they had never been required to before," Rathbun said. As a result, contamination consequences have slipped through the cracks, unmonitored.

One of the accusations has been that drilling companies do not come forth with the chemicals that are being used during fracking.

Pennsylvania state law requires that companies provide the names of chemicals they are using on site.
Other states are also calling for more public transparency. Wyoming's Oil and Gas Conservation Commission approved rules last month that require companies to make public a list of chemicals used in the fracking. Meanwhile Colorado passed a similar requirements last year, reports The Daily Sentinel [3].

Meanwhile the DEP has released a list [4] of 80 chemicals that are brought to the well site where the fracking process takes place. A second list of chemicals that are actually used in the process are set to be released this month.

"It is critical that we implement a strong discharge standard for wastewater that does make it into our water supply," Pennsylvania House Representative David Levdansky, told the Pittsburgh Post-Gazzette [5]."

“Hydrofracking has never been conducted on such a scale and with such volumes of water in our state before,” Levdansky said.

“Drilling wastewater contains TDS levels that are thousands of times more harmful to aquatic life than discharges from other industries. Without imposing limits on this pollution, treatment costs for this wastewater are passed along to downstream industries and municipal ratepayers,” Environmental Protection Secretary John Hanger told The Empowered Municipality [6], A Pennsylvania based organization connecting municipal decisionmakers and suppliers.

In addition to pollution concerns, there have been recent disasters from the Marcellus Shale drilling pads.

Early last month, a drilling pad exploded in Clearfield County, a rural area of northern Pennsylvania, with gas and contaminated water shooting up to 75 feet in the air for 16 hours, according to theAP [7].

Four days later a natural gas explosion injured seven crew members in Moundsville, West Virginia, which sits near the state’s border with Ohio and Pennsylvania, reports the Pittsburgh Post-Gazette [8].

There were two specific events that inspired the DEP to established, the Environmental Quality Board, the panel was established to investigate chemicals released in the fracking process. It took one year to implement the new TDS requirements.

Earlier this year the Upper Delaware River was deemed the most endangered river in the U.S. by American Rivers [9], a leading national conservation non-profit, because of threats from natural gas drilling. Much of the Marcellus Shale formation resides in the Delaware River Basin.

07/30/2010

**EPA Eyes Alternative Authorities To Address Concerns Over Fracking (*Inside EPA*)**

Barred from regulating the natural gas drilling practice known as hydraulic fracturing under federal drinking water law, a senior EPA official says the agency is now examining whether it can use alternative authorities, such as the Clean Water Act (CWA) and Endangered Species Act, to limit environmental risks.

While the agency is still in the preliminary stages of examining its options, the move could bolster efforts by environmentalists and key lawmakers who are increasingly making the case for EPA and other agencies to use alternative laws to limit the risks

given the bar on the agency from regulating the practice under the Safe Drinking Water Act (SDWA).

"I think it sounds appropriate for EPA to be looking at their laws and making sure they're being enforced properly," one environmentalist tracking the issue says.

Fracking is a process where operators inject chemical-laced fluids into underground rock to release gas. The process has allowed drillers to reach gas in previously off-limits reserves, leading to increased resource estimates but growing concerns about the risks of drinking water contamination -- especially since Congress in 2005 exempted the practice from EPA regulation under the drinking water law. The agency is now launching a congressionally backed study into the practice's risks.

As part of that study the agency is undertaking a series of public meetings with stakeholders, drawing on wide public attention to the issue in affected states. A public stakeholder meeting July 21 in Pittsburgh, PA, drew nearly 1,200 people, with approximately 120 speakers weighing in on the issue. That meeting follows two others in Texas and Colorado, and previews three meetings scheduled for Aug. 12 in Binghamton, NY.

Cynthia Dougherty, director of EPA's Office of Groundwater & Drinking Water, told the agency's National Drinking Water Advisory Council July 22 that EPA is looking into whether the other laws could provide the agency with authorities to better manage so-called fracking operations.

The 2005 energy law bars the agency from regulating injection of chemical-laced fracking fluids under SDWA but efforts to restore the authority in Congress have faltered, prompting environmentalists and key lawmakers to push alternative regulatory approaches under existing authorities.

While Dougherty declined to elaborate much further, she noted that, for instance, if it were found that a fracking operation were discharging to a surface water, then it would require a CWA permit.

She also suggested that the agency could even exercise SDWA enforcement authority in the event a release from a fracking operation contaminated a private well. She noted that the agency had exercised such enforcement authority in the past, as was the case at a California concentrated animal feeding operation where a waste pond leaked and contaminated a private drinking water well.

Dougherty also noted that some states have additional regulatory authority under oil and gas programs, rather than environmental authorities.

**EPA's consideration of alternative authorities to regulate the practice comes as key** lawmakers and environmentalists are increasingly pushing a similar approach.

In the House, Energy & Commerce Committee Chairman Henry Waxman (D-CA) and environmental panel chair Edward Markey (D-MA) recently expanded their investigation of the industry's practices, with a special emphasis on data related to flowback -- the process by which fracking fluid is brought back to the surface -- and produced water from the wells, which could be regulated under the CWA.

The lawmakers sent July 19 letters to 10 oil and gas well operators asking them for information on wells drilled near drinking water sources and the total volume of flowback and produced water recovered from or disposed of at each well, as well as information on company policies and procedures for on-site storage of flowback and produced water, testing for the chemical content of the water and information on allegations of harm from the water to human health or the environment. The letters ask for the companies to provide the information by Aug. 6.

Similarly, Rep. Joe Sestak (D-PA), who is running for the state's U.S. Senate seat, urged EPA Administrator Lisa Jackson recently to ensure that the agency's pending study on the practice consider possible water contamination that results from on-sight storage and disposal of fracking and waste fluids.

In a recent letter, Sestak also warned that the state's wastewater infrastructure is not equipped to deal with hydraulic fracturing flowback as well as groundwater contamination.

"In light of the American Society of Civil Engineer's assessment that Pennsylvania has $7.18 billion in wastewater infrastructure needs, I see a pressing need for the proposed research on the effectiveness of municipal wastewater treatment systems in dealing with hydraulic fracturing flowback - the process by which the potentially dangerous chemicals are brought back to the surface and can potentially be mixed into the regular water supply - as well as ground contamination. These waters are often being directed to Publicly Owned Treatment Works and, as such, the potential of new and existing drinking water and public water treatment technology needs to be assessed," Sestak wrote.

Sestak also urged EPA to study the effect of fracking in Pennsylvania, where there is a significant amount of drilling in relatively small area. "In addition to understanding the impact of fracking in individual wells, this study must also consider anticipated high density drilling in relatively short periods of time to account for the cumulative effects of drilling on a region's drinking water supply," he said.

And he urged the agency to study to potential risk of fracking fluid migration that can occur from previously abandoned, but not properly sealed wells in proximity of fracking operations. He noted that a recent report had found that the location and status of more than half of the oil and gas wells that have been drilled in the state (approximately 184,000 wells) are unknown.

He also called for development of "clear standards for pre-drilling investigations of background conditions to understand the potential for contamination."

The calls for alternative regulations comes as policymakers appear to have dropped efforts to reinstate EPA's SDWA authority, though EPA and numerous groups are pursuing fracking "best management practices" (*Inside EPA*, July 9).

Congress is also considering legislation that would require operators to disclose the chemicals they use in fracking fluid, though the legislation grants states, not EPA, authority to oversee the disclosure (*see related story*). -- *Erica Martinson*

07/30/2010

**Fate Of Chemical Security Bill Likely To Hinge On Conference Negotiations (*Inside EPA*)**

The fate of chemical security legislation in the 111th Congress is likely to hinge on the outcome of future conference negotiations after a key Senate panel approved a bill to extend existing federal security rules by three years, in contrast to a House-passed bill that would overhaul the rules and require EPA to regulate security at wastewater facilities.

Some senators are already flagging key priority issues that must be resolved at conference negotiations should the Senate bill clear a floor vote, including whether to mandate consideration of "safer" technologies at facilities.

At least one key House Democrat -- Bennie Thompson (D-MS), chairman of the homeland security panel -- is already strongly criticizing the Senate committee's vote as a "disservice" to the United States that leaves "major security gaps unaddressed." One Senate Democratic aide however cautions that the vote to move the bill out of committee is designed to push the bill forward to the Senate floor, where senators could try for something "closer" to the House bill.

The uncertainty over the final shape of the Senate's version of chemical security legislation is prompting concern from environmentalists who say the bill underscores major flaws in the existing security rules, while the chemical industry is praising the Senate legislation as an endorsement of the current regulatory structure.

The Senate Homeland Security & Governmental Affairs Committee held a markup of the House's chemical security bill, H.R. 2868, July 28. The House-passed bill would create stricter requirements for chemical facilities and also give EPA first-time authority to develop a security program for drinking water and wastewater facilities.

At markup, Sen. Susan Collins (R-ME) offered an amendment to replace the bill with a three-year reauthorization of the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS). CFATS applies only to chemical facilities and exempts wastewater plants. The program is set to expire Oct. 4 though DHS' pending fiscal year 2011 appropriations bill would reauthorize the program to Oct. 4, 2011.

The homeland security panel unanimously approved Collins' amendment, which largely mirrors a bill the senator introduced earlier this year, S. 2996. The stark differences between the House and Senate bills could spur debate on the Senate floor and in any eventual conference negotiations over what shape a final bill should take.

Collins said the amendment includes a handful of new provisions that were suggested by members of the committee, including a reduction of the bill's authorization from five years to three years. The bill also includes provisions to develop a voluntary training program "to improve collaboration with the private sector and the state and local communities" under the CFATS program, as well as the development of a "chemical security best practices clearing house and a private sector advisory board" to aid in implementation of the CFATS program, Collins said.

Sen. Joseph Lieberman (I-CT), chairman of the homeland security committee, said that though he had hoped for concessions from Collins that addressed the exclusion of wastewater, drinking water facilities and port facilities from the program and that would allow for some inherently safer technology (IST) provisions, he also felt that the House bill had gone too far in its mandate for DHS to require facilities to implement IST practices.

IST is a process whereby certain chemical manufacturing processes are phased out in favor of alternative processes that use lower quantities of less hazardous chemicals, and is strongly favored by environmentalists but that industry says would make chemical manufacturing practically impossible in the United States.

Lieberman added that despite his misgivings over the adequacy of the Collins amendment to address flaws in CFATS, he believes the Senate may still be able to make concessions on the wastewater, drinking water and port exemptions in the current program either before the amended bill reaches the floor or on the floor itself.

"I'm sorry we couldn't come to a meeting of minds here in the committee but I certainly hope that if the bill is reported out today, which I assume it will be, we will be able to work as the present bill goes to the floor and on the floor and forge a kind of consensus that will allow us to not only reauthorize the current CFATS program but hopefully to strengthen it in ways we can all agree on," Lieberman said prior to the vote on the bill.

The Senate homeland security panel vote came the same day as a Senate Environment & Public Works Committee hearing on two security bills introduced by Sen. Frank

Lautenberg (D-NJ). The bills largely mirror H.R. 2868 but split in two, with one bill focused on chemical facilities and the other addressing water facilities.

Lautenberg at the hearing expressed disappointment in the Senate homeland security panel vote, but noted that his water security bill is distinct from the chemical security legislation voted on July 28.

**Sen. Thomas Carper (D-DE) said at the markup that his staff have surveyed what steps states** have already taken to improve chemical security and found that a law enacted in New Jersey requiring consideration of IST has proven effective. That law requires facilities to undergo an assessment of whether IST practices would be feasible and effective at their facilities but does not require those facilities to act on the assessments' suggestions.

Carper circulated a pair of amendments prior to the markup that would have IST assessment at chemical facilities and water facilities as part of CFATS, but he did not offer them for a vote, saying instead that such a provision should be considered if and when the bill passes the Senate and goes to conference with the House.

"We have the opportunity to pass this legislation, and if we move on and conference with the House leaders this year, we may want to come back and look at this amendment," Carper said.

The American Chemistry Council in a July 28 statement said the Senate committee vote in favor of Collins' substitute amendment shows support for existing chemical security regulations.

But House Homeland Security Committee Chairman Thompson -- a lead sponsor of H.R. 2868 -- said in a statement the same day that the Senate Homeland Security & Governmental Affairs Committee "did the country a disservice. Instead of tackling the difficult task of considering comprehensive chemical security legislation, they simply kicked the can down the road until a future date, and in doing so, left major security gaps unaddressed."

Greenpeace, which advocates IST mandates and supports H.R. 2868, echoed Thompson's statement in a July 28 press release saying that the Collins amendment would allow high risk chemical plants to continue to use unsafe chemical processes and would not require the plants to assess safer chemical processes.

"It's clear that the senators voting for the Collins bill today would rather wait for a disaster before they will lift a finger to prevent one," said Rick Hind, Greenpeace's legislative director. He said the bill continues to exempt all 2,400 drinking water and wastewater facilities and all 500 port facilities from security rules. -- *John Heltman*

**Appellate Court Backs Strict EPA Approach For New Gulf Drilling Wells (*Inside EPA*)**

A federal appeals court has upheld EPA's rule governing cooling water intake structures (CWIS) for new offshore oil and gas facilities in the Gulf of Mexico and elsewhere, rejecting arguments by industry groups who had sought to require the agency to do more flexible, facility-by-facility technology determinations.

The court, over industry objections, also granted a request by EPA and environmentalists to remand portions of the rule pertaining to existing facilities, backing the agency's interpretation of its obligation to consider costs and benefits of different control requirements in light of a Supreme Court ruling on the issue.

The U.S. Court of Appeals for the 5th Circuit's ruling July 23 in *ConocoPhilips et al v. EPA* rests on a recent Supreme Court ruling that held EPA had the discretion to decide whether to perform cost-benefit analysis before promulgating rules under the Clean Water Act (CWA).

The rules at issue are promulgated under CWA section 316(b), which authorizes EPA to determine "best technology available for minimizing adverse environmental impact" from CWIS discharges. Offshore energy platforms use cooling water for gas compression and processing as well as compressors and other turbo machinery. Drawing in large amounts of water for cooling purposes kills fish and other aquatic organisms when they become trapped against intake valves or are drawn into a plant's machinery. In addition, when the used water is returned to the waterbody, its increased heat can harm the surrounding ecosystem.

The so-called Phase III rules aim to establish national standards for CWIS at new offshore oil and gas facilities, but Conoco and other industry plaintiffs sued in an attempt to force EPA to rely on site-specific considerations in crafting rules for different facilities. Industry argued that EPA modified its cost-benefit approach in the middle of the rulemaking process in a manner that was not entitled to deference from the court and acted in an "arbitrary and capricious" manner by failing to consider location-specific criteria, instead relying on "qualitative" data from a broad study of the area where most new facilities would be located.

In the July 23 ruling, the 5th Circuit rejected those arguments. The court held that the Supreme Court's April 2009 ruling in *Entergy Corp., et al. v. Riverkeeper* granted EPA broad discretion to use cost-benefit analysis in setting CWA 316(b) rules, but did not require it. In earlier court filings, EPA said its Phase III CWIS rule was justified on the basis of "economic achievability," in that costs of compliance could be borne by industry and would not be so excessive to serve as a barrier to entry for firms hoping to construct new offshore facilities. EPA did not conduct site-specific cost-benefit analysis of the new rule because it was unable to estimate benefits without knowing the location of yet-to-be-built facilities. *The ruling is available on InsideEPA.com.*

Industry said that "economic achievability" standard differed from EPA's discussion of costs and benefits in preambles to the proposed and final Phase III rules, violating federal notice-and-comment requirements, but the court disagreed. "After comparing the EPA's statements in the Final Rule to those argued before us, we are convinced that the EPA's 'economic achievability' argument is not a mere litigating position, but is instead the very basis under which the Final Phase III Rule for new offshore facilities was promulgated," the court found.

Conoco also faulted EPA for failing to conduct a benefits analysis for specific facility locations and inappropriately relied on data from the Southeast Area Monitoring and Assessment Program (SEAMAP) on aquatic life densities in the Gulf of Mexico, where most new offshore facilities will be built.

The court said EPA's lack of location-specific analysis was acceptable, highlighting the agency's conclusion based on economic impact assessments "that uniform regulation was achievable, that it would not create barriers to entry, and that it would not force operations to close." And it highlighted EPA's consideration of data on the types of facilities to be used and their likely location in the Gulf. "[W]e conclude that the EPA's decision to forgo a benefits analysis and promulgate the Phase III Rule on economic achievability grounds is at least 'minimally related to rationality.' . . . Accordingly, under the 'highly deferential' standard of review mandated here, we are unpersuaded that the EPA's failure to estimate benefits for specific new facility locations renders the process arbitrary or capricious," the court wrote.

The court also endorsed the use of SEAMAP data, rejecting industry's argument that its assessment of aquatic life populations would apply differently to oil rigs operating in different water depths. The court observed that regardless of the depth at which a rig was drilling, its CWIS would be located at approximately the same depth, within 100 feet of the water's surface, making the SEAMAP data applicable.

The court also granted a joint request from EPA and environmentalists to remand the portion of the rules dealing with existing facilities. Pending a new rule for existing facilities, expected to be released later this year, case-by-case permitting that existed before promulgation of the Phase III rule will remain in effect for existing facilities.

EPA in an e-mailed statement said it is "pleased" with the 5th Circuit ruling. The agency says it "has already begun development of a consolidated rule to address requirements for facilities subject to the [5th] Circuit's remand, but also for large existing power plants," which were subject to a separate CWIS rule that was remanded to the agency in separate litigation in the 2nd Circuit and Supreme Court.

07/30/2010

**House Spill Bill Bars Dispersant Use Pending Inter-Agency Study Results (*Inside EPA*)**

House leaders have added new language to their just-introduced oil spill response bill that bars the use of dispersants to control oil spills pending completion of a federal study on their safety and effectiveness and issuance of new EPA rules governing their approval -- a change from the bill when it emerged from committee.

The language was added to the bill before its introduction to the House Rules Committee July 27 after Democratic leaders and Rep. Jerrold Nadler (D-NY) -- who had originally sought a blanket moratorium on dispersant use -- agreed to new language that allows the EPA Administrator to override that moratorium on a conditional basis, after determining that dispersant use would not harm "water quality, the environment, or any other factor" deemed appropriate.

Senate Majority Leader Harry Reid (D-NV) July 27 also introduced a spill-response package that incorporated efforts from several committees, but the upper chamber's much narrower bill does little regarding EPA authority to address dispersant use, calling for additional research on the toxic chemicals but avoiding a moratorium on their use and steering clear of requiring new rules from EPA. *Relevant documents are available on InsideEPA.com.*

Sen. Frank Lautenberg (D-NJ) July 28 also introduced the "Safe Dispersants Act," which would require additional testing on dispersants' environmental and health effects before they could be approved, ban the use of dispersants that could not be shown to be safer than removing oil by mechanical means or allowing it to biodegrade, and require public disclosure of dispersant ingredients. It is not clear whether the bill will be added to the broader spill-response measure; a Lautenberg spokeswoman did not immediately respond to a request for comment.

Both the House and Senate spill response bills eliminate the liability cap oil companies face for economic and natural resource damages (NRD) resulting from an oil spill. The Oil Pollution Act of 1990 established a $75 million economic damage cap and $500 million NRD cap.

The House bill, H.R. 3534, combines legislation produced over the last month by the transportation, energy and natural resources committees. The bulk of the bill is modeled on the Consolidated Land, Energy & Aquatic Resources (CLEAR) Act, which was introduced last year by Resources Chairman Nick Rahall (D-WV) and implements a variety of reforms in land- and resource-management agencies.

Among them is language being sought by environmentalists repealing section 390 of the 2005 energy law, which gave the Interior Department authority to grant categorical exemptions from the National Environmental Policy Act (NEPA) for certain oil and gas exploration activities.

Most of the EPA-related provisions in the House bill are drawn from language adopted by the transportation committee, and its contribution remains largely unchanged since the bill was marked up in committee July 6.

But there are some notable changes from the committee-passed version, a House source says, including the dispersant moratorium, and provisions authorizing EPA to collect fees from dispersant manufacturers to fund the research and formalizing the agency's role in reviewing and potentially revoking approval of dispersants.

The final House product also maintains an amendment offered during markup by Rep. Michael Arcuri (D-NY) to end the oil and gas industry's exemption from construction stormwater permitting requirements that had been implemented in the 2005 energy law. Arcuri highlighted the expansion of natural gas hydraulic fracturing operations in his district during the markup as partially motivating his attempt to attach the measure. A similar provision is absent from the Senate bill, and observers don't expect it would garner much support in the upper chamber.

The repeal of the stormwater and NEPA exemptions contained in the 2005 energy law are among the provisions environmentalists have been seeking to address onshore drilling. In a July 21 letter to Reid and House Speaker Nancy Pelosi (D-CA) a coalition of environmental groups outlines several provisions they would like to see, including elimination of the stormwater exemption, requirements to disclose chemical constituents of drilling chemicals, and elimination of the use of categorical exclusions to avoid strict environmental reviews under NEPA.

"It is well known that the oil and gas industry has available to it many methods to reduce and prevent toxic releases into our air and water and onto our land. In many cases, these methods are also economically beneficial to the industry and pay for themselves. Unfortunately, these methods are not uniformly used. We believe the industry has the ability to comply with stronger laws and regulations without experiencing substantial harm," says the letter, signed by Earthjustice, Earthworks, Environment America, the Natural Resources Defense Council and the Sierra Club, among dozens of national and local organizations.

The Senate's narrower oil spill bill combines four broad provisions that leaders believe can garner bipartisan support and allow for passage before senators leave for their August recess at the end of next week, although a precise timeline remains in flux. It combines a bill reforming the Outer Continental Shelf Lands Act, which was unanimously passed by the energy committee this month; incentives for natural gas- and electric-powered vehicles; funding for land and water conservation; and the Home Star efficiency rebate program.

Senate Majority Whip Richard Durbin (D-IL) told reporters July 27 that he did not expect Reid would allow amendments to be offered on the bill, although Reid was non-committal when asked the same question during his weekly press conference.

The Senate bill creates an interagency research committee -- comprising EPA, the Department of the Interior, National Oceanic and Atmospheric Administration and Coast Guard -- to study oil spill prevention and response measures, including an evaluation of the effectiveness and toxicity of dispersants.

The Senate bill also directs the U.S. Sentencing Commission to revise sentencing guidelines for violations of the Clean Water Act to increase fines based on total damage caused by such violations.

07/30/2010

**Iowa Cities' Suit May Test Strict New EPA Limits On Wastewater Discharges (*Inside EPA*)**

The Iowa League of Cities is challenging EPA's recent actions to clamp down on municipal wastewater discharges during wet weather events in local permits, a suit that could influence the agency's just-launched rulemaking governing sanitary sewer overflows (SSOs).

In *Iowa League of Cities v. EPA*, filed July 23 in the U.S. Court of Appeals for the 8th Circuit, the group asks for court review of several agency permit requirements that the group says include new interpretations of EPA rules and regulatory determinations before it finalizes the SSO rule or addresses the issues in other rulemakings. *The lawsuit is available on InsideEPA.com.*

Of particular concern in the suit are new agency permit requirements on "blending" of partially and fully treated wastewater during storm events and a bar on "mixing zones" where bacteria is temporarily allowed in waters meant for swimming.

At issue are how wastewater treatment plants are allowed to deal with wet weather events that often lead to sewer overflows, depositing partially treated or untreated wastewater into regulated waters.

EPA, states and industry are at odds over expensive treatment requirements increasingly required by EPA in Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) permits in order to protect or clean up waters. Many municipal officials, for example, say they cannot afford the expensive storage and treatment systems needed to address the huge increases in flow that often result from storm events.

While EPA already regulates systems that combine stormwater and sewage under its combined sewer overflow (CSO) rule, the agency is just beginning to formulate a draft rule for SSOs, which occur at systems where the stormwater and sewage are conveyed via separate infrastructure.

EPA in June and July held four public listening sessions to gather information on its plans to craft a rule to address permitting requirements for SSOs. The agency said the rulemaking is intended "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."

As part of the listening sessions, EPA took comment on whether the agency should codify a 2005 draft policy that allows utilities to blend treated and partially treated wastewater if they can show there is no feasible alternative. The policy interprets the agency's bypass regulation, which generally prohibits the intentional diversion of wastewater from any portion of a wastewater treatment facility except where necessary for essential maintenance to assure efficient operation and where effluent limitations are not exceeded.

Although EPA never finalized the policy, some regional offices -- including Region VII which oversees Iowa -- have sought to implement it by requiring facilities to complete "no feasible alternatives" analyses and prove that they have no way to avoid occasional blending during extreme storm events.

But the Iowa cities' July 23 filing suggests the group is concerned that EPA is requiring local municipalities to comply with the 2005 blending policy in permits without the policy being finalized. Municipalities that have been subject to such permit requirements have long been concerned they are being unfairly targeted by EPA, forced to implement costly permit requirements before a rulemaking is complete.

Also at issue in the suit are two instances where EPA has said it sees mixing zones for *E. coli* in water as contrary to CWA requirements and never allowed in any waters that are designated appropriate for primary human contact.

Mixing zones are areas around discharge pipes where permits allow higher concentrations of pollutants than in others parts of receiving waters, particularly during storm events. One source involved in the suit says that EPA has previously allowed states to determine whether to allow mixing zones, despite strong opposition from environmentalists who have urged the agency to ban them.

But recent EPA letters show the agency is taking a different approach. For example, EPA water chief Peter Silva said in a Feb. 4, 2010 letter to Sen. Charles Grassley (R-IA) that if a permitted entity can have a CSO without violating water quality standards for *E. coli*, then no water quality based effluent limits would be needed to control the discharges. "However, in EPA's view, such a demonstration would be difficult considering the typical concentration levels of *E. coli* found in CSO discharges."

And Ephraim King, director of EPA water office's Office of Science & Technology, said in a 2008 letter to Region VII that mixing zones are inconsistent with public health

requirements and people are expected to be protected throughout all parts of a water segment or river, including near CSO outputs.

A source involved with the suit says that this is inconsistent with the previous EPA approach towards mixing zones and bacteria, citing EPA's own 2004 Beach Rule, where the agency promulgated water quality standards for bacteria in coastal recreation waters in some states and territories. The 2004 rule declines activist requests to ban mixing zones but advises against them where it poses "a significant health risk." -- *Erica Martinson*

**********

**E-Clips contain copyrighted materials and are made available to designated recipients. Neither the E-Clips nor any individual article within may be further distributed.**

**********