**U. S. Environmental Protection Agency**
**E-Clips**
**Prepared by the Office of Public Affairs**

Monday, February 18, 2013

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

## Friday, June 11, 2010


ADMINISTRATOR JACKSON ..... 4
Lincoln company says its powder can soak up oil spill (*Sacramento Bee*) ..... 4
Senate narrowly rejects preventing EPA from regulating greenhouse gases (*Washington Post*) ..... 5
Obama's greenhouse gas rules survive Senate vote (*Associated Press*) ..... 6
Story also appeared: *Washington Post* ..... 6
Senate votes on blocking EPA greenhouse gas regs (*Wichita Eagle*) ..... 9
Story also appeared: *Fort Worth Star Telegram, Atlanta Journal Constitution, Newsday, Charlotte Observer, Sacramento Bee, Palm Beach Post, Star Tribune, Lexington Herald Leader, Newsday* ..... 9
Advisers Urge New EPA Task Forces To Coordinate Nitrogen Research (*Inside EPA*) ..... 10
EDITORIAL / OP-ED / COMMENTARY / LETTERS ..... 11
Move to curb EPA action on emissions is premature (*Washington Post*) ..... 12
Bee's stance favors more taxes (*Sacramento Bee*) ..... 12
Thwarting the EPA (*Toledo Blade*) ..... 13
AIR ..... 14
Texas and E.P.A. Clash Over Air Pollution (*New York Times*) ..... 14
Senate rejects effort to block EPA greenhouse gas rules (*USA TODAY*) ..... 17
EPA changes may force strict permits on Texas plants (*Houston Chronicle*) ..... 18
EPA offers option to firms worried over compliance (*Houston Chronicle*) ..... 19
Senate Rejects Republican Effort to Thwart Carbon Limits (*New York Times*) ..... 21
Move to block EPA regulation rejected (*Denver Daily News*) ..... 23
Brown, Kerry on opposite sides of emissions vote (*BusinessWeek*) ..... 24
Obama's greenhouse gas rules survive Senate vote (*Atlanta Journal Constitution*) ..... 25

Story also appeared: *Charlotte Observer, Los Angeles Times* ..... 25
EPA goes to industry to fix faulty Texas permits (*Associated Press*) ..... 27
Sen. Brown: Don't let EPA regulate greenhouse gas (*Associated Press*) ..... 29
Story also appeared: *Boston Herald* ..... 29
Senate backs Obama on EPA's CO2 authority (*San Francisco Chronicle*) ..... 29
Ill. senators back Obama on greenhouse gas rules (*Associated Press*)..... 30
Story also appeared: *Chicago Tribune*..... 30
EPA goes to industry to fix faulty Texas permits (Associated Press) ..... 31
Story also appeared: *Houston Chronicle* ..... 31
Hitachi Consulting Joins EPA Climate Leaders Industry-Government Program (*San Francisco Chronicle*) ..... 31
Incinerator Groups Eye Lawsuit In Bid To Revive Key Air Toxics Exemption (*Inside EPA*) ..... 33
OTC Seeks Strict State, EPA Air Rules to Meet Stringent Ozone Standard (*Inside EPA*) .. 35
Senate leaders strike deal to lure Dems from Murkowski (*Greenwire*) ..... 36
EPA Aims To Solve State SO2 NAAQS Compliance Fears With 'Hybrid' Plan (*Inside EPA*) ..... 38
Industry Likely To Sue Over EPA Bid To Bolster MACT 'Hammer' Authority (*Inside EPA*) ..... 40
State Bid For Stricter NOx Cap In Senate Emissions Bill Could Spark Fight (*Inside EPA*) 42
EPA Sees Cement Air Rules As Legal Test For Sector-Based Air Strategy (*Inside EPA*) .. 45
GOP Eyes Murkowski Resolution Vote As Test On Support For GHG Rules (*Inside EPA*) ..... 47
EPA Begins Broad Push To Require Additional Monitoring In Title V Permits (*Inside EPA*) ..... 48
ASBESTOS ..... 50
New EPA report finds no health concerns from shipyard dust (*San Francisco Chronicle)*. 50
BP SPILL ..... 51
You've heard of government 'by the people, for the people'? (*Washington Post*)..... 51
Focused On Gulf Oil Spill, EPA Officials Pulled Away From Key Policymaking (*Inside EPA*)..... 53
Environmental Trustees Fault Vitter Plan To Require NAS Study Of Oil Spill (*Inside EPA*) ..... 55
After Budget Cutbacks, Trustees Scramble to Craft Gulf Spill Damages Study (*Inside EPA*) ..... 56
Democrats Criticize Nuclear Insurance Approach For Oil Spill Liability (*Inside EPA*)..... 59
BROWNFIELDS ..... 61
Officials want to make over brownfield sites in West Pasco (*Tampa Tribune*) ..... 61
ENERGY..... 63
Angle Blasts Reid On Supporting EPA Regs That Harm Nevada (*Cypress Times*) ..... 63
EPA Weighs Liability Fixes To Help Promote Clean Energy On Brownfields (*Inside EPA*) ..... 64
FUEL ..... 65
State's Ethanol Push (*Palm Beach Post*) ..... 65

GENERAL ..... 67
Mel Chin hopes to trade drawings of $100 bills for cash to clean soil in New Orleans (*Los Angeles Times*) ..... 67
HAZARDOUS WASTE ..... 68
Neb. firm pays $150,000 fine for waste problems (*BusinessWeek)* ..... 68
EPA Proposal Walks 'Fine Line' Over How to Address Coal Waste Reuse (*Inside EPA)* ... 69
EPA Finalizes Decision To Scrap Rule On Burning Hazardous Wastes (*Inside EPA*) ..... 71
MOUNTAINTOP MINING ..... 72
Defending Permit Veto, EPA Seeks To Dismiss Key Mountaintop Mining Suit (*Inside EPA*) ..... 72
PESTICIDES ..... 73
Endosulfan to Be Banned, Pesticide Poses "Unacceptable Risks," EPA Says (*Scientific American*) ..... 73
US insecticide ban spurs local review (*Sunday Morning Herald*) ..... 76
TOXICS ..... 77
Toxic Corexit dispersant chemicals remained secret as feds colluded with Big Business (*Natural News*) ..... 77
EPA Draws Early Criticism Over First-Time Oral Safety Standard For Dioxin (*Inside EPA*) ..... 79
Industry Seeks New Toxicity Study Before EPA Issues New PAH Risk Method (*Inside EPA*) ..... 81
Activists Say EPA Dispersant Disclosure Highlights Need For Stronger TSCA (*Inside EPA*) ..... 83
WATER ..... 85
EPA cracking down on Amish, English farmers (*CBS 21*) ..... 85
For Now, Industry Turns To EPA To Limit Burden Of Chemical Spray Permit (*Inside EPA*) ..... 86
Senate Democrats Weigh Greater EPA Role In Offshore Drilling Permits (Inside EPA) ... 88
EPA Rejection Of Oregon Water Criteria May Set Precedent Over Risk Level (*Inside EPA*) ..... 90
Industry Warns Proposed EPA Mine Veto Undermines Water Permitting (*Inside EPA*) .... 92
Lawmakers Cite Gas Well Accidents To Call For Greater EPA Oversight (*Inside EPA*) ... 94
EPA fines Iowa battery maker fined over pollution (*Businessweek*) ..... 95
EPA vows to push dispersant makers after posting Corexit ingredients (*Greenwire*) ..... 96
Sand berm construction proceeds despite EPA concerns (*Greenwire*) ..... 97
EPA meets next week on $5M-$7M Buick City cleanup (*Associated Press*) ..... 98
Story also appeared: *Chicago Tribune* ..... 98
EPA to reduce pesticides discharged into US waters (*Bandera County Courier*) ..... 98
Sewage spills in Northland spark probe (*Kansas City Star*) ..... 99

**ADMINISTRATOR JACKSON**
==========

**Lincoln company says its powder can soak up oil spill (*Sacramento Bee*)**

California
June 11, 2010 Friday
SECTION: B; Pg. 6
By Matt Kawahara; mkawahara@sacbee.com
DATELINE: June 11 2010
A tiny Lincoln company that says its product could help mop up oil from the Gulf of Mexico has embarked on a political and media campaign to get BP's attention.

The company, Mobius Technologies, grinds foam from desk chairs and car seats into a powder. Applied to oil, the powder – called micronized polyurethane powder – quickly absorbs the oil and forms a cake that floats on water indefinitely.

"We're just the best sorbent solution that hasn't been applied," said Mobius manager Brian Hennessy.

The company submitted its idea to BP online several weeks ago but hasn't received a response. BP spokesman Mark Proegler said it received 80,000 such suggestions from the public. He said he hadn't heard of Mobius.

Now the company has enlisted the help of Rep. Doris Matsui, D-Sacramento, who is backing its push to get its powder tested by BP for possible use in the gulf. Matsui wrote a letter to U.S. Environmental Protection Agency Administrator Lisa Jackson on Monday urging Jackson to look into BP's lack of response.

Matsui, a member of the House Energy and Environment Subcommittee, has also reached out to high levels of the Coast Guard, scientists and local senators and representatives in the gulf region about the powder, said Matsui's legislative aide Mara Lee.

Mobius said it has 2 million pounds of the powder in warehouses that could reach the gulf within five days. That amount would soak up about 1 million gallons of oil – or roughly 25,000 barrels, Hennessy said.

The company can produce 1 million pounds every 10 days after that, said its media director Michael Cudahy.

The powder is nontoxic, and the cake that it forms with oil can be picked up with a fishing net or by anybody wearing gloves.

Mobius, which employs 12 people, was started in 1996 by engineers of Dow Chemical Co. who were developing recycling technologies.

Before Mobius started grinding it into powder, the foam would end up in the dump. Now, it could be a key component in cleaning up the gulf – if it ever gets there.

Hennessy went on Rosie O'Donnell's radio show Thursday as part of the company's effort to spread awareness about its product while it waits for BP. Today, the company plans to demonstrate the product for a Fox News crew.

"Are we trying to make Governor (Charlie) Crist and Governor (Bobby) Jindal aware of who we are? You bet," Cudahy said, noting the governors of Florida and Louisiana, respectively.

"Think how frustrating it is for us to have a product that we know works and watch this going on and not be able to participate," he said.

**Senate narrowly rejects preventing EPA from regulating greenhouse gases (*Washington Post*)**

June 11, 2010 Friday
Regional Edition
SECTION: A-SECTION; Pg. A06
DISTRIBUTION: Maryland
By Juliet Eilperin
A Senate resolution to block the Environmental Protection Agency from regulating greenhouse gases failed narrowly Thursday, providing a temporary respite to environmental activists hoping to enact a mandatory cap on emissions before year's end.

But the 47 to 53 vote showed that even in the wake of the massive Gulf of Mexico oil spill, Congress remains divided over how best to address climate change. The contentious debate, in which some lawmakers said federal regulation would strike a devastating blow to the economy, suggested the Senate is far from decided on whether to put a price on the industrial emissions that stem from everyday activities such as lighting a home or driving a car.

Sen. Lisa Murkowski (R-Alaska), who drafted the resolution that would have barred the EPA from regulating greenhouse gas emissions under the Clean Air Act, said the central question was whether Congress or the administration would set the rules for curbing carbon dioxide. EPA Administrator Lisa P. Jackson has proposed rules that would subject large greenhouse gas emitters -- such as coal-fired utilities and oil refineries -- to federal regulation starting next year.

"Politically accountable members of the House and Senate, not unelected bureaucrats, must develop our nation's energy and climate policies," said Murkowski, whose

resolution of disapproval would have overturned the EPA's December finding that greenhouse gases endanger public health and welfare.

Six Senate Democrats -- Evan Bayh (Ind.), Mary Landrieu (La.), Blanche Lincoln (Ark.), Ben Nelson (Neb.), Mark Pryor (Ark.) and John D. Rockefeller IV (W. Va.) -- voted for the resolution, and no Republicans opposed it.

Several backers, including moderate Maine GOP Sens. Susan Collins and Olympia J. Snowe, said they were still open to Congress crafting a climate bill. But it is unclear what form that measure would take, because there are now several proposals. Sen. Richard G. Lugar (R-Ind.) introduced legislation Wednesday that would promote energy efficiency and renewable fuels but not place a price on carbon.

While Americans continue to express support for federal regulation of greenhouse gases -- 71 percent of respondents in a new Washington Post-ABC News poll said they backed the idea -- advocates are encountering resistance even in relatively liberal states such as California, where Gov. Arnold Schwarzenegger (R) is fighting a ballot initiative financed by oil companies to overturn mandatory carbon limits.

**Obama's greenhouse gas rules survive Senate vote (*Associated Press*)**

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

By JIM ABRAMS
The Associated Press
Friday, June 11, 2010; 1:52 AM

WASHINGTON -- In a boost for the president on global warming, the Senate on Thursday rejected a challenge to Obama administration rules aimed at cutting greenhouse gas emissions from power plants and other big polluters.

The defeated resolution would have denied the Environmental Protection Agency the authority to move ahead with the rules, crafted under the federal Clean Air Act. With President Barack Obama's broader clean energy legislation struggling to gain a foothold in the Senate, the vote took on greater significance as a signal of where lawmakers stand on dealing with climate change.

"If ever there was a vote to find out whose side you are on, this is it," said Sen. Barbara Boxer, D-Calif., chairman of the Environment and Public Works Committee.

The vote was 53-47 to stop the Senate from moving forward on the Republican-led effort to restrain the EPA.

Sen. Joe Lieberman, I-Conn., predicted the vote would "increase momentum to adopt comprehensive energy and climate legislation this year."

But Obama still needs 60 votes to advance his energy agenda, and Democrats don't have them yet. Sen. James Inhofe, R-Okla., said the vote made clear that a majority in the Senate back either a delay or an outright ban on "the Obama EPA's job-killing, global warming agenda."

Republicans, and the six Democrats who voted with them to advance the resolution, said Congress, not bureaucrats, should be in charge of writing climate change policy. They said the EPA rules would drive up energy costs and kill jobs.

But Democrats, referring frequently to the Gulf oil spill, said it made no sense to undermine efforts to curtail greenhouse gas emissions and reduce dependence on oil and other fossil fuels.

The effort to block the rules "is an attempt to bury our heads in the sand and ignore reality," said Sen. Tom Udall, D-N.M.

Obama said the vote was another reminder of the need to pass legislation to reduce the country's reliance on oil. The White House had issued a veto threat this week, saying the resolution would block efforts to cut pollution that could harm people's health and well-being.

"Today the Senate chose to move America forward, towards that clean energy economy - not backward to the same failed policies that have left our nation increasingly dependent on foreign oil," he said.

The EPA crafted standards on greenhouse gas emissions by big polluters after the Supreme Court ruled that those emissions could be considered a danger to human health and thus could be regulated under the Clean Air Act. The rules are to go into effect next January.

The poor chances of the anti-EPA measure overcoming a veto and becoming law did not deter fierce debate.

Senate Republican leader Mitch McConnell of Kentucky called the new regulations a "blatant power grab by the administration and the EPA." With a broad energy bill unlikely to pass this year, "the administration has shifted course and is now trying to get done through the back door what they haven't been able to get done through the front door," he said.

But Senate Majority Leader Harry Reid, D-Nev., called the blocking measure, "a great big gift to big oil" that would "increase pollution, increase our dependence on foreign oil and stall our efforts to create jobs" in clean energy.

White House press secretary Robert Gibbs said Thursday that he anticipated the Senate taking up a broader energy bill in the next several weeks "and hopefully we can get something done before Congress adjourns this year."

The sponsor of Thursday's resolution, Republican Sen. Lisa Murkowski of oil-rich Alaska, said her intent was to protect the authority of Congress, not the interests of the oil industry. "It should be up to us to set the policy of this country, not unelected bureaucrats within an agency," she said.

Her Democratic allies used similar arguments. "The regulatory approach is the wrong way to promote renewable energy and clean energy jobs in Arkansas and the rest of the country," said Sen. Blanche Lincoln of Arkansas, who faces a difficult re-election campaign this summer.

Sen. Jim Webb, D-Va., who opposed the resolution, agreed that Congress should not cede its authority to the executive branch but expressed concern the measure would reverse progress made in such areas as vehicle emissions. He said he supported a bill that would suspend EPA's regulation of greenhouse gases from stationary sources for two years.

Murkowski, too, said Congress should be working harder to come up with an energy bill. The issue was whether a consensus was possible this year.

"Here's the real rub," said Sen. Lindsey Graham, a South Carolina Republican who has worked with Democrats on possible energy legislation. "If we stop them (the rules), are we going to do anything?"

"This is going to be the great hypocrisy test," said Sen. John Kerry, D-Mass., cosponsor of a major clean energy proposal. He asked whether those demanding that Congress act first would actually vote for change.

There were other disputes about the consequences of the Murkowski resolution. EPA Administrator Lisa Jackson and the White House said the resolution would force the EPA to rescind the standards for emissions from future-model cars and light trucks it came up with earlier this year with the Transportation Department. The result, she said, would be a need for the country to consume an extra 455 million barrels of oil.

Murkowski and others countered that Transportation has long been able to set fuel efficiency standards without the help of the EPA.

Jackson also denied the argument of critics that the EPA rules would impose devastating costs on small businesses and farmers, resulting in major job losses. The EPA added a provision that exempts small sources of pollution from the regulations for six years.

The bill is S.J. Res. 26.

Online:
Congress:http://thomas.loc.gov.

**Senate votes on blocking EPA greenhouse gas regs (*Wichita Eagle*)**

**Story also appeared: *Fort Worth Star Telegram, Atlanta Journal Constitution, Newsday, Charlotte Observer, Sacramento Bee, Palm Beach Post, Star Tribune, Lexington Herald Leader, Newsday***

Posted on Thu, Jun. 10, 2010
WASHINGTON - In the absence of congressional action on climate change, the Senate is heading toward a much-watched vote on whether the Obama administration should be allowed to go ahead with regulations curtailing greenhouse gas emissions from power plants and other major polluters.

The Republican-led measure coming to a vote late Thursday would stop the Environmental Protection Agency from carrying out rules to regulate carbon and other greenhouse gases under the Clean Air Act.

At least four Democrats have indicated their support for the legislation, and the vote is expected to be close. The measure will produce the most important vote this year on the climate change issue and is seen as a test of where lawmaker sentiments lie.

The White House on Tuesday said President Barack Obama would be advised to veto the bill if it ever reaches his desk. The bill, it said, "would undermine the administration's efforts to reduce the negative impacts of pollution and the risks associated with environmental catastrophes, like the ongoing BP oil spill."

The sponsor of the legislation, GOP Sen. Lisa Murkowski from oil-rich Alaska, said she was "flabbergasted" by the effort to link her bill to the Gulf disaster, saying her intent was to stop bureaucratic usurping of congressional authority.

"You either support the Congress setting the policy on climate change or you support the EPA in their capacity as a regulatory agency setting policy," she said.

Also at issue is how the legislation would affect the Obama administration's tough new emission standards for the auto industry. EPA Administrator Lisa Jackson said Tuesday that it would "gut EPA's authority in the clean cars program," increasing oil consumption by 455 million barrels over the lifetime of the newly regulated vehicles.

Murkowski challenged that, saying the Transportation Department has for three decades had the ability to set emission standards, and the EPA has a limited role in fuel economy standards.

The senator also argued that the EPA rules would impose too heavy a burden on small

businesses and farmers, resulting in job losses. Jackson countered that small sources of pollution will be exempted from the rules, set to go into effect in January, for six years.

"I know that the local Starbucks and the backyard grill are no places to look for meaningful CO2 reductions," she said.

Despite White House prodding and the refocusing on the energy issue with the BP oil spill, it is unclear whether the Senate has the capability to come up with a clean energy bill this year that can muster the 60 votes needed for passage.

In that light, said Sarah Saylor, senior legislative representative of the environmental group Earthjustice, Thursday's vote is "a distraction from the real task at hand before the Senate to find a way forward toward a sustainable and prosperous clean-energy future."

Second, she said, "it is a test," showing which senators are on the side of the fossil fuel industry.

But Democratic Sen. Jay Rockefeller from the coal state of West Virginia, said Tuesday he was siding with Murkowski because "I believe we must send a strong message that the fate of West Virginia's economy, our manufacturing industries and our workers should not be solely in the hands of EPA."

The EPA actions grew out of a 2007 Supreme Court ruling that carbon dioxide and other greenhouse gases could be regulated under the Clean Air Act if it were shown that such gases endanger health.

Determining that global warming did pose a long-term danger to health, the EPA has issued standards requiring large polluters to reduce the amounts of greenhouse gases they release into the air.

The bill is S.J. Res. 26

**Advisers Urge New EPA Task Forces To Coordinate Nitrogen Research (*Inside EPA*)**

EPA's science advisers are urging the agency to create both intra- and inter-agency task forces to coordinate research, monitoring and management in a new integrated approach for addressing excess nitrogen in the environment, which the advisers say can pose a threat to human health and the ecosystem and which some environmentalists have identified as the next major pollutant to address after carbon.

The Science Advisory Board's (SAB) Integrated Nitrogen Committee held a June 8 conference call to discuss a draf letter and report they plan to send to EPA Administrator Lisa Jackson about the impacts and possible management of so-called reactive nitrogen, which is nitrogen that changes chemical forms and cycles through different environmental media. Relevant documents are available on InsideEPA.com.

Human activities such as crop fertilization and combustion of fossil fuels put five times more reactive nitrogen into the environment than natural processes, and this excess nitrogen can have adverse impacts on human health, agriculture, forests, aquatic ecosystems, and climate change, according to the draft SAB letter.

While EPA and other federal and state agencies have implemented media- and pollutant-specific programs that have reduced the impacts of nitrogen, the letter says that agencies need to adopt multi-media and adaptive approaches that allow regulators to target the most effective points in the system for reductions.

As a result, the group recommends that EPA form an intra-agency task force to study the effects of nitrogen on the environment, the most relevant monitoring requirements and the most efficient and cost-effective ways to reduce reactive nitrogen, according to the draft letter. The group also recommends that EPA convene an inter-agency task force to coordinate federal programs that manage reactive nitrogen.

EPA should also adopt an integrated policy "that recognizes the complexity and trade-offs associated with the nitrogen cascade," and adopt a framework that tracks and manages nitrogen as it goes through multiple ecosystems and media, the draft letter says.

The report outlines ways to cut reactive nitrogen in the environment by 25 percent in the next five to 10 years, including improved nitrogen uptake by crops, controls of emissions of oxides of nitrogen, decreased loss of reactive nitrogen from animal feeding operations and decreased discharges from point sources and urban areas, the draft letter says.

One environmentalist told the panel when it started meeting back in 2008 that addressing excess nitrogen in the environment is the next major campaign after addressing carbon emissions."The widespread ecological effects of nitrogen will become the most important environmental issue in the coming decade, just as climate change has become the most pressing environmental issue right now," the Environmental Defense Fund's David McNaught said.

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

**Move to curb EPA action on emissions is premature (*Washington Post*)**

Thursday, June 10, 2010; A16

SENATORS SEEM to have done all they can this year could to avoid acting on the issue of climate change. Until Thursday, perhaps, when Sen. Lisa Murkowski (R-Alaska) and 40 others will move to limit, by means of a rarely used "disapproval resolution," the Obama administration's authority to cut greenhouse gas emissions.

Ms. Murkowski wants to block the Environmental Protection Agency next year from enforcing carbon emissions rules, based on the agency's authority to regulate pollutants under the Clean Air Act. She and many of her colleagues worry that the EPA will command power plants and other "stationary sources" to adopt expensive carbon-reduction measures that government regulators favor. Businesses will face higher costs. So will consumers. Neither will get rebates or other assistance to ameliorate the sting of those costs. Ms. Murkowski says that she wants Congress to design a more efficient emissions-reduction policy.

We agree. And the next logical step is to insist that Congress pass a bill that establishes a price on carbon and rebates the proceeds to consumers, which would be cheaper and more predictable than EPA regulation alone. Instead, Ms. Murkowski favors eliminating Plan B -- EPA regulation -- before it's clear that Plan A -- passing a serious climate bill -- will proceed. Plan B isn't the best solution; that's why it's Plan B. But, if designed carefully, it would at least begin to scale back America's greenhouse-gas emissions, a job that it is critical to start as soon as possible. And it would keep pressure on lawmakers to pass climate legislation.

If Congress approves a real climate bill, there can and should be a legitimate debate about the role of EPA regulation in a broader carbon-cutting effort. Until then, attempting to strip the agency of its authority to regulate is premature.

**Bee's stance favors more taxes (*Sacramento Bee*)**

Re "As spill spreads, Congress weighs bill to boost consumption of oil" (Editorial, June 6): Predictably, The Bee has jumped upon the tragedy in the Gulf of Mexico to advocate using the **EPA** to impose devastating cap and trade restrictions on our economy. The Bee attacks Sen. Lisa Murkowski's Senate Joint Resolution 26 – and those of us who support it – which forbids the **EPA** from doing so without a vote of Congress.

Let's be clear on what The Bee is advocating: crushing new taxes and restrictions on energy consumption that are estimated to cost an average family between $1,500 and $3,100 in higher energy prices, and costing the nation's economy more than 1 million jobs each year.

The Bee is right in one respect: artificially driving gasoline and electricity costs through

the roof will indeed reduce consumption.

But The Bee is dead wrong to use the gulf tragedy as an excuse to crush the American economy with sky-high energy prices or to shut down American oil production.

If The Bee were serious about reducing our dependence on offshore production or foreign imports, it would be vigorously supporting lifting restrictions on onshore oil production, shale oil, coal, hydroelectricity and nuclear power, which would have the added benefit of actually lowering our energy bills and improving our economy.

– Rep. Tom McClintock, R-Elk Grove

Article published June 10, 2010

**Thwarting the EPA (*Toledo Blade*)**

THE horrendous oil spill in the Gulf of Mexico reminds Americans of the problems and costs associated with the nation's addiction to petroleum as an energy source. At this of all times, it would take an especially tone-deaf member of Congress to push a resolution that caters to Big Oil.

Unfortunately, Sen. Lisa Murkowski (R., Alaska) appears up to the task. Her resolution, which is scheduled for a Senate vote today, would disapprove - basically, veto - the Environmental Protection Agency's science-based finding last December that greenhouse gas emissions endanger public health and welfare.

Senator Murkowski insists she is committed to a careful evaluation of options to address climate change. But she says she opposes the EPA "endangerment finding" for carbon dioxide and five other greenhouse gases because it threatens a host of "command-and-control directives, rather than market-based decisions."

Cynics might say she opposes the EPA action because it might actually achieve something. Realists can say that reckless market-based decisions contributed to the Gulf oil spill.

If the resolution succeeds, it would deal a major blow to the Clean Air Act. It also would call into question whether this nation will ever contain greenhouse gas emissions.

EPA Administrator Lisa Jackson told a House subcommittee in April that if Congress were to nullify the EPA's finding of the harmful effects of greenhouse gas pollution, it would remove the legal basis for regulating emissions of those gases from new vehicles.

The EPA projects that by 2022, its greenhouse-gas standard will save about 13.6 billion gallons of gasoline and diesel fuel that year alone, decreasing America's oil imports by $41.5 billion and reducing emissions by 138 million metric tons.

This is no time to indulge Big Oil. Ohio's and Michigan's senators, and their colleagues, should reject this irresponsible resolution.

**AIR**
==========

**Texas and E.P.A. Clash Over Air Pollution (*New York Times*)**

June 11, 2010 Friday
Late Edition - Final
Section A; Column 0; National Desk; Pg. 22
By JAMES C. McKINLEY Jr.
HOUSTON -- For 16 years, a showdown has been brewing between Texas and federal environmental officials over the state's unique way of regulating industrial air pollution, which many critics complain is lax and has led to some of the dirtiest air in the country.

Now, President Obama's new regional director of the Environmental Protection Agency in Dallas has forced the issue. The new environmental sheriff is Al Armendariz, a 40-year-old chemical engineer from El Paso, and two weeks ago, he took the unprecedented step of barring Texas from issuing an operating permit to a refinery in Corpus Christi.

The state's rules for granting permits have long violated the Clean Air Act, Mr. Armendariz said, and he made it clear that the agency would do the same thing in about 39 other cases, among them several major refineries, unless Texas changed its system.

"The State of Texas has to let me know if they can issue permits that are consistent with federal requirements, and if they can't, then we will," he said.

Since Mr. Armendariz's announcement, a political donnybrook as broken out.

Gov. Rick Perry, who has been in attack mode against all things Washington, warned that jobs would be lost. At a warehouse in Deer Park, just a few blocks from the string of refineries along the Houston shipping canal, a line of blue-collar workers recently stood stiffly behind Mr. Perry, a Republican seeking his third full term, as he accused federal environmental regulators of persecuting Texas.

The governor suggested that the Obama administration must have political motives for cracking down on the state.

"Washington just isn't happy unless they have total control of everything," he said, playing a note that pleases his conservative constituents. "This administration seems to think it's their way or the highway."

But, the Democratic nominee for governor, the former mayor of Houston, Bill White, has accused Mr. Perry of mismanaging the state environmental agency and of losing control of a vital authority.

Environmentalists have also fired at the governor, charging that the Texas Commission on Environmental Quality has become a toothless lapdog of the industry it regulates.

But beyond the finger-pointing and partisan posturing is a dispute between Texas and Washington over air quality that stretches back through the Bush and Clinton administrations.

At issue is the state's practice of "flexible permitting." The Clean Air Act requires polluters to limit emissions for several key pollutants from each smokestack, or other source inside a plant or refinery. But since 1994, Texas has instead given about 140 plants -- among them the largest refineries in the state -- a general ceiling for pollution from all sources inside a plant.

Mr. Armendariz, in an interview, said the scheme made it extremely difficult for federal regulators to figure out if a plant was polluting or not. If they find one source of pollution at a refinery, for instance, they must balance it against hundreds of others. "It's an impossible situation," he said. "These permits are unenforceable."

The system has other advantages for industrial polluters, he said. Many have managed to expand their plants without including the controls required on new sources of pollution by getting the state to raise the cap for the whole complex.

There is also hard evidence that these plants produce more toxins for each barrel of oil or chemicals they process than similar refineries and factories in other states, he said.

Other critics say a flexible permit means a single stack can be spewing a toxic chemical at illegal levels as long as the overall pollution cap is met. And if that source is close to the edge of a refinery, for instance, it can have devastating effects on people living nearby.

Some environmentalists also argue that the overall pollutions limits in the permits are too high, making it easy for the industry to meet them and giving polluters room to exceed limits for certain pollutants on certain days without facing the consequences.

"They never exceed the limits," said Jen Powis, a lawyer with the Lonestar chapter of The Sierra Club. "The T.C.E.Q. really gave them this inflated bubble for the entire site."

No other state uses this system, which is beloved by many business leaders here, and the E.P.A. under three presidents has refused to sanction it. Even President George W. Bush's regional administrator, who was not known for being tough on the oil industry, challenged the permitting program in 2002, on similar grounds as Mr. Armendariz.

State officials, however, point out that under their regimen, Texas has seen steep drops in air pollution, larger than the national average. Ozone levels have dropped 22 percent since 2000, and nitrogen oxide levels are down 46 percent, they say.

"The proof is in the pudding," said Mark R. Vickery, the executive director of the environmental quality commission. "The air has gotten tremendously cleaner."

No one disputes that the situation has improved in recent years, but environmentalists say the gains have come in spite of the state's loose regulation of industry, not as a result of state pressure. They say lawsuits brought by the federal government and environmental groups account for most of the gains, along with the national trend toward cleaner fuels and more energy-efficient cars.

Besides, these critics argue, Texas started out with such high levels of pollution in the 1990s that it was not difficult to cut emissions significantly. "Better does not equal good," said Matthew Tejada, the executive director of Air Alliance Houston, an environmental group. "We still do not have clean air in Texas."

Elena M. Marks, a former director of health and environmental policy for the City of Houston, said the national emissions figures showed that the amount of carcinogens released into the air for each barrel of oil processed in Houston's refineries was higher than the average at refineries in other states, even within the same company.

Ms. Marks, who now works for Mr. White's campaign, said Houston became so disenchanted with the state's monitoring that it bought its own mobile laboratory to test for pollutants. Simply by publicizing the illegal levels of emissions it found, the city shamed oil and chemical companies into halving benzene and butadiene emissions over the last six years, she said.

Houston was not the only entity upset with the current system. Saying they needed more regulatory certainty, the Texas Oil and Gas Association sued the E.P.A. in 2008 in an effort to force the Bush administration to make a final decision on the flexible permits.

Now, however, Mr. Armendariz has made it clear he intends to force the state's hand this summer. "The time for delay and for partnership and for compromise is very quickly coming to an end," he said, "and we have to get the Clean Air Act implemented in the State of Texas."

This is a more complete version of the story than the one that appeared in print.

URL: http://www.nytimes.com

June 10, 2010

**Senate rejects effort to block EPA greenhouse gas rules (*USA TODAY*)**

06:11 PM
Senate Democrats rejected a GOP-led effort Thursday to strip the Environmental Protection Agency of authority to regulate greenhouse gases.

Sen. Lisa Murkowsk, R-Alaska, backs a proposal to block the Environmental Protection Agency from regulating greenhouse gas emissions.
By Mark Wilson, Getty Images
The Senate voted 53-47 against a motion to proceed to a resolution by Sen. Lisa Murkowski, R-Alaska, that would bar the EPA from issuing such climate-changing regulations under the Clean Air Act.

* Follow Green House on Twitter

"We need to be growing our economy, not paralyzing it," Murkowski said on the Senate floor, warning that regulations could kill jobs and increase costs, reportsThe Hill.

Her resolution, supported by business groups such as the U.S. Chamber of Commerce and the National Petrochemical and Refiners Association, also won the backing of six Democrats: Indiana's Evan Bayh, Louisiana's Mary Landrieu, Arkansas' Blanche Lambert Lincoln and Mark Pryor, Nebraska's Ben Nelson and West Virginia's Jay Rockefeller.

The White House threatened to veto the measure and environmental groups such as the Wilderness Society opposed it. They argue that the EPA has the power to regulate harmful carbon emissions.

Speaking for them was Sen. Barbara Boxer, D-Calif., who's in a tough re-election battle with GOP candidate and former Hewlett Packard CEO Carly Fiorina. A recent Fiorina ad belittled Boxer's concern for climate change by calling it "the weather."

"Big oil backs the Murkowski resolution. So whose side are we on?" said Boxer as she displayed photos of birds covered with oil leaking from the massive spill in the Gulf of Mexico, according to The Hill. Boxer chairs the Senate Environment and Public Works Committee.

The American Public Health Association applauded the Senate's vote, saying current levels of the six key greenhouse gases cited by EPA pose significant public health threats, including increased likelihood of more frequent and intense heat waves and degraded air quality.

"Climate change is as much an environmental issue as it is a leading public health concern," said the group's executie Georges C. Benjamin, in a statement.

Senate Majority Leader Harry Reid, D-Nev., has indicated he wants a broad energy bill on the floor next month, but Democrats are struggling to craft one that will pass. Last month, Sens. John Kerry, D-Mass., and Joe Lieberman, I-Conn., proposed a sweeping climate change bill, but it's yet to attract GOP support.

**EPA changes may force strict permits on Texas plants (*Houston Chronicle*)**

By PEGGY FIKAC Austin Bureau
June 10, 2010, 2:44PM
AUSTIN – The battle over Texas' air quality took another turn today, when the U.S. Environmental Protection Agency proposed a program for companies to convert the flexible permits issued by the state to standard permits regulating pollution.

"EPA's responsibility is to ensure that the program in Texas complies with the public-health protections provided for all Americans in every other state under (the) nation's Clean Air Act. EPA is taking another important step to address deficiencies in the state's air operating permit program by proposing an audit program to help companies with Texas flexible permits obtain an air permit that meets the protections of the Clean Air Act," the federal agency said on its Web site in announcing the program.

The program will be published in the Federal Register later in June, launching a 15-day public comment period.

Flexible permits set an air emissions cap for an entire facility but allow leeway for various units within that facility. Federal regulators and environmental groups say that type of permit, never federally approved, hinders enforcement of clean-air rules.

Federal regulators and environmentalists say the permits hamper regulation of air quality. GOP Gov. Rick Perry and businesses have defended the system. Perry has struck back fiercely at the federal government, saying the EPA is cracking down on Texas despite what he describes as its program's success and without good reason.

The Texas Commission on Environmental Quality said in a statement, "While we support innovative approaches, we do have concerns with the efficiency of the audit concept and how it would overlap the state's permitting processes. We look forward to studying the proposal and seeing subsequent comments. "

**EPA offers option to firms worried over compliance (*Houston Chronicle*)**

Companies could agree to outside audit in exchange for civil protection
By PEGGY FIKAC
AUSTIN BUREAU
June 10, 2010, 10:03PM
To see the EPA's proposal, visit www.epa.gov.
AUSTIN — The U.S. Environmental Protection Agency on Thursday offered an option for companies worried about their pollution permits as the state and federal government battle over regulation of Texas' air quality.

Under the EPA's proposal, companies that hold controversy-stirring flexible permits could voluntarily undergo a third-party audit to see if they're complying with the Clean Air Act and make corrections as needed, said Al Armendariz, the agency's regional administrator.

If problems are found — such as a facility modification that should have gone through the permitting process — companies undergoing the audit would be given protection from civil prosecution by the agency, he said. If excessive emissions are identified, companies could be required to take steps, such as investing in new pollution control equipment.

“This is not something that's going to be required of companies in Texas. What we've done is put together what we believe is a tool that companies can use to fix their permits and to get them consistent with the Clean Air Act,” Armendariz said. He said it was an effort to help companies “get out of the uncertainty they're all under.”

The program will be published in the Federal Register later this month, launching a 15-day public comment period. The EPA has posted the proposal on its Web site.

Officials at the Texas Commission on Environmental Quality expressed concern over the proposal.

“While we support innovative approaches, we do have concerns with the efficiency of the audit concept and how it would overlap the state's permitting processes. We look forward to studying the proposal and seeing subsequent comments,” the agency said in a statement.

Under the Clean Air Act, states must develop plans to meet federal air quality requirements aimed at protecting public health. EPA officials have been meeting with representatives of the TCEQ, industry and environmental groups to discuss what the federal agency calls deficiencies with the state's air emission permits. It barred one state rule earlier this year, and it is due to formally act on Texas' so-called flexible permits by June 30.
Flex permits at issue

A flexible permit sets a limit on air emissions for an entire facility, but allows leeway for various units within that facility. Federal regulators and environmental groups say that type of permit, never approved by the EPA, hinders enforcement of clean-air rules.

The EPA, which also has concerns over other aspects of Texas' permitting program, took over the issuance of an operating permit for a Corpus Christi refinery last month and has objected to 39 others. There are more than 120 companies with flexible permits or pending permits.

Companies that go through the proposed audit process still would have their permits issued by the state, rather than the federal government, Armendariz said. The audit could take a year for a large refinery or chemical plant, and the company in the meantime would continue operating with its existing permit, he said.

GOP Gov. Rick Perry and businesses have defended the current system.

The action is “part of the Obama administration's ongoing efforts to eliminate our state's successful 16-year-old clean air program,” said Lucy Nashed, a spokeswoman for Perry.

“We will continue to fight the EPA's efforts to extend federal control over the state's authority, undermine proven air quality success and cost thousands of Texans their jobs,” Nashed said.

Stephen Minick of the Texas Association of Business said his group believes Texas' current laws and rules are consistent with federal law. He said he is concerned that the EPA wants to use the audit process to find problems to support a negative view of the flexible-permit program.

Voicing concerns

“I fear the EPA and the federal government are using their position as the arbiter, and the agency with the ultimate authority, not to rule effectively on whether the program is legally sufficient, but to … quite frankly, dig into individual permits and see if they can find issues to support the contentions that the program is inadequate or ineffective or inconsistent,” Minick said.

Sierra Club in favor

If the EPA believes a company has circumvented the law, Minick said, it should look into that company, but not “cast aspersions on the entire state program.”

“They've decided to hang a sword over the head of every operating facility in Texas,” he said.

The Sierra Club's Jennifer Powis said the audit program makes sense.

The Sierra Club “encourages industry to take advantage of this opportunity to formally demonstrate that these flex permits abide by federal law,” Powis said in an e-mail.

“This is an opportunity for third-party engineers to review these permits and demonstrate, frankly, which side is right,” she said. “If there are no emission violations, then industry shouldn't be too concerned …”

pfikac@express-news.net

June 10, 2010

**Senate Rejects Republican Effort to Thwart Carbon Limits (*New York Times*)**

By CARL HULSE
WASHINGTON — The Senate on Thursday defeated a Republican-led effort to prevent the Environmental Protection Agency from curbing greenhouse gases as lawmakers road-tested arguments for a future fight over climate change legislation.

The Senate voted 53-47 to reject an attempt by Senator Lisa Murkowski, Republican of Alaska, to block the E.P.A. from imposing new limits on carbon emissions based on its 2009 finding that such gases from industry, vehicles and other sources represent a threat to human health and the environment.

Ms. Murkowski and others, including six Democrats, contended that the E.P.A. was engaging in a bureaucratic power grab and usurping Congressional authority with regulations that would stifle the economy and kill jobs.

“The sweeping powers being pursued by the E.P.A. are the worst possible option for reducing greenhouse gas emissions,” said Ms. Murkowski, who tried to thwart the agency’s action using a rarely employed procedure called a resolution of disapproval.

The resolution of disapproval, created in a 1996 law, is a vehicle to allow Congress to overturn an executive branch action and is not subject to filibuster in the Senate. It is seldom used, however, due to the likelihood of a veto.

Democratic opponents of the Murkowski proposal said its backers were protecting oil companies and other industrial interests at the expense of public welfare and were ignoring science that substantiated the hazards of greenhouse gas emissions. They said Ms. Murkowski and her allies wanted to prevent the E.P.A. from taking action while simultaneously stalling Congressional action, essentially protecting the status quo.

“This is about delay in changes in our energy policy,” said Senator Sheldon Whitehouse, Democrat of Rhode Island, who said many of Ms. Murkowski’s allies “want

nothing to do with comprehensive clean energy and climate legislation. What they want is the E.P.A. to go away."

The fight was mainly symbolic because the prospects for the resolution were bleak even had the Senate passed it. It would have then required a majority vote in the House and the approval of President Obama, who has already threatened to veto it.

But it provided a showcase for a Senate fight over global warming as well as an indicator of where lawmakers could be expected to come down on legislation aimed at carbon emissions. The near-even division among lawmakers showed that a 60-vote supermajority on climate change legislation remains elusive.

Senate leaders and the White House are continuing to explore whether to push energy legislation on the Senate floor before the midterm elections this November. Senator Harry Reid, the Nevada Democrat and majority leader, was meeting Thursday afternoon with the chairmen of the committees with jurisdiction over energy issues to plot strategy.

Leading Democrats see the threat of E.P.A. action as an effective way to keep pressure on Congress to consider energy legislation and as a ready alternative if the House and Senate are not able to come to terms on an energy measure.

Supporters of the plan to block the E.P.A. said they were trying to stop a backdoor attempt by the Obama administration to regulate carbon emissions without waiting for Congress to weigh in. They said the E.P.A. approach would produce little environmental reward while putting the United States at a severe disadvantage to nations that were not imposing such controls on their own industries.

"It would be stupid for us to do this now when the rest of the world is not coming along at all," said Senator Tom Coburn, Republican of Oklahoma. "Even if it is the right thing to do, now is not the time to do it."

Though Mr. Coburn said the case for global warming is not settled science, several other Republicans said they accepted the scientific assessment that climate change is occurring. They said their main reason for trying to rein in the E.P.A. was concern over handing such far-reaching regulatory power on emissions to an executive agency.

Given that several backers of Ms. Murkowski's plan said they believed climate change was a reality, senators advocating a broad energy approach that would try to address global warming said defeat of the plan to strip the E.P.A. of regulatory authority over greenhouse gases should provide momentum to their legislative efforts.

"Climate change is happening," said Senator Joseph I. Lieberman, an independent from Connecticut who is a sponsoring a main climate change bill with Senator John Kerry, Democrat of Massachusetts. "The science is convincing and the current pattern of energy consumption is just making a bad problem worse."

**Move to block EPA regulation rejected (*Denver Daily News*)**

Udall, Bennet vote to defeat measure that would have blocked the EPA from regulating CO2
Peter Marcus, DDN Staff Writer
Friday, June 11, 2010
Colorado's two U.S. senators yesterday voted against controversial legislation that would have prevented the Environmental Protection Agency from imposing carbon dioxide-reduction controls.

U.S. Sens. Mark Udall and Michael Bennet, both Democrats, joined in defeating the bill offered by Alaska Republican Senator Lisa Murkowski. The bill died in a procedural vote of 47-53.

State Republicans yesterday had urged the two senators to vote for the legislation, but their pleas fell short. Concerns have been raised that allowing the EPA next year to impose carbon dioxide-reduction controls on large factories and electric power companies could cost jobs and hurt the energy industry, an issue always relevant in Colorado where there is a large carbon-based industry.

"We're not talking about a knee jerk reaction to an oil spill in the Gulf," State Sen. Kevin Lundberg, R-Berthoud, said yesterday in a statement. "We're talking about the EPA taking authority they don't have and declaring carbon dioxide a pollutant, which is absurd."

The debate gained steam following the Gulf oil spill. Critics of Murkowski's legislation said the oil spill is an indication that there needs to be increased government regulation, not less.

The defeat could give new life to an effort to pass a broad energy and climate bill in the Senate. Udall, a supporter of comprehensive climate change legislation, said yesterday during a speech on the Senate floor that the Gulf oil spill is an indication that there needs to be energy reform in America.

"If ever there was a wake-up call for this body, then surely the horrifying images from the marshes of Louisiana to the sickening plume of oil cascading into the blue waters of the Gulf should provide it," Udall said in his speech. "Time and again, we have seen opportunities to improve our energy future passed up because of our addiction to fossil fuels, our tendency to put off difficult choices, or our habit of letting partisanship get in the way."

Meanwhile, Democratic U.S. Senate candidate Andrew Romanoff, who is challenging Bennet in a primary election, called yesterday for a national renewable energy standard

similar to one that currently exists in Colorado. Romanoff is calling for a renewable energy standard of 50 percent by 2030. Colorado's standard is 30 percent by 2020.

"We can speed the day when we no longer have to spoil our oceans or foul our skies or spill our blood just to power our planet," said the former Colorado House Speaker in a speech yesterday at a Golden-based bio-fuels company.

Environmentalists yesterday applauded Bennet and Udall for contributing to the defeat of Murkowski's measure. Environmental groups were concerned that the measure would have voided a carefully negotiated agreement between the Obama administration and the auto industry last year that allowed for the EPA to regulate state-level emissions. Concerns were also raised that the measure would have increased Colorado and the nation's dependence on oil.

"This bailout would have increased Colorado's oil dependence, and given Big Oil millions that belong in Coloradans' pocketbooks," said Gavin Clark, with Environment Colorado. "This bill was an unprecedented attack on the Clean Air Act protections that have cost-effectively cut dangerous pollution to safeguard our health and environment for 40 years, while also driving technological innovation," said Clark. "With oil spewing into the Gulf and global warming impacts becoming more noticeable every year, we need to be adding new measures to cut pollution — not undercutting the protections we already have."

**Brown, Kerry on opposite sides of emissions vote (*BusinessWeek*)**

BOSTON
Massachusetts Sens. Scott Brown and John Kerry have split on a resolution to block the Environmental Protection Agency from regulating greenhouse gases from automobiles and industrial facilities.

Brown, a Republican, said Thursday he would vote for the proposal by Sen. Lisa Murkowski, R-Alaska. It seeks to undo a finding that allowed the federal environmental agency to regulate the gases.

The resolution was rejected by the Senate on Thursday.

"Now is not the time to further increase energy prices, add to administrative costs for businesses, and create massive new layers of government bureaucracy," Brown said in an op-ed column published in the Cape Cod Times.

"There are ways to renew our national commitment to cleaner sources of energy without breaking the back of our economy," he said "That includes encouraging greater energy efficiency in our homes, vehicles and offices. It means significant investment in

developing additional sources of natural gas and allowing for new nuclear power generation."

Kerry, a Democrat, delivered a floor speech reiterating his opposition to it.

"Why is it that the United States of America is more dependent today on foreign oil than we were before September 11?" Kerry asked. "Because we haven't done anything -- nothing -- to reduce our dependence on foreign oil. We have an opportunity to do it now. This is about that."

The White House had threatened a veto if the resolution passed.

**Obama's greenhouse gas rules survive Senate vote (*Atlanta Journal Constitution*)**

**Story also appeared: *Charlotte Observer, Los Angeles Times***

WASHINGTON — In a boost for the president on global warming, the Senate on Thursday rejected a challenge to Obama administration rules aimed at cutting greenhouse gas emissions from power plants and other big polluters.

The defeated resolution would have denied the Environmental Protection Agency the authority to move ahead with the rules, crafted under the federal Clean Air Act. With President Barack Obama's broader clean energy legislation struggling to gain a foothold in the Senate, the vote took on greater significance as a signal of where lawmakers stand on dealing with climate change.

"If ever there was a vote to find out whose side you are on, this is it," said Sen. Barbara Boxer, D-Calif., chairman of the Environment and Public Works Committee.

The vote was 53-47 to stop the Senate from moving forward on the Republican-led effort to restrain the EPA.

Sen. Joe Lieberman, I-Conn., predicted the vote would "increase momentum to adopt comprehensive energy and climate legislation this year."

But Obama still needs 60 votes to advance his energy agenda, and Democrats don't have them yet. Sen. James Inhofe, R-Okla., said the vote made clear that a majority in the Senate back either a delay or an outright ban on "the Obama EPA's job-killing, global warming agenda."

Republicans, and the six Democrats who voted with them to advance the resolution, said Congress, not bureaucrats, should be in charge of writing climate change policy. They said the EPA rules would drive up energy costs and kill jobs.

But Democrats, referring frequently to the Gulf oil spill, said it made no sense to undermine efforts to curtail greenhouse gas emissions and reduce dependence on oil and other fossil fuels.

The effort to block the rules "is an attempt to bury our heads in the sand and ignore reality," said Sen. Tom Udall, D-N.M.

Obama said the vote was another reminder of the need to pass legislation to reduce the country's reliance on oil. The White House had issued a veto threat this week, saying the resolution would block efforts to cut pollution that could harm people's health and well-being.

"Today the Senate chose to move America forward, towards that clean energy economy — not backward to the same failed policies that have left our nation increasingly dependent on foreign oil," he said.

The EPA crafted standards on greenhouse gas emissions by big polluters after the Supreme Court ruled that those emissions could be considered a danger to human health and thus could be regulated under the Clean Air Act. The rules are to go into effect next January.

The poor chances of the anti-EPA measure overcoming a veto and becoming law did not deter fierce debate.

Senate Republican leader Mitch McConnell of Kentucky called the new regulations a "blatant power grab by the administration and the EPA." With a broad energy bill unlikely to pass this year, "the administration has shifted course and is now trying to get done through the back door what they haven't been able to get done through the front door," he said.

But Senate Majority Leader Harry Reid, D-Nev., called the blocking measure, "a great big gift to big oil" that would "increase pollution, increase our dependence on foreign oil and stall our efforts to create jobs" in clean energy.

White House press secretary Robert Gibbs said Thursday that he anticipated the Senate taking up a broader energy bill in the next several weeks "and hopefully we can get something done before Congress adjourns this year."

The sponsor of Thursday's resolution, Republican Sen. Lisa Murkowski of oil-rich Alaska, said her intent was to protect the authority of Congress, not the interests of the oil industry. "It should be up to us to set the policy of this country, not unelected bureaucrats within an agency," she said.

Her Democratic allies used similar arguments. "The regulatory approach is the wrong way to promote renewable energy and clean energy jobs in Arkansas and the rest of the

country," said Sen. Blanche Lincoln of Arkansas, who faces a difficult re-election campaign this summer.

Sen. Jim Webb, D-Va., who opposed the resolution, agreed that Congress should not cede its authority to the executive branch but expressed concern the measure would reverse progress made in such areas as vehicle emissions. He said he supported a bill that would suspend EPA's regulation of greenhouse gases from stationary sources for two years.

Murkowski, too, said Congress should be working harder to come up with an energy bill. The issue was whether a consensus was possible this year.

"Here's the real rub," said Sen. Lindsey Graham, a South Carolina Republican who has worked with Democrats on possible energy legislation. "If we stop them (the rules), are we going to do anything?"

"This is going to be the great hypocrisy test," said Sen. John Kerry, D-Mass., cosponsor of a major clean energy proposal. He asked whether those demanding that Congress act first would actually vote for change.

There were other disputes about the consequences of the Murkowski resolution. EPA Administrator Lisa Jackson and the White House said the resolution would force the EPA to rescind the standards for emissions from future-model cars and light trucks it came up with earlier this year with the Transportation Department. The result, she said, would be a need for the country to consume an extra 455 million barrels of oil.

Murkowski and others countered that Transportation has long been able to set fuel efficiency standards without the help of the EPA.

Jackson also denied the argument of critics that the EPA rules would impose devastating costs on small businesses and farmers, resulting in major job losses. The EPA added a provision that exempts small sources of pollution from the regulations for six years.

The bill is S.J. Res. 26.

Online: Congress: http://thomas.loc.gov.

**EPA goes to industry to fix faulty Texas permits (*Associated Press*)**

By RAMIT PLUSHNICK-MASTI (AP)
HOUSTON — The U.S. Environmental Protection Agency offered on Thursday to work directly with Texas' petrochemical industry in an effort to fix permits it says have long violated the Clean Air Act.

The EPA's offer is the latest in a drawn-out, public and politicized battle between the federal agency and Texas. The dispute evolved last month from a debate over pollution permitting into a pitched battle over states' rights, reaching the tipping point when the EPA threatened to remove Texas' permitting authority — a role traditionally filled by states.

The EPA made public on Thursday a proposed voluntary program that would allow the nation's largest refineries to hire independent auditors to correct the problem permits while guaranteeing them legal forgiveness should violations be found. The auditors would determine what the required emission limits should be in each unit of a facility. After the EPA approved the findings, Texas would be asked to include the limits in air and operating permits. A 10-day public comment period on the program began Thursday.

While the program aims to correct a complicated problem by allowing industry to work directly with the EPA, the program gives Texas a rubber stamp status, with the state simply approving requirements after they receive a federal nod.

The Texas Commission on Environmental Quality indicated it was not satisfied with the proposal.

"While we support innovative approaches, we do have concerns with the efficiency of the audit concept and how it would overlap the state's permitting processes," the state agency said in a statement, but declined to comment further.

Al Armendariz, the EPA's regional director, said the EPA discussed the program with state officials before going public. He said the concept was also intensively discussed with some of the country's largest petrochemical companies, who "don't like the uncertainty" of operating with permits the EPA believes violate federal law.

"We are going to work with industry to identify what the legally appropriate requirements should be and should have been all along," Armendariz said.

The EPA, he added, would welcome Texas' input in the program, including in reviewing the audits.

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

In meetings and telephone calls held in the last two weeks, it appeared Texas was finally moving to bring its program in line with federal regulation, Armendariz said.

Still, the EPA will likely officially disapprove the state's flexible permit program at the end of this month, and could still strip its permitting authority completely if it fails to comply with the Clean Air Act.

"To date, I still have not seen a single permit which addresses the major grounds for our objections," Armendariz said. "The final proof that the state of Texas is serious is when the state issues permits that are consisted with the Clean Air Act and they haven't done so yet."

**Sen. Brown: Don't let EPA regulate greenhouse gas (*Associated Press*)**

**Story also appeared: *Boston Herald***

By Associated Press | Thursday, June 10, 2010 | http://www.bostonherald.com | Local Politics

U.S. Sen. Scott Brown is backing a resolution to block the Environmental Protection Agency from regulating greenhouse gases from automobiles and industrial facilities.

Brown said he plans to vote for the proposal by Alaska Republican Sen. Lisa Murkowski that seeks to undo a finding that allowed the federal environmental agency to regulate the gases.

The resolution is up for a vote Thursday. Sen. John Kerry, a Democrat, opposes it.

Brown said he disagrees that giving the EPA the ability to regulate the emissions will help solve the country's energy problems.

The Massachusetts Republican called the carbon dioxide regulations "restrictive and damaging" and said they will drive up energy prices and make it harder for businesses to create new jobs.

The White House issued a veto threat if the resolution is passed.

**Senate backs Obama on EPA's CO2 authority (*San Francisco Chronicle*)**

Alan Blinder, Hearst Newspapers
Friday, June 11, 2010
(06-11) 04:00 PDT Washington - --

President Obama won a big victory Thursday when Democratic senators upheld the power of the Environmental Protection Agency to combat global warming by regulating greenhouse gases.
Supporters of the EPA's powers under the Clean Air Act garnered the votes of 53 senators while 47 senators - all 41 Republicans and six Democrats - backed the resolution by Sen. Lisa Murkowski, R-Alaska, to override the agency.
Murkowski contended that the issue was "whether Congress or unelected bureaucrats of EPA should set climate policy for this country."

The EPA, after designating greenhouse gases from such sources as automobiles and power plants as a danger to public health, has set new fuel economy rules for automobiles beginning with the 2012 model year. The Murkowski resolution sought to keep those regulations from going into force.

Senate Minority Leader Mitch McConnell, R-Ky., accused the Obama administration of "going around the legislative branch and imposing this massive job-killing tax on Americans through an unaccountable agency."

Obama praised the Senate's vote and said it kept the nation from going "backward to the same failed policies that have left our nation increasingly dependent on foreign oil." The White House earlier had threatened to veto the measure if it reached the president's desk.

The House passed a climate change measure last summer, but the Senate has not acted on the issue. Sens. John Kerry, D-Mass., and Joe Lieberman, independent-Conn., have introduced global warming legislation that faces uncertain prospects in the Senate.

The six Democrats who voted with the Republicans were Evan Bayh of Indiana, Mary Landrieu of Louisiana, Blanche Lincoln of Arkansas, Ben Nelson of Nebraska, Mark Pryor of Arkansas and Jay Rockefeller of West Virginia.

**Ill. senators back Obama on greenhouse gas rules (*Associated Press*)**

**Story also appeared: *Chicago Tribune***

Associated Press
3:00 AM CDT, June 11, 2010
WASHINGTON
Both of Illinois' U.S. senators backed the Obama administration in a vote on letting the Environmental Protection Agency restrict greenhouse gases.

The votes by Democrats Roland Burris and Dick Durbin mean the EPA can go forward with regulating gases that scientists say are contributing to global warming.

The Republican National Committee says that ultimately will hurt the Illinois economy.

The EPA's rules are to go into effect next January.

Senate Republicans wanted to halt that process, but the Senate voted 53-47 on Thursday to let the EPA continue.

**EPA goes to industry to fix faulty Texas permits (Associated Press)**

**Story also appeared: *Houston Chronicle***

By RAMIT PLUSHNICK-MASTI Associated Press Writer
June 10, 2010, 4:52PM
HOUSTON — The U.S. Environmental Protection Agency says it's working directly with Texas' petrochemical industry to fix permits that have long violated the federal Clean Air Act.

The agency is offering the nation's largest refineries tools to correct the problems and foster legal forgiveness.

A 10-day public comment period on the EPA's proposed independent auditing program begins Thursday. It allows industry to hire consultants to determine the emission limits of each unit. After the EPA approves the limits, Texas can include them in the permits.

The EPA's move is the latest in a protracted, public and politicized battle with Texas, and appears to remove much of the state's authority.

EPA regional director Al Armendariz says it appears Texas is trying to fix its air program.

**Hitachi Consulting Joins EPA Climate Leaders Industry-Government Program (*San Francisco Chronicle*)**

Reducing Carbon Emissions for Itself and Clients Supports Hitachi Ltd.'s Environmental Vision; Sustainability Practice Leader Todd Price to Address National A&D Sustainability Conference

As a part of its continued commitment to environmental improvement, Hitachi Consulting, the consulting and IT services company of Hitachi Ltd., today announced its participation in the U.S. Environmental Protection Agency's (EPA's) Climate Leaders program. By participating in Climate Leaders Hitachi Consulting emphasizes its pledge to reduce its corporate-wide greenhouse gas (GHG) emissions as part of Hitachi, Ltd.'s long-term goal of helping to reduce worldwide CO2 emissions.

“We commend Hitachi Consulting for their goals and look forward to working with them,” said EPA's Assistant Administrator for Air and Radiation, Gina McCarthy. “EPA's Climate Leaders program strives to be an instrumental part of responsible companies' sustainability efforts,” McCarthy said.

Climate Leaders is an EPA industry-government collaboration to develop comprehensive climate-change strategies. Companies commit to reducing impact on the global environment by completing a corporate-wide inventory of their greenhouse gas emissions based on a quality management system, setting aggressive reduction goals, and annually reporting progress to the EPA.

Todd Price, National Leader of the Hitachi Consulting Environmental Sustainability Solutions Practice, acknowledges the progress already made by Hitachi Consulting, in part by implementing SAP Carbon Impact to help measure and manage its sustainability efforts. Hitachi Consulting's global parent Hitachi, Ltd., has stated long-term environmental targets of becoming emission-neutral as a company by 2015 (“Vision 2015”) and helping to reduce global CO2 emissions in general by 100 million tons annually through Hitachi manufacturing efficiencies and more efficient use of Hitachi products by 2025.

“As a company we are honored to be accepted into this group of environmentally conscious companies, which are responding to the many challenges presented by reducing their overall impact on the environment,” Price said.

Price's experience and knowledge in the sustainability arena has secured him a role as presenter at the National Defense Industrial Association's Environment, Energy Security & Sustainability conference in Denver June 14-17, addressing audiences on:

Pragmatic Impact Reporting: Wednesday, June 16, 4:30 p.m.

Responding to EO 13514: Thursday, June 17, 10 a.m.

Follow Hitachi Consulting's news on sustainability at http://twitter.com/HitachiGreen.

About Hitachi Consulting Corporation

As Hitachi, Ltd.'s (NYSE: HIT) global consulting company, with operations in the United States, Europe and Asia, Hitachi Consulting is a recognized leader in delivering proven business and IT strategies and solutions to Global 2000 companies across many industries. With a balanced view of strategy, people, process and technology, we work with companies to understand their unique business needs, and to develop and implement practical business strategies and technology solutions. From business strategy development through application deployment, our consultants are committed to helping clients quickly realize measurable business value and achieve sustainable ROI.

Hitachi Consulting's client base includes 25 percent of the Global 100 as well as many leading mid-market companies. We offer a client-focused, collaborative approach and transfer knowledge throughout each engagement.

For more information, call 1.877.664.0010 or visit www.hitachiconsulting.com.

About Hitachi, Ltd.

Hitachi, Ltd., (NYSE: HIT / TSE: 6501), headquartered in Tokyo, Japan, is a leading global electronics company with approximately 360,000 employees worldwide. Fiscal 2009 (ended March 31, 2010) consolidated revenues totaled 8,968 billion yen ($96.4 billion). Hitachi will focus more than ever on the Social Innovation Business, which includes information and telecommunication systems, power systems, environmental, industrial and transportation systems, and social and urban systems, as well as the sophisticated materials and key devices that support them. For more information on Hitachi, please visit the company's website at http://www.hitachi.com.

**Incinerator Groups Eye Lawsuit In Bid To Revive Key Air Toxics Exemption (*Inside EPA*)**

Incinerator industry groups are urging a federal appeals court to revive an EPA exemption from air toxics rules for emissions during startup, shutdown and malfunction (SSM) periods for medical waste combustion units, saying a 2008 ruling vacating the SSM exemption for other sectors should not apply to the waste incinerators.

In a U.S. Court of Appeals for the District of Columbia Circuit suit, *Medical Waste Institute and Energy Recovery Council v. EPA* , the incinerator and waste-to-energy petitioners say that a 2008 D.C. Circuit ruling vacating the SSM exemption for facilities regulated under section 112 of the Clean Air Act should not apply to incinerators, because the units are regulated under sections 111 and 129 of the air act, not section 112.

The push to restore the SSM exemption for non-section 112 rules comes at a critical time, as EPA has just published a comprehensive proposal to set new air toxics rules for combustion in boilers and incinerators. The proposals would cover a wide range of sources, including schools relying on boilers for energy.

Industry says EPA has taken an overly broad interpretation of the SSM ruling by requiring it to end the exemption for all air rules, not just the national emissions standards for hazardous air pollutants issued under section 112 of the air act, as the *Medical Waste* petitioners argue. In an April 16 brief, industry says that EPA's position contradicts a prior EPA conclusion that -- because the lawsuit was argued over a section 112 air rule -- it should not apply to non-112 rules.

The D.C. Circuit in a June 7 order granted EPA's motion for more time to reply to industry's brief. EPA's response is due July 9, and final briefs from all parties in the suit are due Sept. 17.

In the *Medical Waste* suit, the industry groups are challenging EPA's Oct. 6 new source performance standards (NSPS) for hospital/medical/infectious waste incinerators (HMIWI). Industry says EPA set too strict a "floor" for establishing the rule's maximum achievable control technology standard, and is also challenging the agency's decision to cite the SSM vacatur in scrapping the SSM exemption in the HMIWI rule.

The incinerator and waste-to energy groups say that the 2008 ruling on SSM exemptions, *Sierra Club v. EPA*, was limited to section 112 rules. The court vacated a Clinton-era rule that said facilities need not meet Clean Air Act air toxics emission limits during SSM periods. Certain sectors whose air toxics rules incorporate the SSM exemption by reference to the general rule, rather than using sector-specific language, were immediately impacted by the court mandate, and EPA is reviewing other rules on a sector-by-sector basis.

But in the *Medical Waste* suit, industry says the ruling is limited to section 112 NESHAPs and not the HMIWI source category that is regulated under air act sections 111, which establishes requirements for NSPS, and section 129, which covers incineration rules.

The petitioners cite an EPA memorandum to the regulated community on the impact of the D.C. Circuit's SSM vacatur in *Sierra Club*, pointing out that the document "identifies no section 111 or 129 standards that may be affected, and gave no indication that it believed the SSM decision required re-evaluation of SSM provisions under those sections." *Relevant documents are available on InsideEPA.com.*

Industry claims that EPA did not adequately justify why it removed an SSM exemption in the final HMIWI, and that the removal of the SSM exemption in the final rule was based on flawed assumptions about the industry's operations. The groups also argue in their brief that EPA's decision to remove the exemption in the final HMIWI rule violates statutory requirements to provide the public with a meaningful opportunity to comment.

One lawyer who represents stationary sources using boilers says the *Medical Waste* petitioners' distinction between sections 112 and 129 makes sense based on the court opinion, but that the incinerator groups may inadvertently be giving the court the opportunity to broaden the 2008 ruling beyond section 112 sources.

"I don't think there's any reference" in the *Sierra Club* ruling to section 129 standards, the source says. "I think it's all under 112 . . . so I think that's a good argument" to claim that the ruling only impacts sources covered under section 112. But "I think maybe if the court were presented with the question it would decide that you couldn't have a sort of blanket SSM exemption from 129 standards as well," the source adds.

**OTC Seeks Strict State, EPA Air Rules to Meet Stringent Ozone Standard (*Inside EPA*)**

BALTIMORE -- The Ozone Transport Commission (OTC) is vowing to pursue strict limits on the ozone precursor nitrogen oxide (NOx) including caps on a wide range of emission sources, such as consumer products and boilers, and is urging EPA to adopt similar federal measures to help states meet EPA's proposed strict ozone standard.

OTC, which represents Northeast and Mid-Atlantic state air officials, approved resolutions at its June 3 annual meeting here outlining emission sources it believes need stricter controls to help cut pollution. The states are trying to find sources of ozone pollution to cut in order to come into compliance with EPA's proposed tightening of its ozone air standard. *Relevant documents are available on InsideEPA.com.*

One resolution commits the states "with added urgency" to pushing EPA to issue "strong" national rules for six source categories that emit nitrogen oxide, which contributes to ozone formation.

The states want strict EPA rules to cut NOx from electricity generating units (EGUs); on-road mobile gasoline and diesel sources; industrial, commercial and institutional boilers; cement kilns; locomotive engines; and marine engines. OTC says that these sources combined account for 75 percent of all NOx emissions. States are largely preempted from regulating mobile sources of NOx emissions, such as trains and marine engines.

The resolution also calls for "strong national programs" for other NOx sources, including stationary reciprocating and combustion engines; consumer and commercial products -- such as architectural, industrial and maintenance (AIM) coatings -- and other industrial sources, including glass manufacturing and asphalt production. OTC says that these standards should at a minimum mirror regional standards for these same emission sources.

The OTC-member states also adopted a memorandum of understanding to continue to work on state-specific rulemakings to reduce NOx and other ozone precursor emissions from several sectors, including consumer products and AIM coatings, in addition to new rules for large above-ground storage tanks; oil and gas boilers serving EGUs; and new small natural gas-fired boilers.

The memorandum says that the rules will help states come into attainment with EPA's Jan. 19 proposed tightening of the agency's 8-hour ozone air standard from 0.08 parts per million (ppm) to between 0.06 and 0.07 ppm.

At the meeting, OTC -- representing 12 states and the District of Columbia -- also adopted a resolution committing its mobile source and stationary and area source committees to continue to work on other state-specific rules and measures that could further help to reduce ozone emissions to help meet EPA's standard. The committees

will look at rules for stationary generators; coal-fired boilers serving EGUs; lightering; non-road idling; seaport drayage trucks; aftermarket catalytic converters; and vapor controls at gasoline service stations.

**Senate leaders strike deal to lure Dems from Murkowski (*Greenwire*)**

(06/10/2010)Robin Bravender, E&E reporter
Senate Democratic leaders have promised to offer a vote on a bid to limit U.S. EPA's authority to regulate greenhouse gases in hopes of draining support from a more sweeping EPA curb on the floor today, a Democratic Senate aide said.
During the run-up to today's vote on a proposal by Sen. Lisa Murkowski (R-Alaska) that would prohibit EPA from regulating greenhouse gases under the Clean Air Act, Democratic leaders promised a vote on a narrower bill from Sen. Jay Rockefeller (D-W.Va.) to impose a time-out for two years on EPA rules aimed at industrial emitters.

A spokeswoman for Senate Majority Leader Harry Reid (D-Nev.) declined to comment.

Rockefeller, who announced this week that he would vote for the Murkowski resolution, has said that he favors his narrower approach over Murkowski's more sweeping measure, which the Obama administration has warned will undo EPA's greenhouse gas emission limits for cars. The West Virginia Democrat has several moderate Democratic co-sponsors, several of whom announced yesterday that they would likely oppose Murkowski's resolution in favor of Rockefeller's.

Sen. Byron Dorgan (D-N.D.) said yesterday he was leaning against voting for the Murkowski resolution in favor of the two-year delay. "I expect we'll be having a vote on the Rockefeller bill," he said. "Not this week, but I expect there will be a vote on it."

Sens. Kent Conrad (D-N.D.) and Claire McCaskill (D-Mo.), who are also co-sponsoring the Rockefeller bill, also announced yesterday that they would oppose the Murkowski amendment.

"There is a serious alternative, which is the Rockefeller approach to have a delay for two years, which I do support," Conrad said.

Sen. James Webb (D-Va.) signed on yesterday as the bill's sixth co-sponsor. "I think it's an appropriate way for us to be able to clearly have a clear expression of congressional intent when it goes to the areas that are outside the Supreme Court holding," Webb said, referring to the U.S. Supreme Court's 2007 decision that gave EPA the authority to regulate greenhouse gases under the Clean Air Act.

**Brown, Collins endorse Murkowski**

Meanwhile, Massachusetts Sen. Scott Brown and Maine Sen. Susan Collins -- two of three GOP senators who did not formally sign on as co-sponsors of Murkowski's resolution -- announced today they would vote for the measure.

"While many of my colleagues have argued that giving the EPA the ability to regulate greenhouse gas emissions is the answer to our energy problems, I disagree," Brown wrote in an op-ed published today in the *Cape Cod Times*.

"This action would give an un-elected and unaccountable government agency the power to impose restrictive and damaging carbon dioxide regulations that will drive up energy prices and hurt job-creating small businesses in our country."

Collins also announced she would back the measure, saying she has "serious concerns about un-elected government officials at the EPA taking on this complicated issue instead of Congress."

Murkowski has 40 co-sponsors for her resolution, including three Democrats. She would need 51 votes to pass her resolution under the Congressional Review Act, which provides special procedures for vetoing agency rules. The White House has threatened to veto the measure if it makes it to the president's desk.

**EPA regs under fire as debate begins**

Senate Republicans today launched an assault over EPA's climate rules as debate got under way on Murkowski's measure, while a new poll signaled broad public support for federal efforts to curb greenhouse gases.

"The sweeping powers being pursued by the EPA are the worst possible option for reducing greenhouse gas emissions," Murkowski said today. She and other Senate Republicans today decried EPA's greenhouse gas rules, which are slated to kick in next January.

"This approach should have been taken off the table long ago," Murkowski said. "And yet, because the EPA is determined to move forward aggressively -- and because neither Congress nor the administration has acted to stop them -- it is now in the process of becoming our nation's *de facto* climate policy."

Meanwhile, a new *Washington Post*-ABC News poll shows most Americans support EPA rules to curb greenhouse gas emissions.

Of those surveyed, 71 percent said they think the federal government should regulate the heat-trapping emissions from sources like power plants, cars and factories in an effort to reduce global warming. Most Democrats and independents said they strongly favor new controls, and 55 percent of Republicans said they would favor such rules.

Still, Murkowski and her supporters insist that greenhouse gas regulations under the Clean Air Act will impose overwhelming costs and regulatory burdens across the country.

"Imposing new taxes and mandates in the United States will hurt our already struggling economy," said Sen. George Voinovich (R-Ohio). "We must address this issue through targeted policies that incentivize multinational collaboration on the development and deployment of clean energy technologies."

**Democrats return fire**

Senate Democrats, meanwhile, blasted what they portrayed as efforts to undermine EPA's scientific finding that greenhouse gases endanger human health and welfare.

Murkowski's resolution would nullify EPA's "endangerment" finding, the determination that allows EPA to move forward with regulations to curb greenhouse gas emissions from mobile and stationary sources.

"I believe it's ridiculous for politicians, elected senators, to make this scientific decision," said Sen. Barbara Boxer (D-Calif.).

"What are we going to do next, repeal the laws of gravity?" Boxer said. "We start down this path, there's no end in sight."

Top attorneys from 11 states and New York City are also urging the Senate to oppose Murkowski's resolution. In a **letter** sent yesterday to Senate leadership, the attorneys warned of "major negative consequences" if the resolution were to pass, which include the unraveling of EPA's auto standards, eliminating backup rules if Congress fails to act and inhibiting EPA from studying the effects of climate change.

The letter was sent by the Democratic attorneys general from Arizona, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, New Hampshire, New Mexico, Rhode Island, Vermont and New York City's corporation counsel.

**EPA Aims To Solve State SO2 NAAQS Compliance Fears With 'Hybrid' Plan (*Inside EPA*)**

EPA's just-finalized stricter sulfur dioxide (SO2) national ambient air quality standard (NAAQS) attempts to solve state fears that the standard will require overly burdensome monitoring to determine compliance, with EPA's final rule offering states a "hybrid" plan that relies more on modeling than the proposal did for determining compliance.

Public health advocates are offering early praise for the plan and say it would provide additional data on impacts of air pollution on communities. But at least one state air official gives a more cautious reaction, saying that modeling requirements could actually hinder efforts to demonstrate attainment -- even if monitors show attainment -- depending on the stringency of whatever guidelines EPA issues for conducting the compliance modeling.

Monitoring takes real-world data on SO2 levels from sources near monitors and is often used by states to determine their criteria pollutant levels to measure whether they are in attainment with EPA air standards. Modeling is less expensive because it is run on computers and does not require investments in new monitors. However, it may produce different results, such as greater pollution problems, depending on the approach used in running computer models.

EPA June 3 issued its final SO2 NAAQS, establishing a new 1-hour standard at a level of 75 parts per billion (ppb), within its proposed 50-100 ppb range. *Relevant documents are available on InsideEPA.com.*

EPA is also following through on its proposal to abolish the existing 24-hour SO2 standard of 140 ppb and to also abolish an existing annual standard of 30 ppb, saying in the final rule that those standards would not offer any increase in public health protection beyond that created under the new 1-hour standard.

One of the most significant changes between the proposal and the final rule is EPA's decision to amend its modeling and monitoring requirements for states collecting data to prove attainment with the NAAQS.

EPA in its Nov. 16 proposed rule detailed a monitoring-focused plan that would have required approximately 348 monitors across the country at the locations of highest concentration. In the final rule EPA says that rather than rely solely on monitoring it will use a hybrid of monitoring and modeling data to determine compliance with the NAAQS, "using each of these analytic tools where they are most appropriate and effective."

For a short-term 1-hour standard EPA says in the rule that modeling will generally be more technically "appropriate, efficient, and effective because it takes into account fairly infrequent combinations of meteorological and source operating conditions that can contribute to peak ground-level concentrations of SO2."

"Our ultimate intention is to place greater emphasis on modeling than did the proposed rule as the most technically appropriate, efficient, and readily available method for assessing short-term ambient SO2 concentrations in areas with large point sources," according to the rule, which says the revised strategy will be quicker to establish and less costly. EPA says the change is, in part, a response to states' concerns about monitoring burdens.

State and local air officials said in comments on the proposal that the "proposed monitoring network was too small and insufficient to cover the range of SO2 sources, and yet too burdensome and expensive to expand to an adequate scale," according to the final rule. Delaware, North Carolina and others suggested using modeling, or favored modeling over monitoring, as the primary data source for determining NAAQS compliance.

Public health advocates welcomed EPA's decision to allow the states to rely more heavily on modeling, a plan that does not appear to be heavily discussed -- if at all -- in EPA's proposed version of the standard. Charles Connor of the American Lung Association (ALA) said June 3 the modeling "is an appropriate and welcome supplement to monitoring and can help ensure that we can better protect the people living nearest to these big polluters."

But the state air official says that relying more heavily on modeling could ultimately prove a barrier to demonstrating attainment, even if monitors do not show any exceedances of the NAAQS.

If EPA mandated strict modeling requirements then that could potentially boost predicted emissions above the levels that would be detected by monitors. For example, if EPA required modelers to assume that facilities will emit the maximum level of pollution at all times, that could produce a greater predicted pollution level than a monitor detecting pollution from the facility's real-world emissions, which may be below the maximum level.

EPA says it will develop implementation guidance on such issues as "how monitoring and modeling data would be used together in specific situations to define attainment and nonattainment boundaries and under what circumstances it may be appropriate to rely on monitoring data alone to make attainment determinations."

In the final rule EPA also defends its approach of scrapping the 24-hour and annual SO2 standards and replacing them with the 1-hour NAAQS, saying it is the best approach to protect public health.

**Industry Likely To Sue Over EPA Bid To Bolster MACT 'Hammer' Authority (*Inside EPA*)**

Industry is likely to sue EPA once the agency finalizes its proposal to bolster a Clean Air Act "hammer" provision requiring case-by-case maximum achievable control technology (MACT) limits in the absence of a federal MACT, a boiler industry source says, with industry questioning the costs and legality of the rule.

EPA published in the March 30 *Federal Register* a proposed rule that aims to resolve confusion over when the hammer provision applies. The hammer requires states to set individual MACTs at facilities when there is no federal rule -- for example after a federal court vacates an EPA sector-based MACT. Environmentalists say EPA's rule is in line with previous administrations and clarifies and reinforces states' duty to comply with the hammer.

Industry groups in their comments on the proposal, however, raised multiple concerns with the plan and question whether it is permissible under the air act. Industry and some state officials have previously criticized the hammer requirements as a major funding and resource constraint.

Industry cannot file suit over the hammer rule until EPA publishes the final version in the *Federal Register* in the coming months, but the industry source says a lawsuit is all but guaranteed.

"I think it is going to take litigation to move the top two or three people" at EPA and in the Obama administration involved with the proposal to address industry's concerns over the MACT hammer, according to the source with the Council of Industrial Boiler Owners (CIBO). The source says that a lawsuit could help to force EPA Administrator

Lisa Jackson, White House energy adviser Carol Browner and others to address the issue.

The CIBO source claims that EPA has been unresponsive to industry's concerns over the feasibility of imposing case-by-case MACTs under the hammer provision in section 112(j) of the air act. "I don't think this administration cares in the least what any of us say," according to the CIBO source.

EPA did not respond to a request for comment but in the proposal said its "long-standing position" is that hammer requirements of the air act apply whenever a federal court vacates entirely a MACT for a major industry sector, the proposal says. EPA says its position is backed by congressional intent and case law.

In the proposal, EPA also said the information that industry would have to submit to EPA or states with delegated permitting authority is the same data that industry would have had to submit during the development of the original MACT, EPA says. The agency also outlined proposed steps to streamline and expedite the process for obtaining case-by-case MACTs by condensing a two-part process into one single, streamlined step.

Despite these apparent attempts by the agency to address industry's concerns over the proposal, CIBO argues in its May 27 comments on the plan that, "EPA lacks the legal foundation to redefine by regulation the clear text of the [Clean Air Act] regarding when case-by-case MACT standards must be set." *Relevant documents are available on InsideEPA.com.*

When EPA fails to act to establish a MACT for an industrial sector, the hammer provision takes effect. But industry says that if a court vacates a MACT that does not mean EPA has effectively failed to act, as the agency claims in the notice. "Under EPA's interpretation, even where EPA has promulgated final MACT standards that are effective and bind regulated sources to near-term compliance deadlines, regulated sources would be compelled to re-start the standard-setting procedure on a case-by-case basis," CIBO's comments say.

EPA's proposal would "cause significant setbacks for sources that have already made capital investments and operational changes to comply with the already promulgated, effective, binding MACT standards. These impacts on sources are not even considered by EPA in its regulatory proposal," the comments add.

Some states also take issue with EPA's imposition of onerous case-by-case MACT in their comments on the agency's proposal. For example, the Ohio EPA in April 27 comments says that it does not differ with EPA's interpretation of the hammer provision but nonetheless asks EPA to rethink its approach.

Ohio EPA notes that EPA intends to promulgate MACT standards for all the sectors for which MACT was vacated, including industrial boilers for which the agency will publish a proposal in the *Federal Register* June 4, the CIBO source says. These new standards should render moot the need to expend effort on pursuing case-by-case MACT under

the hammer, the state argues. The proposal "does not recognize the significant additional burden that will be placed on states should the 'hammer' rule go into effect," according to the state's comments.

Environmentalists, however, welcome the agency's proposal on implementing the hammer, which they say is years overdue. In March 30 comments, Earthjustice and the Northwest Environmental Defense Center say that, "As EPA correctly points out, vacatur of a rule restores the status quo before that rule was promulgated." The groups say that the Clean Air Act and legal precedent are clear on this point, however EPA's proposal to clarify this issue in the language of the forthcoming rule should remove any ambiguity.

**State Bid For Stricter NOx Cap In Senate Emissions Bill Could Spark Fight (*Inside EPA*)**

BALTIMORE -- Northeast and Mid-Atlantic state air officials are urging Sen. Thomas Carper (D-DE) to tighten the nitrogen oxide (NOx) caps in his bill to create a multipollutant cap-and-trade emissions program, but the push could spark a fight with Midwestern senators opposed to more stringent pollution limits, sources say.

Carper's office appears receptive to the push and has already asked EPA for an additional analysis of the costs and benefits of a stricter NOx cap that could help make the case for altering the bill, S. 2995, according to state sources. An agency spokesman told Inside EPA in a June 4 statement, "EPA has received a request from Senator Carper to analyze S. 2995. We are in the process of conducting that analysis."

At the Ozone Transport Commission's (OTC) annual meeting here June 3, state officials said they want Carper to ratchet down the NOx limit in the bill that currently would set a cap of 1.39 million tons of NOx from 2012-2014. They want a lower limit of 900,000 tons during that period, in order to further cut NOx -- a precursor to ozone formation -- and help them reduce ozone levels in order to comply with EPA's proposed stricter ozone standard.

OTC, which represents Northeast and Mid-Atlantic air officials, further wants Carper to accelerate the implementation schedule for his legislation, which would also set a cap on sulfur dioxide (SO2) emissions and a strict limit on mercury emissions. OTC also wants to amend the bill to give EPA authority to accelerate the target years for achieving specific pollution reduction goals, if the agency believes that such a change is warranted.

Broadly, the OTC region states are trying to amend the bill to toughen the NOx limits and accelerate the schedule for those emission cuts, which could give the states a major boost in reducing ozone and meeting EPA air standards.

Cap-and-trade programs allow companies to either install controls to cut emissions or buy emission credits to comply with the cap. Carper's bill as introduced with Sen. Lamar Alexander (R-TN) sets a 3.5 million ton cap on SO2 emissions beginning in 2012, dropping to 2 million tons in 2015 and 1.5 million tons in 2018.

For NOx emissions the bill would set different caps for Eastern and Western states. Western states would face a cap of 510,000 tons in 2012, dropping to 320,000 tons by 2020. Eastern states would be subject to a 1.39 million ton cap in 2012, tightening to 1.3 million tons by 2020. Combined, the two emission trading markets would reduce NOx levels by 53 percent -- from 3 million tons in 2008 to 1.6 million tons in 2015, Carper's website says.

The bill is designed as a replacement for the Bush EPA's Clean Air Interstate Rule (CAIR), a cap-and-trade program for NOx and SO2 emissions that the U.S. Court of Appeals for the District of Columbia Circuit remanded back to the agency due to what it said were flaws in the rule's trading program. The Obama EPA is poised to soon propose its Clean Air Transport Rule to replace CAIR, which is also expected to be a cap-and-trade program.

At the OTC meeting, the group's Executive Director Anna Garcia said that the NOx cap in Carper's bill "seems to match what is in CAIR and we have said repeatedly that is not adequate."

One informed source says that Carper's office has told OTC states they are receptive to lowering the NOx cap, saying the senator's staff have asked EPA for a cost-benefit analysis of a tighter NOx limit, and the analysis should be available within two months.

However, any effort by Carper to tighten the NOx cap beyond the levels in the introduced version of the bill would likely face strong resistance from Midwestern senators, according to the source.

Midwestern states have historically been less receptive to mandates for sharp cuts in NOx and other emissions from coal-fired power plants, given the high number of plants in the region. Additionally, air pollution tends to drift from the West to the East, giving Eastern states a potentially higher pollution problem than in the West.

Sen. James Inhofe (R-OK), ranking member on the Environment & Public Works Committee (EPW), has said he is open to supporting a multipollutant bill. Given a lull in negotiations over a climate bill, Inhofe and other Republicans are trying to put fresh momentum behind Carper's bill while trying to soften key provisions.

A Republican EPW aide has said that the GOP is not necessarily concerned about the stringency of the mercury provisions in the Senate legislation -- which require a 90 percent reduction -- but it believes that utilities need more flexibility in meeting the requirements than the legislation currently offers.

**It is unclear whether Inhofe could support a tightening of the NOx cap beyond that** which was proposed in the introduced version of the legislation, and Inhofe's spokesman did not respond to a request for comment.

Still, Inhofe said in a June 3 statement on EPA's just-finalized stricter SO2 national ambient air quality standard (NAAQS) that Carper's bill would be better than a slew of additional agency air rules.

While saying the SO2 standard would stifle economic growth, Inhofe added, "I have supported [three-pollutant (3P)] legislation to reduce real pollutants, legislation that guarantees emissions reductions, provides health benefits and brings certainty for industry. Congress must address the overlapping and confusing suite of EPA air regulations that will spawn a wave of litigation instead of advancing environmental progress."

Carper meanwhile issued a June 3 statement saying he supports EPA's SO2 standard but, "Unfortunately, states don't have every tool at their disposal to make that happen. I believe we need new clean air legislation to help states meet this new standard -- federal legislation like my three-pollutant bill that tightens the national emissions cap on the largest national sulfur dioxide emitter, fossil-fuel power plants." Carper said that his legislation would mandate specific power plant pollution cuts that "will help states meet these new standards more successfully."

Meanwhile, Garcia said at the group's meeting that states in the region are satisfied with the bill's SO2 limits. But OTC wants to see the legislation's schedule for implementation accelerated, Garcia said, though she declined to elaborate further on proposed new timelines or whether it should be for all three regulated pollutants -- NOx, SO2 and mercury.

Garcia said OTC would also like EPA to have authority to accelerate compliance dates after the bill takes effect, though she did not elaborate or say whether this would be for NOx, SO2 and mercury.

Garcia also said that OTC intends to closely scrutinize EPA's proposed CAIR replacement, due for imminent release, to assess how the SO2 and NOx limits marry up with or differ from Carper's bill.

Joseph Goffman, senior EPA counsel, said at the meeting that the agency will "soon" release the proposal. The White House Office of Management & Budget received EPA's proposed Clean Air Transport Rule April 26, and EPA's website says the agency intends to publish the proposal in the Federal Register this month.

Goffman said that EPA is anxious with the CAIR replacement to avoid the legal troubles that led to the D.C. Circuit remanding CAIR to the agency. The court found that under the Bush-era rule it was not possible to quantify emissions from one state impacting others -- which is required under the air act's section 110(a)(2)(D) to determine when a "significant contribution" to one state's failure to attain EPA's NAAQS is made by another state.

The upcoming proposal "will very much reflect our careful reading of the D.C. Circuit's opinion," Goffman said. The preamble to the new rule will include "a pretty lengthy discussion" of the court's opinion and the steps EPA has taken to address what the court found were legal flaws in the Bush-era CAIR trading program. -- *Stuart Parker*

**EPA Sees Cement Air Rules As Legal Test For Sector-Based Air Strategy (*Inside EPA*)**

An expected lawsuit over EPA's pending final rules to cut air toxic and criteria pollutant emissions from cement manufacturing facilities will serve as a legal test for the agency's plans to issue similar multipollutant regulatory packages for power plants and other industrial sectors, according to a key EPA air official.
EPA will in the coming months issue its final new source performance standard (NSPS) and national emission standards for hazardous air pollutants (NESHAP) for the cement industry. The agency had been under a June 6 court-ordered deadline to issue the final rules as the result of lawsuits over the two standards, but EPA recently won approval to delay issuance of the rules until August 6.

Brenda Shine of EPA's Office of Air Quality Planning & Standards told a recent Clean Air Act Advisory Committee (CAAAC) meeting in Washington, DC, that the package of two cement industry rules "is the test, really" of the agency's nascent push to address multiple pollutants through a coordinated regulatory plan. A lawsuit could resolve whether a challenge to one rule would stall a sector-specific regulatory package that includes other rules, she said.

"We won't get sued until it's promulgated, but that's the first one out of the box," Shine said of the precedent that the cement NSPS and NESHAP package will set for other multipollutant rulemakings.

EPA is pursuing similar multipollutant approaches for regulating other industrial sectors. For example, EPA last August asked the U.S. Court of Appeals for the District of Columbia Circuit to remand its challenged NSPS for power plants in order to reconsider the standard's limits in tandem with an upcoming power plant NESHAP proposal, expected to mandate significant cuts in power plants' mercury emissions.

Litigation over either the cement manufacturing NESHAP or NSPS will provide a key test in the D.C. Circuit for the question of whether a lawsuit over an individual rule -- for example the NESHAP or NSPS -- would stall the entire sector-based regulatory strategy, which has a goal of harmonizing compliance with multiple air rules.

Shine said at CAAAC that the regulated community has requested this harmonization in order to see the "full slate of responsibilities and make decisions about the way to achieve control requirements."

Under the Clean Air Act, EPA regulates criteria pollutants such as ozone and particulate matter under NSPS, which require facilities to install best demonstrated technology --

the best level of emissions controls demonstrated to work in an industry, considering cost and other factors. NESHAPs regulate air toxics, such as mercury, by requiring companies to install maximum achievable control technology (MACT) to cut emissions.

States, industry and others have raised concerns that EPA has no coordinated process for issuing its various air rules, creating regulatory uncertainty. EPA air chief Regina McCarthy has vowed to promote multipollutant rules, for example simultaneously issuing several rules for the same sector, in order to address these concerns.

The cement manufacturing industry will be the first sector subject to such a sector-based multipollutant approach with the dual issuance of a NESHAP to cut the sector's air toxics emissions and an NSPS to reduce criteria pollutant emissions from the industry. EPA in June 2008 proposed to significantly strengthen the existing NSPS for cement kilns, and in May 2009 proposed a NESHAP to cut cement manufacturers' emissions of mercury, total hydrocarbons and hydrochloric acid for both new and existing kilns.

EPA's deadline to issue both rules is the result of litigation -- the NSPS challenged in the U.S. District Court for the Northern District of California case *Sierra Club v. EPA* and the NESHAP litigated in the D.C. Circuit case *Portland Cement Association v. EPA, et al*. While EPA originally faced a June 6 court-ordered deadline to issue the final rules, the agency recently won an extension to August 6, according to court documents.

The publication of the rules in the *Federal Register* will trigger a 60-day clock for opponents to seek judicial review of the regulations, and Shine indicated that EPA expects a lawsuit.

EPA official Keith Mason said at the meeting May 26 that one challenge in harmonizing air regulations is that they are often governed by strict court deadlines, as in the case of the cement manufacturing sector. But Mason said that one possible solution is to take early action on certain rules in order to release them simultaneously with another rule that would impact the same industrial sector but that faces a tight court deadline for issuance.

"If we want to align them, we might have to do something sooner than we want to, but it's doable," Mason said, adding that the agency would like CAAAC's input on how to align regulatory timelines.

Another major challenge to the sector-based strategy is the data-intensive nature of the rules, but officials outlined technological advancements that can help better characterize emissions on a sector-wide basis. For example, agency air official Matthew Witosky cited the Industrial Sectors Integrated Solutions Model, which the EPA website says provides information on the optimal industry operation to meet the demand for its commodity as well as any emission reduction requirements, taking into account cost-effectiveness. "In order to look at the multipollutant strategy, you've got to develop the tools and the data to get it and be realistic about it," Witosky said. -- *Molly Davis*

**GOP Eyes Murkowski Resolution Vote As Test On Support For GHG Rules (*Inside EPA*)**

On the eve of a vote on Sen. Lisa Murkowski's (R-AK) resolution to nullify EPA's greenhouse gas (GHG) endangerment finding, Republicans are upping pressure on Democrats from industrial and coal states to support the measure, suggesting that a vote against it would be a statement in favor of GHG regulation by "unelected bureaucrats."
The comments come with Murkowski's resolution of disapproval expected to fall short of the 50-vote threshold necessary to pass the Senate under streamlined rules when lawmakers hold a slated June 10 vote on the resolution. Even if the measure did clear the Senate, its prospects in the House are dim and President Obama has pledged a veto.
Sen. Jay Rockefeller (D-WV), a key coal state Democrat, says he will vote for the plan after being on the fence, while another Democrat considered a possible supporter, Sen. Claire McCaskill (MO), says she will vote against it.

The Obama administration June 8 issued a Statement of Administration Policy saying it "strongly opposes" the resolution, S.J. Res. 26. If President Obama is presented with the resolution his senior advisers would recommend that he veto it, according to the statement, because it would frustrate the administration's landmark vehicle GHG rules and other attempts to reduce GHG emissions. *The statement is available on InsideEPA.com.*

Even in the face of the veto threat, Murkowski and other supporters are seeking to raise the stakes for the vote. At a June 8 press conference, Murkowski, flanked by a phalanx of GOP lawmakers, called the upcoming vote an opportunity for the Senate to make a statement on whether Congress, or "unelected bureaucrats," should establish GHG curbs.

At the same event, Sen. James Inhofe (R-OK), a longtime opponent of GHG limits, added that "this may well be the last opportunity for a lot of Democrats" this year to vote against what he called a "massive government takeover" -- his reference to EPA's process for beginning to regulate GHG emissions.

Meanwhile, Rockefeller -- who has put forward a separate plan to delay EPA stationary source regulations by two years without nullifying the endangerment finding, meaning existing vehicle GHG rules would be preserved -- said in a June 8 press statement that he has decided to support Murkowski's proposal. "I intend to vote for Senator Murkowski's Resolution of Disapproval because I believe we must send a strong message that the fate of West Virginia's economy, our manufacturing industries, and our workers should not be solely in the hands of EPA," Rockefeller said.

However, resistance to the measure among many Democrats continues in advance of the vote, including from those who have little enthusiasm for moving forward with

comprehensive climate legislation but nevertheless raise concerns that Murkowski's approach would derail the landmark agreement between the auto industry, Obama administration and states on automobile GHG rules.

In a June 8 interview with Inside EPA, McCaskill said she would vote against the measure, and credited the auto industry for being helpful in resisting it.

In separate comments to reporters, Sen Byron Dorgan (D-ND) indicated that his "preference" is for Rockefeller's two-year delay but did not indicate how he would vote on Murkowski's plan.

Sen. Tom Carper (D-DE) says the Democrats' plan is to "defeat" the Murkowski proposal on June 10 and focus on passing comprehensive legislation. Carper largely pushed aside discussion of a Murkowski alternative that he and Sen Bob Casey (D-PA) have been drafting -- at the "staff level," according to Carper -- that appears likely to legislatively limit EPA in controlling GHG emissions from smaller sources.

**EPA Begins Broad Push To Require Additional Monitoring In Title V Permits (*Inside EPA*)**

EPA is requiring significantly increased emissions monitoring in Title V clean air operating permits in response to activists' petitions that have increased after a federal appeals court vacated a Bush-era rule limiting permit monitoring mandates, but industry opposes the costly new requirements while conceding it can do little to fight them.
In the latest example, EPA Administrator Lisa Jackson May 27 signed an order granting an environmentalist petition that said a Louisiana-issued permit included insufficient and "illegal" monitoring requirements.

Sierra Club filed the petition with EPA challenging the Louisiana Department of Environmental Quality's (LDEQ) Title V permit for a Waste Management facility, saying it "fails to include monitoring sufficient to assure compliance with permit limits . . . and is therefore illegal." Title V permits, which states can win delegated authority to issue, are so-called umbrella permits that cover all of a facility's obligations under the Clean Air Act.

"If LDEQ concludes that the monitoring in the permit is not sufficient, it must add monitoring requirements to ensure compliance with the applicable requirements," EPA says in the order. "If LDEQ determines that additional monitoring is required, it must revise the Title V permit and issue a new draft permit for public review and comment."
*Relevant documents are available on InsideEPA.com.*

One environmentalist says that decision is the latest in a series of initial steps the Obama EPA has taken to impose additional monitoring requirements following an August 2008 U.S. Court of Appeals for the District of Columbia Circuit ruling that vacated a Bush-era rule limiting monitoring requirements.

The court in *Sierra Club v. EPA* sharply rebuked EPA's rule to explicitly bar states from imposing additional monitoring requirements in Title V permits, finding that the Clean Air Act requires states to impose more monitoring if regulators determine it is needed (*Inside EPA*, Aug. 22, 2008).

LDEQ had attempted to stave off additional monitoring requirements in the Waste Management permit by claiming the *Sierra Club* ruling was "not yet binding" -- an argument EPA rejected.

Since the court's ruling, the Obama EPA has upheld environmentalists' objections over monitoring requirements in permits in at least four or five decisions, the environmentalist says. This is a pattern, the source says, adding that EPA appears to be closely abiding by the court's conclusions.

One industry source says EPA is "taking a hard line" in imposing more monitoring requirements in Title V permits -- which come up for renewal every five years -- but concedes there is little industry can do to fight the new monitoring mandates. The source adds that industry expects states to begin imposing additional requirements on their own, in order to avoid going through the time-consuming Title V petition process.

Additional monitoring is "expensive but industry can't fight it because of the court ruling. . . . This is a tough one," the source says. "The Clean Air Act allows for states and for EPA in the Title V context to insert monitoring requirements to ensure continuous compliance, and that is a really high standard."

The first decision by the Obama EPA to impose additional monitoring requirements in Title V permits occurred in May 2009 when EPA granted a petition to object to the permit Texas issued to Citgo's Premcor Refining Group. There, EPA set a precedent by requiring Texas officials to reconsider monitoring requirements for refinery flares, sources say.

Another decision issued in April this year granted environmentalists' petition objecting to a permit Maryland issued to the Wheelabrator incinerator. EPA is ordering Maryland's Department of Environment (MDE) to better demonstrate how nitrogen oxides (NOx) and other emissions will be accurately measured against permit limits. For example, the facility must meet hourly limits for NOx but the Title V permit requires compliance testing only once a year.

Responding to the Wheelabrator decision, the Environmental Integrity Project said, "Without monitoring of emissions, we are really flying blind -- neither the public nor MDE can be sure of what's coming out of the Wheelabrator stacks. Emission monitoring helps make sure that companies are actually complying with the law."

EPA in its order, signed April 14, says MDE also failed to show how the Title V permit assures compliance with short-term emissions limits for particulate matter, mercury, cadmium, lead, hydrogen chloride and dioxins/furans. "Rather, MDE appears to have concluded that it could not include in the Title V permit any additional monitoring requirements beyond those from the applicable requirement, and therefore MDE did not

analyze whether the annual stack test and any other monitoring requirements for these pollutants are adequate. MDE's analysis and conclusion is inconsistent with the *Sierra Club* case," according to the agency's order.

Maryland must also provide EPA with a statement "that sets forth the legal and factual basis for concluding that the existing and/or additional monitoring requirements for these pollutants are adequate, and a response to significant comments," EPA says in the order -- *Dawn Reeves*

## ASBESTOS
==========

### New EPA report finds no health concerns from shipyard dust (*San Francisco Chronicle)*

Dust rising from construction work now going on at the Hunters Point Naval Shipyard redevelopment project poses no special danger to either workers or neighbors, according to a report released today by the federal Environmental Protection Agency.

While critics of the project have long complained that the dust contains asbestos and other toxics that were damaging the health of people living near the project, the new report found that "best practices for dust monitoring and mitigation are in place ... to protect the community."

The report differs little from a draft version made public in January. The EPA did the study at the request of local groups concerned that the city and Lennar, the project's developer, were ignoring community concerns about the dust.

Dust from Parcel A, where Lennar now is doing preliminary work for a housing project, "meets all appropriate (health) standards," said Mark Ripperda, who wrote the EPA report. The agency is still monitoring the Navy's cleanup of toxic materials on the rest of the former shipyard and has found no community health hazards in the way the work is being done, he added.

Naturally occurring metals in the shipyard dust do not pose "an unacceptable risk," while radiation measured at all the Navy excavations "is below levels set for residential exposure," the report stated.

An attorney involved in a suit against Lennar over the dust argued that the report did not review contaminate levels for 2006 and 2007, when the grading and the dust were at their height.

"No one has ever come up with safe levels of exposure to asbestos, only acceptable levels," said Linda Dardarian.

The report was good news for Supervisor Sophie Maxwell, whose district includes the shipyard.

"What we have in front of us is evidence and proof, not from one agency, not from two agencies, not from three agencies but from a whole cadre of agencies," she said.

People who still want to complain about danger from the dust need to provide proof of their own, Maxwell added.

But the original complaints played an important role in convincing the city to "be the best we could be" when it came to monitoring the site for health concerns, she said.

**BP SPILL**
**==========**

**You've heard of government 'by the people, for the people'? (*Washington Post*)**

By Al Kamen
Friday, June 11, 2010; A16
Now that it's abundantly clear that neither BP nor the federal government has any clue how to resolve the disaster in the Gulf of Mexico, everyone -- from BP itself to CNN and other media outlets -- has been soliciting ideas on what to do. Tens of thousands of suggestions, some serious, some not so, have come in on ways to plug the gusher.

Even Hollywood has gotten into the act, with Kevin Costner urging the use of oil-separation centrifuges and director/producer James ("Titanic") Cameron -- after getting into deep water by calling the BP engineers "morons" -- helping out.

We're hearing that even Scarlett Johansson, while in town for the White House Correspondents' Association dinner May 1, shared her views with administration officials on what to do to fix the leak.

And for those who thought maybe, just maybe, the Department of Energy, led by a Nobel Prize-winning scientist, would have some good solutions in mind, we got this e-mail from Bill Valdez, acting director of the department's small-business office, asking 35,000 small-business owners on his e-mail list.

"The Department of Energy is working tirelessly to address the oil spill in the Gulf," he explained in his June 8 e-mail. Secretary Steven Chu, he added, is working "closely with a team of top scientist from academia and the U.S. government, with support from more

than 200 personnel from DOE's national laboratories, to analyze the response efforts and recommend additional options for stopping the leaking oil."

Well, that sounds promising. But then came this:

"We'd like you to share your ideas on how to stop or contain the oil spill and mitigate the impact on the environment," Valdez wrote. "The Deepwater Horizon Response has an online form available to collect suggestions here: http://www.horizonedocs.com/artform.php. Valdez explained that by adding that small-business folks "know that innovation comes from many sources" and that the feds "need to tap into the spirit of American entrepreneurship to learn as much as possible." There's an online form, titled "Alternative Technology Response," he writes, that "collects detailed information about your idea, including the materials, equipment and resources required to put your idea into action. Your idea, once you fill out the form will go to a team of 30 technical and operational BP personnel for evaluation."

Don't delay. Since you started reading this, countless barrels of oil may have befouled the gulf. "We encourage you to be part of the solution and submit any ideas you have to the Deepwater Horizon Response," Valdez said, "and to share this message with others who might be able to help."

Not an expert in these matters? There are so many other things you can do. You might want to write the Defense Department with your ideas on how to find Osama bin Laden. Maybe the Environmental Protection Agency could use your thoughts on climate change. Any deficit-reduction thoughts?

Getting the message

Sen. Richard Lugar (Ind.), the Senate Foreign Relations Committee's top Republican, issued a lengthy report Thursday on the state of U.S. international broadcasting, calling on the Senate to confirm a long-stalled slate of nominees for the eight-member Broadcasting Board of Governors, which oversees that broadcasting.

The 95-page report asks, "Is Anybody Listening?" The answer is decidedly mixed. For example, Alhurra, the much-criticized Arabic-language television station, has "marginal" viewership outside Iraq, the report says. Earlier studies note that TV Marti, the anti-Castro station, doesn't even have a "marginal" viewership in Cuba.

On the other hand, Arabic-language radio seems to have a "large following," and broadcasts to Iran provided "much-needed news and information" to that country.

For the last 15 years, Lugar said in a statement, "both parties in the Senate [have been] playing politics with Board nominations." The "partisan bickering and obstruction" have kept the board below full strength during that time, he said. Only four of the eight seats on the board are filled -- and all four have terms that expired five years ago.

Time to either confirm the new board, he said, or "it is perhaps time to create a new mechanism that will have greater Congressional support."

As it turns out, we're hearing that there is a chance the Senate could move in the next few weeks to approve the nominees -- including author and Aspen Institute chief executive Walter Isaacson, formerly CEO of CNN and editor of Time magazine, who's up for chairman.

Holding penalties

Speaking of holds, Sen. Jeff Sessions (Ala.), the top Republican on the Judiciary Committee, is most unhappy with the National Archives' pace releasing Supreme Court nominee Elena Kagan's records from the Clinton administration. There are rumblings of delays in the confirmation hearings until all her records are made public. The administration asked the Archives to step on it.

Sen. Joe Lieberman (I-Conn.) issued a statement supporting Sessions, taking the occasion to point out that "speedy release of documents" is not required under the current law. President George W. Bush even issued an executive order, since rescinded by President Obama, that would have allowed former presidents, vice presidents and even their heirs to withhold the release of documents indefinitely by claiming executive privilege, Lieberman said.

Since a future president could easily change things back to the Bush order or issue new restrictions, Lieberman noted he had legislation pending that would ensure that presidential documents "are the property of the American people and therefore should be subject to timely release."

"But we cannot move forward with this legislation because my friend, colleague and Ranking Member on the Judiciary Committee, Sen. Jeff Sessions, has placed a hold on it."

**Focused On Gulf Oil Spill, EPA Officials Pulled Away From Key Policymaking (*Inside EPA*)**

With top EPA officials focused on the Gulf oil spill, many are being pulled away from work on several pending policy measures, though top agency officials are in some cases downplaying the effect their focus on the spill is having.

EPA Deputy Administrator Robert Perciasepe recently declined an industry request to meet over the agency's controversial assessment of the risks posed by arsenic, which industry fears will drive cost-prohibitive new regulatory requirements. It is not clear how industry plans to address the issue.

A score of industry associations sent Perciasepe a letter last month requesting "an urgent meeting" to discuss "serious concerns" with the assessment, according to the May 20 letter. It was signed by the American Farm Bureau Federation, the Edison Electric Institute, the National Mining Association, the Organic Arsenical Products Task Force and the Utility Water Act Group, among others.

Industry had sought the meeting to discuss concerns with EPA's draft Integrated Risk Information System (IRIS) assessment. The document names arsenic a known human carcinogen and sets a cancer slope factor (CSF), or estimate of carcinogenicity 17 times more potent than the existing published estimate. Industry representatives argued at a recent review of the document that naturally occurring levels of arsenic in some soils, water and food exceeds the proposed cancer slope factor, a concern for many industries, including agriculture, pesticide manufacturers and drinking water utilities (*Inside EPA*, April 16).

"The newly proposed [EPA risk assessment] unjustifiably proposes a dramatic increase in the [CSF] that does not fairly reflect the currently best available science and, if relied upon for standard setting purposes, could have overwhelming and indefensibly adverse implications for a wide range of regulatory endpoints, including drinking water, soil cleanup, and dietary intake requirements," according to the industry letter. "While we applaud EPA's stated commitment to ensuring that any EPA assessment is based on the latest scientific information and an unimpeachable peer review process, we do not believe that either of those measures is met in this IRIS assessment."

The request cites industry's concern with not only the assessment, but also the recent Science Advisory Board (SAB) review panel meeting of the assessment. It followed an earlier, unsuccessful meeting with EPA research chief Paul Anastas, whose office produced the arsenic assessment. At the February meeting, Anastas declined to expand the charge questions addressed to the review panel as industry wished.

"[W]e conveyed our serious concerns with the narrow scope of the charge questions given to the SAB workgroup at our meeting with Dr. Anastas. He assured us that the existing charge questions are fundamental and important but are not the limits of what should be addressed," according to the May 20 letter. "Regrettably, the workgroup not only failed to consider highly relevant issues beyond the charge, but it also failed to appropriately review issues within the charge and to pursue points inadequately addressed in the draft IRIS report itself." *The letter is available on InsideEPA.com.*

The associations had sought to meet with Perciasepe before the full SAB considers the panel's report during a June 16 conference call. A draft version of the report, released last month, does not suggest the major changes to the arsenic assessment requested by industry. Following the panel's discussion at its April meeting, the May 13 draft review report supports much of the approach EPA used in the new assessment, but makes recommendations designed to improve the "clarity and transparency" of the document.

The report does, however, note that the panel discussed calculating a "reality check" because the calculated levels in the IRIS draft are "higher than what is normally

encountered in cancer risk assessments of environmental contaminants. This may cause confusion for individuals who have high levels of exposure," the draft report notes. "For clarity it is important that EPA emphasize that their estimates are based on upper 95th percentile of possible risk values."

**Meanwhile, some industry sources say they are struggling to work with EPA** to encourage the agency to develop one or more electronic waste recycling standards. I don't know which direction EPA is leaning on e-waste because the entire EPA hierarchy has been pulled away to deal with the Gulf spill, one source says.

EPA Administrator Lisa Jackson recently acknowledged that she had to drop plans to travel to Africa to visit an e-waste recycling operation due to the spill, but she told an Interpol meeting on illegal e-waste exports May 25 that she did not need the site visit to learn about contamination from the practice. "I don't need to go to Africa or China or India to know about the electronics that are discarded at open dump sites," she said.

And the distraction did not prevent Jackson from announcing a new EPA policy on a related issue, endorsing new measures to cut down on harmful exports of e-waste, including seeking legislation to limit illegal export, standards to draw a "bright line" between safe and unsafe practices, and steps toward ratifying a key international treaty, but the agency appears to be stopping short of heeding activists' call for a complete export ban.

**Environmental Trustees Fault Vitter Plan To Require NAS Study Of Oil Spill (*Inside EPA*)**

Plans by Sen. David Vitter (R-LA) to require a one-year National Academy of Sciences (NAS) study on the long-term "environmental services" impacts of the ongoing oil spill in the Gulf of Mexico is drawing concerns from resource trustees who charge it would interfere with their more in-depth natural resource damage (NRD) assessment, which will form the basis of key state and federal environmental liability claims against BP and other responsible parties.

Vitter introduced an amendment to a supplemental defense appropriations bill May 27 that would have instructed NAS to conduct a one-year study "of the long-term ecosystem service impacts" of the Deepwater Horizon oil spill in the Gulf of Mexico, which has surpassed the 1989 Exxon Valdez oil spill as the largest in American history. *Relevant documents are available on InsideEPA.com.*

The amendment, along with dozens of other amendments addressing the spill offered as riders for the bill, was tabled before being addressed on the floor, but it could return to the floor when lawmakers take up energy and climate legislation in the coming weeks. Senate Majority Leader Harry Reid (D-NV) recently asked Senate committee chairs to submit legislative language they hope to see in the climate-energy package to address oil spill issues.

But one trustee source says the move to have NAS conduct its own study signals what may be the beginning of an effort by lawmakers sympathetic to the oil and gas industry to undermine the integrity of the ongoing NRD assessment being conducted by trustees, which include federal agencies like the Fish & Wildlife Service and the National Oceanic & Atmospheric Administration (NOAA), as well as states and Native American tribes.

"It lacks credibility, it muddies the waters -- it's highly unlikely that it would help," the source says.

A NOAA source agreed, noting that the one-year time frame allowed for NAS in the amendment would be far shorter than a typical NRDA. "A NRDA would probably take much longer than that," the source said. "Some of these go on for years."

Vitter's office did not return calls seeking comment but the senator has in the past fought to require NAS reviews of controversial agency studies. Last year, Vitter blocked confirmation of Paul Anastas as EPA's science chief until the agency agreed to allow NAS to review its assessment of the risks posed by formaldehyde. EPA Administrator Lisa Jackson initially refused to allow an NAS study but eventually agreed to a speedy review, and the senator lifted his hold. -- *John Heltman*

Issue Focus: Oil Spill Fallout

**After Budget Cutbacks, Trustees Scramble to Craft Gulf Spill Damages Study (*Inside EPA*)**

State and federal agencies are scrambling to develop what many expect could be the largest environmental damage assessment in history, stemming from the ongoing oil spill in the Gulf of Mexico, after years of budget cuts and personnel cutbacks. Observers tracking the issue say the agencies' resource constraints may slow efforts to develop a baseline of the environmental resources prior to the spill -- a critical measure that will determine how much environmental restoration BP will ultimately have to conduct in addition to any cleanup work -- and may also undermine the quality of any future assessment.

"We have to not be naive and recognize that if you're going to cut everyone's budget around things like this their ability to be nimble and react is going to be compromised," says one activist tracking the damage assessment effort.

To overcome their resource constraints, some trustee agencies assigned to conduct the natural resource damage assessment (NRDA) are calling back recently retired employees, while some current agency employees are being reassigned from their traditional duties to assist with the NRDA process.

"The trick is how do we maintain our other regular daily jobs . . . and frankly I'm not sure whether we've got it figured out," a state trustee source says.

Sources also say agencies are partnering with universities in the region and hiring independent contractors to assist the NRDA activities. "We're a little short-handed compared to where we would like to be, but we're able to deal with it with the folks we have," says a Mississippi trustee source.

Further complicating the issue is a pending amendment from Sen. David Vitter (R-LA) who is calling for a one-year study from the National Academy of Sciences to quantify the environmental services provided by the Gulf of Mexico -- a study that some trustee sources say could interfere with any NRDA the trustees eventually produce (*see related story*).

Under several environmental statutes -- including the Clean Water Act, Comprehensive Environmental Response, Compensation & Liability Act and Oil Pollution Act (OPA) -- natural resource trustees are authorized to conduct a NRDA to determine the extent of damages from harmful releases, interim losses until the damage is addressed as well as assessment costs.

Under OPA, for example, trustees have authority to seek compensation for "the cost of restoring, rehabilitating, replacing or acquiring the equivalent of, the damaged natural resources," in addition to any response and cleanup costs. If trustees follow relevant rules for how to assess the damages, they are granted litigation benefits in the form of a presumption that puts the onus on industry to rebut any data in the assessment record.

But quantifying damages is difficult and can often result in multi-billion dollar claims that industry officials balk at even discussing. The result has been an adversarial process that regulators and industry have long sought to avoid, arguing that it leaves the resource damaged for longer.

To address this, resource trustees have been moving to craft assessment rules that favor restoration of the resources' "lost environmental services," such as the loss of fish breeding habitat from wetlands, rather than quantifying the damages in monetary terms. The National Oceanic & Atmospheric Administration (NOAA) issued a rule adopting this approach for OPA claims during the Clinton administration and the Department of Interior issued a rule adopting this approach for Superfund claims during the Bush administration. Industry has long favored this kind of approach because it broadens the range of options it can propose when negotiating a settlement and can allow them flexibility when implementing the restoration approaches.

**The NRDA for the Gulf spill, which started when the Deepwater Horizon drilling rig** exploded and sank in late April, is still in its early stages. NOAA, along with the Department of Interior's Fish & Wildlife Service (FWS) are leading the effort on behalf of the federal government, and state environmental quality or natural resource agencies are planning assessments for the states of Louisiana, Mississippi, Alabama and Florida. Texas trustees have gathered baseline data on its coastal ecosystems, a state source says, but it is not currently projected to suffer extensive impacts from the spill.

FWS normally has about 100 staff whose portfolio includes NRDA, but the service has reassigned additional personnel and has between 300 and 400 staff engaged in the process on the current effort, a federal trustee source says.

FWS's Environmental Contaminants Program oversees its NRDA process. A source says that program has existed for years but is traditionally quite small and has struggled to keep up with the workload for the current response. "It's all hands on deck. We had a number of people called back from retirement. . . . We were overwhelmed in a few days," the source says.

State and federal agencies also have lost personnel in recent years; for example, two sources say NOAA's Office of Response & Restoration, which oversees the NRDA process, has lost nearly a third of its staff in the last five years.

Most involved in the assessment agree the scope of this disaster is unprecedented, and several sources say it will test the ability of so many trustees and BP to be able to work together to negotiate a settlement. Trustee sources say they hope to be able to cooperate with BP in assessing and repairing damage to the environment, but that they also are preparing for the possibility that the company eventually adopts a more adversarial stance -- especially after the Department of Justice earlier this month announced criminal and civil investigations into the company's conduct.

No agreements have yet been entered into between BP and NOAA or among the various federal and state trustees to guide the NRDA process, a NOAA source says, insisting that it is too early for any agreements to have been worked out.

**Other sources say at this point there are many unanswered questions over how the NRDA** will proceed. "What I'm seeing so far is a fair amount of confusion amongst the various trustees and BP," says an academic source who is tracking the process.

BP has agreed to pay NRDA-related costs incurred by trustees, although details on BP's specific obligations are unclear. According to an agreement between BP and the state of Mississippi, BP will provide $25 million to the state for assessment costs, and an agreement between the company and the state of Florida outlines its "desire to assist the State by providing initial funds for pre-assessment and assessment activities," although it does not specify a dollar figure. Comparable agreements with Louisiana, Alabama and the federal agencies either have not yet been entered into or were not immediately available to be released, sources say. *Relevant documents are available on InsideEPA.com.*

While BP has repeatedly expressed its intent to blow through liability caps and pay all "legitimate claims" related to the spill, trustees still worry about the potential that money will not be forthcoming or could get bogged down in bureaucratic red tape. For example, the federal trustee source says efforts to recoup NRDA-related costs can be delayed because of laws requiring repayment to happen within the same fiscal year as the activities that occurred. With the cleanup expected to last until at least this fall -- and damage assessment and restoration expected to stretch several years -- such

repayment complications could become an issue, although the source says agencies can set up revolving funds or other mechanisms to smooth the process.

In conducting the NRDA, trustees first establish the baseline status of ecosystems prior to a spill, calculate the loss of wildlife and habitat caused by the spilled oil and craft a restoration plan aimed at returning the impacted environment to baseline conditions. The trustees also are able to assess damages on responsible parties for the lost use of those resources between the time of the spill and the time of restoration. That process requires collecting a massive amount of data before and after the spill, and several sources say cutbacks to the relevant programs in recent years have left them without as much pre-spill data as they need.

For the current spill in particular, in which oil is spewing from a leaking well nearly a mile below the water's surface and affecting deep-sea ecosystems about which little is known, the data shortages are particularly problematic. EPA for the first time has authorized BP to inject dispersants -- toxic chemicals that prevent surface oil slicks from forming -- directly at the source of the spill, potentially contributing the the formation of massive plumes of oil in the water column and exposing especially sensitive sea floor organisms to the mix of oil and dispersants with unknown long-term effects.

The federal trustee source says FWS has fairly robust data sets for the coastal habitats and species being affected by oil washing ashore, such as wetlands and marshes and the birds that live in those habitats. But "for NOAA it's going to be tough," the source notes, because far less data is available about the oceanic creatures and environments being exposed to oil, such as plankton, fish, deep sea corals and sea-floor organisms. -- *Nick Juliano*

**Democrats Criticize Nuclear Insurance Approach For Oil Spill Liability (*Inside EPA*)**

Key Democrats are criticizing suggestions from a bipartisan group of senators to revise the oil spill liability system along the lines of the Price-Anderson insurance approach for the nuclear industry, which caps the industry's liability and pools the risk among all companies in the industry, leaving the Senate divided as they seek to devise a new system.
Senate environment committee Chairwoman Barbara Boxer (D-CA), who has long criticized the Price-Anderson approach, told a committee hearing June 9 that while she has asked her staff to review the bipartisan approach, she opposes capping industry's liability.

The federal government is still "on the hook" for the remaining damages, she said, arguing alongside several other Democratic senators that they favor an approach put forward by Sen. Robert Menendez (D-NJ) that sets no liability limit for the industry. "The reason I like Sen. Menendez' bill, which is broad . . . [is] because taxpayers will never have to bail out [the oil companies]," Boxer said.

The Democratic senators were responding to a proposal from Sen. Lamar Alexander (R-TN) and other lawmakers who are proposing a new approach for how to revise the oil spill liability system in the wake of the BP spill, suggesting an insurance approach for the industry modeled after the controversial Price-Anderson Nuclear Industry Indemnity Act, which establishes a $10 billion collective liability cap on the industry in the event of a nuclear accident and requires all nuclear reactor companies to contribute to a collective fund to pay damages up to that cap.

Alexander is arguing that the approach allows companies to pool their collective risk in order to protect small companies and creates industry-wide incentives to maximize risk-reduction strategies. "Every one of the 107 [nuclear] reactors we have shares in any problem that we have with one reactor, which creates an incentive for every single operator of a nuclear power plant to make sure that every other operator has the latest safety equipment, or [be forced to pay] if anything happens," Alexander told Inside EPA June 8.

"And I think we should consider whether a similar sort of Price-Anderson scheme for oil drilling might make, say, Exxon just as worried about BP's cleanup as BP is. And Chevron as interested in sharing with BP it's technology just so it doesn't share in the cost of the cleanup," he added.

Several other senators have also expressed support for the idea, including Sens. Lisa Murkowski (R-AK) and Mary Landrieu (D-LA).

Discussion of the approach comes as lawmakers are scrambling to reach agreement on a new liability system for the oil industry in the event of spills.

Before lawmakers left for their Memorial Day recess, anti-drilling lawmakers pushed legislation that would increase to $10 billion the $75 million economic damage cap and eliminate a $500 million cap on natural resource damage (NRD) claims imposed on oil companies under the Oil Pollution Act (OPA). Lawmakers scuttled those measures over concerns that they applied retroactively -- a legally tricky question -- and could make it difficult for smaller oil companies to afford insurance.

Now that lawmakers have returned, the worsening oil spill in the Gulf of Mexico is a top agenda item, with Democrats and Republicans agreeing on the need to revise the liability system but disagreeing on how to do it. There is "broad consensus" that the limits on economic and NRD claims against oil companies under the OPA needs to be increased, Alexander said June 8, although he did not say by how much.

Senate Majority Leader Harry Reid (D-NV) has asked committee chairs for spill-related provisions to be included in a broad climate and energy bill he hopes to bring to the floor in July, and lawmakers have highlighted the need for new laws in response to the spill with numerous introduced pieces of legislation and congressional hearings in a host of House and Senate committees that are expected to continue throughout the summer.

The Senate has already passed a supplemental appropriations bill that includes tens of millions of dollars in spill-related funding and the Senate is also considering a tax

extenders package that would increase the per-barrel fee oil companies pay into a federal oil spill response trust fund. But neither of those bills is likely to include new liability provisions, which will instead likely be considered in the climate-energy bill.

**At the environment committee hearing June 9, Alexander reiterated his arguments** in favor of the Price-Anderson insurance approach but drew stinging criticism from Democrats.

Sen. Amy Klobuchar (D-MN) told the hearing that capping the industry's liability violates free-market principles. "It is a pretty basic free-market idea, an American idea, that if you take the risk you should be the one to get the rewards, but also the one who incurs the costs," she said.

She also argued that eliminating the cap could create a new incentive for the industry to adopt safer practices. "I truly believe that if we hadn't had that $75 million cap in place, perhaps different calculations would have been made. And I'm not saying for a minute that BP would have made the same decision had they known the disaster that was awaiting them, but point is all they knew at that time was there there was a $75 million cap in damages," Klobuchar said.

Boxer echoed Klobuchar's suggestion that having a finite cap on liability as a general matter simply allows companies to consider their liabilities as limited and therefore perhaps shirk certain environmental protections in the interest of serving their bottom line. "If there is a situation like in Price-Anderson, where taxpayers are on the hook beyond a certain amount, then won't they do what Sen. Klobuchar said, which is to take into account what the rules are, and maybe they'll cut corners because they feel they can rely on taxpayer bailouts?" Boxer said.

## BROWNFIELDS
==========

**Officials want to make over brownfield sites in West Pasco (*Tampa Tribune*)**

NEW PORT RICHEY - At the corner of S.R. 54 and U.S. 19 sits an empty lot covered with cars.

Today, the lot is home to the excess stock of a nearby car dealership; but just a few years ago there was a gas station here, and that potentially toxic legacy could complicate any future effort to redevelop the property.

As Pasco County leaders look to the future, they hope to see the rebirth of the U.S. 19's hodgepodge of aging strip malls, car dealerships and gas stations. Many of the buildings along the strip date back 40 years or more.

In recent years, county officials have begun laying the groundwork for an eventual rehabilitation of west Pasco between U.S. 19 and Little Road. But environmental contamination associated with those aging businesses could stand in the way.

Last week, county commissioners agreed to start work this fall on reclaiming contaminated properties, known in environmental parlance as "brownfields." The first step will be figuring out how many brownfields the county has and where they are.

That would cost money, possibly as much as $300,000 for a countywide study, according to the county's growth management director, Richard Gehring.

At a time when the county faces a $5.6 million deficit for its 2011 fiscal year, which begins Oct. 1, the potential cost of the brownfields survey gives some commissioners pause.

"If we knew that we were going to be able to capitalize on something, it'd be easy to say, 'Do it,' " said Commissioner Jack Mariano.

Without a study, landowners will have a hard time getting federal and state cleanup assistance. But Commissioner Ann Hildebrand said her fellow commissioners' concerns are warranted.

"It's something we're ultimately going to have to do," Hildebrand said of the study. "But we're going to have to look at the timing."

Commissioners may compromise and limit their brownfields study to West Pasco to save money. The source of the money for the survey, however, remains unclear.

Brownfields are more often associated with heavily contaminated industrial properties. Hillsborough County has dozens of brownfield sites, some of the largest near Channelside in Tampa.

Channelside itself was a brownfields site until it was restored and turned into a popular tourist site. Gehring helped make that restoration happen during a previous career.

"Now it's a productive site," Gehring said. "But it was a problem before because of the contamination."

What West Pasco lacks in large industrial sites it makes up for in small properties polluted with gasoline, dry cleaning chemicals and other toxic elements. Along with abandoned gas stations, former car dealerships are likely targets for cleanup, Gehring said.

"When they leave, they leave behind a big site that's hard to cleanup," Gehring said of dealerships.

Lenders typically require potential borrowers to review sites for environmental problems. A red flag can scuttle a deal and lead to more development of unspoiled "greenfields," Gehring said.

Commissioners want to concentrate future growth along existing road-and-utility corridors. Along U.S. 19, that will mean encouraging developers to rehab old sites.

"Before you can do urban renewal on those properties, you have to clean them up," Hildebrand said.

That's where federal and state environmental officials come in. The U.S. Environmental Protection Agency offers grants to landowners to help clean up their property. But first those sites have to be on a priority list.

The Florida Department of Environmental Protection helps landowners get tax breaks and economic incentives, as much as $2,500 per job, if they rehab a brownfield, said Kim Walker, director of the DEP's brownfields office. But first the county must create a brownfields zone, making sites within it eligible for help, Walker said.

Clearwater took those steps and returned several derelict properties to productive uses. Pinellas County has integrated brownfield rehab into its economic development strategy, an approach forced by the county's lack of virgin land.

Pasco commissioners need to look at the U.S. 19 corridor in a similar fashion, making brownfields restoration a key to future growth there, Gehring said.

"It's a tool that ought to be in the toolbox," he said.

## ENERGY

==========

### Angle Blasts Reid On Supporting EPA Regs That Harm Nevada (*Cypress Times*)

Published 06/11/2010 - 4:31 a.m. CST
RENO, NV - U.S. Senate candidate Sharron Angle said that Senate Majority Leader Harry Reid was “continuing his work against the people of Nevada” by defeating an attempt to stop the Environmental Protection Agency from imposing draconian energy regulations. The Senate defeated a resolution of disapproval of those regulations by a vote of 47-53 on Thursday.

“Once again Harry Reid has put the extreme environmental agenda of the Obama Administration against the well being of his own state,” Angle said. “He twisted arms of

his fellow Democrats who wanted to vote for the resolution, causing it to fail. These regulations proposed by EPA would be harmful to most sectors of the domestic energy industry and eventually substantially raise the utility bill of every American. Even one of the most liberal members of the Senate, Jay Rockefeller, said he was voting for the resolution because he 'didn't want EPA turning out the lights on America.'"

"It's time to replace a Senator who is so out of touch with what the people of Nevada want," Angle said.

**EPA Weighs Liability Fixes To Help Promote Clean Energy On Brownfields (*Inside EPA*)**

EPA's top waste official says the agency is considering changes to its land contamination liability process in order to address concerns from industry and local governments that fears over liability are stymieing EPA's efforts to promote the development of clean energy projects on contaminated brownfields sites.
Mathy Stanislaus, head of EPA's Office of Solid Waste & Emergency Response, told a June 3 teleconference that EPA needs to "tweak" its environmental liability process to address "all the obstacles, perceived or real, to promote renewable energy" on contaminated sites. Stanislaus' comments to the American Bar Association (ABA) teleconference come after the agency has held a series of meetings with stakeholders over how to boost such projects.

Industry has floated ideas for limiting liability for renewable energy developers seeking to site their projects on brownfields, including qualified releases for certain long-term cleanup liabilities and agreements to indemnify developers from some EPA enforcement.

Industry and local government sources say it can be challenging to place renewable energy on contaminated sites without disturbing contaminated soil and increasing liability (*Inside EPA*, Jan. 15).

For example, at a solar energy project on a brownfield in Massachusetts, developers had to pour two feet of fill over a cap that had been placed over contaminated soil before 18-inch anchors for solar panels could be put in place. Wind turbines, which need to be rooted much deeper into the ground, present an even greater challenge. In these cases, the developers are concerned about taking on liability for a release caused by the project and potentially responsible parties that are cleaning up the site are concerned about anything that could disturb their remediation process.

Stanislaus acknowledged this problem on the ABA teleconference, and noted that EPA does not currently have a process to deal with invasive work on contaminated projects. Stanislaus added that the agency is working on how to accommodate such projects. The agency is also trying to accommodate renewable energy on portions of a site even

while remediation is still going on at other parts of the site, Stanislaus told the teleconference.

EPA held a series of meetings in late 2009 and early 2010 with environmentalists, developers, landowners, renewable energy companies and state and local officials seeking ideas to both address the concerns over liability and also facilitate reuse of potentially contaminated sites for renewable energy.

The meetings were part of EPA's Re-Powering America's Land initiative with the Department of Energy, which has so far identified about 490,000 brownfields and Superfund sites that have potential for renewable energy projects.

Industry has said that EPA has the authority to issue several different types of indemnification for clean energy projects on brownfields sites, including the use of prospective purchaser agreements, which protect the development from limited EPA enforcement. But the process is rarely used because it is time consuming, industry says.

Environmental consulting firms late last year also floated a plan to address brownfields sites by requiring EPA to provide qualified releases for certain long-term cleanup liabilities under its existing authority (*Inside EPA*, Dec. 25).

While Stanislaus did not mention any specific mechanisms during the ABA teleconference, he said that EPA has been educating investors about tools to cap and limit liability.

Lawmakers are also trying to promote clean energy development on brownfields sites, with Sen. Frank Lautenberg (D-NJ) recently introducing two bills to provide incentives for such projects, by providing federal grants for such projects and allowing them to receive triple credit to meet future renewable energy mandates.

## FUEL

==========

### State's Ethanol Push (*Palm Beach Post*)

With oil prices hovering around a modest $70 a barrel, coupled with the poor economy, ethanol startups have had difficulty attracting investors.

Now the disaster in the Gulf of Mexico could help change that. The horror of the Deepwater Horizon/BP oil spill has focused more attention on the need for alternative fuels, Florida companies planning to produce ethanol say.

"We can displace enough oil through biofuels and renewable energy that we don't need

to rely on offshore drilling for oil," said Brad Krohn, principal and manager of Highlands EnviroFuels LLC, Lake Placid. "Until now it has been difficult to get our projects financed. We believe this is a prime opportunity for both federal funding from government agencies as well as private investment."

Since the spill April 20, the company has been approached by several interested investors, Krohn said. It plans to construct a $140 million sugar-based ethanol plant in Highlands County with the goal of producing ethanol by early 2012.

No ethanol for fuel is being produced in Florida.

If the U.S. Environmental Protection Agency decides to allow the sale of E15, a 15 percent ethanol/85 percent gasoline blend, demand for ethanol would increase. Most gasoline sold in Florida contains 10 percent ethanol. The EPA is expected to make a decision in August, said Matt Hartwig, spokesman for the Renewable Fuels Association in Washington. It could allow the E15 blend to be sold for use in all cars, or only for 2001 and later model years.

E15 is not to be confused with E85, a fuel containing 85 percent ethanol that can power only flex-fuel vehicles designed for it.

Jim Smith, president/CEO of the Florida Petroleum Marketers & Convenience Store Association in Tallahassee, said his group opposes a change to E15 because their equipment is only rated for E10. In addition, retailers would have to have dual inventories for some time.

Meanwhile, Florida-based companies that want to be among the first to produce ethanol in the state are positive about the industry's prospects. By the end of this year, a state mandate will require 1 billion gallons of ethanol supply, and most of that is coming from the Midwest.

"Unfortunately, it has taken an accident and a catastrophe of this size to refocus people on the need to develop clean and renewable alternatives," Hartwig said. "Florida is extraordinarily well-positioned to lead the nation due to the great deal of biomass it has."

W.L. "Tex" Carter, vice president/operations of the joint venture, INP BioEnergy, which plans to start ethanol production in Vero Beach in late 2011, said of the oil disaster, "It underscores the need for alternative fuels."

David Stewart, CEO of Citrus Energy LLC, Boca Raton, said that since the spill the firm has not had an uptick in calls from potential investors. Citrus Energy plans to use citrus waste to produce ethanol.

"Right now the single biggest impact is oil has gone from $140 a barrel to $70. If the spill results in the price of oil going up, that would be beneficial," Stewart said. "The whole industry is moving very slowly at this time. It is tough to compete with oil. I am

talking with people in the investment community. They are pretty cold-hearted about it. It is all about dollars."

Don Markley, executive vice president and chief operating officer of Southeast Renewable Fuels LLC, Fort Lauderdale, said his firm has not seen an impact yet.

President Obama's statements about the need to go in a different direction are a positive for the alternative fuels industry, Markley said. "We are incredibly disappointed about what has happened in the gulf."

Smith's take on meeting the nation's fuel needs is this "We don't need to be drilling off shore. We have the Bakken Reserve in North Dakota and Montana that contains reserves greater than Saudi Arabia. We have been seeking alternatives for years, and we're still years away. We still need oil to survive."

~susan_salisbury@pbpost.com

**GENERAL**
**==========**

**Mel Chin hopes to trade drawings of $100 bills for cash to clean soil in New Orleans (*Los Angeles Times*)**

June 11, 2010 Friday
Home Edition
SECTION: CALENDAR; Entertainment Desk; Part D; Pg. 23
Artist's unique bill proposal;
Mel Chin hopes to trade drawings of $100 bills for cash to clean soil in New Orleans.

BYLINE: Sharon Mizota
Like many others, artist Mel Chin went to post-Hurricane Katrina New Orleans to see what he could do to help. And like many, he was overwhelmed by the devastation he saw.

But the artist, known for conceptual works that blend art, politics and science, ended up catalyzing a nationwide effort to address a problem that has plagued the city since well before the hurricane.

New Orleans, like many urban centers, has levels of lead in its soil that are as much as four times the limit deemed safe by the Environmental Protection Agency.

In 2008, the North Carolina-based Chin began the Fundred Dollar Bill Project, a campaign to raise awareness about the dangers of lead contamination and poisoning.

With participating institutions in nearly all 50 states, it aims to collect 3 million "Fundred Dollar Bills," unique interpretations of hundred dollar bills drawn by 3 million people.

When completed, the bills are picked up at designated "collection centers" by an armored truck -- retrofitted to run on vegetable oil -- that is currently making a 17,000-plus mile trip back and forth across the country. The truck will end its journey in Washington, D.C. next spring, where Chin intends to offer the 3 million hand-drawn bills to Congress and ask for 300 million real dollars to clean New Orleans' lead-contaminated soil. He has collected about 350,000 bills so far.

Chin is especially interested in contributions from children, the population most affected by lead poisoning, so the project has worked with many schools. Several Southland schools are participating as well as the Skirball Cultural Center, Pasadena's Side Street Projects and the Santa Monica Museum of Art, which is holding a "Fundred Dollar Bill Drawing Party" Saturday

SMMoA's director of education, Asuka Hisa, has integrated the project into the museum's tours and outreach activities for the last two months. "Even the little kids, they all invest the time and effort into them as much as they can and then they let go, because they know that their art work has a bigger purpose," she says.

If Chin succeeds in exchanging these "voices" for real money, the funds will go toward "Operation Paydirt," a collaboration with toxicologist Howard Mielke and research scientist Andrew Hunt.

They have developed a method of chemically transforming lead so that, although it remains in the soil, it can no longer be absorbed by the body.

**HAZARDOUS WASTE**
==========
June 10, 2010, 2:44PM ET

**Neb. firm pays $150,000 fine for waste problems (*BusinessWeek)***

KIMBALL, Neb.
A company that runs a hazardous-waste incinerator in western Nebraska has agreed to pay a $150,000 fine and make several changes to address Environmental Protection Agency concerns.

The EPA said Thursday that Clean Harbors Environmental Services Inc. had resolved a series of problems at its Kimball location.

During visits in 2007 and 2008, federal and state inspectors found several possible violations, including several unlabeled, leaking waste containers, improper emissions controls on waste tanks and several different wastes stored close enough for chemical reactions to occur.

The Norwell, Mass.-based company spent $152,000 on installing a better emissions control device, and it agreed to regularly inspect its storage area and report to the EPA.

News Analysis

**EPA Proposal Walks 'Fine Line' Over How to Address Coal Waste Reuse (*Inside EPA)***

EPA is walking a "fine line" on how to address the beneficial reuse of coal ash in its first-time proposed rule regulating the waste's disposal, sources say, rejecting industry claims that a strict hazardous designation for the waste would harm the reuse industry but also raising questions about the safety of some beneficial reuses.
One industry source says EPA appears to be trying to "have it both ways" on beneficial reuse of coal combustion residues (CCR) in its proposed Resource Conservation & Recovery Act (RCRA) rules on CCR disposal because it says the approach would boost use of coal ash in products such as wall board and cement while also raising concerns about unencapsulated uses.

Another industry source says it is troubling that EPA through the RCRA proposal is taking such a nuanced approach while forcefully rejecting industry's claims that a strict hazardous approach would create a stigma effect harming CCR recycling. "To say beneficial uses are okay, but then again maybe not, sort of does plant the seed of stigma" for the wastes that could harm the reuse industry, the source says.

At the same time, EPA suspended its long-time involvement in a voluntary partnership with industry to promote coal waste reuse during the rulemaking.

EPA is trying to "walk a fine line" on the issue of beneficial reuse, one environmentalists says, but adds, "EPA should be doing it's job, saying what proper beneficial reuse is," rather than exempting all of it from regulation.

EPA waste chief Mathy Stanislaus articulated the agency's position during a June 3 conference call sponsored by the American Bar Association, saying the agency wants to "promote and expand beneficial reuse." But he also downplayed industry concerns, saying he "yet to see any data" that supports industry claims that labeling the waste as hazardous will stigmatize beneficial reuse.

In its proposed rule, EPA seeks comment on "potential refinements for certain beneficial uses" as part of its dual RCRA proposal that formally exempts beneficial use from regulation, while also seeking comment on regulating CCR under RCRA subtitle C as well as under nonhazardous subtitle D.

In the proposal, EPA asks for comment on limiting some CCR reuse that could pose health or environmental risks, such as unencapsulated uses of CCR applied to land.

EPA's concerns over the risks of some reuse prompted the agency to suspend its participation in the Coal Combustion Products Partnership (C2P2), a voluntary effort by several federal agencies and industry to promote beneficial reuse of coal and and their associated environmental benefits, during the rulemaking process (*Inside EPA*, May 28).

An agency spokeswoman says, "At this time, EPA is not proposing to regulate the beneficial use of CCR. However, EPA has identified concerns with some uses of CCR in unencapsulated forms, such as the use of CCR in road embankments and agricultural applications, in the event proper practices are not employed. For those uses, the agency is soliciting comment on whether to regulate and, if so, the most appropriate regulatory approach to be taken. While EPA does not want to negatively impact the legitimate beneficial use of CCR unnecessarily, we are also aware of the need to fully consider the risks, management practices and other pertinent information."

EPA's proposal says that since 2000 there has been "a significant increase in the use of CCR," as ingredients in specific products, "such as resin-bound products or mineral filler in asphalt." It also says using CCR as filler for cement can hold many greenhouse gas benefits. But it does cite concern with unencapsulated uses, particularly agricultural applications, sand and gravel pit fill, and other uses that place CCR in the ground, potentially near sources of water. In the rule, EPA proposes criteria to distinguish between a beneficial use and waste management, which would include sand and gravel pit fill, and seeks comment on that criteria as well as the "most appropriate" regulatory approach to take.

A third industry source warns this language "lays the groundwork, as a matter of administrative law" for EPA to include substantial limits on beneficial reuse in a final rule. "The fact that the proposal doesn't include language to restrict beneficial uses does not mean people are going to sleep on this and not worry about it," the source says.

The environmentalist says that EPA's attempt to both exempt reuse from RCRA regulation while possibly limiting some reuse will be difficult to implement, given a high-profile battle over reuse industry cost estimates in the proposal.

EPA was forced by White House Office of Management & Budget (OMB) regulatory reviewers to quantify industry's fear of stigma of coal waste regulation in its cost/benefit analysis of the proposal, which was issued early last month but has yet to appear in the *Federal Register.* The changes forced by OMB resulted in slashing the lower-end benefit estimates for classifying the waste as hazardous from $87 million to negative $230 million (*Inside EPA*, June 4).

EPA in the RCRA proposal asks for information -- specifically analyses and other data -- supporting the claims that a stigma "will drive people away from the use of valuable products," or that states would prohibit CCR reuse if EPA regulates any aspect of coal waste as hazardous under RCRA subtitle C.

A second environmentalist downplays industry's concerns over the impacts of a hazardous waste rule, saying there is no scenario where proper beneficial reuse would suffer from a stigma effect.

**A source with Public Employees for Environmental Responsibility (PEER), a vocal critic** of EPA's participation in the C2P2 program, is pleased that EPA is seeking comment on potential curbs on beneficial reuse but does not expect the agency to finalize restrictions any time soon, and says if the agency has reason to believe that putting CCR on the ground is bad "then they need to regulate what they previously considered a beneficial use."

PEER also wants EPA to consider end-of-life standards for regulating encapsulated reuses of coal ash and other combustion wastes. "So in concrete when it's broken up, or in carpet backing when it's incinerated, what happens to the material? . . . There should be standards for it," the PEER source says.

Environmentalists in a recent summary of the agency's proposal pushed their strong support for subtitle C rules while criticizing the agency for failing to seek regulation for any beneficial reuse, particularly because it "leaves open the possibility that dangerous 'uses' such as agricultural 'soil amendments' and use of ash as an anti-skid agent on roads would qualify as beneficial," according to summary from Earthjustice, the Environmental Integrity Project, the Natural Resources Defense Council, Sierra Club and the Southern Environmental Law Center.

A third environmentalist says activists have not yet decided how far to push EPA to restrict beneficial reuses in their upcoming comments on the proposal but notes that the agency has regulated beneficial uses of other substances, such as the many products that fall under its new definition of solid waste rule. "There are all sorts of rules for recycling under RCRA," the source notes. -- *Dawn Reeves*

**EPA Finalizes Decision To Scrap Rule On Burning Hazardous Wastes (*Inside EPA*)**

The Obama EPA is finalizing its plan to scrap a controversial Bush-era rule that increased the number of hazardous wastes that can be burned as fuel, with EPA justifying the move by citing difficulty in ensuring the additional wastes would not cause harmful emissions when burned.

EPA June 8 released its final rule to withdraw the so-called emission comparable fuels (ECF) rule, which the Bush administration issued in December 2008. The Obama EPA first flagged its intent to scrap the rule in May 2009. *Relevant documents are available on InsideEPA.com.*

"The 2008 rule sought to remove regulatory costs by reclassifying fuels that would otherwise be regulated as hazardous waste, but generate emissions comparable with fuel oil when burned, as non-wastes," EPA notes in the announcement of the final rule.

The Obama EPA is withdrawing the rule "due to the difficulty of ensuring that emissions from burning ECF are comparable to emissions from burning fuel oil, and the limited savings of burning ECF," the agency says. Environmentalists criticized the Bush rule "for allowing hazardous waste to evade the hazardous waste regulatory system, and for being difficult to administer," EPA notes. "Industry members have also criticized it because of the detailed and prescriptive conditions for reclassification, which they believe will limit the rule's use."

Earthjustice in March 2009 filed suit against the Bush rule on behalf of the Louisiana Environmental Action Network and the Sierra Club, arguing it illegally allows companies to sidestep stringent hazardous waste regulations by allowing companies to avoid tracking, permitting, closure and financial assurance requirements under the Resource Conservation & Recovery Act. The Obama EPA announced in May 2009 that it would move to withdraw the rule in response to the environmentalist lawsuit against rule.

## MOUNTAINTOP MINING

==========

### Defending Permit Veto, EPA Seeks To Dismiss Key Mountaintop Mining Suit (*Inside EPA*)

EPA is seeking to dismiss a coal mining company's challenge of its landmark proposal to veto a previously issued mountaintop mining permit, arguing in part that the agency has authority to retroactively revoke permits after they have been handed out by the Army Corps of Engineers, according to a just-filed agency brief in the case.
In a June 7 motion to dismiss, EPA says Mingo Logan Coal Company Inc.'s challenge is invalid because it is being brought prior to final agency action and the company has not exhausted its potential administrative remedies. EPA also says the company's request for the court to grant relief "under the extraordinary doctrine of 'non-statutory review'" falls short because the company does not dispute EPA's authority to veto but simply the timing in which it exercised that authority and because it cannot show a clear statutory violation on EPA's part.

In effect, the company's complaint "amounts to nothing more than a garden-variety dispute over statutory interpretation" and does not rise to the level of judicial review, EPA says.

At issue is EPA's proposed veto of a so-called "dredge and fill" permit issued under section 404 of the Clean Water Act (CWA) to Mingo Logan for its Spruce No. 1 mine in Logan County, WV. Mining companies rely on such permits to dispose of large volumes of waste rock from mining operations in so-called valley fills. But the disposal practice obliterates local streams, harming water quality.

EPA March 26 announced that it planned to veto the Spruce No. 1 permit, one of 79 Army Corps permits EPA held up for review when the Obama administration came into office, citing potential adverse impacts to drinking water, aquatic life and local communities. EPA in announcing the veto touted it as the first time the agency had stepped in to block an already issued permit.

The Corps first issued the permit in January 2007, but Mingo never fully expanded its operations to the extent the permit would have allowed under an agreement with environmentalists in separate litigation over the permit. After EPA issued the veto, the agency also released interim guidelines setting strict new environmental control requirements before it would allow the Corps to issue new permits -- requirements that would likely bar future construction of valley fills.

In April, Mingo Logan, a subsidiary of Arch Coal Inc., sued EPA in U.S. District Court for the District of Columbia, asking the court to declare that EPA had overstepped its authority based on the argument that EPA's veto authority only applies to the selection of a disposal site for mine waste, action that precedes issuance of a permit.

But in its motion to dismiss EPA argues that its authority to retroactively veto permits is well supported by court precedent and the plain text of the CWA. The agency notes that the relevant section of the law, 404(c), "not only authorizes EPA to 'prohibit' and 'deny' such specification of disposal sites -- terms largely of prospective application -- it also authorizes EPA's 'withdrawal' of a specificiation -- a term purely of retrospective application. . . . Moreover, unless the term 'withdrawal' encompasses EPA's authority to take back a specification that was already permitted, the term would have no meaning that is not duplicated by the terms 'prohibit,' 'deny,' and 'restrict.'" *Relevant documents are available on InsideEPA.com.*

## PESTICIDES

==========

### Endosulfan to Be Banned, Pesticide Poses "Unacceptable Risks," EPA Says (*Scientific American*)

The EPA, declaring that endosulfan is unsafe for farm workers, moves to ban one of the last organochlorine pesticides left in the United States. Like DDT, endosulfan accumulates in the environment and in the bodies of people and wildlife, and is transported around the world to remote places.

By Marla Cone and Environmental Health News

CROP CHEMICAL: The EPA plans to ban endosulfan, a chlorinated pesticide that is commonly used on tomatoes, melons, squash and cucumbers.

Declaring that endosulfan is unsafe, the Environmental Protection Agency announced Wednesday that it is about to ban one of the last organochlorine pesticides still used in the United States.

Endosulfan—used largely on vegetables, apples, melons and cotton—"poses unacceptable risks" to farm workers and wildlife, EPA officials said. In response, the agency is moving to cancel the pesticide's registration.

Endosulfan is a chlorinated insecticide that is chemically similar to DDT, which was banned nearly 40 years ago. Like DDT, endosulfan builds up in the environment and in the bodies of people and wildlife, and it is transported around the world via winds and currents. Nearly all other organochlorine pesticides already have been banned.

Because of the risks to human health and the environment, "pesticide products containing endosulfan do not meet the standard for registration" under a federal law governing pesticides, EPA officials announced. The agency is now working with endosulfan's sole manufacturer, Makhteshim Agan of North America, a North Carolina subsidiary of an Israeli company, to terminate all uses yet give growers time to shift to alternatives.

The agency's move reverses a decision made in 2002 under the Bush Administration that allowed continued use of endosulfan with some restrictions. That decision triggered a lawsuit two years ago filed by farm labor unions and environmental groups.

EPA officials said new research shows that the health risks to workers who apply endosulfan to crops "are greater than previously known, in many instances exceeding the agency's levels of concern." The agency also found the risks for wildlife, particularly fish and birds, were greater than estimated in 2002.

The human effects are largely unknown but tests on lab animals have shown that endosulfan is toxic to the nervous system and can damage the kidney, liver and male reproductive organs.

The coalition of environmental and farm worker advocates that sued the EPA welcomed the decision to ban all uses of endosulfan.

"Finally," said Kristen Boyles, who handled the lawsuit for the groups, which included United Farm Workers, Pesticide Action Network North America and the Natural Resources Defense Council. "Endosulfan should have been banned years ago. As this growing season enters full swing, we sincerely hope it's the last one where this dangerous poison is let loose in our communities and our environment."

In late 2007, the EPA updated its assessment of endosulfan's risks based largely on new research showing effects on the developing brains of lab animals and studies of farm workers that showed their exposure was greater than previously believed despite

use of protective equipment. Two months later, California officials—who also were reviewing the risks of endosulfan—reported an even higher risk to workers than the EPA reported.

In addition, California officials determined that the amounts found in the air near some fields and orchards posed a public health risk to bystanders. The state declared endosulfan a toxic air contaminant in 2008, which triggered efforts to reduce people's exposure.

Last year, the EPA launched a review of the economic benefits of endosulfan, which is required before banning a substance under federal pesticides law. Its conclusion: "While a few crop uses have relatively high benefits for growers, the nationwide benefits to society as a whole are low for all uses of endosulfan and do not exceed the risks," says an EPA document released online Wednesday.

The EPA, declaring that endosulfan is unsafe for farm workers, moves to ban one of the last organochlorine pesticides left in the United States. Like DDT, endosulfan accumulates in the environment and in the bodies of people and wildlife, and is transported around the world to remote places.

By Marla Cone and Environmental Health News

The top crops that use endosulfan are tomatoes, cucurbits (which include melons, cucumbers and squashes), potatoes, apples and cotton. Usage has been decreasing since 2002, when new restrictions were added. In California, about 60,000 pounds were applied to crops in 2008, compared with 151,000 pounds in 2002, according to the California Dept. of Pesticide Regulation.

First registered for use in the United States in the 1950s, endosulfan is one of the most abundant pesticides found in the global atmosphere. And unlike most other organochlorines, which were banned in the 1970s, its concentrations have been increasing since the 1980s in the Arctic and in other remote ecosystems, according to a 2009 study by British and Canadian researchers.

Traces of endosulfan are found on food crops, but EPA officials say the risks from consuming the residue are low. Because organochlorines accumulate in fatty tissue, those who eat high on food chains—such as the Inuit who eat marine mammals —are the most highly exposed.

United Nations countries are evaluating endosulfan for inclusion in the Stockholm Convention, an international treaty which bans or restricts persistent organic pollutants—chemicals that can build up in the environment. A decision by the UN's review committee is expected next year.

The ban on endosulfan will leave dicofol as the last major chlorinated pesticide allowed today in the United States, where it is used to kill mites, mostly on cotton and citrus. Pentachlorphenol is also used as a pesticide, although its use is restricted to treatment of railroad ties and utility poles, not food crops. Lindane is banned from crops but continues to be used in prescription shampoos for treating lice.

**US insecticide ban spurs local review (*Sunday Morning Herald*)**

TOM ARUP
June 11, 2010
AUSTRALIAN authorities are reviewing the local use of the controversial insecticide endosulfan, which was banned by the US this week, due to threats to wildlife as far away as the north and south poles.
The US Environmental Protection Agency said on Wednesday that it would take action to end the use of endosulfan because of unacceptable health risks to agricultural workers and wildlife.
The EPA's decision cites recent research since 2002 showing an unacceptable "neurological and reproductive risks to farmworkers and wildlife," in its use.

Australia is just one of a handful of countries - including India and Brazil - still using endosulfan while 64 countries, including New Zealand, have banned it.

A spokesman for Australian Pesticides and Veterinary Medicines Authority (APVMA) said yesterday the authority had requested a review of recent research that showed endosulfan was able to travel great distances in the atmosphere, even turning up in the body fat of Arctic mammals.

"The [Environment] Department has confirmed these risks exist and will soon provide advice to the APVMA whether it believes they trigger legislation that might enable the APVMA to take action on endosulfan in Australia," the spokesman said in a statement. He told *The Age* the review would take a month to complete.

A spokeswoman for the Environment Department said Australia's use of the insecticide was not in contravention of international environmental conventions protecting Antarctica and the Arctic.

In a recent decision at the Stockholm Convention on Persistent Organic Pollutants endosulfan was nominated to be listed as a "persistent pollutant".

A global ban of its use is now being considered under the convention.

The APVMA spokesman said yesterday said there was no evidence the insecticide posed human health risks in Australia. A review of the use of endosulfan from 2005 had set strict controls on its use, he said, and recent advice from the Health Department showed those controls were working.

Australian endosulfan sales were worth $2.3 million in 2008-09. It is mainly used in the cotton and macadamia industries.

WWF Australia yesterday called for Australia to immediately ban endosulfan. "Australian farmers have not been adequately informed of the risks associated with endosulfan and other toxic pesticides," spokesman Nick Heath said.

"The continued delay in action is symptomatic of the lack of concern for Australians and Australian wildlife."

## TOXICS

==========

### Toxic Corexit dispersant chemicals remained secret as feds colluded with Big Business (*Natural News*)

by Mike Adams, the Health Ranger, NaturalNews Editor
(NaturalNews) After weeks of silence on the issue, the U.S. Environmental Protection Agency (EPA) finally decided to go public with the list of ingredients used to manufacture Corexit, the chemical dispersant used by BP in the Gulf of Mexico oil disaster. There are two things about this announcement that deserve our attention: First, the ingredients that have been disclosed are extremely toxic, and second, why did the EPA protect the oil industry's "trade secrets" for so long by refusing to disclose these ingredients until now?

As reported in the New York Times, Brian Turnbaugh, a policy analyst at OMB Watch said, "EPA had the authority to act all along; its decision to now disclose the ingredients demonstrates this. Yet it took a public outcry and weeks of complaints for the agency to act and place the public's interest ahead of corporate interests."

On the toxicity question, you could hardly find a more dangerous combination of poisons to dump into the Gulf of Mexico than what has been revealed in Corexit. The Corexit 9527 product has been designated a "chronic and acute health hazard" by the EPA. It is made with 2-butoxyethanol, a highly toxic chemical that has long been linked to the health problems of cleanup crews who worked on the Exxon Valdez spill.

A newer Corexit recipe dubbed the "9500 formula" contains dioctyl sodium sulfosuccinate, a detergent chemical that's also found in laxatives. What do you suppose happens to the marine ecosystem when fish and sea turtles ingest this chemical through their gills and skin? And just as importantly, what do you think happens to the human beings who are working around this chemical, breathing in its fumes and touching it with their skin?

The answers are currently unknown, which is exactly why it is so inexcusable that Nalco and the oil industry giants would for so long refuse to disclose the chemical ingredients they're dumping into the Gulf of Mexico in huge quantities (over a million gallons dumped into the ocean to date).

But it gets even more interesting when you look at just how widespread this "chemical secrecy" is across Big Business in the USA... and how the U.S. government more often than not conspires with industry to keep these chemicals a secret.
It's time to end chemical trade secrets
Armed with the accomplices in the FDA, EPA, FTC and the U.S. Patent and Trademark Office, powerful corporations have been keeping secrets from us all. It's not just the toxic chemicals in Corexit, either: Large manufacturers of consumers products -- such as Unilever, Proctor & Gamble and Johnson & Johnson -- routinely use toxic chemical ingredients in their products -- ingredients which are usually kept secret from the public.

Similarly, virtually every perfume, cologne and fragrance product on the market is made with cancer-causing chemicals that their manufacturers refuse to disclose, claiming their formulas are "trade secrets."

Throughout Big Business in America, the toxic chemicals used in everyday products such as household cleaners, cosmetics and yard care remain a dangerous secret, and the U.S. government actually colludes with industry to keep these chemical ingredients a secret by, for example, refusing to require full disclosure of ingredients for personal care products. The FDA offers us virtually no enforcement in this area, depending almost entirely on companies to declare their own chemicals are safe rather than requiring actual safety testing to be conducted.

This is why the following statement is frightening yet true: What BP is doing to the Gulf of Mexico, companies like Proctor & Gamble are doing to the entire population. We are all being mass poisoned by the toxic chemicals in personal care products, foods, medicines, fragrance products and other concoctions created by powerful corporations that use toxic chemicals throughout their product lines... but who refuse to disclose those ingredients in the public.

Thanks to the widespread use of secret chemicals in foods, medicines and personal care products, we are awash in synthetic toxic chemicals that have already reached the shores of public health. The rates of cancer, Alzheimer's, diabetes and infertility that we're seeing right now are a reflection of the devastating health cost associated with ongoing the ongoing chemical contamination of our population. Even public water fluoridation policies are a kind of "water contamination disaster" where chemicals from an undisclosed source are dumped into the water supply (on purpose, no less!).

What's doubly disturbing about all this is that many of the chemicals used in foods, medicines, household cleaners and personal care products end up in the Gulf of Mexico as well because they get flushed down stream. So now the Gulf isn't just polluted with crude oil and dispersant chemicals; it's also heavily contaminated with all the chemical

runoff from the products made by large corporations that refuse to disclose the actual chemical ingredients, claiming they're trade secrets.
It's time to end the chemical secrecy
As this Gulf of Mexico oil disaster clearly demonstrates, it's time to end the chemical secrecy maintained by Big Business. We must demand that all ingredients be fully disclosed for all products so that the curtain of chemical secrecy is lifted once a for all.

Neither oil companies nor consumer product companies should be able to hide behind the excuse of "trade secrets" to avoid disclosing the actual chemicals contained in the products they sell. As consumers, we must demand chemical transparency from these companies or refuse to buy their products.

Legislatively, we must demand new laws that require full disclosure on all consumer products so that ordinary people can see what's contained in the products they buy.

In a world where one person's chemical runoff impacts every other person, there is no justification for chemical secrecy. We all have the right to know what we're putting on (or in) our bodies, and if companies refuse to be honest with us, we should boycott their products and publicly shame them for engaging in deceptive, secretive behavior.

Because the truth is that consumer product companies don't dare want you to know what's actually found in their products. And that's because most of their products are made with poison. If the average perfume product listed its chemical ingredients on the label, for example, product sales would plummet as consumers realized just how many of those ingredients are linked to cancer and liver disorders.

Big Business wants us all to remain ignorant... blinded to the truth of what poisons they're slathering on our skin or dripping down our throats. But it's time to halt this dark era of chemical secrets in our modern world. It's time to demand transparency, clean up our waterways and stop poisoning ourselves and our planet.

Sources for this story include:
http://www.nytimes.com/gwire/2010/0...{SubscribeHealthRangerBlock}

**EPA Draws Early Criticism Over First-Time Oral Safety Standard For Dioxin (*Inside EPA*)**

EPA is facing early criticism from the chemical industry and federal agencies over its first-time oral safety standard for dioxin -- a standard that the agency created at the recommendation of the National Academy of Sciences (NAS) but which critics charge is not necessary, inappropriate and based on faulty data.
Meanwhile, industry officials are urging EPA's Science Advisory Board (SAB) to remove Paolo Mocarelli -- one of the members from the panel designated to review EPA's draft reassessment -- arguing that as the author of one of the principal studies EPA used in setting the standard Mocarelli cannot impartially review the assessment.

Mocarelli is known for his research of dioxins, and particularly of the residents of Seveso, Italy and surrounding towns exposed to large amounts of the contaminants after an industrial accident in 1976. EPA used one of Mocarelli's studies of the exposed residents, along with a second study by one of Mocarelli's colleagues also looking at Seveso residents as the basis for its calculation of the non-cancer risk that dioxin poses when ingested.

One industry source notes that SAB announced the members of the review panel last November, before the publication of the draft 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) assessment, so "no one could have known there was a conflict." The source adds that industry is "hoping SAB will review his participation on the panel" due to concern over Mocarelli's "potential lack of objectivity" in reviewing an assessment based in part on one of his own publications.

The source indicates that an industry representative discussed Mocarelli's participation on the panel with an SAB staff member, but the meeting was inconclusive. The source did not know how or if SAB intends to address the concern.

EPA's draft reassessment of the risks posed by TCDD -- the most toxic form of dioxin against which other dioxins and dioxin-like compounds are assessed -- includes a first-time calculation of a reference dose (RfD) for TCDD. An RfD is the amount EPA considers safe to consume daily over a lifetime without experiencing non-cancer health effects.

EPA calculates an RfD for dioxin of 7x10-10 milligrams per kilogram of body weight per day (mg/kg-day), one of the strictest yet. EPA calculated the RfD in response to a 2005 NAS recommendation, which reviewed an earlier EPA draft reassessment of dioxin in 2005.

One environmental consultant says EPA in the past was reluctant to calculate an RfD for dioxin because "so much of the population is already in excess" of the RfD EPA would have calculated.

Similarly, a public health activist says that in the past EPA indicated that calculating an RfD was "not practical because the value was above the average intake value for the population so therefore it had no meaning. It never made sense to me." Instead, EPA calculated "benchmark levels between intake and adverse effects," the source adds. "I think they still make the argument that is more important" than the RfD.

The activist believes this is the first time that EPA has set an RfD above the daily ingestion rate. The draft presents an estimated U.S. daily intake of TCDD and other dioxin-like compounds at "roughly 0.58 [picograms per kilogram body weight per day (pg/kg-day)] at the 50th percentile and suggests that human TEQ ingestion exposures likely peaked in the 1970's." That estimate converts to 5.8x10-10 mg/kg-day.

But both industry and other agencies, including the Agriculture (USDA) and Defense (DOD) departments, have questioned the RfD, which is based in part on one of Mocarelli's studies. USDA questioned whether an RfD is "truly necessary for reduction

of risk," while DoD and the American Chemistry Council (ACC), the chemical industry association, questioned the studies EPA used to calculate the RfD.

"An inappropriate data set was chosen for the chronic RfD," DOD argues in its March 26 interagency comments. The Pentagon explains that it does not believe EPA has met its own criterion for choosing the principle studies that are the basis for non-cancer risk calculations. "For noncancer risks, the document concludes that the human data are the most relevant. However, the studies selected do not meet EPA's criterion," according to DOD's comments. "For a chemical such as dioxin where the document states that body burden or area under the curve is the appropriate dose metric there must be more than acute exposure (such as the exposures in these studies) to attain the body burden."

ACC also protests the principle studies EPA chose when developing the RFD. In a May 21 letter, ACC Assistant General Counsel David Fischer argues that "while EPA appeared to heed NAS' recommendation to develop a dioxin RfD using human data, the agency did not use the best available science, and based the RfD on questionable research. As a result, the agency exaggerates health effects expected from normal dietary exposure."

**Industry Seeks New Toxicity Study Before EPA Issues New PAH Risk Method (*Inside EPA*)**

An industry coalition is calling on EPA to complete a long-delayed update to its risk assessment of benzo(a)pyrene (BaP) -- a key polycyclic aromatic hydrocarbon (PAH) that is a by-product of fuel and other industrial combustion -- before it completes a formula for assessing the risks of other PAHs that are released from asphalt and other sources.

Many of the industry comments also raise concerns with EPA's plan to use the so-called relative potency factor (RPF) approach to calculate the human health risks of mixtures of PAHs, which uses BaP as an index or reference chemical by which regulators can determine cancer risk estimates for mixtures of PAHs. Other PAHs are assigned a potency relative to BaP, and these factors are then used to calculate the toxicity of a mixture.

Industry's concern with EPA's use of an RPF approach echoes its concern over EPA's use of a similar approach to calculate the toxicity of various dioxins relative to the most toxic form of the compound using so-called toxic equivalency factors.

EPA's National Center for Environmental Assessment (NCEA) proposed its method for calculating the toxicity of PAHs Feb. 26 in a draft document, Development of a Relative Potency Factor (RPF) Approach for PAH Mixtures. The agency's effort is crucial to regulators who will use the new formula to calculate regulatory limits for a range of

media exposures, including water contamination from runoff from roads, railroads and other sources of the chemicals. *Relevant documents are available on InsideEPA.com.*

In Austin, TX, for example, city officials have banned the use of some coal-tar sealants that contain PAHs due to concern that it is harming local waters. City officials continue to monitor the issue closely and plan to issue a report in 2011 reporting on the effects of the citywide ban, according to the city's website.

But industry is criticizing EPA's approach, charging that the agency's 15-year-old BaP assessment -- which finds the chemical is a "probable" human carcinogen -- is outdated. EPA started to update its Integrated Risk Information System (IRIS) assessment of BaP in 1998, according to the IRIS track website, but NCEA has yet to issue a draft of the updated assessment.

Members of a Science Advisory Board Review Panel raised some initial concerns about EPA's proposed RPF approach on a June 8 conference call after hearing an EPA presentation on the approach. The purpose of the call was to discuss a June 21-23 peer review of the draft document, but panel members also posed questions as to why EPA estimated final RPF values from data contained in several bioassay studies by using an average RPF value.

"It seems like there's a big range in RPF values," John DiGiovanni, of the University of Texas at Austin, said on the call, questioning the use of an average.

Dr. Lynn Flowers, NCEA's acting associate director for health, said the average was used because researchers were unable to arrive at an appropriate method for weighting the data. "That may not be really good. If you look at the validity of these studies, they can't all be equally valid," Nicholas Geacintov, of New York University, said on the call.

Industry groups including the American Petroleum Institute, the Asphalt Institute, the Association of American Railroads and the National Petrochemical & Refiners Association have filed comments calling on EPA to complete an updated assessment of BaP's carcinogenicity before finalizing the RPF approach.

"At a minimum it should be consistent with current EPA 2005 Cancer Guidelines before being used as a point of reference for the proposed RPF approach. The proposed RPF approach appears to rely on the 1994 IRIS toxicological assessment for benzo(a)pyrene," API, speaking on behalf of the other stakeholders, writes in its April 28 comments.

Though EPA's proposal summarized a large number of studies on PAHs, the document failed to perform a weight of evidence assessment in accordance with EPA 2005 requirements, API further argued.

An industry source says EPA failed to provide clear justification for its use of BaP as the index chemical for the formula, which attempts to quantify the risks of multiple PAHs, an ubiquitous class of suspected carcinogenic chemicals found in oil, coal, tar, and other carbon-based fuels. "It just seems to be a bit of a disconnect," the industry source says,

suggesting that EPA wait until more current data concerning the toxicity of the index chemical is available.

The California-based Electric Power Research Institute raises similar concerns, arguing that EPA's proposal uses an outdated and scientifically unjustifiable cancer slope factor (CSF) for estimating cancer risks that was in the 1994 IRIS assessment of BaP. The power industry group cites "discussion in the report regarding the need to update the CSF for BaP despite the fact that a guideline-compliant two-year feeding study in mice (performed at the National Center for Toxicological Research) has been available for such purpose for more than ten years."

**Activists Say EPA Dispersant Disclosure Highlights Need For Stronger TSCA (*Inside EPA*)**

EPA has disclosed the constituents in controversial dispersant chemicals being used to break up the Gulf of Mexico oil spill but one key environmentalist says the difficulty EPA had in obtaining the data highlights the need for Congress to provide the agency with more authority in its toxics law to ease disclosure of chemical data.
"The notion that EPA has to beg and plead for this kind of disclosure under these kinds of conditions is all the more reason [the Toxic Substances Control Act (TSCA)] needs to be amended," says Richard Denison, a senior scientist with the Environmental Defense Fund. Dennison and other members of the Safer Chemicals, Healthy Families Coalition are scheduled to host a June 10 teleconference to discuss the need for strengthening TSCA in the wake of the spill.

EPA this week posted the ingredients in the Corexit-brand dispersants on its BP spill website after Sen. Kirsten Gillibrand (D-NY) asked the agency to make the ingredients public using existing TSCA authority. Gillibrand sent a June 4 letter to EPA Administrator Lisa Jackson noting that section 14(a)(3) of TSCA gives the agency power to disclose data on dispersants' risk if it determines it to be "'necessary to protect health or the environment against an unreasonable risk of injury to health or the environment.' Given the very serious health and environmental concerns associated with exposure to these chemicals, I believe it is essential that this information be made public without delay." *The letter is available on InsideEPA.com.*

But it is not clear whether EPA exercised the authority or simply cajoled Nalco, the dispersants' manufacturer, to voluntarily provide the data. In a June 7 statement, EPA said it has "challenged" BP and several dispersant makers to provide more information about the chemicals to the public, a move that EPA says has resulted in the release of new data on the use and components of the chemicals, including Corexit. Critics have said the dispersant,which is manufactured by Nalco and is being used by BP for the Gulf of Mexico oil spill, is more toxic than alternatives.

"In response to our strong urging, Nalco has released the constituents of their product, Corexit, and we encourage other companies to do the same so Americans can get a full

picture of the potential environmental and health impacts of these dispersants," EPA says in the statement.

A spokesman with Nalco said the company did not have prior knowledge that the information would be made public, though he says the company did provide information to EPA that the agency could share with other agencies and third-party laboratories. "We were not aware this would be posted on the website," the spokesman said.

Environmentalists, however, say confusion about the dispersant ingredients and questions about how EPA obtained the information demonstrate the need for stricter TSCA authority to require the information be provided to the agency and in some cases be made public. "We know how hard proving unreasonable risk can be under section 6" of TSCA, which would be the same standard for disclosing information under section 14 the statute. Further, any move under section 14 could take time for the agency to develop its case. "We need this information now," Denison says.

EPA already requires toxicology and effectiveness tests for all dispersants approved under the National Oil and Hazardous Substances Pollution Contingency Plan, which provides a blueprint for federal government responses to oil and hazardous substance spills. But environmentalists and others have raised concerns after EPA approved use of dispersants to address the BP spill in the Gulf, charging that the agency approved the dispersants despite major uncertainties about the chemicals' long-term impacts on aquatic life and deepwater ecosystems.

Jackson has acknowledged limitations of the system and has vowed to strengthen agency rules governing approval of dispersants. Despite the criticisms, a scientific panel of federal officials, industry and academics is recommending continued use of chemical dispersants in the Gulf.

But Denison says clarifying EPA authority in a TSCA reform package could give the agency more discretion to release certain information to the public, abiding by certain criteria that would be easier to meet than the current standard. This would relieve EPA of having to meet the "unreasonable risk" test under section 14 or use other workaround tactics to compel companies to make the information public.

**Meanwhile, some lawmakers may also be weighing legislative changes to strengthen** EPA authority over dispersants. At a House science subcommittee hearing June 9, several lawmakers called on EPA and other agency officials to describe in writing what went wrong in the spill response efforts and what regulatory breakdowns occurred that they felt contributed to the Gulf disaster. "I'm just amazed there isn't a greater regulatory mechanism that says, 'They will do this,'" said Rep. Vernon Ehlers (R-MI). "I think there's a lot of people at fault here."

Rep. Brian Baird (D-WA), who chairs the Energy and Environment Subcommittee, challenged panel witnesses' repeated references to the "solidity" of the inter-agency spill research regime established by the Oil Pollution Act of 1990 in response to the Exxon Valdez spill, and asked that witnesses cite specific examples of "what we've

learned from OPA 90 that we didn't know before that has been useful." -- *Aaron Lovell & Bridget DiCosmo*

**WATER**
**==========**

**EPA cracking down on Amish, English farmers (*CBS 21*)**

Reported by: Jenni Joyce
Email: jennijoyce@cbs21.com
Last Update: 6/10 6:49 pm

The Amish believe it's their religious duty to be stewards of the land.

"We have many farmers who have put in best management practices above and beyond baseline regulations," says Don McNutt, of the Lancaster County Conservation District.

But, the Environmental Protection Agency says Lancaster County farmers are not doing enough to keep the area's Chesapeake watershed clean.

Lancaster County ranks at the top of the list of counties contributing to nitrogen and phosphorous runoff. The Lancaster Conservation District says that's because of the high number of cattle in the county.

The feds want the pollution reduced quickly.

They're knocking on the doors of individual farmers. It's not a conversation that strikes accord with the Amish.

"They are reluctant to have the government interfere with their way of life," says Donald Kraybill, a professor at Elizabethtown College who specializes in Amish studies.

The Amish have an agreement with the government. They do not participate in Social Security and have vowed not to take money from the government.

"There are government programs to [help fund] manure storages and some fencing [to reduce manure runoff]," explains McNutt.

McNutt says, recently, the Conservation District has seen some positive changes in the relationship between the Amish and the government.

“We are seeing more and more people becoming comfortable with fencing cattle out and taking funds for that.”

Last Fall, the EPA visited 24 farms in a southern pocket of Lancaster County. Many of the farms were cited for poor manure management and high levels of nitrate.

McNutt says the problems are simple fixes. The Lancaster Conservation District has a plan of changes for the farms cited. The plans will be announced when the District meets with the EPA the first week of July to discuss better practices.

**For Now, Industry Turns To EPA To Limit Burden Of Chemical Spray Permit (*Inside EPA*)**

Pesticide and other industry officials have dropped plans, for now, to ask Congress to block EPA from issuing a general Clean Water Act (CWA) permit for chemical spraying activities "on or near waters," and are instead calling on the agency to seek "creative ways" to gain additional time to develop and implement the permit.
Exempting chemical spraying from regulation under the water act is "possible," but action in Congress is "ahead of where we're at" at the current time, says Jay Vroom, president and chief executive officer at CropLife America.
Rather than lobby Congress to address the issue substantively, the group and others are urging EPA to ask the appellate court that ordered EPA to issue the permit by April 2011 to give the agency more time to act. The deadline set by the court is "near impossible" for EPA and states to meet, Vroom says. The group also says Congress could move to extend the deadline.

In addition, affected industry groups are also seeking substantive changes to the draft permit, including additional language reiterating that agricultural stormwater is exempted from the water act, addressing concerns about regulatory burdens for smaller entities and providing more flexibility for when regulated entities must implement integrated pest management and other control measures.

EPA released its draft National Pollutant Discharge Elimination System (NPDES) permit for point source discharges from the application of chemicals to waters on June 4, kicking off a 45-day comment period that includes a number of public workshops. The *Federal Register* notice included a draft general permit and fact sheet, asking for comment on a range of issues, including what activities should be covered by the general permit.

EPA is developing the permit after the U.S. Court of Appeals for the 6th Circuit in *National Cotton Council, et al. v. EPA* vacated EPA's 2006 rule exempting agricultural pesticide users, state pest controllers and others that spray chemicals "on or near" waters from needing to obtain a permit. The ruling means that some applications are now considered discharges under the water act, requiring a permit to avoid liability for unregulated discharges.

The 6th Circuit gave EPA until April 9, 2011, to develop a general permit for states and tribal lands that do not have delegated NPDES permitting authority, though the agency's permit will also provide a model to those states with delegated programs. The permit covers chemical-spraying activities for mosquito control, aquatic weeds and algae, aquatic nuisances like mollusks and aerial application for pest control in the forest canopy. It does not address the key question of whether agricultural discharges are covered, but EPA has long said it would consider covering additional usage under the permit based on public input.

Many in industry consider a legislative change as the "only fix," according to a source in the aquatic pesticide industry. Because the Supreme Court declined to rehear the case, the 6th Circuit decision was reaffirmed, essentially saying, "If you don't like our interpretation, change the law," the source says.

But the source says there are questions about whether sympathetic lawmakers would be able to pass a bill amending the CWA to include the exemptions proposed by EPA in the initial rule.

"Congress doesn't act unless there is a crisis," and would probably not address issues like whether agriculture is covered until a court forces the question after the new permit goes into effect, a legal source says. If plaintiffs filed a successful citizen suit requiring farmers to obtain permits to cover spray drift, Congress might be forced to take action, or EPA might be required by the court to develop a similar permit for agriculture, the source says.

**Despite skepticism about congressional support, some sympathetic lawmakers** continued to highlight their concerns with the court ruling and the Obama administration's response. "In light of recent actions by the EPA that overreach its intended jurisdiction and the fact that Arkansas is such an agriculturally intensive state which relies heavily on our water resources, I am greatly concerned about the possible unintended consequences of this rule," Rep. John Boozman (R-AK), who is running against Senate agriculture committee Chairwoman Blanche Lincoln (D-AR), said in a statement to *Inside EPA*.

Sen. Mike Johanns (R-NE), meanwhile, questioned the administration's decision to not defend its established approach to pesticide permitting. "The result will be more expensive regulation and onerous permitting requirements for our producers that will provide no environmental gain," Johanns said in a June 2 statement.

But others say the breadth of the rule's coverage could spur action in Congress. CropLife's Vroom says there could be growing calls to lawmakers to amend the water law, including from the state officials that will have to implement the new permits. "That will be a driver as much as constituents who are actually pesticides users" from the four affected usage areas and other "gray areas," Vroom says.

While industry awaits action in Congress, industry is turning to other approaches to delay or limit the impact of the permit. Chief among them is urging EPA to ask the 6th Circuit for more time to develop the permit, an approach that the legal source says

would "not be uncommon." The court might grant the extension because EPA has made progress on the issue and the court has already granted the agency the 2-year stay, the source says.

Many stakeholders pointed out that the 45-day comment is quick for a complex rule, and added that they would like to see EPA open a second comment period after comments are incorporated into the permit. Sources also say that after EPA finalizes the permit, more than 40 states will also have to develop a permit and take comment on it before the stay ends in April 2011.

**In a June 8 statement Croplife also raises concerns with the current language in the draft permit,** specifically raising concerns that existing exemptions for certain agricultural uses in the Clean Water Act are not specifically mentioned in the draft general permit, which Croplife says could pave the way for lawsuits by activist groups against farmers. Section 402 of the water act carves out an exemption for return flows from irrigated agriculture, while section 502 includes an exemption for agricultural stormwater discharges. The group intends to make sure "any exemptions are faithfully followed" to avoid "creep" in what the permit is covering, Vroom says.

Other key stakeholders say the draft permit does not resolve crucial conflicts between the permit and the Federal Insecticide, Fungicide & Rodenticide Act (FIFRA) and the Clean Water Act. The water act and permit are focused on reducing pesticides use, while FIFRA is focused on "optimizing" pesticide use among a number of pest control options, according to a source with Responsible Industry for a Sound Environment (RISE), which represents the makers of aquatic pesticides.

The permit would also allow for the "second-guessing" of decisions made about pest management, as FIFRA allows for applicators to choose how much of a substance to use within a range as long as they comply with the label, while the permit and Clean Water Act treat pesticides as pollutants and require as little as possible be used, according to the RISE source.

The aquatic pesticides source says there are questions about the threshold levels that would require a control measure and which party would be responsible for filing a notice of intent for coverage with EPA, among other concerns. -- *Aaron Lovell*

**Senate Democrats Weigh Greater EPA Role In Offshore Drilling Permits (Inside EPA)**

Senate Democrats are considering whether to expand EPA's role for offshore oil drilling permits, though one key senator says the question of EPA's role in any future administrative shakeup of the Interior Department's Minerals Management Service (MMS) -- the agency that oversees offshore drilling operations -- is still an open one.

Sen. Sheldon Whitehouse (D-RI), who chairs the Senate Environment & Public Works Committee's oversight panel, told Inside EPA June 8 that the idea of expanding EPA's

regulatory role for offshore permitting is being discussed, though he himself has not decided whether that is an idea he supports.

However, Whitehouse said there is a credibility problem that MMS suffers that EPA does not. "I would put [an expanded role for EPA] in the 'on the table' category," Whitehouse said. "I haven't yet made up my own mind. I do think that it is very hard at this point to salvage the credibility of MMS." When asked whether EPA has the credibility that MMS lacks, Whitehouse said, "Absolutely."

His comments come as lawmakers are weighing legislative responses to the worsening BP oil spill in the Gulf of Mexico. Senate Majority Leader Harry Reid (D-NV) June 3 asked relevant committee chairs to mark up legislation related to the spill for inclusion in a pending "comprehensive clean energy" bill.

While it is not clear whether EPA's authorities will be expanded, there is support in the Senate for expanding EPA's role. Sen. Bill Nelson (D-FL) suggested last month that MMS' credibility has been brought into question as a result of its handling of its permitting responsibilities leading up to the Deepwater Horizon spill, and that EPA could be better poised to regulate the offshore oil industry as a result. "EPA stands for environmental protection -- they ought to be up there pounding the table" alongside MMS, Nelson said.

Sen. Frank Lautenberg (D-NJ), another member of the environment panel, has also questioned whether EPA is playing an active enough role in overseeing offshore drilling operations. "Are you concerned that the EPA has such a small, almost nonexistent, role in our government's action on oil drilling off our coast?" he asked EPA Administrator Lisa Jackson at a May 18 hearing.

Jackson responded that the agency would learn lessons from the spill that may require both congressional and administrative fixes. "We will learn lessons from this entire incident, which is far from over, that will, I think, possibly mean we need some changes, possibly in the law, certainly in the regulation," she said.

Jackson also vowed changes to how the agency approves dispersants used to break down spilled oil to help prevent it from reaching shore. "As we emerge from this response, I commit to reviewing the regulations regarding dispersant registration and listing. I commit to sharing the results of that review with this committee and working to tighten the law if it is necessary to ensure protection of human health and the environment," she said.

EPA waste chief Mathy Stanislaus added to this, telling a June 3 American Bar Association teleconference that the Gulf oil spill shows the need for improved drilling permitting and oil spill response. "Clearly [the spill] shows that there is a need for a greater . . . approach to how we handle both the response side and the permitting side," he said.

Remediation of the Gulf spill will likely go on for a long time, according to Stanislaus, who added, "There are going to be lots of lessons learned after this." He did not provide

further details on needed changes to drilling regulation and oil spill cleanup, though he said the agency is looking at innovative technology such as bioremediation products to clean up wetlands harmed by the BP spill.

Environmentalists have also been calling for a stronger role for EPA and the National Oceanic & Atmospheric Administration (NOAA) in offshore oil permitting in the wake of the ongoing oil spill in the Gulf of Mexico, which began in April and has since become the worst oil spill in U.S. history. The authority both to oversee environmental regulations for offshore platforms and to collect revenues from offshore leases lies with MMS, which activists say amounts to a conflict of interest.

Along with increased authorities for NOAA and EPA, environmentalists also are hoping the package will include provisions to lift the cap on oil companies' liability for spill damages, provide incentives to expand electric vehicle infrastructure, extend the moratorium on future offshore drilling and further reform MMS, which oversees offshore drilling.

**EPA Rejection Of Oregon Water Criteria May Set Precedent Over Risk Level (*Inside EPA*)**

EPA has disapproved Oregon's water quality criteria to limit pollutants in water because the criteria underestimated the amount of potentially contaminated fish Oregon tribes consume, a move sources say could set a precedent that water criteria should address risks to sensitive groups -- for example, Gulf residents impacted by the BP oil spill.

Some environmentalists, however, argue that both the criteria and EPA's rejection of them due to concerns about impacts on tribes' health is "lip service to the environmental justice" because the state had enough data to update the criteria years ago. Under the Clean Water Act, states develop water quality criteria that establish the highest concentration of a pollutant in water not expected to pose a significant risk to aquatic life or human health, setting the basis for developing enforceable water quality standards.

EPA Region X -- which covers Alaska, Idaho, Oregon, and Washington -- June 1 disapproved Oregon's 2004 revised human health criteria for 103 toxic pollutants due to studies and state efforts that show some tribal members in the state eat 10 times more fish than EPA's default consumption value. EPA said the consumption rate exposes tribe members to more pollutants from contaminated fish, and said the state needs to pursue stricter water criteria.

EPA also approved some criteria unrelated to fish consumption and delayed action on other criteria while it waits for endangered species advice from other agencies. EPA's decision was forced under a court-order as a result of an environmental group's lawsuit. *Relevant documents are available on InsideEPA.com.*

For the toxic pollutants criteria, EPA said that Oregon erred by using the agency's default fish consumption value of 17.5 grams per day, saying this did not account for significantly higher fish consumption by members of Oregon's Umatilla tribe. Higher fish

consumption could increase the risk of exposure to toxics in contaminated fish, and EPA says Oregon should have assessed the health risks for the sensitive tribal group in setting the criteria.

Even though EPA rejected the criteria, it noted that Oregon is currently pursuing a rulemaking to revise its 2004 water quality criteria based on a higher fish consumption rate of 175 grams per day.

"EPA believes that Oregon's adoption of human health criteria consistent with Commission's directive to develop criteria using a fish consumption rate of 175 grams per day statewide would be adequate to address EPA's disapproval of the new and revised human health criteria adopted in 2004," according to a letter from Michael Bussell, director of Region X's Office of Water & Watersheds, rejecting the criteria.

While EPA has authority to set federal water quality criteria for Oregon if the state does not move quickly enough to revise its criteria and address the agency's concerns, EPA would prefer to instead let the state finish its rulemaking process, which is slated to be completed in June 2011, according to a source with EPA Region X.

EPA's decision should send a signal to other states that they should also weigh local fish consumption, including by sensitive groups, in setting water criteria, the source says.

For example, EPA expects Washington state, which has tribal fish consumption levels similar to Oregon, to begin revising its fish consumption levels, which are currently set at 6.5 grams per day, the source says. The revision could lead to tighter water quality criteria to protect tribes in the Evergreen state that have high fish consumption rates.

Any precedent could be limited, however, by the availability of local data on fish consumption within a given state, the source notes. "This definitely would have national implications. We are not sure that data exists in other parts of the country . . . but where that data exists, it would have national precedence," the source says.

Efforts to develop more accurate fish consumption levels is an important step for environmental justice, since minority groups like tribes can consume much more fish than other groups, the Region X source says.

It can also help protect any population that eats high levels of fish, including residents that could be impacted by the Gulf of Mexico oil spill, the source says. "Perhaps in the Gulf . . . there will be some issues about fish consumption and toxics that this model might help in coming up with better criteria to protect people who eat a lot of fish."

**EPA is working with Oregon to find ways to meet the strict new criteria that are expected to result** from the new consumption rate, an approach that could be a national model, the source says. Oregon is planning to address both point and non-point sources of pollution, much like the agency's watershed-wide work in the Chesapeake Bay, which the agency has pointed to as a national model for improving water quality, the source says.

A source with the Oregon Department of Environmental Quality (DEQ) says the department is weighing how to implement the criteria, since some of the criteria are likely to be too stringent to meet right away. DEQ is considering variances, which temporarily relax water quality criteria; compliance schedules, which give sources time to meet the criteria; and intake credits, which do not hold sources responsible for pollutants that are in the water before it is taken up.

However, environmentalists are criticizing EPA for its long delay in making the decision and for not requiring the state to update the criteria more quickly. "We are pleased EPA has finally disapproved Oregon's human health standards because it's been a very long time coming," according to Nina Bell, the executive director of Northwest Environmental Advocates, the group that sued EPA to make the decision.

"EPA's six year delay is untenable, particularly considering that Oregon has been fiddling around with this issue for 10 years and it's been 15 years since the original study was completed. These agencies excel at providing lip service to the idea of environmental justice," Bell said in a June 7 statement.

Bell argues that EPA's decision "flouts federal law" because it backed what the state is already doing rather than specifying changes that are necessary and requiring the changes within 90 days. "In blatant disregard for the law, EPA has just told Oregon that one year from now is sufficiently soon. EPA continues to fiddle while Rome burns," Bell said. EPA's decision to rely on Oregon's process rather that make its own analysis of health risks also could limit the decision's precedent and let other states allow pollution levels that could cause cancer and other diseases, Bell said.

The EPA Region X source disagrees, and argues that the decision does set precedent for other states. The source also says the 90-day deadline is for EPA to make its decision whether to approve the standard, not for EPA to require changes or impose a federal standard. -- *Kate Winston*

**Industry Warns Proposed EPA Mine Veto Undermines Water Permitting (*Inside EPA*)**

A broad range of industry groups is objecting to EPA's proposal to veto an already issued permit for a mountaintop mine, warning that if finalized the decision would undermine industry's faith in Clean Water Act (CWA) permitting and deter investors due to uncertainty about whether water quality permits would be rescinded in the future. "If EPA actually proceeds to revoke this permit, any faith in the regulatory processes and the clearly defined separation of authorities and responsibilities between federal and state permitting programs will vanish," West Virginia's Coal Association says in June 1 comments to EPA on its proposal to veto an already issued Army Corps of Engineers water act section 404 "dredge and fill" permit for the Spruce No. 1 mine in Logan County, WV.

EPA took comment through June 4 on its landmark proposal to veto an already issued CWA permit for mountaintop mining. The mine's owners have already filed suit over the plan, though EPA counters that it is not final action that can be challenged and that it has authority to retroactively revoke permits issued by the Corps.

But a broad range of industry groups beyond coal and mining associations are strongly condemning the decision in their comments on the proposal. Organizations representing the manufacturing, construction, agricultural and other sectors all are weighing in to argue that the proposal would have broader impacts beyond the mountaintop mining industry, because it would undermine industry's faith in being able to rely on the validity of CWA permits.

The groups all argue that their businesses would suffer if EPA decided to revoke water quality permits already issued for their regulated facilities. They also say that uncertainty over the validity of permits could deter future investment in their industries. *Relevant documents are available on InsideEPA.com.*

The National Mining Association and 10 other industry organizations -- including the American Farm Bureau Federation, American Road and Transportation Builders Association (ARTBA), National Association of Manufacturers and National Association of Home Builders -- filed joint June 4 comments on EPA's proposed mining veto outlining potential adverse ripple effects from the decision that they say could harm their industries.

The coalition argues that, "The content of applicable laws and regulations is less important to these parties than the implicit guarantees of consistency and permanence. This institutional reliance is essential to the structural foundation of the free market economy." Through the proposal, EPA "is upsetting this foundational principle, and letting every permit holder know that at any time, for any reason, if may pull out a brick," the groups claim.

"If the CWA processes ARTBA members have come to rely upon are disturbed by an unprecedented revocation of a section 404 permit, it will be difficult, if not impossible, for ARTBA members to rely upon CWA permits to both build transportation improvements and accomplish environmental objectives through mitigation," ARTBA says.

The U.S. Chamber of Commerce -- the nation's largest business federation -- says EPA's move "not only threatens the integrity of the entire Section 404 program but will also stifle development and investments nationwide" because firms and investors could never be sure that their permits would not later be revoked.

Industry also argues that EPA is trying to graft water quality standards outlined in CWA section 402 -- which applies to state-issued national pollutant discharge elimination system permits -- onto section 404 requirements, claiming that EPA's objections to the Spruce permit are based on discharge concerns under section 402.

The legislative history of the CWA also demonstrates Congress' intent to limit veto authority to apply only before a permit is issued, industry argues, saying only the Corps has continuing jurisdiction over issued permits.

But EPA in a June 7 motion to dismiss Mingo Logan Coal Company Inc.'s challenge to the proposed permit veto argues that its authority to retroactively veto permits is well supported by court precedent and the plain text of the CWA. The agency notes that the relevant section of the law, 404(c), "not only authorizes EPA to 'prohibit' and 'deny' such specification of disposal sites -- terms largely of prospective application -- it also authorizes EPA's 'withdrawal' of a specification -- a term purely of retrospective application," according to the motion. Industry also says EPA is not justified in its attempt to use new scientific data to revoke a permit first issued in 2007.

Several organizations cite comments from former Sen. Edmund Muskie (D-ME) to support their contention that Congress did not intend to give EPA retroactive veto authority under the CWA.

Explaining EPA's section 404(c) authority in presenting the report of the CWA conference committee in 1972, Muskie said, "[P]rior to the issuance of any permit to dispose of spoil, the administrator must determine that the material to be disposed of will not adversely affect municipal water supplies, shellfish beds, and fishery areas . . . wildlife or recreational areas in the specified site" and should such a determination be made no permit would be issued. "EPA is empowered to veto specifications, however it must exercise this authority before a permit is issued," the Chamber says.

**Environmentalists also have weighed in, arguing that EPA is required to veto the permit** to protect water quality and to uphold standards of environmental justice outlined in a Clinton-era executive order.

"EPA has recognized the potential for environmental justice concerns in its proposal, including harm caused by valley fills, as well as blasting, dust, impacts on subsistence fishing, hunting, and gardening, concerns about drinking water supplies. . . . EPA has the authority to consider potential harm to the local community or human health 'to the extent that it is impacted by the factors listed' in the 404(b)(1) guidelines as well," say a coalition of environmental organizations, including Friends of the Earth, Environment America and the Natural Resources Defense Council in June 4 comments on the proposed veto. -- *Nick Juliano*

**Lawmakers Cite Gas Well Accidents To Call For Greater EPA Oversight (*Inside EPA*)**

Lawmakers are citing recent accidents at onshore natural gas wells using fracturing technologies in calls for EPA to boost its oversight of the practice, saying the circumstances behind some of the incidents are similar to the cause of the BP offshore oil spill in the Gulf of Mexico.

But EPA does not appear to be stepping up its oversight of fracking in light of the recent accidents, which include a June 3 Clearfield County, PA, blowout and a June 7 incident in West Virginia where seven members of a natural gas drilling crew were burned after hitting a methane pocket in an abandoned mine. An EPA Region III spokesman says the agency is "not directly involved" in the investigations at this time but is "always available to assist" states if need be.

Still, lawmakers are seizing on the incidents to call for more oversight of fracturing, or fracking. Rep. Joe Sestak (D-PA) sent a June 7 letter to EPA Administrator Lisa Jackson asking her to increase EPA's oversight of Marcellus Shale natural gas drilling, and also tied the fracking accident in Pennsylvania to the BP disaster in the Gulf.

Sestak wrote, "The blowout at the natural gas well in Clearfield County last week, apparently caused by a failed blowout preventer, spewed polluted drilling water and natural gas 75 feet in the air and on the ground before being capped 16 hours later. . . . The circumstances of the accident are similar to those that led to the BP oil rig explosion." *Relevant documents are available on InsideEPA.com.*

In the letter to Jackson, Sestak wrote that he would continue to work to pass H.R. 2766, which would give EPA explicit authority to regulate fracking under the Safe Drinking Water Act (SDWA). "As that legislation moves through the legislative process, I request that the EPA use its current authority to the maximum extent possible to protect the health, safety and environment of Pennsylvania and our neighboring states," the letter says.

At the same time, Rep. Maurice Hinchey (D-NY) is citing the BP oil spill to urge House Speaker Nancy Pelosi (D-CA) to bring the bill to the House floor. In addition to giving EPA authority to regulate fracking under SDWA, by removing an exemption included in the 2005 energy law, the bill would also require the oil and gas industry to disclose chemicals they use in fracking fluid.

"We've seen what happens when energy companies are granted unfettered access to our precious natural resources without proper oversight," Hinchey said in a statement accompanying the letter. "We cannot allow drilling to move forward without rules in place to protect drinking water and our overall environment." His June 2 letter to Pelosi says that an ongoing EPA fracking study and House Energy & Commerce Committee investigation into the practice should not hold up Congress from passing the bill giving EPA oversight.

**EPA fines Iowa battery maker fined over pollution (*Businessweek*)**

KANSAS CITY, Kan.

The U.S. Environmental Protection Agency has settled a dispute with an Iowa battery maker that allegedly failed to properly monitor and report discharges of industrial wastewater.
In the settlement, filed Wednesday in Kansas City, Kan., East Penn LLC of Corydon, Ia. agreed to pay a $53,547 fine for alleged violations of the Clean Water Act.

According to the EPA, agency inspectors determined in July that East Penn's facility was discharging industrial process wastewater. The violation was discovered during an inspection of Corydon's wastewater treatment system.

The EPA reports that at the time, East Penn never applied for a water pretreatment permit from the Iowa Department of Natural Resource.

East Penn has since filed an application for a pretreatment permit, and is conducting the required monitoring to ensure its wastewater will not adversely impact Corydon's treatment system

**EPA vows to push dispersant makers after posting Corexit ingredients (*Greenwire*)**

(06/10/2010)
Elana Schor, E&E reporter
U.S. EPA shed more light yesterday on its recent disclosure of once-secret complete ingredients in the oil dispersant being sprayed in the Gulf of Mexico, urging all makers of the controversial chemicals to cease shielding their components from the public.
In a statement released after a full list of chemicals in the Corexit oil dispersant was posted on the agency's website (*Greenwire*, June 9), EPA said it had successfully leaned on the product's manufacturer to waive its claim that the ingredients were a trade secret, a term known as "confidential business information" (CBI).

"Due to EPA's efforts, NALCO agreed to allow more of that CBI to be made public," the agency said, adding that it plans to vet all CBI claims made by dispersant producers "to determine if they are valid." Any claims found unjustified, EPA added, will leave chemical ingredients in the products subject to public release.

"EPA continues to believe that all dispersant manufacturers should voluntarily waive all CBI claims so that all information can be shared with the American public," the agency said in its statement.

Environmental and public-health advocates monitoring the Gulf oil spill had called for the release of Corexit's complete ingredients since the early days of the disaster, lamenting that some cleanup workers were stymied in seeking medical treatment because the chemicals they were exposed to remained unknown.

The exact formulas of Corexit 9500 and Corexit 9527 were not released by EPA, though the agency noted in its statement that the now-public information would aid "air, water, and sediment monitoring efforts."

EPA posted a combined list of ingredients in the two Corexit products -- one of which, 9527, it said was "no longer in use in the Gulf" -- without notifying Nalco Holding Co., the manufacturer, and without identifying the components of the individual dispersants. The agency's statement noted that Nalco had "waived their CBI claim to [a] combined list."

Late yesterday, Nalco posted on its website and Twitter account to clarify that Corexit 9500 did not include the ingredient 2-butoxyethanol, a hazardous chemical linked to long-term health problems experienced following the 1989 *Exxon Valdez* oil spill.

**Sand berm construction proceeds despite EPA concerns (*Greenwire*)**

(06/10/2010)
Sand piles designed to block oil from reaching the Louisiana coast will be built despite concerns from U.S. EPA about the environmental impact of the plan.
EPA says the sand berms will not keep most of the spilled oil away from the coast and may cause other ecological damage. The berms are designed to stand 6 feet above the high water mark, and 25 feet wide at the top. They will stretch 40 miles along the coast, and construction is set to begin this weekend. The construction, which could run into hundreds of millions of dollars in costs, will be funded by BP PLC.

The U.S. Army Corps of Engineers authorized the plan on June 2 after being pressured by Louisiana Gov. Bobby Jindal (R), the state's congressional delegation and other leaders.

But some government agencies say the initiative will be powerless against the spill. The emergency berms will take many months to build, by which time the oil would have already hit the coast. Many large water passes will also remain open, reported EPA in its comments to the Army Corps.

Concerns that dredging up sand to build the sand piles could increase coastal erosion and rip apart undersea oil-and-gas pipelines were also cited in the submitted comments. The berms, which are man-made barriers close to the coast, could also change the flow of water and alter the salinity, affecting wildlife.

EPA said the berms could "exacerbate the emergency situation in the Gulf" because it could move around oil-laden sand on the sea floor, contaminating clear regions and newly endangering wildlife (Jeffrey Ball, *Wall Street Journal*, June 10). **--**

**EPA meets next week on $5M-$7M Buick City cleanup (*Associated Press*)**

**Story also appeared: *Chicago Tribune***

1:49 PM CDT, June 10, 2010
FLINT, Mich.
The U.S. Environmental Protection Agency is holding a public meeting in Flint on plans to clean up General Motors Co.'s former Buick City complex.

The hearing is Wednesday evening at Mott Community College. It covers plans for a $5 million to $7 million cleanup of part of the 452-acre property now owned by Motors Liquidation Corp. GM spun off the company as part of its bankruptcy proceedings.

The EPA says work will start in 2011 and the current owners will pay. The agency says it has found lead-contaminated soil and groundwater polluted by gasoline and hydraulic fluid. It says the contaminants haven't affected drinking water.

Auto production at the site began in the 1890s. Operations in the affected area stopped in 1999.

Online:

EPA cleanup plan for the site: http://j.mp/9OOeAM

2010-06-10

**EPA to reduce pesticides discharged into US waters (*Bandera County Courier*)**

Contributed

The United States Environmental Protection Agency (EPA) is proposing a new permit requirement that would decrease the amount of pesticides discharged to the nation's waters and protect human health and the environment.

This action is in response to an April 9, 2009, court decision that ruled pesticide discharges to US waters were pollutants, thus requiring a permit.

The proposed permit, released for public comment and developed in collaboration with states, would require all operators to reduce pesticide discharges by using the lowest effective amount of pesticide, prevent leaks and spills, calibrate equipment and monitor for and report adverse incidents.
Additional controls, such as integrated pest management practices, are built into the permit for operators who exceed an annual treatment area threshold.

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

The agency’s draft permit covers the following pesticide uses:
• mosquito and other flying insect pest control;
• aquatic weed and algae control;
• aquatic nuisance animal control; and
• forest canopy pest control. It does not cover terrestrial applications to control pests on agricultural crops or forest floors. EPA is soliciting public comment on whether additional use patterns should be covered by this general permit.

The agency plans to finalize the permit this December. It will take effect April 9, 2011.

EPA will hold three public meetings, a public hearing and a webcast on the draft general permit to present the proposed requirements of the permit, the basis for those requirements and to answer questions. EPA will accept written comments on the draft permit for 45 days after publication in the Federal Register.

For more information on the draft permit, visit http://www.epa.gov/npdes.

Once finalized, the pesticide general permit will be used in states, territories, tribal lands and federal facilities where EPA is the authorized permitting authority. In the remaining 44 states, states will issue the pesticide permits.

**Sewage spills in Northland spark probe (*Kansas City Star*)**

Human feces, toilet paper and used condoms litter the ground and a road near the Northland village of Birmingham.

And the smells from the spills at a Kansas City Water Services Department pumping station are overpowering, several village residents said.

But it wasn't until this week — after an estimated spilling of tens of millions of gallons over three years — that a cleanup is beginning.

Village residents say they have been complaining to Kansas City water officials, with little or no response. City officials say they reported spills to state officials, who say those reports downplayed the problem.

But wherever the blame falls, no one this week has been denying that the continuing spills are massive and hazardous.

"If we had had any indication of the seriousness or the magnitude of the situation, we would have been out there sooner," said Judd Slivka , spokesman for the Missouri Department of Natural Resources , which has begun an investigation.

Assistant City Manager Rich Noll , who has been acting water services director since April, said he realized the situation was unpleasant for residents.

"We're doing what we can to address the unpleasantness," Noll said. "I would concur the cleanups could be better."

But sewer overflows from the station could continue for 17 more years because the station is not scheduled for a fix until then.

The trigger for this week's action appears to have been a call by the Birmingham police chief. Tony Seymour said he had complained to DNR a month ago.

"I just told them thousands and thousands of gallons of raw sewage were spilling out," he said.

But Monday the mess was still there, and Seymour called Gov. Jay Nixon's office. Nixon's staff called DNR that same day, a Nixon spokesman confirmed Thursday.

At least 300,000 gallons of sewage on May 13 spilled out of the station, and 100,000 more gallons a week or so later, according to city officials.

DNR officials said they believed those discharges may have been bigger, and their preliminary estimates have showed millions of gallons of raw sewage have sloshed onto the land surrounding the station over at least three years.

The station is just north of the Missouri River. Most of the Northland sewage drains through the station to a wastewater treatment plant about three miles south, city officials said.

The station helps propel the sewage to the treatment plant.

Residents of Birmingham, population about 200, said they started noticing overflows about three years ago. Kansas City officials said the timing coincided with the heavier rains the area had been experiencing since 2008, which caused most of the overflows.

Bryan Spragg , who lives with his family about a quarter-mile from the station, said he spent months calling the Water Services Department . He said he left messages and talked to workers, who gave him different phone numbers and employees to talk to.

Spragg finally called the EPA but was told he needed to call the city. He did, and eventually called the EPA again.

"Nothing," he said. "I got hem-hawed around."

Still the sewage continued to run out the west side of the station, and sometimes even out its garage door. Residents said kids were riding four-wheelers on the road blackened with sewage. Tree trunks and the grounds were blackened, too. Toilet paper was strewn throughout brushy area, and piles of feces could be seen.

Kansas City officials acknowledged that the station had massive problems but said many of the city's other pump stations did, too.

The station is scheduled to be replaced by 2027 at a cost of $23 million. First, the city must upgrade a 300-mile network of pipes in the Northland.

Two months ago the city and federal government signed a court-ordered consent decree requiring the city to spend more than $2 billion over 25 years to fix the city's decaying and broken sewer system.

As for the station's overflows, city officials denied they failed to properly report them. The Water Services Department notifies the DNR of all overflows, Noll said.

In the May 13 spill, Water Services laboratory manager Lorene Lindsay said, the city reported to DNR immediately and followed up five days later with a report that outlined the problem.

But DNR blamed Water Services workers for mischaracterizing the problem as a "routine bypass." DNR officials said they never were told the seriousness of the overflows.

Only after a DNR inspector arrived this week did "it became apparent that the magnitude of this issue was greater than what we had been led to believe by the water department," Slivka said.

The state's investigation is ongoing, Slivka said.

Investigators ordered Kansas City to turn over all its documents on the station by today and told the city it was responsible for cleaning up the mess.

City officials conceded workers failed to clean up after the latest sewage flooding.

"From what I saw out there, I was not happy with our housekeeping," said Robert Williamson , Wastewater Treatment Division manager.

As for not responding to Birmingham residents' complaints about the problem, Williamson said he did not remember receiving any. But his cell phone number is public, he said, and Kansas Citians should call him regarding sewer bypass problems at 816-804-8117.

**********

**E-Clips contain copyrighted materials and are made available to designated recipients. Neither the E-Clips nor any individual article within may be further distributed.**

**********