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

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**ADMINISTRATOR JACKSON**

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8/2/2010

**EPA Denies Petitions Challenging Endangerment Finding (*Truckinginfo*)**

The U.S. Environmental Protection Agency is standing by its claim that greenhouse gases threaten the public health and welfare of the American people and that emissions from on-road vehicles contribute to that threat. The agency rejected 10 petitions last week, which challenged its endangerment finding and asked EPA to reconsider.

The petitions claim that climate science cannot be trusted and assert a conspiracy that invalidates the findings of the Intergovernmental Panel on Climate Change (IPCC), the U.S. National Academy of Sciences, and the U.S. Global Change Research Program. EPA spent months considering the petitions, but found no evidence to support them.

"The endangerment finding is based on years of science from the U.S. and around the world," said EPA Administrator Lisa P. Jackson. "These petitions -- based as they are on selectively edited, out-of-context data and a manufactured controversy -- provide no evidence to undermine our determination.

"Defenders of the status quo will try to slow our efforts to get America running on clean energy," she said. "A better solution would be to join the vast majority of the American people who want to see more green jobs, more clean energy innovation and an end to the oil addiction that pollutes our planet and jeopardizes our national security."

Opponents have filed suit in federal appeals court to overturn the EPA's finding, according to reports by *POLITICO*. Arguments will likely not be heard until next spring, followed by a final decision by summer 2011, the publication reports.

Published: August 02, 2010

**EPA rejects climate petitions from Cuccinelli, others (*Richmond Times Dispatch*)**

By Jim Nolan | TIMES-DISPATCH STAFF WRITER
The Environmental Protection Agency has rejected 10 petitions challenging the research at the heart of its greenhouse gas regulations.
The Environmental Protection Agency has rejected 10 petitions -- including one filed by Virginia Attorney General Ken Cuccinelli -- challenging the climate science research it is using to formulate regulations limiting manmade greenhouse gas emissions.

The petitions asked the agency to reconsider its Endangerment Finding, which asserted that manmade emissions of greenhouse gases have affected climate change and threaten human health and the environment.

"After months of serious considerations of the petitions and of the state of climate-change science, EPA finds no evidence to support these claims," the agency said in a statement last week. "In contrast, EPA's review shows that climate science is credible, compelling and growing stronger."

The agency statement also characterized the petitions as relying on "selectively edited, out-of-context data and a manufactured controversy" to make their case.

"Defenders of the status quo will try to slow our efforts to get America running on clean energy," said EPA Administrator Lisa P. Jackson. "A better solution would be to join the vast majority of the American people who want to see more green jobs, more clean energy innovation, and an end to the oil addiction that pollutes our planet and jeopardizes our national security."

Cuccinelli spokesman Brian Gottstein said the attorney general will fully review the EPA ruling before issuing a statement. In a brief statement Gottstein predicted the reviewing court could find the decisions "fatally flawed," claiming that the agency's review of the new information took place "without notice or comment from the public."

Cuccinelli also has filed a petition with the federal appeals court in Washington seeking a court review of the EPA finding.

Numerous global-warming skeptics have expressed concern over the EPA's December finding, which creates an opening for the EPA to create regulations that crack down on cars and other sources of greenhouse gases. The EPA finding came after a 2007 U.S. Supreme Court ruling that heat-trapping gases are pollutants that the EPA can regulate.

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**Harkin-Lugar Amendment Would Give Ethanol A Boost (*Wallace's Farmer*)**

The week of August 2 the U.S. Senate is scheduled to begin debate on a new comprehensive energy bill introduced by majority leader Harry Reid (D-Nevada). Senators Tom Harkin (D-Iowa) and Richard Lugar (R-Indiana) have offered an amendment that is being strongly endorsed by corn growers and other ethanol supporters. The Harkin-Lugar amendment would:

Mandate the production of flex fuel vehicles by requiring all new cars and trucks sold in the U.S. be flex fuel,

Require the installation of blender pumps nationwide to dispense mid- and high-level ethanol blends,
Create a federal loan guarantee program for pipelines to carry ethanol from production facilities to the major markets.
"Bipartisan support for the Harkin-Lugar amendment is crucial. The timing is also crucial, because if majority leader Reid is unable to cut off a filibuster, our next opportunity to address energy legislation in the Senate will be in September—after the month-long Congressional recess in August," says Phil Lampert, vice president of development for Growth Energy. Growth Energy is an organization of ethanol producers and others who support ethanol and want to see this amendment included in the new energy bill.

Ethanol promotion group encouraging farmers to call senators

"We are asking farmers and consumers to call their senators and encourage the senators to endorse the Harkin-Lugar amendment," says Lampert. "The more voices our senators hear in support of this legislation the more likely they will get behind it and help it to pass and become law. We are encouraging people to call the U.S. Senate switchboard at 202-224-3121 and ask to speak with both senators from their state."

In another effort to boost the use of ethanol in the U.S., Harkin has called on Lisa Jackson, administrator of the Environmental Protection Agency, to approve the use of E15 (15% ethanol blend) in the nation's gasoline supply. Currently, EPA only allows the use of blends up to 10% ethanol or E10 in non-flex fuel vehicles.

Groups seek E12 immediately, pending EPA's approval of E15

Last week, the National Corn Growers Association, the American Coalition for Ethanol and the Renewable Fuels Association sent a letter to Jackson asking her to approve the use of E12 in gasoline nationwide. The letter states, "Based on the EPA's delay in acting upon the full E15 waiver and on our concerns that the EPA will restrict the use of E15 to cars made in 2001 and newer, we encourage EPA to approve the use of E12 for all motor vehicles as an immediate interim step pending any ongoing additional testing on E15."

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

The letter makes it clear that approval of E12 is an immediate step that can be taken by EPA since EPA is already authorized to do so. But spokesmen for all three of the groups that are asking EPA for this approval are quick to point out that the groups remain fully committed to efforts to gain eventual approval of the use of E15 for all vehicles nationwide.

Include biodiesel tax credit incentive in new energy legislation

Biodiesel supporters also want Senator Reid to listen up. In a letter sent to the majority leader last week, the National Biodiesel Board is urging him to include renewal of the currently expired federal Biodiesel Tax Incentive in the new senate energy legislation. Congress let the $1 per gallon tax credit on biodiesel expire at the end of 2009 and it hasn't been renewed yet. Consequently, the US biodiesel industry, including most of the 14 biodiesel production plants in Iowa, is virtually shutdown. In Iowa, most plants are closed and a few are running at only half of their production capacity, or less.

The letter from NBB to Reid points out that the most reliable and immediate way of displacing imported petroleum for the production of diesel fuel is to expand the U.S. production and use of biodiesel. The letter says the best way to achieve this objective is to provide a retroactive, multiple year extension of the $1 per gallon federal biodiesel tax incentive.

The letter to senate majority leader Reid states, "The U.S. biodiesel industry shares your goal of displacing petroleum in heavy duty uses. Swift enactment of a retroactive, multiple year extension of the biodiesel tax incentive is the most effective and immediate way of achieving this worthwhile goal. The NBB respectfully asks that this common sense proposal ultimately be included in forthcoming energy legislation."

## EDITORIAL / OP-ED / COMMENTARY / LETTERS

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### The truth about global warming (*Washington Post*)

Monday, August 2, 2010; A12
IN A DEPRESSING case of irony by juxtaposition, the death of climate change legislation in the Senate has been followed by the appearance of two government reports in the past week that underscore the overwhelming scientific case for global warming -- and go out of the way to repudiate skeptics.

First came a report on global climate from the National Oceanic and Atmospheric Administration, which confirmed that the 2000s were by far the warmest decade in the instrumental record -- as were, in their turns, the 1980s and the 1990s. Unlike year-to-year fluctuations, these 10-year shifts are statistically significant. Further, the report notes that it derived its conclusions from an array of data sources -- not just the land-surface readings that doubters challenge -- from ocean heat uptake to melting land ice to sea level rise.

"If the land surface records were systematically flawed and the globe had not really warmed, then it would be almost impossible to explain the concurrent changes in this wide range of indicators produced by many independent groups," the report said. "The

warming of the climate system is unequivocal." The gases most likely responsible for that warming, such as carbon dioxide, continue to accumulate.

Second was a strongly worded response from the Environmental Protection Agency to petitions that it revoke its finding that "climate change is real, is occurring due to emissions of greenhouse gases from human activities and threatens human health and environment." As with much climate-change skepticism, the petitions were based "on selectively edited, out-of-context data and a manufactured controversy," EPA Administrator Lisa P. Jackson said. Among other things, the agency reviewed every document from the "Climategate" e-mail hack at a respected British climate research unit. The EPA found what four other independent studies did: that the e-mails contained some "candid" language but nothing that seriously discredits the scientific consensus on global warming.

Perhaps it is still too much to hope that Virginia Attorney General Ken Cuccinelli II will call off his misguided investigation of climate scientist Michael Mann, which seems to be based on the e-mail affair. Many climate-change skeptics will simply dismiss these reports as more evidence of a sprawling conspiracy instead of what they really are: yet more affirmation of the risks humanity runs if it continues to pump carbon into the atmosphere.

**Chesapeake Bay protection can't be partisan (*Virginian Pilot*)**

It took a while to convince the politicians, but Virginians long ago committed to cleaning up the Chesapeake Bay.

By slow steps, the General Assembly put those goals into action, even dedicating millions to clean up sewage treatment facilities, which discharge nutrients into the estuary's tributaries.

The next step has always been doing something about the most intractable pollution: runoff from farms and expanding suburbs.

Much of the nitrogen that pollutes the bay and causes algae blooms and dead zones comes in stormwater that washes over fields, yards and pavement. The dynamics of stormwater flow are well understood, and the role it plays in Bay degradation is abundantly clear.

Doing something about it is expensive, difficult and disruptive. It involves changing the way farmers and neighbors behave. Administrations - Democratic and Republican - have dragged their feet, refusing to invest money or enforcement in the Bay's biggest problem.

Now the McDonnell administration is resisting on new fronts, including one in D.C.

Doug Domenech, the secretary of natural resources, has pledged to be rigorous about the science and modeling of stormwater flow in the watershed. That's the kind of statement that makes already rigorous scientists suspicious about a politician's motives.

In an interview with The Pilot's Scott Harper, Domenech cleared up concerns about his commitment to the Bay, though perhaps not in the way he intended.

"The mitigating factor here is the economy," Domenech said. "It's such a bad time to impose all these new restrictions on farmers, foresters, land developers. It's the worst time to be kicking these guys."

Apparently, though, it is the right time to go on kicking the Bay and protecting a core constituency.

In addition to elevating business over the environment, questioning the well-understood dynamics of stormwater and inviting opponents to sue over environmental regulations, Domenach also argued that the cleanup is already working just fine:

"The Bay is getting cleaner. Why all the fuss about us 'failing' the Bay? We're not failing; the cleanup is working."

Barely. Progress has been agonizingly slow, even by Richmond standards. Worse, had suburban growth in the watershed not slowed because of the recession, the Chesapeake's meager progress would've been slower still.

Assertions like Domenech's, though, are part of a larger effort in Richmond to resist the Environmental Protection Agency's new push for Bay cleanup. Part of the EPA effort will involve restrictions on how much pollution can end up in a waterway.

The EPA's overdue interest in Bay cleanup comes even as the agency has become political enemy No. 1 in the McDonnell administration. Given that Attorney General Ken Cuccinelli and others are at war with the EPA over its efforts to clean up air, it makes perverse sense for Richmond to also fight efforts to clean up water.

Given that the push to protect the Chesapeake has always been consistently bipartisan, the question is why?

Posted: Aug. 2, 2010
EDITORIAL

**Energy reform needs a voice (*Detroit Free Press*)**

Congress can help now by passing bills for efficiency

It is tragic that Congress has run out of gas, so to speak, on energy reform that would include tackling the greenhouse gas emissions that warm the planet. At best, that means the issue could make good fodder for the campaign debates that will take place this fall.

But Americans live in an at-worst economy, and the environment will surely take a back seat to concerns about jobs, taxes and other aspects of everyone's financial security. On top of that, those who oppose a cap on emissions have spread an extraordinary amount of hype about the costs of ratcheting back on carbon dioxide, warning that any change would blow yet another hole in most families' well-being. What such fear-mongers neglect to explain is that a carbon-based future looks even more expensive.

For now, Congress could redeem itself by passing strong energy-efficiency measures: helping businesses and households to insulate, upgrade electrical systems and lights, and replace appliances, for example. There are still huge gains to be made in what are known as nega-watts -- removing demand bit by bit from the electrical grid.

But other measures, such as setting minimum thresholds for alternative sources of energy, seem pointless without simultaneously setting a price on carbon-based fuels, be it through a cap-and-trade system on emissions or through a direct carbon tax. Many states, including Michigan, already have set standards for alternate sources of electricity, and federal action ought to be reserved for a well-coordinated strategy that takes global warming gases seriously, once and for all.

A coordinated strategy can take the edge off of increasing energy costs by ensuring that people on fixed incomes and in low-income households get rebates. It should also help ensure that the most efficient types of alternative energy -- not just the most heavily subsidized -- rise to the top. It may help spur more decentralized, even home-based, solutions.

Meanwhile, inaction has its own fallout. Electric utilities face great risk in their long-range planning when they don't know whether they'll face emissions controls for greenhouse gases. Customers will pay the price for decades if their local utilities guess wrong.

Inaction also raises the probability that the U.S. Environmental Protection Agency will step into the breach, as the U.S. Supreme Court has said it can, and implement emissions controls by regulation. That may prove to be more excruciating than the current contentiousness.

Eventually the results of an incoherent energy policy will inflict the kind of pain that makes Americans demand something real from Congress. Unfortunately, it looks to be a while yet before enough elected officials feel the heat.

**AIR**

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**Fairbanks borough begins its wood stove trade-in program (*Fairbanks Daily News Miner*)**

by Amanda Bohman / abohman@newsminer.com
08.02.10 - 03:14 am

FAIRBANKS — The borough began taking applications last week for its wood stove repair and replacement program.

“The program is up and operational,” air quality director Glenn Miller said.

Applications are available at the borough air quality office on Peger Road.

The program is still evolving, and applications won’t be available on the borough website until final modifications are made, Miller said.

Qualifying residents will receive government assistance replacing outdoor wood boilers and old wood stoves for cleaner-burning models approved by the Environmental Protection Agency. Cash payouts and tax credits are available to those who switch to gas or oil heat.

The program is part of a larger endeavor to improve the air in Fairbanks.

Applicants with the dirtiest stoves in the neighborhoods with the worst air quality will be prioritized, officials said.

The program involves cash payments of up to $6,000 and tax credits worth up to $1,500 for qualifying applicants who remove hydronic heaters, otherwise known as outdoor wood boilers, and replace them with another form of heat.

Qualifying applicants who remove other types of solid-fuel burning devices, including old wood stoves, can receive cash payments of up to $1,000 and tax credits worth $1,500.

But they must replace their stove with something other than a solid-fuel burning device and a certificate of destruction for the old device must be delivered to the borough.

For people who want to replace an old wood stove, the subsidy is a $1,500 cash payment. Residents can also receive up to $1,000 to replace their smokestacks.

In addition, the borough has a repair program for catalytic converters and other emissions-reducing stove components.

The repair and replacement program applies to residents in the borough's non-attainment area, a wide swath of the municipality from North Pole to Ester that includes about 80 percent of its population.

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**Tug of war over biomass plant (*Gainesville Sun*)**

Critics and supporters disagree about a study on greenhouse gas emissions
By Chad Smith
Staff writer
Published: Monday, August 2, 2010 at 6:01 a.m.
Standing in the middle of a forest near Archer, Bryan Olmert watched Friday afternoon as a truckload of pine trees was hauled away to a pulp mill.

Mounds of debris - limbs, diseased trunks, dead trees - were left behind throughout the roughly 140-acre tract overseen by Olmert, president of Loncala Inc., a High Springs-based firm that manages timberland.

The land owner will need to burn the debris to make way for new pines because, at the moment anyway, there's not much of a market for such waste wood.

That would change if Gainesville's planned biomass power plant becomes a reality.

But a study released last month seemed to indict biomass as a fuel source, indicating that it gives off more greenhouse gases than coal.

Or that's how it was initially interpreted.

The study made national headlines that oversimplified the results, the group that conducted the study said later. Opponents of Gainesville's proposed venture, named the Gainesville Renewable Energy Center, brought the study to the City Commission, however, saying it was Exhibit A in the case against building the 100-megawatt plant.

But Josh Levine - the director of project development for American Renewables, the Boston company that has a contract with the city to build, own and operate the plant - said the study proved little, if anything, as it relates to the project here.

For example, in the study, commissioned by the state of Massachusetts and based on that state's data, the fuel used was largely whole trees.

"This doesn't happen pretty much anywhere, and it definitely is not the case for our facility," Levine said.

Most of what GREC will burn - roughly 78 percent - will be wood waste, limbs left over after foresting operations or trees knocked over in storms.

For the most part, that material otherwise would be put into piles, like in Olmert's operation, and burned or left on the forest floor. Either way - once it's burned or once it decays - it will give off carbon dioxide.

"That wood was going to be cut down or left to rot or landfilled or something other than just standing in the ground," Levine said. "What would have happened to that material in the absence of a renewable energy facility?"

Paula Stahmer, one of two Gainesville residents who intervened as GREC went before the Florida Public Service Commission, objects to the project on a number of grounds - from the financial makeup of the partially redacted contract between Gainesville Regional Utilities and American Renewables to the need for a 100-megawatt plant, regardless of the fuel source.

But the underlying issue is environmental.

The operation would be "destroying our most valuable carbon sink: wood," Stahmer said Thursday.

Levine and GRU officials have said they will, for the majority of the fuel, use waste wood and will not begin clear cutting.

Olmert and Brian Condon, the project director for BioResource Management Inc., the Gainesville firm contracted to set up the fuel supply for GREC, said the plant will lead to healthier plantation forests because it gives incentives to thin them, allowing the preferred trees more room to blossom.

Dian Deevy, who also intervened in the PSC process, said that while the Massachusetts study, conducted by the Manomet Center for Conservation Sciences, wasn't perfect, it was important because it caused the state to step back and say "wait a minute, perhaps we shouldn't be on this woody biomass bandwagon."

In response to the study, the state's environmental secretary, Ian Bowles, has said the state will set stricter greenhouse gas emission standards for biomass plants in order to get renewable energy certificates.

Despite Stahmer and Deevy's protests, the PSC approved the project in May with a 3-2 vote, and plans for the plant, to be built at GRU's Deerhaven facility, are moving forward.

On Wednesday, Stahmer and Deevy filed an appeal that will be sent to the state Supreme Court.

If their appeal isn't granted, the matter will be left to Gov. Charlie Crist and his Cabinet to decide - and opponents already are getting involved in that process.

On July 26, former Gainesville Mayor Tom Bussing filed to intervene in the state Department of Environmental Protection's review of the site, according to a news release about the legal challenge released Thursday.

"Dr. Bussing says the site approval should be denied because of the burner's negative health impacts and deforestation of public lands that will be cut for biomass fuel," the release stated.

GRU doesn't think the appeals will kill the project when it gets to Crist.

"I think it is important to note that these same appellants and their arguments have been heard at the local and state level where the project received approval both times," Lewis Walton, GRU's communications and marketing manager, wrote in an e-mail.

Along with the Manomet study, another recent point of contention in the biomass debate has been the U.S. Environmental Protection Agency's perceived stance that biomass isn't carbon neutral - meaning the amount of carbon emitted is the same as the carbon absorbed - which Levine and others in the industry contend it is.

In May, the EPA released the so-called "tailoring rule," detailing which facilities would be required to obtain permits based on their greenhouse gas emissions.

Biomass plants were not exempted.

Bob Cleaves, the president and CEO of the Biomass Power Association, a Portland, Maine-based trade organization, said biomass is a carbon-neutral process because the fuel - trees or tree waste - is replenished through forest replanting.

Biomass also will put a dent in the need to use fossil fuel, Cleaves said.

"It's a huge missed opportunity for the country not to develop these plants," he said.

Tim Martin, a professor of tree physiology at the University of Florida's School of Forest Resources and Conservation, said carbon dioxide emitted from burning biomass isn't the same as what's emitted from burning coal.

Coal, for instance, is mined out of the earth and burned, thus releasing new carbon dioxide into the atmosphere.

Trees already are part of the environment, and when they die they emit carbon dioxide anyway, Martin said.

"If the forest regrows, carbon neutrality is always obtained," Martin said. "It just depends on how long it takes."

In North Florida, for instance, a forest can regrow in about 20 years, while in Massachusetts, it can take about 90 years.

The EPA still is gathering input about possible exemptions to the greenhouse gas-permit policy, and Levine said he thinks the agency will reconsider biomass.

If not, the fear is that even wood-burning plants will be subject to cap-and-trade regulations, which basically would give incentives to companies that emit fewer greenhouse gases, if and when they're passed.

To him and others in the industry, they can't see how biomass can be lumped in with coal.

"It's already part of the cycle," he said of trees' carbon emissions. "The facts are on our side."

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**No simple fix likely in clean-air dispute (*Houston Chronicle*)**

Fayette's coal-fired plant is example for both sides
Jeff Wick Fayette County Record
The Fayette Power Project is operated by the Lower Colorado River Authority under one of the state's flexible permits. Critics say the license allows plants to skirt pollution rules; the state insists it helps companies control emissions.

Driving along Highway 71, through miles and miles of ranches and gnarled oaks, you can't miss the towering chimney of the Fayette Power Project, a coal-fired plant that provides electricity for many in Central Texas.

The 525-foot chimney is part of a $435 million push to reduce emissions at the plant, as proposed by its owner-operator, the Lower Colorado River Authority, in a permit application to Texas regulators in 2002.

Eight years later, the plant stands out not only above the rolling vastness of Fayette County but as one of 122 industrial facilities operating under state-issued permits that the federal government and environmentalists say are practically unenforceable.

At issue is the state's use of "flexible permitting," which requires refineries, chemical plants and other facilities to meet an overall emissions cap but allows them to choose

how to do so. Federal rules, however, require plants to limit emissions of certain pollutants from each source within a facility.

In effect, the way Texas regulates air pollution makes it difficult to determine if plants are exceeding the caps and allows them to produce more emissions than are permitted at similar facilities in other states, the U.S. Environmental Protection Agency concluded last month in rejecting the 16-year-old permitting program under a legally binding deadline. The Texas Commission on Environmental Quality issues the permits on behalf of the EPA, but the EPA decides whether they're in compliance with federal law.

Texas has allowed some companies to make changes at their plants without public reviews to ensure the lowest-polluting technology is being used, critics say. The state's rules say that if a company stays below the emissions caps of a flexible permit, they can modify their facilities without additional approvals over the 10-year lifespan of the permit.

Could take a year

The EPA has offered to help companies that hold flexible permits to come into compliance with federal law through a third-party audit that could take up to a year.

"The state's rules allow companies to skirt federal law," said Ilan Levin, an Austin-based attorney for the Environmental Integrity Project, which is reviewing the permits for a number of major plants in Texas. "That doesn't mean they violated federal law. But I can't say some plants have not undergone major modifications, and that's the problem: We don't know. TCEQ doesn't know. EPA doesn't know."

The Environmental Integrity Project and two other groups have challenged the 1,641-megawatt Fayette coal plant's flexible permit, claiming the LCRA made a major modification to the facility without upgrading emissions controls for tiny soot particles that can cause lung damage and premature death.

The plant — about 90 miles northwest of Houston - also exceeded pollution limits in its permit thousands of times and avoided paying $562,000 in fines by underreporting its emissions to the TCEQ, the groups claim in a July 14 legal notice.

Levin said the publicly owned utility inflated the emissions caps for the Fayette plant when it applied for the flexible permit in 2002. In the application, LCRA requested the plantwide pollution cap to avoid "time-consuming delays" that come with the federally required review of pollution control technology.

LCRA's general manager, Tom Mason, dismissed the claims, saying they are based on faulty methodology and flawed conclusions. Under the flexible permit, the plant will remove 95 percent of sulfur dioxide emissions and up to 70 percent of smog-forming nitrogen oxides, he said.

"When focused on clean air instead of inexact assumptions, reasonable people will see that LCRA has a very good story to tell," Mason said.

It's a story that Texas officials also like to tell. Last year, they honored the plant for its pollution reductions, holding it up as a model for other coal-fired plants.

Gov. Rick Perry and the TCEQ say the state's flexible permitting program cuts red tape and air pollution without violating federal law.

"We remain committed to our flexible air permitting program because it works," TCEQ spokesman Terry Clawson said in a statement. "Our flexible permits are an integral part of the state's success in cleaning our air, and it is entirely possible that if the state abandons the innovative flexible air permits, the progress we have made over the last 15 years will all be for nothing."

Living in the real world

Industry representatives, meanwhile, say the firestorm over flexible permits has more to do with process than pollution. Houston attorney Jed Anderson, who specializes in air quality matters, said the flex permit has encouraged companies to develop control strategies to stay under the emissions cap.

"There is a difference between permits and the real world, and you see this in the argument between EPA and TCEQ," Anderson said. "I would rather see real-world benefits. Why do we keep talking about paperwork?"

Anderson said "deflexing" could lead to a bureaucratic nightmare at a time when the process should, if anything, be simplified.

Some environmentalists say the fight could lead to more reductions because the companies operating in bad faith will be forced to meet federal standards.

One problem with flexible permitting is that "it is so opaque and disjointed that environmental groups, regulators, elected officials and regular citizens cannot separate the good guys from the bad," said Matthew Tejada, executive director of the environmental group Air Alliance Houston.

Lack of transparency

Al Armendariz, the EPA's regional director in Dallas, agreed, saying, "Once everyone understands what the requirements are, there are no more excuses. That level of transparency is a huge deterrent."

Critics point to various red flags with flex permits for facilities statewide - not just the Fayette plant. Consider:

The permitting program let BP remove three heaters from the plantwide caps for some pollutants at its Texas City refinery last year so that repairs could be completed without a review required on new sources of pollution, state records show.

What's more, the refinery's current flex permit lists 27 pages of emissions sources at the plant without specific limits for each. That means any individual source can be emitting illegal levels of a pollutant as long as the overall cap is met, critics say.

Meanwhile, Exxon Mobil asked regulators to roll about 200 permits into a flex permit for its Beaumont refinery. The EPA objected, arguing that while the move would place the plant under a single permit, the references make it difficult to issue one that is "clear and meaningful."

And in the application for the Fayette coal plant's flex permit, LCRA asked to burn a blend of coal and petroleum coke as fuel. The EPA warned that the addition of petroleum coke, a residue from oil refining, represented an operational change that would trigger a review of pollution controls.

The power company dropped the request, but with TCEQ's understanding that once the plantwide pollution cap was established, any fuel, including petroleum coke, could be used as long as the emissions did not exceed the limits.

LCRA has not burned petroleum coke at the plant, but critics say that the potential change in operations without a full review reveals a significant weakness in the Texas rules.

"For the state of Texas and Governor Perry to say that the permitting process isn't flawed is wrong," Levin said. "They're not even to step one in a 12-step program."

**BP SPILL**

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**Dispute over chemical dispersants on oil leak (*Associated Press*)**

**Story also appeared: *San Francisco Chronicle***

Greg Bluestein, Associated Press
Monday, August 2, 2010
Doug Suttles, BP's chief operating officer, looks at a pa...
(08-02) 04:00 PDT New Orleans --
Retired Coast Guard Adm. Thad Allen, the government's point man on the gulf oil spill, on Sunday rejected assertions that federal officials allowed BP too much leeway to use chemical dispersants.

Regulators did not ignore environmental guidelines, Allen said, adding that some field commanders had authority to allow more dispersants to be used on a case-by-case basis.

The Coast Guard routinely approved BP requests to use thousands of gallons of chemicals per day to break up the oil, despite a federal directive to use the dispersant rarely, congressional investigators said.

Rep. Edward Markey, D-Mass., released a letter Saturday that said instead of complying with the Environmental Protection Agency restriction, "BP often carpet bombed the ocean with these chemicals and the Coast Guard allowed them to do it."

Before leaving on a boat tour of recovery efforts Sunday off Venice, La., BP Chief Operating Officer Doug Suttles said the company had operated under a protocol agreed on by the Coast Guard and the federal government.

The EPA and the Coast Guard ordered BP on May 24, more than a month after the spill began, to cut the use of chemical dispersants by 75 percent.

The Coast Guard approved 74 waivers over a 48-day period after the EPA order, according to documents reviewed by the investigators. Only in a few cases did the government scale back BP's request.

The EPA said in a statement that the company slashed its use by 72 percent through mid-July, when engineers placed a cap on the leaking well.

"While EPA may not have concurred with every individual waiver granted by the federal on-scene coordinator, the agency believes dispersant use has been an essential tool in mitigating this spill's impact," the agency said in a statement.

The chemical dispersant was effective at breaking up the oil into small droplets to be consumed more easily by bacteria, but experts say it can kill seafood eggs and larvae, with the long-term effects unknown. In humans, long-term exposure to dispersants can cause central nervous system problems or damage blood, kidneys or livers, according to the Centers For Disease Control and Prevention.

Whether the benefits of dispersants outweigh the possible risks is a "debatable point," said Larry McKinney, executive director of the Harte Research Institute for Gulf of Mexico Studies at Texas A&M University-Corpus Christi. He noted that the chemicals protected some fragile coastal wetlands from heavier bands of oil. "That's a debate with no right answer," he said.

A temporary cap has held the gusher in check for more than two weeks, and engineers were planning to start tonight or Tuesday on an effort to help plug the well for good. The procedure, dubbed the static kill, involves pumping mud and possibly cement into the blown-out well through the temporary cap.

If it works, it will take less time to complete a similar procedure using a relief well that is nearly complete. That effort, known as a bottom kill, should be the last step to sealing the well.

http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/08/02/MNEI1ENCA2.DTL

This article appeared on page A - 5 of the San Francisco Chronicle

**Update: Gulf oil spill (*Associated Press*)**

**Story also appeared: *Dallas Morning News***

12:00 AM CDT on Monday, August 2, 2010
The Associated Press
DISPERSANTS: The Environmental Protection Agency says BP cut its use of chemical dispersants in the Gulf of Mexico oil spill after being ordered to do so. The EPA statement Sunday came a day after Rep. Edward Markey, D-Mass., released a letter saying that "BP often carpet bombed the ocean with these chemicals and the Coast Guard allowed them to do it." The chemicals help break up oil, but their effect on aquatic life remains unknown. The EPA said it ordered BP in late May to cut use of chemical dispersants by three-quarters. The agency said BP had nearly met that threshold by mid-July.

BOAT TOUR: BP chief operating officer Doug Suttles took reporters on a boat tour of beaches and marshes south of Venice, La., on Sunday. In response to questions about whether fish caught in the area, recently reopened to fishing, are safe to eat, Suttles said he would eat the fish and would serve it to his family. He said he believes gulf residents would find oil and tar balls washing ashore into the winter.

U.S. NEWS AUGUST 1, 2010

**Congress Questions Oil-Dispersant Usage (*Wall Street Journal*)**

Article Interactive Graphics
By JEFFREY BALL
Congress is stepping up its scrutiny of the controversial chemical dispersants sprayed on the Gulf of Mexico oil spill to prevent crude from washing ashore and fouling beaches and marshes.

Rep. Edward Markey, a Massachusetts Democrat, is demanding that federal officials provide more information about why the chemicals continued to be used almost daily in

June and July, after the Environmental Protection Agency told BP PLC to slash their use because of concerns about the effect on marine life.

Retired Coast Guard Adm. Thad Allen, the point man in the federal response to the spill, said he and EPA officials were confident that the use of dispersant had dropped dramatically since the EPA's May 26 directive to cut back their use. But at times, "our leaders have had to make decisions on scene," he told reporters Sunday. "Sometimes there was no other way to attack the oil than to use dispersants."

2010 Storm Tracker
Follow the paths of storms including Bonnie, below, and locate oil rigs and refineries.

More photos and interactive graphics More
Locals to BP: Don't Leave Town Yet Officials involved in the oil-spill response broadly agree that far more oil would have washed ashore along the Gulf had dispersants not been widely used. Government scientists so far have said underwater plumes of dispersed oil particles don't appear to be reducing underwater-oxygen levels dangerously. Some university scientists have reported deeper oxygen-level drops around the underwater plumes.

The Senate Committee on Environment and Public Works is slated to hold a hearing Wednesday on dispersant use in the Gulf.

**Dispersant use defended...EPA: Michigan river cleanup improving, will take time (*Associated Press*)**

**Story also appeared: *9& 10 News***

Posted: 8/1/2010
WASHINGTON (AP) — BP and the government's oil spill point man are taking issue with congressional investigators who say limits on the use of dispersants in the Gulf ignored EPA limits. BP says it's worked closely with the Coast Guard and the EPA on the matter. And retired Coast Guard Adm. Thad Allen says the guidelines were not ignored.

LANSING, Mich. (AP) — The Environmental Protection Agency says it will take months to complete the cleanup of an oil spill in a river in southern Michigan. But the agency says improvement continues. Health officials are increasing air and water quality testing in the area along the Kalamazoo River. The oil flow is stopped and has been contained in a 25-mile stretch of the river.

**Use of toxins to fight spill scrutinized (*Associated Press*)**

**Story also appeared: *Chronicle Herald***

By GREG BLUESTEIN The Associated Press
NEW ORLEANS — BP inched closer to permanently sealing the blown-out oil well in the Gulf of Mexico as environmental officials defended themselves Sunday against assertions they allowed the oil giant liberal use of chemical dispersants whose threat to sea life remains unknown.

The coast guard routinely approved BP requests to use thousands of litres of chemicals per day to break up the oil, despite a federal directive to use the dispersant rarely, congressional investigators said.

Rep. Edward Markey released a letter Saturday that said instead of complying with the EPA restriction, "BP often carpet bombed the ocean with these chemicals and the Coast Guard allowed them to do it."

Thad Allen, a retired coast guard admiral, said Sunday some field commanders had authority to allow more dispersants to be used on a case-by-case basis.

BP chief operating officer Doug Suttles said Sunday the company had operated under a protocol agreed on by the Coast Guard and the federal government.

"Furthermore," spokesman Daren Beaudo said earlier, "we've complied with EPA requests regarding dispersants, which are an EPA-approved and recognized tool in fighting oil spills."

The U.S. Environmental Protection Agency and the coast guard ordered BP on May 24 to cut the use of chemical dispersants by 75 per cent. The coast guard approved 74 waivers over a 48-day period after the EPA order, according to documents reviewed by the investigators. Only in a few cases did the government scale back BP's request.

**Dispersants shifting ecosystem impacts, scientists warn (*Greenwire)***

(07/30/2010)
Elana Schor, E&E reporter
A seemingly feel-good story showed up this week on the nation's front pages and newscasts: The oil that befouled the Gulf of Mexico for 86 days is vanishing from the surface, leaving workers with little to clean.

But scientists warn the oil's ecological impacts are shifting, not ebbing, thanks to massive volumes of dispersants that have kept the crude beneath the waves.

"This is a management decision, to use dispersants," College of William and Mary marine science professor Robert Diaz said yesterday. "It doesn't make the oil go away, it just puts it from one part of the ecosystem to another."

That dispersed oil now hovers, diluted in the water column, posing a challenge for scientists to track and measure the subsea plumes. Mapping the long-term effects of the nearly 2 million gallons of dispersant used by BP PLC may well be equally difficult, given the array of unanswered questions that surround the products' rapid breakdown of oil droplets and their chronic toxicity.

In other words, while dispersants may have helped spare the Gulf's birds, the chemicals are likely shifting dangers to other species lower in the food chain. The National Research Council described dispersant use in 2005 as "a conscious decision" to direct hydrocarbons to one part of the marine ecosystem, "decreasing the risk to water surface and shoreline habitats while increasing the potential risk to organisms in the water column and on the seafloor."

Diaz spoke at a Capitol Hill briefing aimed at guiding future research into dispersants, which remain a politically volatile topic even as their use in the Gulf tapers off thanks to the capped Macondo wellhead. A May meeting at the University of New Hampshire's Coastal Response Research Center, planned by government scientists and oil industry representatives, yielded a consensus judgment that dispersant use "has generally been less environmentally harmful than allowing the oil to migrate on the surface into the sensitive wetlands."

Another group of scientists, however, issued a **public plea** last week that decried dispersants and warned that, mixed with oil, the products "pose grave health risks to marine life and human health."

Coastal Response Research Center co-director Nancy Kinner sought to put the May statement in context. "Nobody's saying dispersants are great," she said after yesterday's briefing, though they are an effective alternative when mechanical methods of collecting spilled oil prove impossible.

Kinner outlined a series of gaps in the current system of testing dispersants. U.S. EPA's analysis of their toxicity focuses on acute effects of exposure in two representative species, but "we do very little chronic toxicity work," she said. That work would evaluate whether dispersants could heighten the mortality of larvae and other sensitive species that may not die off immediately but studies show are absorbing tiny droplets of dispersed oil into their shells.

Dispersant studies have not examined the products' long-term effects and their consequences when applied at high pressure, Kinner added, which BP did by spraying the chemicals subsea near the leaking wellhead. Diaz added another mystery to the list, noting that current studies focus on marine organisms that may not be feeling the brunt of this summer's dispersant assault.

"All the risks we've evaluated have used surface, shallow-water species that are easily maintained" in a laboratory setting, Diaz said. "We haven't been using oceanic species to assess risk, and this is a key issue."

**Measuring long-term effects**

The Marine Environmental Research Institute's director, Susan Shaw, the organizer of last week's statement against dispersant use, agreed that the current extent of testing falls short. Oil mixed with the Corexit dispersant used by BP "is probably having a lethal effect on all these [small] animals -- that's the food for the small fish."

"The idea that the oil has disappeared and this is all fine is completely not true," Shaw added. "There are long-term impacts that we need to look at and measure."

Shaw also pointed to language in the 2005 National Research Council report that discussed the higher potential toxicity of chemically dispersed crude droplets, thanks to an increased surface area that exposes more of the oil's polycyclic aromatic hydrocarbons.

The Obama administration sought this week to temper premature celebration of the shrinking surface oil. "What we have yet to determine is the full impact that the oil will have on not just the shorelines, not just the wildlife, but beneath the surface," National Oceanic and Atmospheric Administration chief Jane Lubchenco told reporters. "And we have a very aggressive research effort under way to determine exactly that."

How much funding that effort will receive remains an open question. Kinner said the National Research Council's report outlined a $40 million plan for dispersant research, but a quarter of the money materialized over the past five years. Future research and development should bring "industry and government and NGOs to the table," she said.

The first player on that list, however, raised concerns for Shaw, who described herself as "worried about the impact of having polluting industries funding the research. There's no way that will not impact [things] -- it's not independent research."

**BUDGET**

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**Agency, union spar over staffing for Great Lakes effort (*Greenwire*)**

(07/30/2010)
Emily Yehle, E&E reporter

The Great Lakes Restoration Initiative is an ambitious project, aimed at cleaning up contaminated waste and invasive species with billions of federal dollars. Congress approved a budget last year of $475 million for the initiative, and appropriators are on track to hand over another $300 million for fiscal 2011. But it is unclear whether U.S. EPA is adequately staffed to oversee the mammoth task.

For more than two decades, the agency has not completed a comprehensive workforce analysis to determine whether its offices have the right number of employees with the right expertise. That could leave some offices with too many employees, some with too few and others with misplaced experts.

A March report from the Government Accountability Office found that EPA's workforce plan -- created in 2006 -- "is not clearly aligned with the agency's strategic plan or budget formulation." Consequently, budget requests are not based on an analysis of staffing needs; instead, officials make marginal changes from the previous year.

John Stephenson, the GAO director of natural resources and environment, said the agency would ideally complete an agencywide analysis of its workforce. But that is also a "hard thing to do," he said.

"To do a complete work force analysis of your 18,000 people, we recognize that's difficult," Stephenson said. "But EPA needs to better justify why it has the number of people it has in the locations it has them."

Leaders of EPA's union say the agency's handling of the Great Lakes initiative is the latest example of the problem.

To beef up the Great Lakes staff, EPA officials moved employees away from other initiatives, said Charles Orzehoskie, president of the American Federation of Government Employees Council 238, which represents about 10,000 EPA employees.

That not only led to a "disinvestment" in less-prominent programs, he contends, but also to insufficiently trained and inexperienced employees for the Great Lakes project.

"I'm concerned when you have large sums of money and don't have proper oversight, something could go wrong," Orzehoskie said, "and I don't want that to happen."

President Obama first announced his plans for a Great Lakes restoration project during his presidential campaign, and last October, Congress approved a first-year budget of $475 million. EPA was tasked with leading the project, including parsing out much of the funds to other agencies and entities.

The amount was unprecedented for Great Lakes efforts, saddling an EPA staff used to handling $60 million with an almost 700 percent increase. About 60 employees handled Great Lakes efforts in fiscal 2009, according to a document provided by the union. EPA officials added 23 employees in 2010 to handle the extra workload.

EPA declined to answer any questions on the specific staffing of the Great Lakes National Program Office, but spokeswoman Latisha Petteway said the agency is working with a contractor on the broader issue of assessing "shifts in workload." So far, EPA has collected some initial data, she said.

In the agency's response to the GAO report, Assistant Administrator Craig Hooks wrote that the agency "agrees with the principles underlying GAO's recommendations." But the agency also defended some of their staffing practices, including their decision to leave much of their workforce planning to regional offices. Because EPA is decentralized -- with specialized experts on a variety of issues -- local offices are best equipped to decide who they need, the agency wrote.

But union officials claim the agency's method is not working out for the Great Lakes Restoration Initiative. Resources in the EPA's Great Lakes National Program Office are now focused on the GLRI, they say, diverting employees from existing commitments. In a recent "issue paper," the union described project managers who were assigned to work outside their expertise and inexperienced employees who put strain on existing staff.

**'Competency gaps'**

The March GAO report also found that EPA suffered agencywide from "competency gaps" in 12 of its "mission-critical occupations." By the time the report was released, EPA said it had closed six of those gaps, and Petteway said the agency was able to continue to address the gaps through "training and other internal developmental activities."

But in addressing the issue, EPA did not look into whether employees were being placed into positions that made the most sense for completing agencywide goals. Determining how many employees of which expertise is needed in each office -- including the Great Lakes office -- is difficult without an overarching analysis, union officials said.

"We can't tell you the right number of people we need at EPA: more or less," said John O'Grady, treasurer of AFGE Council 238 and president of the local AFGE council for the EPA region headquartered in Chicago. "That's the problem."

But it is not only EPA's problem. In 2009, House and Senate appropriators asked GAO to review the workforce plans of EPA, the Interior Department and the Forest Service. They cited a concern that the plans were "in many cases outdated and that no comprehensive review of appropriate staffing needs for the future had been undertaken."

The result was the March 2010 report titled "Interior, EPA, and the Forest Service Should Strengthen Linkages to Their Strategic Plans and Improve Evaluation." Now the

EPA union wants Congress to direct GAO to do a new report specifically on the workforce planning for the Great Lakes Restoration Initiative.

A House Appropriations Committee staffer said appropriators are aware of the issue and plan to address the need for another GAO report on workforce planning in language in the fiscal 2011 spending bill for environmental agencies.

But EPA employees will have to wait awhile before any changes in staffing levels.

When EPA received a 30 percent increase in its fiscal 2010 budget to about $10.3 billion, it increased its staff by 162 full-time employees -- or less than 1 percent of its workforce.

A spending bill appropriating about $10 billion for the agency passed the House Interior, Environment and Related Agencies Appropriations Subcommittee last week. The staff increase requested: 154 employees.

**ENFORCEMENT**

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Published: August 02. 2010 1:15AM

**Erie Coke manager faces federal charges in New York pollution case (*GoErie*)**

By LISA THOMPSON
lisa.thompson@timesnews.com
BUFFALO -- A man listed in government records as the environmental control manager for Erie Coke Corp. has been indicted on multiple federal pollution charges stemming from his handling of waste at Erie Coke's sister corporation, Tonawanda Coke.

Mark Kamholz and Tonawanda Coke Corp. were indicted Thursday by a federal grand jury in Buffalo.

The U.S. Attorney's Office charges Kamholz, 63, of West Seneca, N.Y., and the company:

- Released coke oven gas containing benzene, a carcinogen, into the air through an unreported valve.

- Operated two coke-quenching towers without the proper pollution control devices known as baffles.

- Mixed coal tar sludge, a hazardous waste containing benzene, on the ground in violation of hazardous waste regulations.

- Disposed of a hazardous liquid containing benzene and mercury in an old rail car tanker on the Tonawanda Coke property.

- Obstructed justice by having Kamholz direct another Tonawanda Coke employee in April 2009 to hide the fact that the plant emitted coke-oven gas directly into the air through a pressure relief valve.

They face 15 counts of violating the federal Clean Air Act and one count of obstruction of justice, each of which carries penalties of up to five years in prison and a fine of $500,000 for the corporate defendant and a $250,000 fine for Kamholz. They also face four counts of violating the Resource Conservation and Recovery Act, which carries a maximum possible sentence of up to five years in prison and a fine of $50,000 a day per violation.

The government charges that the violations occurred between July 2005 and December 2009.

"The EPA takes these new criminal allegations extremely seriously," said Judith Enck, EPA regional administrator. "Pollutants like benzene, a known human carcinogen, and particulate matter put communities at risk. Failing to properly install or maintain the control equipment designed to eliminate illegal emissions of these pollutants will be prosecuted."

Kamholz was initially charged through a criminal complaint in December. The indictment covers the conduct that was raised in the complaint and expands on it.

Kamholz, as of Friday, was still listed as Erie Coke's environmental control manager on the U.S. Environmental Protection Agency's website.

Under the threat of a DEP closure order, Erie Coke recently entered the first stage of a consent decree with DEP that requires it to pay a $6 million fine and pay an additional estimated $15 million over the next three years to bring the long-troubled East Avenue plant into compliance with environmental laws.

The plant must also pay an estimated $40,000 a month in fines for pollution that occurs during the time that improvements are made.

The EPA is also suing Erie Coke in U.S. District Court in Erie.

LISA THOMPSON can be reached at 870-1802 or by e-mail.

**Tonawanda Coke hit with indictment (Buffalo News)**

Author:

- Published Date: Jul 30, 2010 12:00 AM
- Last Updated: Jul 30, 2010 10:08 AM

A grand jury Thursday returned a 20-count indictment charging Tonawanda Coke Corp. and its environmental- control manager with a variety of federal crimes stemming from alleged emissions of toxic chemicals at the River Road plant in the Town of Tonawanda.

Charges include unsafe storage and treatment of coal tar sludge, a manufacturing byproduct, at the facility and attempting to conceal it during an Environmental Protection Agency inspection in April 2009.

Both the corporation and environmental- control manager Mark L. Kamholz, of West Seneca, could be fined if found guilty. Kamholz, 63, also faces the possibility of prison, according to U. S. Attorney William J. Hochul Jr. The incidents allegedly occurred from 2005 to 2009.

Fifteen of the federal charges relate to violations of the federal Clean Air Act and five related to the release of coke oven gas containing benzene directly into the air through faulty pressure-relief valves.

“All of the Clean Air Act charges carry a maximum five-year jail term and a $250,000 fine for Kamholz, and a $500,000 fine for the corporation,” Hochul said in a news conference Thursday in the Federal Building. Hochul added that Tonawanda Coke is currently in compliance on its emissions.

Assistant U. S. Attorney Aaron J. Mango, the lead prosecutor in the

case, said both parties are scheduled to be arraigned at 2 p. m. Tuesday before U. S. Magistrate H. Kenneth Schroeder Jr. in U. S. District Court.

Residents of the neighborhood in the shadows of the Tonawanda Coke plant have long complained about toxic emissions from the facility.

“The environmental-protection laws such as the Clean Air Act were passed by Congress in recognition that clean air and land are basic rights for all residents living in a community,” Hochul said Thursday.

The indictment includes charges of 10 Clean Air Act violations related to the operation of two “coke quenching towers” that lacked baffles, which are designed to reduce the emission of particulate matter from the coke gas produced at the plant. As a result, it is alleged, the gas was allowed to escape directly into the air of surrounding communities.

“The indictment also alleges both the Tonawanda Coke Corp and Kamholz obstructed justice during the investigation of the Clean Air Act violations,” Mango said.

He added that four other counts in the indictment have to do with a different federal environmental-protection law called the Resource Conservation and Recovery Act.

“These offenses relate to the storage and the treatment of coal tar sludge that is another byproduct of the coke production process,” Mango said. “The indictment alleges these two defendants either put the coal tar sludge directly into the ground, which is unpermitted or, in one case, taking the liquid and putting it on the coke and then burning it in a normal process, allowing the air and the gas to simply escape without being treated.”

The alleged actions were in violation of the plant’s federal EPA and state Department of Environmental Conservation permits, Mango said.

Erin J. Heaney, executive director of the Clean Air Coalition of Western New York, said of the government’s investigation, “It sounds like it was very, very thorough and comprehensive.”

She added, “It’s really gratifying to know that the case is moving forward and the government is really attacking this at all sides.”

Heaney said that while Tonawanda Coke has in the past been threatened with fines, her group’s goal has long been to stop the emissions.

“We certainly want companies to be held accountable,” she said, “but, first and foremost, we’re concerned with improving air quality.”

**Tonawanda Coke indicted by grand jury (*WIVB.com)***

Updated: Thursday, 29 Jul 2010, 5:27 PM EDT
Published : Thursday, 29 Jul 2010, 5:02 PM EDT

- Posted by: Eli George

TONAWANDA, N.Y. (RELEASE) - U.S. Attorney William J. Hochul Jr. and Assistant Attorney General Ignacia S. Moreno, of the Environment and Natural Resources Division of the U.S. Department of Justice, announced today that a federal grand jury returned an Indictment charging the Tonawanda Coke Corporation and its Environmental Control Manager, Mark L. Kamholz, 63, of West Seneca, NY, with a variety of environmental and other federal crimes.

Specifically, the Indictment charges the defendants with fifteen counts of violating the federal Clean Air Act. According to Assistant U.S. Attorney Aaron J. Mango and Senior Trial Attorney Kevin M. Cassidy, who are handling the case, five of these offenses relate to the release of coke oven gas containing benzene into the air through an unreported pressure relief valve. The remaining ten Clean Air Act counts relate to operating two coke-quenching towers without baffles, a pollution control device required by TCC's Title V Clean Air Act permit designed to reduce the particulate matter that is released into the air during coke quenches. These charges carry a maximum penalty of 5 years imprisonment, a maximum fine of $500,000 for the corporate defendant and $250,000 for defendant Kamholz, or both.

The Indictment also alleges the defendants engaged in obstruction of justice during an inspection conducted by the U.S. Environmental Protection Agency in April of 2009. Prior to that inspection, defendant Kamholz told another TCC employee to conceal the fact that the unreported pressure relief valve, during normal operations, emitted coke oven gas directly into the air, in violation of the TCC's operating permit. This violation of federal law carries a maximum penalty of 5 years imprisonment, a maximum fine of $500,000 for the corporate defendant and $250,000 for defendant Kamholz, or both.

Finally, the defendants are charged with four counts of storing, treating and disposing of hazardous waste without a permit to do so, in violation of the Resource Conservation and Recovery Act. AUSA Mango and Senior Trial Attorney Cassidy stated that these offenses relate to TCC's practice of mixing its coal tar sludge, a listed hazardous waste that is toxic for benzene, on the ground in violation of hazardous waste regulations, and the un-permitted treatment, storage and disposal in 2007 to 2008 of the contents of an abandoned rail car tanker on TCC's property. The rail car tanker contained a hazardous liquid that was toxic for benzene and mercury. The indictment alleges that TCC employees, with the help of and at the direction of defendant Kamholz, disposed of the waste by spraying it on the coal and burning it in the coke oven. These charges carry a maximum penalty of 5 years imprisonment, a maximum fine of $50,000 per day of violation, or both.

"The federal Clean Air Act, and other environmental laws, were passed by Congress in recognition that clean air and land are basic rights of residents living in any community. The laws were designed to protect and enhance the quality of these natural resources, and to promote the public health and welfare," said U.S Attorney Hochul. "My office takes very seriously our obligation to enforce the country's environmental laws so as to ensure the protection of the public."

"The EPA takes these new criminal allegations extremely seriously," said Judith Enck, EPA Regional Administrator. "Pollutants like benzene, a known human carcinogen, and particulate matter put communities at risk. Failing to properly install or maintain the control equipment designed to eliminate illegal emissions of these pollutants will be prosecuted."

The Indictment is the culmination of an investigation on the part of Special Agents of the U.S. Environmental Protection Agency - Criminal Investigation Division, under the direction of Special Agent-In-Charge, William Lometti and investigators of the New York State Department of Environmental Conservation Police, BECI, under the direction of Captain David Bennett.

The fact that a defendant has been charged with a crime is merely an accusation and the defendant is presumed innocent until and unless proven guilty.

## ENVIRONMENTAL JUSTICE

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### New database to help shape push on enviro justice (*Greenwire*)

(07/30/2010)
Gayathri Vaidyanathan, E&E reporter
U.S. EPA is working on a coarse screening tool as part of its "environmental justice" initiative to help its employees spot pockets of people whose health has suffered disproportionally over the years.

The Environmental Justice Strategic Enforcement Assessment Tool uses a complex combination of census data, a respiratory hazard index, poverty levels, toxic emissions, infant mortality, an index of documented pollution events and other such numbers to assign a score to a geographical area.

The end result will be a national database that will identify small tracts of people as unfairly affected over the years. Officials can take the score into consideration while making land-use and permit decisions, reducing chances of human judgment errors. Officials stressed that the tool was only a starting point, and other information would also be used to make decisions.

The tool is being developed to assist the agency in its quest to help officials take into account concerns of minorities, low-income and indigenous communities while they prepare rules, issue permits and seek compliance. The interim guidance on the issue, released Monday, will go for assessment to the National Environmental Justice Advisory Council (NEJAC), a council put together by EPA in 1992 to address environmental justice issues.

"Historically, the low-income and minority communities that carry the greatest environmental burdens haven't had a voice in our policy development or rulemaking," EPA Administrator Lisa Jackson said in a statement. "This plan is part of my ongoing commitment to give all communities a seat at the decision-making table."

The guidance, called Plan EJ 2014, will be a road map for EPA to carry out Jackson's priority of enforcing justice over the next four years, states the document. It is now open for public comment.

"Environmental justice has always been a focus for the agency, and we see overwhelming energy and focus. It comes from the top," said Heather Case, deputy director of the Office of Environmental Justice (OECJ), an arm of EPA.

EPA was not always so diligent. In 2008, it proposed getting rid of federal oversight of hazardous waste recycling to make easy recycling of secondary waste products. The industry goes through 1.5 million tons of waste from steel, chemical and pharmaceutical industries. Many hazardous waste sites are located in poor and minority communities.

The Sierra Club submitted a petition for the agency to reconsider its 2008 "Definition of Solid Waste" or DSW rule. EPA then began an environmental justice review in 2009.

The new guidance this week from Jackson gives officials a guide to include environmental justice concerns while working on rules such as the DSW. It will be included in the permitting process, while enforcing rules, creating new rules and providing support for communities hard hit by pollution.

The guidance asks employees to consider if a community is long-suffering and has been especially vulnerable. People may also be suffering from the effects of many factories, each of which plays a minor role but can add up to a larger health or environmental effect.

Wilmington, Calif., for example, has an 85 percent Latino population and is the site of five oil refineries, oil drilling, recycling facilities, freeways, ports, diesel trucking and more sources of pollution, according to Communities for Better Environment, a California-based environmental justice organization.

"Factoring multiple and cumulative exposures in our decisionmaking has long been a focus for the agency," said Case of OECJ. She said the agency's work on permitting will help tackle this issue.

So far, the health effects of pollution from multiple sources are acutely felt by communities, but polluting permits for air, water, soil and others are all issued separately.

Stephen Lester, science director at the Center for Health, Environment & Justice said the EPA guidance, while commendable in giving a voice to the community, should also give them a chance to say, "Enough is enough."

"Having a voice is critical, but it's also about having a voice to say, 'No, this community has suffered enough,'" he said.

Lester said that given its background with environmental justice, EPA should make sure the staff integrates environmental justice into its work. "It is a good thing they are doing something like this; getting the staff to integrate it into its work is another thing," he said.

**Getting the data**

The tool, currently under review, is being deployed in a limited manner in regional environment offices.

"There is a potential for false negatives," Case said. "For example, some council members were worried that Native Americans are not all noted in the census."

There are also significant data gaps in land, water and other environmental data in the United States, making it necessary for EPA to rely mostly on air toxics data. Drinking water pollution data, for example, is often incomplete when received yearly by EPA from regions. Health indicators, such as cancer rates and neurological effects, can be even sparser.

But even with sparse data, removing health as an indicator in the tool radically changes the scores of the sites, according to EPA officials at the meeting. This gives a vague indication of the health burdens of environmental pollution.

"Data is critical, and often data is not great when it comes to health," Case said. "So it [EJSEAT] is a screening tool."

**Longstanding issue**

For decades, reports have found that the poor and minorities face disproportionate pollution burdens. A 1983 report by the General Accounting Office, since renamed the Government Accountability Office, found that minorities are more likely to live around hazardous waste landfills in the three Southeastern states it reviewed. And new permits issued by regulators did not take the existing environmental burdens into account.

According to the **report**, there were four off-site hazardous waste landfills in Region IV's eight states. Blacks made up the majority of the population in three of the four communities where the landfills were located. At least 26 percent of the population in all four communities had income below the poverty level and most of this population was black.

In 1994, President Clinton developed Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which requires most federal agencies to actively collect, monitor and use information on health and environmental effects within populations.

Since then, federal agencies including EPA have failed to actively follow through, according to the Government Accountability Office. As late as April 2005, the office

issued the report entitled, "EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules." In 2007, it again criticized EPA, saying that although the agency had made some progress, significant challenges remained. With Jackson as administrator, the issue has regained prominence, as she has toured the country to meet with minority communities affected by environmental pollution (*Greenwire*, July 27).

**FUEL**

**==========**

**Biofuel industry struggles as automakers recharge (San Francisco Chronicle)**

California
August 2, 2010 Monday
FINAL Edition
Business; Pg. D1
Biofuel industry struggles as automakers recharge;
ENERGY;
Electric cars trump promise of corn-based ethanol, other Alternatives for gasoline
By David R. Baker, Chronicle Staff Writer
In the race to replace oil, electric cars seem to be leaving biofuels in the dust.

Five years ago, biofuels such as ethanol and biodiesel looked like the best bet for breaking the world's addiction to oil. Biorefineries turning corn into ethanol sprouted across the Midwest, while startups trying to make fuel from wood chips or grass soaked up venture capital. Big automakers considered electric cars a lost cause.

Now the situation has been reversed. The buzz surrounding electric transportation has never been louder, while the biofuel industry struggles to regain momentum after two brutal years.

By the end of 2010, two global automakers will start selling plug-in cars priced for the mass market. Nissan will introduce the all-electric Leaf, while General Motors offers the Chevrolet Volt, a plug-in hybrid that runs solely on batteries for the first 40 miles of every trip. Automakers as different as Ford, Toyota and Porsche all have plans to go electric.

"Progress is coming at an unbelievable pace," said Carlos Tavares, executive vice president of Nissan North America, speaking at an electric car conference in San Jose last week. "One year from now, there will be thousands of Nissan Leafs driving on the streets of America."

The biofuel industry, however, took a hard blow when the recession hit in 2008. Oil

prices dropped, making it harder for biofuels to compete. Biorefineries closed, and some companies plunged into bankruptcy. Startups that needed money to build demonstration plants for their experimental biofuels watched financing vanish with the credit crisis.

Put on hold

"You had projects get put on hold because the price of oil dropped so low, and then the project finance market was so weak that they never got back on track," said Jonathan Wolfson, chief executive officer of Solazyme, a South San Francisco company that uses algae to make substitutes for diesel and jet fuel.

As the recession deepened, venture capital funding for biofuels dwindled, dropping from $1.08 billion in 2007 to $524 million in 2009, according to the Cleantech Group. And companies that make ethanol from corn came under fire for contributing to a worldwide increase in food prices.

"Biofuels got what they deserved," said Marc Geller, one of the founders of Plug In America, an advocacy group for electric cars. "The conversation should get narrowed down to, 'Where do we really need liquid fuels?' "

Many energy analysts, however, caution against counting biofuels out.

Cellulosic ethanol - made from crop stubble, wood chips or grass - could prove to be economical in the next few years, they say. The recession may have delayed the progress of cellulosic entrepreneurs, but it didn't wipe them out.

In addition, most energy analysts believe both electricity and biofuels have a place in transportation's future, even if their exact roles have not yet been decided. For example, electricity may be a fine option for powering cars, but not planes.

Spreading the risk

"There are three horses in this race - electric vehicles, biofuels and hydrogen fuel cells," said Roland Hwang, transportation program director for the Natural Resources Defense Council. "At any given time, there's going to be one that looks more promising. But you want to spread your bets around. Too much focus on a single one is not a good risk."

Paul Koehler experienced the biofuel industry's trials firsthand.

His Sacramento company, Pacific Ethanol, had to close plants in Stockton and Madera early last year, laying off about 80 people. The Stockton plant had been open fewer than five months.

Pacific Ethanol's production facilities filed for bankruptcy in May 2009, emerging one month ago. But the Stockton and Madera plants remain shut. The company plans to reopen them as the market improves but does not yet have a firm timetable, Koehler

said.

"Corn ethanol companies are keeping their heads above water," said Koehler, Pacific Ethanol's vice president of corporate development. "It's still a challenging business environment. Marketing conditions are challenging. Be that as it may, the underlying demand is there."

Indeed, the market for biofuels remains, supported in large part by government mandate.

Federal law requires the nation's motor fuel suppliers to blend an increasing amount of biofuels into their products each year. The federal "renewable fuel standard" gives biofuel companies, mostly corn ethanol producers, a base level of demand they can rely on.

Renewable standard

Last year, the nation's biorefineries pumped out 10.6 billion gallons of ethanol, the overwhelming majority of it made from corn. The renewable fuel standard also includes specific mandates for the production of cellulosic biofuels, but so far, the industry hasn't been able to make as much as the government wants. The standard originally called for 100 million gallons of cellulosic biofuels to hit the market in 2010, but the Environmental Protection Agency had to scale back the requirement to 6.5 million gallons to match production.

The recession and credit crunch struck just as many cellulosic companies were trying to build demonstration plants, hoping to prove that their technologies could work at commercial scale and not just in the lab. Suddenly, biofuel entrepreneurs couldn't find funding. Few companies of any kind could.

"The timing was pretty bad," said Jeremy Martin, senior scientist with the clean vehicles program of the Union of Concerned Scientists. "The cellulosic people were just starting to get going when things got really ugly."

The recession may have delayed the commercialization of cellulosic biofuels. But many companies are still pursuing that dream. And they're starting to find funding again, sometimes from the federal government.

"There's a tremendous amount of development going on, and I think we're getting very close to scale-up and commercialization," said Dan Verser, executive vice president of ZeaChem, a cellulosic biofuel company based in Colorado.

ZeaChem is building a plant in Oregon, helped by a $25 million grant from the U.S. Department of Energy. Verser said the company is probably a year behind its initial schedule.

He too sees a place for both electric cars and biofuels. Plug-ins work well in urban environments, for commuting or errands. But with battery range still limited, liquid fuel remains a better choice for long-distance travel, Verser said. And Americans still love to travel.

"I think there's room for all of these solutions," he said.

"You had projects get put on hold because the price of oil dropped so low, and then ... they never got back on track."

Jonathan Wolfson, Solazyme

**EPA notes improvements at Michigan oil spill site (*Associated Press*)**

LANSING, Mich. — A regional administrator for the Environmental Protection Agency said Sunday that significant improvement had been made at the site of an oil spill in a southern Michigan river, but the agency cautioned that it will take months to complete the cleanup.

Those efforts, along with air and water quality monitoring, continue to increase along the affected stretch of the Kalamazoo River, EPA regional administrator Susan Hedman said during a media briefing in Marshall.

The oil flow was stopped and contained in a 25-mile stretch of the river from Marshall westward past Battle Creek. Several hundred workers are on crews along the river devoted to the cleanup.

"Containment is adequate now," said Mark Durno, the EPA's deputy incident commander. "Now it's a matter of recovery and removal of the remainder of the sheen and small patches of oil that remain on the Kalamazoo River."

The EPA estimates it will take weeks to get the oil out of the river and months to clean it off river banks and the flood plain. It could take several months to clean up the marshy area where the spill began near a creek that flows into the Kalamazoo River, the agency said.

Officials with Enbridge Inc., which owns the pipeline, estimated Sunday that the company had recovered slightly more than half the oil that had leaked.

Enbirdge officials said they detected the leak July 26. Investigators are reviewing 911 calls to Marshall area fire departments made the previous evening by residents complaining of a strong gas odor to try and determine if the leak might have begun earlier.

The EPA estimates the spill at more than 1 million gallons of crude, while the Canadian company estimates the total at 820,000 gallons. The leak came from a 30-inch pipeline, which was built in 1969 and carries about 8 million gallons of oil daily from Griffith, Ind., to Sarnia, Ontario.

The cost of the cleanup hasn't been determined. Enbridge is responsible for the cleanup bill, including money that the EPA and other government agencies will spend on its response.

"Our goal is to return the river to the state it was in before this incident," Enbridge CEO Patrick D. Daniel said.

The EPA and other government officials have scheduled a public meeting for residents at Marshall's high school on Monday evening. A similar public hearing will be scheduled for Battle Creek residents later in the week.

The section of the pipeline where the leak occurred could be removed early this week. It's expected to be taken to a National Transportation Safety Board lab for testing to try and determine the cause of the incident.

The EPA on Saturday said it had rejected the Calgary, Alberta-based company's long-range cleanup plan because of "deficiencies in content and technical details." It ordered Enbridge to submit a revised version by Monday. Daniel said the company will modify the plan to meet EPA requirements.

U.S. regulators earlier this year demanded improvements to the pipeline network that includes a segment that ruptured in southern Michigan. The Pipeline and Hazardous Materials Safety Administration, the U.S. Department of Transportation's regulatory arm, said it had summoned Enbridge Inc. executives in February to discuss problems with the 1,900-mile Lakehead system.

The agency has cited Enbridge or its affiliates for 30 enforcement actions since 2002.

**PESTICIDES**

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Mon., Aug. 2, 2010, 12:27 AM

**Bedbug baloney (*New York Post*)**

By PAUL DRIESSEN
Last Updated: 12:27 AM, August 2, 2010
Posted: 12:27 AM, August 2, 2010

'Don't let the bedbugs bite," it seems, is no longer a fashionable good-night wish for Big Apple kids, even in the city's high-rent districts and posh hotels. Growing infestations of the ravenous bloodsuckers have New Yorkers annoyed, angry about officialdom's inadequate responses -- and "itching" for answers.
Instead, their Bedbug Advisory Board recommends a bedbug team and an educational Web site. Residents, it advises, should monitor and report infestations. Use blowdryers to flush out (maybe 5 percent of) the bugs, then sweep them into a plastic bag and dispose properly. Throw away (thousands of dollars' worth of) infested clothing, bedding, carpeting and furniture.

Hire (expensive) professionals who (may) have insecticides that (may) eradicate the pests -- and hope you don't get scammed. Don't use "risky" pesticides yourself. Follow guideline for donating items, and be wary of

bedbug risks from donated furniture and mattresses.

New Yorkers want real solutions, including affordable insecticides that work. Fear and loathing from decades of chemophobic indoctrination are slowly giving way to a healthy renewed recognition that the risk of not using chemicals can be greater than the risk of using them (carefully). Eco-myths are being replaced with more informed discussions about the alleged effects of DDT and other pesticides on humans and wildlife.

Thankfully, bedbugs haven't been linked to disease -- except emotional distress associated with obstinate infestations, incessant itching and pathetic "proactive" advice, rules and "solutions" right out of "Saturday Night Live."

It is hellish for people who must live with bedbugs and can't afford eradication pros such as those Hilton Hotels or Mayor Bloomberg might hire. But [now] imagine what it's like for some 2 billion people who live 24/7/365 with insects that definitely *are* responsible for disease: malarial mosquitoes.

Malaria infects more than 300 million people annually. For weeks on end, it renders them unable to work, attend school or care for their families -- and far more susceptible to death from tuberculosis, dysentery, HIV/AIDS, malnutrition and other diseases that stalk their impoverished lands.

This vicious disease causes low birth weights in babies and leaves millions permanently brain damaged. It kills more than a million annually, most of them children and mothers, the vast majority in Africa. It drains families' meager savings and perpetuates the region's endemic poverty.

Emotional distress? Imagine the stress that comes from having no escape from destitution and disease, having to support a child with a perpetual 10-year-old's mental functions, burying your baby, wife or sibling, or wondering whether you can walk 20 miles to a clinic before the child you are carrying dies and whether the clinic will have (noncounterfeit) medicine to cure her.

Frustration over absurd bedbug programs? Imagine the reaction Africans must have to "malaria no more" campaigns that claim they'll (eventually) eradicate the disease solely with insecticide-treated bed nets, drugs, "capacity building," education and (maybe

someday) mosquitoes genetically engineered not to carry malaria parasites. As for insecticide spraying, especially DDT, forget it.

DDT is the most powerful, effective, long-lasting mosquito repellant ever invented. Spraying the eaves and inside walls of mud huts and cinderblock homes every six months keeps 80 percent of the flying killers from entering. It irritates most that do enter, so they leave without biting, and kills any that land.

Yet many aid agencies refuse to encourage, endorse or fund spraying. Many don't even want to monitor mosquito and malaria outbreaks or determine success in reducing disease and death rates. That's more difficult and costly than counting the number of bed nets distributed and underscores the embarrassing reality that their "comprehensive" (and politically correct) programs achieve only 20 to 40 percent reductions in morbidity and mortality. By contrast, as South Africa and other countries have shown, adding insecticides and DDT can bring 95 percent success.

Since the Environmental Protection Agency banned DDT in 1972, billions have been stricken by malaria and tens of millions have died. This is intolerable.

We need adult supervision and informed debate on pesticide policies, laws and regulations. We can no longer leave those decisions to anti-chemical activists in unaccountable pressure groups and government agencies. These zealots are making decisions that affect the quality of life for millions of Americans -- and life itself for billions of poor people worldwide.

If not for the economy and mental health of Americans afflicted by bedbugs, then do it for Africa's sick, brain-damaged and dying parents and children.

*Paul Driessen, senior policy ad viser for the Congress of Racial Equality, is author of* "*Eco-Imperi alism: Green power -- Black death*."

**SUPERFUND**

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**Former, Current Owners to Pay for Cleanup at Walpole Superfund Site (*EP Magazine*)**

Aug 02, 2010
A $13 million settlement has been reached between four parties and the United States to expedite cleanup of the contaminated Blackburn and Union Privileges Superfund Site in Walpole, Mass., the Justice Department and Environmental Protection Agency announced recently.
The parties involved in the settlement include W.R. Grace & Co.-Conn., a former owner and operator of the site; Tyco Healthcare Group, also former owner and operator; as well as BIM Investment Corp. and Shaffer Realty Nominee Trust, the current owners.

Under the settlement, the four parties will, among other things:
excavate and dredge contaminated soil and sediment;
treat contaminated groundwater that poses a risk to surface waters;
establish land use restrictions for the site; and
perform long-term monitoring of soils, sediment and groundwater.
The private parties will be required to maintain the cap and culvert, and perform engineering studies needed to ensure the long-term integrity of the structures.
The site, which was listed on the National Priorities List in 1994, includes about 21 parcels of land. The Neponset River runs through the 22-acre site, which has been used for commercial and industrial purposes since the 1700s. From about 1915 to 1936, a predecessor of W.R. Grace manufactured asbestos brake linings and clutch linings on a large portion of the property. From 1946 to about 1983, a predecessor of Tyco Healthcare operated a cotton fabric manufacturing business, which used caustic solutions, on a portion of the property.
As a result of these operations, soils, sediment and groundwater are contaminated with inorganic chemicals, including asbestos and metals, volatile organic compounds, polycyclic aromatic hydrocarbons, and highly alkaline compounds.
The group will reimburse the federal government for the $1.4 million in response costs associated with the site, as well as for all future oversight costs up to $2 million.
The consent decree, lodged in U.S. District Court for the District of Massachusetts, is subject to a 30-day public comment period and court approval. The consent decree has already been approved by the U.S. Bankruptcy Court for the District of Delaware as part of W.R. Grace's pending bankruptcy proceeding.
During a cleanup in the early 1990s, Grace consolidated asbestos-contaminated soils and sediments and installed a cap and containment cell at the site. In addition, a culvert was installed along the Neponset River to prevent the erosion of asbestos contaminated soils along the banks of the river.

**S.F. approves giant redevelopment project (*Associated Press*)**

**Story also appeared: *Ashland Daily Tidings***

Supporters say the project will breathe new life into city
By ROBIN HINDERY
The Associated Press
August 02, 2010 2:00 AM
SAN FRANCISCO, Calif. — After more than 20 years of environmental cleanup efforts, San Francisco's largest swath of undeveloped land will someday be home to thousands of families, as well as parks, businesses and perhaps even a new football stadium.

The county Board of Supervisors last week overwhelmingly approved a project to turn the abandoned Hunters Point Naval Shipyard into a bustling 700-acre residential and commercial center on the southeast shoreline of San Francisco Bay. The Miami-based developer, Lennar Corp., is in the process of negotiating with lenders to finance the initial home construction, which could begin later this year.

Supporters say the development, which will stretch west to Candlestick Park, will breathe new life into the rough-edged Bayview-Hunters Point neighborhood by bringing jobs, affordable housing and recreation options into an area plagued by gang crime and poverty.

"This is a part of San Francisco desperately in need of revitalization," said Board of Supervisors President David Chiu. "This area is the last remaining plot of land to help develop the future of what San Francisco is going to be."

But critics have raised concerns that portions of the federal Superfund site are a long way from being environmentally sound. They also fear the disappearance of the city's last predominantly black community, citing the displacement of poor black residents during the earlier redevelopment of San Francisco's Western Addition neighborhood.

"Part of San Francisco died yesterday," Supervisor Chris Daly, the board's lone dissenting vote on the current proposal, said Wednesday. "The city is essentially green-lighting gentrification."

Daly had lobbied unsuccessfully for an amendment requiring 50 percent of the new residences to be set aside as affordable housing. The current plan reserves 32 percent of the units for low- and moderate-income residents.

The U.S. Environmental Protection Agency, which oversees the cleanup of the shipyard along with the Navy, is approaching the development plan with cautious optimism, stressing that there still is work to be done.

"It's getting really close to where we feel the site can be safely transferred and development can occur, and we're trying to clean things up as fast as we can," said John Chesnutt, a manager in the EPA's Superfund Division.

The 936-acre base, which was closed in 1974, is one of 20 former military sites in California whose high levels of pollution have earned them a spot on the EPA's National Priorities List.

The shipyard received its Superfund designation in 1989, and the Navy since has spent $700 million addressing hazards such as toxic metals and chemicals and low-level radiation contamination. Only one 88-acre parcel of land has been fully transferred to the city, while the rest still is undergoing decontamination work.

Now that the Board of Supervisors has acted, the EPA will enter into a formal legal agreement with Lennar Corp. to ensure the developer takes certain environmental safety precautions during the construction phase, Chesnutt said. Those include applying a cover layer of soil or pavement over "hot spots" where the original soil was contaminated.

As a symbol of the shipyard's evolution from environmental blight to eco-friendly urban model, the development plan includes space for a green technology research hub within the 2.65 million square feet of commercial space.

The new community also will include about 10,500 new homes, 885,000 square feet of retail space and more than 300 acres of open space.

**TOXICS**
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**U.S. regulators lack data on health risks of most chemicals (*Washington Post*)**

By Lyndsey Layton
Washington Post Staff Writer
Monday, August 2, 2010; A01
This summer, when Kellogg recalled 28 million boxes of Froot Loops, Apple Jacks, Corn Pops and Honey Smacks, the company blamed elevated levels of a chemical in the packaging.

Dozens of consumers reported a strange taste and odor, and some complained of nausea and diarrhea. But Kellogg said a team of experts it hired determined that there was "no harmful material" in the products.

Federal regulators, who are charged with ensuring the safety of food and consumer products, are in the dark about the suspected chemical, 2-methylnaphthalene. The Food and Drug Administration has no scientific data on its impact on human health. The Environmental Protection Agency also lacks basic health and safety data for 2-methylnaphthalene -- even though the EPA has been seeking that information from the chemical industry for 16 years.

The cereal recall hints at a larger issue: huge gaps in the government's knowledge about chemicals in everyday consumer products, from furniture to clothing to children's products. Under current laws, the government has little or no information about the health risks posed by most of the 80,000 chemicals on the U.S. market today.

"It is really troubling that you've got this form of naphthalene that's produced in millions of pounds a year and we don't have some of the basic information about how toxic it is," said Erik Olson, an expert at the Pew Charitable Trusts, which is advocating an overhaul of U.S. chemical laws. "In so many cases, government agencies are missing data they need on even widely used chemicals about whether they pose a health risk."

The information gap is hardly new. When the Toxic Substances Control Act was passed in 1976, it exempted from regulation about 62,000 chemicals that were in commercial

use -- including 2-methylnaphthalene. In addition, chemicals developed since the law's passage do not have to be tested for safety. Instead, companies are asked to volunteer information on the health effects of their compounds, and the government can decide whether additional tests are needed.

In 1994, the EPA invited the chemical industry to submit health and safety data for 2-methylnaphthalene because it was being produced in large quantities, said Mary F. Dominiak of the EPA. Chemical manufacturers have yet to disclose that information, she said.

And they may not even have it. If a manufacturer possesses data showing that a chemical harms health or the environment, it is required to turn over the findings to the EPA. Critics say that creates a disincentive for manufacturers to test their chemicals.

Kellogg responded to a request for comment by referring to the statement it issued with its recall, which said, "While the potential for serious health problems is low, some consumers are sensitive to the uncharacteristic off-flavor and smell and should not eat the recalled products because of possible temporary symptoms including nausea and diarrhea."

Bills pending in Congress would revamp the way the government regulates chemicals, forcing companies to prove that new chemicals are safe before using them and requiring health and safety assessments of existing chemicals, such as 2-methylnaphthalene. The chemical industry has said it agrees the law should be revamped, but it also has expressed concern that new restrictions might hamper innovation and competitiveness.

One federal agency has minimal information about 2-methylnaphthalene -- the Agency for Toxic Substances and Disease Registry, which reviewed the scientific literature on the chemical in 2005. It concluded that nothing is known about its use related to food. "You are not likely to be exposed . . . eating foods or drinking beverages" and risk exposure only "if you live near a hazardous waste site," according to the agency's Web site.

A natural component of crude oil, 2-methylnaphthalene is structurally related to naphthalene, an ingredient in mothballs and toilet-deodorant blocks that is considered a possible human carcinogen by the EPA. Kay Cooksey, a packaging expert at Clemson University, said 2-methylnaphthalene likely ended up in cereal because something went awry in the manufacturing of the foil-lined bags. The foil is attached to the paper bag with an adhesive that is heated, she said. If too much heat is applied or if the composition of the adhesive is incorrect, 2-methylnaphthalene could form, she said.

The chemical "is not supposed to be in food," said Mitchell Cheeseman of the FDA's office of food safety. The agency allows a minute amount of the chemical in food packaging if it is produced as a "contaminant" during the manufacturing process, but it is not supposed to transfer to the food, he said.

Because the FDA does not know anything about the toxicity of 2-methylnaphthalene, the agency set its limit based on what it knows about the toxic effects of similar chemicals, Cheeseman said.

He added that the FDA does not know what caused the Kellogg contamination, how much 2-methylnaphthalene might have migrated into the cereals or if it was the only contaminant. The agency did not perform its own tests on the cereals.

Roberta Wagner of the FDA's Office of Regulatory Affairs said Kellogg destroyed most of the tainted liners before it contacted the agency and announced a recall.

"Basically, Kellogg's investigated the situation before they made the decision to do the recall," Wagner said. "They did their own testing." She said the agency continues to investigate.

The company submitted a copy of its health risk assessment to the FDA, but neither Kellogg nor the agency would release it.

Cheeseman said it is unusual for contaminants to migrate from packaging into foods.

But others are less certain. "In this case, it had an odor and it had a taste, so it was detected," said David Andrews, a senior scientist at the Environmental Working Group, an advocacy organization. "But there are hundreds of other potential impurities that we can't smell and taste, chemicals that we know very little about and the government knows little about."

**WATER**

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Article published Aug 2, 2010

**Drug levels in water unclear (*South Bend Tribune*)**

Little or no testing being done locally.
By SUE LOWE Tribune Staff Writer
You've probably read or heard that scientists have found prescription drugs in water.

For example, the Alliance for the Great Lakes reports that cholesterol-modifying drugs and a nicotine byproduct were among the pharmaceutical compounds found in Lake Michigan.

Some of the same drugs also were found in Lake Erie, along with ibuprofen, caffeine and an anticonvulsant.

But there apparently has been little or no testing for pharmaceuticals in local water.

There are no standards for pharmaceuticals in drinking water or in water discharged from wastewater treatment plants.One local person most concerned about the issue is Marc Nelson, environmental health services manager with the St. Joseph County Health Department.

His concern comes because scientists believe the vast majority of the drugs found in water are not unused drugs disposed of improperly.

They are drugs not metabolized in the bodies of the people who take them and end up in the environment through human waste.

Nelson believes there probably are pharmaceuticals in small concentrations in private wells in the northeastern part of the county.

That's because waste in private septic tanks gets through the sandy soil there and into the groundwater, according to Nelson."It's becoming a greater and greater problem," Nelson said of prescription drugs in the water.

He said a layer of clay underground in the southern part of the county protects the groundwater there.

South Bend and Mishawaka get their water from deep wells, deep enough that the people who operate the water departments believe the drinking water is safe from the problem.

Jim Schrader, general manager of Mishawaka Utilities, said that so far, drugs have been found in surface water.

"Fortunately we don't have that issue with deep water wells," he said.Dave Tungate, director of South Bend Water Works, said that city has nine wellfields with 30 wells, all of them at least 120 feet deep.

He believes there may have been some pharmaceuticals in surface water for some time.

Testing for low levels of prescription drugs is just now becoming available.

The city of St. Joseph gets its water from Lake Michigan, but water superintendent Greg Alimenti said the city doesn't test for pharmaceuticals.

He said testing is expensive and isn't yet required by the federal or state governments.Alimenti believes eventually there will be standards because of public concern over the issue.

Wastewater treatment plants also don't test for pharmaceuticals in the water they discharge. Cost and lack of regulations are cited as the reasons.

Jack Dillon, superintendent of wastewater treatment in South Bend, said the cities already test for "a couple hundred contaminants."

Karl Kopec, manager of the wastewater treatment plant in Mishawaka, believes the plant removes some of the pharmaceuticals in treated water.

He said the Mishawaka plant removes 90 percent of the mercury that goes through it, even though it was not designed to remove mercury.Everybody is waiting for direction from the U.S. Environmental Protection Agency and, hopefully, lower prices on the testing.

Ernesta Jones, from the EPA press office, sent out an e-mail saying the agency "remains committed to improving our understanding of pharmaceuticals in water."

"We continue to work to better understand the occurrence, risk and treatment of pharmaceuticals in water, as well as methods for preventing pharmaceuticals from entering water," the statement continued. "EPA will continue to use the best science to address environmental and health concerns posed by pharmaceuticals in water."

Local officials stressed that unused medicine should not be flushed down the toilet, even though that accounts for little of the drugs in water.

Instead, unused drugs should be put in the trash if you can't find any facilities that will accept them.

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**Toxicologists warn that waters that look clear of oil can be deceiving (*USA Today*)**

By Dan Vergano, USA TODAY
Out of sight, out of mind?
As surface oil plumes fade from view in the Gulf of Mexico, courtesy of the capped Macondo well, it would be wrong to think that the oil still isn't there, forensic toxicologists warn.

"We're finding less and less oil as we move forward," disaster response chief Thad Allen said last week, noting that skimmer boats were having trouble finding slicks. The retired Coast Guard admiral also pointed out that 40% of the leaked oil — more than 90 million gallons of crude by U.S. Geologic Survey scientist estimates — is unaccounted for.

LOUISIANA MARSHES: Damaged by oil, but surprisingly resilient

"There's the issue of whether or not we may find oil under the water," Allen added.

Under the water is where the oil is, say environmental chemists such as Jeffrey Short of the conservation group Oceana — not just in deep sea clouds of oil reported by National Oceanic and Atmospheric Administration scientists. "Oil tends to congeal, and where you saw a broad slick, you now have a lot of droplets and tar balls," he says. Whether floating as tar balls, buried under Mississippi River mud or carried off in currents to the Atlantic, much of the spilled oil remains in the water, Short says.

Chemist Kim Anderson of Oregon State University in Corvallis heads a team tracking how much of the worst toxins in the oil — organic chemicals called polycyclic aromatic hydrocarbons — have been dumped in the water by the spill. They'll be measured at four sites off the coast of Louisiana, Mississippi, Alabama and Florida. Earlier samples from Louisiana alone showed that by June 7, concentrations of the toxic chemicals had risen 40 times higher than levels on May 1, although the water looked clear of oil.

Complicating the search for the chemicals is the amount of dispersant, about 1.84 million gallons, applied to oil from the leak. The dispersant has done its job, acting like dish soap on bacon grease, congealing the oil into tiny droplets that microbes can begin eating. "That means they are in the food chain." Short says. "Whether people will want to swim or eat food from water that looks clear but has high concentrations of (toxins) will be interesting," she says.

Heavy use of the dispersants came under fire over the weekend when Rep. Ed Markey, D-Mass., charged that "BP often carpet bombed the ocean with these chemicals and the Coast Guard allowed them to do it." BP Chief Operating Officer Doug Suttles said the company had operated under a protocol agreed on by the Coast Guard and the federal government.

A temporary cap has held the gusher in check for more than two weeks, and engineers are planning to start as early as tonight on an effort to help plug the well for good, Allen said. The procedure, dubbed a static kill, involves pumping mud and possibly cement into the blown-out well through the temporary cap.

As the response shifts from capping the leak to fixing the damage, we have seen only the start of the story, Anderson says: "Years. I'll be here for years."

**Spilled Milk, A Threat? (*Food Safety News*)**

by Laurel Curran | Aug 02, 2010
Is milk as dangerous as oil? Many would tell you not to cry over spilled milk, but if you are a dairy farmer you may have reason to shed a few tears. Dairy farmers may

become subject to a 2002 update to the landmark 1970s Clean Water Act that requires them to possess the same spill prevention abilities as oil companies like BP and Exxon. These regulations are set to go into effect in November of this year.

So, how can milk qualify as oil? Milk contains animal fat which the Environmental Protection Agency classifies as non-petroleum oil. Consequently, milk producers are subject to regulations requiring them to purchase expensive spill-response plans. The rule will go into effect if milk producers are not given an exemption from the EPA.

A number of senators and congressmen have spoken out in support of granting milk producers exemption status, including Rep. William L. Owens (D, NY), Rep. Scott Murphy (D, NY), Sen. Charles Schumer (D, NY), and Sen. Mike Johanns (R, NB).

"Everyone knows that when Congress enacted these laws it was targeting massive oil spills and toxic substances, not an accident involving milk at one of our state's small dairy farms," remarked Senator Schumer to a national wire service. "Mothers tell their children not to cry over spilled milk--farmers certainly shouldn't have to either," he said.

Johanns and Schumer recently introduced legislation in the Senate to grant dairy farmers exempt status. "The idea of EPA treating spilled milk similarly to oil spills is ludicrous. My common sense legislation will require EPA to exempt milk containers from oil spill regulations within 30 days," said Johanns. "Considering the exemption was proposed in January of last year and the compliance date for these regulations is rapidly approaching, EPA should stop dragging its feet. These regulations would be laughable if not for the costly burdens they will place on our dairy farmers if not stopped."

Though many are in support of giving milk producers an exemption, there is still some opposition. Gayle Miller, legislative director of the Sierra Club's Michigan Chapter, told The American Spectator that agricultural pollution probably is the nation's most severe chronic problem when it comes to water pollution.

"Milk is wholesome in a child's body. It is devastating in a waterway," Miller said. "The fact that it's biodegradable is irrelevant if people die as a result of cryptosporidium, beaches close for E. coli, and fish are killed."

The EPA has publicly asserted that it intends to give milk producers an exemption from the rules, however the agency has yet to do so.

**Gulf damage began long ago with little oversight (*Greenwire*)**

(07/30/2010)

Ecological damage to the Gulf of Mexico had been happening long before the BP spill began. In little ways, Americans polluted the Gulf daily with oil, chemicals and other debris as they fulfilled economic appetites centered around oil and corn.
The Gulf is a rich habitat for migratory birds and other wildlife, and home to natural resources that have led to nearly 4,000 offshore oil and gas platforms, and tens of thousands of miles of pipelines in the sea.

Half a million barrels of oil and drilling fluids were spilled daily even before the Deepwater Horizon spill, according to records. Runoff from corn fields, sewage plants, golf courses and parking lots trail into the Mississippi River, from where they flow into the Gulf. They have created an enormous dead zone off the coast of Louisiana.

The seabed resembles a battlefield, as bombs, chemical weapons and ordnance dumped in the past century vegetate below ground. They exist in a maze of drilling platforms and pipelines, and miles outside designated dumping zones. Accidents are unlikely, but no one's really watching to guarantee the safety of drillers, according to experts.

The coast itself is falling apart as the wildlife-rich wetlands become ever smaller as oil and gas, shipping and flood control measures slowly claim the land.

"This has been the nation's sacrifice zone, and has been for 50-plus years," said Aaron Viles, campaign director for the nonprofit Gulf Restoration Network, to *The New York Times*.

A lack of regulatory enforcement and sparse scientific research by state and federal agencies is responsible, according to some. Jurisdiction issues, such as control of the Mississippi River, also play a role in enforcement, while some poorer states worry that strict rules could chase away jobs.

Funding for research is difficult to come by, and U.S. EPA's budget for Gulf of Mexico programs is not comparable to those in other major water bodies.

The Obama administration said it will generate a Gulf restoration plan to address problems with the Louisiana and Mississippi coasts. But details of that plan remain vague and financing miniscule.

Environmental groups do not operate in the region successfully because they find it difficult to raise funds and get political support, said Paul Templet, a former secretary of the Louisiana Department of Environmental Quality. This has led to a situation where pollution of the Gulf has gone unnoticed for decades, he said (Campbell Robertson, *New York Times*, July 29). **-- GV**

**House clears infrastructure, boat-discharge bills (*Greenwire*)**

(07/30/2010)
Paul Quinlan, E&E reporter
The House passed two bills by voice vote yesterday authorizing $4.8 billion for upgrading water infrastructure and delaying Clean Water Act regulation of "incidental discharges" of recreational boats and small commercial vessels.

The infrastructure bill, **H.R. 5320**, sponsored by Democrats Henry Waxman of California and Ed Markey of Massachusetts, reauthorizes EPA's drinking water state revolving fund for $1.4 billion for fiscal 2011, $1.6 billion for fiscal 2012 and $1.8 billion for fiscal 2013 -- significantly less than the more than $14 billion over five years that Democrats had sought.

"Today, the House has taken decisive, bipartisan action to invest in the future of our nation's public water systems," Waxman said in a statement. "This legislation is a critically important step to ensure that all Americans have access to safe and affordable drinking water for years to come."

U.S. EPA estimated in 2007 that the nation's water infrastructure, much of which was laid a century ago, would require $335 billion worth of work over the next 20 years. In promoting the bill, Markey illustrated the stakes by citing the water main break this year that put 2 million Boston-area residents under a boil-water notice for more than two days.

"The reality is that the country's drinking water infrastructure is rapidly aging," Markey said in a statement. "We cannot turn off the flow of federal funding for this essential infrastructure at a time when our water systems need it most."

The measure includes a buy-American provision, as well as language intended to aid water systems in disadvantaged communities, strengthen EPA enforcement authority, encourage better financial and environmental management of water systems, reduce lead in drinking water, and strengthen a program that screens drinking water for substances that can interfere with the human hormone system.

The boat measure, **S. 3372**, introduced by Sens. Barbara Boxer (D-Calif.) and Lisa Murkowski (R-Alaska) -- with companion legislation introduced by Rep. Frank Lobiando (R-N.J.) in the House -- extended a moratorium on EPA's permitting of deck wash, bilge water and other "incidental discharges" of recreational and commercial fishing vessels less than 79 feet long. The Senate passed the measure July 14.

The bill extends the moratorium, which was set to expire tomorrow, until Dec. 18, 2013. That will allow more time for EPA to study the new regulation, which Lobiando and Republicans generally oppose but which Democrats in committee argued was worth pursuing.

"With our economy still struggling to recover, the government must not enact arbitrary federal penalties which could discourage economic growth and job creation," Lobiando said in a statement.

Under the 1972 Clean Water Act, such discharges were not regulated until a 2005 court ruling reversed the policy. EPA had told Congress it was not prepared to process by the end of this month scores of permits necessary and needed more time to shape its policy.

**Muskegon Heights has new plan for redevelopment of former wastewater site (*Muskegon Chronicle-MLive*)**

Published: Monday, August 02, 2010, 6:45 AM
Eric Gaertner | Muskegon Chronicle

MUSKEGON HEIGHTS -- Muskegon Heights officials are picking up the pieces and altering the scope of a proposed redevelopment of the city's former wastewater treatment plant site that has been in the works for years and could eventually provide a significant boost to the area.

If all goes as planned, the large, contaminated site -- bordered on the north by Summit Avenue and on the west by Wood Street -- will have the most significant environmental contamination spots cleaned up, senior-citizen condominium units constructed, natural areas established and single-family houses built. Depending on the economy, the development of senior-citizen and single-family residential units could still be years away.

Mayor Darrell Paige said redevelopment of the site would provide a "serious face-lift" for Muskegon Heights. He said he has received feedback from those in the community reaching retirement age who are looking for the type of maintenance-free living that the proposed senior-citizen condominium units would provide.

The city has been in the process of trying to redevelop the site, which was used to treat the city's municipal wastewater from 1916 to 1974, for more than 10 years. And a proposed residential project by Mona Terrace Development has been in the planning stages since 2001. The Environmental Protection Agency designated the plant site as one of only five Resource Conservation and Recovery Act brownfield pilot programs in the nation in 2001.

PROPOSED DEVELOPMENT PHASES
Phase 1 -- Site preparation: Address the worst areas of contamination and remove remnants of the wastewater treatment plant.

Phase 2 -- Senior citizen condominiums: Subdivide the northeast and northwest portions of the property and offer the property for sale.

Phase 3 -- Residential units: Relocate the city's public works garage and prepare the southwest portion of the property for sale for construction of houses.

City officials blame a series of private parties that formerly leased the property for a release of hazardous substances on the site.

City council members recently approved a revised plan for demolition and environmental cleanup at the site, and it was submitted to the Michigan Department of Natural Resources and Environment and the Michigan State Housing Development Authority, Cities of Promise Program.

The city needs DNRE approval to use brownfield grant monies for the revised project. The city previously was awarded a $1 million grant and $1 million loan from the Department of Environmental Quality, now DNRE, to conduct environmental and demolition activities based on the original project's design.

"Through a series of unfortunate circumstances, the city of Muskegon Heights has been left with a contaminated property and liability ... which has significantly complicated redevelopment," the city stated in its revised plan.

The original plan called for the city to use the grant to clean up the site and demolish the sewage treatment plant at 3030 Wood. Under the plan, a group of local developers, Mona Terrace Development, was to build a 95-unit housing development.

The new, revised plan also calls for the city to use the grant to clean up the site and demolish the remaining portions of the treatment plant. However, the revised proposal changes the development plans, calling for up to 50 senior citizen condominium units in the northern and western portions of the property and 75 single-family units in the southwestern portion, with natural area and open space for the balance of the site.

City officials said the city previously received notice that Mona Terrace Development wanted to terminate the agreement for the proposed project in which it was involved.

City Manager Natasha Henderson said city officials are ready to move forward with site preparation with the understanding that economic recovery will play a role in when a private developer would begin construction of residential units. She pointed out that the city would likely put out a request for proposals from potential developers at some point.

"It will take some time," Henderson said. "As soon as it could be done, we would do that."

Pending the go-ahead from the DNRE, the city would likely begin with demolition this fall.

Initial site preparation work also would include excavating the most polluted soil. The cost, estimated at $800,000 for demolition and $32,600 for soil management, would be paid for with money from the DNRE brownfield grant.

The plan is for the city to serve as the development manager because of the challenges in redeveloping the site. City officials would position the property for resale to private parties for the construction of homes. The city would secure funding through state and federal sources to support housing and infrastructure.

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